IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/24/23

BETWEEN:

ALMADEN MINERALS LTD.

and

ALMADEX MINERALS LTD.

Claimants

-and-

THE UNITED MEXICAN STATES

Respondent

CLAIMANTS' REPLY

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19 MAY 2026

BSF WILLKIE RÍOS FERRER Gutiérrez

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1. INTRODUCTION

1. Almaden Minerals Ltd. ("**Almaden**") and Almadex Minerals Ltd. ("**Almadex**," and together with Almaden, the "**Claimants**"), on their own behalf and on behalf of their respective Mexican subsidiaries, Minera Gorrión S.A. de C.V. ("**Minera Gorrión**") and Minera Gavilán S.A. de C.V. ("**Minera Gavilán**"), submit this Reply Memorial ("**Reply**")[1] in support of their claims against the United Mexican States ("**Mexico**" or the "**Respondent**") under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the "**CPTPP**" or the "**Treaty**"), and in accordance with the procedural calendar established by the Tribunal.[2]

2. In the introduction to the Memorial, the Claimants explained that a group of politically-backed, anti-mining NGOs falsely derided the Ixtaca Project as a "Project of Death" before Mexico deprived the Claimants of the fruits of their labor and expropriated their investments. The Claimants predicted that Mexico would parrot the same baseless allegations as the NGOs in its Counter-Memorial. On the very first page of its Counter-Memorial, Mexico explicitly rejects that prediction – before spending the better part of 300 pages doing exactly what was envisaged in the Memorial's introduction. Namely, advancing the NGOs' same tired, baseless narrative, falsely characterizing the Project as dangerous and illegitimate and espousing the same caricature of foreign miners as carpetbaggers seeking to profit at the expense of the local communities. In its Counter-Memorial, Mexico paints the Claimants with the same broad brush, labeling them as irresponsible "speculators" concerned only with short-term profits and unmoved by the local impacts of the Project. So much for the disavowal.

3. As explained in the Memorial, Mexico's *Secretaría de Economía* ("**Economía**") terminated the Claimants' mining concessions on the flimsy basis that they were "not feasible." The Claimants predicted that Mexico would be hard-pressed to defend that decision as anything other than a pretext. And as predicted, Mexico's Counter-Memorial fails to do so. The Project was demonstrably feasible, and but for Mexico's unlawful measures, it would have become a world-class, productive gold-silver mine on a predictable timeline.

4. Instead, Mexico advances a parallel narrative that the Project lacked legitimacy and a social license and that community concerns and opposition were significant. As the Claimants predicted, however, Mexico ignores the fact that community opposition played no role in Economía's cancellation of the Claimants' concessions. That is because there *was* no material

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[1] Abbreviations and terms used in the Claimants' Memorial have the same meaning in this Reply.

[2] Procedural Order No. 1 dated 27 November 2024; Procedural Order No. 4 dated 11 September 2025 (as amended by the Tribunal on 19 May 2026).

opposition. The Project enjoyed vocal support from communities within its area of influence, hundreds of whom expressed support for the Project in writing, and one of whom – the indigenous representative of the community Mexico acknowledges as the "main nucleus" of the Project – appears for the Claimants as a witness in this arbitration. By contrast, a single distant village, Tecoltemi, served as the vehicle for the anti-mining NGOs' astroturfing operation. Mexico now invokes that same village as the centerpiece of its defense. In so doing, Mexico ignores the fact that it would have been physically impossible for the Project to affect either Tecoltemi's territory or its water supply.

5. The Memorial's introduction also foresaw that Mexico would engage in victim-blaming to distract from its own wrongdoing. Of course, in the Counter-Memorial, Mexico does exactly that. Rather than defend its own conduct on the merits, it systematically blames the Claimants for the loss of their investments. It asserts that the Project was not "viable," citing the Claimants' "management" as the sole reason for that alleged lack of viability. It further asserts that the Claimants manipulated the local populace through "transactional" gifts and promises of future economic benefits – thus twisting the reality that the Claimants, dedicated investors in Mexico for decades, ran a world-class, internationally recognized mining development project that served as a benchmark for projects around the globe. Mexico uses these allegations as a smokescreen to distract from its own wrongdoing. But, as the Claimants explained in the Memorial and as will become evident in the pages that follow, Mexico picked the wrong mining company at which to level those allegations.

6. As demonstrated in the Memorial, the origins of this dispute are found in the election of populist Mexican President Andrés Manuel López Obrador ("**AMLO**"). Beginning in 2018, AMLO adopted a discriminatory policy of effectively banning all foreign mining development in Mexico. AMLO committed not to issue any new mining concessions and not to authorize any new open-pit mine anywhere in the national territory. That included the Claimants' newly discovered and state-of-the-art Ixtaca gold-silver project located in the municipality of Ixtacamaxtitlán in the State of Puebla, Mexico (the "**Ixtaca Project**" or the "**Project**"), which AMLO publicly "***guaranteed***" would not proceed.

7. True to AMLO's word, his administration brought the Ixtaca Project to an end in two ways:

   - *First*, Mexico's *Secretaría de Medio Ambiente y Recursos Naturales* ("**SEMARNAT**") suspended and then denied the *Manifestación de Impacto Ambiental* ("**MIA**") for the Ixtaca Project. That decision (the "**MIA Denial Decision**") rested on thinly veiled pretexts to conceal its true motive – to implement AMLO's political directive. SEMARNAT Secretary Toledo unabashedly pre-announced the

final result more than a year before the decision, declaring publicly that "SEMARNAT is not going to permit" the Ixtaca Project and that, "[w]ith SEMARNAT, Ixtaca will not happen." AMLO personally endorsed Secretary Toledo's stance at his daily *mañanera* on 31 October 2019, and that same day the Office of the Presidency hand-delivered to Secretary Toledo a veiled but unmistakable instruction – framed as a forwarded community letter – directing him to halt the Project. When AMLO subsequently replaced Secretary Toledo with Secretary Albores, he confirmed publicly that SEMARNAT would stick to the plan, because Secretary Albores was "part of the same team" and that the "transition is continuity." Secretary Albores wasted no time in confirming her marching orders, declaring before the Chamber of Representatives on 4 November 2020 – just a month before the MIA Denial Decision – that SEMARNAT would not grant permits for open-pit mining.

- While it concocted the pretexts to deny the MIA for the Ixtaca Project, SEMARNAT suspended the MIA evaluation without any legal basis, invoking the foreknown and unrelated Tecoltemi *amparo* as justification to freeze the process while it formulated grounds to carry out AMLO's and Secretary Toledo's directive. Although SEMARNAT was not even a party to the Tecoltemi *amparo*, and the Court's order confirming the injunction on the Concessions' exploration work – which was limited to Tecoltemi's land – said nothing about the MIA evaluation, SEMARNAT suspended the process one month before the statutory deadline and without proper notice to Minera Gorrión. It then waited a further three months after the Court confirmed that SEMARNAT could freely proceed before finally denying the MIA. As the evidence that has emerged in document production shows, that decision followed a hasty appointment of a new evaluator at SEMARNAT, who purported to review the entire case file – which amounted to several thousand pages – and issue the MIA Denial Decision *in a single day*.

- Unsurprisingly, the MIA Denial Decision was riddled with technical errors and misapplied legal standards befitting its political motivations. SEMARNAT disregarded the comprehensive technical information that Minera Gorrión had submitted, blithely dismissing it as insufficient and holding Minera Gorrión to the impossible standard of proving with "absolute scientific certainty" that the Project would not adversely impact the environment. That facially absurd standard had no basis in the *Ley General del Equilibrio Ecológico y la Protección al Ambiente* ("**LGEEPA**"), which permits denial on only three enumerated grounds, none of which applied, nor in the precautionary principle, which SEMARNAT purported to invoke.

SEMARNAT further grounded its decision on the independent conclusion that Minera Gorrión had purportedly failed to conduct an indigenous consultation, a position flatly contradicted by SEMARNAT's own internal correspondence – obtained in document production – which expressly acknowledges that SEMARNAT itself bore that obligation. This should come as no surprise, as it cannot be argued that such consultation obligations fall on anyone other than the State, as Mexican and international law standards make abundantly clear, and as Professor James Anaya, one of the world's leading experts on indigenous human rights, explains in his testimony.

- SEMARNAT's outright denial of the MIA stood in stark contrast to its treatment of three similarly situated mining projects owned by Canadian, Korean, and Mexican investors – Camino Rojo, El Boleo, and Huazamota River. All three were located near indigenous communities, yet each received conditional MIA approval subject to obtaining a decision from the competent State and Federal authorities to confirm whether indigenous consultation was required. None was held to the capricious "absolute scientific certainty" standard that SEMARNAT invented for Ixtaca.

- *Second*, Mexico arbitrarily and retroactively cancelled the Claimants' 20- and 14-year-old mining concessions on the legally undefined basis of "non-feasibility," relying upon alleged measurement defects in the original concession applications that were, on their face, *de minimis* and pretextual. Mexico's cancellation was not compelled by the Supreme Court's decision in the *amparo* proceedings. Nor did it accord the Claimants their due process rights. The cancellation was instead driven by AMLO's anti-foreign-investment and anti-mining agenda – which in its haste to end the Ixtaca Project, denied the local communities in Ixtacamaxtitlán the very human right the Supreme Court sought to protect: the right to indigenous consultation.

- The Claimants have long maintained that Mexico's "non-feasibility" decision was nothing more than a baseless and pretextual expedient to end the Ixtaca Project. This is now confirmed. As documents produced by Mexico show, although Economía's stated basis for its decision was the alleged measurement defects – internally, Economía acknowledged and recorded that this decision was, in fact, based upon a "study" purportedly prepared by the *Instituto Nacional de los Pueblos Indígenas* ("**INPI**") in late 2022. The INPI study finds its genesis in closed-door meetings organized between SEMARNAT, INPI, AMLO's Spokesman, and the anti-mining NGOs that had unsuccessfully opposed the Project for years. What is more, that study was not prepared independently by INPI, but was led by one of these NGOs, "*en compañía del INPI*." Mexico, notably, has not produced any documents relating to the

preparation of this study, nor has it produced any documents showing Economía's review of it – or why it believed the study was decisive for its feasibility decision.

- Any doubts about the objective of the INPI study are erased by a 2024 SEMARNAT report that one can still find on its website stating that the INPI study, together with other purported "studies," were deliberately coordinated and crafted by the Mexican Government and the NGOs and then delivered to Economía for its feasibility decision. Shortly thereafter, Economía ruled against the Claimants' Concessions, ending the Ixtaca Project once and for all. This "historic achievement," SEMARNAT proclaims in its report, affirmed the Government's commitment of "not granting new mining concessions anywhere in the national territory." In short, Mexico's destruction of the Project was its showpiece accomplishment in a politically-driven campaign against foreign mining investment.

8. Cancelling the Ixtaca Project on such arbitrary and pretextual bases breached several of Mexico's obligations under the CPTPP. Those breaches led to considerable damages, as set out in the Memorial and below.

9. In response to these claims, Mexico raises in its Counter-Memorial six main defenses, each of which is unsupported by factual witness testimony, is untethered to the contemporaneous document record, and relies almost entirely on a cast of hired gun experts who regularly turn up in Mexico's defense:

- *First*, Mexico denies that AMLO directed his anti-foreign-investment and anti-mining agenda at the Ixtaca Project. But the record is replete with public and private statements from high-ranking Government officials specifically targeting the Ixtaca Project, and committing to bring it to an end in line with AMLO's directives.

- *Second*, Mexico argues that the Ixtaca Project failed to comply with environmental regulations. This too finds no support in the record. Rather, as the Claimants show, Mexico's *Procuraduría Federal de Protección al Ambiente* ("**PROFEPA**") found no environmental violations during the life of the Project, and the only fine it issued against Minera Gorrión, for less than US$ 1,000 dollars, was based on an administrative error in the name on a waste management permit; PROFEPA itself confirmed at the time that this issue did not cause or give rise to any environmental damage.

- *Third*, Mexico argues that the *amparo* filed by Tecoltemi was the consequence of the Claimants' own acts and omissions. This is untrue. As noted, the obligation to conduct

indigenous consultations rests with Mexico, not with private companies; this is why the defendant in the *amparo* proceeding was the Mexican Government, not Minera Gorrión. In any event, as the record reflects, the Tecoltemi community decided to self-declare as indigenous for the first time only in 2015, years after Economía granted the Concessions – and, as comments from its own NGO lawyers confirm, the Tecoltemi community was but a mere vehicle for the NGOs to challenge the Concessions and, through them, the foundation of Mexico's mining sector.

- *Fourth*, Mexico argues that Economía's cancellation of the Concessions complied with the Supreme Court's decision. This is not so. As the Claimants' expert, Former Supreme Court Justice José Ramón Cossío opines, Economía not only deviated from the Supreme Court's orders and the limits of the *amparo*, but violated a number of foundational principles of Mexican law and procedure in doing so. The Supreme Court did not order the nullity or cancellation of the Concession titles, but ordered their suspension and *insubsistencia* until Economía acted to cure the defect that the Supreme Court had identified – namely, Economía's failure to conduct an indigenous consultation. Rather than cure that defect and reissue the Concession titles, Economía instead declared them "not feasible" on spurious grounds, cancelling them outright.

- *Fifth*, Mexico contends, through its experts, that the Ixtaca deposit was not commercially or technically viable, and that the Claimants overstate the Project's economics, mine plan, and environmental controls. The record shows otherwise. The Project's Feasibility Study confirmed the economic viability of the Ixtaca deposit, and the Claimants obtained term sheets for project financing from major mining-finance institutions on the basis of that Study. Furthermore, the United Nations Economic Commission for Europe ("**UNECE**") and Economía's own joint selection of Minera Gorrión for the UNECE Mining Pilot Project affirmed the Ixtaca Project's technical, environmental, and sustainability credentials.

- *Sixth*, Mexico contends that the Claimants failed to obtain a "social license to operate." At its core, this fashionable, made-for-arbitration defense seeks to transfer to the Claimants Mexico's own non-delegable obligation to consult indigenous communities. But as with most cases, Mexico's attempt to deploy a social license defense is as baseless as it is belated. Over more than a decade, the Claimants built and maintained open and transparent dialogue with the local communities surrounding the Ixtaca Project, established a permanent presence within those communities, and voluntarily commissioned the first social impact and human rights impact assessments of their kind for a mining project in Mexico – each of which confirmed that the Project was

developed responsibly and in compliance with the highest international standards. The fact that one community, located in a remote location far away from the Project's area of influence, was used as a vehicle by anti-mining NGOs to foment opposition to the Project does not equate to a lack of social license. Moreover, the speciousness of Mexico's argument is confirmed by the fact that its actions disregarded the very principles it now invokes, by denying a voice to the very community – namely, the Santa María Zotoltepec community – that stood to be impacted most directly by the Project.

10. The ability of the Tribunal to grant the relief the Claimants seek under the CPTPP is unhindered by Mexico's jurisdictional objections. Those objections, as the Claimants demonstrated in their Response to the Request for Bifurcation, are without foundation as a matter of fact and law and should be rejected accordingly. The Tribunal has jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* over this dispute.

11. Mexico's challenge to the Claimants' damages is equally unfounded. As explained in the Memorial, Brattle computed the Claimants' damages using the DCF method. The CIMVAL Code, the recognized industry standard for mineral property valuation, prescribes that income-based valuation methods such as DCF are "usually the most appropriate" for properties as advanced as Ixtaca. Investment tribunals have likewise awarded DCF valuations in circumstances where, as here, the investment would have become operational and profitable but for the respondent's breaches.

12. Brattle's DCF rests on key inputs drawn from the Project's Feasibility Study and independently validated and updated by SLR. Mexico's own technical experts acknowledge the robust data and methodology underlying the Claimants' Feasibility Study and SLR's analysis. They nonetheless venture a list of hastily assembled critiques of the Project's technical underpinnings. Those critiques represent little more than quibbles, and they have no adverse impact on Brattle's valuation. Mexico's quantum experts offer no credible alternative. Untethered from industry standards, their assumptions drive the fair market value of the Ixtaca Project into negative territory. That result is plainly absurd. The Ixtaca Project had declared Mineral Reserves, a completed Feasibility Study, and financing interest from established mining lenders. No reasonable buyer would assign zero value – let alone negative value – to such an asset. Mexico's experts' contradictory alternative valuation based on market capitalization fares little better: it unfairly derives the Project's market value from Almaden's share price at a time when it was already materially depressed by Mexico's conduct. The Tribunal should therefore reject both valuation exercises for what they are: partisan efforts to

minimize Mexico's quantum exposure for the harm its unlawful conduct inflicted on the Claimants.

13. Consistent with its attempt to malign the Claimants as irresponsible "speculators," Mexico complains that the Claimants "speculate on the valuation date." But that inverts reality: Mexico forcibly and unlawfully deprived the Claimants of their investment, and it must compensate them at current market values. Mexico also ventures a contributory fault defense, asking this Tribunal to reduce any award by 50% based on its alleged failure to obtain a "social license to operate." That defense fails for the reasons explained above. In any event, no investment arbitration tribunal has taken such drastic action in circumstances remotely resembling these.

14. This Reply is supported and accompanied by witness statements from the following individuals:

a) *Jorge Luis García Herrera*: indigenous authority and former Security Inspector for the Santa María Zotoltepec community in the municipality of Ixtacamaxtitlán, Puebla, Mexico.[3]

b) *Douglas J. McDonald*: President and CEO of Almaden Minerals Ltd.[4]

c) *Dr. Jesús Enrique Pablo-Dorantes*: Vice President of the Environmental Department at the Centro de Investigaciones Interculturales, Jurídicas y Ambientales.[5]

d) *Daniel Santamaría Tovar*: former Vice President of Minera Gorrión and Project Manager of the Ixtaca Project.[6]

e) *Rosario Margarita Uzcanga Vergara*: former Director of Human Rights, Corporate Social Responsibility, and Community Relations at Minera Gorrión.[7]

f) *Professor Stephen James Anaya*: United Nations Special Rapporteur on the Rights of Indigenous Peoples (2008 to 2014), and former member of the Advisory Committee established to oversee the Human Rights Impact Assessment for the Ixtaca Project.[8] In

[3] Second Witness Statement of Mr. Jorge Luis García Herrera ("**García Herrera WS-2**"), dated 18 May 2026.

[4] Second Witness Statement of Mr. Douglas J. McDonald ("**McDonald WS-2**"), dated 18 May 2026.

[5] Second Witness Statement of Dr. Jesús Enrique Pablo-Dorantes ("**Pablo-Dorantes WS-2**"), dated 18 May 2026.

[6] Second Witness Statement of Mr. Daniel Santamaría Tovar ("**Santamaría Tovar WS-2**"), dated 18 May 2026.

[7] Second Witness Statement of Ms. Rosario Margarita Uzcanga Vergara ("**Uzcanga Vergara WS**"), dated 15 May 2026.

[8] Witness Statement of Mr. Stephen James Anaya ("**Anaya WS**"), dated 17 May 2026.

addition to describing his role on that committee, Professor Anaya opines on certain corporate responsibility and social issues relevant to the Project.

15. This Reply is also supported and accompanied by the following expert reports:

a) *Mauricio Limón Aguirre*: Expert in Mexican environmental law; Associate Director of Limón Consultants, S.C., an environmental law firm.[9]

b) *Darrell Chodorow and Florin Dorobantu*: Valuation and damages experts; Principals at The Brattle Group.[10]

c) *Ian C. Weir and Derek J. Riehm*: Experts in technical and cost elements, as well as environmental and social aspects, of mining projects; Principal Mining Engineer and Technical Manager of Mining Engineering and Principal Consultant, respectively, at SLR Consulting (Canada) Ltd.[11]

d) *José Ramón Cossío Díaz*: Former Justice of the Supreme Court of Mexico.[12]

16. Finally, this Reply is accompanied by factual exhibits **C-608** to **C-932** and legal authorities **CL-215** to **CL-254**, listed in the attached Indices of Factual Exhibits and Legal Authorities.

2. FACTUAL BACKGROUND

2.1. Request for Adverse Inferences

17. In response to the Claimants' 37 document requests, Mexico agreed to voluntarily produce documents responsive to 14 of those requests.[13] In its Procedural Order No. 5 ("**PO5**"), the Tribunal ordered Mexico to produce documents responsive to an additional 18 requests.[14] However, Mexico has failed to produce documents in response to many of those requests. In fact, for ***11*** of those requests, Mexico has not produced a single document.

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9 Second Expert Report of Mr. Mauricio Limón Aguirre ("**Limón ER-2**"), dated 11 May 2026.

10 Second Expert Report of The Brattle Group ("**Brattle ER-2**"), dated 18 May 2026.

11 Second Expert Report of SLR Consulting (Canada) Ltd. ("**SLR ER-2**"), dated 18 May 2026.

12 Expert Report of José Ramón Cossío Díaz ("**Cossío ER**"), dated 18 May 2026.

13 Mexico's Objections to the Claimants' Document Production Requests dated 26 January 2026.

14 Procedural Order No.5, Annex A.

18. Mexico has also applied multiple unjustified redactions to no fewer than 158 responsive documents, in contravention of PO5 and PO1.[15]

19. The Tribunal has the power and the authority to draw adverse inferences from Mexico's production failures. Paragraph 16.20 of PO1 expressly provides that "[s]hould a Party fail to produce documents as ordered by the Tribunal without good cause, the Tribunal may draw adverse inferences for such failure, either on its own motion or upon a reasoned application setting out the nature of the requested inference and its consequences on the relief sought."[16]

20. Section 16.1 of PO1 further provides that "[r]equests for document production shall be made in accordance with the Tribunal's orders and the time-limits established in the Procedural Calendar and will be guided by the International Bar Association's Rules on the Taking of Evidence in International Arbitration 2020 (IBA Rules 2020)."[17] Article 9 of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, provides, in its relevant part:

> If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.[18]

21. Tribunals routinely exercise this power. In *OPIC Karimum Corporation v. Venezuela*,[19] for example, the tribunal drew adverse inferences against the respondent where it found that "the explanations offered by counsel for the Respondent as to Venezuela's failure to follow up the production of [requested documents] are less than fully convincing."[20] Likewise, in *Gujarat State Petroleum v. Yemen*, the tribunal ordered Yemen to produce internal Government reports.[21] Yemen admitted that the reports existed, but produced only publicly available

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15 Letter from the Claimants to the Tribunal dated 27 April 2026; Procedural Order No. 1, para. 16.16; Procedural Order No. 5, para. 14.

16 Procedural Order No.1, para. 16.20.

17 Procedural Order No.1, para. 16.1.

18 2020 IBA Rules on the Taking of Evidence in International Arbitration, Article 9.6.

19 *OPIC Karimum Corporation v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/14, Award, 28 May 2013, **CL-247**.

20 *OPIC Karimum Corporation v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/14, Award, 28 May 2013, para. 145, **CL-247** (emphasis added).

21 *Gujarat State Petroleum Corporation Limited, Alkor Petroo Limited, and Western Drilling Constructors Private Limited v. the Republic of Yemen and the Yemen Ministry of Oil and Minerals*, ICC Arbitration No. 19299/MCP, Award dated 10 July 2015, **CL-254**.

summaries, citing national security concerns and domestic law restrictions. The tribunal rejected that justification.[22] Applying Article 9(5) of the IBA Rules and the parties' general obligation to cooperate in good faith under the ICC Rules, the tribunal held that, where non-production was not satisfactorily explained, it was "prepared to draw appropriate inferences" to "complement otherwise available evidence in the record."[23] The same is true here.

22. The Claimants respectfully request the Tribunal to adopt the same approach here. Mexico's explanations for its non-production are not "fully convincing" – they are not explanations at all. The Tribunal should therefore draw the appropriate inferences to "complement otherwise available evidence in the record." Specifically, the Claimants seek the following adverse inferences in respect of: (i) documents that Mexico has unjustifiably redacted, and (ii) documents responsive to requests where the Claimants either know, or consider it highly likely, that responsive documents exist, but Mexico has failed to produce them:

a) As explained in the Memorial, SEMARNAT suspended the MIA evaluation process on 24 October 2019, purportedly based on a years-old injunction in the *amparo* proceedings, even though SEMARNAT was not a named defendant in those proceedings and even though the Second District Court had advised SEMARNAT that the injunction encompassed only the portion of the Concessions which overlapped with the "*derechos agrarios*" (surface rights) of the *ejido*.[24] In Request C-1, the Claimants thus sought contemporaneous documents setting out the legal basis for the suspension of the MIA.[25] As the Claimants explained, those documents were likely to confirm that the Tecoltemi *amparo* provided no legal basis for suspending the MIA evaluation and that the suspension was pretextual. The Tribunal ordered Mexico to produce the requested documents, but Mexico failed to produce any contemporaneous documents setting out the legal basis for the suspension. As Dr. Limón Aguirre explains, based on his experience as head of UCAJ and later as *Subsecretario*, SEMARNAT could not have suspended the MIA evaluation without first conducting an internal legal deliberation led by UCAJ, its own legal affairs unit.[26] Indeed, the chronology confirms that DGIRA consulted UCAJ between August and

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22 *Gujarat State Petroleum Corporation Limited, Alkor Petroo Limited, and Western Drilling Constructors Private Limited v. the Republic of Yemen and the Yemen Ministry of Oil and Minerals*, ICC Arbitration No. 19299/MCP, Award dated 10 July 2015, paras. 97-104, **CL-254**.

23 *Gujarat State Petroleum Corporation Limited, Alkor Petroo Limited, and Western Drilling Constructors Private Limited v. the Republic of Yemen and the Yemen Ministry of Oil and Minerals*, ICC Arbitration No. 19299/MCP, Award dated 10 July 2015, paras. 97-104, **CL-254**.

24 Memorial, at paras. 316-322.

25 Procedural Order No. 5 dated 11 March 2026, Annex A, Request C-1.

26 *See infra* Section 2.11.

September 2019, yet Mexico has produced no UCAJ analysis, memorandum, or communication responsive to DGIRA – documents squarely within the scope of the Claimants' Request C-1. The inescapable conclusion is that such documents exist but Mexico has failed to produce them. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 1**: The Tecoltemi *amparo* provided no legal basis for suspending the MIA evaluation, and that suspension was pretextual.

b) As explained in the Memorial, two days after SEMARNAT suspended the MIA evaluation for the Ixtaca Project, AMLO stated publicly in response to a question about the status of the MIA that he had "absolute confidence in" Secretary Toledo, who "participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others."[27] In Request C-4, the Claimants thus sought documents exchanged between the Secretary of SEMARNAT, AMLO, and the Office of the Mexican Presidency concerning the environmental or social impact of the Project between February 2019 and December 2020.[28] As the Claimants explained, those documents were likely to show that SEMARNAT acted on a political directive from AMLO to deny the MIA and fabricated the suspension as the vehicle to implement that directive. The Tribunal ordered Mexico to produce them, but Mexico produced nothing, instead asserting that it did not locate any responsive documents. That contention is not credible. The President's cover letter expressly directed Toledo to respond to the community member and forward that response to the Presidency. A response necessarily existed—yet Mexico produced neither it nor any related correspondence. As explained further below, the only plausible explanation is that these documents are devastating to Mexico's case.[29] The Claimants respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 2**: SEMARNAT acted on a political directive from AMLO to deny the Ixtaca MIA and fabricated the suspension as the vehicle to implement that directive.

c) As explained in the Memorial, SEMARNAT attempted to foist its own obligation to conduct indigenous consultations onto the Claimants despite according more favorable

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27 Memorial, at para. 314.

28 Procedural Order No. 5 dated 11 March 2026, Annex A, Request C-4.

29 *See infra* Section 2.12.

treatment to other projects.[30] In Request D-5, Claimants requested that Mexico produce documents exchanged within SEMARNAT reflecting discussions about indigenous consultation in connection to the Ixtaca Project. As the Claimants explained, the requested documents were likely to show that SEMARNAT acknowledged the consultation obligation as its own, failed to discharge it through UCPAST, and subsequently sought to shift that failure onto Minera Gorrión as a pretext to deny the MIA.[31] Mexico failed to produce any such documents despite the Tribunal's express order that it do so. Mexico produced only documents related to opinions issued by INPI, SECOTRADE, CDI, and other indigenous-tasked agencies related to the Ixtaca Project, which already existed on the record. It is simply not credible that UCPAST – SEMARNAT's dedicated social participation unit, which DGIRA tasked with conducting the indigenous consultation – simply failed to respond or take any action whatsoever and that DGIRA kept no record of that response. The absence of any responsive documentation is all the more conspicuous given that DGIRA's letter specifically invoked UCPAST's institutional experience in conducting indigenous consultations for mining projects. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 3**: SEMARNAT (i) acknowledged the consultation obligation as its own, (ii) failed to discharge it through UCPAST, and (iii) subsequently sought to shift that failure onto Minera Gorrión as a pretext to deny the MIA.[32]

d) As explained in the Memorial, while the appeals in Amparo Lawsuit 445/2015 were pending before the Supreme Court, SEMARNAT issued two highly irregular official public statements attacking the Ixtaca Project and urging the Supreme Court to reject the appeals.[33] SEMARNAT is a Mexican Government agency tasked with overseeing environmental affairs; it has no authority to issue political statements, particularly in an ongoing litigation. In Request E-1, the Claimants sought all documents relating to the preparation and/or approval of SEMARNAT's official public statements dated 13 January 2022 and 14 February 2022.[34] As the Claimants explained, those documents were likely to "show, among other things, the contemporaneous reasons for SEMARNAT's public statements, including why and on what basis SEMARNAT approved and issued them."[35]

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30 Memorial, at para. 589.

31 Procedural Order No. 5 dated 11 March 2026, Annex A, Request D-5.

32 *See also infra* Section 2.12.

33 Memorial, at paras. 369-373.

34 Procedural Order No. 5 dated 11 March 2026, Annex A, Request E-1.

35 Procedural Order No. 5 dated 11 March 2026, Annex A, Request E-1.

The Tribunal ordered Mexico to produce them, but Mexico produced nothing, asserting in its 4 May 2026 letter that, "after an exhaustive search across multiple areas of various Mexican government agencies, no information was found."[36] That contention is not credible. Official public statements issued by a Government agency – one of which was issued with two *other* Government agencies, including INPI – on a matter pending before the Supreme Court, do not materialize without preparation, internal review and approval, and inter-agency coordination. Yet Mexico claims that no drafts, internal approvals, correspondence, or coordination documents of any kind exist. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 4**: SEMARNAT's public statements formed part of a coordinated, bad faith campaign to lobby against the Ixtaca Project for political reasons and to influence the Supreme Court's decision on the Tecoltemi *amparo*.

e) As explained in the Memorial, meeting minutes dated 4 August 2022 reveal that SEMARNAT orchestrated a series of closed-door meetings with the anti-mining NGOs, including Tecoltemi's lead counsel in the *amparo* proceedings, to manufacture evidence against the Project in light of Economía's pending feasibility decision.[37] The Claimants' Request E-3[38] encompassed minutes or reports of weekly meetings held between UCPAST and Fundar, as referenced in the 4 August 2022 minutes, as well as minutes of the 11 July 2022 meeting, at which the plan to procure a series of "studies" against the Project was agreed between SEMARNAT, INPI, AMLO's Spokesman, and the anti-mining NGOs. As the Claimants explained, these documents were likely to reveal the actual contemporaneous reasons for the closed-door meetings, including the content of the agreements reached and the object and purpose of the purported "studies."[39] Accordingly, they are relevant to assess the *bona fides* of SEMARNAT's actions and, in particular, whether the closed-door meetings it held reflected legitimate interinstitutional coordination, as Mexico contends, or a calculated effort to discredit the Project and exert political pressure on Economía to cancel the Concessions.[40] Mexico produced a meagre six documents, asserting in its letter of 4 May 2026 that, following an "additional search," "there are no documents other than those already produced."[41] Mexico's position is not

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[36] Letter from Mexico to the Tribunal dated 4 May 2026.

[37] Memorial, paras. 405-413.

[38] Procedural Order No. 5 dated 11 March 2026, Annex A, Request E-3.

[39] Procedural Order No. 5 dated 11 March 2026, Annex A, Request E-3.

[40] Procedural Order No. 5 dated 11 March 2026, Annex A, Request E-3.

[41] Letter from Mexico to the Tribunal dated 4 May 2026.

plausible. As set forth below, publicly available SEMARNAT documents confirm that this coordination yielded tangible "deliverables"[42] – yet Mexico asserts that no documents exist. The only plausible explanation is that these documents are devastating to Mexico's case. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 5:** The closed-door meetings held between SEMARNAT, INECC, IMTA, INPI, the President's Spokesman, and the anti-mining NGOs were not "legitimate interinstitutional coordination," as Mexico contends, but a calculated effort to manufacture evidence against the Ixtaca Project and put political pressure on Economía to cancel the Concessions.

f) As explained in the Memorial, the 4 August 2022 minutes further reveal a coordinated strategy between SEMARNAT, the President's Spokesman, and the anti-mining NGOs "to support with technical and scientific evidence that this mining project affects the environment and, therefore, no more mining concessions can be granted in the region."[43] The minutes further record a request from NGO Fundar that "the technical support be sent as soon as possible to the Office of the President of the Republic *so that the President can issue a decision and comply with the mandate of not allowing new concessions to the Ministry of Economy (Presidential Spokesperson's Motion), in order to support that there are no proper conditions for the Ministry of Economy to grant a new concession*.[44] In Request E-8, the Claimants sought all documents and communications exchanged between the Office of the President, and SEMARNAT, Economía, IMDEC, and/or Fundar relating to these "studies" and/or Economía's feasibility determination.[45] Such documents were likely to reveal whether Economía's feasibility determination was influenced by political pressure from the Office of the President – as Fundar expressly planned and as the President's Spokesman requested – which is highly probative of the arbitrary and pretextual nature of that determination. The Tribunal ordered Mexico to produce them, but Mexico asserted in its letter of 4 May 2026 that, "after an exhaustive search across multiple areas of various Mexican government agencies, no information was found."[46] That

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42 *See infra*, Section 2.17.

43 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

44 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

45 Procedural Order No. 5 dated 11 March 2026, Annex A, Request E-8.

46 Letter from Mexico to the Tribunal dated 4 May 2026, at p. 6.

contention is not credible. The 4 August 2022 minutes expressly record that Fundar requested the studies to be sent to the Office of the President, pursuant to a request from the President's Spokesperson.[47] Notably, the President's Spokesperson, Mr. Jesús Ramírez Cuevas, had attended the 11 July 2022 meeting at which the plan to manufacture the studies was first agreed.[48] Moreover, documents that Mexico has produced confirm an extensive chain of inter-agency communications orchestrating these studies, making it implausible that no documents were exchanged with AMLO's Office, the very entity to which the studies were to be delivered.[49] The only plausible explanation is that these documents are devastating to Mexico's case. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 6**: The "studies" were not a legitimate exercise of regulatory authority, but were prepared and produced in secret, and in collaboration with the NGOs, for the express purpose of pressuring Economía to cancel the Concessions, including by way of order from the President.

g) As explained in the Memorial, in its 16 February 2022 Decision, the Supreme Court ordered Economía to declare the Concession titles "*insubsistentes*" until it pronounced on the "feasibility" of issuing the titles and carried out an indigenous consultation.[50] On 20 June 2022, Economía issued the June 2022 *Oficio*, suspending the legal effects of the Concession titles and clarifying that "everything that was done prior to the granting of the concession titles subsists."[51] As the Claimants explained, the June 2022 *Oficio* signaled to the Claimants that their original concession applications – including the underlying expert reports approved by Economía in 2003 and 2009 – remained valid and in good order.[52] Mexico, however, asserts that the June 2022 *Oficio* did not suspend the Concessions for purposes of carrying out the indigenous consultation, but declared them void *ab initio*.[53] It also asserts that Economía was entitled to review the Claimants' original concession applications *de novo*.[54] In Request G-1, the Claimants sought all documents evidencing

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47 Memorial, at para. 411; Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

48 *See infra* Section 2.16.

49 *See infra* Section 2.16.

50 Memorial, at para. 376.

51 Memorial, at paras. 385-386.

52 Memorial, at para. 387.

53 Counter-Memorial, at para. 395.

54 Counter-Memorial, at para. 395.

Economía's and/or the DGM's preparation of the 20 June 2022 *Oficio*, including documents approving its issuance.[55] The requested documents would reveal the context and the meaning of the June 2022 *Oficio*, including Economía's understanding of the Supreme Court's decision. The Tribunal ordered Mexico to produce them, but Mexico produced nothing, instead directing the Claimants to the Concession files.[56] The Concession files contain the administrative record of the Concessions themselves – they do not contain contemporaneous documents evidencing Economía's internal analysis of the Supreme Court's decision, its views on the meaning of *insubsistencia*, or the object and purpose of the June 2022 *Oficio* provisions, including the clarification that all prior administrative acts remained valid – documents that Mexico should have in its possession. The only plausible explanation is that these documents are devastating to Mexico's case, because they would confirm that Economía itself understood *insubsistencia* as a suspension – not as a cancellation – of the Concession titles, undermining Mexico's revisionist interpretation of the June 2022 *Oficio*. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 7**: Economía understood *insubsistencia* as a suspension of the Concession titles – and not as a cancellation – for the purpose of conducting the indigenous consultation and that all prior administrative acts remained valid, including its prior approval of the expert reports.

h) As explained in the Memorial, Economía's feasibility decision was motivated by the arbitrary political directive of AMLO, rather than by any genuine public purpose.[57] Shortly after Secretary Buenrostro's appointment in October 2022, Economía abruptly halted all communications with Minera Gorrión, refused further meetings on the consultation process, and reversed course on feasibility – ruling in its February 2023 *Oficio* that the Concession titles were allegedly "not feasible." In Request G-6, the Claimants sought all documents evidencing or reflecting any orders or directives from the Office of the President to Economía relating to its feasibility determination and/or its February 2023 Oficio."[58] And in Request G-4, the Claimants sought all documents evidencing or reflecting Economía's and/or DGM's preparation of the February 2023 *Oficio* itself.[59] As the Claimants explained, those documents were likely to show that Economía acted on a

[55] Procedural Order No. 5 dated 11 March 2026, Annex A, Request G-1.

[56] Letter from Mexico to the Tribunal dated 4 May 2026, at p. 5.

[57] Memorial, at para. 514.

[58] Procedural Order No. 5 dated 11 March 2026, Annex A, Request G-6.

[59] Procedural Order No. 5 dated 11 March 2026, Annex A, Request G-4.

political directive from AMLO, as intended by Fundar, to cancel the Concessions outright, in line with AMLO's anti-mining policy. Those documents were also likely to show that Economía's feasibility determination was a pretextual expedient to end the Ixtaca Project, before any indigenous consultations were carried out. The Tribunal ordered Mexico to produce them, but Mexico produced nothing for Request G-6, asserting that "after an exhaustive search," "no information was found."[60] That contention is not credible. As noted, Fundar's commitment to send the purported technical "studies" "as soon as possible to the Office of the President" so that AMLO could issue an order directing Economía to rule against feasibility – and Economía's fulfillment of those marching orders – necessarily generated responsive documents. For Request G-4, Mexico produced a mere four documents. It is not credible that Mexico has no additional responsive documents. Indeed, the record confirms that officials within Economía prepared a draft *oficio* ruling that issuing the Concession titles *was* feasible in November 2022, before that position was reversed under Secretary Buenrostro in circumstances consistent with external direction.[61] As discussed below, the record also now confirms that the actual basis for Economía's February 2023 *Oficio* was the INPI study – not the alleged *de minimis* defects in the expert reports. Yet Mexico has produced no documents reflecting Economía's review of that study or its decision to base its feasibility determination on that study internally – while externally representing something else entirely. The Claimants thus respectfully request that the Tribunal draw the following adverse inference.

> **Adverse Inference 8**: Economía acted on a political directive from AMLO to cancel the Ixtaca Concessions and used the feasibility determination as a pretext to shut down the indigenous consultation process and cancel the Concessions outright, in line with AMLO's anti-mining policy.

23. Each of the foregoing adverse inferences is narrow in scope and consistent with the objective evidence already on the record. Each inference fills a discrete evidentiary gap created by Mexico's non-production and remains tethered to a series of established facts that lead logically to the conclusion. The Tribunal has broad authority and discretion under Article 36 of the ICSID Arbitration Rules to determine the admissibility and probative value of evidence, and to call upon a party to produce documents at any stage of the proceeding. Pursuant to that authority, drawing the requested inferences is both permissible and necessary to preserve the integrity of the fact-finding process.

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60 Letter from Mexico to the Tribunal dated 4 May 2026.

61 *See infra* Section 2.17.

24. Furthermore, even if the Tribunal determines, with respect to a particular document, that an adverse inference is not warranted in the circumstances, it should nevertheless refrain from drawing any positive inference in the Respondent's favor. As the tribunal in *Apotex v. United States* observed, "while the Respondent is not to be blamed for these missing evidential pieces in its jigsaw defence, the fact remains that its jigsaw is materially incomplete with a likely mass of documentation and numerous factual witnesses unavailable to be heard by the Tribunal in this arbitration, as to which the Respondent must accept the legal consequence."[62]

25. On 27 April 2026, faced with Mexico's blatant disregard for its document production obligations, the Claimants had no choice but to inform the Tribunal of Mexico's document production failures.[63] The Claimants raised their serious doubts about the adequacy of Mexico's production. While Mexico contends that it has "conducted an exhaustive good-faith search over the course of four months,"[64] the extent of Mexico's production belies that assertion. As set forth above, there are a number of documents Mexico has failed to produce, which the record establishes exist.[65] The Claimants also challenged Mexico's baseless claims of privilege, and its continued reliance on domestic law in a clear attempt to evade its document production obligations. Mexico's belated privilege log is also limited to the documents it has chosen to redact; it does not identify the documents it has withheld from production entirely. The Claimants note in this regard that Mexico objected to a number of the Claimants' requests on grounds that responsive documents would contain privileged or confidential information. It is implausible that Mexico has in its possession no privileged, responsive documents.

26. Mexico responded to the Claimant's letter on 4 May 2026.[66] Unsurprisingly, in a continuation of its *modus operandi* to evade document production obligations in cases brought against it.[67] Mexico asserted, without support, that it had conducted exhaustive searches of the relevant archives and that no other documents were located.[68] Mexico also represented that it had resubmitted a request for further searches to be conducted, in particular for Requests Nos. C-

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62 *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, 25 August 2014, para. 8.72, **CL-152**.

63 Letter from Claimants to the Tribunal, dated 27 April 2026.

64 Letter from Mexico to the Claimants dated 8 April 2026, **Exhibit C-604**.

65 Letter from Claimants to the Tribunal, dated 27 April 2026.

66 Letter from Respondent to the Tribunal dated 4 May 2026.

67 *Coeur Mining Inc. v. United Mexican States*, ICSID Case No. UNCT/22/1, Procedural Order No. 9, 19 November 2024, **CL-0214**, at para. 28 and para. 73(b), (finding that Mexico had failed to file a complaint privilege and confidentiality log); *Silver Bull Resources Inc. v. The United Mexican States*, ICSID Case No. ARB/23/24, Procedural Order No. 3, Annex A, **CL-0207**, at p. 82 (finding that Mexico cannot rely upon domestic laws to withhold from production relevant material documents).

68 Letter from Respondent to the Tribunal dated 4 May 2026.

1, C-5, and D-5 and committed to produce any further responsive documents "as soon as possible."[69] Despite that representation, Mexico has not produced any new additional responsive documents to date.

27. In summary, Mexico's document production has been deficient, obstructionist, and conducted in bad faith throughout these proceedings, so as to frustrate Claimants' access to evidence and its fundamental due process right to be heard and to present its case in full.

28. Mexico has produced documents piecemeal and well after the Tribunal's deadlines, redacted documents without justification, and withheld others without even logging them. It has failed to produce the most basic categories of Government documents ordered by the Tribunal – including internal communications regarding administrative acts material to this case.

29. Where a party deliberately withholds relevant and material documents, its explanations go beyond "less than convincing" – they reflect bad faith, and the Tribunal should draw the adverse inferences requested.

2.2. Mexico's Attempt To Recast Almaden And Almadex As Irresponsible Foreign Speculators Is Baseless And Contradicted By The Record

30. As set out in the Memorial, Almaden is a family-run Canadian mining company founded in 1981 by Duane Poliquin, an experienced mining executive who has been directly involved in or responsible for the discovery of eight mineral deposits, four of which became producing mines.[70] Before founding Almaden, Mr. Poliquin advanced a series of successful mining projects in the United States and Mexico. As further elaborated in Mr. Poliquin's first witness statement, these included Westley Mines' Santa Fe gold property in Nevada, which he recognized as a high-potential gold prospect and helped explore and develop through joint ventures before it was sold to Homestake Mining Co., which subsequently brought the Santa Fe project into production.[71] A similar process followed La Trinidad gold project in Sinaloa, Mexico, which he first optioned and later sold to Eldorado Gold Corporation, which brought the project into production.[72] These projects illustrate Duane Poliquin's success in the context of a well-known dynamic in the mining sector: junior companies discovering and de-risking

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69 Letter from Respondent to the Tribunal dated 4 May 2026.

70 Memorial, at paras. 28-30; D. Poliquin WS, at paras. 6, 11-15.

71 D. Poliquin WS, at para. 11.

72 D. Poliquin WS, at para. 14; Cision, 'GR Silver Mining Signs Definitive Binding Agreement with Mako to Acquire Marlin Gold Mining Ltd.', dated 1 February 2021, at p. 3, **Exhibit C-358**.

projects before selling them to, or partnering with, major mining companies which then develop them into producing mines.

31. Duane Poliquin's son, Morgan Poliquin, grew up working on his father's exploration project sites and, as he describes, mineral exploration was the only career he ever considered.[73] As Morgan Poliquin described in his first witness statement, during his postgraduate studies at the University of Auckland, he was responsible for groundbreaking research – funded by BHP Billiton, the world's largest mining company – into potential gold deposits in Mexico. That work led directly to the discovery of the Caballo Blanco, El Cobre, and Ixtaca deposits.[74] In 2014, the Association for Mineral Exploration of British Columbia ("**AME BC**") awarded Duane and Morgan Poliquin the Colin Spence Award for Excellence in Global Mineral Exploration, recognizing them for their roles "in the recent discovery and advancement of the Ixtaca gold-silver deposit," which it described as "one of the most significant greenfield discoveries of recent times, following several years of diligent research and exploration efforts focused on an underexplored area."[75]

32. Mexico's Counter-Memorial recasts the Poliquins' successful careers in mining, as well as the Claimants' track record, as evidence of irresponsible speculation. Mexico attempts to denigrate an entire segment of the mining sector, describing the junior mining industry as "highly speculative and volatile" and claiming that junior mining companies "rarely develop a deposit to production" and instead rely on "discovering and then selling projects to 'senior mining companies.'"[76] In line with this broad-brush attack, Mexico contends that Almaden's plans "were not really aimed at bringing the Project to fruition, but rather at sustaining a narrative of progress and speculative value."[77]

33. Mexico's expert, Mr. Cabrera, builds on this theme, asserting that the "failure of the Ixtaca project is the direct, predictable and documented consequence of a business model – that of a speculative junior mining company – that proved to be fundamentally incompatible with Mexico's legal, social and environmental framework."[78] He claims that Almaden's junior-miner business model prioritized exploration results and market value over social legitimacy,

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[73] M. Poliquin WS, at paras. 6-7.

[74] M. Poliquin WS, at paras. 12-13.

[75] M. Poliquin WS, at para. 27; Mining.com, AME BC announces 2014 award recipients, dated 9 December 2014, **Exhibit C-209**.

[76] Counter-Memorial, at para. 121.

[77] Counter-Memorial, at para. 122.

[78] Cabrera ER, at para. 253.

creating self-inflicted risk.[79] He further labels Almaden as an "eminently extractive" junior mining company and asserts that it managed the Ixtaca Project with a "short term approach, prioritizing asset valuation and attracting venture capital in Canadian stock markets" over regulatory compliance.[80]

34. This *ex-post* narrative recasts ordinary features of the junior mining model as proof of irresponsibility. Mexico's objective in doing so is transparent: to shift responsibility away from the State and to reframe its unlawful measures as the products of private failures rather than the State's own acts and omissions.

35. But the record flatly contradicts Mexico's characterization of Almaden as a speculator whose "gross negligence" caused the Project to fail. Behind Almaden are a father and son who have directed the Company continuously as a family-run enterprise since its inception, resisting over-capitalization and staying true to their guiding principles and family values at every turn.[81] As Duane Poliquin stated, they are "problem solvers" who "sought to resolve each challenge presented by Mexico" and "followed best international standards and practices"[82] at Ixtaca. They would have continued in this vein had Mexico not arbitrarily cancelled the Project. Aside from that broader mischaracterization, Mexico's arguments suffer from several fundamental flaws.

36. *First*, Mexico simply affixes the label "junior" and asks the Tribunal to infer speculation from corporate size. That inference is baseless. The distinction between a "junior" and a "senior" mining company describes market capitalization, not competence, credibility, or intent. Far from being a mark of unreliability, junior mining companies are the primary engine of mineral discovery: they bring the vast majority of new mineral deposits to production globally.[83]

37. *Second*, the Poliquins' track record speaks for itself. What distinguishes Almaden from other mining companies is that it operates on first principles: while major mining companies tend to be less entrepreneurial – viewing developed mines as assets and exploration as an expense, waiting for explorers to identify new mineral deposits and then acquiring them – Almaden operates at the leading edge, utilizing innovative methods for mineral exploration and development and advancing projects from inception with a view to them ultimately going into

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79 Cabrera ER, at paras. 173, 253-256.

80 Cabrera ER, at paras. 174-175.

81 D. Poliquin WS, at para. 20.

82 D. Poliquin WS, at para. 56.

83 SLR ER-2, at paras. 347-48; McDonald WS-2, at paras. 7-9.

production. That model is the product of Duane Poliquin's career-long practice, having been directly involved in or directly responsible for the discovery or recognition of eight mineral deposits, of which four became producing mines as noted above.[84]

38. *Third*, the prospect-generation model – under which a junior explorer identifies and acquires mineral properties before optioning them to partner companies to advance the project toward production in return for a royalty or carried interest – is a recognized and legitimate business model that the Claimants pioneered and that at least 20 other companies were following by 2012.[85] What is more, Mexico's own legal framework actively encouraged that model. The model depends structurally on full ownership of mineral properties: a company cannot option a property to a partner while retaining an interest if its ownership is capped at 49%, as it had been under Mexico's 1975 Mining Law. Mexico's 1992 Mining Law removed that barrier, raising the foreign ownership cap to 99.9% and thereby creating the legal conditions under which the prospect-generation model could operate in Mexico.[86] President Zedillo reinforced its openness to the model in 1996, holding an exclusive event in Vancouver for Canadian exploration-sector leaders – including Duane Poliquin – to encourage mining investments in Mexico.[87] Almaden invested in Mexico directly in response to these initiatives: in 1993, the year after the 1992 Mining Law came into force, Duane Poliquin identified and acquired the La Trinidad gold deposit in Sinaloa, applying the prospect-generation model and optioning it to Eldorado Gold Corporation.[88]

39. For decades, Mexico promoted and benefited from the resulting private investment–driven model, which became a cornerstone of national economic development, contributing to exports, employment, and regional growth.[89] More broadly, the liberalization reforms of the 1990s – including the 1992 Mining Law – drove increased foreign investment, expanded exports, and job creation.[90] At Ixtaca alone, over the course of two decades, Almaden brought at least

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84 D. Poliquin WS, at para. 21; McDonald WS-2, at para. 10.

85 Business Insider, Drill Baby Drill—the Secret to Prospect Generation Duane and Morgan Poliquin, dated 21 September 2012, at pp. 1-3, and 7, **Exhibit C-186**.

86 D. Poliquin WS, at para. 28; Miranda, Fausto C., "Mining Law and Regulations of Mexico", Rocky Mountain Mineral Law Foundation, 1993, Denver, dated 1992-1993, at pp. 4-6, **Exhibit C-471**.

87 D. Poliquin WS, at para. 29; Prime Minister of Canada Press Release, President of Mexico to Visit Canada, dated 4 June 1996, **Exhibit C-161**.

88 D. Poliquin WS, at para. 14.

89 Chambers and Partners, Mining 2026 – Mexico: Trends and Developments (2026), *available at* https://practiceguides.chambers.com/practice-guides/mining-2026/mexico.

90 Brookings Institution, AMLO Reverses Positive Trends in Mexico's Energy Industry (2022), *available at* https://www.brookings.edu/articles/amlo-reverses-positive-trends-in-mexicos-energy-industry/.

US$ 56 million of investment into Mexico, paid over CAD 2.3 million in concession taxes, and – during the exploration phase alone – employed and trained up to 70 local workers. Almaden also delivered a bankable Feasibility Study projecting US$ 210 million in federal, state, and municipal tax revenues. Mexico now seeks to repudiate the very model it cultivated and from which it derived substantial benefit.[91] In a subsequent policy shift, the AMLO administration committed not to issue new mining concessions and denounced mining concessions as tools of "speculation."[92] But that policy shift was born of political expediency and has no bearing on the legitimacy of Almaden's investment or the Poliquins' established reputations.

40. *Fourth*, and in any event, Almaden's conduct at every stage demonstrated a genuine intent to bring Ixtaca to production. To begin with, Almaden completed a six-year sequence of increasingly rigorous engineering studies, from a resource estimate in 2013 to a full NI 43-101-compliant feasibility study in 2019.[93] Along the way, it entered into an option and subsequently purchased a 7,000-tonne-per-day processing mill – the Rock Creek Mill – for US$ 6,500,000, and began to dismantle the facility and prepare it for shipment to the Project site.[94] Further, Almaden assembled a production-stage management and governance team tailored to advancing Ixtaca towards construction and operation. This included hiring Laurence Morris as Vice President for Projects and Operations and John Thomas as Vice President for Project Development. Between them, Messrs. Morris and Thomas have over 70 years of mine construction and operation experience.[95] Almaden also strengthened its Board with experienced directors, including Kevin O'Kane, Ria Fitzgerald, and Elaine Ellingham, each bringing expertise in areas critical to financing, developing, and executing a mining project such as Ixtaca.[96]

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91 Rice University Baker Institute for Public Policy, David A. Gantz, AMLO's Energy and Investment Policies Will Make Mexico Poor Again (Aug. 4, 2022), available at https://www.bakerinstitute.org/research/amlos-energy-and-investment-policies-will-make-mexico-poor-again.

92 McDonald WS, at para. 77; Sin Censura Presenta YouTube Channel, *AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT*, dated 11 June 2024, *available at* https://www.youtube.com/watch?v=wr15-QItWg0, **Exhibit C-433**.

93 Memorial, at paras. 108-115; McDonald WS, at paras. 37-42; McDonald WS-2, at paras. 24-41.

94 McDonald WS, at para. 44.

95 McDonald WS, at paras. 51-52; Almaden Press Release, 'Almaden Appoints Laurence Morris Vice President, Projects And Operations, To Oversee Development And Construction Of The Ixtaca Gold Silver Deposit, Mexico', dated 7 February 2018, **Exhibit C-240**; McDonald WS-2, at paras. 57-63.

96 McDonald WS-2, at para. 21.

41. Additionally, Almaden retained [redacted], pursuant to a mandate that was expressly limited to securing financing for the construction and development of the Project.[97] That mandate was not exploratory: [redacted] – a structure that is inconsistent with a company merely preserving optionality.[98] [redacted] Almaden retained them [redacted][99] [redacted].[100] Mr. McDonald states directly that those [redacted] "reflected and confirmed the market's confidence in the development of the Ixtaca Project" and that "[s]uch documents represent serious intent, demonstrating that the Project was considered worthy of financing."[101] Finally, Almaden submitted a comprehensive MIA application to SEMARNAT, coordinated by over 30 specialized professionals over nearly two years.[102] Each of those steps involved material cost, time, and commitment, and each would have no residual value unless the mine is built.

42. *Fifth*, independent third parties confirmed Almaden's *bona fides*. As discussed above, in 2014 AME BC – a leading international industry association – awarded the Poliquins the Colin Spence Award in recognition of the Ixtaca discovery, characterizing it as one of the most significant greenfield discoveries of recent times.[103] In addition, the Society of Economic Geologists invited Morgan Poliquin to deliver a speech at a 2013 conference, and in 2018 Economía itself invited him to participate in Mexico Day at the PDAC Conference in Toronto

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97 [redacted], **Exhibit C-265**.

98 [redacted] **Exhibit C-265**.

99 [redacted] **Exhibit C-265**.

100 McDonald WS, at paras. 49.1-49.3; [redacted], **Exhibit C-270**; [redacted] **Exhibit C-287**; [redacted] **Exhibit C-294**.

101 McDonald WS, at para. 50; McDonald WS-2, at paras. 44-58.

102 Memorial, at paras. 124-125; McDonald WS, at paras. 55-56.

103 M. Poliquin WS, at para. 27; Mining.com, 'AME BC announces 2014 award recipients', dated 9 December 2014, **Exhibit C-209**.

to discuss Mexico's exploration potential.[104] Most significantly, in June 2022, Economía and UNECE selected the Ixtaca Project for the UNECE Mining Pilot Project, a global initiative aimed at identifying best practices in responsible mining.[105] Mexico thus actually *endorsed* the Project as a model for responsible and sustainable mining. That endorsement is irreconcilable with Mexico's *post hoc* characterization of Almaden as a reckless speculator.

43. *Sixth*, Mexico points to the Claimants' corporate restructuring – specifically, the spin-off of Azucar Minerals and Almadex in 2015 and 2018 – as further evidence of speculative intent, suggesting that the successive separation of assets reflects a pattern of asset-stripping or value extraction rather than genuine commitment to developing the Ixtaca Project. But that characterization distorts the commercial reality. The 2015 restructuring responded to a straightforward financing reality: advancing Ixtaca to production would require substantial capital and attract a different investor profile than the early-stage exploration activities in which Almaden had historically engaged. To avoid diluting shareholder interests in its broader portfolio solely to advance Ixtaca, Almaden spun off for shareholders all of its non-Ixtaca related assets into a newly incorporated entity – Almadex Minerals Limited ("**AML**") – leaving Ixtaca as Almaden's sole remaining asset and enabling Almaden and Minera Gorrión to concentrate exclusively on the Ixtaca Project's development.[106]

44. The second 2018 restructuring was driven by a distinct, transaction-specific opportunity. Newcrest Mining – a major Australian mining company – approached AML to participate in the El Cobre project. To accommodate Newcrest's participation without diluting shareholder interests across other entities' assets, AML implemented a further spin-off, transferring all of its non-El Cobre assets into a newly incorporated entity – which took the name Almadex Minerals Ltd. – while AML renamed itself Azucar Minerals Ltd.[107] The result was three focused companies: Almaden (Ixtaca), Azucar (El Cobre), and Almadex (royalties and other assets), each aligned with discrete investment theses and capital requirements.[108] Mexico offers no basis for its proposition that rational, investor-driven corporate restructurings such as these evidence speculative intent.

45. Finally, even beyond the factual record contradicting Mexico's characterization of Almaden as a speculative actor, Mr. Cabrera's broader attempt to attribute the Project's failure to the

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104 M. Poliquin WS, at para. 27; Memorial, at para. 102.

105 McDonald WS, at para. 74; Memorial, at para. 15; McDonald WS-2, at paras. 72-76.

106 McDonald WS, at para. 18; McDonald WS-2, at paras. 15-23.

107 McDonald WS, at para. 31; McDonald WS-2, at para. 19.

108 McDonald WS, at para. 32; McDonald WS-2, at paras. 22-23.

Claimants' business model does not withstand scrutiny.[109] The record set out above directly refutes his assertion that the Claimants prioritized "asset valuation in Canadian stock markets" over genuine project development.[110] More fundamentally, Mr. Cabrera's analysis suffers from methodological flaws that independently undermine its reliability.[111] His approach is abstract and lacks project-specific grounding. Instead, he invokes broad ESG frameworks without reference to the specific facts, stage, or timeline of the Ixtaca Project. He also relies on non-comparable cases – including Conga in Peru and Escobal in Guatemala – that differ materially from Ixtaca in scale, history, community dynamics, and institutional environment.[112] Most glaringly, he conflates the Project's area of influence with the Concession Area, producing erroneous conclusions regarding the scope of Almaden's social engagement obligations and performance.[113] The record thus demonstrates that Mr. Cabrera's characterization of the outcome as "self-inflicted negligence" or "self-inflicted business risk"[114] is baseless.[115] The Claimants address Mr. Cabrera's further allegations regarding social license, community opposition, and alleged deficiencies in social engagement in Section 2.18 below.

2.3. Economía Repeatedly Affirmed The Validity And Good Standing Of The Mineral Concessions Almaden Obtained At Ixtaca Through Minera Gavilán

2.3.1. Mexico's Mining Law And Regulations Established A Structured Concession Application Process

46. There is no dispute between the Parties that the Mexican Mining Law, its Regulations, and Article 27 of the Mexican Constitution regulate the exploration, exploitation, and processing of minerals in Mexico.[116] There is also no dispute that the application of the Mining Law is the responsibility of the Federal Executive Branch through Economía, and that the DGM, an

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109 Cabrera ER, at paras. 173, 253-256.

110 Cabrera ER, at paras. 253-256.

111 SLR ER-2, at Section 3.2.

112 SLR ER-2, at paras. 293-94.

113 SLR ER-2, at para. 298(b); Anaya WS, at paras. 97-103.

114 Cabrera ER, at paras. 12, 254.

115 SLR ER-2, at Section 3.2.7.1; Cabrera ER, at Section VI.

116 Memorial, at para. 57; Counter-Memorial, at para. 35; 1992 Mining Law, published in the *Diario Oficial* on 26 June 1992 ("**1992 Mining Law**"), **Exhibit C-157**; 2005 Mining Law Amendment, published in the *Diario Oficial* on 28 April 2005 ("**Mining Law**"), **Exhibit C-174**; 1999 Mining Regulations, published in the *Diario Oficial* on 15 February 1999 ("**1999 Mining Regulations**"), **Exhibit C-164**; Political Constitution of the United Mexican States (last amended 17 January 2025) ("**Mexican Constitution**"), at Art. 27, paras 4, 6, and 10, Section I, **Exhibit C-439**. *See also* Manual de Servicios al Público en Materia Minera, published in the *Diario Oficial*, dated 28 July 1999 ("**1999 Mining Manual**"), **Exhibit C-165**; *Manual de Servicios al Público en Materia Minera*, published in the *Diario Oficial*, dated 7 April 1993 ("**1993 Mining Manual**"), **Exhibit C-159**.

agency under Economía, is responsible for the administration of the mining industry in Mexico, including the granting of mining concessions.[117]

47. In their Memorial, the Claimants described in detail the legal and regulatory framework governing the application for, and grant of, mining concessions.[118] Mexico, by contrast, offers a truncated description of that administrative process, which mischaracterizes the scope of discretion Economía and its DGM enjoy in reviewing concession applications.[119] Mexico further asserts that when Economía evaluates whether a concession application meets the conditions and requirements of the Mining Law and Regulations, "the DG Min[es] is not required to notify the individual of any non-compliance of their application with applicable legislation . . . the DG Mines must only determine whether the granting of the concession is feasible."[120] These assertions are misleading and incorrect.

48. *First*, while there is no dispute that Economía enjoys discretion in reviewing and approving mining concession applications, that discretion is not open-ended, as Mexico and its legal experts suggest. Instead, it is a structured administrative process, governed at each stage by prescriptive requirements and fixed deadlines defined in the Mining Law and its Regulations.

49. Specifically, under Articles 16 and 17 of the Mining Regulations, to obtain a mining concession, an applicant must first file an application with the relevant regional office of Economía, together with the requisite documentation.[121] That documentation includes proof of compliance with the Mexican nationality requirement;[122] identification of the main minerals to which the envisaged exploration and exploitation activities relate; and information in relation to the requested concession areas, including the land's surface area; the location of the departure point and photographs thereof; the sides, boundaries, horizontal distances, and perimeter of the

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117 Memorial, at para. 57; Counter-Memorial, at para. 43.

118 Memorial, at Section 2.4.1.

119 Counter-Memorial, at paras. 35-56.

120 Counter-Memorial, at para. 50.

121 Memorial, at para. 60; 1999 Mining Regulations, at Arts. 16-17, (Art. 17 provides that "[a]pplications for exploration concession or mining assignment shall be filed in person before the corresponding unit according to the location of the mining lot, in accordance with the district determined by the Secretary"), **Exhibit C-164**.

122 Memorial, at para. 60; Under Arts. 10 and 11 of the Mining Law and Art. 4 of the 1999 Mining Regulation the applicant must be a Mexican corporation, *ejido*, agrarian community, or indigenous community. Mining Law, at Arts. 10-11, **Exhibit C-158**; 1999 Mining Regulations, at Art. 4, **Exhibit C-164**.

land; and, when the surface area exceeds 50 hectares, a map indicating the departure point of the concessioned lot in accordance with the Mining Manual.[123]

50. The Claimants further explained that, upon receipt of a concession application, Economía must register the application and verify its completeness, without assessing its content.[124] Article 17 of the Mining Regulations provides that if any information is missing, Economía "will verbally request the person who submitted the application to provide [the missing information] at that time."[125] If the application is not corrected, "the application will be rejected and [Economía] will record the causes that give rise to this situation."[126] Once the application is found to be complete, Economía must issue a certificate to the applicant affirming that the application has been "admitted for study and processing."[127]

51. Upon admission of the application for processing, the applicant's mining expert has 60 days to carry out the required fieldwork on the land of the concession area and to submit an expert report establishing the coordinates of the departure point and recording the topographical information in relation to the concession.[128] Article 21 of the Mining Regulations prescribes the information that the expert report must contain, while the Mining Manual sets out the applicable technical guidelines for each section of the report.[129]

52. Importantly, Article 22 of the Mining Regulations provides that, once the expert report is submitted for review, Economía has 45 days to verify its compliance with the Mining Regulations and the Mining Manual.[130] Where Economía identifies defects in the expert report, Article 22 requires Economía to notify the applicant within 30 days of receiving the report, "in

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123 Memorial, at para. 60; 1999 Mining Regulations, at Art. 16, **Exhibit C-164**; 1999 Mining Manual, **Exhibit C-165**; 1993 Mining Manual, **Exhibit C-159**.

124 Memorial, at para. 61; 1999 Mining Regulations, at Art. 17, Section II ("Once the application has been registered by the competent administrative unit, the unit shall verify, without evaluating its content, that the requirements established in these Regulations for its submission are met and that it is accompanied by the number of copies and attachments specified in the Manual.") **Exhibit C-164**.

125 Memorial, at para. 61; 1999 Mining Regulations, at Art. 17, Section II, **Exhibit C-164**.

126 Memorial, at para. 61; 1999 Mining Regulations, at Art. 17, Section II, **Exhibit C-164**.

127 Memorial, at para. 62; 1999 Mining Regulations, at Art. 17, Section I, **Exhibit C-164**.

128 Memorial, at para. 62; 1999 Mining Regulations, at Art. 17, **Exhibit C-164**; *see also* 1999 Mining Manual, at Provision 2, Section XXII, **Exhibit C-165**.

129 Memorial, at para. 62; 1999 Mining Regulations, at Art. 21, **Exhibit C-164**; 1993 Mining Manual, at Provisions 13-23, **Exhibit C-159**.

130 Memorial, at para. 63; 1999 Mining Regulations, at Art. 22, Section II, **Exhibit C-164**.

writing and only once, to present the pertinent corrections or new expert works, within 60 days" following the date of notification.[131]

53. Once Economía has reviewed and approved the expert report, Article 23 of the Mining Regulations requires Economía to review the complete concession application and issue a decision within 15 days.[132] During this 15-day period, Economía "will verify the free character of the lot that is the object of the application and, if the other conditions and requirements provided by the Law and these Regulations are satisfied, it will issue" the mining concession.[133] The Public Mining Registry must then register the approved mining concession *ex officio* within 10 days of Economía's approval and publish it in the Book of Mining Concessions.[134]

54. Notably, Article 13 of the Mining Law provides that concessions "*shall be granted* on free land to the first applicant in time of a mining lot, provided that the conditions and requirements set forth in this Law and its Regulations are met."[135] The language – "shall be granted" – confirms that the issuance of a concession is not a matter of unfettered administrative discretion. Rather, Economía's role is to assess the application, as presented, against the requisite criteria set forth in the Mining Law and Regulations and, where the criteria are satisfied, to grant the concession.

55. This is consistent with Article 6 of the 1992 Mining Law, pursuant to which mining had preferential status over other types of land usage.[136] As Article 6 provides, "[t]he exploration, exploitation and benefit of the minerals or substances referred to in this Law are of public utility, and shall be preferred over any other use or exploitation of the land."[137]

56. *Second*, Mexico's assertion that "the DG Mines is not required to notify the individual of any non-compliance of their application with applicable legislation"[138] ignores and conflates the various stages of the application process, namely: (i) the initial review for completeness under Article 17; (ii) the review and approval of the expert report under Article 22; and (iii) the final approval under Article 23.[139] As explained above, in assessing whether the application is complete and whether the expert report complies with the Mining Regulations and the Mining

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131 Memorial, at para. 63; 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**.

132 Memorial, at para. 65; 1999 Mining Regulations, at Art. 23, **Exhibit C-164**.

133 Memorial, at para. 65; 1999 Mining Regulations, at Art. 23, **Exhibit C-164**.

134 Memorial, at para. 65; Mining Law, at Art. 47, **Exhibit C-158**; 1999 Mining Regulations, at Art. 93, Section I, **Exhibit C-164**.

135 Memorial, at para. 59, n. 120; 1992 Mining Law, at Art. 13, (emphasis added) **Exhibit C-157**.

136 Mining Law, at Art. 6, **Exhibit C-158**.

137 Mining Law, at Art. 6, **Exhibit C-158**.

138 Counter-Memorial, at para. 50.

139 *See supra* paras. 4-8.

Manual, Economía is expressly required to advise the applicant of any missing information or defects, and to provide the applicant the opportunity to correct.[140] Indeed, under Article 22, the applicant has a full 60 days "to present the pertinent corrections or new expert reports."[141]

57. Economía's 15-day review of the concession application under Article 23 can take place only "on the day following the date on which the expert reports are approved or deemed approved in accordance with the preceding article."[142] In other words, Economía's review and approval under Article 23 does not and cannot involve a review of the expert reports – those reports must be "approved or deemed approved in accordance with" Article 22 before the assessment under Article 23 can even commence. Mexico disregards in its entirety this distinction, as well as the notification and correction procedure under Article 22. Of course, Mexico does so because it knows that, in reassessing the original concession applications in February 2023, Economía improperly re-examined the underlying expert reports – which Economía had duly approved in 2003 and 2009 – to identify purported fatal irregularities. It then failed to accord Minera Gorrión any opportunity to correct those purported irregularities, in clear violation of Article 22 of the Mining Regulations.

58. Furthermore, Mexico's position that "the DG Mines is not obligated to notify the individual of any non-compliance of their application with applicable legislation"[143] is irreconcilable with Article 17A of the Federal Law of Administrative Procedure.[144] As the Claimants explained in the Memorial, Article 17A operates as a due process safeguard and applies to all administrative proceedings in Mexico, including the review and approval of mining concession applications.[145] Specifically, Article 17A provides that "[w]hen the documents submitted by the interested parties do not contain the data or do not comply with the applicable requirements," the relevant administrative agency (in this case, Economía) "must notify the interested parties, in writing and only once, so that they can correct the omission" within the timeframe established by the agency, which must not be less than five days.[146] Critically, Article 17A further provides that if the agency fails to notify the applicant of the relevant error, "the

140 *See supra* para. 5; 1999 Mining Regulations, at Art. 17, Section II, **Exhibit C-164**.

141 Memorial, at para. 63; 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**.

142 1999 Mining Regulations, at Art. 23, **Exhibit C-164**.

143 Counter-Memorial, at para. 50.

144 Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

145 Memorial, at para. 64; Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Arts. 1 and 2 (published in the official gazette on 24 December 1996), **Exhibit C-160**.

146 Memorial, at para. 64; Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

application cannot be rejected on the grounds that it is incomplete."[147] As set forth above, the Mining Regulations incorporate these due process protections in Articles 17 and 22, which Mexico ignores.

59. The Claimants also explained in the Memorial that Article 24 of the Mining Regulations confers upon Economía the power and the authority to modify an approved mining concession *ex officio*, if "it is subsequently required to make any corrections, if its data are erroneous or do not correspond to the land that it should legally cover."[148] This process is governed by Article 31 of the Mining Regulations, which requires Economía, in turn, to notify the concessionaire of the corrections to be made and an opportunity to be heard.[149]

60. In its Counter-Memorial, Mexico argues that Article 24 is "irrelevant to the Claimants' case," because it "applies to requests for extension of the term of a concession" and "does not provide for Economía's power to correct defects in an individual's applications on its own initiative."[150] Mexico makes the same objection with regard to Article 31, asserting that it "specifies the information that must be included in calls for tenders for the granting of mining concessions," and does not "require[] Economía to notify the concessionaire of any necessary corrections, thereby allowing for adjustments without undermining its legal rights."[151] Mexico's position is inconsistent with the plain text of the Mining Regulations.

61. Article 24 of the Mining Regulations expressly provides that Economía reserves the right to modify a mining concession, if "it is subsequently required to make any corrections, if its data are erroneous or do not correspond to the land that it should legally cover."[152] Mexico's attempt to confine Article 24 to requests for extensions is without basis; it is also contradicted by the second paragraph of Article 24, which addresses corrections to data in the concession title – and makes no mention of extensions to the concession term.[153]

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147 Memorial, at para. 64; Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

148 Memorial, at para. 67; 1999 Mining Regulations, at Art. 24, second para., **Exhibit C-164**.

149 Memorial, at para. 67; 1999 Mining Regulations, at Art. 31, second para. (establishing that Economía shall inform the concessionaire the reasons to correct the title and allowing the concessionaire to provide a response within 30 days), **Exhibit C-164**.

150 Counter-Memorial, at para. 397, n. 421.

151 Counter-Memorial, at para. 397, n. 421.

152 1999 Mining Regulations, at Art. 24, second para., (emphasis added) **Exhibit C-164**.

153 1999 Mining Regulations, at Art. 24, second para. ("The Secretariat reserves, under the terms of Article 18 of the Law, the authority to modify the title thus issued if, subsequently, any correction to it is required, if its data is erroneous, or if it does not correspond

62. Similarly, Article 31 of the Mining Regulations, which establishes the procedural mechanism by which Economía carries out such corrections, is applicable in the following circumstances:

> "[W]hen the Secretariat verifies, based on data deriving from mining maps, the results of inspection visits, or the records in the relevant files, as well as those on file in the Registry, that the information contained in a mining concession or assignment title is erroneous or does not correspond to the land it is legally required to cover in accordance with the provisions of Article 18 of the Law, it shall proceed *ex officio* to initiate the procedure to correct the corresponding mining concession or title."[154]

63. Notably, Article 31 is not predicated upon an extension request or a call to tender; rather, the correction process contemplated under Article 31 is initiated by Economía *ex officio* based upon its review of "data deriving from mining maps, the results of inspection visits, or the records in the relevant files, as well as those on file in the Registry."[155] Where Economía identifies discrepancies in the data through its review, it must first notify the concessionaire of the reasons for the proposed correction and afford the concessionaire an opportunity to respond and adduce any evidence it deems necessary.[156] Economía must then review the available evidence and issue a decision, ordering the correction of the title, where appropriate.[157]

64. Read together, Articles 24 and 31 of the Mining Regulations establish a clear pathway for the correction of technical defects in existing mining concessions by Economía *ex officio*. This is logical: it allows Economía to correct technical defects in existing concessions, rather than requiring it to revoke and reissue them in full. In doing so, this preserves legal stability and security in existing rights. It is, however, a pathway Economía failed to follow here.

2.3.2. Economía Approved And Repeatedly Affirmed The Validity Of The Cerro Grande And Cerro Grande 2 Concessions

65. The Claimants demonstrated in the Memorial that, in accordance with the legal and regulatory framework described above, Minera Gavilán applied for and obtained in 2003 and 2009 two

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to the land it is legally intended to cover. In this case, the procedure set forth in Article 31 of these Regulations shall apply"), **Exhibit C-164.**

154 1999 Mining Regulations, at Art. 31, **Exhibit C-164**.

155 1999 Mining Regulations, at Art. 31, **Exhibit C-164**.

156 1999 Mining Regulations, at Art. 31, Sections I and II **Exhibit C-164**.

157 1999 Mining Regulations, at Art. 31, Section IV, **Exhibit C-164**.

mining concessions in Ixtacamaxtitlán: the Cerro Grande and Cerro Grande 2 Concessions.[158] The Claimants further demonstrated that Economía and the DGM affirmed and reaffirmed the validity and good standing of those Concessions on multiple occasions, without ever identifying any defects or deficiencies.[159] The full concession files Mexico has produced confirm that Economía did not identify any deficiencies when it reviewed and approved the concession applications, including the underlying expert reports, or at any point afterwards.[160]

66. Mexico does not dispute that Economía reviewed, approved, and granted title to the Cerro Grande and Cerro Grande 2 Concessions in 2003 and 2009, respectively, without identifying any defects in the expert reports. Instead, Mexico contends that the "irregularities persisted in the files [which] meant that the concession applications never fully complied with the legal requirements."[161] The existence of these purported "irregularities" in the files, even if true (*quod non*), does not render the Concessions void *ab initio*, as Mexico insinuates. To the contrary, where Economía identifies such "irregularities" in the files, it is permitted to correct them through the *ex officio* procedure set out in Articles 24 and 31 of the Mining Regulations.

67. The purported "irregularities" Mexico points to center on three categories of alleged defects in the expert reports underlying the original concession applications: (i) incorrect coordinates; (ii) excessive distance between the starting point and perimeter; and (iii) missing or defective land surveys.[162] These purported "irregularities" relate to the form and technical presentation of the expert reports, not to the substance of the Concessions. And, even if they did relate to the Concessions (*quod non*), these are precisely the types of irregularities Articles 24 and 31 of the Mining Regulations permit Economía to correct *ex officio*.

68. Moreover, as demonstrated in the Memorial, following the grant of the Concessions, Economía affirmed and reaffirmed their validity and good standing on multiple occasions over the course of nearly two decades – without identifying any "irregularities."[163] Specifically, Economía approved the expert reports and the concession applications;[164] registered the Concessions in

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158 Memorial, at Section 2.4.2.

159 Memorial, at Section 2.4.3.

160 Administrative File for Mining Concession No. 219469 ("**Cerro Grande**"), Volumes I to VII and Appendices I to IV, dated 2002-2023, **Exhibit C-658**; Administrative File for Mining Concession No. 233434 ("**Cerro Grande 2**"), Volumes I to VII and Appendices I to III, dated 2008 – 2023, **Exhibit C-659**.

161 Counter-Memorial, at para. 666.

162 Memorial, at paras. 426-427; Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

163 Memorial, at para. 85.

164 Official letter No. 120/21/A.4/6.1/2003 from the Subdirección de Minería of DGM to the Director of DGM with respect to the Cerro Grande concession application, dated 10 February 2003, **Exhibit C-171**; Official letter No. 141.8.1.20087 04713 from the

the Public Mining Registry;[165] transferred the Concessions to Minera Gorrión;[166] approved the reduction of the Concessions; [167] issued certificates confirming the validity of the Concessions; [168] and defended the legality of the Concessions throughout the *amparo* proceedings.[169] At no point did Economía identify any issue with the coordinates, surveying methods, or land surveys.

69. Indeed, Mexico itself acknowledges that, in Amparo 445/2015, Economía, "specifically the DG Minas [] argued that the contested concessions were granted in accordance with the legal provisions in force."[170] In other words, when called upon to defend its actions before the Mexican courts, Economía affirmed that it had granted the Concessions "in accordance with the legal provisions in force" – the same act Economía characterized in 2023 as "not feasible."

70. As Mr. McDonald notes in his second statement, although Mexico now seeks to minimize Economía's opposition to Tecoltemi's *amparo* – characterizing it as simply "fulfill[ing] its duty of legality"[171] – it was important to the Claimants at the time that the Government of Mexico, and Economía in particular, answered that *amparo* by defending the legality of the Concessions and confirming that they remained in good standing.[172] This reaffirmed the

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Jefe de Departamento de Concesiones Mineras of DGM to the Director of DGM with respect to the Cerro Grande 2 concession application, dated 9 December 2008, **Exhibit C-175**.

165 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**; Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 March 2009, **Exhibit C-8**.

166 Contrato de cesión de derechos between Minera Gavilán and Minera Gorrión, dated 13 December 2011, at p. 15, **Exhibit C-13**. *See also* Agreement duly filed under number 62 page 33, Volume 32 of the Libro de Actos, Contratos y Convenios Mineros of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**; Convenio modificatorio al Contrato de cesión de derechos between Minera Gavilán and Minera Gorrión, dated 22 December 2012, **Exhibit C-17**.

167 DGM Oficio No. SE/610-02973/2017, dated 30 May 2017, **Exhibit C-45** (as amended by DGM Oficio No. SE/610-03211/2017, dated 9 June 2017, **Exhibit C-48**); DGM Oficio No. SE/610-02972/2017, dated 30 May 2017, **Exhibit C-46** (as amended by DGM Oficio No. SE/610-03210/2017, dated 9 June 2017, **Exhibit C-49**; *see also* Títulos de Concesión Minera: Cerro Grande R1, Cerro Grande R3, Cerro Grande R4, Cerro Grande R5, Cerro Grande R6, Cerro Grande 2 R2, and Cerro Grande 2 R3, de 29 Mayo de 2017 al 23 de Febrero de 2059, dated 29 May 2017, **Exhibit C-152**.

168 Certificate No. Exp. 185/3 issued by Ms. Laura Araceli Cervantes Alejandre, Deputy Director of the Public Mining Registry from Economía, Cerro Grande, dated 16 December 2019, at pp. 1, 3, at **Exhibit C-330**; Certificate No. Exp. 185/3 issued by Ms. Laura Araceli Cervantes Alejandre, Deputy Director of the Public Mining Registry from Economía, Cerro Grande 2, dated 16 December 2019, at pp. 1, 3, at **Exhibit C-331**.

169 *See infra* Section 2.13.

170 Counter-Memorial, at para. 361.

171 McDonald WS-2, at para. 108; Counter-Memorial, at para. 113.

172 McDonald WS, at para. 108; DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 5, **Exhibit C-34**.

Claimants' confidence in both the security of their rights and the legitimacy of the Ixtaca Project.[173]

71. As set forth in the Memorial and below, in using purported "irregularities" in the expert reports as a pretext for non-feasibility – which had nothing to do with the subject matter of the *amparo* or Economía's retroactive "feasibility" review – Economía not only undermined legal certainty, but shattered the legitimate trust the Claimants had in the stability of Mexico's legal and regulatory framework. What is more, documents recently produced by Mexico in this arbitration show that these "irregularities" were not even the actual basis for Economía's non-feasibility decision – rather, as elaborated below, the actual basis was the INPI report.

2.4. Almaden Made Significant Investments To Advance The Ixtaca Project Toward Development

72. As explained in the Memorial, after discovering the Ixtaca deposit, the Claimants made significant investments to advance the Ixtaca Project toward development.[174] *First*, Almaden completed a Feasibility Study ("**FS**") compliant with National Instrument 43-101 of the Canadian Securities Administration, the regulatory standard governing technical disclosure for mineral projects by companies publicly traded on Canadian stock exchanges.[175] The FS declared proven and probable Mineral Reserves of 73 million metric tons containing 1.39 million ounces of gold and 85.2 million ounces of silver (**Section 2.4.1**).[176] *Second*, following publication of the FS in December 2018, Almaden – [redacted] – secured [redacted] financing proposals from sophisticated and established project funders, the terms of which were likely to improve (**Section 2.4.2**).[177] *Third*, Almaden recruited experienced mining specialists to bring the Project into production.[178] It engaged Laurence Morris and John Thomas,[179] both critical to preparing the project delivery strategy, *i.e.*, [redacted].[180] As explained further below, Mexico does not

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173 McDonald WS, at para. 108.

174 McDonald WS, at paras. 41-45.

175 Memorial, at paras. 113-117.

176 Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 21, and at Sections 16 and 18, pp. 196-223; 238-252, **Exhibit C-314**.

177 McDonald WS-2, at Section 3.2.

178 McDonald WS, at para. 51-52.

179 McDonald WS, at paras. 51–52.

180 McDonald WS, at para. 53; [redacted], at p. 1, **Exhibit C-268**.

and cannot seriously question that Almaden took these steps, that they advanced the Project substantially toward production, or that the experts involved throughout the process were eminently qualified, with extensive experience in their respective fields.

2.4.1. Almaden Published an NI 43-101-Compliant Feasibility Study, Demonstrating the Project's Technical and Economic Viability

73. After discovering the Ixtaca deposit in 2010, the Claimants invested approximately US$ 56 million in direct exploration and evaluation expenditures to advance the Project toward development.[181] The Claimants also incurred, *inter alia*, land acquisition costs of approximately [redacted], concession taxes of over CAD 2.3 million paid to Mexico, costs to acquire and dismantle the Rock Creek Mill, and extensive community engagement expenditures over more than a decade.[182] The Claimants advanced the Project through six successive technical studies: from a maiden resource estimate in 2013 to a full NI 43-101-compliant FS, which they announced in December 2018.[183] Each of these studies was progressively more detailed and robust than the last.[184] Mexico does not contest this chain of events.

74. The Claimants retained a team of respected independent experts to prepare the FS to the exacting standards of sophisticated mining financiers. The Claimants retained Moose Mountain Technical Services ("**Moose Mountain**"), which had prepared the Project's PFS, to lead the preparation of the FS. As Mr. McDonald explains, Moose Mountain is an "association of highly experienced and qualified Professional Geologists, Engineers, Environmental Professionals and Technicians" which provides "independent consulting services to mining and exploration clients around the world, from exploration to closure," and has experience on over 200 projects worldwide.[185] The Claimants selected Moose Mountain not only based on

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181 Memorial, at paras. 107–24; Brattle ER-1, at para. 177.

182 Memorial, at para. 131; D. Poliquin WS, at para. 55; Santamaría Tovar WS, at para. 18; GlobeNewswire, 'Almaden Responds to Court Submissions by Mexico's Ministry of Economy to Deny Twenty Year-Old Ixtaca Mineral Title Applications', dated 22 February 2023, **Exhibit C-419**.

183 McDonald WS, at para. 41; Almaden press release, Almaden reports 42% after-tax IRR with 203,000 OZS Gold Equivalent Production per year over first 6 years from Feasibility Study for the Ixtaca Precious Metals Project, Mexico, dated 11 December 2018, **Exhibit C-58**.

184 D. Poliquin WS, at paras. 35–36; Memorial, at paras. 107–115.

185 McDonald WS-2, at para. 29 (*citing* Moose Mountain Technical Services webpage, available at https://moosemmc.com/ (last accessed 18 May 2026), **Exhibit C-834**.

the strong credentials of its team members, but also for its reputation as a firm known for delivering rigorous work product.[186]

75. Moose Mountain prepared the FS in collaboration with three other independent consultancies. *First*, APEX Geoscience Ltd. ("**APEX**") verified the Project's exploration and drilling data.[187] APEX is a mineral exploration consultancy with over 25 years of experience on more than 330 projects across six continents, including eight projects in Mexico. Among those projects are the currently producing San Ignacio mine in Guanajuato and the Topia mine in Durango.[188] The Claimants were familiar with APEX, having retained the firm on several of their other projects.[189] *Second*, Giroux Consultants handled resource estimation. Its principal, Mr. Gary Giroux, is a well-established resource geologist and a "qualified person" under NI 43-101, whose experience includes multiple projects in Mexico.[190] *Third*, SRK Consulting U.S. Inc. ("**SRK**") addressed the geotechnical, tailings, and water management aspects of the FS.[191] SRK is among the most respected geotechnical and environmental consultancies in the mining industry, with experience on over 30,000 projects worldwide, including multiple projects in Mexico.[192] Mexico does not contest that these experts were independent and well qualified for their respective roles in preparing the FS.

76. The FS concluded that the Project hosted Proven and Probable Mineral Reserves of 73.1 million tons at 0.59 grams per ton of gold and 36.3 grams per ton of silver, amounting to 1,387,000 ounces of gold and 85,159,000 ounces of silver.[193] The FS further established that the Project was "well suited for a potential mining operation," with "robust economics" supporting a mine life of 11 years.[194] Those economics included an after-tax internal rate of

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186 McDonald WS-2, at para. 29.

187 McDonald WS-2, at para. 30.

188 McDonald WS-2, at para. 30; *see also* APEX Geoscience webpage, Projects, **Exhibit C-835**.

189 McDonald WS-2, at para. 30.

190 McDonald WS-2, at paras. 30-31; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 5, **Exhibit C-314**.

191 McDonald WS-2, at para. 32; SRK Consulting webpage, Why Choose SRK?, **Exhibit C-838**.

192 McDonald WS-2, at para. 32; SRK Consulting webpage, Why Choose SRK?, **Exhibit C-838**; SRK Consulting webpage, Sonora Mineral Resource Estimate Update, **Exhibit C-839**; SRK Consulting webpage, Hydrogeological Conceptual and Numerical Model of the Juanicipio Underground Mine, **Exhibit C-840**.

193 McDonald WS, at para. 42; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at pp. 21, 30, **Exhibit C-314**.

194 McDonald WS, at para. 41; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at pp. 36, 39, **Exhibit C-314**.

return of 42%,[195] as well as modest initial capital expenditures of US$ 174 million.[196] Based on the prevailing gold and silver prices at the time and using a 5% discount rate, the FS calculated the Project's after-tax net present value to be US$ 310 million.[197] Almaden filed the FS on Canada's capital markets information repository on 24 January 2019 and published it on its corporate website, making it publicly accessible.[198]

2.4.2. Almaden Secured Multiple Serious Financing Offers from Sophisticated, Mining-Specialist Financiers

77. By the time Almaden published the FS, however, macroeconomic trends meant that equity markets likely would not "support large-scale financing" for a development-stage project such as Ixtaca.[199] Likewise, as Mr. McDonald explains, banks had "temporarily left development-stage project financing as a consequence of the difficult equity markets and a broader, industry-wide aversion to risk among these lending institutions."[200] Almaden therefore sought financing from other sources, including specialized mining financiers.

78. As noted in Section 2.2 above, on 13 December 2018, Almaden retained [redacted].[201] [redacted].[202]

79. Having retained [redacted], Almaden began a structured, institutional process to secure project finance for Ixtaca. Assisted by [redacted], the Claimants received [redacted]

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195 Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 21, **Exhibit C-314**.

196 Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 21, **Exhibit C-314**.

197 McDonald WS, at para. 42; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 21, **Exhibit C-314**; SLR ER-1, at para. 34.

198 *See* McDonald WS, at paras. 40-47; *see also* Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, **Exhibit C-314**.

199 McDonald WS-2, at para. 42.

200 McDonald WS-2, at para. 42.

201 McDonald WS, at para. 48; [redacted], **Exhibit C-265**.

202 Almaden Minerals Ltd., News Release, 'Almaden Appoints Financial Advisor to Assist in Arranging Project Finance for the Ixtaca Precious Metals Project, Mexico', dated 19 December 2018, **Exhibit DC-13**.

[redacted] – thus demonstrating the Project's attractive fundamentals and compelling value proposition.

80. *First*, on 13 May 2019, [redacted].[203] [redacted].[204]

81. *Second*, on 25 June 2019, [redacted].[205] [redacted].[206] [redacted].[207]

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[203] McDonald WS-2, at para. 46; [redacted], **Exhibit C-287**.

[204] McDonald WS, at para. 49.1; [redacted], **Exhibit C-287**.

[205] McDonald WS, at para. 49.2; [redacted], **Exhibit C-294**.

[206] McDonald WS, at para. 49.2, n. 62; [redacted], **Exhibit C-294**.

[207] McDonald WS-2, at para. 49.2; [redacted], **Exhibit C-294**.

82. *Third*, on 13 February 2019, [redacted].[208]

83. Mexico does not and cannot contest that Almaden obtained these financing proposals. Mexico and its expert, Dr. Daniel Flores of Quadrant Economics ("**Quadrant**"), nonetheless critique these proposals as implying a lack of confidence in the production figures forecast by the FS or a lower valuation than Brattle reached in its expert report.[209] This contention is wrong.

84. *First*, far from signaling a lack of confidence in the FS production figures, [redacted] a sophisticated market participant considered the Project financeable.[210]

85. *Second*, [redacted].[211] As Mr. McDonald explains, that is precisely why Almaden continued to negotiate with multiple counterparties – to secure competitive offers and thereby optimize the cost of capital.[212] To that end, [redacted].[213]

86. In September 2019, Almaden [redacted]. That month, Mr. McDonald met with a delegation [redacted]. As Mr. McDonald recalls, [redacted] "the summer had gone well" for Almaden, alluding to "the improving precious metals prices and equity markets."[214] He signaled that if Almaden

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208 McDonald WS, at para. 49.3; [redacted], **Exhibit C-270**.

209 Counter-Memorial, at para. 822; Quadrant ER-1, at para. 84.

210 McDonald WS-2, at paras. 47-48.

211 McDonald WS-2, at paras. 47-48.

212 McDonald WS-2, at para. 49.

213 McDonald WS-2, at para. 47.

214 McDonald WS-2, at para 53.

could secure additional equity financing, [redacted][215]

87. Moreover, as Mr. McDonald explains, there was ample room for further negotiation as the financing discussions progressed. Almaden planned to solicit firm offers and close on its project financing after it received MIA approval. Before closing, Almaden and its financing counterparty would have jointly selected an independent engineering firm to conduct an independent review of the FS, followed by full legal and engineering due diligence. During that process, they would continue to refine the financing terms.[216] Brattle confirms that progression: "[u]nder normal circumstances, if the Project had received its MIA in a timely fashion, the final terms of any financing agreements would have reflected the outcome of additional negotiation and due diligence that would be expected to improve the financing terms."[217]

88. However, in October 2019, while Almaden was in the midst of negotiating revised terms [redacted], SEMARNAT suspended its review of the MIA.[218] Mr. McDonald informed [redacted] of the suspension on 29 October 2019,[219] but [redacted].[220] Shortly thereafter, they agreed to stand down at Mr. McDonald's request, with a view to re-engaging after the suspension.[221]

89. Notwithstanding the multiple serious expressions of interest it obtained, Mexico and Quadrant contend that Almaden faced material financing risks that adversely impact the Project's valuation.[222] They dismiss [redacted], and in turn, they assert that the existence of such "preliminary" expressions of interest "does not eliminate" that risk.[223]

90. That argument mistakes the evidentiary significance of the [redacted]. [redacted]

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215 McDonald WS-2, at para. 53.

216 *See* McDonald WS-2, at paras. 54-55.

217 Brattle ER-2, at para. 125.

218 McDonald WS, at para. 90; SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394 notified on 29 October 2019, **Exhibit C-322**.

219 Email from D. McDonald to [redacted], **Exhibit C-818**.

220 Email chain between [redacted] and Almaden [redacted], **Exhibit C-819**.

221 Email from D. Mcdonald (Almaden) [redacted], **Exhibit C-820**.

222 Counter-Memorial, at para. 821; Quadrant ER-1, at para. 83.

223 Quadrant ER-1, at para. 83; Counter-Memorial, at para. 821.

[redacted]. [redacted]

[redacted]. Those expressions of interest illustrate the attractiveness of the Project as an investment proposition and its ability to attract financing, thus demonstrating its low level of financing risk. Indeed, Brattle confirms that "given its low all-in sustaining costs . . . (and accordingly high profit margins), the Project would have been an attractive target for debt and equity investors."[224] Brattle thus concludes that "Ixtaca did not face any meaningful financing risks,"[225] and that Quadrant's "concerns to the contrary are misguided,"[226] as explained further in Section 5.5 below.

91. Moreover, the [redacted] is standard for such financing at the pre-permit stage.[227] That stands to reason: [redacted] necessarily do not become binding until permits are in hand and the due diligence they trigger is complete – in the present case, Mexico's unlawful actions prevented this from occurring.

2.4.3. In Parallel, Almaden Recruited a Team of Specialists with the Know-How to Advance the Project to Production

92. In parallel with its project financing efforts, Almaden recruited experienced mining professionals with the specialized skills to bring the Project into production.[228] Specifically, Almaden hired two senior executives, Mr. Laurence Morris and Dr. John Thomas,[229] who played key roles in preparing the project delivery strategy, [redacted].[230]

93. *First*, on 7 February 2018, Almaden announced that it had hired Laurence Morris as Vice President for Projects and Operations.[231] Mr. Morris had formerly served as Mine Manager at

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224 Brattle ER-2, at para. 122.

225 Brattle ER-2, at para. 126.

226 Brattle ER-2, at para. 122.

227 McDonald WS-2, at Section 3.2; *see also* Brattle ER-2, at paras. 124-26.

228 McDonald WS, at paras. 51-52.

229 McDonald WS, at paras. 51-52.

230 McDonald WS, at para. 53; [redacted], at p. 1, **Exhibit C-268**.

231 McDonald WS, at para. 51.

First Quantum Minerals, where he had supervised the Cobre Panamá project,[232] a US$ 5.5 billion project and one of the 10 largest copper mines in the world.[233] He also brought experience managing mining operations in Mexico, having supervised operations at the Dolores gold silver mine in Chihuahua State earlier in his career.[234]

94. Mr. Morris helped oversee the preparation of the FS and led Almaden's preparations for the construction phase of the Project.[235] In that capacity, as the Project progressed closer to construction, he was poised to assemble a team of experienced personnel to build the mine.

95. *Second*, on 9 September 2019, Almaden announced that it had hired Dr. John Thomas, a trained chemical engineer with over 46 years of experience across an array of jurisdictions,[236] as Vice President for Project Development.[237] Dr. Thomas had previously served as a Vice President at Atlantic Gold, where he acted as a "qualified person" for purposes of NI 43-101 for the successful construction and commissioning of the Moose River Consolidated Mine.[238]

96. At Almaden, Dr. Thomas led the Project's processing and construction engineering workstreams after the Feasibility Study, including:

a) Developing the construction engineering design plan, including the detailed processing plant design for the water storage dam;[239]

b) Overseeing negotiation of easements for the power line connecting the Project to the Zocac substation, 27 kilometres away;[240]

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232 McDonald WS, at para. 51; Almaden Press Release, 'Almaden Appoints Laurence Morris Vice President, Projects And Operations, To Oversee Development And Construction Of The Ixtaca Gold Silver Deposit, Mexico', dated 7 February 2018, **Exhibit C-240**.

233 McDonald WS, para. 51; Almaden Press Release, 'Almaden Appoints Laurence Morris Vice President, Projects And Operations, To Oversee Development And Construction Of The Ixtaca Gold Silver Deposit, Mexico', dated 7 February 2018, **Exhibit C-240**.

234 McDonald WS-2, at para. 58.

235 McDonald WS, at para. 51.

236 McDonald WS, at para. 52; Almaden Press Release, 'Almaden appoints Dr. John Thomas as Vice President, Project Development, to oversee detailed engineering and construction of the Ixtaca Gold/Silver Deposit, Mexico', dated 9 September 2019, **Exhibit C-310**.

237 McDonald WS, at para. 52.

238 Almaden Press Release, 'Almaden appoints Dr. John Thomas as Vice President, Project Development, to oversee detailed engineering and construction of the Ixtaca Gold/Silver Deposit, Mexico', dated 9 September 2019, **Exhibit C-310**.

239 SLR ER-1, at Sections 6.5-6.7, 6.11, 8.2, 8.4, 13.2-13.4.

240 *See* Power Line Progress dated March 2021, **Exhibit C-821**.

c) Evaluating dry-stack filter suppliers to identify the most suitable process for the Project, including a visit to the Cuzcatlan mine tailings filter facility;[241] and

d) Helping develop an August 2019 census of local private housing for Project workers, which identified 267 available beds in nearby communities, including Santa María Zotoltepec and San Francisco de Ixtacamaxtitlán.[242]

97. By joining Almaden, Mr. Morris and Dr. Thomas not only reinforced the Project's technical strength; they also lent further credibility to the Project by virtue of their considerable standing in the mining industry. As Mr. McDonald explains, "[e]xperienced mining professionals of this caliber do not join mining projects that are not viable or capable of being brought into production, as Mexico argues was the case at Ixtaca."[243] Notably, Mexico does not comment on the role or credentials of either Mr. Morris or Dr. Thomas. That silence speaks volumes.

98. As explained in the Memorial, with the help of Mr. Morris and Dr. Thomas, Almaden developed a [redacted] Project Delivery Strategy to bring the Project into production [redacted].[244] [redacted][245] [redacted].[246]

99. Despite SEMARNAT's suspension of the MIA evaluation process in October 2019, the development efforts outlined above did not represent the end of Almaden's work to progress the Project toward development. As explained below, Almaden acquired the surface rights needed to build the Project, thereby surpassing a major milestone toward construction and production.

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241 Report on Visit to Cuzcatlan Mine Tailings Filter Facility dated 15 October 2019, **Exhibit C-822**.

242 Email from J. Thomas to M. Poliquin dated 8 August 2019, **Exhibit C-823**.

243 McDonald WS-2, at para. 61.

244 Memorial, at paras. 122-123.

245 McDonald WS, at para. 54.

246 McDonald WS, at para. 54; [redacted], at p. 1, **Exhibit C-268**.

2.5. Contrary To Mexico's Contentions, Almaden Successfully Acquired Surface Rights Needed To Develop The Ixtaca Project

100. In their Memorial, the Claimants demonstrated that Minera Gorrión successfully acquired surface rights needed to develop the Ixtaca Project through transparent, good-faith negotiations with local landowners in Ixtacamaxtitlán.[247] By September 2022, Minera Gorrión had acquired surface rights covering over [redacted] of land in the Project area, representing a total investment of approximately [redacted].[248]

101. In its Counter-Memorial and during the document production phase, Mexico contested the Claimants' acquisition of surface rights at Ixtaca. Specifically, Mexico relies upon the terms of the Concession titles to suggest that the Claimants had no rights over the surface area of the Project.[249] Mexico next argues that the Claimants have failed to prove they acquired the surface rights described in their Memorial.[250] In a separate attack, Mexico argues that, in 2017, Minera Gorrión "convinced some members of the Santa María Zotoltepec *ejido*, the main nucleus of the Ixtaca Project, to sell part of their land;" that the negotiations were allegedly "conducted individually and without the approval of the *ejido* assembly;" that "the *ejido* was divided, and the president of the *ejido* commissariat was even dismissed;" and that, "[a]s of October 2025, the Santa María Zotoltepec *ejido* has not elected the members of the commissariat, which has serious effects on the management of its territory and community life."[251] Finally, Mexico argues that Minera Gorrión's "purchase of land restricted access to routes and spaces necessary for the collection of medicinal and food plants, disproportionately affecting women and older adults."[252] Mexico's assertions are meritless and belied by the evidentiary record.

102. *First*, there is no dispute that the Concession titles granted to Minera Gorrión confer rights only over the minerals within the Concession areas, not over the surface land. As the Concession titles expressly provide, the "title only grants rights over minerals, not over surface land."[253] The Claimants have never contended otherwise. Indeed, this is precisely why Minera Gorrión

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247 Memorial, at paras. 128-132; WS (Santamaría), at paras. 17-22; WS (McDonald), at para. 57; Moose Mountain Technical Services, *Ixtaca Feasibility Study*, dated 3 October 2019, at p. 22, **Exhibit C-314**.

248 Santamaría Tovar WS-2, at Section 2; Moose Mountain Technical Services, *Ixtaca Feasibility Study*, dated 3 October 2019, at p. 22, **Exhibit C-314**.

249 Counter-Memorial, at paras. 41, 547-553.

250 Procedural Order No. 5, Annex B, dated 11 March 2026, at p. 11.

251 Counter-Memorial, at para. 169.

252 Counter-Memorial, at para. 162.

253 Títulos de Concesión Minera: Cerro Grande R1, Cerro Grande R3, Cerro Grande R4, Cerro Grande R5, Cerro Grande R6, Cerro Grande 2 R2, and Cerro Grande 2 R3, de 29 Mayo de 2017 al 23 de Febrero de 2059, at p. 8, **Exhibit C-152**.

proceeded to negotiate purchase and lease agreements with local landowners for surface land rights as early as 2012.[254] As Mr. Santamaría reiterates in his second statement, Minera Gorrión approached these negotiations with care, ensuring both financial transparency and fair and mutually beneficial agreements for local landowners.[255]

103. *Second*, Mexico's argument that the Claimants have failed to prove they acquired the surface rights described in the Memorial is without basis. The Claimants have exhibited with this Reply [redacted] notarized sale and purchase agreements Minera Gorrión executed with individual landowners from 30 January 2013 until 15 September 2022.[256] Each of the [redacted] agreements was executed before a public notary, recorded in a numbered *Escritura Pública*, and registered with the local land registry.[257] Minera Gorrión continues to hold these surface rights today.[258]

104. *Third*, Mexico's argument that, in 2017, Minera Gorrión "convinced some members of the Santa María Zotoltepec *ejido* . . . to sell part of their land;" that the negotiation was conducted "individually and without the approval of the *ejido* assembly;" and that "the *ejido* was divided" as a result, is meritless.[259] As Messrs. Santamaría and García Herrera explain in their second statements, Mexico deliberately misrepresents these events.[260]

105. The village of Santa María Zotoltepec – the village closest to the Project site – comprises mostly private land, with a smaller portion of *ejido* land.[261] *Ejido* land is semi-private in character: individual *ejido* members own their land parcels and may sell or transfer them to other *ejido* members freely; however, a sale to an outside party, such as Minera Gorrión, requires the agreement of the individual landowner and the approval of the *ejido* assembly.[262] As shown in the map below, the Santa María Zotoltepec *ejido* comprises two separate parcels of land – a larger one that Minera Gorrión did not need to develop the Project, and a smaller one comprised of [redacted] individual landowners that was needed for Project development. Minera

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254 Santamaría Tovar WS-2, at Section 2.

255 Santamaría Tovar WS-2, at Section 2.

256 Escritura de Compraventa (Instrumento Número [redacted]), between [redacted] and Minera Gorrión, dated [redacted] **Exhibit C-660**; Escritura Pública No. [redacted] (Rectificación de Medidas, Colindancias y Superficie Restante; Compra-Venta), between [redacted] and Minera Gorrión, dated [redacted], **Exhibit C-661**.

257 Santamaría Tovar WS-2, at Section 2.

258 Santamaría Tovar WS-2, at Section 2.

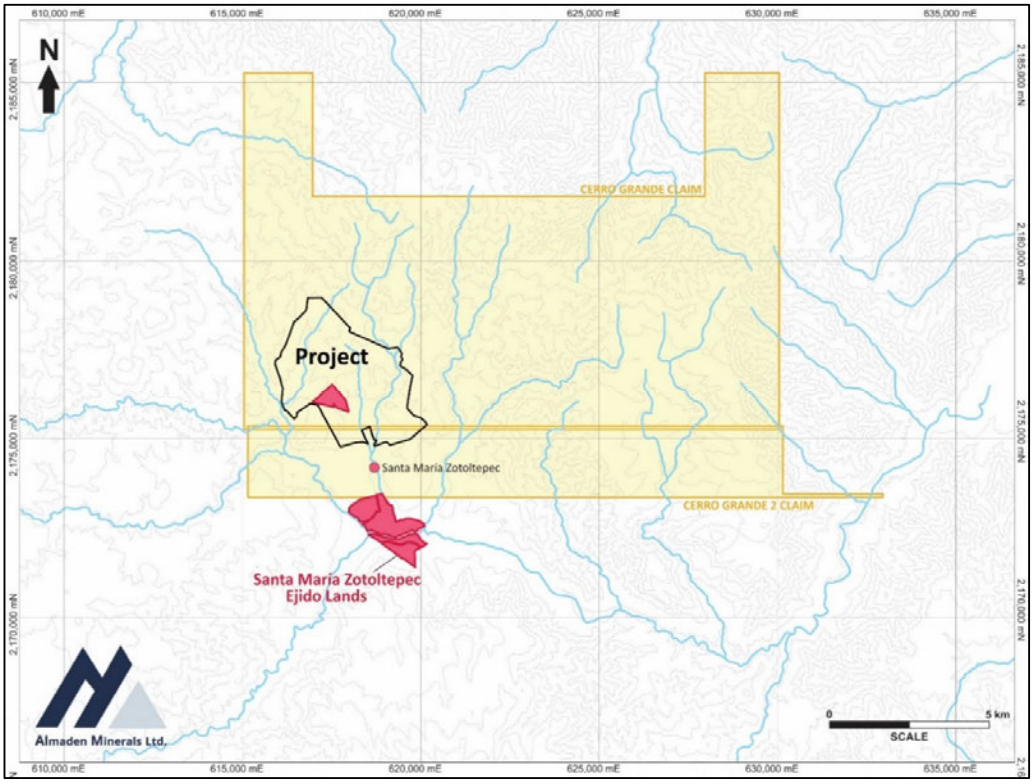
259 Counter-Memorial, at para. 169.

260 Santamaría Tovar WS-2, at Section 2; García Herrera WS-2, at Section 2.

261 Santamaría Tovar WS-2, at Section 2.

262 Santamaría Tovar WS-2, at Section 2.

Gorrión agreed on purchase terms for the land owned by these [redacted] individual *ejido* members, but the transfers could not be completed, as explained below.



106. As Mr. Santamaría explains, the *ejido* assembly process requires: (i) a notice of assembly, or a *Convocatoria*; (ii) an *ejido* assembly session, or an *Asamblea Ejidal de Formalidades Especiales*; (iii) an attendance of 75% of the *ejidatarios*; (iv) the presence of a notary public and the *Procuraduría Agraria*; (v) a vote of two-thirds of the *ejido* members at the assembly; (vi) registration of the approved measure in the *ejido*'s record, or the *Libro de Registros*; and (vii) registration of the approved measure in the *Procuraduría Agraria*.[263] In view of this process, Minera Gorrión and [redacted] willing *ejido* sellers first signed promissory sale and purchase agreements that recorded the parties' intentions and made each sale subject to *ejido* assembly approval.[264] These [redacted] promissory agreements covered [redacted] hectares – the entire northern "satellite" of the Santa María Zotoltepec *ejido*.[265]

263 Santamaría Tovar WS-2, at Section 2.

264 Santamaría Tovar WS-2, at Section 2.

265 *See* Promissory Sale and Purchase Agreement between [redacted], and Minera Gorrión, [redacted], **Exhibit C-662**; Promissory Sale and Purchase Agreement between [redacted] and Minera Gorrión, [redacted], **Exhibit C-663**; Promissory Sale and Purchase Agreement between [redacted]

107. Mexico characterizes these promissory sale and purchase agreements as a means of bypassing the *ejido* assembly.[266] That is incorrect. The agreements expressly conditioned each sale on *ejido* assembly approval and, without such approval, these sales could not close.[267]

108. Between 2021 and 2022, the *ejidatarios* who had signed promissory agreements with Minera Gorrión repeatedly asked the then President of the *ejido* commissariat, Ms. [redacted], to convene the assembly required to vote on the sales.[268] Ms. [redacted] refused.[269]

109. As Mr. García Herrera recounts, on 18 September 2022, the anti-mining NGO *Consejo Tiyat Tlali* ("**CTT**") organized a meeting in Santa María Zotoltepec against the Ixtaca Project and mining activities in Ixtacamaxtitlán.[270] At that meeting, Ms. [redacted] – who had, for two years, refused to convene the assembly the *ejidatarios* had requested – signed and stamped documents on behalf of the *ejidatarios* against the Project.[271] Critically, she did so without *ejido* assembly approval, under the watchful eye of Ms. [redacted] of CTT, Tecoltemi's lead counsel in the *amparo* proceeding.[272]

[redacted], and Minera Gorrión, [redacted], **Exhibit C-664**; Promissory Sale and Purchase Agreement between [redacted] and Minera Gorrión, [redacted], **Exhibit C-665**.

266 Counter-Memorial, at para. 169.

267 Santamaría Tovar WS-2, at Section 2; *see, e.g.,* Promissory Sale and Purchase Agreement between [redacted] and [redacted], and Minera Gorrión, dated 25 May 2017, **Exhibit C-662**.

268 Santamaría Tovar WS-2, at Section 2.

269 Santamaría Tovar WS-2, at Section 2; García Herrera WS-2, at Section 2.

270 García Herrera WS-2, at Section 2.

271 García Herrera WS-2, at Section 2.

272 García Herrera WS-2, at Section 2; Public Statement from *Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C.* (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, **Exhibit C-399**.

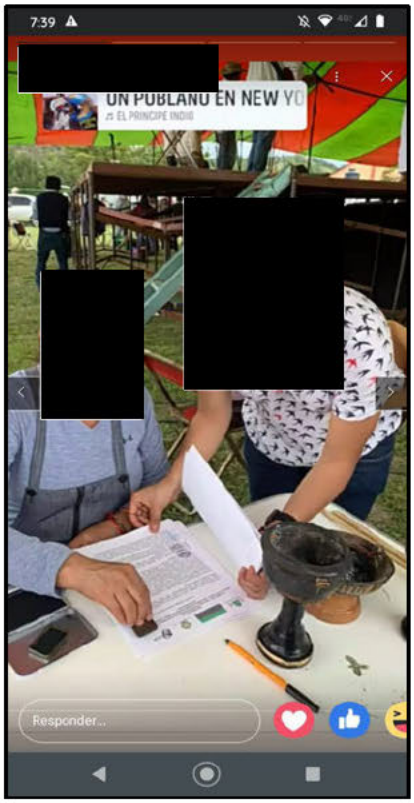


Photo of the former President of the ejido signing documents without authorization with Ms. [redacted], a CTT representative and Tecoltemi's lead counsel

110. Four days later, on 22 September 2022, the *ejidatarios* of Santa María Zotoltepec issued a public statement repudiating Ms. [redacted]'s actions.[273] They emphasized that "[t]he *Ejido* of Santa María Zotoltepec was not summoned by our *ejido* representatives to the agrarian meeting or the mentioned assembly, nor were we informed about the need for our participation in that event or the attendance of our representatives."[274] The *ejidatarios* refused to "recognize the agreements made in that assembly," and opposed "the actions of our President of the Ejido Commissariat, who signed and stamped minutes or agreements without the consent and vote of the majority of the *ejido*."[275] They demanded "to be informed in advance whenever there are

273 Public Statement from Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C. (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, **Exhibit C-399**.

274 Public Statement from Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C. (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, at p. 1 (Spanish original: "*El Ejido de Santa María Zotoltepec no fue convocado por nuestros representantes del ejido a la convocatoria agraria ni a la asamblea mencionada, ni informados de la necesidad de nuestra participación en dicho evento o de nuestros representantes.*"), **Exhibit C-399**.

275 Public Statement from Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C. (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, at p. 1 (Spanish original: "*Nos inconformamos con la actuación de nuestra Presidenta del Comisariado Ejidal en la cual firma y sella minutas o actas sin el consentimiento y votación de la mayoría del ejido.*"), **Exhibit C-399**.

invitations to such meetings so that agreements can be put to a vote through an assembly as required by law."[276] And they reaffirmed the *ejido*'s autonomy: "In our *ejido*, we make the decisions and we do not need life plans organized by external groups that know little about our communities."[277] These are the voices of the *ejidatarios* whom Mexico claims Minera Gorrión "divided."[278] As their own public statement makes clear, they were, in fact, united in their effort to oppose the NGOs, including CTT, which had repeatedly sought to speak on their behalf.

111. Following this public statement, Ms. [redacted] continued to refuse calls to convene an *ejido* assembly, because, as Mr. García Herrera explains, she knew and understood that the *ejido* was going to remove her from office.[279] The surveillance committee, which supported Ms. [redacted], also refused to do convene an *ejido* assembly.[280] The *ejidatarios* therefore requested the *Procuraduría Agraria* to do so, as it is permitted to do under Article 24 of the Agrarian Law, where the *ejido* president and the surveillance committee refuse.[281]

112. On 12 February 2023, the *Procuraduría Agraria* convened the long-overdue *ejido* assembly.[282] As Mr. Santamaría explains, at that assembly, the *ejido* approved a General Collaboration Agreement with Minera Gorrión.[283] In that Agreement, Minera Gorrión committed to "incorporate the Santa María Zotoltepec *ejido* into the *Plan de Gestión Social* . . . to strengthen

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276 Public Statement from Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C. (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, at p. 2 (Spanish original: "*Solicitamos se nos informe de manera general cuando existan invitaciones a reuniones de este tipo para crear acuerdos y someter a votación por medio de una asamblea tal como lo marca la ley.*"), **Exhibit C-399**.

277 Public Statement from Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C. (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, at p. 2 (Spanish original: "*En nuestro ejido mandamos nosotros y no necesitamos planes de vida organizados por organizaciones externas que poco conocen de nuestras comunidades.*"), **Exhibit C-399**.

278 Counter-Memorial, at para. 169.

279 García Herrera WS-2, at Section 2.

280 Santamaría Tovar WS-2, at Section 2.

281 Santamaría Tovar WS-2, at Section 2. *See also* Letter from Santa María Zotoltepec *ejidatarios* to the *Procuraduría Agraria* of the State of Puebla, dated 16 January 2023, **Exhibit C-666**; Agrarian Law, Article 24 (Spanish original: "*La asamblea podrá ser convocada por el comisariado ejidal o por el consejo de vigilancia, ya sea a iniciativa propia o si así lo solicitan al menos veinte ejidatarios o el veinte por ciento del total de ejidatarios que integren el núcleo de población ejidal. Si el comisariado o el consejo no lo hicieren en un plazo de cinco días hábiles a partir de la solicitud, el mismo número de ejidatarios podrá solicitar a la Procuraduría Agraria que convoque a la asamblea.*"), **Exhibit C-667**.

282 Acta de Asamblea levantada en el *ejido* Santa María Zotoltepec, Municipio de Ixtacamaxtitlán, Estado de Puebla, dated 12 February 2023, **Exhibit C-668**.

283 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Ejido* Santa María Zotoltepec, dated 12 February 2023, **Exhibit C-414**.

community relations in the Project area and . . . improve the *ejido*'s quality of life."[284] The *ejido* likewise affirmed that it was "aware of the Project's activities, scope, and technical studies, and the communities that are in the Project's proximity," and had been "informed of the Project's benefits and negative impacts as well as the mitigation measures that will be implemented."[285] The next step was a further *ejido* assembly to vote on the sales. That assembly, however, was never held, as Economía cancelled the Concessions, ending the Project.[286]

113. On 12 March 2023, the *ejido* voted to remove Ms. [redacted] as President at a second assembly convened for that purpose by the surveillance committee, after several weeks of back and forth involving the *Procuraduría Agraria*.[287] 21 out of 24 *ejidatarios* voted in favor of her removal.[288] The alternate *ejido* President, Mr. [redacted], immediately assumed office.[289] In late 2025, the *ejido* assembly elected a new *ejido* President, Mr. [redacted], who continues to hold that position today.[290] Contrary to Mexico's contentions, there was thus no interruption in the governance of the *ejido* or its territory.[291]

114. *Finally*, the Claimants' purchase of land did not "restrict[] access to routes and spaces necessary for the collection of medicinal and food plants, disproportionately affecting women and older adults," as Mexico contends.[292] Mr. Santamaría testifies that, when community members asked whether they could collect *escamoles* – a traditional food from the area – on land near the Project site, Minera Gorrión agreed without hesitation.[293] More importantly, Minera Gorrión helped to improve local health care through, among other things, the construction of a multipurpose room in the local health clinic, as well as the donation of over

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284 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Ejido* Santa María Zotoltepec, dated 12 February 2023, pp. 3-4, **Exhibit C-414**.

285 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Ejido* Santa María Zotoltepec, dated 12 February 2023, pp. 5-6, **Exhibit C-414**.

286 Santamaría Tovar WS-2, at Section 2.

287 García Herrera WS-2, at Section 2.

288 García Herrera WS-2, at Section 2. *See also* Public Statement from Ejidatarios Unidos en Favor del Desarrollo Sustentable de Santa María Zotoltepec A.C. (EJUNDS) on Unauthorized Assembly Decisions in Santa María Zotoltepec, dated 22 September 2022, **Exhibit C-399**.

289 García Herrera WS-2, at Section 2.

290 García Herrera WS-2, at Section 2; Santamaría Tovar WS-2, at Section 2.

291 Counter-Memorial, at Section 2.

292 Counter-Memorial, at Section 2.

293 Santamaría Tovar WS-2, at Section 2.

600 wheelchairs, eyeglasses, vital signs monitors, a portable ultrasound machine, as well as hand sanitizer and facemasks during the COVID-19 pandemic.[294]

115. In sum, none of Mexico's contentions regarding the surface land at Ixtaca has merit. As the evidence shows, Minera Gorrión acquired surface rights to develop the Project through lawful, notarized transactions. Where *ejido* land was involved, Minera Gorrión followed the *ejido* assembly process hand in hand with the *ejidatarios*, and had their support. And Minera Gorrión did not restrict access to medicinal and food plants, but granted access and improved local healthcare infrastructure.

2.6. Minera Gavilán And Minera Gorrión Complied With All Applicable Environmental Regulations During Their Exploration Activities At Ixtaca

116. As the Claimants demonstrated in the Memorial, between 2009 and 2018, Minera Gavilán and Minera Gorrión carried out successive drilling campaigns to estimate the resources in the Concession areas, focusing on the Ixtaca deposit after its discovery in 2010.[295] All these drilling campaigns complied fully with Mexican law.[296] SEMARNAT authorized them through seven *informes preventivos* ("**IP**")[297] approved under NOM-120, the technical regulation governing mining exploration activities,[298] and all seven remained valid throughout the relevant period.[299] The contemporaneous record confirms this compliance. Moreover, PROFEPA inspected the

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294 Memorial, at para. 155. *See also* Letter from Puebla State Governor, Mr. Luis Barbosa to Mr. Daniel Santamaría, dated 14 May 2020 (thanking Minera Gorrión for their "unconditional support" towards Puebla's healthcare workers), **Exhibit C-669**.

295 Memorial, at para. 168; M. Poliquin WS, at Sections 3.1 and 3.2; APEX Geoscience Ltd and Giroux Consultants Ltd, Technical Report on the Tuligtic Project, Puebla State, Mexico, dated 12 February 2014, at p. 2, **Exhibit C-23**.

296 Memorial, at Section 2.6; Moose Mountain Technical Services, Pre-Feasibility Study of the Ixtaca Gold-Silver Project Puebla State, Mexico, dated 17 May 2017, **Exhibit C-230**; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, **Exhibit C-314**.

297 SEMARNAT Oficio DFP/1551 (approving Exploración Minera Calderas II), dated 8 April 2008, **Exhibit C-6**; SEMARNAT Oficio DFP/5024 (approving Exploración Minera Tuligtic II IP), dated 3 November 2010, **Exhibit C-10**; SEMARNAT Oficio. No. DFP 4406/11 (approving Exploración Minera Ixtaca IP), dated 18 November 2011, **Exhibit C-12**; SEMARNAT Oficio No. DFP/2303/13 (approving Ixtaca II IP), dated 3 June 2013, **Exhibit C-19**; SEMARNAT Oficio No. DFP/SGPARN/2638/2015 (approving Ixtaca III Bis IP), dated 18 August 2015, **Exhibit C-36**; SEMARNAT Oficio No. 21/IP-0825/02/17 (approving Ixtaca IV IP), dated 31 March 2017, **Exhibit C-42**; Minera Gavilán Ixtaca III application filed with SEMARNAT (approving Ixtaca III IP), dated 22 April 2014, **Exhibit C-504**.

298 Memorial, at Section 2.10.1; Pablo-Dorantes WS, at para. 15. *See* (i) NORMA Oficial Mexicana NOM-120-SEMARNAT-1997, dated 19 November 1998 **Exhibit C-163**, and (ii) NORMA Oficial Mexicana NOM-120-SEMARNAT-2011, dated 13 March 2012, **Exhibit C-181**.

299 Memorial, at Section 2.10.

Ixtaca Project on multiple occasions between 2009 and 2021, and each inspection concluded that Minera Gorrión complied with applicable environmental requirements.[300]

117. In its Counter-Memorial, Mexico argues that, prior to 2010, the Claimants conducted exploration activities without the necessary mining concessions or environmental authorizations.[301] While Mexico concedes that the Claimants received approved IPs in accordance with Mexican environmental regulations,[302] it nonetheless asserts that the Claimants "did not comply with their environmental obligations during the exploration phase."[303]

118. Mexico also claims that the "fact that PROFEPA conducted several inspections at the Ixtaca Project confirms that there were concerns of the part of the environmental authorities and the communities surrounding the Ixtaca Project."[304] Mexico advances four arguments in support of this claim:

a) *First*, it relies on a 2009 PROFEPA inspection at Zacatepec, which it says shows that the Claimants "carried out actions that put the environment in the area at risk."[305]

b) *Second*, it argues that the January and May 2017 PROFEPA inspections arising from a complaint by "various farmers living in the towns of Santa María and San Francisco"[306] did not "validate full compliance with all the environmental obligations of the Ixtaca Project."[307]

c) *Third*, it dismisses as inconsequential the 2017-2022 PROFEPA verifications, in which PROFEPA found no irregularities in Minera Gorrión's exploration activities.[308]

d) *Fourth*, it invokes a 2022 PROFEPA fine against Minera Gorrión of MXN 19,244 for failure to register as a hazardous waste generator as evidence of non-compliance.[309]

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300 Memorial, at Section 2.10.4.

301 Counter-Memorial, at paras. 177-180.

302 Counter-Memorial, at paras. 179-180.

303 Counter-Memorial, at para. 213.

304 Counter-Memorial, at para. 184.

305 Counter-Memorial, at para. 187.

306 Counter-Memorial, at para. 188.

307 Counter-Memorial, at para. 191.

308 Counter-Memorial, at paras. 192-193.

309 Counter-Memorial, at paras. 194-213.

119. Mexico's arguments are baseless.

120. Mexico's assertion that the Claimants conducted unauthorized exploration activities prior to the discovery of the Ixtaca deposit in 2010 is incorrect.[310] As Dr. Pablo-Dorantes explains in his first statement, before 2012, certain mining exploration activities did not require a prior environmental authorization.[311] Specifically, under Articles 28(III) of the LGEEPA and 5(L)(II) of its Regulations ("**R-LGEEPA**"), mining exploration activities such as gravimetric, surface geological, geoelectric, magnetotelluric, magnetic susceptibility, and density surveys, as well as drilling, trenching, and rock exposure work, did not require prior authorization from SEMARNAT when conducted in dry or temperate climates, outside protected natural areas.[312]

121. The Claimants' pre-2010 exploration activities fell squarely within the scope of the above provisions and therefore did not require any formal authorization from the Mexican authorities. As Morgan Poliquin confirms in his first statement, these early activities consisted primarily of field reconnaissance to confirm clay alteration zones, and other prospecting techniques to validate his geological hypotheses regarding copper-gold mineralization in Eastern Mexico.[313] The contemporaneous technical record is consistent with this account. Since at least 2004, the Claimants' exploration activities consisted primarily of geochemical sampling, ground magnetics, IP and resistivity, and other geophysical surveys,[314] all of which fall within the categories of activities listed in Article 28(III) of the LGEEPA and Article 5(L)(II) of the R-LGEEPA.[315] In these circumstances, no IP was required. Mexico's suggestion that the Claimants lacked the necessary environmental permits for these activities is therefore unsupported.

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310 Counter-Memorial, at paras. 177-180.

311 Pablo-Dorantes WS, at para. 15.

312 LGEEPA, dated 28 January 1988, at Article 28, Section XI, **Exhibit C-156**; R-LGEEPA, dated 30 May 2000, at Article 5, Section L), Section I. II (providing that "Any person intending to carry out any of the following works or activities must first obtain authorization from the Secretariat regarding environmental impact . . . Exploration works, ***excluding*** gravimetric, surface geological, geoelectric, magnetotelluric, magnetic susceptibility, and density surveys, as well as drilling, trenching, and rock exposure works, provided they are carried out in agricultural, livestock, or fallow areas and in areas with dry or temperate climates where xerophytic shrub vegetation, tropical deciduous forests, coniferous forests, or holm oak forests grow, located outside protected natural areas") (emphasis added), **Exhibit C-166**.

313 M. Poliquin WS, at Sections 3.1 and 3.2.

314 APEX Geoscience Ltd and Giroux Consultants Ltd, Technical Report on the Tuligtic Project, Puebla State, Mexico, dated 12 February 2014, at p. 26, **Exhibit C-23**.

315 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter IV, p. 55 (describing the biotic environment of the Ixtaca Project, where xerophytic vegetation prevails), **Exhibit C-262**.

122. Mexico's arguments supporting the Claimants' alleged environmental non-compliance after 2010 are similarly misplaced. Aside from a single, trivial administrative fine of less than US$ 1,000 in 2022, Mexico does not cite – because it cannot – any contemporaneous finding by PROFEPA of violations in connection with the Claimants' exploration activities. Faced with this evidentiary void, Mexico resorts to a circular argument: it invokes PROFEPA's inspections to suggest risk, but disregards their conclusions when they confirm compliance.[316] As Mr. Santamaría Tovar aptly notes in his testimony, "Mexico relies upon the mere fact of inspections, while declining to engage with their actual results."[317]

123. However, Mexico's threshold premise – that the mere occurrence of PROFEPA inspections reflects "concerns" about the Project – is plainly flawed. Enforcement agencies such as PROFEPA regularly carry out inspections of companies' activities – the mere existence of such inspections does not indicate any concern, let alone any actual violation, under Mexican environmental law. To argue otherwise would be to misstate the role of PROFEPA under Mexican law.[318] As Dr. Limón Aguirre – a former *Sub-Procurador* of *Asuntos Jurídicos* at PROFEPA – explains in his second expert report, PROFEPA is the federal environmental enforcement authority responsible for investigating and sanctioning violations of environmental laws and applicable technical norms.[319] It initiates inspections either in response to public complaints or on its own initiative, and must investigate complaints regardless of their merit.[320] An inspection therefore says nothing about the existence of a violation; it simply reflects that PROFEPA discharged its statutory mandate.[321]

124. Conversely, where PROFEPA conducts an inspection and identifies no irregularity or imposes no sanction, that outcome confirms compliance.[322] PROFEPA has a duty to enforce and sanction environmental violations.[323] When an investigation concludes without any finding of

316 Counter-Memorial, at paras. 187, 191.

317 Santamaría Tovar WS-2, at para. 91.

318 Counter-Memorial, at para. 184.

319 Limón ER-2, at para. 19.

320 Limón ER-2, at para. 20.

321 LGEEPA, dated 28 January 1988, at Articles 188-192 (describing the environmental proceeding in case of public complaints), **Exhibit C-156**.

322 Limón ER-2, at para. 20.

323 Limón ER-2, at para. 21.

non-compliance, the only reasonable inference is that the authority found no breach within the scope of its review.[324]

125. As the Claimants demonstrated in the Memorial, the contemporaneous enforcement record confirms the Claimants' consistent compliance during the exploration phase.[325] Between 2009 and 2021, PROFEPA repeatedly inspected the Ixtaca Project and did not identify any environmental violation. As Mr. Santamaría Tovar explains in his first statement – and confirms in his second statement, [326]

> [f]rom 2009 until 2021, however, not a single complaint resulted in a fine, sanction, or suspension. Every inspection confirmed our compliance. Indeed, when the MIA process was underway, SEMARNAT itself asked PROFEPA to confirm whether there were any environmental violations at Minera Gorrión, and PROFEPA confirmed there were none.[327]

126. Against this record, Mexico mischaracterizes the 2009 PROFEPA inspection at Zacatepec when it asserts that the Claimants "carried out actions that put the environment in the area at risk."[328] The underlying facts show the opposite. As the Claimants explained in the Memorial, on 1 September 2009 – shortly before the discovery of the Ixtaca deposit – PROFEPA notified Minera Gavilán of a community complaint dated 26 August 2009 alleging that one of its drill holes had released water mixed with toxic residues and deposited mineral waste on neighboring lands.[329] This allegation triggered PROFEPA's inspection, as required by law.[330]

127. On 13 October 2009, PROFEPA conducted an on-site inspection in the community of Zacatepec.[331] During that visit, the authority verified that Minera Gavilán had completed 17 drilling holes and found no evidence of contamination or improper waste disposal.[332] Minera Gavilán explained that, while drilling in an area unrelated to the Ixtaca Project in June 2009, it had encountered water in two drill holes, resulting in a limited and temporary release of

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324 Limón ER-2, at para. 22.

325 Memorial, at Section 2.10.4.

326 Santamaría Tovar WS-2, at para. 91.

327 Santamaría Tovar WS, at para. 67 (emphasis added).

328 Counter-Memorial, at para. 187.

329 Memorial, at para. 201.

330 Official letter No. PFPA/27.7/2C28.1/5469/09 from PROFEPA to Minera Gavilán, dated 1 September 2009, **Exhibit C-525**.

331 Resolution in the case file No. PFPA/27.2/2C27.5/039-09/083, dated 5 April 2010, at p. 2, **Exhibit C-510**.

332 Acta de Inspección No. PFPA/27.2/2C.27.1.5/0418/09, dated 20 October 2009, at p. 7, **Exhibit R-34**.

water.[333] However, the company had already taken corrective action as required under the applicable regulations.[334] Indeed, on 19 August 2009, Minera Gavilán had informed the *Comisión Nacional de Agua* ("**CONAGUA**") what had happened and the corrective measures that it had taken.[335] The company also submitted water samples for laboratory testing, which confirmed the absence of any contamination.[336] Minera Gavilán provided PROFEPA with the test results and supporting documentation during the inspection. After reviewing this information, PROFEPA signed the inspection minutes[337] and, on 5 April 2010, formally closed the proceeding without imposing any sanction.[338]

128. Mexico itself acknowledges that PROFEPA "concluded the proceedings, considering that Minera Gavilán had complied with the corrective measures,"[339] and that no sanction was imposed. That outcome is dispositive. As noted above, and as Dr. Limón Aguirre confirms in his second expert report, the absence of a sanction in this case is evidence of compliance.

129. Mexico's argument that PROFEPA's inspections in 2017 did not "validate full compliance with all the environmental obligations" is unavailing.[340] The Parties agree on the relevant facts. On 29 August 2016, individuals from the communities of Santa María and San Francisco – led by Mr. [redacted][341] and supported by anti-mining NGOs[342] – filed a complaint with PROFEPA alleging broad environmental and social harms associated with the Ixtaca Project.[343]

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333 Acta de Inspección No. PFPA/27.2/2C.27.1.5/0418/09, dated 20 October 2009, at p. 7, **Exhibit R-34**.

334 Santamaría Tovar WS-2, at para. 92.

335 Santamaría Tovar WS-2, at para. 92.

336 Acta de Inspección No. PFPA/27.2/2C.27.1.5/0418/09, dated 20 October 2009, at p. 8, **Exhibit R-34**.

337 Acta de Inspección No. PFPA/27.2/2C.27.1.5/0418/09, dated 20 October 2009, at p. 8, **Exhibit R-34**.

338 Oficio No. PFPA/27.2/2C.27.5.2/6398/09, dated 13 October 2009, at p. 1, **Exhibit R-33**; Resolution in the case file No. PFPA/27.2/2C27.5/039-09/083, dated 5 April 2010, at p. 4, **Exhibit C-510**.

339 Counter-Memorial, at para. 187.

340 Counter-Memorial, at para. 191.

341 A self-recognized member of the so-called "peoples in resistance" to the implementation of the Ixtaca Project. *See* Resolution in the case PFPA/27.7/2C.28.2/00102-16, dated 23 June 2017, at p. 1, **Exhibit C-231**.

342 These individuals affiliated with the NGOs included Including Messrs. [redacted] (lead counsel to Tecoltemi for the Tecoltemi *amparo*), [redacted], [redacted] and [redacted].

343 Resolution in the case PFPA/27.7/2C.28.2/00102-16, dated 23 June 2017, at p. 2 (the complainants requested PROFEPA to investigate "[t]he following impacts on the right to a healthy environment: damage caused by drilling, increased soil erosion and aridity, deforestation, the release of dust and gases, pollutants, and explosives; vibrations from explosions; noise; disruption of the "natural" habitat; displacement of wildlife and loss of biodiversity; habitat fragmentation; and impacts on agricultural production. They also point out the impacts on the human right to water due to reduced water volume and the exploitation of aquifers, acid rock drainage and heavy metal contamination, the depletion of aquifers, increased sedimentation, and contamination by chemical agents. Furthermore, they highlight the impacts on the right to health due to noise, gaseous emissions, dust, and solutions contaminated with cyanide and heavy metals."), **Exhibit C-231**.

The complainants expressly relied on a purported Human Rights Impact Assessment prepared with the involvement of NGOs such as PODER,[344] IMDEC, and CESDER. Based on that document (the "**PODER HRIA**")[345] they alleged a wide range of adverse impacts of the Project, including environmental degradation, water contamination and depletion, biodiversity loss, and adverse health effects.[346] These sweeping allegations lacked support from any contemporaneous finding of the competent authorities.[347] As the Claimants explained in the Memorial, and as elaborated further below,[348] PODER's HRIA relied on outdated designs, speculative worst-case scenarios, and unverified claims.[349]

130. In response, PROFEPA carried out two unannounced inspections of the Ixtaca Project in January and May 2017.[350] Following these inspections, on 23 June 2017, PROFEPA closed the proceedings without finding any environmental violation. It confirmed that: (i) Minera Gorrión's activities were limited to exploration; (ii) Minera Gorrión had not carried out any unauthorized land-use change or exploitation activities; and (iii) all drilling and related activities were covered by the IP approved by SEMARNAT.[351] Mexico's attempt to rely on these inspections while ignoring their outcome is incoherent. PROFEPA investigated the allegations that had been raised, including based on PODER's flawed and arbitrary "HRIA," and found no indication of environmental wrongdoing. The outcome of those inspections – not their mere occurrence – is what matters, and that outcome confirms compliance.[352]

131. Mexico also fails to engage with the broader evidentiary record confirming compliance. After their efforts with PROFEPA proved unsuccessful, Mr. [redacted] and other individuals – again supported by anti-mining NGOs[353] – filed a nullity action on 6 September

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344 Resolution in the case PFPA/27.7/2C.28.2/00102-16, dated 23 June 2017, at p. 2, **Exhibit C-231**; PODER Youtube Channel #PODER10años – Saludo de Benjamin Cokelet, dated 5 October 2020, last accessed on 4 March 2025, *available at* https://www.youtube.com/watch?v=Vp5tI3cwM_g/., **Exhibit C-348**.

345 PODER et al., Human Rights Impact Assessment, 'Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin', dated February 2017, **Exhibit C-229**.

346 Resolution in the case PFPA/27.7/2C.28.2/00102-16, dated 23 June 2017, at p. 2, **Exhibit C-231**.

347 PODER et al., Human Rights Impact Assessment, 'Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin', dated February 2017 (citing no evidence in support of its findings of environmental harm attributable to the Claimants), **Exhibit C-229**.

348 *See infra* Section 2.18.

349 Memorial, at para. 161.

350 Counter-Memorial, at para. 189.

351 Resolution in the case PFPA/27.7/2C.28.2/00102-16, dated 23 June 2017, **Exhibit C-231**; *see also* Email from Daniel Santamaría from Minera Gorrión to Mauricio Heiras et al., dated 6 October 2016, **Exhibit C-511**.

352 Limón ER-2, at para. 22.

353 Decision issued by the Federal Administrative Tribunal, dated 4 June 2019, **Exhibit C-503**.

2017 before the Environmental and Regulatory Chamber of the Federal Tribunal of Administrative Justice ("**FTAJ**"), seeking to annul SEMARNAT's approval of the Ixtaca IV IP.[354] They argued that SEMARNAT had failed to verify compliance with NOM-120 limits, had not adequately assessed impacts of drilling on aquifers, and had failed to consider the rights of indigenous communities.[355]

132. As the Claimants explained in the Memorial, SEMARNAT and Minera Gorrión defended the legality of the Ixtaca IV IP authorization.[356] On 4 June 2019, the FTAJ dismissed the complaint. The FTAJ found, *inter alia*, that: (i) Minera Gorrión's mining activities were limited to exploration works, which were governed by NOM-120,[357] and (ii) SEMARNAT had verified that the Ixtaca IV IP drilling program did not exceed the maximum impact levels permitted under NOM-120.[358] This judicial decision independently validates the legality of the Claimants' IPs.

133. Mexico does not address this decision in its Counter-Memorial. That omission is telling. The FTAJ judgment confirms that the Claimants' exploration activities were not only accepted by the environmental enforcement authority, but also upheld by the Mexican courts when directly challenged. In such circumstances, Mexico's arguments regarding the Claimants' alleged violations of Mexican law during the exploration phase fall flat.

134. Moreover, the sequence of events underscores that the 2016 PROFEPA complaint and the subsequent 2017 nullity action were part of a broader effort by anti-mining NGOs to generate *ex post* support for the conclusions advanced in the PODER HRIA.[359] As the Claimants explained in the Memorial[360] and further elaborate in Section 2.18, that document alleged extensive environmental harm at a time when the Project remained at the exploration stage, proverbially putting the cart before the horse. However, neither PROFEPA nor the Mexican courts bore out those allegations.

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354 Decision issued by the Federal Administrative Tribunal, dated 4 June 2019, **Exhibit C-503**.

355 SEMARNAT's answer to the complaint before the Federal Administrative Tribunal, dated 11 January 2017, **Exhibit C-514**; Decision issued by the Federal Administrative Tribunal, dated 4 June 2019, at pp. 11-16, **Exhibit C-503**.

356 Memorial, at para. 196; SEMARNAT's answer to the complaint before the Federal Administrative Tribunal, dated 11 January 2017, **Exhibit C-514**; Expert report submitted by Jesus Enrique Pablo Dorantes from CAM, dated 28 August 2018, **Exhibit C-524**.

357 Decision issued by the Federal Administrative Tribunal, dated 4 June 2019, at p. 17, **Exhibit C-503**.

358 Decision issued by the Federal Administrative Tribunal, dated 4 June 2019, at pp. 17-18, **Exhibit C-503**.

359 PODER et al., Human Rights Impact Assessment, 'Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin', dated February 2017, **Exhibit C-229**.

360 Memorial, at para. 161.

135. Mexico's characterization of the PROFEPA inspections from 2019 to 2022 is non-contentious.[361] If anything, it reinforces the Claimants' case. As the Claimants explained in the Memorial,[362] and as Mr. Santamaría Tovar testifies,[363] during this time period PROFEPA visited the Ixtaca Project several times and confirmed that: (i) Minera Gorrión had finished exploration activities in early 2018 and had started preparing its MIA to move towards the construction and operation phase, and (ii) no environmental wrongdoing was being committed. [364] Notably, in its Counter-Memorial, Mexico takes no issue with this characterization of the facts.

136. Finally, Mexico's sole evidence of the Claimants' alleged environmental non-compliance is a fine of MXN 19,244 (approximately US$ 944) that PROFEPA imposed on 28 September 2022 for alleged failure to register as a hazardous waste generator since 2019.[365] The Claimants addressed this *de minimis* fine promptly and disclosed it transparently in the Company's financial statements.[366] That record alone should put an end to Mexico's baseless arguments.

137. In any event, the alleged infraction and accompanying fine was trivial. PROFEPA did not impose the sanction because Minera Gorrión generated, mishandled, or discharged hazardous waste into the environment. As Mr. Santamaría Tovar explains in his first statement, "[t]his sanction arose solely because Minera Gorrión's residues permit was still registered under the name "Minera Gavilán," even though Minera Gorrión had applied more than a year earlier to correct the name."[367] Even PROFEPA itself stated in its decision that the infraction was "a

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361 Counter-Memorial, at paras. 192-193.

362 Memorial, at paras. 206-207.

363 Santamaría Tovar WS, at para. 67.

364 Oficio No. PFPA/27.2/440/2019 from PROFEPA to DGIRA, dated 12 March 2019 (in which PROFEPA confirmed to DGIRA that it had "no record of any administrative proceedings initiated against Minera Gorrión, S.A. de C.V." and that its technical visits in 2018 and 2019 confirmed that only exploration activities had been carried out, "which have already been completed after the corresponding authorizations by the SEMARNAT (Department in the State of Puebla)"), **Exhibit C-273**; Acta de Visita No. PFPA/27.2/2C.27.1.5/003/19, dated 28 January 2019, at pp. 1-2, **Exhibit R-36**; Acta de Inspección No. PFPA/27.2/2C.27.1.5/112/22-083, at pp. 8-28, **Exhibit R-37**; *see also* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 6, Section XII, **Exhibit C-86**.

365 Counter-Memorial, at paras. 194-213.

366 Santamaría Tovar WS-2, at para. 88; Santamaría Tovar WS, at para. 68; Procuraduría Federal de Protección al Ambiente Inspection Report, dated 29 September 2022, **Exhibit C-401**; Almaden Minerals Ltd., Management's Discussion and Analysis, dated 31 December 2023, **Exhibit C-126**.

367 Santamaría Tovar WS, at para. 68.

minor offense, which . . . could not cause damage to public health or cause environmental imbalances or damage natural resources or biodiversity."[368]

138. The circumstances surrounding this fine were in any event irregular.[369] Minera Gorrión had ceased exploration activities years earlier and was no longer generating material hazardous waste; the requirement to maintain such registration served no practical purpose, and the imposition of a sanction was unwarranted.[370] Further, as Mr. Santamaría Tovar confirms – and Mexico does not dispute – Minera Gorrión had already submitted a request in August 2021 to transfer the relevant permit from Minera Gavilán to Minera Gorrión. It was for the Mexican administration to process that request, but it failed to do so.[371]

139. Moreover, PROFEPA carried out the inspection underlying the fine on 4 November 2021, yet did not issue its decision until 28 September 2022. Notably, as detailed further below, that fine followed shortly after the closed-door meetings SEMARNAT organized with Mexican regulatory agencies and the anti-mining NGOs to coordinate and produce "evidence" to undermine the Project.[372] The timing of the fine therefore suggests that it was not *bona fide*.

2.7. Almaden Invested Significant Time, Effort, And Resources Into The Local Communities And Built Significant Support For The Ixtaca Project

140. In their Memorial, the Claimants demonstrated that, from the outset of the Ixtaca Project, Almaden made transparent and proactive engagement with the local communities the foundation of its approach, investing early in community programs, long before the Project reached production or even had a resource.[373] Through inclusive information-sharing initiatives and mechanisms, Almaden and Minera Gorrión ensured that community voices were heard, understood, and incorporated into their development plans.[374] They built direct, collaborative, and strong relationships with the local communities surrounding the Ixtaca Project, earning recognition for their pioneering approach from industry peers and setting new benchmarks for transparency, inclusivity, and sustainable local collaboration, as recognized by

368 Santamaría Tovar WS-2, at para. 93; PROFEPA, Acuerdo No. de Control 010-04, dated 28 September 2022, at p. 18, **R-44**.

369 Santamaría Tovar WS-2, at para. 89.

370 Limón ER-2, at paras. 24-25.

371 Santamaría Tovar WS, at para. 68; Almaden Minerals Ltd., Management's Discussion and Analysis, dated 31 December 2023, at p. 18, **Exhibit C-126**.

372 *See infra* Section 2.18. Santamaría Tovar WS-2, at para. 93.

373 Memorial, at para. 133; McDonald WS, at para. 60.

374 Memorial, at para. 134; Uzcanga Vergara WS, at Section 3, paras. 13-55.

Economía and UNECE.[375] These efforts reflected Almaden's core belief that a successful mining project must not only respect but contribute meaningfully to the well-being of its host communities.[376]

141. As the Claimants explained, the Ixtaca Project operated near 12 small, rural communities in Ixtacamaxtitlán, comprising roughly 2,000 local residents.[377] Many of these residents faced and continue to face significant economic and social challenges, including a lack of education and formal employment opportunities.[378] Because modern metallic mining had never been a part of Puebla's economy and culture, many residents were unfamiliar with modern mining practices.[379] Minera Gorrión therefore required a coordinated approach to community engagement that aimed to address these issues, while ensuring that Minera Gorrión received the community's honest feedback regarding the Project, its benefits, and its potential impacts.[380]

142. Taking into account the community's specific needs, Mr. Santamaría and Ms. Uzcanga Vergara built Minera Gorrión's comprehensive community engagement program from the ground up on the strong foundations laid down by the Poliquins.[381] They ensured that community initiatives were inclusive and aligned with global best practices and international frameworks, including the United Nations Guiding Principles on Business and Human Rights.[382] These

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375 Memorial, at paras. 42, 138; Santamaría WS, at Section 7, paras. 43-50.

376 Almaden CSR 2019, at p. 7 ("That is why our mandate now, for everyone's sake, is to develop this resource into a meaningful and valued contributor to the wellbeing of the communities that surround it and the area as a whole."), **Exhibit C-80**.

377 Uzcanga Vergara WS, at para. 13.

378 Uzcanga Vergara WS, at para. 13; Almaden Minerals / Minera Gorrión 2014 Corporate Social Responsibility Report, at p. 11 ("Generally speaking, these local communities have a lack of employment opportunities with a large number of families dependent on social services. INEGI rates their degree of marginalization as 'high.'"), **Exhibit C-211**.

379 Memorial, at para. 135.

380 Memorial, at para. 135; Almaden Minerals / Minera Gorrión 2014 Corporate Social Responsibility Report, at p. 21 ("We will endeavour to inform our communities in a timely, inclusive, honest, transparent, and culturally appropriate way throughout the life of a project."), **Exhibit C-211**.

381 Santamaría WS, at para. 22.

382 Memorial, at para. 41; Uzcanga Vergara WS, at paras. 15-16; Almaden Minerals / Minera Gorrión 2019 Corporate Social Responsibility Report, at p. 7 ("There are many different frameworks which are intended to provide guidance to companies in respect of their interaction with government, communities, employees, and the environment, such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the IFC Environmental and Social Performance Standards, the Equator Principles, the ILO Declaration on Fundamental Principles and Rights at Work, and the GRI Sustainability Reporting Guidelines, to name a few. These guidelines have helped frame the principles which nourish our interaction with our stakeholders, such as respect for others, human rights, transparency, stakeholder engagement, care for the environment, capacity building, and good governance. We see these principles as being fundamentally linked, and critical to the long-term success of any business."), **Exhibit C-80**.

initiatives included a permanent community office in Santa María Zotoltepec, open six days a week (the *Módulo Permanente*); monthly two-hour dialogue sessions with community members (the *Diálogos Transversales*); a mobile module that brought Minera Gorrión to communities farther from the Project site (the *Módulo Itinerante*); annual informative assemblies (the *Juntas Informativas Anuales*); and a formal grievance mechanism with drop boxes, a mobile channel, and an anonymous digital platform.[383] The program also included 25 multi-day mine tours to visit active mining projects in Mexico (the *Visitas a Minas*), through which approximately 500 residents – the equivalent of nearly 40 percent of all adults within the Project's area of influence[384] – saw firsthand what a working mine looks like.[385]

143. Recognizing that true impact extends beyond direct employment, Minera Gorrión also launched a comprehensive education and skills-training initiative, equipping residents with transferable technical expertise applicable both within and beyond the Project.[386] This included training in geological surveying, drilling operations, fieldwork logistics, equipment handling and maintenance, stakeholder engagement, and administrative management, ensuring participants developed valuable skills immediately applicable both within the mining sector and across various industries.[387] To further support future employment opportunities, Minera Gorrión hosted a Mining Expo, bringing together industry experts, suppliers, and potential employers to showcase career paths and job prospects in the sector.[388]

144. Environmental stewardship was also a core priority. Minera Gorrión spearheaded reforestation efforts, waste management programs, and a PET recycling initiative, empowering local women through sustainable economic participation.[389] Minera Gorrión also worked with the Puebla State Ministry of Environment to establish a Fire Prevention Brigade, equipping residents with

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383 Memorial, at para. 136; Santamaría WS, at paras. 23-27.

384 Memorial, at para. 136.

385 Memorial, at para. 136; Santamaría WS, at para. 24; Minera Gorrión YouTube Channel *Diálogos Transversales*, available at https://www.youtube.com/watch?v=aLHkWNQ3Wh8,dated 18 May 2018, **Exhibit C-249**; Minera Gorrión YouTube Channel *10a Junta Informativa del Proyecto*, available at https://www.youtube.com/watch?v=tWJSq7WnQ1k, dated 23 December 2021, **Exhibit C-377**; Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2014, at p. 19, **Exhibit C-211**; Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 14, **Exhibit C-80**.

386 Memorial, at para. 136; Santamaría Tovar WS, at para. 15; Uzcanga Vergara WS, at para. 62; Almaden Minerals CSR 2019, at p. 22 ("We work to be a positive force in the local community by strengthening education opportunities and promoting local activities which reinforce traditions and culture."), **Exhibit C-80**.

387 Memorial, at para. 136; Almaden Minerals CSR 2019, at p. 14 ("Almaden operates the drills used at the project and hence can draw and train a local workforce as opposed to bringing in external contractors."), **Exhibit C-80**.

388 Memorial, at para. 136; Uzcanga Vergara WS, at paras. 53-55.

389 Memorial, at para. 136; Minera Gorrión #ProIxtaca Recycling Program Brochure, **Exhibit C-566**.

essential skills and equipment to protect their own communities from wildfires and environmental hazards.[390]

145. Through these and other initiatives and activities, Almaden and Minera Gorrión developed real and enduring relationships with the local communities and a strong community consensus in favor of the Ixtaca Project.[391] Their support for the Project was not superficial; local residents within the Project's core area of impact had directly witnessed Minera Gorrión's commitment to responsible mining and sustainable development, and understood the potential benefits of the Project, as well as its potential risks.[392] This is reflected in the results of independent social impact assessments commissioned by Minera Gorrión, as well as in the formal letters the local communities submitted to the Mexican Government, seeking to have their voices heard and rejecting the repeated efforts of external NGOs to speak on their behalf.[393] As explained in the Memorial, those efforts ultimately failed: the Government cancelled the Concessions without any consultation at all, depriving these communities of the very human right the Supreme Court sought to protect.[394]

146. In its Counter-Memorial, Mexico predictably seeks to recast and mischaracterize Almaden and Minera Gorrión's longstanding community engagement efforts to fit its baseless narrative. Mexico therefore argues that Almaden and Minera Gorrión's efforts were mere "image-driven philanthropy" designed to "fabricate an appearance of support."[395] Relying upon the opinion of Mr. Gustavo Cabrera Sotomayor,[396] Mexico further argues that Minera Gorrión's community engagement work did not constitute genuine social "due diligence;" that Minera Gorrión's initiatives "appeared only when community opposition arose and operated more as a strategy to protect legitimacy than as a serious mechanism to identify, prevent, or mitigate social and environmental risks;" and that Minera Gorrión's approach generated "polarization,

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390 Memorial, at para. 136; Minera Gorrión, Press Release Announcing Conclusion of Fire Prevention Brigade Operations as Rainy Season Begins, dated 6 June 2023, **Exhibit C-425**.

391 Memorial, at para. 136.

392 Memorial, at para. 140; Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 23 ("Perhaps the most important component of our efforts to build mutual trust and respect is the notion of 'informed consent.' We believe the local population has the capacity to be active players in the potential future mining activity at Ixtaca."), **Exhibit C-80**.

393 Memorial, at paras. 140-143; Letter from community members to SEMARNAT dated 25 July 2019, **Exhibit C-77**; Letter from community members to AMLO, dated 30 August 2019, **Exhibit C-308**; Letter from community members to AMLO, dated 4 October 2019, **Exhibit C-315**; Community submission to the Mexican Supreme Court dated 13 January 2022, **Exhibit C-684**.

394 Memorial, at para. 143.

395 Counter-Memorial, at paras. 147-153.

396 G. Cabrera Sotomayor, Expert Report: Analysis on due diligence and social license to operate, dated. 2 December 2015.

division, and confrontation," rather than community trust and support.[397] As detailed below, these arguments are baseless and inconsistent with the evidence. They are also built upon an expert report that is methodologically unreliable and evidentially inapposite: Mr. Cabrera draws inapt analogies to high-conflict projects in Peru and Guatemala,[398] confuses the Project's area of influence with its concession area and mischaracterizes the sequencing of its impact assessments,[399] conducted an undocumented September 2025 site visit limited to known opponents of the Project,[400] and relies on the methodologically defective and NGO-authored INPI study as his principal evidentiary foundation.[401]

2.7.1. Minera Gorrión's Community Engagement Program Was Aimed At Building Mutual Trust and Respect From The Outset

147. Minera Gorrión's community engagement efforts at Ixtaca began long before the arrival of external, anti-mining NGOs in the Sierra Norte de Puebla in or around 2012.[402] Even from the early prospecting days long before any discovery was made, Minera Gorrión (then Minera Gavilán) worked proactively to engage local residents in open and transparent dialogue through door-to-door conversations, as well as through larger meetings and events.[403] In particular, Minera Gorrión needed permission from local landowners to enter their land for prospecting work, which it obtained through open and transparent dialogue regarding what that prospecting work would entail.[404] As the Project progressed, Minera Gorrión also worked with the local community collaboratively to rehabilitate and improve basic infrastructure, including the local schools, and to carry out reforestation efforts.[405]

148. Contrary to Mexico's contentions, these early community engagement efforts were not a mere "strategy to protect legitimacy."[406] Rather, as Messrs. McDonald and Santamaría explain, they

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397 Counter-Memorial, at paras. 147-153.

398 Cabrera ER, at paras. 34–36, 42; SLR ER2, at para. 293.

399 Cabrera ER, at paras. 10, 55, 61–62, 187, 190–191, 243; SLR ER2, at para. 298.

400 Cabrera ER, at para. 2; SLR ER2, at para. 297.

401 Cabrera ER, at paras. 107, 126, 154, 242; SLR ER2, at para. 298.

402 McDonald WS-2, at Section 4; Santamaría WS-2, at Section 3.

403 McDonald WS-2, at Section 4; Santamaría WS-2, at Section 3; Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2014, at p. 22 ("Our initial door to door conversations in 2001 have now developed into a permanent community information center in our local community."), **Exhibit C-211**.

404 McDonald WS-2, at Section 4; Santamaría WS-2, at Section 3.

405 McDonald WS-2, at Section 4; Santamaría WS-2, at Section 3; Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2014, at pp. 34, 56, **Exhibit C-211**.

406 Counter-Memorial, at para. 147.

reflected Almaden and Minera Gorrión's understanding that transparent engagement with local communities from the outset is critical to building a foundation of mutual trust, respect, and understanding – and thus long-term resilience for any mining project.[407] Indeed, as discussed further below, these early efforts are one of the reasons why the anti-mining NGOs had difficulty turning the local communities within the Project's core area of impact against the Project, while they were able to do so at neighboring mining projects in Zautla and Tetela de Ocampo, leading to the expulsion of the mining companies in late 2012.[408] Although the anti-mining NGOs intended to achieve the same result at Ixtaca,[409] they did not succeed in doing so. Instead, they turned to legal action on behalf of the remote village of Tecoltemi in 2015.[410]

149. Almaden and Minera Gorrión's early community engagement work also reflected their longstanding belief that the local residents in Ixtacamaxtitlán had the capacity to be active players in the future mining activity at Ixtaca.[411] This translated into information-sharing events designed to educate the community about mining operations generally, even before Minera Gorrión knew what type of mine it would seek to build at Ixtaca.



407 Santamaría WS-2, at Section 3; McDonald WS-2, at Section 4.

408 *See infra* Section 2.7.5.

409 *See, e.g.*, EJOLT, Successful resistance movements against mining in the Sierra de Puebla (Mexico), dated 3 December 2012, available at http://www.ejolt.org/2012/12/successful-resistance-movements-against-mining-in-the-sierra-de-puebla-mexico/, **Exhibit C-706**.

410 *See infra* Section 2.8.

411 *See, e.g.*, Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 23 ("Perhaps the most important component of our efforts to build mutual trust and respect is the notion of 'informed consent.' We believe the local population has the capacity to be active players in the potential future mining activity at Ixtaca."), **Exhibit C-80**.

Minera Gorrión staff and local community members during reforestation activities in June 2011

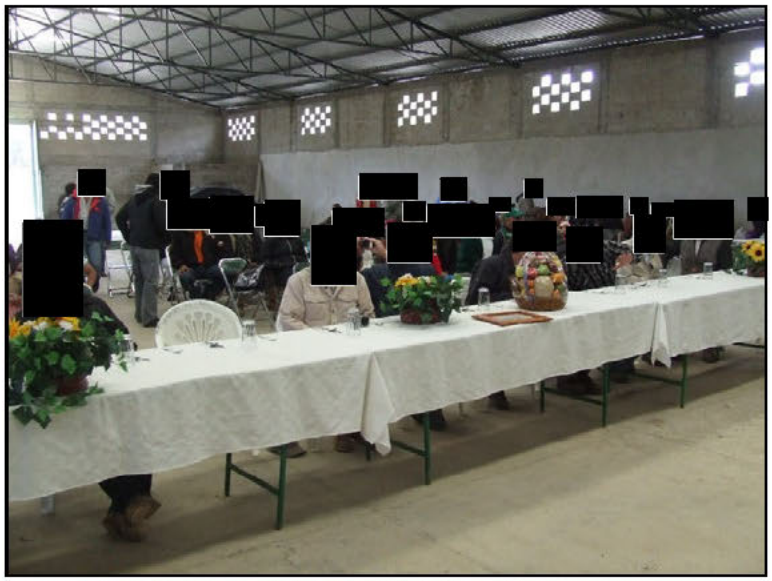


Photo of community gathering in Santa María Zotoltepec during Messrs. Morgan and Duane Poliquin's visit in October 2011

150. As Mr. Santamaría recounts, the first informational assembly he attended was on 25 August 2012 in Santa María Zotoltepec, which brought together approximately 200 residents from the local communities surrounding the Project.[412] Because at that early stage Minera Gorrión did not yet have a resource, mine plan, or any idea of whether an eventual resource could support a mine at Ixtaca – and if so what type of mine that may be – they explained the permits Minera Gorrión had already obtained and the boundaries of the Concessions.[413] They also invited experts to speak about the use of cyanide in mining operations generally and what the permitting process for exploitation would entail.[414] As additional background, Minera Gorrión prepared and distributed written handouts, explaining the status of Mexico's mining industry and its potential; the importance of sustainable mining practices; as well as the importance of open, transparent dialogue between mining companies and communities.[415] As Mr. Santamaría recalls, given the work Minera Gorrión had done with the local community since the early

412 *See* Comunidades Instituciones 2022, Excel spreadsheet, Juntas Informativas tab, **Exhibit SLR-38**.

413 Santamaría WS-2, at Section 3.

414 Santamaría WS-2, at Section 3.

415 Company Handout regarding sustainable mining, dated 25 August 2012, **Exhibit C-670**. *See also* Video of informative assembly held at Santa Maria Zotoltepec, dated 25 August 2012, (showing community members watching video on the use of cyanide), **Exhibit C-671**; Video of informative assembly held at Santa Maria Zotoltepec, dated 25 August 2012, (explaining part of environmental permit process before SEMARNAT), **Exhibit C-672**.

exploration years, community members were enthusiastic and curious about the Project; they listened carefully and asked many questions.[416]



MINERIA Y AGRICULTURA

La minería y la agricultura están intrínsecamente ligadas por la dependencia que tiene la agricultura con los fertilizantes y los suplementos alimenticios, los cuales se extraen de las minas. Las plantas requieren de tres nutrientes esenciales, nitrógeno, potasio y fósforo. Aún cuando el nitrógeno es renovable y se captura del aire, el potasio y el fósforo son minados y aplicados como fertilizantes cuando no están presentes en la tierra en cantidades adecuadas. El fósforo es utilizado también como suplemento alimenticio para los animales. Otros suplementos que se extraen de las minas y que se utilizan para el ganado y en la avicultura incluyen al selenio y al zinc.

APOYO RURAL

En México los descubrimientos de nuevas minas se encuentran típicamente en zonas remotas, rurales y en ocasiones pobres, en donde la pequeña agricultura es la actividad económica principal. Las operaciones mineras pueden ser de gran beneficio para las comunidades rurales ya que éstas se benefician directamente de la infraestructura generada. La minería es una de las pocas industrias que invierte directamente en las comunidades rurales. Para las comunidades que tienen actividad minera cerca, se convierte en una excelente oportunidad para la gente joven para quedarse en sus comunidades a trabajar (en lugar de salir a EUA).

ENERGIA RENOVABLE Y MINERIA

El incremento en la producción de energías renovables ha aumentado la demanda de nuevos metales y minerales. Los nuevos paneles solares requieren de arsénico, bauxita, boro, cadmio, carbón, cobre, galio, indio, hierro, molibdeno, plomo, fosfato, selenio, silice y oxido de titanio. Por ejemplo, las turbinas eólicas usan concreto, bauxita, cobalto, cobre, hierro, molibdeno y tierras raras, las cuales son particularmente importantes para reducir el peso y el tamaño de los magnetos para las turbinas.

IMPORTANCIA DE LA MINERIA EN MEXICO

Cifras preliminares del 2011:

- Valor anual de su producción: 19,000 mdd
- PIB: 1.6%
- Empleos directos: 309,722 en el IMSS
- Empleos indirectos: 1,600,000
- Inversión en minería: US$5,000 mdd
- Divisas generadas: US$22,526 mdd

México cuenta con una excelente oportunidad de crecimiento económico en el ciclo expansivo de la minería a nivel mundial. En México existe un alto potencial minero sin explorar, pero para sacarle provecho es indispensable resolver los conflictos laborales de competividad, de tenencia de la tierra, y de inseguridad para el desarrollo minero del país. *Garantizar el estímulo para el desarrollo de la industria minera en México depende de todos, de autoridades, de las empresas, de los profesionistas, de la academia, de los legisladores, de cómo nos organicemos para trabajar en armonía, con un mismo objetivo: EL DESARROLLO SUSTENTABLE DEL SECTOR MINERO.*

FUENTES DE INFORMACION

- Cámara Minera de México www.camimex.org.mx
- Servicio Geológico Mexicano www.sgm.gob.mx
- Secretaría de Economía www.economia.gob.mx
- Proyecto IXTACA www.almadenminerals.com

MINERA GAVILÁN
CERRO GROUSE GORRIÓN
RESPETANDO AL MEDIO AMBIENTE

ASAMBLEA INFORMATIVA

Proyecto IXTACA

Santa María Zotoltepec, Puebla

25 Agosto 2012

Handout from the informative assembly held on 25 August 2012[417]

151. Furthermore, from the outset of the Project, Minera Gorrión treated its community engagement work not as "image-driven philanthropy," as Mexico suggests, but rather as a core operational commitment of equal weight to its technical work on the Project.[418] As Mr. Santamaría notes, in the mining industry, exploration progress is frequently measured in meters drilled; Minera Gorrión adopted that same metric for its engagement with the community at Ixtaca: for every meter drilled, it committed an equal amount of time to community engagement and dialogue.[419] To memorialize and reflect this commitment, Mr. Santamaría coined the phrase "Meters Drilled v. Minutes Talked" ("*Metros Perforados vs. Minutos Platicados*").[420] This was not a

416 Santamaría WS-2, at Section 3.

417 Company Handout regarding sustainable mining, dated 25 August 2012, **Exhibit C-670**. *See also* Video of informative assembly held at Santa Maria Zotoltepec, dated 25 August 2012, (showing community members watching video on the use of cyanide), **Exhibit C-671**; Video of informative assembly held at Santa Maria Zotoltepec, dated 25 August 2012 (explaining part of environmental permit process before SEMARNAT), **Exhibit C-672**.

418 McDonald WS-2, at Section 4.

419 Santamaría WS-2, at Section 3.

420 "Proyecto Ixtaca, Proyecto de Mina, Ixtacamaxtitlán, Puebla," PowerPoint Presentation, at p. 3, **Exhibit C-673**; Santamaría WS-2, at Section 3.

mere corporate slogan; it was an operating discipline that Mr. Santamaría, Ms. Uzcanga Vergara, and their team applied throughout the life of the Project.[421]

152. Minera Gorrión's commitment to *Metros Perforados vs. Minutos Platicados* is reflected in comments from community members collected in 2021 as part of Minera Gorrión 20th Anniversary celebration. As one community member put it: "The information they provide is very comprehensive. It covers the entire process they've been following from the very beginning—including the initial assessment and everything else—right up to the current stage they're in."[422] Another community member noted: "They really do explain a lot of things, but what you really notice—or what you're most interested in—is whether it's going to happen or not. How it's going to affect society, the community, everything. Whether there will be jobs for you, for others, or whether there will be jobs for second or third parties."[423] As set forth below, Minera Gorrión engaged the community in open, transparent discussions on these very topics in its information-sharing initiatives, ensuring that Project benefits and potential risks were understood and that the perspectives of all affected groups, including women and indigenous peoples, were appropriately considered.

2.7.2. Minera Gorrión's Information-Sharing Initiatives Were Open, Transparent, And Culturally Appropriate

153. As noted above and in the Memorial, creating a space for open, transparent dialogue whereby Almaden and Minera Gorrión could understand community needs and communicate the nature of their plans was a critical objective, and one they carried out professionally and respectfully.[424]

154. In its Counter-Memorial, Mexico criticizes Minera Gorrión's information-sharing initiatives, including its *Módulo Permanente* and *Módulos Itinerantes*, asserting that these modules "merely disseminated Minera Gorrión's narrative and did not allow for the identification of concerns, risks, or collective rights."[425] With respect to the monthly *Diálogos Transversales*, Mexico argues that these monthly sessions were designed simply to "correct perceptions" and dispel doubts,[426] while Minera Gorrión controlled the topics and avoided any substantive

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421 Santamaría WS-2, at Section 3.

422 Minera Gorrión, 20th Anniversary Magazine, 2021, at p. 8, **Exhibit C-354**.

423 Minera Gorrión, 20th Anniversary Magazine, 2021, at p. 8, **Exhibit C-354**.

424 Memorial, at para. 133.

425 Counter-Memorial, at para. 148.

426 Counter-Memorial, at para. 149.

assessment of Project impacts.[427] Mexico further argues that the mine visits were part of a propaganda tool to show only "successful operations in unrelated contexts and did not provide information on the specific risks of the Ixtaca Project."[428] For his part, Mr. Cabrera contends that Minera Gorrión's information-sharing initiatives were "tools for one-way communication and persuasion,"[429] and that the "information shared with the community was insufficient and lacked the necessary cultural relevance."[430] He further contends that Minera Gorrión's anonymous suggestion box was an alleged "cosmetic tool, focused on the micromanagement of superficial incidents," and not a "mechanism for processing and addressing serious structural risks."[431] These contentions are misguided and demonstrably wrong.

155. *First*, the *Módulo Permanente* and the *Módulos Itinerantes* did not "merely disseminate Minera Gorrión's narrative," as Mexico contends.[432] The purpose of these modules, as Ms. Uzcanga Vergara explains, was to provide the community with spaces where they could go to learn about the Project and clarify their questions.[433] The *Modulo Permanente* was a permanent community office and information center in Santa María Zotoltepec, open six days a week, to all community members; it was visited by more than 6,000 people throughout the Project's life.[434] The *Módulos Itinerantes* were transportable information booths designed to provide information and educational content to more distant communities; more than 4,100 people visited these information booths.[435] Minera Gorrión used these modules to share information, communicate Project risks and impacts, and explain in clear terms how Minera Gorrión would undertake to prevent those risks and impacts at the social and operational levels.[436] As one

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427 Counter-Memorial, at para. 149.

428 Counter-Memorial, at para. 150.

429 Cabrera Report, at para. 134.

430 Cabrera Report, at para. 203.

431 Cabrera Report, at para. 135.

432 Counter-Memorial, at para. 148.

433 Uzcanga Vergara WS-2, at Section 3; Almaden Minerals / Minera Gorrión 2014 Corporate Social Responsibility Report, at p. 22 ("Here 6 days a week people from surrounding communities can find our team available to answer questions, submit suggestions and openly discuss the Ixtaca project."), **Exhibit C-211**.

434 Uzcanga Vergara WS, at para. 30; Minera Gorrión, 20th Anniversary Magazine, 2021, at p. 8 ("Direct contact is a key component of this communication and information initiative. To that end, Minera Gorrión's Public Service Center is located in the heart of Santa María Zotoltepec. There, visitors can find all the information they need about the Ixtaca project and mining. More than 6,000 people have visited the center."), **Exhibit C-354**; Illustrative Brochure of the Permanent Information Module, **Exhibit C-456**.

435 Uzcanga Vergara WS, at para. 35; Minera Gorrión, 20th Anniversary Magazine, 2021, at p. 8 ("Minera Gorrión also offers a traveling version of this exhibit. More than 4,100 people have visited it."), **Exhibit C-354**.

436 Proyecto de Mina Ixtaca "Corto," available at https://youtu.be/IvxeFH9ZC-8, **Exhibit C-274**.

community member put it, the information provided at these modules was "clear and concise, mainly because it clears up a lot of your doubts. That's where you get your questions answered. There are people there who explain everything to you in detail."[437]



A Módulo Itinerante (left); the Módulo Permanente (right)

156. Minera Gorrión did not seek to marginalize critical voices through the *Módulo Permanente*, the *Módulos Itinerantes*, or any of its other information-sharing initiatives.[438] As Ms. Uzcanga Vergara affirms, Minera Gorrión's goal was never to persuade, but rather to inform and provide residents the opportunity to ask questions and learn about modern mining practices so that they could form their own opinions.[439] For that reason, the information Minera Gorrión provided was not biased or one-sided, as Mr. Cabrera incorrectly asserts.[440] Rather, Minera Gorrión sought to address the potential risks and impacts, as well as the benefits, of mining operations at Ixtaca, in an objective and balanced manner.[441] This is reflected in the written newsletters prepared by Minera Gorrión, in which it explained the use of explosives and cyanide in mining operations, water management, and dust and vehicle emissions, as well as the corresponding controls and mitigation actions Minera Gorrión planned to undertake at the Project.[442]

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437 Minera Gorrión, 20th Anniversary Magazine, 2021, at p. 9, **Exhibit C-354**.

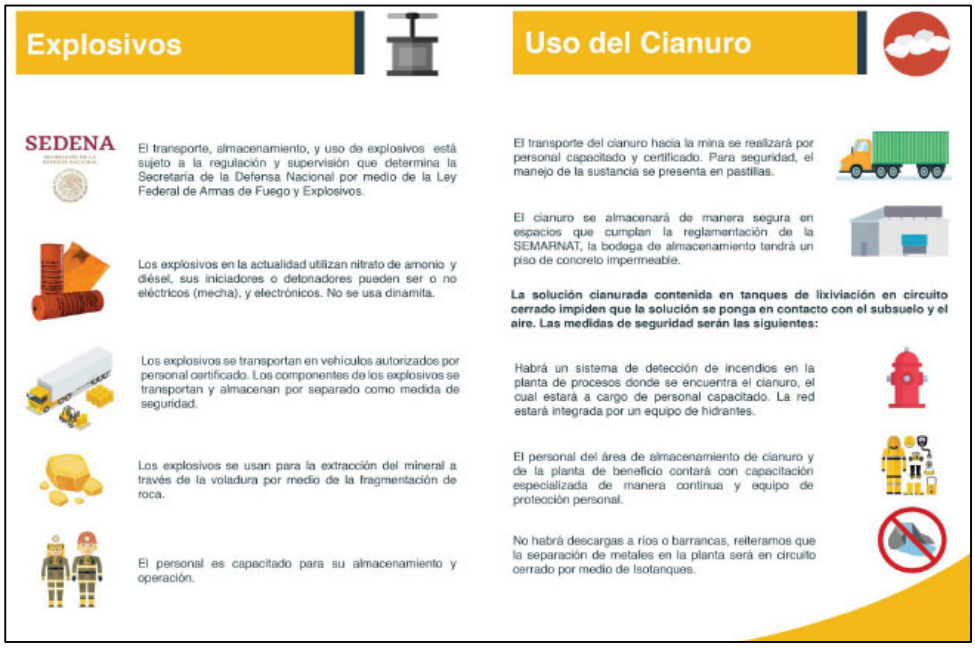
438 Uzcanga Vergara WS-2, at Section 3.

439 Almaden Minerals / Minera Gorrión 2019 Corporate Social Responsibility Report, at p. 23 ("We encourage and assist local stakeholders to develop an understanding of the business and science of mining, so that they are enabled to form their own opinions on our activities. We accomplish this by taking the time to explain our activities in regular community dialogues, and by hiring experts to present different aspects of the business, such as the use of explosives or the legal framework for mining in Mexico."), **Exhibit C-80**.

440 Uzcanga Vergara WS-2, at Section 3.

441 Uzcanga Vergara WS-2, at Section 2.

442 Newsletter Gorrión, **Exhibit C-675**.



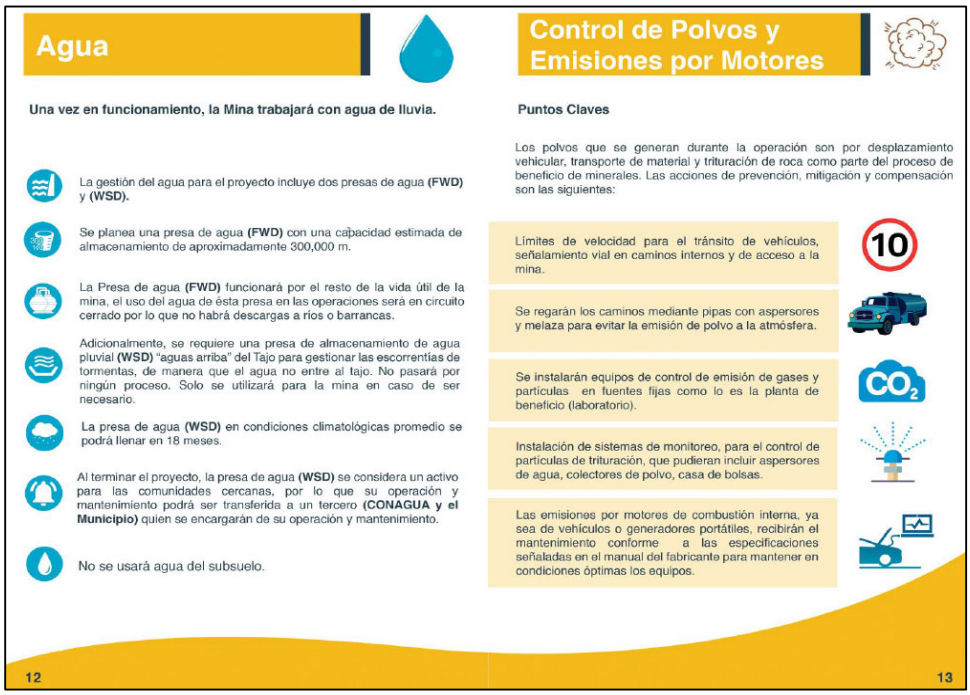
Project newsletter explaining Project risks and mitigation strategies[443]

157. In a separate newsletter, Minera Gorrión explained its water management plan, as well as how the Project would build water resilience by capturing rainwater for community use and use on the Project.[444] As explained below, the community's feedback led Minera Gorrión to engineer and design the large water storage dam or WSD as a permanent facility so that it could be used by local communities long after mine closure.[445]

443 Newsletter Gorrión, **Exhibit C-675**.

444 "Proyecto Ixtaca, Proyecto de Mina, Manejo del Agua, Ixtacamaxtitlán, Puebla," PowerPoint Presentation, at p. 5, **Exhibit C-676**.

445 *See infra* Section 2.9.



Project newsletter explaining the water management plan[446]

158. Mr. Cabrera's further assertion, namely that "the information shared with the community was insufficient and lacked the necessary cultural relevance," is equally baseless.[447] Ms. Uzcanga Vergara was the Director of Human Rights, Corporate Social Responsibility, and Community Relations at Minera Gorrión – and the person responsible for leading the community relations efforts at Ixtaca.[448] She was born and raised in Puebla, and graduated from the Benemérita Universidad Autónoma de Puebla with a Bachelor's degree in social anthropology.[449] She has a deep understanding and appreciation for the local culture in Ixtacamaxtitlán, and ensured that Minera Gorrión's communications and initiatives were respectful and culturally appropriate.[450] Furthermore, when Ms. Uzcanga Vergara joined the Company in 2014, she expanded her team with several new members, all drawn from the local communities.[451] She and her team communicated with the local community primarily face-to-face and, at times, through music (*cumbias*).[452] They also incorporated photos, maps, and videos into their discussions, where

446 Newsletter Gorrión, **Exhibit C-675**.

447 Gustavo Cabrera ER, at para. 203.

448 Uzcanga Vergara WS-2, at Section 2.

449 Uzcanga Vergara WS-2, at Section 2.

450 Uzcanga Vergara WS-2, at Section 2.

451 Uzcanga Vergara WS-2, at Section 2.

452 Uzcanga Vergara WS-2, at Section 2.

appropriate, to explain the Project and mining operations visually.[453] As she reiterates in her second statement, the fact that community members repeatedly invited Minera Gorrión staff to participate in important community events, such as their *fiestas patronales*, reflected and confirmed Minera Gorrión's respect for the community's beliefs and traditions, as well as the community's acceptance and integration of Minera Gorrión into their daily lives.[454]

159. *Second*, the *Diálogos Transversales* Minera Gorrión organized were not designed simply to "correct perceptions" and dispel doubts;[455] nor did they exclude "participation on an equal footing," as Mexico asserts.[456] As Ms. Uzcanga Vergara explains, the monthly *Diálogos Transversales* were genuine community dialogues designed to invite discussion and exchange on topics of interest to the community.[457] The sessions were roughly two hours long and held on a monthly basis from October 2014 until February 2023, when Economía issued its *Oficio* cancelling the Concessions.[458] During these sessions, which more than 2,000 community members attended over the years, Minera Gorrión discussed topics such as key aspects of the MIA, the study of flora and fauna, mine infrastructure, modifications to the tailings dam, the fire prevention brigade, safety and hygiene in mining, and cyanide use in mining.[459]

160. As Ms. Uzcanga Vergara explains, average attendance at the *Diálogos Transversales* sessions was between 30 to 40 participants, but rose to 80 to 100 participants when Minera Gorrión invited external experts to present.[460] The purpose of these expert-led sessions was to provide clear, complete, and objective information to the communities on technical topics – and to give

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453 Uzcanga Vergara WS-2, at Section 2.

454 Uzcanga Vergara WS-2, at Section 2.

455 Counter-Memorial, at para. 149.

456 Counter-Memorial, at para. 149.

457 Uzcanga Vergara WS-2, at Section 2.

458 Uzcanga Vergara WS-2, at Section 2.

459 *See, e.g.*, Brochure Inviting Community Members to the Diálogos Transversales Session: Key Aspects of the MIA, dated 28 March 2019, **Exhibit C-280**; Brochure Inviting Community Members to the Diálogos Transversales Session: Study of Flora and Fauna in the Ixtaca Project, dated 30 June 2022, **Exhibit C-391**; Brochure Inviting Community Members to the Diálogos Transversales Session: Mine Infrastructure, dated 27 September 2018, **Exhibit C-255**; Brochure Inviting Community Members to the Diálogos Transversales Session: Modifications to the Tailings Dam, **Exhibit C-451**; Brochure Inviting Community Members to the Diálogos Transversales Session: Ixtaca Project Next Steps and Presentation of Minera Gorrión's Fire Prevention Brigade, dated 28 April 2022, **Exhibit C-387**; Brochure Inviting Community Members to the Diálogos Transversales Session: Safety and Hygiene in Mining, dated 30 August, **Exhibit C-452**; Brochure Inviting Community Members to the Diálogos Transversales Session: Zacatepec Small Landowners Agreement, dated 24 November, **Exhibit C-453**; Brochure Inviting Community Members to the Diálogos Transversales Session: Update on Court Ruling – Ixtaca Case, dated 29 September, **Exhibit C-454**.

460 *See* Comunidades Instituciones 2022, Excel spreadsheet, Diálogos tab, **Exhibit SLR-38**; Uzcanga Vergara WS-2, at Section 2.

residents the opportunity to discuss these topics with third party experts.[461] For example, Minera Gorrión organized sessions with Explosivos Oviedo, an explosives company, on the use of explosives in the mining industry; Industrial Engineer Mr. [redacted] on cyanide use in mining; Mr. Mauricio Heiras, one of Minera Gorrión's attorneys, on Mexico's legal mining framework; and an introduction to geology for local students.[462] Mr. Pablo-Dorantes, Minera Gorrión's environmental consultant for the MIA, likewise participated in sessions to address environmental questions relating to the MIA in March and July of 2019.[463] The goal throughout was to encourage community members to form their own opinions on these topics, not to steer them toward predetermined conclusions.[464]



Photo of Diálogos Transversales session on use of explosives in mining with Engineer Mr. [redacted] from Explosivos Oviedo on 25 August 2016

461 Uzcanga Vergara WS-2, at Section 2.

462 Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2014, at p. 27, **Exhibit C-211**; Uzcanga Vergara WS-2, at Section 2.

463 *See* Comunidades Instituciones 2022, Excel spreadsheet, Diálogos tab, **Exhibit SLR-38**.

464 Uzcanga Vergara WS-2, at Section 2.



Invitation to Diálogos Transversales session on Important Aspects of the MIA on 28 March 2019

161. *Third*, Minera Gorrión's mine tours were not part of a "promotional campaign," nor did they avoid discussion of adverse impacts.[465] Rather, these mine tours reflected Minera Gorrión's belief that firsthand experience is more powerful than words alone.

162. As Mr. Santamaría explains, because the communities in Ixtacamaxtitlán did not have a mining tradition, Minera Gorrión organized 25 tours to operating mines in neighboring States to better explain and illustrate the impacts of a mining operation at Ixtaca.[466] These mine tours were three-day trips, often involving long hours of travel each way, with 20 or more people.[467] Ms. Uzcanga Vergara focused on making the tours more inclusive and encouraged more women to join.[468] As a result, in 2016, 31 women – versus 29 men – joined the mine tours.[469]

163. In addition to a visual understanding of mining operations, the mine tours gave participants direct contact with local residents living near operating mines.[470] Local residents spoke from their own experiences about how mining had impacted their lives – both positively and negatively.[471] These conversations were not scripted, nor were they controlled in any way by Minera Gorrión, as Mexico suggests.[472] These discussions, however, shattered misconceptions

465 Counter-Memorial, at para. 150.

466 Santamaría WS, at para. 28.

467 Santamaría WS, at paras. 28-30.

468 Uzcanga Vergara WS-2, at Section 2.

469 Uzcanga Vergara WS-2, at Section 2.

470 Santamaría WS-2, at Section 3.

471 Santamaría WS-2, at Section 3.

472 Santamaría WS-2, at Section 3.

about mining. As noted in the Memorial, residents who participated in the mine tours left with a transformed perspective, as reflected in the testimonials of tour participants: "We must see, we must see to believe, because sometimes we are told one thing, and we believe it completely, but that's not the case. There, I saw firsthand how the work is done. Honestly, for me, it was an eye-opener."[473] Referring to the fear tactics from the anti-mining NGOs, another tour participant remarked: "People from here had told us that if there is a mine, all the children or all the people will be born with a malformation. Another very pleasant surprise, contrary to what I had heard, is realizing that it is not true that no plant life exists after a mine."[474]

164. The mine tours, however, did not showcase only successful mining operations, as Mexico suggests; indeed, as Mr. Santamaría and Ms. Uzcanga Vergara note, they did not even know in advance the precise state of each mine before they visited.[475] One tour illustrates this point. As Mr. Santamaría explains, one of the mines they visited in the State of Aguascalientes was not in good condition – it was dusty, inadequately watered, not properly treated, and needed substantial work.[476] They also observed illegal street vending, public intoxication, petty crime, and prostitution. He used this as an opportunity to explain to the tour participants what good mining practices look like and how they intended to operate differently at Ixtaca.[477] In other words, these tours were not propaganda tools – instead, they provided an unfiltered view into modern mining operations so that community members could form their own opinions.

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473 Minera Gorrión's 20th Anniversary Magazine ("Revista de los 20 años"), 2021, at p. 11, (Spanish original: "*Debemos de ver para creer, debemos de ver para creer, porque luego nos dicen una cosa y lo creemos al cien y no es así. Yo ahí me di cuenta cómo se trabaja. Ahí la verdad, para mí fue un desengañarme*."), **Exhibit C-354**.

474 Minera Gorrión's 20th Anniversary Magazine ("Revista de los 20 años"), 2021, at p. 12, (Spanish original: "*Gente de aquí nos había dicho que si hay una mina, todos los niños o todas las personas van a nacer con una malformación. Otra impresión muy agradable a diferencia de lo que he escuchado, es que es mentira que ya no exista vida vegetal después de la mina*."), **Exhibit C-354**. *See also* Viaje a Mina de la localidad de Luis Moya, Zacatecas, Minera Gorrión YouTube Channel, dated 13 April 2018, available at https://www.youtube.com/watch?app=desktop&v=FZ_Zcxj-_eI&t=31s, **Exhibit C-677**.

475 Santamaría WS-2, at Section 3.

476 Santamaría WS-2, at Section 3.

477 Santamaría WS-2, at Section 3.



Mine visit to "El Coronel" February 2018



Photo showing that 31 women joined the mine tours in 2016

165. *Fourth*, the fact that the community did not frequently use the anonymous suggestion box was not a "serious deficiency" in Minera Gorrión's due diligence, as Mr. Cabrera contends.[478] Minera Gorrión established many different channels for communication, including the anonymous suggestion box.[479] As Ms. Uzcanga Vergara notes, the limited use of the suggestion box demonstrates how successful the Company's community outreach efforts were in building trust and open dialogue: community members rarely felt like there were issues they could not

478 Gustavo Cabrera ER, at p. 135.

479 Minera Gorrión's Mecanismo de Inconformidades, Sugerencias, y Reconocimientos, dated September 2021, **Exhibit C-373**.

raise with Minera Gorrión directly.[480] This is why Minera Gorrión strove to maintain a visible and accessible presence, including a community office available six days a week to all.[481]

166. *Finally*, the Claimants note that the *post hoc* criticisms Mexico seeks to advance ignore the important contemporaneous recognition that Minera Gorrión received for its community relations work at Ixtaca not only from industry peers, but also from the Mexican and Canadian Governments and UNECE.

167. Minera Gorrión's community programs generated significant interest from peer companies and industry bodies. As Mr. Santamaría explains, representatives from [redacted], Women in Mining (WIM) Mexico, and CAMIMEX – the Mexican Mining Chamber – visited the Ixtaca Project to learn first-hand about the community initiatives Minera Gorrión had developed at Ixtaca.[482] These visits included site tours and meetings with Mr. Santamaría and Ms. Uzcanga Vergara, where they shared their experiences and methodologies.[483]

168. Furthermore, Mexican Government officials themselves recognized the impact and strength of Minera Gorrión's community engagement. Specifically, in 2018, the then Undersecretary of Mining, Mr. Francisco Quiroga, spoke at Minera Gorrión's 9th Annual Informative Assembly, emphasizing that "Minera Gorrión has made an effort to understand the community's needs . . . it has worked to integrate itself into the community, rather than expecting the community to integrate itself into mining activities."[484] He noted: "the eyes of Mexican mining are on Ixtaca: something is happening here that will set the standard for mining in the rest of the country."[485]

169. Likewise, the Puebla State Government supported the Project, recognizing Minera Gorrión's impact on the local economy. As Mr. McDonald notes, the Governor of the State of Puebla, Mr. Miguel Barbosa, was himself publicly supportive of the Project and took a pragmatic approach to the question of mining in rural Puebla.[486] In November 2021, Minera Gorrión received an invitation from the Puebla State department of the Economy to attend a meeting

480 Uzcanga Vergara WS-2, at Section 2.

481 Almaden Minerals / Minera Gorrión 2019 Corporate Social Responsibility Report, at p. 14 (We have "opened a central community office in the town of Santa Maria Zotoltepec, which is continually open to community members and includes a grievance mechanism"), **Exhibit C-80**.

482 Santamaría WS-2, at Section 3.

483 Santamaría WS-2, at Section 3.

484 McDonald WS, at para. 75; Speech by Undersecretary of Mining Francisco Quiroga at Minera Gorrión's 9th Annual Informative Assembly in Santa María Zotoltepec, dated December 2018, **Exhibit C-264**.

485 McDonald WS, at para. 75; Speech by Undersecretary of Mining Francisco Quiroga at Minera Gorrión's 9th Annual Informative Assembly in Santa María Zotoltepec, dated December 2018, **Exhibit C-264**.

486 McDonald, WS-2, at Section 4.

with Governor Barbosa to "develop initiatives that will drive the recovery of Puebla's economy."[487] Mr. McDonald and Mr. Santamaría attended the meeting, and, as Mr. McDonald recounts, Governor Barbosa acknowledged that the Project had been unfairly targeted by anti-mining NGOs.[488] After the meeting, Governor Barbosa facilitated follow-up meetings and other local initiatives that ended shortly after the Supreme Court's ruling on the *amparo*.[489]

170. The Embassy of Canada in Mexico likewise identified the Ixtaca Project as a standard-bearer for Canadian mining companies operating in Mexico.[490] In March 2021, the Embassy asked Mr. McDonald and Mr. Santamaría to contribute to a trade advocacy campaign, in which it sought to highlight the positive impact that Canadian mining companies had on Mexican workers and communities.[491] Mr. McDonald confirmed Almaden's willingness to participate, and Mr. Santamaría provided the Embassy with photographs, videos, and a testimonial video for use in that campaign. The Embassy highlighted the Ixtaca Project in its subsequent campaign, noting that Canadian "companies operate responsibly and respect human rights, having a commitment to the best practices of responsible business conduct abroad."[492]

171. Most significantly, and as explained further below, in June 2022, UNECE, in collaboration with Economía, selected the Ixtaca Project for the UNECE Mining Pilot Project – a global UN initiative aimed at identifying and promoting best practices in responsible mining across the mining lifecycle.[493] After a site visit in August 2021 and an evaluation of the Project's technical, legal, social, cultural, and environmental aspects, UNECE, together with input from Economía, concluded that the exploration and development model at Ixtaca "could be replicated and [could become] a national and international model of how to do responsible and sustainable mining."[494] Contrary to Mexico's *post hoc* assertions in this arbitration, UNECE highlighted specifically the Project's "more than ten years of community work . . . [including] *continuous and ongoing processes of meaningful and culturally relevant dialogue [and] a properly*

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487 Economía meeting invitation with Governor Barbosa, dated 23 November 2021, **Exhibit C-678**.

488 McDonald, WS-2, at Section 4.

489 McDonald, WS-2, at Section 4.

490 McDonald WS-2, at Section 4.

491 Email from [redacted] (Canadian Embassy in Mexico) to D. McDonald (Almaden) dated 8 March 2021, **Exhibit C-679**.

492 Facebook post, Canadian Embassy in Mexico, 4 May 2021, **Exhibit C-680**; Facebook post, Canadian Embassy in Mexico, 24 October 2021, **Exhibit C-681**.

493 Official Invitation to Minera Gorrión for Participation in the UNECE Initiative Kickoff Session, dated 20 June 2022, **Exhibit C-390**; Almaden Press Release, *Almaden Announces Selection by United Nations UNECE for Mining Pilot Project in Coordination with Mexican Ministry of the Economy*, dated 6 July 2022, **Exhibit C-392**; Santamaría WS, at paras. 43–44.

494 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**.

implemented and operational grievance mechanism . . . in line with the best international standards."[495] On that basis, UNECE and Economía selected the Ixtaca Project to represent the exploration phase, alongside Argonaut Gold's La Colorada project for active production, and Starcore's San Martín project for mine closure for the UNECE Pilot Project.[496] That selection was the first international recognition of a Mexican mining project for its community engagement, human rights due diligence, and sustainable water management.[497]

172. Mexico's assertion in its Counter-Memorial that Economía played only a passive role in the UNECE Mining Pilot Project is incorrect.[498] As addressed further below, Economía signed the agreement with the UN to implement the Pilot Project in Mexico;[499] Secretary Clouthier personally championed the Pilot Project in public remarks;[500] Economía's Coordination Unit for Extractive Activities identified the Ixtaca Project as a candidate for the Pilot Project and participated in the site visit to the Ixtaca Project;[501] and, in June 2022, Economía funded and co-hosted the kickoff session for the Pilot Project in Mexico City, alongside UNECE.[502] Moreover, even if Economía's role on the Pilot Project were subsidiary to UNECE (*quod non*), UNECE's independent, contemporaneous assessment of the Project belies Mexico's arbitration-inspired defense that "Almaden chose to ignore international standards, minimize obvious risks, and move forward with a project that was technically fragile, financially unviable, and socially unsustainable."[503]

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495 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, (emphasis added) **Exhibit C-682**.

496 Official Invitation to Minera Gorrión for Participation in the UNECE Initiative Kickoff Session, dated 20 June 2022, **Exhibit C-390**.

497 Santamaría WS-2, at Section 9.

498 Counter-Memorial, at para. 563.

499 *Tatiana Clouthier: Una nueva hoja de ruta – Expansión Summit 2021*, Expansión YouTube Channel, dated 6 September 2021, available at https://www.youtube.com/watch?v=Xhx-r89PMlA (Spanish original: "*También es importante hablar que hemos firmado un convenio con la ONU para hacer tres prototipos de investigación y estudios, para poder llevar una coordinación y un respeto al medio ambiente, a la comunidad y al desarrollo armónico de los mismos. Creo que esto se ha vuelto muy importante para saber que la minería no funciona como en el pasado, y que está sufriendo cambios acelerados en el mundo, y que tendrá un papel preponderante*."), **Exhibit C-371**.

500 *Tatiana Clouthier: Una nueva hoja de ruta – Expansión Summit 2021*, Expansión YouTube Channel, dated 6 September 2021, available at https://www.youtube.com/watch?v=Xhx-r89PMlA, **Exhibit C-371**.

501 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**.

502 Official Invitation to Minera Gorrión for Participation in the UNECE Mining Pilot Project Kickoff Session ("Oficio ICE-SRM/075-2022"), dated 20 June 2022, **Exhibit C-390**.

503 Counter-Memorial, para. 175.

2.7.3. Minera Gorrión's Community Programs Benefited All Residents

173. In their Memorial, the Claimants demonstrated that Minera Gorrión designed and implemented its community programs and activities in alignment with Almaden's environmental, social, and governance goals, namely: to foster sustainable economic development, ensure environmental stewardship, and promote social well-being.[504] These programs and activities included educational initiatives and improvements to local infrastructure and healthcare, which formed part of Minera Gorrión's broader commitment to improving the well-being of local residents and contributing to their development.[505]

174. Mexico asserts in its Counter-Memorial that, rather than building legitimacy, credibility, and trust with the local communities, Minera Gorrión instead carried out voluntary actions aimed at improving its image, implementing superficial initiatives to generate sympathy.[506] Mexico further contends that Minera Gorrión's social programs generated benefits, but did not mitigate risks, and that the selective provision of support created dependencies and implicit pressures to back the Ixtaca Project.[507] These assertions are misguided and wrong.

175. *First*, Mexico itself notes that legitimacy arises when a company acts in a manner consistent with the community's values, norms, and expectations.[508] As Ms. Uzcanga Vergara observes, Minera Gorrión acted in a manner consistent with the values, norms, and expectations of the local communities at Ixtaca.[509] It gained the mutual trust and respect of those communities not through superficial initiatives, but through genuine engagement and exchange over many years on equal terms.[510] As detailed further below, this is confirmed by the numerous instances in which local community members wrote to Mexican authorities, including SEMARNAT and the Mexican Supreme Court, to give voice to their support for the Ixtaca Project.[511]

176. *Second*, the social programs Minera Gorrión established and the benefits it provided were focused on addressing the needs of the local communities, not on influencing their opinions.[512] As Ms. Uzcanga Vergara explains, Minera Gorrión's programs were not discriminatory, and

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504 Memorial, at Section 2.2, at paras. 38-44.

505 Uzcanga Vergara WS-2, at Section 3.

506 Counter-Memorial, at para. 146.

507 Counter-Memorial, at para. 151.

508 Counter-Memorial, at para. 167.

509 Uzcanga Vergara WS-2, at Section 3.

510 Uzcanga Vergara WS-2, at Section 3.

511 McDonald WS-2, at Section 4.

512 Uzcanga Vergara WS-2, at Section 3.

its goal was never to polarize.[513] All programs and activities benefited the entire community, and no distinctions were made in the granting of benefits based on Project support or opposition.[514] For example, the Company's rehabilitation of infrastructure and environmental programs benefited the community as a whole.[515] Likewise, its educational classes and workshops were available to the entire community, without distinction.[516]

177. *Finally*, Mr. Cabrera contends that Minera Gorrión's model was "based on charity (handouts), which is inherently flawed because it does not create shared economic value, but rather generates a dependency on welfare that will collapse when the mine closes."[517] This too is incorrect.

178. Minera Gorrión's community benefits were not handouts; instead, they sought to diversify and expand job opportunities and training, as well as educational programs and support, so that the community would continue to thrive after the mine came to its natural end.[518]

179. As noted above, the local communities at Ixtaca are among the most marginalized in the region, with limited formal job opportunities.[519] Stable employment is scarce, with most jobs limited to local Government, schools, and health clinics.[520] During the Project's exploration phase, Minera Gorrión prioritized the hiring of local residents, recruiting and training some 70 residents from five communities for its drilling works.[521] As the Project progressed toward construction and production, it promised to transform employment opportunities in the region even further.[522] For example, Minera Gorrión projected that the construction phase alone would generate more than 600 jobs and that more than 400 workers would be needed for long-term

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513 Uzcanga Vergara WS-2, at Section 3.

514 Uzcanga Vergara WS-2, at Section 3.

515 Uzcanga Vergara WS-2, at Section 3.

516 Uzcanga Vergara WS-2, at Section 3.

517 Gustavo Cabrera ER, at p. 170.

518 Uzcanga Vergara WS-2, at Section 3.

519 Uzcanga Vergara WS-2, at Section 3; Almaden Minerals / Minera Gorrión 2014 Corporate Social Responsibility Report, at p. 11 ("Generally speaking, these local communities have a lack of employment opportunities with a large number of families dependent on social services. INEGI rates their degree of marginalization as 'high.'"), **Exhibit C-211**.

520 Uzcanga Vergara WS-2, at Section 3.

521 Uzcanga Vergara WS-2, at Section 3; Almaden Minerals / Minera Gorrión 2019 Corporate Social Responsibility Report, at p. 14 (We have "employed as many local people as possible, reaching up to 70 people drawn from 5 local communities. Almaden operates the drills used at the project, and hence can draw and train a local workforce as opposed to bringing in external contractors."), **Exhibit C-80**.

522 Uzcanga Vergara WS-2, at Section 3.

positions during subsequent operations.[523] Beyond direct employment, indirect jobs would be generated in services, retail, and local supply chain sectors as well.[524] Recent estimates suggest that for every direct job generated by the mining industry, six indirect jobs are created.[525]

180. Beyond the Project, Minera Gorrión sought to diversify and expand job opportunities in other sectors. For example, Minera Gorrión entered into a number of agreements with the local communities and *ejidos* designed to strengthen local agriculture.[526] Among other initiatives, Minera Gorrión supported the construction of a 5,000 cubic meter water reservoir in collaboration with the Civil Association of Small Landowners of the Zacatepec Neighborhood ("**Zacatepec**"), which was built in 2020.[527] Minera Gorrión contributed some of the expense, paid directly to the contractor, but the community members themselves participated in the construction and maintenance of the reservoir and are also in charge of its operation.[528] The reservoir is still standing and working today.[529] As Ms. Uzcanga Vergara observes, this project resulted in Zacatepec becoming a year-round producer of strawberries.[530]

181. In addition to long-term job creation and economic diversification, the Company also focused on education.[531] Its educational programs were built around the idea that education is a human right that supports the exercise of other human rights.[532] Many of the Company's educational

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523 Uzcanga Vergara WS-2, at Section 3; Almaden Minerals / Minera Gorrión 2019 Corporate Social Responsibility Report, at p. 3 ("The Feasibility Study announced in December, 2018 estimates that the mine will employ 600 people during construction, 420 over the mine life, and contribute on the order of US$210 million in taxes, including approximately US$50 million to Puebla State and US$30 million to the local municipality. These financial benefits do not include the amounts paid in wages and benefits to employees and to local service and construction companies over the life of the mine."), **Exhibit C-80**.

524 Uzcanga Vergara WS-2, at Section 3.

525 Bnamericas, *Mining companies highlight social impact in marginalized communities in Mexico*, dated September 3, 2025, available at https://www.bnamericas.com/en/news/mining-companies-highlight-social-impact-in-marginalized-communities-in-mexico#:~:text=Executives%20from%20mining%20companies%20such,Mexican%20Mining%20Chamber%20(Camimex), **Exhibit C-683**.

526 Uzcanga Vergara WS-2, at Section 3.

527 Uzcanga Vergara WS-2, at Section 3.

528 Uzcanga Vergara WS-2, at Section 3.

529 Uzcanga Vergara WS-2, at Section 3.

530 Uzcanga Vergara WS-2, at Section 3; Minera Gorrión YouTube Channel (Web page), Reservorio de agua en Zacatepec 'Un aliado del agua, el Proyecto de Mina Ixtaca' Parte 2, available at https://www.youtube.com/watch?v=6kdY0s9d-Oo, dated 22 January 2023, **Exhibit C- 411**; Minera Gorrión YouTube Channel (Web page), Reservorio de agua en Zacatepec 'El proceso', available at https://www.youtube.com/watch?v=O2eZC9sd3r0&t=17s dated 22 January 2023, **Exhibit C-412**; Minera Gorrión YouTube Channel (Web page), Reservorio de agua en Zacatepec-Etapa final, available at https://www.youtube.com/watch?v=_1w52tJGb64, dated 21 April 2023, **Exhibit C-424**.

531 Uzcanga Vergara WS-2, at Section 3.

532 Uzcanga Vergara WS-2, at Section 3.

programs were practical programs for the communities, such as reading clubs, music classes, sewing and embroidery workshops, as well as Zumba and English classes.[533]

182. The Company also partnered with the *Instituto de Educación Digital del Estado de Puebla* to award educational scholarships, helping to support over 100 students from 20 local communities to pursue higher education.[534] As Ms. Uzcanga Vergara notes, Minera Gorrión did not choose the beneficiaries of these scholarships; the *Instituto de Educación Digital del Estado de Puebla* chose the students, and the Company supported their tuition.[535]

2.7.4. The Local Communities Affirmed Their Support For The Project

183. As Mr. García Herrera, Santa María Zotoltepec's elected President of the Indigenous Community and former *Inspector de Vigilancia*, explains in his second statement, the vast majority of community members in the village of Santa María Zotoltepec – the village closest to the Ixtaca Project site – supported the Project from the beginning, because they saw it as a real opportunity to improve their economic situation, gain skills and stable employment, and improve local infrastructure.[536] Out of approximately 450 residents, only 10 actively opposed the Project.[537]

184. Santa María Zotoltepec is a small, rural community, where most residents rely upon subsistence farming and small local jobs.[538] The village has limited access to formal employment opportunities, and education levels are generally low.[539] For decades, Santa María Zotoltepec had struggled with a lack of job opportunities, forcing many, especially young people, to leave in search of work elsewhere.[540] The Project changed that, training and employing roughly 70 local workers on the initial exploration works.[541] As a result, Mr. García

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533 Minera Gorrión, 20th Anniversary Magazine, 2021, at p. 23 ("Minera Gorrión has been fortunate enough to organize a variety of educational and recreational activities with local communities over the past 20 years. These have ranged from embroidery workshops for women and Zumba classes to English and reading classes for children."), **Exhibit C-354**.

534 Uzcanga Vergara WS-2, at Section 3; Almaden Minerals / Minera Gorrión 2019 Corporate Social Responsibility Report, at p. 14 (Almaden has "Initiated a program of scholarships for top performing local students, with 130 scholarships granted to date to individuals from 23 different communities (79 women and 51 men)"), **Exhibit C-80**.

535 Uzcanga Vergara WS-2, at Section 5.

536 García Herrera WS-2, at Section 2.

537 García Herrera WS-2, at Section 2.

538 García Herrera WS-2, at Section 2.

539 García Herrera WS-2, at Section 2.

540 García Herrera WS-2, at Section 2.

541 García Herrera WS-2, at Section 2.

Herrera and many other residents were able to stay and work in Santa María Zotoltepec.[542] Now, without the Project, many local residents, including Mr. García Herrera himself, have had to leave Ixtacamaxtitlán in search of work elsewhere.[543]

185. As Mr. García Herrera observes, when the first exploration works began in the early 2000s, there was little opposition to the Project.[544] That is because, as noted above, community members saw the Project as an important source of stable employment and a vehicle for economic development.[545] The Santa María Zotoltepec community openly expressed their support for the Project through tangible actions, including marches and demonstrations in favor of the Project.[546] Many residents regularly attended community meetings and events with Minera Gorrión; actively participated in site visits to operating mines; and openly discussed the Project's benefits with their families and friends.[547] The community members made their support for the Ixtaca Project clear and rejected outside organizations deciding their future, especially when they had no connection to their land or their way of life.[548] As Mr. García Herrera emphasizes, community members in Santa María Zotoltepec never imagined that the Mexican Government would cancel the Ixtaca Project without consulting them, as it did.[549]

186. This support is reflected in the several contemporaneous letters the local communities in Ixtacamaxtitlán wrote to the Mexican Government, seeking to have their voices heard.[550] Many of these community members had participated in Minera Gorrión's meetings, workshops, and mine tours to better understand the Project and its development plans.[551] As these letters reflect, through years of continuous dialogue and exchange, they understood the Project benefits and potential risks, and wanted to ensure that the Government heard their voices directly.[552]

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542 García Herrera WS-2, at Section 2.

543 García Herrera WS-2, at Section 2.

544 García Herrera WS-2, at Section 2.

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547 García Herrera WS-2, at Section 2.

548 García Herrera WS-2, at Section 2.

549 García Herrera WS-2, at Section 2.

550 *See* Letter from community members to SEMARNAT, dated 25 July 2019, (showing that at least 800 people supported the Ixtaca Project at that time), **Exhibit C-77**; *see also* Letter from community members to President Andrés Manuel López Obrador, dated 30 August 2019, **Exhibit C-308**; Community submission to the Mexican Supreme Court dated 13 January 2022, **Exhibit C-684**.

551 García Herrera WS-2, at Section 2.

552 Counter-Memorial, at paras. 150-152.

Specifically, as the Ixtacamaxtitlán communities explained in a 13 January 2022 letter to the Supreme Court Justices hearing the appeal in the *amparo* proceedings:

> [T]he company has been working with our indigenous communities and children for over ten years. We talk with them all the time; our children have gone camping with them for many years, and in a community near the project, they've even built a dam so that they can have water and can produce a better harvest.[553]

187. The Ixtacamaxtitlán communities made clear to the Justices that their voices should be heard: "Justices, in our communities there are people both for and against the project. There are families with diverse positions, but why are only those who appear to be against the project being heard?"[554] They noted that they "respect[ed] the decisions of our brothers and sisters in Tecoltemi, but we hope that the communities closest to the project will be heard and that they, too, will respect us."[555] As they emphasized: "Our position on the mining project in Ixtacamaxtitlán is firm."[556] They further strongly rejected the repeated attempts by external NGOs and other activists to speak on their behalf: "Enough of external organizations speaking for us. Our communities are small, and we don't know why these organizations are suddenly so interested in the project."[557]

188. The communities likewise sought to make their support for the Project known to Mexican officials in AMLO's administration. As explained in the Memorial, on 25 July 2019, over 800 community members signed and sent a letter of support to SEMARNAT, underscoring that

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553 Community submission to the Mexican Supreme Court dated 13 January 2022, **Exhibit C-684**.

554 Community submission to the Mexican Supreme Court dated 13 January 2022, (Spanish original: "*Señoras Ministras y señores Ministros, en nuestras comunidades habemos personas a favor y en contra del proyecto. Habemos familias con posiciones diversas, pero ¿Por qué solo se escucha a los que aparentemente están en contra del proyecto?*"), (emphasis added), **Exhibit C-684**.

555 Community submission to the Mexican Supreme Court dated 13 January 2022, at p. 3 (Spanish original: "*Ministros, en nuestras comunidades habemos personas a favor y en contra del proyecto. Habemos familias con posiciones diversas, pero ¿Por qué solo se escucha a los que aparentemente están en contra del proyecto? Estamos conscientes que se deben hacer estudios sociales y en derechos humanos, y hasta donde sabemos, es una obligación de las empresas hacerlos y el gobierno revisarlos, pero que dichos estudios se incluyan todas las voces, a favor y en contra, hombres y mujeres, niños, adolescentes, personas mayores, pero todos. Por lo que, respetamos las decisiones de los hermanos de Tecoltemic, pero deseamos que las comunidades que estamos más cercanas al proyecto seamos escuchados y que también ellos nos respeten a nosotros.*"), **Exhibit C-684**.

556 Community submission to the Mexican Supreme Court dated 13 January 2022, at p. 4 (Spanish original: "*Nuestra postura es firme sobre el proyecto minero en Ixtacamaxtitlán. Sabemos que todas las empresas deben llevar procesos de debida diligencia bajo los Principios Rectores de Empresas y Derechos Humanos. Y que el proyecto se pueda llevar en armonía como ya ocurre con proyectos mineros en otros Estados de la República.*"), **Exhibit C-684**.

557 Community submission to the Mexican Supreme Court dated 13 January 2022, at p. 4 (Spanish original: "*Ya basta de que organizaciones externas hablen por nosotros. Nuestras comunidades son pequeñas y no sabemos porque estas organizaciones de repente les interesa tanto el proyecto*."), **Exhibit C-684**.

they saw the Project as a real opportunity for economic development and growth.[558] The community members described Minera Gorrión's efforts to engage on equal footing:

> We are members of the communities of Ixtacamaxtitlán. We live near the works of the mining Project, and we are interested in seeing this mining project developed in a positive way. We trust the environmental institutions, we want employment and development in the region, which we really need. *We believe that the arrival of a mining project is a good opportunity for development and economic growth for the region of Ixtacamaxtitlán, because that is how it has been since they started working in the area*.
>
> The mining company has been working in our Municipality for many years, almost 20, doing exploration and drilling to see if they can really make the mine. *Unlike what some people try to make it seem, people from the mining company have spent a long time carrying out activities to explain to us what the mine is going to be about and everything*. In these activities we have also shown them our concerns and worries, and they listen to us and explain things to help.[559]

189. They further made clear that the NGOs did not represent them; as they put it: "*They speak as if they represent us, but we do not recognize them as our representatives*."[560] They described themselves as "a community that is not afraid of dialogue, that wants to listen and have all the information about the Mine Project," emphasizing that what they did not want was "deception, external or media pressure, the publication of reports that simply say everything is bad, or that our rights are being violated, or that our land is being contaminated, when it is not true."[561]

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558 McDonald WS, at para. 76; Letter from community members to SEMARNAT, dated 25 July 2019, (showing that at least 800 people supported the Ixtaca Project at that time), **Exhibit C-77**.

559 *See* Letter from community members to SEMARNAT, dated 25 July 2019, at para. 2, (Spanish original: "*La empresa minera lleva trabajando muchos años en nuestro Municipio, casi como 20 haciendo exploración y barrenos para ver si de verdad pueden hacer la mina. A diferencia de lo que algunas personas intentan hacer ver, gente de la minera llevan mucho tiempo realizando actividades para explicarnos de que se va a tratar la mina y todo. En estas actividades les hemos mostrado también nuestras preocupaciones e inquietudes, y ellos nos escuchan y explican para ayudar*."), **Exhibit C-77**.

560 Letter from community members to SEMARNAT, dated 25 July 2019, at para. 3 (Spanish original: "*Ellos hablan como si nos representaran, pero nosotros los desconocemos como nuestros representantes*.") (emphasis added), **Exhibit C-77**.

561 Letter from community members to SEMARNAT, dated 25 July 2019, at p. 2 (Spanish original: "[S]*omos una comunidad que no tiene miedo al diálogo, que quiere escuchar y que quiere tener toda la información sobre el Proyecto de Mina . . . Lo que no queremos son engaños, presiones externas o mediáticas que se publiquen reportes que simplemente dicen que todo está mal, o*

190. In a separate letter to AMLO dated 30 August 2019, the Ixtacamaxtitlán communities again emphasized that, "*in Ixtacamaxtitlán, there are also people in favor of this project, which will bring economic development to our municipality*."[562] As they explained: "We are hardworking people who seek the well-being of our community, we are parents who want a better future for our children, we are young professionals who seek better opportunities and professional growth."[563] The communities pleaded with AMLO: "[Do] not to leave us in the hands of certain organizations that meddle in the internal affairs of our communities . . . no one among us has asked them to do so, much less to tell us what to do."[564] They concluded by expressing their desire to tell AMLO "first-hand what life is really like, day to day, in our communities," underscoring once again that they "[did] not want others to speak for [them]."[565]

191. On 4 October 2019, the Ixtacamaxtitlán communities delivered a follow-up letter to the Presidential delegation during AMLO's visit to Ixtacamaxtitlán, reiterating that "[w]e do not want others to speak for us; we want to tell you firsthand what it is really like to live day to day in our communities."[566] During this visit, community members protested in front of AMLO's motorcade while it drove through Ixtacamaxtitlán, chanting, "We are the majority in Ixtacamaxtitlán, and we want the mine."[567] When the community members handed the letter to a Mexican Government official, they stressed their "need to be heard" because they "represent[ed] the majority in Ixtacamaxtitlán," and they "[did not] want people from Zautla, from Veracruz saying 'Ixtacamaxtitlán does not want the mine,' when they ignore [the

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que se violan nuestros derechos o que se está contaminando nuestra tierra, cuando no es verdad."), (emphasis added) **Exhibit C-77**.

562 Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, at p. 1 (Spanish original: "*[E]n Ixtacamaxtitlán también hay gente a favor de este proyecto, el cual va a genera desarrollo económico a nuestro municipio*."), (emphasis added) **Exhibit C-308**.

563 Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, at p. 1 (Spanish original: "*Somos personas trabajadoras que buscamos el bien de nuestro municipio, somos padres de familia que queremos un mejor futuro para nuestros hijos, somos jóvenes profesionistas que buscamos mejores oportunidades y desarrollo profesional*."), **Exhibit C-308**.

564 Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, at p. 1 (Spanish original: "[N]*o nos deje en manos ciertas organizaciones que se inmiscuyen en los asuntos internos de nuestras comunidades, que nadie de nosotros les ha pedido que lo hagan y menos que nos digan lo que tenemos que hacer . . . no queremos que nos sigan victimizando como comunidades indefensas ante instituciones Públicas*."), **Exhibit C-308**.

565 Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, at p. 1 (Spanish original: "[N]*o queremos dejar que otros hablen por nosotros — queremos contarle de viva voz lo que realmente se vive día a día en nuestras comunidades*."), **Exhibit C-308**.

566 Letter from Community Members to President Andrés Manuel López Obrador, dated 4 October 2019, at p. 1 (Spanish original: "[*N]o queremos que otros hablen por nosotros; queremos contarle de viva voz lo que realmente se vive día a día en nuestras comunidades*."), (emphasis added) **Exhibit C-315**.

567 Video of protest at Ixtacamaxtitlán during AMLO's visit, dated 4 October 2019, **Exhibit C-685**.

communities'] realities and their struggle to get a job," and while "environmentalists [did] not offer [them] an alternative."[568] They lamented being an "abandoned Municipality."[569]

192. Despite these efforts, neither SEMARNAT nor AMLO gave these local communities the opportunity to be heard. Instead, as detailed below, SEMARNAT amplified and endorsed the views of anti-mining NGOs that did not represent or speak for the local communities within the Project's area of influence, including the community of Santa María Zotoltepec.

2.7.5. Opposition To The Ixtaca Project Was Not Organic, But Was Driven By NGOs External To The Project

193. In the Memorial, the Claimants demonstrated that opposition to the Ixtaca Project did not arise organically from the local communities at Ixtaca.[570] Instead, it originated in the coordinated efforts of several, well-funded anti-mining NGOs from outside Ixtacamaxtitlán, whose stated aim was to oppose "megaprojects of death" in the Sierra Norte de Puebla region of Mexico.[571] When these anti-mining NGOs failed to generate sufficient local opposition to the Ixtaca Project between 2012 and 2014, they turned to the remote village of Tecoltemi – located well outside the Project's area of influence – to pursue an *amparo* petition before the Mexican courts to challenge the Concessions and, through them, the foundation of Mexico's mining sector.[572] As elaborated further below, during that *amparo* process, these same anti-mining NGOs coordinated directly with SEMARNAT to create adverse "evidence" against the Project and deliver to Economía the pretext it needed to cancel the Concessions in full in February 2023.[573]

194. In its Counter-Memorial, Mexico argues that opposition to the Project allegedly arose organically from local activism in Ixtacamaxtitlán – in particular from the Center for Rural Development Studies ("**CESDER**"), a "key player and critic of the Ixtaca Project"[574] – and reflected concerns of the local communities.[575] Mexico's arguments are belied by the record.

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568 Video of community members handing letter to Mexican Government official, dated 4 October 2019, at 0:05-1:10, **Exhibit C-686**.

569 Video of community members handing letter to Mexican Government official, dated 4 October 2019, at 0:05-1:10, **Exhibit C-686**.

570 Memorial, at paras. 215-216.

571 Memorial, at paras. 217-222.

572 Santamaría WS-2, at Section 4.

573 *See infra* Section 2.16.

574 Counter-Memorial, at para. 115.

575 Counter-Memorial, at paras. 119, 445–449.

195. *First*, the opposition campaign against the Project did not emerge from genuine, grassroots community opposition; rather, as the record reflects, it was spearheaded by a network of well-funded, international NGOs, led by the Project on Organization, Development, Education and Research ("**PODER**"), a U.S.-registered NGO backed by the Ford Foundation.[576] PODER coordinated its activities with a number of Mexican activist organizations, including CESDER, the *Unión de Ejidos y Comunidades en Defensa de la Tierra, el Agua y la Vida* ("**Atcolhua**"), CTT, *Instituto Mexicano para el Desarrollo Comunitario*, AC ("**IMDEC**"), and *Centro de Análisis e Investigación, A.C.* ("**Fundar**").[577]

196. These NGOs did not engage in evidence-based advocacy and education; rather, they leveraged their media influence to spread misinformation, seeking to mobilize local residents through false and alarmist narratives.[578] They used rhetoric designed to instill fear and hostility, including labelling the Project a "project of death."[579] Disturbing banners with photos of chemical burns and skin diseases visually reinforced these labels at NGO-organized events.[580]



Protester holding photo of a baby with skin disease at June 2013 anti-mine rally in Ixtacamaxtitlán

576 McDonald WS, para. 66.

577 McDonald WS, para. 66.

578 McDonald WS, para. 67.

579 McDonald WS, para. 67; Ixtaca: El «proyecto de muerte» que es rechazado por las comunidades de la Sierra Norte de Puebla, dated 7 February 2021, **Exhibit C-367**.

580 McDonald WS, para. 67.

197. As Mr. Santamaría explains, the first anti-mining NGOs arrived in Puebla in or around 2012 as part of the movement against "projects of death" in the Sierra Norte de Puebla region of Mexico.[581] In mid-2012, an organization called *Tetela No a la Mina* and a local journalist, Mr. [redacted], launched a successful campaign against a mining project operated by Minera Frisco – a Mexican mining company controlled by local billionaire Carlos Slim – in the neighboring town of Tetela de Ocampo, Puebla.[582] On 11 September 2012, Mr. Mastretta and *Tetela No a la Mina* representatives travelled to Santa María Zotoltepec to distribute anti-mining pamphlets and urge residents to oppose the Project.[583] Minera Gorrión staff met them in Santa María Zotoltepec with their own informational materials.[584]



Photo of Mr. Santamaría sharing information with the community on 11 September 2012 (left); photo of a pamphlet distributed by Tetela No a la Mina's representatives (right)

198. Because the Santa María Zotoltepec community was not persuaded by these initial efforts, the anti-mining NGOs sought to enter Ixtacamaxtitlán through its municipal politics. On 16 June 2013, CTT – a coalition of organizations based outside of Ixtacamaxtitlán that included the NGOs IMDEC and CESDER – together with *Tetela No a la Mina*, organized a political gathering in Ixtacamaxtitlán.[585] As Mr. Santamaría recounts, at that gathering, the NGOs pressed the mayoral candidates to sign a written pledge committing to "oppose the establishment of mining companies and any authorization to change the land use."[586]

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581 Santamaría WS-2, at Section 4.

582 Santamaría WS-2, at Section 4; Sergio Mastretta, "La Tetela y el conflicto por la explotación minera en la región de La Cañada," dated 20 June 2012, **Exhibit C-687**.

583 Santamaría WS-2, at Section 4.

584 Santamaría WS-2, at Section 4.

585 La Jornada de Oriente, *Acusan al edil de Ixtacamaxtitlán de recibir 400 mil pesos mensuales de Almaden*, dated 17 June 2013, available at https://www.lajornadadeoriente.com.mx/noticia/puebla/acusan-al-edil-de-ixtacamaxtitlan-de-recibir-400-mil-pesos-mensuales-de-almaden_id_25838.html, **Exhibit C-688**.

586 La Jornada de Oriente, *Acusan al edil de Ixtacamaxtitlán de recibir 400 mil pesos mensuales de Almaden*, dated 17 June 2013, available at https://www.lajornadadeoriente.com.mx/noticia/puebla/acusan-al-edil-de-ixtacamaxtitlan-de-recibir-400-mil-pesos-

199. Two weeks after that political rally, on 30 June 2013, the same organizations convened a second election rally in Ixtacamaxtitlán, at which CTT and CESDER speakers from outside Ixtacamaxtitlán presented imagery of alleged damage caused by mining projects in other parts of Mexico, and called on attendees to reject the Ixtaca Project.



Photo of [redacted] (from NGO CESDER) speaking at the 30 June 2013 rally



Photo of attendees holding imagery of alleged damage caused by mining projects

200. These efforts still did not gain sufficient traction with the local communities within the Project's area of influence.[587] As Mr. Santamaría explains, this pattern continued throughout the life of the Project: organizations from outside Ixtacamaxtitlán arrived with pre-prepared materials, bringing with them external activists who sought to speak on behalf of the local communities. For example, in November 2013, CTT, CESDER, *Colectivo Voces de la Tierra*, and representatives of the anti-mining movements from Zautla, Olintla, and Tetela de Ocampo

mensuales-de-almaden_id_25838.html, (noting that the four mayoral candidates "were forced" to sign the pledge), **Exhibit C-688**; Santamaría WS-2, at Section 4.

587 Santamaría WS-2, at Section 4.

proceeded to organize a "*Caravana por la Vida*" march that paraded through the region and ended with a night-time rally in Santa María Zotoltepec.[588] Mr. Santamaría observed the *Caravana*'s arrival that night; it drew few local residents; rather, it included anti-mining activists largely drawn from outside the region.[589]

201. Contemporaneous press coverage of a subsequent "*Caravana por la Vida*" held on 17 March 2018 confirms that these NGO-sponsored rallies continued to fail in their desired outcome; as the local press reported, the organizers "want[ed] residents of Santa María Zotoltepec to close the doors to the mine as *they have been the most reluctant to participate in the struggle*."[590] Press coverage also describes how, during the event, "CESDER students mounted a play . . . dressed as businessmen wearing skull make-up because '*to us, they represent death*.'"[591]

202. The 18 September 2022 meeting CTT organized against the Project in Santa María Zotoltepec further demonstrates that many participants at these events did not even know why they were there. A reporter attended that event and interviewed the attendees; as the recording reflects, the attendees were from as far away as the State of Mexico.[592] When asked why they were there, one attendee responded: "They want to . . . take over something, right? . . . it's political, I don't know, this is the first time we come."[593] Asked the same question, a person holding a "life yes, mine no" sign says: "Ask her, she knows, she has been working here for longer."[594]

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588 Santamaría WS-2, at Section 4; Municipios Puebla, *A frenar el saqueo del pais llamada la Caravana por la Vida en Ixtacamaxtitlán*, dated 4 November 2013, **Exhibit C-689**.

589 Santamaría WS-2, at Section 4.

590 Regeneración, "Caravana por la Vida llama a cerrar puertas a minería en Ixtacamaxtitlán," dated 18 March 2018, available at https://regeneracion.mx/caravana-por-la-vida-llama-a-cerrar-puertas-a-la-mineria-en-ixtacamaxtitlan/, (Spanish original: "*han sido los más renuentes a participar en la lucha que desde hace cinco años mantienen contra la empresa"; "cierre las puertas a este proyecto*"), **Exhibit C-690**.

591 Regeneración, "Caravana por la Vida llama a cerrar puertas a minería en Ixtacamaxtitlán," dated 18 March 2018, available at https://regeneracion.mx/caravana-por-la-vida-llama-a-cerrar-puertas-a-la-mineria-en-ixtacamaxtitlan/, (Spanish original: "*Alumnos del CESDER hacen una pequeña obra de teatro para que todos se enteren de lo que pasa en la comunidad con la llegada de los mineros. Se visten de empresarios y se maquillan como calaveras porque para 'nosotros ellos representan la muerte.* "), **Exhibit C-690**.

592 Video of assembly, dated 18 September 2022, (at 00:15, the reporter notes, "the attendees to [the assembly] come from communities outside the project's influence area;" at 00:24, the reporter continues, "most of the interviewed local residents say they are open to the mining project because it will provide economic wellbeing and employment;" at 00:57, a local resident notes, "the large majority of the people from Santa María consider the mine to be a great opportunity;" at 1:08, another local resident stresses, "we have received more support from the company than the Government;" at 2:07, "I am from a neighboring community, from the Tlatlauquitepec Municipality;" at 2:13, "We come from the State of Mexico;" at 2:17, "We are from San Andrés, State of Puebla."), **Exhibit C-691**.

593 Video of assembly, dated 18 September 2022, at 2:34, **Exhibit C-691**.

594 Video of assembly, dated 18 September 2022, at 2:51, **Exhibit C-691**.

In other words, these NGO-organized activities did not arise organically from the local communities, nor did they reflect their concerns, as Mexico would like this Tribunal to believe.

203. The local communities in Ixtacamaxtitlán, moreover, did not stay silent in the face of these NGO efforts against the Project. To the contrary, on 2 June 2013, the Santa María Zotoltepec community organized a pro-Ixtaca march that gathered around 300 people and included members of the adjacent San Francisco Ixtacamaxtitlán, Tuligtic, and Zacatepec communities.[595] Residents carried signs with messages such as, "Yes to the mine," "Let's support job sources," "Mining brings progress to families and communities," "Almaden Minerals boosts economic development in our communities," and "Yes to employment."[596] The attendees marched around the town and handed signatures in support of the Project to the President of the Municipality.[597]



Photo of community members holding signs in support of the Project at the 2 June 2013 march



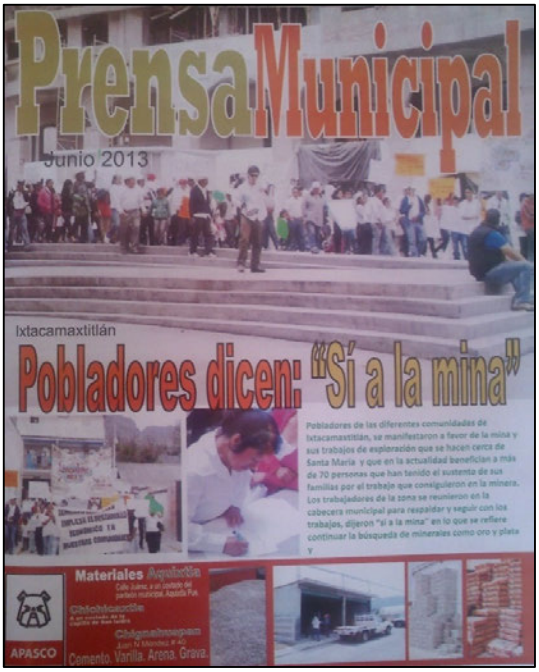
595 *Prensa Municipal*, June 2013, at p. 3, **Exhibit C-692**; Santamaría WS-2, at Section 4.

596 *See* Video of 2 June 2013 march in Santa María Zotoltepec, **Exhibit C-693**.

597 *Prensa Municipal*, June 2013, at p. 3, **Exhibit C-692**.

Photo of community members marching through Santa María Zotoltepec at the 2 June 2013 march

204. As the local municipal press reported, community members wanted "to show municipal authorities their support for the exploration works" and what they saw as "an opportunity for the region, for small and mid-sized merchants . . . because people in Ixtacamaxtitlán wish for progress, prosperity, a better future for their children, and see the mine as an opportunity for the region's improvement."[598] One community member appreciated that Minera Gorrión "organized many informational meetings, and invited students to visit the project site, where they obtain information on the work the company is conducting,"[599] while another noted Minera Gorrión's "reforestation works, which people from the Municipality have failed to do," including Minera Gorrión's "planting between ten and 15 thousand trees."[600] That same community member expressed that working on the Project had allowed him to "finance [his] kids' schooling" and that, if the Project closed, he would be "forced to emigrate, because there [would be] no more work in the Municipality."[601] As Mr. García Herrera testifies, that is precisely what has happened since Economía cancelled the Project in 2023.[602]



Local press coverage of the June 2013 march where communities chanted "Yes to the mine"

598 *Prensa Municipal*, June 2013, **Exhibit C-692**.

599 *Prensa Municipal*, June 2013, at pp. 1-3, **Exhibit C-692**.

600 *Prensa Municipal*, June 2013, **Exhibit C-692**.

601 *Prensa Municipal*, June 2013, at p. 3, **Exhibit C-692**.

602 García Herrera WS-2, at Section 2.

205. In stark contrast, with encouragement and support from these same anti-mining NGOs, community members in the neighboring municipality of Zautla successfully ousted JDC Minerales, a Chinese-owned company, from its La Lupe mining project in 2012[603]

206. Specifically, on 21 November 2012, over 5,000 people from 32 Zautla communities marched to La Lupe's project site, confronted the company representatives, and gave them a 24-hour ultimatum to abandon the project.[604] Following the march, community leaders signed a document certifying the company's expulsion from the area.[605] Escorted by the police, the company left La Lupe before the ultimatum expired.[606]



Photo of the march against JDC Minerales's La Lupe Project on 21 November 2012

603 *En el olvido mina La Lupe en el municipio de Zautla*, dated 13 December 2014, available at https://www.municipiospuebla.com.mx/nota/2014-12-13/interiores/en-el-olvido-mina-la-lupe-en-el-municipio-de-zautla, **Exhibit C-694**. *See also Asamblea multitudinaria da 24 horas a JDC Minerals para salir de La Lupe*, dated 22 November 2012, available at https://www.jornada.com.mx/2012/11/22/sociedad/042n1soc, **Exhibit C-695**.

604 *Protestan en Zautla contra explotacion de mina "La Lupe,"* Sintonizados zacapoaxtla YouTube Channel, dated 23 November 2012, available at https://www.youtube.com/watch?v=k5EDLuegnwo, **Exhibit C-696**.

605 *Firma de acta de expulsion de minera en Zautla*, Periodico e-consulta YouTube Channel, dated 22 November 2012, available at https://www.youtube.com/watch?v=z72LGVZ0Wj0, **Exhibit C-697**.

606 *Expulsan a mina china de Puebla*, dated 23 November 2012, available at https://www.proceso.com.mx/nacional/2012/11/23/expulsan-minera-china-de-puebla-111176.html, **Exhibit C-698**.



Photo of Zautla community members confronting JDC Minerales staff

207. As the Claimants' witnesses confirm, no such activities happened at the Ixtaca Project.[607] Unlike the communities at La Lupe, the local communities at Ixtaca never blockaded the mine or sought to expel the Company from the Project site.[608] Instead, as detailed above, they marched and demonstrated in support of the Project.

208. In 2014, PODER arrived at the Ixtaca Project to try and change local opinion. As noted, PODER is a U.S.-registered NGO founded by Mr. Benjamin Cokelet, an American activist.[609] It focuses on the extractive industries in Latin America and has conducted advocacy campaigns against mining projects across the region.[610]

209. As Mr. Santamaría explains, PODER first arrived in Ixtacamaxtitlán in June 2014 to conduct, in coordination with CTT, an investigation into the extractive industries in the Sierra Norte of Puebla, covering 66 municipalities.[611] That same month, PODER and CTT organized the first large, anti-mining rally in the regional center of Ixtacamaxtitlán. Mr. Santamaría attended this event and recognized few, if any, local residents; rather, PODER and CTT had transported the attendees by bus and car from outside Ixtacamaxtitlán.[612] Despite these ongoing efforts, the

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607 Santamaría WS-2, at Section 4; Uzcanga Vergara WS-2, at Section 5.

608 Santamaría WS-2, at Section 4.

609 *#PODER10años – Saludo de Benjamin Cokelet*, PODER YouTube Channel, dated 5 October 2020, available at https://www.youtube.com/watch?v=Vp5tI3cwM_g/, **Exhibit C-348**.

610 Poder, *Mining in Ixtacamaxtitlán*, available at https://poderlatam.org/en/project/ixtaca, **Exhibit C-699**.

611 Consejo Tiyat Tlali de la Sierra Norte de Puebla webpage, "Investigación: Industrias Extractivas en la Sierra Norte," available at http://consejotiyattlali.blogspot.com/p/resultados-de-la-investigacion.html, **Exhibit C-700**; Santamaría WS-2, at Section 4.

612 Santamaría WS-2, at Section 4.

anti-mining NGOs were still unable to turn the local communities within the Project's core area of impact against the Project.[613]

210. *Second*, contrary to Mexico's contentions, the fact that CESDER, unlike PODER, had a regional presence in Puebla does not mean that CESDER spoke for the local communities.[614] CESDER is simply one of the regional NGOs through which PODER and its allies worked in its aim to end the Project.[615] This is confirmed by the record.

211. Specifically, CESDER was one of the NGOs that participated in the December 2017 Canadian tour. The trip was organized and publicly announced on 4 December 2017 by PODER.[616] PODER selected four individuals affiliated with Atcolhua and CESDER, namely Ms. [redacted], Mr. [redacted], Ms. [redacted], and Mr. [redacted], to travel to Canada on behalf of "the communities," although none had any mandate to speak for the region.[617] Between 5 and 12 December 2017, the delegation moved through Ottawa, Vancouver, and Kamloops, holding meetings with Canadian Parliamentary committees and mining investors, in coordination with a Vancouver-based anti-mining organization, Mining Justice Alliance.[618] The tour culminated on 11 December 2017 with a protest outside Almaden's Vancouver headquarters, the same day as the Company announced it had received

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613 Santamaría WS-2, at Section 4.

614 McDonald WS-2, at Section 5.

615 Santamaría WS-2, at Section 4.

616 PODER and Mining Justice Alliance, Press Release, "Mexican Delegation Urges Canadian Government to Prevent Human Rights and Environmental Abuses from Canadian Mine," dated 4 December 2017, available at https://miningjusticealliance.wordpress.com/2017/12/04/press-release-mexican-delegation-urges-canadian-government-to-prevent-human-rights-and-environmental-abuses-from-canadian-mine/, **Exhibit C-701**.

617 PODER and Mining Justice Alliance, Press Release, "Mexican Delegation Urges Canadian Government to Prevent Human Rights and Environmental Abuses from Canadian Mine," dated 4 December 2017, available at https://miningjusticealliance.wordpress.com/2017/12/04/press-release-mexican-delegation-urges-canadian-government-to-prevent-human-rights-and-environmental-abuses-from-canadian-mine/, **Exhibit C-701**; La Jornada de Oriente, "Hasta la sede de Almaden Minerals en Canadá llevarán estudios que demuestran la devastación de la empresa en Sierra Norte," dated 6 December 2017, available at https://www.lajornadadeoriente.com.mx/puebla/almaden-minerals-canada-estudios/, **Exhibit C-702**; Uzcanga Vergara WS, at para. 68.

618 PODER and Mining Justice Alliance, Press Release, "Mexican Delegation Urges Canadian Government to Prevent Human Rights and Environmental Abuses from Canadian Mine," dated 4 December 2017, available at https://miningjusticealliance.wordpress.com/2017/12/04/press-release-mexican-delegation-urges-canadian-government-to-prevent-human-rights-and-environmental-abuses-from-canadian-mine/, **Exhibit C-701**; Regeneración, "Protesta en Vancouver contra minera canadiense en Ixtacamaxtitlán," dated 12 December 2017, available at https://regeneracion.mx/protesta-en-vancouver-contra-minera-canadiense-en-ixtacamaxtitlan/, **Exhibit C-703**; MINING.com, "Almaden rejects Mexican activists' accusations surrounding Ixtaca project," dated 13 December 2017, available at https://www.mining.com/community-leaders-mexico-protest-canada-almadens-operations/, **Exhibit C-704**.

a summary report of the EVIS.[619] At the event, PODER's Founder and Director, Mr. Benjamin Cokelet, falsely claimed that the Claimants were deceiving the Mexican and the Canadian Governments, and that Almaden was under criminal investigation by the British Columbia Securities Commission for alleged "fraudulent practices."[620] CESDER maintains a photo of this tour's Ottawa stop on its website, under which it proclaims: "CESDER members take the voice of protest to Canada."[621]



CESDER members take the voice of protest to Canada

Mr. Cokelet (on the far left) and Mr. [redacted] from CESDER (second from the right) in front of the Canadian Parliament Buildings, Ottawa, Canada, December 2017, holding a banner accusing Almaden of "planning to destroy our habitat."

212. Almaden's President and CEO, Mr. Morgan Poliquin responded publicly to Mr. Cokelet's claims, stating that "[w]ithout the approval of the local stakeholders, no project can go forward. Mining should be done safely and well or not at all," and that Almaden "respect[s] activism and share[s] all concerns for human welfare and the environment;" however, he emphasized that "the four activists had no formal authorization from communities nearby the Ixtaca project to represent community views" and that the title of "community leaders" was "self-appointed."[622] Four weeks later, the President of the Municipality of Ixtacamaxtitlán confirmed

619 MINING.com, "Almaden rejects Mexican activists' accusations surrounding Ixtaca project," dated 13 December 2017, available at https://www.mining.com/community-leaders-mexico-protest-canada-almadens-operations/, **Exhibit C-704**; Remarks by Ben Cokelet at the Vancouver Public Library, dated 11 December 2017, **Exhibit C-235**.

620 Remarks by Ben Cokelet at the Vancouver Public Library, dated 11 December 2017, **Exhibit C-235**.

621 CESDER webpage, Nuestros Equipos de Trabajo, available at https://cesder-prodes.com/quienes-somos/nuestro-modo-de-organizarnos/, **Exhibit C-705**.

622 MINING.com, "Almaden rejects Mexican activists' accusations surrounding Ixtaca project," dated 13 December 2017, available at https://www.mining.com/community-leaders-mexico-protest-canada-almadens-operations/, **Exhibit C-704**.

Mr. Poliquin's statement in a "clarification letter," noting that the NGOs – including CESDER – did *not* represent any community in Ixtacamaxtitlán.[623]

213. Specifically, by letter dated 11 January 2018, the Municipal President of Ixtacamaxtitlán stated that he had become aware through various media, including social networks, that four people had traveled to Canada "claiming to be representatives of the community."[624] He underscored that "there are no records or any document" in the Municipality's files by which any such person "had been elected or Constitutionally appointed" to represent any community in Ixtacamaxtitlán, and that the purpose of his letter was to "correctly inform the community" that "the Presidency of the Municipality of Ixtacamaxtitlán, is not involved in the statements made by the people who made the trip."[625] He went on to clarify: "the Municipal Government of Ixtacamaxtitlán distances itself from the declarations made by the persons responsible for making the trip referred to in the body of this letter on behalf of any community in Ixtacamaxtitlán."[626] In other words, the Municipal Government of Ixtacamaxtitlán itself expressly rejected the notion that CESDER and its allies represented and spoke for the local communities in Ixtacamaxtitlán.

214. The communities themselves also expressly rejected the intervention of the NGOs, including CESDER, and their attempt to speak on their behalf. In their 25 July 2019 letter to SEMARNAT, the communities noted that "different organizations claim to be representatives of the communities of Ixtacamaxtitlán. But this is not the case. *Neither Consejo Tiyat Tlali, nor CESDER-PRODES, nor Fundar, nor PODER, nor the Unión de Ejidos y Comunidades Atcolhua represent us.*"[627] The communities further noted that "[t]hese organizations have never approached us with proposals; but rather misinform us about the project, even

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623 McDonald WS-2 at Section 5; Clarification Letter from Ixtacamaxtitlán Municipal President Regarding Unauthorized Representation, dated 11 January 2018, **Exhibit C-239**.

624 Clarification Letter from Ixtacamaxtitlán Municipal President Regarding Unauthorized Representation, dated 11 January 2018, (Spanish original: "*en fechas recientes tuve conocimiento por diversos medios, incluyendo redes sociales, que durante el período comprendido entre el 6 y el 12 de diciembre del 2017, cuatro personas viajaron al País de Canadá, ostentándose como representantes de la comunidad representada por el suscrito . . . Por lo anterior, la Presidencia Municipal de Ixtacamaxtitlán se mantiene al margen de las declaraciones hechas por las personas encargadas de hacer el viaje citado en el cuerpo de este oficio en representación de comunidad alguna de Ixtacamaxtitlán*"), **Exhibit C-239**.

625 Clarification Letter from Ixtacamaxtitlán Municipal President Regarding Unauthorized Representation, dated 11 January 2018, **Exhibit C-239**.

626 Clarification Letter from Ixtacamaxtitlán Municipal President Regarding Unauthorized Representation, dated 11 January 2018, **Exhibit C-239**.

627 Letter from Community Members to SEMARNAT, dated 25 July 2019, at p. 1 (Spanish original: "*distintas organizaciones se dicen representantes de las comunidades de Ixtacamaxtitlán. pero no es así Ni el Consejo Tiyat Tlali, ni CESDER-PRODES, ni Fundar, ni PODER. ni la Unión de Ejidos y Comunidades Atcolhua nos representan.*"), (emphasis added) **Exhibit C-77**.

threatening us if we did not support them in their stance against the mine."[628] The communities also rejected interference in their internal affairs: "All we are asking is that these organizations do not interfere in the internal affairs of our communities . . . They are not even from the region of Ixtacamaxtitlán. These organizations generate noise. They talk about conflict, violence, division, things that are not true and that do enormous damage to the good name of our community[.]"[629]

215. As explained below, having failed to gain a foothold within the local communities closest to the Project, these same NGOs orchestrated an *amparo* action in 2015 and sought to use the Tecoltemi community as a vehicle to put an end to the Concessions and to permanently alter the mining landscape in Mexico. That *amparo* action ultimately led to the Mexican Supreme Court's decision in April 2022 on indigenous consultations, which Economía then used as a pretext to arbitrarily and retroactively cancel the Claimants' Concession rights in full, without any indigenous consultations.

2.8. The Tecoltemi *Ejido* Became The Tool Of Anti-Mining Activist NGOs

216. The Claimants explained in the Memorial that the village of Tecoltemi is a small, isolated mountain village comprising roughly 142 residents.[630] It sits well outside the Project's area of social and environmental impact at an altitude of 2,569 meters, and is located 45 minutes to an hour by car from the Project site over steep, narrow mountain roads.[631] Two mountain ranges separate the village of Tecoltemi from the Project.[632] Given its remote location, the Tecoltemi community had no natural interaction with the Project or with Minera Gorrión.[633]

217. Although Minera Gorrión provided opportunities for the Tecoltemi community to participate in its initiatives, such as mine tours and community meetings, participation by the Tecoltemi

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628 Letter from Community Members to SEMARNAT, dated 25 July 2019, at p. 1 (Spanish original: "*Esas organizaciones nunca se han acercado con nosotros con fines propositivos, sino para mal informarnos sobre el proyecto, incluso amenazarnos si no les apoyábamos en su postura en contra de la mina.*"), (emphasis added) **Exhibit C-77**.

629 Letter from Community Members to SEMARNAT, dated 25 July 2019, at p. 2 (Spanish original: "*Lo único que estamos pidiendo es que estas organizaciones no se inmiscuyan en los asuntos internos de nuestras comunidades […] ya que ellos ni son de la región de Ixtacamaxtitlán. Estas organizaciones generan ruido. Hablan de conflicto, violencia, división cosas que no son ciertas y que hacen un daño enorme al buen nombre de nuestra comunidad.*"), (emphasis added) **Exhibit C-77**.

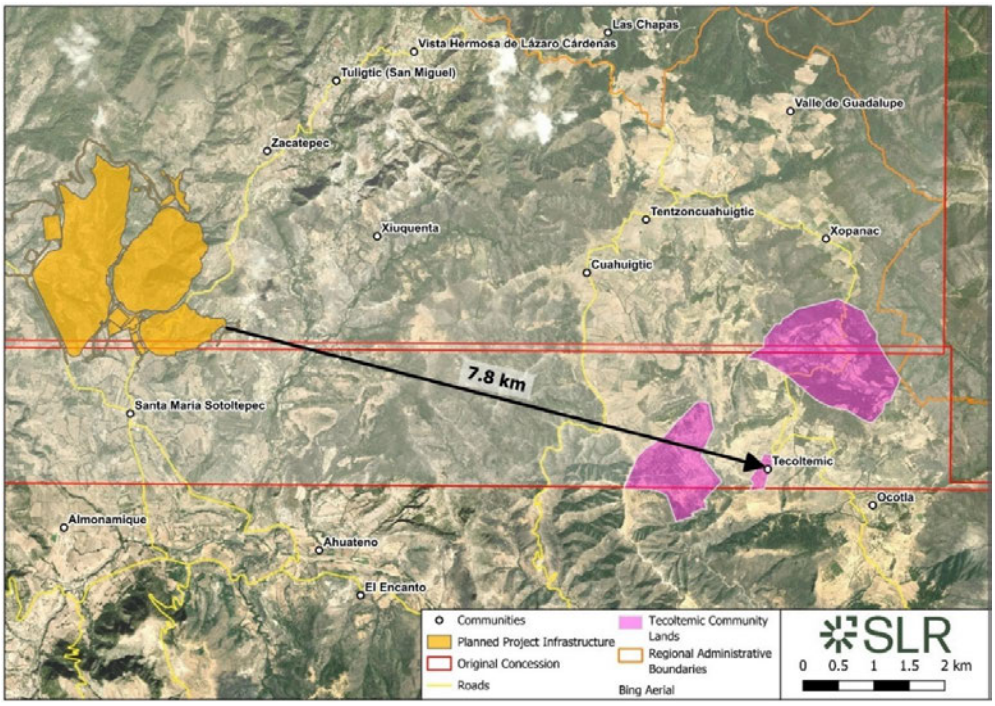
630 Memorial, at para. 210.

631 Memorial, at paras. 210–211.

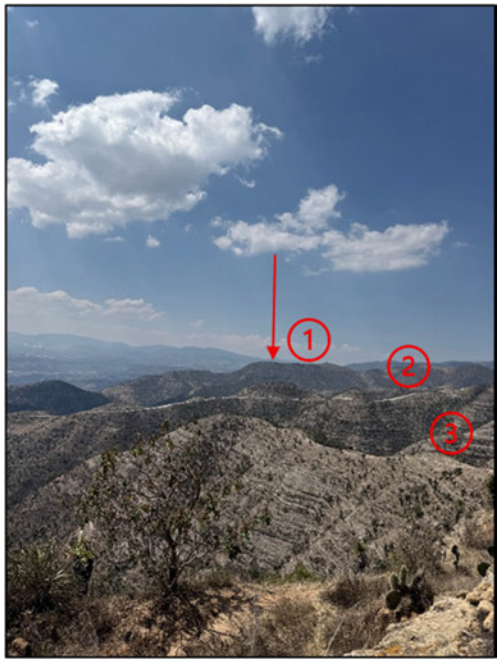
632 Memorial, at paras. 210–211; Santamaría Tovar WS, at paras. 78, 82; Official Puebla State Census Data, Instituto Nacional de Estadística y Geografía (INEGI), dated 2020, **Exhibit C-482**.

633 Memorial, at paras. 210–211.

community in these initiatives was low, likely due to the significant distance and difficult travel conditions between the village and the Project.[634]



Map showing the Project Area (shaded orange) and the Tecoltemi ejido (purple).



634 Memorial, at para. 213; Santamaría Tovar WS, at para. 80.

Photograph taken in March 2026 on top of a mountain ridge near the Tecoltemi ejido, showing the mountainous terrain between the Tecoltemi ejido and the Project site marked with the red arrow.

218. As the record shows, Tecoltemi recorded its self-declaration as an indigenous people in a community assembly act on 15 March 2015.[635] Days later, on 7 April 2015, Ms. [redacted] of CTT and Ms. [redacted] of Fundar filed an *amparo* action against the Mexican Government on behalf of the Tecoltemi *ejido* before the Sixth District Court in San Andrés Cholula State of Puebla.[636] As set forth above, CTT and Fundar were part of the same anti-mining NGO network that had sought to reshape the mining landscape in Mexico and turn the local communities against the Ixtaca Project since 2012.[637]

219. The *amparo* complained that the Mexican Government had failed to consult Tecoltemi before granting the Cerro Grande Concession to Minera Gavilán in 2003 and the Cerro Grande 2 Concession in 2009.[638] Tecoltemi further asserted that it was a cultural and territorial entity dating back to pre-colonial times, descending from the Nahua people, and that the Concessions violated its ancestral rights and threatened its social fabric, undermining traditions, customary practices, and language.[639] In other words, legal representatives from the same NGOs that had opposed the Project for years – acting on behalf of a rural community whose land had never been subject to exploration work – claimed that the Mexican Government had an obligation to have treated the Tecoltemi community as indigenous some 12 and six years *before* the community had self-declared itself as indigenous, based upon purported ancestral rights.[640]

220. Shortly after the NGOs filed the *amparo* action, Minera Gorrión took steps to address the Tecoltemi *ejido*'s purported concerns proactively.[641] Specifically in a good-faith effort to resolve Tecoltemi's stated concern that the Concessions overlapped with their ancestral land,

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635 Tecoltemi Community Assembly Act Declaring Indigenous Identity and Opposition to Mining, dated 15 March 2015, **Exhibit C-543**; *see also* Counter-Memorial, at para. 355.

636 Santamaría Tovar WS-2, at para. 60; Memorial, at para. 221; Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, **Exhibit C-32**; Counter-Memorial, at para. 357.

637 *See supra* Section 2.7.5.

638 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 2, **Exhibit C-32**.

639 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 2, **Exhibit C-32**.

640 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, **Exhibit C-32**; Counter-Memorial, at para. 123.

641 Memorial, at para. 239.

on 31 July 2015, Minera Gorrión requested the DGM to reduce the size of the Concessions voluntarily to eliminate any overlap with Tecoltemi's land, as permitted under the Mining Law.[642] As Mr. McDonald explains, mineral tenure over this land was not material to the Ixtaca Project; Almaden had never explored within that land, and had no interest in conducting any future exploration or development work over it.[643]

221. After Economía failed to act on this request for over 17 months, Minera Gorrión requested the District Court to order Economía to decide on the reduction of the Concessions, which it did.[644] By separate *oficios* dated 30 May 2017, Economía formally accepted Minera Gorrión's requests to reduce the size of its Concessions, as ordered by the District Court.[645] Economía subsequently amended these *oficios* through two subsequent *oficios*, both dated 9 June 2017, which corrected certain administrative details related to the reduction process.[646]

222. Although Tecoltemi had therefore received the relief it sought – namely, the exclusion of its lands from the Concession areas – Tecoltemi nonetheless sought to nullify the reduced Concessions so that it could continue to pursue its *amparo* action.[647] Specifically, shortly after Economía issued the reduced Concessions, Tecoltemi appealed the District Court's order on the ground that it violated the implied injunction imposed on the Public Mining Registry by the *amparo* action.[648] On 1 February 2018, the Collegiate Court upheld Tecoltemi's appeal,

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642 1992 Mining Law, Article 22, **C-157**; 1992 Mining Law, as amended by the 2005 Mining Law Amendment, Art. 19, Section VIII, **Exhibit C-174**; Minera Gorrión, Application to DGM Reduce Cerro Grande, dated 31 July 2015, **Exhibit C-35**; Minera Gorrión, Application to DGM Reduce Cerro Grande 2, dated 31 July 2015, **Exhibit C-51**.

643 McDonald WS, at para. 81; Santamaría Tovar WS, at para. 82; Almaden Minerals Ltd., Management's Discussion and Analysis, dated 30 September 2020, at p. 20 ("*Mineral tenure over the Ejido Lands is not material to Almaden. The Ejido Lands do not overlap the Ixtaca project or its environmental or social area of impact. Almaden has never tried to negotiate access to the Ejido Lands, never conducted exploration work on the Ejido Lands, and has no interest in conducting any future exploration or development work over the Ejido Lands. The Ejido Lands are in a different drainage basin than the Ixtaca project and the Company does not need to travel though the Ejido Lands to access the Ixtaca project*."), **Exhibit C-406**.

644 Memorial, at para. 241; McDonald WS, at para. 82; Citatorio, Juzgado Segundo de Distrito en Materia de Amparo Civil, Administrativa y de Trabajo y de Juicios Federales en el Estado de Puebla, dated 9 December 2016, **Exhibit C-40**.

645 DGM Oficio No. SE/610-02973/2017, dated 30 May 2017, **Exhibit C-45**; DGM Oficio No. SE/610-02972/2017, dated 30 May 2017, **Exhibit C-46**.

646 DGM Oficio No. SE/610-03211/2017, dated 9 June 2017, **Exhibit C-48**; DGM Oficio No. SE/610-03210/2017, dated 9 June 2017, **Exhibit C-49**; *see also* Títulos de Concesión Minera: Cerro Grande R1, Cerro Grande R3, Cerro Grande R4, Cerro Grande R5, Cerro Grande R6, Cerro Grande 2 R2, and Cerro Grande 2 R3, de 29 Mayo de 2017 al 23 de Febrero de 2059, **Exhibit C-152**.

647 Memorial, at para. 243.

648 Notice of Admission of Amparo Indirecto 506/2015, Sixth Judicial District, San Andrés Cholula, Puebla, dated 8 April 2015, at pp. 3-4, **Exhibit C-33**.

affirming that the *amparo* suspension prevented any administrative acts that could affect Tecoltemi's purported agrarian rights, including the reduction of the Concessions.[649]

223. As the Claimants noted in the Memorial, it is unclear how eliminating the overlap between the Concessions and Tecoltemi's land could have affected Tecoltemi's property, possession, or enjoyment of its agrarian rights; if anything, the reduced Concessions guaranteed Tecoltemi's rights, by ensuring the Concessions no longer covered its land.[650] There was, in short, no genuine reason for Tecoltemi to continue to oppose a Project that had no impact on its land.

224. In its Counter-Memorial, Mexico does not engage with these arguments directly. It instead devotes an entire section of its submission to arguing that Tecoltemi meets the criteria to be recognized as an indigenous community under the Mexican Constitution, the International Labor Organization's Convention 169, and the self-identification jurisprudence of the Supreme Court, accusing the Claimants of "question[ing] the indigenous identity of the Tecoltemi community."[651] It next seeks to portray the DGM and Economía as having had no choice on Minera Gorrión's reduction applications, asserting that the DGM's refusal to rule on Minera Gorrión's reduction requests "strictly followed what the judicial authorities ordered;"[652] that a "reduction of the Concessions would have been a breach by Economía and DGM to the suspension Tecoltemi obtained;"[653] and that "DGM never acted on its own accord or exercised discretion with respect to the Concessions, because its actions were strictly limited to following decisions from the Judiciary."[654] These arguments are misguided.

225. Mexico's first argument is a straw man. The Claimants do not dispute that communities in Mexico, including the Tecoltemi community, have the right to self-identify as indigenous under the Mexican Constitution, the International Labor Organization's Convention 169, and Supreme Court jurisprudence, and to register as an indigenous community before INPI. Nor do the Claimants dispute that Tecoltemi self-declared as indigenous on 15 March 2015,[655] and registered as indigenous before INPI on 22 November 2022.[656] What Mexico fails to address

649 Queja 184/2017, Segundo Tribunal Colegiado en Materia Administrativa del Sexto Circuito, dated 1 February 2018, **Exhibit C-53**.

650 Memorial, at para. 247.

651 Counter-Memorial, at para. 96.

652 Counter-Memorial, at para. 366.

653 Counter-Memorial, at para. 367.

654 Counter-Memorial, at para. 379.

655 Memorial, at para. 221.

656 Instituto Nacional de los Pueblos Indígenas, Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas, Datos Registrales, comunidad Tecoltemi, available at https://catalogo.inpi.gob.mx/cedulas/ (last accessed 14 May 2026), **Exhibit C-707**.

is the Claimants' actual argument: namely, that the manner in which the *amparo* was conceived and prosecuted by the NGOs demonstrates that the *amparo* was never about vindicating Tecoltemi's rights as an indigenous community or ensuring indigenous consultations – rather, the *amparo* was simply a tool used by the NGOs to challenge the Claimants' Concessions in their entirety and, through them, the foundation of Mexico's mining sector.[657]

226. Mexico's second argument relating to the DGM misses the point. Even crediting Mexico's arguments regarding the DGM's actions, there was no genuine reason for Tecoltemi to have challenged the reduced Concessions, as those reductions granted to Tecoltemi the relief the *amparo* purported to demand: its land was no longer encumbered by the Concessions.[658]

227. The *amparo*'s actual objective – and the reason why Tecoltemi challenged the reduced Concessions – are not matters of inference. Ms. [redacted] from Fundar – Tecoltemi's lead counsel in the *amparo* – herself has confirmed the purpose and objective of both. In a January 2022 interview, Ms. [redacted] stated:

> The company requested to get out of Tecoltemi's territory – that the mining concessions be reduced and portions of the concessions be removed from Tecoltemi's territory – because if there are no concessions over Tecoltemi's land, there is no substance for the amparo proceeding, *so what we at Fundar and [CTT] did was to file legal challenges to oppose the company's strategy because even if the mining company exiting Tecoltemi's territory would have been a win for the community, the Court should review and analyze the breaches occurred when granting the concessions, but we also want the Court to review and* analyze *several articles of the Mining Law that [had] been applied not only to Tecoltemi, but also in many other cases*.[659]

228. In other words, even if the voluntary reduction of the Concessions would have resulted in "a win for the community," the NGOs continued to press the *amparo* action so that they could challenge the Concessions in their entirety and, through them, key sections of the Mining Law.

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657 Memorial, at para. 248; McDonald WS, at para. 85.

658 DGM Oficio No. SE/610-02973/2017, dated 30 May 2017, **Exhibit C-45** (as amended by DGM Oficio No. SE/610-03211/2017, dated 9 June 2017, **Exhibit C-48**); DGM Oficio No. SE/610-02972/2017, dated 30 May 2017, **Exhibit C-46** (as amended by DGM Oficio No. SE/610-03210/2017, dated 9 June 2017, **Exhibit C-49)**; *see also* Títulos de Concesión Minera: Cerro Grande R1, Cerro Grande R3, Cerro Grande R4, Cerro Grande R5, Cerro Grande R6, Cerro Grande 2 R2, and Cerro Grande 2 R3, de 29 Mayo de 2017 al 23 de Febrero de 2059, **Exhibit C-152**.

659 *La Victoria Intermedia de la Comunidad de Tecoltemi*, Consejo Tiyat Tlali Youtube Channel, dated 5 April 2018, available at https://www.youtube.com/watch?v=DXvfng7WoPI, at 5:35–6:07, **Exhibit C-708**.

It remains unclear, however, how continuing the *amparo* action was in Tecoltemi's best interests, and Mexico notably provides no justification for the NGOs' actions.

229. Finally, Mexico asserts that Minera Gorrión, "ignoring the response from DG Mines and the suspension ordered by the Second District Court[,] . . . assumed that its request for reduction had been authorized."[660] Minera Gorrión did not "ignor[e] the response," as Mexico says.

230. Rather, as Minera Gorrión explained in its 2 May 2016 request to the DGM, Mexican law provided that Economía had a maximum of 20 calendar days from receipt to approve or reject the reduction applications, failing which the applications would be deemed approved.[661] Because more than nine months had elapsed since Minera Gorrión filed its reduction applications on 31 July 2015 – which far exceeded the period prescribed by law – the applications were deemed approved.[662] As Mr. McDonald explains, this is why Minera Gorrión applied to the District Court for an order directing Economía to issue the reduced Concessions, which the District Court did on 29 May 2017.[663] Economía's belated 27 May 2016 response did not change this.[664]

2.9. Minera Gorrión Commissioned The EVIS And HRIA Voluntarily To Assess Human And Social Impacts As Part Of Its Human Rights Due Diligence

231. The Claimants demonstrated in the Memorial that, while the *amparo* proceedings were ongoing before the Mexican courts, Minera Gorrión commissioned its own independent studies to assess the human and social impact of the Ixtaca Project: a Social Impact Assessment (the "**EVIS**"), commenced in 2017 and published in 2018, and a Human Rights Impact Assessment ("**HRIA**"), commenced in 2021 and published in 2023.[665] Minera Gorrión used the results of these studies to refine the Project design and its approach to human rights.[666] As the Claimants noted, Mexican law does not require these studies; rather, Minera Gorrión commissioned them

660 Counter-Memorial, at para. 368.

661 Minera Gorrión, Written request for the issuance of titles due to a request for a reduction in the area of mining concessions, dated 2 May 2016, at p. 5, **Exhibit R-081**.

662 Minera Gorrión, Written request for the issuance of titles due to a request for a reduction in the area of mining concessions, dated 2 May 2016, at p. 5, **Exhibit R-081**.

663 McDonald WS, at para. 82; Citatorio re: Interested Third Party Minera Gorrión S.A. de C.V., Second District Court in Matters of Civil Amparos, State of Puebla, dated 17 May 2017, **Exhibit C-44**; Títulos de Concesión Minera: Cerro Grande R1, Cerro Grande R3, Cerro Grande R4, Cerro Grande R5, Cerro Grande R6, Cerro Grande 2 R2, and Cerro Grande 2 R3, de 29 Mayo de 2017 al 23 de Febrero de 2059, **Exhibit C-152**.

664 Official Letter No. 181.16069.DGRM.2016, dated 27 May 2016, **Exhibit R-082**.

665 Memorial, at para. 153; Santamaría Tovar WS, at paras. 38–41.

666 Memorial, at para. 153; Santamaría Tovar WS, at para. 38.

voluntarily to reaffirm its dedication to transparency, impartiality, and human rights and as an important part of its human rights due diligence.[667]

232. In its Counter-Memorial, Mexico contends that the EVIS and HRIA contain purported methodological and substantive flaws, and that, rather than genuinely identifying and mitigating risks, the studies "merely validated philanthropic actions."[668] More specifically, regarding the EVIS, Mexico argues that: (i) its principal flaw is its conclusion that there were no indigenous communities in the Project area, a finding that Mexico says is based upon a restrictive reading of census data and contradicted by INPI's later identification of 27 indigenous communities in Ixtacamaxtitlán;[669] (ii) the EVIS did not propose genuine mitigation measures, but instead collected feedback on community programs that were not Project impacts;[670] and (iii) the EVIS's methodological flaws allegedly materialized in Minera Gorrión "ignor[ing] the spiritual, territorial, and subsistence link that the communities of Ixtacamaxtitlán—and specifically Tecoltémic—maintain with Cerro Mikixochio, which is a sacred site and crucial source of water."[671]

233. With respect to the HRIA, Mexico contends that it was allegedly prepared late – after the Supreme Court's ruling on Tecoltemi's *amparo* and Economía's non-feasibility decision – making the HRIA "reactive" rather than preventive.[672] Mexico further argues that the HRIA allegedly failed to address risks associated with water, tailings management, and cultural impacts.[673] Mexico also underscores that, according to the HRIA, 34.04% of community members reported insufficient information on impacts and 42.25% reported insufficient information on risks.[674] As explained below, none of Mexico's arguments has merit.

2.9.1. The EVIS Did Not "Validate" Minera Gorrión's Philanthropic Actions, But Sought Honest Community Views On The Project

234. The EVIS is a social impact study that was developed under Mexico's hydrocarbons legislation for the energy sector.[675] It is a diagnostic instrument intended to identify community

667 Memorial, at para. 153; Santamaría Tovar WS, at para. 38.

668 Counter-Memorial, at paras. 154-165.

669 Counter-Memorial, at para. 156.

670 Counter-Memorial, at para. 158.

671 Counter-Memorial, at paras. 160-161.

672 Counter-Memorial, at paras. 159-160.

673 Counter-Memorial, at paras. 159-160.

674 Counter-Memorial, at para. 163.

675 Article 121 of the Hydrocarbons Law, **R-0031**.

perceptions and concerns.[676] As Messrs. McDonald and Santamaría explain, Minera Gorrión decided to commission the EVIS because it wanted to hold itself to the most rigorous, independent social-impact standard in Mexico at that time – and because the Equator Principles, which the Project followed, called for an impact assessment aligned with international best practices.[677] The EVIS was, to their knowledge, the first ever to be conducted in the mining industry in Mexico.[678]

235. An independent consulting firm, GMI Consulting, conducted the EVIS.[679] GMI Consulting engaged with over 300 families across 12 communities through two rounds of interactive dialogue tables.[680] The EVIS followed an iterative process designed to ensure meaningful and genuine community participation, with two field "seasons" conducted between September 2017 and April 2018.[681] During the first season, a nine-person interdisciplinary team of anthropologists, ethnologists, and sociologists lived with host families for four weeks and conducted a minimum of ten in-depth interviews per locality – 119 interviews in total – with the goal of characterizing the communities and "identifying and mapping the relevant actors."[682]

236. During the second season, the team returned to convene two further rounds of open-invitation dialogue sessions in each of the 12 communities within the Project's area of influence, which GMI Consulting designed to "promote the community's active and informed participation."[683] This second round drew 236 participants, with women representing 45% of attendees – a deliberate improvement over the first round, which GMI Consulting achieved through targeted outreach.[684] Throughout both seasons, the EVIS team obtained the express consent of each

676 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 7, 24-25, **Exhibit C-252**.

677 Santamaría Tovar WS-2, at Section 5; McDonald WS-2, at Section 5.

678 Santamaría Tovar WS-2, at Section 5.

679 Memorial, at para. 154.

680 Santamaría Tovar WS, at para. 39; Evaluación de Impacto Social Proyecto Ixtaca (EVIS), Executive Summary, dated July 2018, **Exhibit C-252**; Minera Gorrión YouTube Channel (Web page), *First Phase of Dialogue Tables*, at https://www.youtube.com/watch?v=ZN7fR9lCfqU, dated 18 March 2019, **Exhibit C-276**; *Second Phase of Dialogue Tables*, Minera Gorrión YouTube Channel, dated 18 March 2019, available at https://www.youtube.com/watch?v=fhci3Qi2GoA, **Exhibit C-276**.

681 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 8, 11, **Exhibit C-252**.

682 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 8, **Exhibit C-252**.

683 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 11, **Exhibit C-252**.

684 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 11, **Exhibit C-252**.

participant and documented their participation through video recordings and photographs, ensuring "the interviewees' voluntary participation."[685]

237. The EVIS concluded that there were no indigenous communities in the Project's area of influence.[686] Specifically, the EVIS noted that, across all 12 communities surveyed, no interviewee claimed indigenous self-identification and no indigenous authorities were identified.[687] Mexico says this was a critical flaw.[688] It was not.

238. In concluding that there were no indigenous communities in the Project's area of influence, GMI Consulting drew on two official sources: Mexico's Institute of Statistics and Geography's 2010 census data and the catalogues of indigenous localities prepared by the Commission for the Development of Indigenous Peoples ("**CDI**").[689] Those two official sources showed certain discrepancies, reflecting the broader uncertainty around indigenous identification in the official data at the time.[690] Given this uncertainty, GMI Consulting did not rely on these sources alone. It also conducted independent fieldwork across all 12 communities.

239. In doing so, GMI Consulting engaged the local community members directly to determine whether indigenous communities, indigenous authorities, or active native-language speakers existed within the Project's area of influence.[691] GMI Consulting identified only two individuals with Nahuatl as their mother tongue – one was a migrant in Tuligtic and another was an elderly woman in Zacatepec – but they no longer spoke the language.[692] The elderly woman in particular "confirmed that no indigenous communities are settled in the area of influence."[693] No other residents identified as indigenous. This was not the product of careless fieldwork, as Mexico contends.[694] It instead reflected the reality of the region at that time.

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685 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 9, **Exhibit C-252**.

686 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 21-22, **Exhibit C-252**.

687 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 20-21, **Exhibit C-252**.

688 Counter-Memorial, at para. 156.

689 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 20, **Exhibit C-252**.

690 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 20, **Exhibit C-252**.

691 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 21-22, **Exhibit C-252**.

692 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 21, **Exhibit C-252**.

693 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 21, **Exhibit C-252**.

694 Counter-Memorial, at paras. 156-158.

240. Indeed, the CDI's own official assessment dated 28 September 2018 likewise did not identify any indigenous communities in the Project's area of influence at the time.[695] Specifically, after analyzing the Project's background documentation and contrasting it with the CDI's data, the CDI expressly concluded that "the data analyzed indicate the absence of indigenous population in the Project's zone and area of influence."[696] In response to an earlier petition from Minera Gorrión to clarify whether there were indigenous communities in the Project's area of influence, the Commission of Indigenous Affairs of the Federal Chamber of Representatives likewise confirmed by letter dated 3 August 2016 that "the municipality of Ixtacamaxtitlán and its communities of Santa Maria Zotoltepec, Tuligtic, Vista Hermosa de Lazaro Cardenas and Zacatepec are not considered indigenous municipalities or localities, according to the information obtained from the relevant catalogue."[697] Residents in these communities – like many communities across Mexico – simply did not identify as indigenous at that time.

241. As Professor Anaya notes, "where, as here, a company has actively sought and received written confirmation from the competent government authorities that no Indigenous communities are present in the project area and no consultation is required, those representations are relevant context for assessing the scope and discharge of the company's independent due diligence."[698] In any event, as shown, GMI Consulting conducted its own independent fieldwork and came to the same conclusion. That INPI later identified 27 indigenous communities in Ixtacamaxtitlán does not demonstrate improper due diligence or careless fieldwork, as Mexico says;[699] rather, it reflects a shift in indigenous identification, as result of AMLO's policies.

242. As Mr. Santamaría explains, views on indigeneity changed significantly with the arrival of AMLO to the Presidency in late 2018. Even before taking office, AMLO announced in August 2018 the creation of INPI,[700] and appointed Mr. Adelfo Regino Montes as INPI's head. Mr. Regino Montes is an indigenous Mixe lawyer from Oaxaca known for his role as advisor to the

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695 CDI Response to SECOTRADE Regarding Indigenous Consultation for the Ixtaca Project, dated 28 September 2018, **Exhibit C-256**.

696 CDI Response to SECOTRADE Regarding Indigenous Consultation for the Ixtaca Project, dated 28 September 2018, at p. 2, **Exhibit C-256**.

697 Letter from Hernán de Jesús Orantes López from the Comisión de Asuntos Indígenas de la LXIII Legislatura de la Cámara de Diputados to Minera Gorrión, dated 10 August 2016, at pp. 2-3, **Exhibit C-225**. The Secretary of the Commission for Indigenous Affairs of the Federal Chamber of Representatives further affirmed that the above referenced localities were not considered to be indigenous municipalities or localities. Letter from Hernán de Jesús Orantes López from the Comisión de Asuntos Indígenas de la LXIII Legislatura de la Cámara de Diputados to Minera Gorrión, dated 19 November 2016, at p. 2, **Exhibit C-227**.

698 Anaya WS, at para. 115.

699 Counter-Memorial, at para. 156.

700 Milenio, *AMLO anuncia creación del Instituto Nacional de los Pueblos Indígenas*, dated 14 August 2018, available at https://www.milenio.com/politica/amlo-anuncia-creacion-instituto-nacional-pueblos-indigenas#, **Exhibit C-721**.

Zapatista Army of National Liberation during the negotiations of the San Andrés Accords in the mid-1990s.[701] On 1 December 2018, at his inauguration ceremony, AMLO became the first Mexican President to participate in a traditional indigenous cleansing ceremony and to receive the "Baton of Command" from Mexico's 68 indigenous peoples, as a symbol of trust.[702] The EVIS was completed in 2018, shortly after AMLO was elected; it cannot be judged against perceptions and data that did not then exist, including INPI's *Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas*, which it formally published in August 2024, after a national campaign to register indigenous communities, including in Ixtacamaxtitlán.[703]

243. Mexico's further complaint, namely, that GMI Consulting should have included Tecoltemi in the EVIS process, is misguided and ignores the fact that the EVIS was focused on the Project and the communities within its area of influence, not on the larger Concession areas.[704] The small, rural community of Tecoltemi – comprising roughly 142 people – was not located within the Project's area of influence. Rather, it was located well outside that area, about an hour from the Project site by car and up a narrow and steep mountain road.[705] As noted above, even SEMARNAT did not include Tecoltemi among the communities to be consulted as part of the Ixtaca III IP.[706] While GMI Consulting therefore did not include the Tecoltemi community in the EVIS process, Minera Gorrión did involve Tecoltemi in its community initiatives; indeed, as Mr. Santamaría recalls, four members of the Tecoltemi community participated in Minera Gorrión's mine tours between 2016 and 2018.[707]

244. Mexico further asserts that the EVIS merely collected feedback and failed to propose genuine mitigation measures.[708] That too is incorrect.

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701 La Jornada, *Ex asesor del EZLN, secretario de asuntos indigenas de Oaxaca*, dated 8 December 2010, available at https://www.jornada.com.mx/2010/12/08/estados/039n1est, **Exhibit C-722**.

702 Animal Politico, *Festival en el Zócalo: con danzas y rituales religiosos, indígenas entregan bastón de mando a AMLO*, dated 1 December 2018, available at https://animalpolitico.com/2018/12/globos-musica-baile-ciudadanos-esperan-festejo-zocalo-amlo, **Exhibit C-723**.

703 Acuerdo por el que se expide el Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas, dated 9 August 2024, **Exhibit C-724**. *See also* Instituto Nacional de los Pueblos Indígenas, *Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas*, available at https://catalogo.inpi.gob.mx/ (last accessed 14 May 2026), **Exhibit C-707**.

704 Counter-Memorial, at paras. 154-158.

705 Memorial, at para. 210.

706 SEMARNAT, Letter from La Delegada Federal, Daniela Migoya Mastretta to Minera Gorrión re: *Resolución de Informe Preventivo* Oficio No. DFP/1835/14, dated 22 May 2014, at p. 7, **Exhibit C-27**.

707 *See* Comunidades Instituciones 2022, Excel spreadsheet, Viajes a Minas tab, **Exhibit SLR-38**; Santamaría Tovar WS-2, at Section 5.

708 Counter-Memorial, at para. 158.

245. As noted above, the EVIS is a diagnostic instrument. Its purpose is to make an honest assessment of community perceptions and concerns, and then to use that assessment to refine the project.[709] As Almaden explained in the Preliminary Information Memorandum it prepared for potential lenders, the EVIS provided the Company with "objective insight into the degree to which community members underst[ood] the Project as well as a valuable road map for further interactions with the communities close to the Project."[710]

246. As the EVIS reflects, it captured contemporaneous concerns about what the Project would mean for the local communities at Ixtaca and their water, land, and lives.[711] For example, the EVIS identified the potential pollution of aquifers and water bodies as the community's greatest environmental concern, followed by fears of water scarcity, landslides, modification of the natural landscape, and damage to local flora and fauna.[712] Community members also expressed concern about health impacts from dust emissions, as well as the risk of dermatological, intestinal, and epidemiological diseases.[713]

247. Minera Gorrión took these concerns seriously and undertook to refine the Project accordingly. For example, as Mr. Santamaría explains, the community concerns about water security and environmental risk were key considerations in the shift from a conventional wet tailings dam to a dry stack waste rock and filtered tailings co-disposal facility, which eliminated key risks associated with conventional tailings infrastructure.[714] The community's feedback also led Minera Gorrión to engineer and design the WSD as a permanent facility so that it could be used by local communities long after mine closure.[715]

248. In 2018 and 2019, with the EVIS and these design refinements in hand, Minera Gorrión went back to the communities and hosted *Mesas de Diálogo*, which, as Ms. Uzcanga Vergara explains, were small meetings to present the technical and social aspects of the Project to the communities within the Project's area of influence, including risks and impacts, mitigation measures, and shared social benefit programs.[716] Minera Gorrión held the *Mesas de Diálogo* in

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709 McDonald WS-2, at Section 5.

710 [redacted], **Exhibit C-725**.

711 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24, **Exhibit C-252**.

712 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24, **Exhibit C-252**.

713 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24, **Exhibit C-252**.

714 *See Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24, **Exhibit C-252**; Ixtaca Feasibility Study filed with SEDAR, updated on 3 October 2019, at p. 39, **Exhibit C-314**; Santamaría Tovar WS-2, at Section 5.

715 Santamaría Tovar WS-2, at Section 5.

716 Uzcanga Vergara WS-2, at Section 2.

Santa Maria Zotoltepec, Zacatepec, Ixtacamaxtitlán, Almeya, Loma Larga, Ahuateno, El Encanto, and Cruz de Ocote, among other places.[717] During these meetings, Minera Gorrión negotiated a *Plan de Gestión Social* – a Social Management Plan – which addressed the topics of greatest concern to the community as revealed by the EVIS.[718] For example, Minera Gorrión explained how the Project would build water resilience in the region by capturing rainwater – including in the WSD – both for mine and community use if necessary during the drier months.[719] Minera Gorrión further explained the shift from a conventional, wet to a dry-stack filtered tailings system,[720] as well as its reforestation plan and process after the mine's closure.[721] In summary, the EVIS identified the community's concerns, and the *Plan de Gestión Social* was Minera Gorrión's response to those concerns.



Slide used during presentation to community members explaining the Project's water plan[722]

249. Finally, Minera Gorrión did not ignore "the spiritual, territorial, and subsistence link that the communities of Ixtacamaxtitlán—and specifically Tecoltémic—maintain with Cerro Mikixochio," as Mexico argues.[723] As Mr. García Herrera explains, in his capacity as

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717 Uzcanga Vergara WS-2, at Section 2; Santamaría Tovar WS-2, at Section 3; "Proyecto Ixtaca, Proyecto de Mina, Ixtacamaxtitlán, Puebla," PowerPoint Presentation, at pp. 69-83(the *Plan de Gestión Social* included, among other things, (i) the promotion of local trades, textile businesses, and tourism; (ii) the advancement of small-scale agriculture and *escamoles* preservation; and (iii) the boosting of education, local culture, and infrastructure), **Exhibit C-673**.

718 Santamaría Tovar WS-2, at Section 5.

719 "Proyecto Ixtaca, Proyecto de Mina, Manejo del Agua, Ixtacamaxtitlán, Puebla," PowerPoint Presentation, at p. 5, **Exhibit C-676**.

720 "Proyecto Ixtaca, Proyecto de Mina, Ixtacamaxtitlán, Puebla," PowerPoint Presentation pp. 69-83, **Exhibit C-673**; "Junta Comunitaria," Presentation, dated 9 December 2018, at pp. 3, 21-22, **Exhibit C-726**.

721 Santamaría WS-2, at Section 5.

722 "Proyecto Ixtaca, Proyecto de Mina, Ixtacamaxtitlán, Puebla," PowerPoint Presentation at pp. 69-83, **Exhibit C-673**.

723 Counter-Memorial, at para. 161.

indigenous authority for the community of Santa María Zotoltepec, while it is true that the Cerro Mikixochio is sacred for the communities in Ixtacamaxtitlán, as they believe that all water in the region comes from the Cerro Mikixochio, the Project would not have impacted the Cerro Mikixochio in any way.[724] The Cerro Mikixochio is a mountain located at the border of Ixtacamaxtitlán and Tetela, approximately 50 minutes away by car from the Project's site.[725] The Project had no impact on the Cerro Mikixochio, which was well outside the Project's area of social and environmental impact. Also, as Mr. García Herrera notes, Tecoltemi's source of water is not the Cerro Mikixochio.[726] Moreover, the descriptions of Tecoltemi's territory and culture and identity in INPI's *Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas* make no mention of the Cerro Mikixochio.[727]

2.9.2. The HRIA Was Not "Reactive," Nor Was It Conducted Late

250. The EVIS and the HRIA are not the same tool deployed at different moments, as Mexico incorrectly suggests.[728] Rather, the EVIS is designed to identify community perceptions and concerns, *i.e.*, what people know, understand, and worry about,[729] while the HRIA is designed to identify impacts, *i.e.*, how the Project, as designed, would affect the lives of the surrounding communities, and provide a mitigation framework.[730]

251. As Mr. Santamaría explains, by definition, an HRIA cannot be conducted until a mining project is designed and its parameters are defined; otherwise, it is impossible to assess project impact.[731] This sequencing is consistent with the methodology of the Danish Institute of Human Rights, which contemplates the HRIA as a tool to assess the impact of a project, as designed, on the rights of surrounding communities.[732] Professor Anaya, who chaired the HRIA Advisory Committee, similarly observes that, "[i]n the context of a mining project, the exploration stage – during which the project's potential footprint, its likely impacts on

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724 García Herrera WS-2, at Section 5.

725 García Herrera WS-2, at Section 4.

726 García Herrera WS-2, at Section 4.

727 Instituto Nacional de los Pueblos Indígenas, Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas, Territorio, comunidad Tecoltemi, available at https://catalogo.inpi.gob.mx/cedulas/ (last accessed 14 May 2026), **Exhibit C-707**; Instituto Nacional de los Pueblos Indígenas, Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas, Cultura e Identidad, comunidad Tecoltemi, available at https://catalogo.inpi.gob.mx/cedulas/ (last accessed 18 May 2026), **Exhibit C-727**.

728 Counter-Memorial, at para. 164.

729 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 7, 24-25, **Exhibit C-252**.

730 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 16, **Exhibit C-408**.

731 Santamaría Tovar WS-2, at Section 5.

732 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 7-8, **Exhibit C-408**.

communities, and the composition and rights of affected populations begin to come into focus – can be a natural and appropriate juncture at which to commence or intensify the human rights impact assessment process."[733] The HRIA was, moreover, the starting point of a continuing process and dialogue.[734] As a "living document," Minera Gorrión would have continued to update and use the HRIA throughout the life of the Project.[735]

252. Minera Gorrión's HRIA was conducted by the *Centro de Investigaciones Interculturales, Jurídicas y Ambientales* ("**CIIJA**"), an independent and technically capable research organization.[736] To safeguard the independence and methodological rigor of the assessment, the CIIJA team established two oversight bodies external to its research staff.[737] The first was an Advisory Committee, chaired by Professor Anaya and comprised by independent experts of international standing, which functioned as a reference group that supervised and advised the research team on methodological matters and on the implementation of the methodology in light of its objectives and guiding principles.[738] The second was a Community Advisory Group, comprised of members of the communities under study, whose function was to advise both the research team and the Advisory Committee.[739]

253. Methodologically, the assessment proceeded in the five phases prescribed by the Danish Institute, namely: (i) planning and scoping; (ii) data collection and baseline development; (iii) impact analysis; (iv) mitigation and impact management; and (v) reporting and evaluation.[740] In the data-collection phase, the CIIJA team conducted in-depth interviews with community residents, traditional authorities, local leaders, and Minera Gorrión employees; held participatory workshops with the communities within the Project's area of influence; and administered 449 surveys across those communities.[741] During that process, the CIIJA team

733 Anaya WS, at para. 110.

734 McDonald WS-2, at Section 5.

735 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), Section III, at p. 79 (Spanish Original: "*a EIDH debe ser considerado como un documento 'vivo', es decir, debe tener un proceso de actualización en un determinado periodo de tiempo*."), **Exhibit C-408**.

736 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at p. 1, **Exhibit C-408**.

737 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at p. 101, **Exhibit C-408**.

738 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at p. 101, **Exhibit C-408**.

739 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at p. 101, **Exhibit C-408**.

740 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at pp. 116-117, **Exhibit C-408**.

741 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at pp. 118-119, 131-133, **Exhibit C-408**.

also sought the participation of Tecoltemi, and the NGOs Fundar and PODER; Tecoltemi did not respond to repeated invitations, while Fundar and PODER declined to participate.[742]

254. Contrary to Mexico's contentions, Minera Gorrión did not begin the HRIA "late" or in response to the Supreme Court's February 2022 decision on the *amparo*.[743] Rather, Minera Gorrión commenced the HRIA in 2021. As Mr. Santamaría explains, recognizing the political dynamics in Mexico and the anti-mining posture of the AMLO administration – which was reflected in, among other things, SEMARNAT's denial of Minera Gorrión's MIA permit in December 2020 – Minera Gorrión initiated work on a new MIA along with the HRIA in parallel.[744] Minera Gorrión wanted to complement that new environmental assessment with a rigorous human rights evaluation, joining both documents into a comprehensive framework that went well beyond the regulatory framework, and reflected the confidence Minera Gorrión had in the Project, as well as its commitment to community engagement and human rights due diligence.[745]

255. Professor Anaya explains that the HRIA "was conducted at a point when sufficient information was available about the project's potential scope and impacts to make a meaningful assessment possible, but before any irreversible operational decisions had been taken."[746] The updated 2019 FS, which had defined the Project's scope, mine plan, reserves, and capital requirements, "provided a comprehensive factual basis for assessing human rights impacts, while the project remained in the pre-construction, permitting phase with no producing operations or irreversible decisions implemented."[747] In other words, the HRIA was conducted at the appropriate time.

256. As Mr. Santamaría notes, the HRIA was delayed by the COVID-19 pandemic, which affected the fieldwork during 2021 and into 2022, and required the team to adapt its methodology accordingly.[748] The team adopted a COVID-19 health protocol and adjusted its participatory tools: workshops were conducted with small focus groups of two to ten people rather than in large gatherings, and in-depth interviews were held individually with community members,

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742 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at pp. 88-90, **Exhibit C-408**.

743 Counter-Memorial, at para. 159.

744 Santamaría Tovar WS-2, at Section 8.

745 Santamaría Tovar WS-2, at Section 5.

746 Anaya WS, at para. 110.

747 Anaya WS, at para. 110.

748 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), Section III, at p. 79, **Exhibit C-408**; Santamaría Tovar WS-2, at Section 5.

local authorities, and local leaders under strict safety measures.[749] The team also administered 449 surveys across the communities in the Project's area of influence.[750] Minera Gorrión announced the completion of the HRIA in 2023.

257. The HRIA recommendations focused primarily on strengthening community engagement mechanisms by reinforcing dialogue spaces; improving the grievance mechanism; ensuring information would reach all communities; and refining the *Plan de Gestión Social*.[751] As the HRIA explicitly notes, the Project was at an early stage and there was ample time to implement the HRIA recommendations.[752]

258. Mexico's assertion that the HRIA failed to address Project risks associated with water, tailings management, and cultural impacts is incorrect.[753] The HRIA is a comprehensive 437-page document that assesses over 30 distinct impact scenarios across 19 human rights categories.[754] For each scenario, the HRIA prescribes a two-tier mitigation framework: the first tier incorporates programs already contained in the MIA, while the second tier adds human-rights specific mechanisms designed to protect rights-holders beyond what the environmental assessment alone required.[755] As the HRIA reflects, four impact scenarios specifically address the right to adequate water supply; seven address the right to a healthy environment, including groundwater pollution risks from tailings disposal and cyanide solutions; and one addresses the right to culture, namely, the risk that outside personnel might fail to respect the cultural and religious values of the surrounding communities.[756] Each impact scenario is also accompanied by specific avoidance and mitigation measures.[757]

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749 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), Annex 16, at p. 119, **Exhibit C-408**.

750 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 7-8, 119-120, **Exhibit C-408**.

751 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 418-420, **Exhibit C-408**.

752 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 418, **Exhibit C-408**.

753 Counter-Memorial, at paras. 159-160.

754 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 417, **Exhibit C-408**.

755 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 40-77, **Exhibit C-408**.

756 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 40-55, **Exhibit C-408**.

757 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 40-77, **Exhibit C-408**.

TABLA 1.10. IMPACTOS EN DERECHOS HUMANOS IDENTIFICADOS Y MEDIDAS PARA EVITAR Y MITIGAR.			
DERECHO HUMANO	**IMPACTO IDENTIFICADO**	**EVALUACIÓN GENERAL**	**MEDIDAS PARA EVITAR Y MITIGAR.**
Derecho a la no discriminación.	**Discriminación con base en Género.** Los datos etnográficos muestran que es costumbre en las comunidades limitar a las mujeres al ámbito doméstico y en menor grado a la maquila. Por estas razones existen condiciones de vulnerabilidad hacia ellas por discriminación sobre el ejercicio de sus derechos humanos con relación a igualdad de oportunidades. Dadas las condiciones de vulnerabilidad que viven con marginalidad socioeconómica, aunado a la discriminación real en sus comunidades, la obtención de una plaza laboral sería difícil si se las discrimina en los procesos de contratación por razones de género.	Es un impacto que se puede dar en cualquier ámbito laboral no importa el sector, sin embargo, dada la historia del sector minero existe el estigma que una mujer no puede trabajar en la mina. Se suma la vulnerabilidad de las mujeres en las comunidades, con consecuencias negativas existentes en las comunidades sobre sus derechos humanos. Es por ello por lo que el impacto se considera de gravedad severa porque involucra a un grupo doblemente vulnerable, y esto repercute significativamente en su calidad de vida. Por lo que la empresa deberá desarrollar acciones con enfoque de género de tal forma que el impacto se puede evitar, con las medidas que permitan la igualdad de género e igualdad de oportunidades, durante los	La MIA contempla: Programa social de atención a pobladores y trabajadores En adición, y con el fin de que los derechos humanos de los titulares de derechos sean respetados y reparadas las afectaciones: 1) Protocolo de Contratación de Personal Local 2) Mecanismo de comunicación 3) Mecanismo de quejas: 4) Programa de creación de capacidad para la empleabilidad de las mujeres. 5) Programa de seguridad industrial: 6) Política anti-acoso

Example entry; the HRIA identifies, evaluates, and proposes mitigation measures.[758]

259. For water-related impacts, for example, the HRIA recommended the MIA's *Programas de Proteccion a los recursos hidricos*, complemented by communication and grievance mechanisms.[759] For the risk of groundwater contamination, the HRIA recommended soil conservation programs, also supplemented by communication and grievance mechanisms.[760] And, for cultural impacts, the HRIA recommended a worker hiring plan, ethics and conduct training, a grievance mechanism, and incorporation of cultural respect obligations into the Company's internal work regulations.[761] As Mr. Santamaría explains, Minera Gorrión intended to integrate these recommendations into the Project to refine its approach to human rights and environmental sustainability.[762]

260. Mexico further relies upon the HRIA's finding that 34.04% of community members surveyed reported that they had insufficient information on Project impacts and 42.25% on Project risks to assert that information deficiencies in the community were "particularly serious" and that these knowledge gaps "prevented informed participation" in the HRIA.[763] That too is incorrect.

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758 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 56, **Exhibit C-408**.

759 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 40-44, **Exhibit C-408**.

760 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 43-44, **Exhibit C-408**.

761 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 71-72, **Exhibit C-408**.

762 Santamaría Tovar WS-2, at Section 5.

763 Counter-Memorial, at para. 163; Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 170, **Exhibit C-408**.

261. These numbers mean that approximately 66% of the community members surveyed felt that they had sufficient information on Project impacts and approximately 58% on Project risks.[764] As Mr. Santamaría explains, for a project like Ixtaca being built in a marginalized municipality, those figures were positive and confirmed that the substantial majority of community members surveyed felt adequately informed.[765] This was the result of Minera Gorrión's years of community engagement work and information-sharing initiatives.

262. Furthermore, the HRIA itself did not treat these gaps as evidence of a failed engagement program, but rather as areas for continued reinforcement.[766] This is entirely consistent with the HRIA's overarching conclusion that identified impacts could be avoided or mitigated, and that the Project had sufficient time to design and implement the necessary measures.[767] Notably, and contrary to Mexico's contentions in this arbitration, the HRIA also concluded that "no specific data was obtained from the surveys, workshops and interviews that demonstrate facts or acts directly attributable to the company developing the Project that violate the human rights of individuals and communities surrounding it."[768]

263. Mexico's reading of the HRIA also ignores that the same survey data shows that 55.01% of community members surveyed knew where to raise complaints and inquiries about the Project, and that 95.99% perceived their community as safe.[769]

264. As Professor Anaya observes, Minera Gorrión's HRIA, which was "undertaken through a rigorous process, significant engagement with affected communities, and the development of detailed mitigation and monitoring recommendations" reflects and confirms the Claimants' "good faith effort to discharge corporate due diligence at a stage of project development at which it could genuinely influence the project."[770] Those efforts were unfortunately for naught, as shortly before publication of the HRIA, Economía acted to end the Project permanently.

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764 Santamaría Tovar WS-2, at Section 5.

765 Santamaría Tovar WS-2, at Section 5.

766 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at pp. 79, 331-334, **Exhibit C-408**.

767 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 418, **Exhibit C-408**.

768 Evaluación de Impactos en Derechos Humanos del Proyecto Ixtaca (HRIA), at p. 194 (Spanish original: "*No se obtuvieron datos específicos de las encuestas, talleres y entrevistas que demuestren hechos o actos directamente imputables a la empresa desarrolladora del Proyecto violatorios de los derechos humanos de los individuos y comunidades aledañas al mismo.*"), **Exhibit C-408**.

769 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 171, **Exhibit C-408**.

770 Anaya WS, at para. 116.

2.9.3. As PODER Admitted, It Prepared Its Own HRIA As A "Preventative" Tool To Create Project Opposition

265. In its Counter-Memorial, Mexico relies heavily upon a so-called "independent HRIA," prepared by four anti-mining NGOs, including PODER, to contend that Almaden ignored alleged social risks "at least since 2015."[771] Mexico describes this PODER HRIA as an "early warning mechanism," which allegedly did assess critical social risks,[772] and which revealed human rights violations at Minera Gorrión.[773] These assertions are meritless.

266. Unlike Minera Gorrión's HRIA, the PODER HRIA is not an "independent HRIA," nor did it serve as an "early warning mechanism."[774] To the contrary, the PODER HRIA was a vehicle for anti-mining advocacy designed by PODER and its allies – Atcolhua, CESDER, and IMDEC – to build opposition to the Project.[775] Its support team included Ms. [redacted], lead counsel for Tecoltemi in its *amparo* proceeding.[776] Far from an objective or independent assessment, it relies upon outdated designs, speculative worst-case scenarios, and unverified claims.[777]

267. PODER published the PODER HRIA in February 2017, before Almaden had even completed the PFS or its detailed mine plan.[778] As Mr. McDonald notes, at that time, Minera Gorrión was still in the process of preparing the PFS, MIA, and FS, which would outline that plan and the measures to prevent, mitigate, and compensate for the Project's environmental impact.[779] The PODER HRIA therefore relies upon conjecture and speculation, as there was no mining at that stage – or even a detailed mine plan.[780] Mr. Cokelet indeed admitted this at the event in Vancouver, where he described the PODER HRIA as "preventative," because, in his own words, "the shovel has not yet hit the ground."[781]

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771 Counter-Memorial, at para. 132.

772 PODER Human Rights Impact Assessment ["Canadian Mining in Puebla and its Impacts on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, at p. 26, **Exhibit C-229**.

773 Counter-Memorial, at para. 164.

774 Counter-Memorial, at para. 164; McDonald WS-2, at Section 5.

775 McDonald WS-2, at Section 5.

776 PODER Human Rights Impact Assessment, ["Canadian Mining in Puebla and its Impacts on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, at p. 26, **Exhibit C-229**.

777 Memorial, para. 161; PODER Human Rights Impact Assessment ["Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, **Exhibit C-229**.

778 McDonald WS, at para. 70.

779 McDonald WS-2, at Section 5.

780 McDonald WS, at para. 73.

781 Remarks by Ben Cokelet at the Vancouver Public Library, dated 11 December 2017**, Exhibit C-235**.

268. By way of example, the environmental risk analysis in the PODER HRIA is premised upon an incorrect understanding of the Project's actual tailings management approach.[782] The PODER HRIA describes the Project's tailings facility as a conventional wet tailings dam ("*presa de jales*"), which it defines as a reservoir ("*embalse*") that permanently stores liquid and solid waste from the leaching process.[783] Based upon that mischaracterization, the PODER HRIA asserts that, at the end of the mine's life, the tailings dam would contain 35 million tonnes of solution comprising 60% solid and 40% liquid material, without a liner.[784] The PODER HRIA then draws parallels between the Ixtaca Project and the tailings dam collapse at the Mount Polley project in British Columbia.[785] This analysis, and the analogy to Mount Polley, have no factual basis whatsoever. As detailed below, the Project had adopted a dry co-disposal facility, which has no tailings dam.[786] There was, therefore, no risk of a tailings dam collapse at Ixtaca. As Mr. McDonald explains, rather than update and correct its false HRIA, PODER continued to promote it and maintains the HRIA on its website to this day.[787]

269. As SLR observes in its second expert report, the 2017 PODER HRIA also provides limited methodology or field protocols, relies on non-verifiable data sources, and lacks environmental, hydrological, and technical analysis concerning the Project.[788] Furthermore, the maps in the 2017 PODER HRIA use broad hydrological units – such as the Apulco sub-basin – to define the Project's social area of influence, which is inconsistent with standard social impact assessment practice.[789] That practice requires defining a social area of influence based upon the project's footprint, planned activities, and interaction with surrounding communities – which the 2017 PODER HRIA fails to do.[790] As a result, the 2017 PODER HRIA artificially expanded the geographic scope of the analysis to encompass communities well outside the

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782 McDonald WS-2, at Section 5.

783 PODER Human Rights Impact Assessment ["Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, at n.17, **Exhibit C-229**.

784 PODER Human Rights Impact Assessment ["Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, at p. 35, **Exhibit C-229**.

785 PODER Human Rights Impact Assessment ["Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, at p. 62, **Exhibit C-229**.

786 McDonald WS-2, at Section 5.

787 PODER Webpage, Canadian Mining in Puebla and its Impacts on Human Rights. For the life and future of Ixtacamaxtitlán, dated 27 March 2017, available at https://poderlatam.org/en/2017/03/canadian-mining-in-puebla-and-its-impacts-on-human-rights-for-the-life-and-future-of-ixtacamaxtitlan-and-the-apulco-river-basin/, **Exhibit C-585**; McDonald WS-2, at Section 5.

788 SLR ER-2, at para. 298.

789 SLR ER-2, at para. 298.

790 SLR ER-2, at para. 298.

Project's actual social area of influence, including Tecoltemi.[791] This is unsurprising, given that the PODER HRIA support team included Ms. [redacted], lead counsel for Tecoltemi.[792]

270. In addition to its obvious bias and failure to adhere to standard social impact assessment practice, the PODER HRIA also sets out a number of false and baseless criticisms. Those criticisms include alleged deception of the local population about the Project's environmental impact, avoidance of tax obligations, PROFEPA fines for environmental violations, and an alleged record of human rights violations.[793] None of these allegations is true.

271. As discussed above, Minera Gorrión provided the local communities with clear, factual information about the Project's environmental impact through large and small-group meetings, informational sessions with experts, and tours to operating mines.[794] Minera Gorrión also timely paid all taxes owed under Mexican law.[795] PROFEPA's inspections likewise confirmed that Minera Gorrión had no environmental violations, which PROFEPA itself confirmed to SEMARNAT during the MIA review process.[796] And, as UNECE and CIIJA's independent 2023 HRIA confirmed, neither Almaden nor Minera Gorrión has any alleged record of human rights violations.[797] In short, the PODER HRIA was nothing more than a baseless polemic used by PODER and its allies to misrepresent and undermine the Ixtaca Project.

2.10. AMLO's Anti-Mining Policies Targeted The Ixtaca Project Directly

272. In their Memorial, the Claimants explained that, on 1 December 2018, while Tecoltemi's *amparo* action was pending before the District Court, Mexico elected AMLO as its new

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791 SLR ER-2, at para. 298.

792 PODER Human Rights Impact Assessment, "Canadian Mining in Puebla and its Impacts on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin", dated February 2017, at p. 26, **Exhibit C-229**.

793 McDonald WS-2, at Section 5; PODER Human Rights Impact Assessment, ["Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, **Exhibit C-229**; Letter from PODER, IMDEC, CESDER et al. to Secretary Albores, dated 11 July 2022, **Exhibit C-728**.

794 McDonald WS-2, at Section 5.

795 McDonald WS-2, at Section 5.

796 McDonald WS-2, at Section 5.

797 McDonald WS-2, at Section 5. *See also* UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2 (noting that Minera Gorrión "carries out its actions in strict compliance with the national and international legal framework regarding human rights." Spanish original: *. . . ejecutando sus acciones con estricto cumplimento al marco jurídico nacional e internacional en materia de derechos humanos*.") **Exhibit C-370**; Evaluación de Impactos en Derechos Humanos del Proyecto Ixtaca (HRIA), at p. 196 (observing that "no specific data was obtained from the surveys, workshops and interviews that demonstrate facts or acts directly attributable to the company developing the Project that violate the human rights of individuals and communities surrounding it.") **Exhibit C-408**.

President.[798] AMLO adopted an openly adversarial stance to mining, denouncing mining concessions as tools of "speculation"[799] and vowing to recover Mexican territory from foreign control.[800] He accused previous administrations of recklessly granting mining concessions without adequate environmental or social safeguards,[801] and directed his administration not to grant any new mining concessions or approve any new open-pit mines.[802] True to that promise, his administration granted no new mining concessions during his six-year term,[803] and denied every MIA presented to SEMARNAT for a new open-pit mine.[804]

273. To ensure execution of his anti-mining policy, AMLO installed as Secretaries of SEMARNAT and Economía partisan loyalists publicly opposed to mining and open-pit mining projects.[805]

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798 Memorial, at para. 251.

799 *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, Grupo REFORMA YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8 ("There is quite a lot, in this case, of speculation—of holding concession titles to speculate in the financial market. So, we are not cancelling the concessions, just simply stopping the concessions, because with what is already concessioned, it is enough for millions of years.") (Spanish original: "*Hay bastante, en este caso, de especulación, de tener los títulos de concesión para especular en el mercado financiero. Entonces, no estamos cancelando las concesiones, sencillamente ya detener las concesiones, porque con lo que hay concesionado, pues alcanza para millones de años*."), **Exhibit C-535**.

800 *AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT*, dated 11 June 2024, available at https://www.youtube.com/watch?v=wr15-QItWg0 ("Concessions were handed out so they could negotiate and profit through speculation on stock exchanges. Now, many concessions have even been returned – without any procedure, without stripping anyone of their rights.") (Spanish original: "*Se les entregaban las concesiones para que pudieran negociar y obtener beneficios con la especulación en las bolsas de valores. Ahora, hasta se han recuperado muchas concesiones, sin ningún procedimiento, sin quitarles ningún derecho.*"), **Exhibit C-433**.

801 *No hemos dado una autorización para explotación minera a cielo abierto: AMLO*, La Jornada de Oriente YouTube Channel, dated 15 October 2021, available at https://www.youtube.com/watch?v=CKDnPDowW7c ("The same goes for mining concessions. They were handed out left and right, but there is no investment. Just imagine, when will they ever finish exploiting 120 million hectares?" Spanish original: "*Lo mismo en el caso de las concesiones mineras. Las entregaron a diestra y siniestra, no invierten. Pues imaginen, ¿cuándo van a terminar de explotar 120 millones de hectáreas?*"), **Exhibit C-533**.

802 Concesiones mineras – 24/03/22 – #ConferenciaPresidente, Morena Sí Facebook, dated 24 March 2022, available at https://www.facebook.com/watch/?v=283864170569212 ("During our time in government, we have not granted a single concession, nor have we allowed genetically modified corn or the use of fracking for energy exploitation." Spanish original: "*En el tiempo que llevamos en el gobierno, no hemos dado una sola concesión, ni hemos permitido el maíz transgénico, ni el uso del fracking para la explotación energética*."), **Exhibit C-385**.

803 *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, Grupo REFORMA YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8, **Exhibit C-535**.

804 *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, available at https://www.youtube.com/watch?v=oTicTRLrWyQ ("Open-pit mining—also known as open-cast mining—has been prohibited in our country ever since our president announced the ban. Consequently, not a single permit has been issued by the Secretariat of the Environment.") (Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

805 Memorial, at paras. 256-257.

At SEMARNAT, the Ministry responsible for reviewing and approving MIAs, AMLO appointed Mr. Víctor Manuel Toledo, a self-proclaimed ethnobiologist and anti-mining activist.[806] In September 2020, AMLO replaced Mr. Toledo with Ms. María Luisa Albores, who had built her career inside the anti-mining movement in the *Sierra Norte de Puebla*, the same region where the Ixtaca Project was located.[807] As explained above, in 2012, this movement succeeded in expelling the companies from two neighboring mining projects: the La Lupe project in Zautla and the Espejeras project in Tetela de Ocampo.[808] It did not, however, succeed in gaining a foothold in the local communities within the Ixtaca Project's core area of influence.[809]

274. At Economía, the Ministry responsible for issuing new mining concessions, AMLO removed Secretary Tatiana Clouthier – who had defended the Ixtaca Concessions in the *amparo* proceedings, engaged with Minera Gorrión on indigenous consultations, and promoted the UNECE Mining Pilot Project – and replaced her with Ms. Raquel Buenrostro, a vocal opponent of the mining industry, in October 2022.[810] Secretary Buenrostro, as explained in the Claimants' Memorial and below, promptly shut Economía's door to Minera Gorrión and then ruled against the "feasibility" of the Concessions four months later – shortly after the INPI report and the other "studies" SEMARNAT had devised with the NGOs landed on her desk.[811]

275. The Claimants further demonstrated that AMLO's anti-mining policies imperiled every mining project in development in Mexico at the time.[812] Among other things, the AMLO administration (i) dismantled the Undersecretariat of Mining;[813] (ii) enacted a Mining Reform Act that voided all pending concession applications; dismissed new applications without review; imposed a six-year ceiling on exploration for existing concessions; and conditioned

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806 "*Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser'*," Lado B, dated 29 August 2019, at pp. 2-3, **Exhibit C-307**.

807 La Jornada de Oriente YouTube Page, *López Obrador reconoce a Albores quien apoyaba en la cooperativa "Tosepan Titataniske" en Cuetzalan*, dated 14 February 2024, available at https://www.youtube.com/watch?v=ymWZHodYyyw, **Exhibit C-530**.

808 *See supra* Section 2.7.5; *Conflicto Minero: Tetela de Ocampo se opone a minera Frisco de C. Slim*, available at https://mapa.conflictosmineros.net/ocmal_db-v2/conflicto/view/896 (last accessed 14 May 2026), **Exhibit C-709**; *Expulsan a mina china de Puebla*, dated 23 November 2012, available at https://www.proceso.com.mx/nacional/2012/11/23/expulsan-minera-china-de-puebla-111176.html, **Exhibit C-698**.

809 *See supra* Section 2.7.5.

810 SPR Informa, *Mineras prácticamente no pagan impuestos: Raquel Buenrostro*, dated 8 December 2022, **Exhibit C-109**; La Jornada, *Mineras pagan impuestos de sólo 0.002% de sus ingresos: Buenrostro*, dated 8 December 2022, **Exhibit C-710**.

811 *See* Memorial, at paras. 401, 425-450; *see infra* Section 2.17.

812 Memorial, at paras. 261-266.

813 Economía Press Release, "*La Secretaría de Economía anuncia la cancelación del cargo de subsecretario de Minería a partir del 1° de septiembre de 2020*," dated 31 August 2020, **Exhibit C-531**.

new concessions on indigenous and Afro-Mexican consultations;[814] and (iii) deployed the *Sembrando Vida* program to align rural communities against extractive industries, including in Ixtacamaxtitlán.[815]

276. In its Counter-Memorial, Mexico does not contest that AMLO's policies and partisan appointments transformed Mexico into a hostile environment for mining investment, driving away competition, eroding transparency, and prioritizing State-run enterprises over foreign investors. Instead, Mexico argues that the Claimants "seek to distort" AMLO's public statements and those of other officials.[816] According to Mexico, the statements the Claimants rely upon allegedly contain "no reference to the Ixtaca Project or to Almaden, or to . . . political motivation in the denial of concessions or environmental permits;"[817] AMLO "never referred to the Project or gave instructions against the Claimants;"[818] and the Claimants' arguments "lack solid support" because "scientific and technical evidence confirm DGIRA's technical and legal reasoning for denying the Claimants' MIA."[819] Mexico's assertions are belied by AMLO's own words, the statements of his own Secretaries, and the institutional conduct of the Mexican ministries and agencies he controlled.

277. *First*, contrary to Mexico's contentions, AMLO and members of his administration did make public statements against the Ixtaca Project and Almaden, including that they would not permit the Ixtaca Project to proceed. Secretary Toledo, in fact, publicly declared on 29 August 2019 – *i.e.*, while SEMARNAT's evaluation of the MIA was still ongoing – that "*with respect to Ixtacamaxtitlán, SEMARNAT is not going to permit it*," and that "*[w]ith SEMARNAT, Ixtaca will not happen*."[820] AMLO reaffirmed this publicly at his 31 October 2019 *mañanera*.

278. As explained in the Memorial, AMLO used his daily press conferences, or *mañaneras*, as a populist megaphone to reinforce his anti-mining stance, vilifying foreign mining companies

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814 Ley de Minería (Última reforma publicada DOF 08-05-2023), **Exhibit C-158**.

815 *Sembrando Vida* Overview, *Programas para el Bienestar*, available at https://programasparaelbienestar.gob.mx/sembrando-vida, **Exhibit C-537**; *Presentación del programa de comunidades sustentables: #SembrandoVida*, Andrés Manuel López Obrador YouTube Channel, dated 8 October 2018, available at https://www.youtube.com/watch?v=NLjTw8b6kro, **Exhibit C-258**.

816 Counter-Memorial, at para. 435.

817 Counter-Memorial, at para. 435.

818 Counter-Memorial, at para. 437.

819 Counter-Memorial, at para. 444.

820 Lado B, '*Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán "no va a ser "',* dated 29 August 2019, available at https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307**.

such as the Claimants.[821] He claimed that previous administrations had recklessly handed over vast tracts of land, amounting to "millions of hectares" for "millions of years" to mining companies purely for "speculative" purposes.[822] And he celebrated his no new mining concession policy at one of his last *mañaneras* in June 2024, proudly highlighting that his administration had granted "zero" mining concessions over his six-year term.[823]

279. At his *mañanera* on 31 October 2019, a journalist from Puebla, concerned about the vacancy at the head of the *Dirección General de Impacto y Riesgo Ambiental* ("**DGIRA**") – the office within SEMARNAT tasked with evaluating MIAs – and the imminent decision on the Ixtaca Project's MIA, asked AMLO:

> The Nahua indigenous people are trying to protect their region from the Almaden Minerals gold mine, and the Environmental Impact Statement is scheduled for November 13 . . . [T]here are 560 environmental conflicts in the country . . . And if they're going down the same path, if in Puebla they've already been authorized . . . I mean, the Environmental Impact Assessment is about to be authorized . . . and if it's affecting, mainly, the indigenous communities, *what guarantee are you giving to the indigenous peoples and communities so that this doesn't happen and the same situation they experienced under the two previous governments, Calderón and Peña Nieto, doesn't continue?*[824]

280. In response, AMLO expressed his "absolute confidence" in Secretary Toledo and "guaranteed" that Secretary Toledo would not authorize the Ixtaca Project:

> Look, regarding this last point, *I have complete confidence in Víctor Manuel Toledo, the Secretary of the Environment*. He is handling things fairly and protecting the environment because he is an honest

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821 Memorial, at para. 252.

822 Sin Censura Presenta YouTube Channel, AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT, dated 11 June 2024, https://www.youtube.com/watch?v=wr15-QItWg0, **Exhibit C-433**; *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, Grupo REFORMA YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8, **Exhibit C-495**.

823 *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, Grupo REFORMA YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8, **Exhibit C-535**.

824 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

> person, a specialist—I've said it here several times—I believe he is one of the people who knows the most about this subject. It's not like before, when they'd appoint a lawyer—with all due respect to lawyers—or a politician, because it was a quota for a party. That's no longer the case. *I invite you to learn about Víctor Manuel Toledo's track record. So, that's a guarantee; he's not going to grant authorization . . . .*[825]

281. That same journalist later came back to the question of the MIA for the Ixtaca Project, noting again: "It's about the Nahua people in Puebla against the Almaden Minerals mining company; that mine is scheduled to open on November 13th."[826] AMLO reiterated:

> *Yes, but we must trust Víctor Manuel Toledo*. He was an advisor to the movements or participated with the movements that opposed the mining companies in Puebla, and *he is a consistent man, not like others. I have absolute confidence in him*.[827]

282. It is impossible to reconcile these and other public statements made by officials in the AMLO administration with Mexico's assertion that "in the public statements presented, no reference was made to the Ixtaca Project or to the Claimants themselves."[828]

283. In its Counter-Memorial, Mexico further contends that DGIRA had "technical autonomy to issue its decisions" and was not subject to political directives.[829] AMLO's own words during this same *mañanera* refute that. When the journalist responded that a MIA had been approved for a project in the Mexican State of Sonora, because "[Mr. Toledo] is not everywhere [and] DGIRA is in charge of someone else," AMLO replied: "*[W]e had to resolve this issue*."[830] In

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825 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

826 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

827 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

828 Counter-Memorial, at para. 434.

829 Counter-Memorial, at para. 440.

830 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

other words, whatever technical independence existed at DGIRA was swiftly quashed to ensure consistency with AMLO's anti-mining policy. Pressed further on whether the Sonora approval had been granted "to benefit the megaprojects," AMLO confirmed:

> No, megaprojects relate to a notion installed during the neoliberal period that does not follow the new reality. We have nothing to do with megaprojects, absolutely nothing.[831]

284. As AMLO's words reflect, his opposition to mining projects like Ixtaca was a matter of political principle, not technical assessment. AMLO, moreover, trusted that Secretary Toledo, and later Secretary Albores, would carry out his political directives faithfully, including to deny the Ixtaca Project's MIA, along with that of any other open-pit mine. As he told the journalist: "[H]e is a consistent man, he is not like others, *I have absolute confidence in him*."[832]

285. Mexico's further assertion, namely, that the Claimants' references to the public statements of AMLO and Secretaries Toledo and Albores "intentionally omit the fact that several mining Projects exist in Puebla and their project is not the only one," is equally unavailing.[833] Secretary Toledo's statements regarding the Ixtaca Project were made at a forum at the *Benemérita Universidad Autónoma de Puebla*, while SEMARNAT was still evaluating Minera Gorrión's MIA.[834] As the video of his statements reflects, Secretary Toledo was asked "what [would] happen with ***the open-pit mining project in Ixtacamaxtitlán***" because "soon SEMARNAT will decide on exploitation."[835] Secretary Toledo answered unequivocally: "With respect to Ixtacamaxtitlán, SEMARNAT will not allow it . . . No, we, SEMARNAT, will not allow it."[836] Contemporaneous press coverage of the forum affirms this, reporting Secretary Toledo as

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831 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

832 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 31 October 2019, available at https://lopezobrador.org.mx/2019/10/31/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-187/, **Exhibit C-711**.

833 Counter-Memorial, at para. 440.

834 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, **Exhibit C-309**.

835 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, (emphases added) **Exhibit C-309**.

836 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, **Exhibit C-309**.

saying: "[W]ith SEMARNAT, ***Ixtaca*** will not happen [because] the most important task of the government is to promote social power. [The Mexican Government] will do nothing that does not seek to empower communities."[837] Secretary Toledo was not referring to any other mining project in Puebla, and Mexico's suggestion to the contrary is disingenuous at best.

286. In another baseless attempt to excuse Secretary Toledo's statements, Mexico asserts that his comments were made "in the context of social responsibility towards indigenous communities and in response to a question from a local resident who referred to various projects in the region."[838] Mexico again misrepresents the record. At the forum, Secretary Toledo answered an explicit question about "***the*** open-pit mining project in Ixtacamaxtitlán."[839] The question was not referring to multiple projects – nor did Secretary Toledo say that the Ixtaca Project and its MIA would be fairly evaluated, or that its approval would turn on technical standards. He said, categorically, it "will not happen." True to his word, two months later, SEMARNAT suspended its review of the MIA without any legal basis,[840] and, in December 2020, proceeded to deny the MIA in full.[841] These decisions, as set out in the Memorial and below, were the result of political directives, not the product of a good faith regulatory review process.[842]

287. Mexico further argues that the prior professional experience of Secretaries Toledo and Albores in environmental activism "does not constitute an impediment to their performance as public servants."[843] The Claimants have not argued otherwise. The Claimants do not challenge their environmental activism backgrounds in the abstract; rather, the Claimants emphasize that AMLO appointed these individuals because he believed that they would faithfully implement his anti-mining policies. AMLO confirmed as much when he replaced Secretary Toledo with Secretary Albores. At the *mañanera* announcing the appointment, AMLO underscored:

> The transition is continuity with change, continuity with change because the same policy continues. Maria Luisa Albores, in addition

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837 Lado B, *Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán "no va a ser*," dated 29 August 2019, available at https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307**.

838 Counter-Memorial, at para. 438.

839 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, (emphases added) **Exhibit C-309**.

840 Memorial, at para. 319.

841 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**.

842 Memorial, at paras. 328-331.

843 Counter-Memorial, at para. 440.

> to being a woman of principles and a professional, is an environmentalist. Yes, she is part of the same team as Toledo[.] I met them both in Puebla . . . at a cooperative. There, they have accomplished incredibly important things in defending the environment, specifically in protecting the land and opposing projects like mining or other polluting initiatives. So, Maria Luisa Albores will act with the same integrity as Victor Manuel Toledo."[844]

288. Mexico characterizes AMLO's statement as referring "only to the context in which [AMLO] met the two former heads of SEMARNAT in Puebla, where they took actions to benefit the environment . . . and he never named the Project or instructed measures against the Claimants."[845] Again, Mexico misses the point. AMLO's appointment of Secretary Albores was the installation of a partisan loyalist who, like Secretary Toledo, would carry out AMLO's anti-mining mandate without question.[846] AMLO said it himself: the transition was "*continuity with change because the same policy continues*."[847] There is no clearer affirmation of the partisan mission of the appointment, other than AMLO's 11 June 2024 *mañanera*, at which he praised Secretary Albores's unwavering commitment to his anti-mining policy:

> I also want to take this opportunity to agree with you on the work María Luisa Albores has done at the Ministry of Environment; she is a first-class public servant. I have been fortunate to have a great team, and María Luisa's case, as you have observed, is exemplary. We have made significant progress in the conservation of reserves, flora, and fauna, and in refusing to grant permits for mining extraction following the excess of concessions handed out during the neoliberal period [. . .] we have not issued one permit, one single authorization.
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> [. . .]
>
> And the landowners – communal landholders, small property owners, *ejidatarios* – don't even know what lies beneath their land, and a concession has already been given because no information was ever

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844 Conferencia matutina de AMLO, Milenio YouTube Channel, dated 3 September 2020, available at https://www.youtube.com/watch?v=V1frDFYHVsM, **Exhibit C-529**.

845 Counter-Memorial, at para. 437.

846 McDonald WS-2, at Section 10.

847 Conferencia matutina de AMLO, Milenio YouTube Channel, dated 3 September 2020, available at https://www.youtube.com/watch?v=V1frDFYHVsM, **Exhibit C-529**.

> provided. *So, we made the decision not to issue any new concessions, and we've honored that commitment*.[848]

289. Ignoring AMLO's own words, Mexico next tries to deny the existence of any political directive or *de facto* mining ban, asserting that the absence of new concessions or open-pit mining projects during AMLO's administration was simply "a direct consequence of the progressiveness of environmental and regulatory standards."[849] Mexico's assertion is as absurd as it is untrue. The record is replete with public statements by AMLO and Secretaries Toledo and Albores tying the absence of new mining concessions and new open-pit mining permits to AMLO's policy and directives. Indeed, in AMLO's 11 June 2024 *mañanera* quoted above, he himself underscored that: "*[W]e made the decision not to issue any new concessions, and we've honored that commitment*."[850] AMLO did not refer to any purported progressive changes to environmental and regulatory standards – he referred to a "decision" that he and Secretary Albores had "honored" in not issuing "one permit, one single authorization." This is further confirmed by sworn testimony Secretary Albores gave before Mexico's Chamber of Deputies.

290. Testifying under oath before the Environment, Sustainability, Climate Change, and Natural Resources Commission in November 2020, Secretary Albores described her position on mining as follows:

> When you do mining, you say no to life . . . because mining – not only open-pit mining – takes away flora and fauna. It takes away the wealth of the subsoil and leaves poverty; wealth goes only to a few.[851]

291. Asked by Representative Frida Esparza about her "position with respect to open-pit mining, promoted by Canadian companies," like the Claimants, Secretary Albores confirmed that her

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848 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 11 June 2024, available at https://lopezobrador.org.mx/2024/06/11/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-1199/, **Exhibit C-712**.

849 Counter-Memorial, at para. 439.

850 AMLO webpage, "Versión estenográfica de la conferencia de prensa matutina del presidente Andrés Manuel López Obrador," dated 11 June 2024, available at https://lopezobrador.org.mx/2024/06/11/version-estenografica-de-la-conferencia-de-prensa-matutina-del-presidente-andres-manuel-lopez-obrador-1199/, **Exhibit C-712**.

851 Cámara de Diputados del Honorable Congreso de la Unión, LXIV Legislatura, "*Comparecencia de la secretaria de Medio Ambiente y Recursos Naturales, María Luisa Albores González, ante la Comisión de Medio Ambiente, Sustentabilidad, Cambio Climático y Recursos Naturales*," dated 4 November 2020, available at https://cronica.diputados.gob.mx/Ve04nov2020-MedioAmbiente.html, **Exhibit C-713**.

position was the same as AMLO's and that AMLO "ha[d] said it repeatedly . . . *no more open-pit mining concessions will be allowed*."[852]

292. At the same hearing, Secretary Albores extended AMLO's anti-mining policy to existing mining concessions: "in places where [exploration and exploitation] concessions have been granted . . . those concessions . . . will be reviewed."[853] Pressed by Representative Adriana Teissier on how the Mexican Government would protect the human rights of communities, Secretary Albores doubled down. SEMARNAT, she said, was "about to begin a very serious review process of which are the protected natural areas where mining exploration concessions have been granted," and "open-pit mining in a protected natural area is an activity that should not happen."[854] In other words, six weeks before SEMARNAT's final decision on the Claimants' MIA, Ms. Albores affirmed that the fate of the Ixtaca Project had already been sealed.[855]

293. Secretary Albores's comments, moreover, were not one-off. In May 2021, standing alongside AMLO at another one of his *mañaneras*, Secretary Albores attributed the complete denial of open-pit mining permits to the moment "our President announced its ban," confirming that, "*since then, SEMARNAT has not granted one single permit*."[856]

294. AMLO did not stop at SEMARNAT. He extended his anti-mining campaign to Economía by replacing Secretary Clouthier with Ms. Buenrostro on 6 October 2022.[857] The timing was not coincidental. As set forth further below, Secretary Buenrostro promptly reversed the work

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852 Cámara de Diputados del Honorable Congreso de la Unión, LXIV Legislatura, "*Comparecencia de la secretaria de Medio Ambiente y Recursos Naturales, María Luisa Albores González, ante la Comisión de Medio Ambiente, Sustentabilidad, Cambio Climático y Recursos Naturales*," dated 4 November 2020, available at https://cronica.diputados.gob.mx/Ve04nov2020-MedioAmbiente.html, **Exhibit C-713**.

853 Cámara de Diputados del Honorable Congreso de la Unión, LXIV Legislatura, "*Comparecencia de la secretaria de Medio Ambiente y Recursos Naturales, María Luisa Albores González, ante la Comisión de Medio Ambiente, Sustentabilidad, Cambio Climático y Recursos Naturales*," dated 4 November 2020, available at https://cronica.diputados.gob.mx/Ve04nov2020-MedioAmbiente.html, **Exhibit C-713**.

854 Cámara de Diputados del Honorable Congreso de la Unión, LXIV Legislatura, "*Comparecencia de la secretaria de Medio Ambiente y Recursos Naturales, María Luisa Albores González, ante la Comisión de Medio Ambiente, Sustentabilidad, Cambio Climático y Recursos Naturales*," dated 4 November 2020, available at https://cronica.diputados.gob.mx/Ve04nov2020-MedioAmbiente.html, **Exhibit C-713**.

855 McDonald WS-2, at Section 10.

856 *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, available at https://www.youtube.com/watch?v=oTicTRLrWyQ (Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

857 *Correspondence to Secretary of Economy Tatiana Clouthier on Ixtaca Project Visit*, dated 7 October 2022, available at https://www.youtube.com/watch?v=gF7Mex2nvus, **Exhibit C-549**.

Secretary Clouthier had done with Minera Gorrión to prepare for the indigenous consultations the Supreme Court had ordered.[858] Unlike Secretary Clouthier, Secretary Buenrostro's public position on mining was consistent with AMLO's anti-mining policy.[859] When asked why the Mexican Government was not granting mining concessions, Secretary Buenrostro replied:

> Mines are no saints, they have issues everywhere in the world . . . smuggling in mining is the second largest . . . mining companies pay [taxes on] 0.002% of their overall income . . . it makes no sense to continue granting concessions . . . we are doing a complete purge, I think it is one of the areas with the largest corruption levels at Economía.[860]

295. Mexico's final defense pivots to the Legislature. With regard to the sweeping regulatory changes enacted under the AMLO administration, Mexico notes in passing that "the Claimants overlook the fact that changes to regulations are an exclusive attribution of the legislative branch."[861] Mexico's attempt to separate AMLO's political agenda from the regulatory changes enacted during his administration is disingenuous and without basis.

296. *First*, as Mexico knows, AMLO and his MORENA party controlled the legislative branch. He had "absolute majority in Congress since the beginning of his presidency" and enacted 23 constitutional reforms, with a 72% approval rate on his legislative initiatives.[862] *Second*, in her sworn testimony before the Chamber of Deputies on 30 November 2023, Secretary Albores herself testified that "in coordination with Economía, [SEMARNAT] had promoted amendments to different mining and environmental laws [including] the Mining Law, the General Law on Environmental Balance and Protection, the National Waters Law, and the General Law on the Prevention and Comprehensive Management of Waste."[863] *Third*, AMLO himself proposed, championed, and publicly took credit for these regulatory reforms as the policy of his administration – submitting the initiative to Congress on 28 March 2023 and, in

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858 *See infra* Section 2.17.

859 Santamaría Tovar WS-2, at Section 10.

860 SPR Informa, *Mineras prácticamente no pagan impuestos: Raquel Buenrostro*, dated 8 December 2022, **Exhibit C-109**; La Jornada, *Mineras pagan impuestos de sólo 0.002% de sus ingresos: Buenrostro*, dated 8 December 2022, **Exhibit C-710**.

861 Counter-Memorial, at para. 442.

862 Milenio, *AMLO aumenta marcador en reformas constitucionales y va por más durante su sexenio*, dated 29 January 2024, **Exhibit C-715**.

863 Cámara de Diputados del Honorable Congreso de la Unión, LXIV Legislatura, *Comparecencia de la secretaria de Medio Ambiente y Recursos Naturales, María Luisa Albores González, ante la Comisión de Medio Ambiente, Sustentabilidad, Cambio Climático y Recursos Naturales*, dated 30 November 2023, **Exhibit C-714**.

his Fifth Annual Address to Congress, claiming that "the publication of the Mining Law . . . ends a period of more than 30 years in which the public interest was disrupted."[864]

297. Finally, it is worth pausing here to note that Mexico's defense of the AMLO administration's treatment of the Ixtaca Project rests on argument alone. Mexico has not proffered testimony from AMLO or from Secretaries Toledo, Albores, or Buenrostro. Mexico also has not proffered testimony from Secretary Clouthier.

298. Notably, Secretaries Albores, Buenrostro, and Clouthier all hold senior positions in President Sheinbaum's administration as General Director of Food for Wellbeing,[865] Secretary of Anticorruption and Good Governance,[866] and Head of the Institute for Mexicans Abroad, respectively.[867] So too does the former Undersecretary of Mining, Mr. Francisco Quiroga, now Mexico's Ambassador to Germany.[868] Mexico presents no testimony from any of them. The Tribunal should draw the obvious inference: their testimony would confirm what the record already shows, namely, that the rejection of the MIA and the cancellation of the Concessions were not the result of an objective or fair administrative process, but rather were the product of political decisions to carry out AMLO's *de facto* mining ban.

2.11. SEMARNAT Violated Minera Gorrión's Due Process Rights During The Assessment Of Its MIA

299. As the Claimants demonstrated in the Memorial, Minera Gorrión's MIA for the Ixtaca Project complied in full with the legal and technical requirements of the LGEEPA and R-LGEEPA, and was supported by comprehensive technical information prepared by independent consultants.[869] However, rather than evaluating the MIA in accordance with an objective procedure as required under Mexican and international law, SEMARNAT repeatedly

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[864] Expansión, *El impacto de la política minera de AMLO en el sector... cinco años después*, dated 4 September 2023, available at https://expansion.mx/empresas/2023/09/04/el-impacto-de-la-politica-minera-de-amlo-en-el-sector, **Exhibit C-716**.

[865] Directora General de Alimentación para el Bienestar, Directorio, available at https://www.gob.mx/segalmex/estructuras/maria-luisa-albores-gonzalez-380745 (last accessed 14 May 2026), **Exhibit C-717**.

[866] Secretaria Anticorrupción y Buen Gobierno, Directorio, available at https://www.gob.mx/buengobierno#11452 (last accessed 14 May 2026), **Exhibit C-718**.

[867] Instituto de los Mexicanos en el Exterior webpage, Directorio, available at https://ime.gob.mx/directorio (last accessed 14 May 2026), **Exhibit C-719**.

[868] Embajada de México en Alemania, "Embajador," available at https://embamex.sre.gob.mx/alemania/index.php/es/equipo (last accessed 14 May 2026), **Exhibit C-720**.

[869] Memorial, at Section 2.14.2; Pablo-Dorantes WS, at para. 23; Limón ER-1, at paras. 108-109.

disregarded Minera Gorrión's due process rights and managed the evaluation process in an irregular and arbitrary manner:[870]

a) *First,* SEMARNAT postponed the public consultation meeting, or *Reunión Pública de Información* ("**RPI**"), on pretextual grounds and then conducted it in a biased manner that suppressed community voices that were supportive of the Project.[871]

b) *Second,* SEMARNAT overlooked Minera Gorrión's timely and complete response to each one of SEMARNAT's requirements in its Request for Additional Information (*Requerimiento de Información Adicional*) ("**RAI**"), despite extending the ordinary period of evaluation by 60 days.[872]

c) *Third,* SEMARNAT solicited and relied on untimely technical opinions, including from the *Dirección General de Vida Silvestre* ("**DGVS**") and the *Dirección General de Gestión Forestal y de Suelos* ("**DGGFS**"), to deny the MIA outright without giving Minera Gorrión an opportunity to review or respond to those opinions.[873]

d) *Fourth and finally,* SEMARNAT suspended the MIA evaluation process on a spurious and pretextual basis, namely the injunction in the unrelated and foreknown Tecoltemi *amparo* proceeding to which SEMARNAT was not even a party.[874]

300. These actions were consistent with Mexico's blanket policy directive, in place since AMLO took office on 1 December 2018, to block open-pit mining projects.[875] This directive permeated the entire MIA evaluation from the moment Minera Gorrión submitted the MIA in February 2019, and through SEMARNAT's MIA Denial Decision in December 2020. Indeed, as Secretary of SEMARNAT María Luisa Albores declared before the Federal Chamber of Representatives six weeks before SEMARNAT rejected the Ixtaca MIA, "[w]e emphasize once again: *Permits are not granted for the exploration and exploitation phases when it comes to open-pit mining or open-cut mining*."[876]

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870 Memorial, at paras. 288-327, 592; Limón ER-1, at Section III; Pablo-Dorantes WS, at Sections 5-6; Limón ER-2, at Section III; Pablo-Dorantes WS-2, at Sections 2-3.

871 Memorial, at paras. 287-298; Pablo-Dorantes WS, at paras. 45-56; First Santamaría Tovar WS, at paras. 92-105.

872 Memorial, at paras. 299-304; Pablo-Dorantes WS, at paras. 57-69.

873 Memorial, at paras. 305-310, 332-337; Pablo-Dorantes WS, at paras. 70-79.

874 Memorial, at paras. 311-327; Pablo-Dorantes WS, at Section 7.

875 *See supra* Section 2.10; Memorial, at Section 2.14.4.

876 H. Cámara de Diputados, Sesión 4 de noviembre de 2020, Minutes: 3:05:11-3:06:11, *available at* https://x.com/Mx_Diputados/status/1324035146316619776, ("*[E]n el caso de la opinión de minería, recordar que el Presidente,*

301. In its Counter-Memorial, Mexico attempts to normalize each of the abovementioned irregularities in the MIA process. In particular, it argues that:

a) Mexican law and SEMARNAT's operational needs justified the delays and rescheduling of the RPI,[877] and SEMARNAT conducted the RPI fairly and in accordance with applicable regulations.[878]

b) SEMARNAT acted within its discretion in soliciting and relying on additional technical opinions, including from the DGVS and the DGGFS. Moreover, SEMARNAT did not impair Minera Gorrión's due process rights because the company had access to the case file and could have voluntarily commented on such opinions. It could also have challenged any procedural deficiency before the Mexican courts or submitted a brand new MIA.[879]

c) The suspension of the MIA evaluation procedure constituted a prudent measure to respect the Tecoltemi *amparo* injunction, indigenous rights, and "the right to a healthy environment for the development and well-being of the people."[880] Mexico further contends that Minera Gorrión had an adequate opportunity to challenge the suspension before the Second District Court.[881]

302. As demonstrated in the sections that follow, Mexico's attempts to excuse SEMARNAT's numerous due process failings are baseless. Its arguments are contradicted by the applicable legal framework, the evidentiary record, and the testimony of the Claimants' witnesses and experts. In the remainder of this section, the Claimants will address the following issues:

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el primero de septiembre hizo hincapié que no se ha dado ningún permiso para fase de exploración. Las fases de minería es: fases de exploración para saber qué mineral hay, y para saber si se le puede entrar. Y después viene la fase de explotación. ***Volvemos a hacer hincapié: No se dan permisos para fase de exploraciones y explotación si estamos hablando de minería a cielo abierto o a tajo abierto****. En lugares que tienen esa actividad y esa concesión no en 2020, no en 2019, que la tienen desde hace tiempo, pues son concesiones que ya se entregaron y ya se dieron. Si el hacer una revisión de eso.*" English translation: "*[I]n the case of the mining opinion, recall that the President, on the first of September, emphasized that no permit has been granted for the exploration phase. The phases of mining are: exploration phases to determine what mineral is there, and to determine whether it can be pursued. And then comes the exploitation phase.* ***We emphasize once again: Permits are not granted for the exploration and exploitation phases when it comes to open-pit mining or open-cut mining****. In places that have that activity and that concession – not in 2020, not in 2019 – that have had it for some time, well, those are concessions that were already awarded and already granted. Whether to conduct a review of that.*") (emphasis added), **Exhibit C-631**.

877 Counter-Memorial, at paras. 217-229.

878 Counter-Memorial, at para. 227.

879 Counter-Memorial, at paras. 237, 239; *see also* Counter-Memorial, at paras. 235-251; Del Razo-Rábago ER, at paras. 220-230.

880 Counter-Memorial, at para. 255; *see also* Counter-Memorial, at paras. 252-262.

881 Counter-Memorial, at para. 256.

a) SEMARNAT's undue delay of the RPI on pretextual grounds and its biased conduct that suppressed pro-Project community voices (**Section 2.11.1**);

b) SEMARNAT's failure to identify any deficiency in Minera Gorrión's robust and complete RAI response (**Section 2.11.2**);

c) SEMARNAT's violation of Minera Gorrión's due process rights through its belated solicitation and concealment of technical opinions, including those from DGVS and DGGFS (**Section 2.11.3**); and

d) SEMARNAT's arbitrary suspension of the MIA evaluation (**Section 2.11.4**).

2.11.1. SEMARNAT Unduly Delayed the RPI and Conducted It in a Biased Manner That Suppressed Pro-Project Community Voices

2.11.1.1. SEMARNAT unduly delayed and postponed the RPI

303. As the Claimants explained in the Memorial,[882] Mexico was obliged to schedule the RPI within 25 days of the request for an RPI from members of the Ixtacamaxtitlán municipality, and was then required to hold the RPI within 5 days from that date, *i.e.*, by 8 May 2019.[883] Mexico, however, failed to comply with that deadline and instead twice postponed the RPI: *first*, on the basis that it was necessary to avoid the RPI being perceived as "an act of political partisanship" in the context of upcoming local elections;[884] and *second*, due to the change of the Secretary of SEMARNAT.[885]

304. As the Claimants demonstrated in the Memorial, an RPI is not a political act but a public information session about a commercial project and should not have been politicized. However, AMLO's politicization of the mining sector was already well underway at that point.[886] As for the change of Secretary, this did not justify the postponement of the RPI. The head of SEMARNAT rarely – if ever – attends RPIs. Indeed, SEMARNAT's newly appointed Secretary, Mr. Toledo, did not attend the rescheduled RPI that took place on 25 June 2019.[887]

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882 Memorial, at para. 290.

883 Memorial, at para. 289; Gaceta Ecológica No. DGIRA/023/19, dated 2 May 2019, at p. 11, **Exhibit C-283**.

884 *Gaceta Ecológica No. DGIRA/023/19,* dated 2 May 2019, at p. 11, **Exhibit C-283**; Official letter in which the Government of Puebla recommended that public meetings not be held due to the state electoral process, dated 22 April 2019, **Exhibit CRCR-13**.

885 Memorial, at para. 292; Oficio No. UCPAST/19/434/1-4 from UCPAST at SEMARNAT to Minera Gorrión, dated 10 June 2019, **Exhibit C-291**.

886 Memorial, at para. 290; Pablo-Dorantes WS, at para. 47.

887 SEMARNAT, Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerales Ixtaca", dated 25 June 2019, **Exhibit C-74**.

In any event, the contemporaneous record shows that coordinated NGO pressure, not the change of Secretary, drove the postponement.[888]

305. In the Counter-Memorial, Mexico argues that the postponements of the RPI were warranted. Regarding the first postponement, Mexico merely repeats the justification given by SEMARNAT for the postponement, namely that it was necessary to preserve electoral fairness during the Puebla State elections held during April and May 2019.[889]

306. Regarding the second postponement, Mexico argues that it "can be considered acceptable" because "when the head of an agency changes, this directly affects the entire administrative hierarchy, causing a delay in the normal course of proceedings."[890] Mexico further asserts that "postponing the Public Consultation cannot be considered disruptive to Minera Gorrión's plans or confusing to the Tecoltemic community. That could only mean that the Plaintiffs had a plan in place to pressure or distract the community."[891]

307. With respect to the first postponement, the Claimants should clarify the record. Given the political environment in Ixtacamaxtitlán and the upcoming State elections, the Municipal President of Ixtacamaxtitlán petitioned DGIRA to postpone the RPI until after the elections.[892] Minera Gorrión consented. The Claimants therefore take no issue with the first postponement. The second postponement, however, is an entirely different matter.

308. Mexico's argument regarding the replacement of the Secretary of SEMARNAT justifying postponing the RPI is baseless. Mexico's argument that the change in leadership at SEMARNAT "directly affects the entire administrative hierarchy" [893] and therefore necessitated the postponement is misconceived for several reasons.

309. *First*, by the time SEMARNAT announced the postponement on 10 June 2019,[894] the day before it was due to take place, its regional officials had already arrived in the area unaware of

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888 Memorial, at paras. 292-293; Letter from SEMARNAT to Minera Gorrión appending letter from Atcolhua SEMARNAT, dated 12 June 2019, **Exhibit C-300**.

889 Counter-Memorial, at para. 219.

890 Counter-Memorial, at para. 221.

891 Counter-Memorial, at para. 226.

892 Letter from the president of Ixtacamaxtitlán to DGIRA, dated 2 April 2019, **Exhibit C-824**.

893 Counter-Memorial, at para. 221.

894 Gaceta Ecológica No. DGIRA/031/19, dated 10 June 2019, **Exhibit C-290**.

the cancellation, the organizers had prepared the auditorium, and all logistical arrangements were in place.[895] The RPI therefore could and should have simply gone ahead as planned.

310. *Second,* Dr. Limón Aguirre – who served 12 years at SEMARNAT, 6 of them as *Subsecretario de Gestión para la Protección Ambiental*, the Subsecretariat that supervises DGIRA – confirms that the operative capabilities of the agency do not depend on a political appointment like the Secretary of SEMARNAT.[896] Indeed, during his tenure as *Subsecretario*, Dr. Limón Aguirre experienced three changes in SEMARNAT's Secretary and not once did SEMARNAT reschedule an RPI as a result.[897]

311. *Third,* and importantly, the contemporaneous record confirms that coordinated NGO pressure – not the change of Secretary – drove the postponement.[898] Documents obtained through production in this arbitration reveal that as early as 29 April 2019, six weeks before the postponement, UCPAST's Director, José Luis Bravo Soto, met with representatives of CESDER and PODER to discuss the RPI.[899] On 4 June 2019, Mr. Bravo Soto called PODER's Julieta Lamberti to ask whether PODER and other NGOs would oppose Minera Gorrión offering food at the RPI.[900] Five days later, the anti-mining NGO, Atcolhua wrote to SEMARNAT urging it to cancel the RPI, alleging that Minera Gorrión's auditorium renovations and refreshment arrangements constituted "pressure."[901] On 10 June 2019 – the very day SEMARNAT announced the postponement – PODER tweeted that the decision reflected "community opposition," not the change of Secretary.[902]

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895 Santamaría Tovar WS, at para. 97. Pablo-Dorantes WS-2, at para. 8.

896 Limón ER-2, at paras. 69.

897 Limón ER-2, at para. 70.

898 Santamaría Tovar WS-2, at para. 98; *Compare* Letter from SEMARNAT to Minera Gorrión appending letter from Atcolhua to SEMARNAT, dated 12 July 2019, **Exhibit C-300**; *and* Letter from Atcolhua to SEMARNAT, dated 9 June 2019, at p. 2 (with unredacted names of [redacted] from CESDER and Julieta Lamberti from PODER and their meetings with UCPAST), **Exhibit C-622**.

899 The *Unidad Coordinadora de Participación Social y Transparencia* ("**UCPAST**"), is a department within SEMARNAT responsible for, among other things, liaising with stakeholders on any project involving the environmental authority, to determine what the next step should be. *See* Memorial, at para. 186.

900 Santamaría Tovar WS-2, at para. 99.

901 Santamaría Tovar WS-2, at para. 99; Letter from Atcolhua to SEMARNAT, dated 9 June 2019, at p. 3, (with unredacted names of [redacted] from CESDER and Julieta Lamberti from PODER and their meetings with UCPAST), **Exhibit C-622**.

902 Santamaría Tovar WS-2, at para. 100; Letter from Minera Gorrión to UCPAST, dated 13 June 2019, appending PODER Tweet, dated 10 June, **Exhibit C-608**.

312. The sequence is clear: SEMARNAT solicited the opposition of anti-mining NGOs, who then coordinated a campaign to derail the RPI.[903] SEMARNAT capitulated, and then invoked the change of Secretary as a pretext to justify a postponement that NGO pressure had already secured.

313. Mexico's Counter-Memorial does not engage with this contemporaneous evidence. Instead, it argues that the Claimants "seek to minimize the legitimate concerns of the Tecoltemic community and NGOs about Minera Gorrión's possible undue interference in the Public Consultation."[904] But there was no basis for such concerns. Mexico's allegation of "possible undue interference" here is based on the fact that the Claimants planned to provide food to the RPI's attendees, had renovated the auditorium where the RPI was due to be held, and intended to discuss local employment opportunities during the RPI.[905] Plainly, none of these acts can be characterized as undue interference.[906] The first – namely that the Claimants would provide food to attendees – is trivial on its face. The RPI lasted over five hours – almost a full working day for attendees, many of whom had forgone their daily wages to participate.[907] The refreshments comprised a modest selection of water, soft drinks and light snacks.[908] Providing limited refreshments of this nature was entirely humane and appropriate,[909] and the idea that it would constitute undue influence does not withstand scrutiny.

314. As for the auditorium, the so-called "renovations" (pictured below) consisted of installing screens and microphones so that attendees could see visual presentations and hear the discussions clearly.[910] These actions were not targeted to unduly influence or pressure the community – they were basic logistical measures to facilitate meaningful public participation in the RPI.[911]

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903 Santamaría Tovar WS-2, at para. 103; Letter from Atcolhua to SEMARNAT, dated 9 June 2019, at p. 2 (with unredacted names of [redacted] from CESDER and Julieta Lamberti from PODER and their meetings with UCPAST), **Exhibit C-622**.

904 Counter-Memorial, at para. 225.

905 Memorial, at para. 293.

906 Pablo-Dorantes WS-2, at paras. 9-12.

907 Pablo-Dorantes WS-2, at para. 9; SEMARNAT, Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca", dated 25 June 2019, at pp. 1-7, **Exhibit C-74**.

908 Pablo-Dorantes WS-2, at para. 9.

909 Santamaría Tovar WS-2, at para. 97.

910 Pablo-Dorantes WS-2, at para. 11.

911 Pablo-Dorantes WS-2, at para. 11.



Photograph of the Santa María Zotoltepec auditorium showing the chairs, screens, and audio system that Minera Gorrión installed to facilitate effective participation ahead of the first RPI scheduled for 10 June 2019.[912]

315. Mexico's purported concerns regarding references to potential employment opportunities from the Project are similarly untenable. The socioeconomic impact of a proposed project – including its capacity to generate local employment – is an integral component of any public consultation process with respect to a mining project,[913] and was precisely the type of information the RPI attendees were entitled to be apprised of.[914] Taken to its logical extension, Mexico's position would require applicants to conceal the economic benefits of their projects from the communities most directly affected by them – an absurd result that would undermine the transparency objectives of the public consultation process.

2.11.1.2. SEMARNAT carried out a biased RPI

316. As the Claimants demonstrated in the Memorial, SEMARNAT conducted the RPI in a manifestly unbalanced manner – halving Minera Gorrión's presentation time, restricting the topics it could address, and skewing the allocation of presentations in favor of the Project's opponents while denying pro-Project community members the opportunity to present.[915]

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912 Pablo-Dorantes WS-2, at para. 11.

913 Letter from Minera Gorrión to the Director General of Impact and Environmental Risk at SEMARNAT (appending the newspaper article publishing the excerpt of the MIA), dated 22 March 2019, **Exhibit C-278**.

914 *See infra* Section 2.12; *see also* Pablo-Dorantes WS, at para. 54.

915 Memorial, at para. 296.

317. In the Counter-Memorial, Mexico advances three arguments in relation to the development of the RPI.[916] *First,* it contends that Minera Gorrión's pre-RPI activities to promote attendance transformed the event into a "political rally" in favor of the Project, and that SEMARNAT had to instruct Minera Gorrión to refrain from further spreading the call to the RPI "by other means."[917] *Second,* Mexico asserts that SEMARNAT conducted the RPI in full compliance with its regulations.[918] *Third*, Mexico argues that the Claimants never raised objections to the conduct of the RPI through the available legal channels, and that their failure to do so amounts to tacit acceptance of the proceedings as conducted.[919] These arguments are unavailing.

318. Regarding Mexico's first assertion, as Mr. Santamaría Tovar clarifies in his First Witness Statement, this complaint referred to Minera Gorrión's use of a loudspeaker mounted on a truck to promote community attendance – a standard practice that Minera Gorrión had followed for years at important events and that no Mexican authority had ever found contrary to any regulation until the RPI.[920] Mexico's Counter-Memorial does not engage with Mr. Santamaría Tovar's testimony.

319. Moreover, what Mexico characterizes as a "political rally," on the basis that some RPI attendees wore Minera Gorrión shirts and caps, amounted to nothing more than the spontaneous expression of support by those in the community who favored the Project – support that, as Mr. Santamaría Tovar describes, community members expressed "with an undeniable sense of enthusiasm," as the contemporaneous videoclip of the RPI confirms.[921]

320. Mexico's bare assertion that DGIRA "conducted the Public Consultation in accordance with its regulations" and that "the time allocated to each intervention was equitable" contradicts the documentary record and the unrebutted testimony of Dr. Pablo-Dorantes and Mr. Santamaría Tovar – neither of which Mexico's Counter-Memorial engages with.[922] As the Claimants demonstrated in the Memorial,[923] when DGIRA rescheduled the RPI for 25 June 2019, it

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916 Counter-Memorial, at paras. 223-229.

917 Counter-Memorial, at para. 224.

918 Counter-Memorial, at para. 227.

919 Counter-Memorial, at para. 229.

920 Santamaría Tovar WS, at para. 97.

921 Santamaría Tovar WS, at para. 100; Minera Gorrión YouTube Channel, *Reunión Pública de Información 'Proyecto de Explotación y Beneficio de Minerales Ixtaca' RPI*, dated 28 June 2019, *available at* https://www.youtube.com/watch?v=0LBUun_uL9A, **Exhibit C-297**.

922 Santamaría Tovar WS, at para. 101; Pablo-Dorantes WS-2, at para. 7.

923 Memorial, at para. 296.

halved Minera Gorrión's presentation time from 90 minutes to 45 minutes without explanation, departing from its own prior practice for comparable projects.[924]

321. DGIRA then confined Minera Gorrión to discussing only flora and fauna, arguing that environmental rehabilitation and socioeconomic impacts were "not directly relevant" to the RPI process.[925] But these arguments were baseless. Environmental rehabilitation is obviously directly relevant to the MIA process. Regarding socioeconomic impacts, as Dr. Pablo-Dorantes explains, these impacts directly inform the definition of a project's area of influence,[926] and in turn determine the scope of the environmental impacts and mitigation measures that the RPI exists to discuss.[927] They are therefore entirely legitimate topics for discussion at an RPI. Indeed, Mexico acknowledges this fact in its Counter-Memorial, characterizing community members' questions about socioeconomic issues such as employment at the RPI as "legitimate concerns."[928]

322. Meanwhile, SEMARNAT allowed opposition groups to present on topics that bore no relationship to the Ixtaca Project's environmental impacts – including generic allegations regarding the "death of animals" caused by the mining industry as a whole, and the alleged "abuse" of Canadian companies worldwide.[929] The asymmetry was stark: SEMARNAT silenced Minera Gorrión on issues directly relevant to the impact of the Project on the RPI's attendees, whilst simultaneously allowing the Project's opponents to use the RPI process to advance irrelevant anti-mining and anti-Canadian political polemics.[930]

323. SEMARNAT also skewed the allocation of presentation time against the company and its supporters. While it allowed 22 presentations from NGOs and aligned community members consuming approximately two hours of the RPI,[931] it denied presentations from community

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924 *See Tiempos RPI de la 4T,* Excel spreadsheet, **Exhibit C-450**.

925 Santamaría Tovar WS-2, at para. 101; Santamaría Tovar WS, at para. 102.

926 Pablo-Dorantes WS-2, at paras. 22-24.

927 R-LGEEPA, at Article 43, **Exhibit C-166**.

928 Counter-Memorial, at para. 228.

929 *See* Santamaría Tovar WS, at para. 102.

930 Santamaría Tovar WS-2, at para. 102; Santamaría Tovar WS, at para. 102.

931 SEMARNAT, Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca", dated 25 June 2019, at p. 5-6, **Exhibit C-74**; Santamaría Tovar WS, at para. 102; Email chain between PODER and SEMARNAT, dated May-June 2019, **Exhibit C-644**; Presentation Request Form for submitting comments and/or proposals to the RPI completed by Consejo Tiyat Tlali, dated 25 June 2019, **Exhibit C-645**; Consejo Tiyat Tlali, *Observaciones y comentarios a la MIA del proyecto denominado "PROYECTO DE EXPLOTACION Y BENEFICIO DE MINERALES IXTACA" con clave de proyecto 21PU2019M0014*, PowerPoint Presentation, dated 25 June 2019, **Exhibit C-610**; Unión de Ejidos y Comunidades en Defensa de la Tierra, Agua y Vida Atcolhuac, *Impacto del proyecto minero Ixtaca, datos*,

members who supported the Project on trivial procedural grounds.[932] Mexico's Counter-Memorial does not engage with these specific facts, offering only a blanket assertion that the time allocation was equitable.[933]

324. Mexico's document production in this arbitration has confirmed what the Claimants suspected at the time: that UCPAST systematically tilted its screening process for accepting presentations at the RPI in favor of the Project's opponents.[934] UCPAST's screening process itself was straightforward: prospective presenters submitted their proposed presentations to UCPAST, which summarily accepted or rejected each submission by email based primarily on whether or not it pertained to an environmental matter.[935]

325. The documents show that UCPAST rejected presentations from community members and local residents who supported the Project on the ground that they lacked "legal and technical observations related to environmental impact."[936] Meanwhile, it accepted presentations from NGOs whose content bore no connection whatsoever to the Ixtaca Project's environmental impacts. By way of illustrative example:

a) On 24 May 2019, Ms. [redacted] – a resident of Santa María Zotoltepec and Minera Gorrión's community relations officer[937] – submitted a presentation titled "The Impact of the Ixtaca Project on the Socioeconomic Environment of Ixtacamaxtitlán"[938]

PowerPoint Presentation, dated May-June 2019, **Exhibit C-646**; *Análisis Técnico "PROYECTO DE EXPLOTACIÓN Y BENEFICIO DE MINERALES IXTACA", ubicado en el municipio de Ixtacamaxtitlán, Puebla*, PowerPoint Presentation, dated May-June 2019, **Exhibit C-647**; Fundar, *Estudios de Impacto Social y Ambiental en el Marco Internacional de los derechos humanos*, PowerPoint Presentation, dated 25 June 2019, **Exhibit C-625**; Letter from PODER to SEMARNAT, dated 8 May 2019, **Exhibit C-648**; Letter from Letter from Atcolhua to SEMARNAT, dated 9 June 2019, **Exhibit C-622**; Oficio No. UCPAST/19/434/1-4, dated 10 June 2019, **Exhibit C-72**; Letter from Minera Gorrión to UCPAST, dated 13 June 2019, appending PODER Tweet, dated 10 June, dated 13 June 2019, **Exhibit C-608**; Questions for the RPI, dated 25 June 2019, **Exhibit C-649**; Compliance Notices from the General Directorate of Mines of the Ministry of Economy, dated 2018-2019, **Exhibit C-650**; Oficio No. UCPAST/19/482, dated 27 June 2019, **Exhibit C-651**.

932 Santamaría Tovar WS, at para. 102.

933 Counter-Memorial, at para. 227.

934 Santamaría Tovar WS, at para. 102**.**

935 *See, e.g.,* Email chain between community member of Ixtacamaxtitlán Puebla and SEMARNAT, dated 24 May-5 June 2019, **Exhibit C-623**.

936 Santamaría Tovar WS-2, at para. 103; Email from SEMARNAT to [redacted] Denying Attendance to RPI, dated 10 June 2019, **Exhibit C-288**.

937 Santamaría Tovar WS, at para. 98.

938 Santamaría Tovar WS-2, at para. 103; Email chain between community member of Ixtacamaxtitlán Puebla and SEMARNAT, dated 24 May-5 June 2019, (showing redacted correspondence produced by the Respondent during document production, consisting of exchanges between SEMARNAT and what appears to be Ms. [redacted] regarding iterative drafts of her proposed presentation), **Exhibit C-623**; Santamaría Tovar WS, at para. 102.

which addressed employment generation, poverty levels, and the municipality's dependence on federal social programs.[939] SEMARNAT rejected it on the ground that it was "not related to the environment."[940] Ms. [redacted] requested SEMARNAT to reconsider, pointing out *inter alia* that it was "important to see and analyze all areas of influence," and that "the proper management of the environmental impacts of the [Ixtaca] Project can be translated into economic benefits" for the municipality.[941] Ms. [redacted] was correct. As explained above, and as Dr. Pablo-Dorantes elaborates in his Second Witness Statement, "job opportunities were a key component of the Ixtaca Project and were among the positive economic impacts we assessed during the preparation of the MIA in accordance with Mexican regulations."[942] In fact, as noted above, the community members who attended the RPI asked questions about employment.[943] Despite this, SEMARNAT barred Ms. [redacted] from presenting on precisely these issues.

b) SEMARNAT likewise rejected a citizen's presentation on reforestation and land use conservation for not focusing on the Project's environmental impact – even though reforestation and land use fall squarely within the scope of an MIA evaluation and, as discussed below,[944] SEMARNAT used this very topic as one of the pretexts to deny the MIA.[945] That presentation concluded that mining companies could positively contribute to the restoration of degraded areas in the municipality through land use change payments channeled to the *Fondo Forestal Mexicano*, and that the Project's own reforestation program would help mitigate land use change and counteract areas degraded by water and wind erosion.[946] This presentation would have provided valuable information to the local

939 Santamaría Tovar WS-2, at para. 103; Email chain between community member of Ixtacamaxtitlán Puebla and SEMARNAT, dated 24 May-5 June 2019, **Exhibit C-623**; El impacto del "Proyecto de Explotación y Beneficio de Minerales Ixtaca" en el ámbito socioecómico de Ixtacamaxtitlán, PowerPoint Presentation, dated 24 May 2019, **Exhibit C-655**.

940 Email from SEMARNAT to [redacted] Denying Attendance to RPI, dated 10 June 2019, **Exhibit C-288**.

941 Email chain between community member of Ixtacamaxtitlán Puebla and SEMARNAT, dated 24 May-5 June 2019, **Exhibit C-623**; Santamaría Tovar WS, at para. 102.

942 Pablo-Dorantes WS-2, at para. 12.

943 Pablo-Dorantes WS, at para. 54.

944 *See infra* Section 2.12.

945 Santamaría Tovar WS-2, at para. 103; *Reforestación en Ixtacamaxtitlán, Reconversión Productiva, Cambio de Uso de Suelo y Conservación de Suelo Fertil*, PowerPoint Presentation, dated 27 May 2019, **Exhibit C-626**; Email chain between community member and SEMARNAT, dated 27 May-3 June 2019, **Exhibit C-624**; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 134, **Exhibit C-86**.

946 Santamaría Tovar WS-2, at para. 103; *Reforestación en Ixtacamaxtitlán, Reconversión Productiva, Cambio de Uso de Suelo y Conservación de Suelo Fertil*, PowerPoint Presentation, dated 27 May 2019, at slide 17, **Exhibit C-626**.

communities regarding the positive environmental impacts of the Project, yet SEMARNAT barred them from seeing it at the RPI.

326. In what can only be described as a blatant double-standard, at the same time as UCPAST rejected these presentations for lacking relevant content it accepted presentations from CTT and Fundar whose content revolved around ILO Convention 169,[947] the Tecoltemi *amparo*, and indigenous consultation generally – topics that fell entirely outside the scope of the RPI and bore no connection to the Ixtaca Project's environmental impacts. UCPAST thus invoked its screening criteria to exclude pro-Project voices while effectively waiving them to admit presentations from the Project's opponents.

327. Mexico's final argument – that the Claimants' failure to challenge the RPI through available legal channels amounts to tacit acceptance – is self-defeating. Elsewhere in its Counter-Memorial, Mexico argues that SEMARNAT's internal procedural acts "did not actually directly affect Minera Gorrión" and that "the relevant act is the DGIRA's resolution concluding the PEIA." Thus, according to Mexico, no challenge ripened until the final decision on the MIA.[948] Yet here, Mexico treats Minera Gorrión's failure to challenge an interim act – the conduct of the RPI – as tacit acceptance.[949] Mexico cannot have it both ways.

328. Mexico is also wrong on the facts. Minera Gorrión did not know at the time – because SEMARNAT did not inform it – that UCPAST had applied an arbitrary screening process and suppressed community voices supportive of the Project. This issue has only come to light in this arbitration via document production. In any event, as explained in detail below,[950] the absence of a domestic challenge does not cure a due process violation or preclude an international tribunal from finding one.[951]

2.11.2. SEMARNAT Failed to Identify Any Deficiency in Minera Gorrión's Robust and Complete RAI Response

329. As the Claimants explained in the Memorial, on 9 May 2019, SEMARNAT issued an RAI covering 10 subjects, including water concessions, infrastructure placement, indigenous

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947 Santamaría Tovar WS-2, at para. 104; Fundar, *Estudios de Impacto Social y Ambiental en el Marco Internacional de los derechos humanos*, PowerPoint Presentation, dated 25 June 2019, **Exhibit C-625**; Consejo Tiyat Tlali, *Observaciones y comentarios a la MIA del proyecto denominado "PROYECTO DE EXPLOTACION Y BENEFICIO DE MINERALES IXTACA" con clave de proyecto 21PU2019M0014*, PowerPoint Presentation, dated 25 June 2019, **Exhibit C-610**.

948 Counter-Memorial, at para. 346.

949 Counter-Memorial, at para. 229.

950 *See infra* Section 2.12.

951 *See infra* Section 4.2.

communities, and the construction and environmental impacts of its proposed dams.[952] Importantly, as Dr. Limón Aguirre explained in his First Report, under Article 22 of the R-LGEEPA, SEMARNAT may only issue one RAI to an applicant during the MIA evaluation process.[953] As such, in its RAI to Minera Gorrión, SEMARNAT was required to define the complete universe of issues that it considered required clarification – it could not tack on perceived insufficiencies at a later stage to deny the MIA.[954]

330. On 1 August 2019, Minera Gorrión filed a comprehensive 100-page response to the RAI plus supporting information and technical annexes,[955] addressing each of SEMARNAT's 10 requests and annexing extensive technical supporting evidence.[956] As both Dr. Limón Aguirre and Dr. Pablo-Dorantes confirm, the response provided SEMARNAT with every technical element needed for MIA approval, including detailed replies to the concerns that the technical opinions and questionnaires filed by interested parties during the public consultation had raised.[957]

331. Notably, Mexico does not dispute that the Claimants provided all of the information that DGIRA had requested: its Counter-Memorial acknowledges that "Minera Gorrión submitted the additional information requested by DGIRA." Mexico thus acknowledges, as it must, that the evidentiary record of the MIA stood complete at that stage.[958] Yet, as elaborated below in Section 2.12, SEMARNAT predicated its MIA Denial Decision largely on an alleged "lack of information"[959] regarding the Project's environmental impacts and its mitigation measures – a characterization that is substantively incorrect and that, in any event, amounted to a violation of Minera Gorrión's due process rights. In each instance, Minera Gorrión had either already provided the information in its RAI response,[960] or SEMARNAT had failed to request it in the RAI and raised it only *post hoc* at the decision stage, without affording Minera Gorrión the opportunity to address it.[961]

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952 *See detailed list of requirements at* Memorial, at para. 299; Pablo-Dorantes WS, at para. 63; *see also* Limón ER-1, at para. 142.

953 R-LGEEPA, at Article 22, **Exhibit C-166**.

954 Limón ER-1, at para. 107.

955 Minera Gorrión's RAI Response, dated July 2019 (prepared by CAM), **Exhibit C-299**.

956 *See* Pablo-Dorantes WS, at para. 65; *see also* Limón ER-1, at paras. 111-124, 142.

957 *See* Pablo-Dorantes WS, at para. 65; *see also* Limón ER-1, at paras. 111-124, 142.

958 Counter-Memorial, at para. 232.

959 *See infra* Section 2.12.

960 Minera Gorrión's RAI Response, dated July 2019 (prepared by CAM), **Exhibit C-299**. *See* Pablo-Dorantes WS, at para. 65; *see also* Limón, at paras. 111-124, 142.

961 *See infra* Section 2.11.

332. Mexico's document production further confirms that Mexico did not consider Minera Gorrión's RAI response to be incomplete at the time. Mexico's production in response to the Tribunal's order on Request C-5 – which called for, inter alia, internal correspondence and analyses among DGIRA, the UCAJ, DGGFS, and/or DGVS reflecting DGIRA's assessment of the MIA application and the RAI response[962] – did not include any documents that indicated that the relevant agencies considered Minera Gorrión's MIA application or its RAI to be incomplete. It was only later, when it compiled the MIA Denial Decision itself, that SEMARNAT lighted on the pretext that Minera Gorrión's MIA should be rejected on the basis of an alleged lack of information. As explained in Sections 2.12 and 4.1, this decision was arbitrary and breached Mexican and international law.

2.11.3. SEMARNAT Belatedly Requested Technical Opinions and Denied Minera Gorrión the Opportunity to Review or Comment on Them

333. As set out in the Memorial, Article 24 of the R-LGEEPA empowers SEMARNAT to request technical opinions from "entities and dependencies of the Federal Public Administration" or "groups of experts," and requires it to forward expert opinions to the applicant.[963] On 4 March 2019, SEMARNAT requested opinions from 14 federal agencies and expert groups, but only four responded within the applicable 15-day deadline under the LFPA.[964] SEMARNAT nonetheless incorporated two belated opinions into the MIA file – one from INPI[965] and one from DGVS, the latter filed nearly a full year after the original request – yet never disclosed the DGVS opinion to Minera Gorrión or afforded it an opportunity to comment.[966] On 19 August 2019 – after Minera Gorrión had already submitted its RAI response – SEMARNAT solicited further opinions from DGGFS and UCAJ without notifying Minera Gorrión. When DGGFS submitted its opinion on 24 October 2019, SEMARNAT again withheld it; Minera Gorrión learned of its existence only in December 2020, when SEMARNAT issued the MIA Denial Decision relying on it to reject the MIA.[967] These actions clearly violated Minera Gorrión's due process rights.[968]

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962 Procedural Order No. 5, Annex A, at pp. 73-77.

963 Memorial, at para. 271; R-LGEEPA, at Art. 24, **Exhibit C-166**.

964 Namely: (i) the CDPI; (ii) the Puebla delegation of PROFEPA; (iii) the Instituto de Geología of UNAM; and (iv) the Subsecretaría de Atención a Pueblos Indígenas of the Puebla State Governor. *See* Memorial, at para. 306.

965 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 8, Section XXIII, **Exhibit C-86**.

966 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 85, 103, and 132, **Exhibit C-86**; *see also* Pablo-Dorantes WS, at para. 61; Limón ER-2, at para. 60.

967 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 37-42, **Exhibit C-86**.

968 Memorial, at para. 308; Limón ER-1, at para. 41.

334. In its Counter-Memorial, Mexico advances four arguments to downplay these irregularities:

a) *First,* relying on Messrs. Del Razo and Rábago, it contends that DGGFS and DGVS are internal "administrative units" of SEMARNAT and that therefore there was no obligation under Article 24 of the R-LGEEPA to disclose their opinions to Minera Gorrión.[969]

b) *Second,* it argues that DGIRA could request technical opinions from the Federal Public Administration at any time during the evaluation,[970] since Article 26 of the R-LGEEPA provides for the progressive integration of the MIA file and the applicant can review the file at any time.[971]

c) *Third,* it contends that no express deadline governs requests for opinions from public agencies and experts, and that the 15-day rule under Article 55 of the LFPA applies only to binding opinions, whereas opinions from federal agencies are non-binding (*facultativas*).[972]

d) *Fourth,* and remarkably, Mexico's experts argue that Minera Gorrión had no right to be heard (*garantía de audiencia*) in the MIA evaluation process at all, because the proceeding did not constitute a sanctioning proceeding and a negative MIA resolution does not deprive the applicant of any pre-constituted right.[973] Mexico adds that in any event, Minera Gorrión could have challenged procedural acts under Article 84 of the LFPA or submitted a new MIA.[974]

335. Each of these arguments fails.[975] *First,* Mexico's experts' characterization of DGGFS and DGVS as mere "administrative units" within SEMARNAT exempt from the disclosure obligation under Article 24 of the R-LGEEPA is incorrect. As a threshold matter, Article 24 does not use the term "administrative units." It refers to: (i) "dependencies and entities" of the Federal Public Administration, whose opinions are *not* required to be forwarded to applicants under Article 24, and (ii) "groups of experts", whose opinions *are* required to be forwarded to applicants. Importantly, as Dr. Limón Aguirre explains, the *Ley Orgánica de la Administración Pública Federal* defines "dependencies" as the Secretaries of State (*Secretarías de Estado*) and

969 Counter-Memorial, at paras. 237, 239, n. 253; Del Razo-Rábago ER, at paras. 133-137.

970 Del Razo-Rábago ER, at paras. 131, 133; Counter-Memorial, at n. 253.

971 Del Razo-Rábago ER, at para. 130.

972 Del Razo-Rábago ER, at para. 126.

973 Del Razo-Rábago ER, at paras. 220-230.

974 Counter-Memorial, at paras 346-347.

975 Del Razo-Rábago ER, at paras. 125-127.

the Judicial Department *(Consejería Jurídica*) (Article 2) and "entities" as the organisms and bodies of the parastatal federal administration (Article 3).[976] These precise legal terms do not extend to internal directorates of a *Secretaría de Estado* like SEMARNAT. DGGFS and DGVS therefore fall outside the category of "entities and dependencies" altogether.[977]

336. Rather, both directorates fall squarely within the category of "groups of experts" (*grupos de expertos*) under the second paragraph of Article 24: DGGFS and DGVS serve as SEMARNAT's specialized technical directorates for forestry and wildlife, respectively, and DGIRA consults them precisely for that technical-scientific competence – not as separate dependencies issuing a generic administrative opinion.[978]

337. Mexico's experts counter that Article 24's reference to "groups of experts" encompasses only groups *external* to the Federal Public Administration.[979] But they cite no authority for this proposition – because none exists. Nothing in the R-LGEEPA limits the term "groups of experts" to external bodies, and Mexico's experts identify no textual basis for reading in such a limitation.[980] Article 24 therefore required SEMARNAT to forward their opinions to Minera Gorrión.[981]

338. SEMARNAT's practice confirms this conclusion. Dr. Limón Aguirre explains that SEMARNAT routinely provided opinions of SEMARNAT's directorates to MIA applicants during his tenure as *Subsecretario de Gestión para la Protección Ambiental*, because it "considered [this] fundamental to guarantee the right to due process."[982] DGIRA's failure to disclose the DGVS and DGGFS opinions broke with that established practice without justification.

339. *Second*, Mexico's argument that the Claimants had access to the DGVS and DGGFS opinions as part of the administrative file is incorrect. As Dr. Limón Aguirre elaborates, DGIRA's record keeping on its *Sistema Nacional de Trámites* ("**SINAT**") was defective and failed to reflect the

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976 Limón ER-2, at para. 44; Ley Orgánica de la Administración Pública Federal publicada en el Diario Oficial de la Federación el día 29 de diciembre de 1976, at Articles 2-3, **Exhibit R-10**.

977 Limón ER-2, at paras. 44-45.

978 Limón ER-2, at para. 45; *Reglamento Interno de la SEMARNAT*, dated 26 November 2012, Article 24, Fraction II, **Exhibit C-190**.

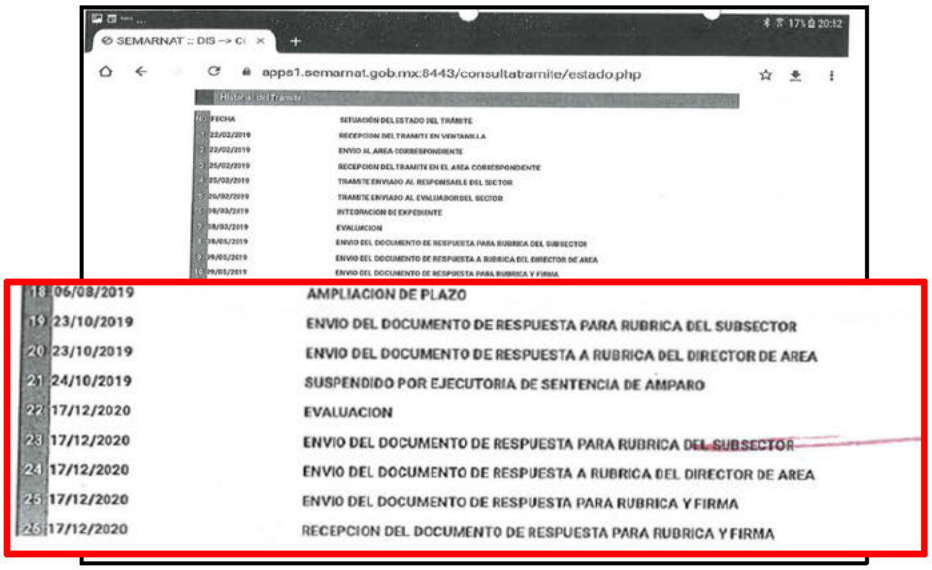
979 Del Razo-Rábago ER, at para. 134.

980 Limón ER-2, at para. 46.

981 Limón ER-2, at para. 47.

982 Limón ER-2, at para. 49.

solicitation or receipt of the DGVS and DGGFS opinions.[983] As Dr. Limón Aguirre confirms, and as the contemporaneous screenshot of the MIA procedure on SINAT below corroborates, between the suspension of the MIA evaluation process on 24 October 2019 and the MIA Denial Decision on 17 December 2020, the system registered no updates whatsoever.[984] Both of these opinions were submitted during that time period, but neither was reflected on the system. Thus, Minera Gorrión had no means of discovering that DGIRA had received them.[985]



Screenshot of SINAT, confirmed before notary public on 20 December 2020, showing that neither the DGGFS opinion (24 October 2019) nor the DGVS opinion (11 February 2020) was reflected in the system.[986]

340. *Third,* SEMARNAT's own conduct refutes Messrs. Del Razo and Rábago's argument that the 15-day deadline for public agencies to provide opinions under Article 55 of the LFPA applies only to binding opinions and therefore did not apply to DGGFS and DGVS opinions.[987] When DGIRA requested the opinion from DGGFS on 19 August 2019, which was not binding, it expressly required a response "within a period of no more than 15 days" and cited Article 55 of the LFPA as the legal basis for that deadline.[988] DGIRA's earlier request to DGVS on 4

983 Limón ER-2, at para. 12.

984 Limón ER-2, at paras. 89-91.

985 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 133, Section XXIII, **Exhibit C-86**.

986 Fe de hechos de 20 de diciembre de 2020, Instrumento No. 23,814 suscrito ante la Notaría 247 de la Ciudad de México, dated 20 December 2020, at p. 11, **MLA-82**.

987 Del Razo-Rábago ER, at paras. 125-127.

988 Limón ER-2, at para. 62. *See* Solicitud de Opinión Técnica de la DGIRA a la DGGFS, dated 19 August 2019, **Exhibit R-65**.

March 2019 invoked the same provision.[989] Thus, DGIRA itself confirmed that the 15-day deadline applied under Article 55. It should thus have disregarded the belated DGGFS and DGVS opinions and refrained from relying on them in the MIA Denial Decision.

341. *Fourth,* Messrs. Del Razo and Rábago's denial of Minera Gorrión's right to be heard (*garantía de audiencia*) in the MIA evaluation[990] contradicts binding Supreme Court jurisprudence. As Dr. Limón Aguirre explains,[991] the Supreme Court has consistently held that the procedural guarantees under Article 14 of the Constitution, which include the right to be heard, apply to all administrative proceedings – including permitting proceedings – in which the authority issues its decision with the individual's participation.[992] This argument is therefore baseless.

342. As explained above in paragraph 301, Mexico's argument that Minera Gorrión could have presented comments on the DGVS and DGGFS opinions[993] is self-defeating: Mexico cannot simultaneously maintain that no challenge ripened until the MIA Denial Decision and blame Minera Gorrión for not commenting on interim procedural acts. Mexico's argument is also disingenuous. Minera Gorrión could not have challenged or commented on opinions whose existence DGIRA actively concealed throughout the evaluation process and that the Company discovered only upon receiving the MIA Denial Decision.[994]

343. Finally, document production has further underscored the pattern of concealment evidenced by the non-disclosure of the DGVS and DGGFS technical opinions. Among the documents Mexico produced in response to the Claimants' Request C-5 was an internal DGIRA letter dated 3 September 2019 addressed to UCPAST, in which the Director General of DGIRA, Mr. Salvador Hernández Silva, formally requested UCPAST to carry out indigenous consultations in connection with the Ixtaca Project.[995] The letter expressly acknowledged that SEMARNAT – as the governmental authority implementing the MIA evaluation – would bear responsibility for conducting any necessary indigenous consultation and requested UCPAST to initiate that

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989 *Compare* Solicitud de Opinión Técnica de la DGIRA a la DGGFS, dated 19 August 2019, **Exhibit R-65**; *with* Oficio SGPA/DGIRA/DG/01806 por el que DGIRA solicita la Opinión Técnica de la Subsecretaría de Atención a Pueblos Indígenas del Gobierno del estado de Puebla, dated 4 March 2019, **Exhibit R-60**; *and* Oficio SGPA/DGIRA/DG/01797 por el que DGIRA solicita la Opinión Técnica de la DGVS, dated 4 March 2019, **Exhibit R-62**; *see also* Solicitud de Opinión Técnica de la DGIRA a la UCAJ, dated 19 August 2019, **Exhibit R-64**.

990 *See* Del Razo-Rábago ER, at paras. 226-227.

991 Limón ER-2, at para. 30-41.

992 Limón ER-2, at para. 33.

993 Counter-Memorial, at paras 346-347.

994 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 133, Section XXIII, **Exhibit C-86**.

995 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

consultation citing its institutional experience of mining projects that had submitted to the MIA evaluation process.[996]

344. This document is irreconcilable with one of the central grounds on which SEMARNAT denied Minera Gorrión's MIA. The MIA Denial Decision accused Minera Gorrión of having breached an obligation to conduct indigenous consultation under ILO Convention 169, yet DGIRA's own internal letter – written one month before the suspension and fifteen months before the MIA Denial Decision – confirms that SEMARNAT understood that obligation to rest with SEMARNAT itself, not with Minera Gorrión. Just as SEMARNAT concealed the DGVS and DGGFS opinions from Minera Gorrión while relying on them to deny the MIA, it concealed from Minera Gorrión the fact that it had acknowledged its own duty to consult – and then denied the MIA on the ground that Minera Gorrión had failed to discharge that very duty. The Claimants address the substantive implications of this contradiction in detail in Section 2.12 below.

2.11.4. SEMARNAT Suspended the MIA Evaluation Without Legal Basis

345. As the Claimants demonstrated in the Memorial, SEMARNAT lacked any legal basis to suspend the MIA evaluation – and the contemporaneous record confirms it manufactured one.[997] On 23 August 2019, Secretary Toledo declared publicly that "with respect to Ixtacamaxtitlán, SEMARNAT is not going to permit it,"[998] adding that "[w]ith SEMARNAT, Ixtaca will not happen."[999] SEMARNAT then seized on the Tecoltemi *amparo* as a pretext to freeze the MIA evaluation while it attempted to formulate a basis to carry out Secretary Toledo's directive. On 4 October 2019, DGIRA wrote to the Second District Court enquiring about the Tecoltemi *amparo* and the injunction issued by the court in that proceeding, despite the fact that SEMARNAT was not a party and the *amparo* bore no relation to the MIA evaluation.[1000] The Court's 14 October 2019 response merely confirmed the existence of an injunction protecting the ejido's "property, possession, or enjoyment of agrarian rights;"[1001] it

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996 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

997 Memorial, at Section 2.14.3.4.

998 Memorial, at para. 312; Reseñas ICSyH Youtube channel, *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, *available at* https://www.youtube.com/watch?v=udbqmCasd7I, (emphasis added), **Exhibit C-309**.

999 Lado B, 'Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán "no va a ser"', dated 29 August 2019, *available at* https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307**.

1000 Memorial, at para. 316.

1001 *Oficio* issued by the Second District Court in Puebla, dated 14 October 2019, **Exhibit C-316**.

neither ordered nor even suggested that SEMARNAT should suspend the MIA evaluation. SEMARNAT nonetheless suspended the evaluation on 24 October 2019 without first notifying Minera Gorrión, which discovered the suspension only by chance through the SINAT system.[1002] Later, on 3 September 2020, the District Court confirmed what Minera Gorrión had argued all along: SEMARNAT was not a party to the *amparo* and could freely continue with the MIA evaluation.[1003] SEMARNAT then waited a further three months before issuing the MIA Denial Decision on 17 December 2020. This delay was pretextual, arbitrary and breached Minera Gorrión's due process rights.

346. In the Counter-Memorial, Mexico asserts that SEMARNAT acted prudently and lawfully in suspending the MIA evaluation, based on four arguments.

a) *First,* proceeding with the MIA evaluation while the Concessions remained under judicial scrutiny in *amparo* 445/2015 would have disregarded the protection of indigenous rights and risked issuing an authorization that a court could subsequently invalidate.[1004]

b) *Second*, the suspension safeguarded the rights of the Tecoltemi community under the precautionary and prevention principles that the LGEEPA and Article 1 of the Constitution enshrine.[1005]

c) *Third*, SEMARNAT notified Minera Gorrión of the suspension, and Minera Gorrión had every opportunity to challenge it through available legal channels because the MIA case file is publicly accessible.[1006]

d) *Fourth*, SEMARNAT lifted the suspension promptly once the Second District Court confirmed on 3 September 2020 that SEMARNAT could freely continue with the MIA evaluation, and the prolonged duration of the suspension was partly down to the COVID-19 pandemic.[1007]

347. Again, Mexico's arguments are misconceived. Mexico's first argument is flatly wrong. As the Court expressly stated in its 14 October 2019 order, the Tecoltemi *amparo* injunction protected

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1002 *See* Pablo-Dorantes WS, at para. 70.

1003 Memorial, at para. 324.

1004 Counter-Memorial, at para. 618; Del Razo-Rábago ER, at para. 146.

1005 Counter-Memorial, at para. 254.

1006 Counter-Memorial, at paras. 255-258.

1007 Counter-Memorial, at para. 261.

the ejido's "property, possession, or enjoyment of agrarian rights"[1008] over the surface land that the Cerro Grande and Cerro Grande 2 Concessions covered.[1009] It bore no relation to the MIA evaluation, which does not deprive anyone of property, possession, or agrarian rights but constitutes a regulatory assessment of a proposed project's environmental impacts.[1010] The MIA evaluation process would therefore have no impact on Tecoltemi's indigenous rights.

348. Mexico's Counter-Memorial also conspicuously fails to explain why SEMARNAT inserted itself into a proceeding to which it was not a party. As the Claimants demonstrated in the Memorial, SEMARNAT had known about the Tecoltemi *amparo* since at least June 2019, when it learned of the proceeding during the RPI.[1011] However, it inexplicably waited more than three months – until 4 October 2019, barely one month before the statutory deadline for the MIA decision – to write to the District Court to inquire about the *amparo* and the Court's injunction.[1012] Had SEMARNAT been genuinely concerned about the *amparo's* impact on the MIA evaluation, it would have acted immediately upon learning of the proceeding, not on the eve of its own deadline.[1013]

349. Importantly, Mexico has failed to provide any contemporaneous documents setting out the legal basis for the suspension. As Dr. Limón Aguirre explains, based on his experience as head of UCAJ and later as *Subsecretario*, SEMARNAT could not have suspended the MIA evaluation without first conducting an internal legal deliberation led by UCAJ,[1014] its own legal affairs unit.[1015] Indeed, the chronology confirms that DGIRA consulted UCAJ between August[1016] and September 2019,[1017] yet Mexico has produced no UCAJ analysis, memorandum, or communication responsive to DGIRA – documents squarely within the scope of the

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1008 *Oficio* issued by the Second District Court in Puebla, dated 14 October 2019, **Exhibit C-316**.

1009 *See infra* Section 2.13.

1010 Limón ER-1, at para. 91.

1011 Pablo-Dorantes WS-2, at para. 27.

1012 Memorial, paras. 316-317.

1013 Memorial, paras. 316-317.

1014 Limón ER-2, at para. 79.

1015 UCAJ is the office within SEMARNAT that is tasked with legal representation of SEMARNAT before the Mexican courts, providing legal advice, and reviewing resolutions and regulations related to SEMARNAT's authority. *See* Reglamento Interno de la SEMARNAT, dated 26 November 2012, at Chapter 5, Article 14, **Exhibit C-190**; *see also* Reglamento Interior SEMARNAT, dated 27 July 2022, at Section III, Article 31, **Exhibit R-32**.

1016 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, dated December 2018, at p. 7 (*containing* Oficio 112/4567 UCAJ 0007910/19 from UCAJ to DGIRA, dated 29 August 2019), **Exhibit C-629**.

1017 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, at pp. 4-5 (*containing* Oficio SGPA/DGIRA/DG/06852 from DGIRA to UCAJ, dated 2 September 2019) , dated December 2018, **Exhibit C-629**.

Claimants' Request C-1.[1018] The inescapable conclusion is that such documents exist but Mexico has failed to produce them. The Claimants thus respectfully request that the Tribunal draw adverse inferences from Mexico's failure to produce these documents and find that they would confirm that the Tecoltemi *amparo* provided no legal basis for suspending the MIA evaluation and that the suspension was pretextual.[1019]

350. Mexico's argument that continuing the MIA evaluation risked judicial invalidation is baseless. As Dr. Limón Aguirre explains, an *amparo* suspension binds only the authorities designated as responsible parties (*ordenadora* and *ejecutora*) in the complaint.[1020] SEMARNAT was not a responsible authority in the Tecoltemi *amparo*, and so the injunction imposed no constraint on the MIA evaluation and no court could have invalidated its MIA decision on this basis.

351. Mexico's reliance on the precautionary and prevention principles is equally misplaced.[1021] As Dr. Limón Aguirre explains in his second report, the two principles have different thresholds. The prevention principle applies when the *risk is known* and scientifically established. In that case, the authority must act to prevent or mitigate harm it knows will occur.[1022] In contrast, the precautionary principle applies when the risk is *uncertain* – scientific knowledge cannot yet confirm whether harm will occur – but the potential consequences are serious and irreversible.[1023]

352. Neither principle authorized SEMARNAT to suspend the MIA evaluation. The prevention principle did not apply because no known risk of harm to Tecoltemi existed, and Mexico has not demonstrated otherwise. The precautionary principle did not apply either, because the absence of risk to Tecoltemi was not a matter of scientific uncertainty; on the contrary, it was a matter of certainty that the Project posed no threat whatsoever to Tecoltemi or its territory. As Dr. Pablo-Dorantes explains in his Second Witness Statement, Tecoltemi lies not merely outside the Project's area of direct and indirect influence,[1024] but outside the broader *Sistema*

1018 Procedural Order No. 5, Annex A, at pp. 53-60.

1019 *See supra* Section 2.1.

1020 Limón ER-1, at para. 82.

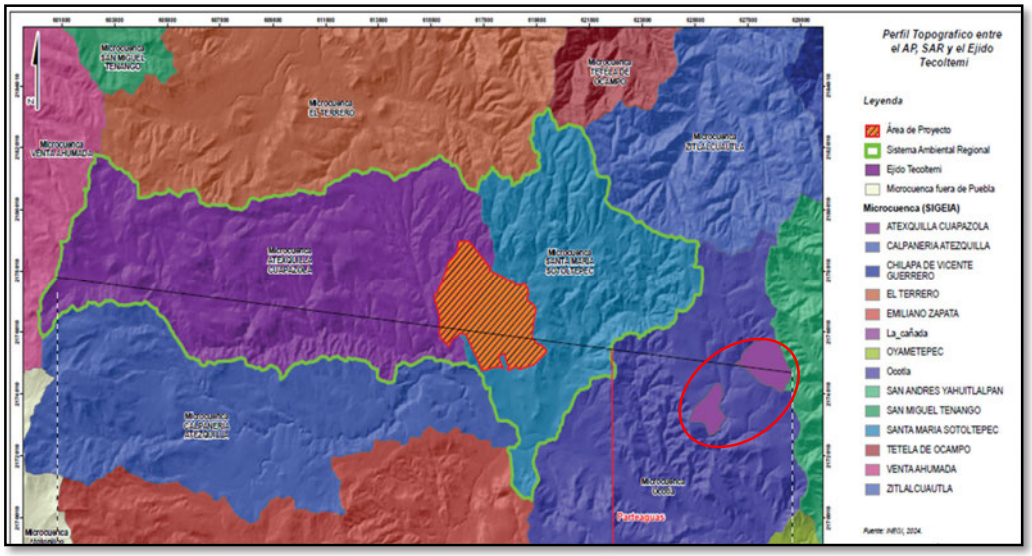
1021 *See* Counter-Memorial, at para. 254; *see also Oficio* issued by the Second District Court in Puebla, dated 14 October 2019, **Exhibit C-316**.

1022 Limón ER-2, at para. 112.

1023 Limón ER-2, at para. 112.

1024 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter IV, p. 163, **Exhibit C-262**. Direct impacts are defined as modifications of the environment resulting from the project, whereas indirect impacts are modifications to the environment resulting from those direct impacts. For instance, constructing an open pit mine has

Ambiental Regional or regional environmental system ("**SAR**") itself – *i.e.*, the geographic space within which the Project's environmental impacts would manifest (enclosed in green in the map below).[1025]



Map showing the Project Area (shaded orange) within the SAR (light green) and the Tecoltemi ejido (purple, circled in red, outside the SAR).[1026]

353. As the MIA and Minera Gorrión's RAI response confirmed, the Project's area of influence (shaded orange) was confined to the municipality of Ixtacamaxtitlán, and no mining activity had occurred or would occur on Tecoltemi's land.[1027] Moreover, Tecoltemi is too far removed from the Project site for there to be any conceivable impact on its territory or activities. As the topographical inset below shows, Tecoltemi sits more than 8 km from the Project area, beyond three steep mountain ranges that rise to 2,650 meters in elevation.[1028] SEMARNAT therefore had no factual basis to conclude that continuing the MIA evaluation would threaten Tecoltemi's right to a healthy environment or its agrarian rights.

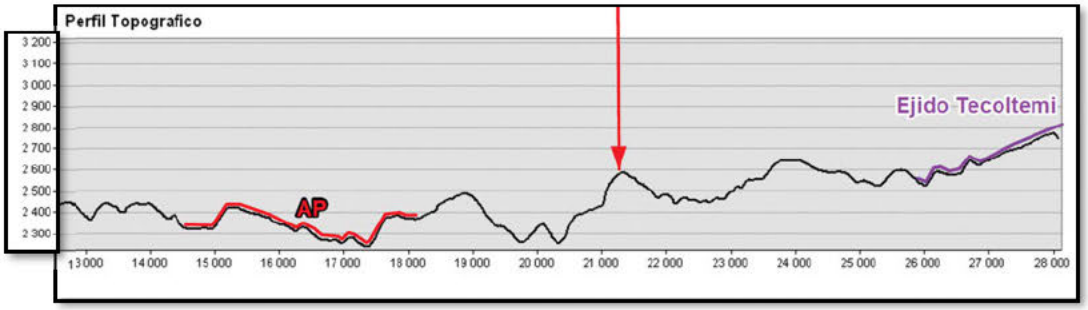
a direct impact on the trees that must be removed, whereas an indirect impact is the relocation of people that move to the area to work in the construction and operation of the open pit mine. Pablo-Dorantes WS, at para. 30.

1025 Pablo-Dorantes WS-2, at para. 22.

1026 Pablo-Dorantes WS-2, at paras. 22; Topograhical map showing the SAR, Area of the Project, and Tecoltemi ejido prepared by Minera Gorrión out of 2024 INEGI information, dated 2025, **Exhibit C-614**.

1027 Pablo-Dorantes WS-2, at para. 26.

1028 Pablo-Dorantes WS-2, at para. 23.



The overlay inset shows the approximately 8 km straight-line distance between the Project Area and Tecoltemi, separated by three steep mountain ridges. The red arrow marks the SAR boundary at the watershed or "parteaguas" – the highest elevation point from which rainwater flows outward – used to delimit the SAR.[1029]

354. Mexico's third argument – that SEMARNAT notified Minera Gorrión of the suspension and the Company could have challenged it through available legal channels because the MIA case file was publicly accessible – elides the facts.[1030] As the Claimants demonstrated in the Memorial, SEMARNAT initially did not inform Minera Gorrión of the suspension.[1031] Minera Gorrión discovered it only on 24 October 2019, when Mr. Pablo-Dorantes happened upon a SINAT entry indicating that the authority had suspended the MIA evaluation based on a "*sentencia de amparo.*"[1032] SEMARNAT did not formally notify Minera Gorrión until five days later, on 29 October 2019.[1033] Mexico does not engage with this evidence.

355. Mexico's argument that Minera Gorrión failed to challenge the suspension is also factually wrong. Minera Gorrión challenged the suspension both before the *amparo* Court and directly with SEMARNAT, but to no avail. By letter dated 28 November 2019, Minera Gorrión objected to the suspension, arguing that the Court's injunction in the *amparo* proceeding had no bearing on the MIA evaluation.[1034] SEMARNAT only responded one year and seven months later, on 24 June 2021, in a letter that appears to have been backdated to 21 February 2020.[1035] Again, Mexico offers no explanation for this irregularity. Minera Gorrión also lodged a complaint with SEMARNAT's *Órgano Interno de Control* on 21 January 2020, requesting

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1029 Pablo-Dorantes WS-2, at para. 23; Topograhical map showing the SAR, Area of the Project, and Tecoltemi ejido prepared by Minera Gorrión out of 2024 INEGI information, dated 2025, **Exhibit C-614**.

1030 Counter-Memorial, at para. 256.

1031 Memorial, para. 319.

1032 *See* Pablo-Dorantes WS, at para. 70.

1033 SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394, dated 23 October 2019, notified on 29 October 2019, **Exhibit C-322**.

1034 Letter from Minera Gorrión to SEMARNAT, dated 29 November 2019, **Exhibit C-329**.

1035 SEMARNAT Official Notice No. SGPA/DGIRA/DG/01596, dated 21 February 2020, notified to Minera Gorrión on 24 June 2021, **Exhibit C-334**.

an internal investigation.[1036] On 30 January 2020, DGIRA's Director General acknowledged the complaint and committed to respond by 29 February 2020,[1037] but that deadline passed without a word.

356. Minera Gorrión further challenged the suspension before the Second District Court in Puebla – the *amparo* Court. On 5 February 2020, it moved to compel SEMARNAT to resume the MIA evaluation.[1038] The Court rejected the motion on 9 September 2020 – more than seven months later – holding that because SEMARNAT was not a party to the amparo, the motion was inadmissible.[1039] Minera Gorrión thus challenged the suspension through every available channel, but was met at every turn with silence, delay, or jurisdictional dead ends. Although the motion failed, the ruling is dispositive for rebutting Mexico's first argument regarding the suspension: the *amparo* Court itself confirmed that its orders could not reach SEMARNAT. A court without jurisdiction over SEMARNAT could not have invalidated its acts, and Mexico's contention that continuing the MIA evaluation risked judicial invalidation fails on its own terms.

357. Mexico's fourth argument – that SEMARNAT lifted the suspension promptly after the Second District Court confirmed that SEMARNAT could proceed – is false.[1040] The suspension remained formally in place for more than three months after 3 September 2020 until 17 December 2020, when SEMARNAT arbitrarily denied the MIA.

358. The circumstances of the lifting of the suspension are revealing. An internal DGIRA email that Mexico produced in document production confirms that on the morning of 17 December 2020 – the same day SEMARNAT issued the MIA Denial Decision – the Deputy Director of Mining and Aquaculture at DGIRA requested the internal help desk to do three things: (i) reactivate the Ixtaca Project file in SEMARNAT's system,[1041] (ii) change its status from suspended due to the enforcement of a constitutional protection ruling ("*suspendido por ejecutoria de*

1036 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. III, dated December 2018, at p. 188, **Exhibit C-630**.

1037 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. III, dated December 2018, at p. 188, **Exhibit C-630**.

1038 Minera Gorrión, *incidente por exceso o por defecto en el cumplimiento de la suspensión*, Juicio de Amparo 445/2015, dated 5 February 2020, **Exhibit C-653**.

1039 Second District Court of Puebla, decision on *incidente por exceso o por defecto en el cumplimiento de la suspensión*, Juicio de Amparo 445/2015, dated 9 September 2020, **Exhibit C-652**.

1040 Counter-Memorial, at paras. 260-261.

1041 Email chain between Minero y Acuicola and SEMARNAT requesting a change to the project status, dated 17 December 2020, **Exhibit C-627**.

sentencia de amparo") back to evaluation ("*evaluación*"), and (iii) assign it to a *new evaluator*, Miguel Barrera Perales.[1042]

359. That new evaluator then denied the MIA ***that same day***. In other words, the new evaluator appointed by SEMARNAT purportedly evaluated and decided a MIA case file comprising more than 3,200 pages of technical documentation on the very day he received the assignment.[1043] This evidence demonstrates that the suspension was not a good faith measure to prevent harm to Tecoltemi's rights – SEMARNAT was merely waiting for the politically expedient moment to implement AMLO's directives and deny the MIA. It also confirms that, as discussed in the next section, SEMARNAT's MIA Denial Decision was not based on a careful review of the available evidence – it was the implementation of an outcome that had already been preordained.

2.12. SEMARNAT's MIA Denial Decision Was Pretextual, Politically Driven, And Disregarded Minera Gorrión's Robust Evidence Of Environmental Compliance And Mitigation And Prevention Measures

360. As the Claimants demonstrated in the Memorial, SEMARNAT's 17 December 2020 MIA Denial Decision[1044] was arbitrary and politically motivated.[1045] The AMLO administration issued a blanket directive to block open-pit mining projects, and Secretaries Toledo and Albores carried out that directive with respect to the Ixtaca Project. Both secretaries embraced AMLO's mandate and ensured that the MIA Denial Decision gave effect to it.[1046] Given that SEMARNAT crafted the MIA Denial Decision to satisfy a political imperative, it is no surprise that the MIA Denial Decision was deficient in many respects, including the following:

1042 Email chain between Minero y Acuicola and SEMARNAT requesting a change to the project status, dated 17 December 2020, **Exhibit C-627**.

1043 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. I, dated December 2018, **Exhibit C-611**; MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, dated December 2018, **Exhibit C-629**; MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. III, dated December 2018, **Exhibit C-630**.

1044 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**.

1045 Memorial, at paras. 328-332; *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2020), Minutes: 3:01:28 to 3:01:45, *available at* https://www.youtube.com/watch?v=udbqmCasd7I (last accessed on 8 March 2025), **Exhibit C-309**; *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, *available at* https://www.youtube.com/watch?v=oTicTRLrWyQ (last accessed 2 March 2025) (Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

1046 Memorial, at paras. 328-331.

a) *First,* SEMARNAT relied on untimely DGVS and DGGFS opinions – which it never afforded Minera Gorrión the opportunity to review or address;[1047]

b) *Second,* SEMARNAT ignored information in the MIA case file, including technical data on the water balance model and tailings characterization;[1048]

c) *Third,* SEMARNAT applied to the MIA for the Ixtaca Project an absurd, non-existent standard of "absolute scientific certainty" and misapplied the precautionary principle;[1049] and

d) *Fourth,* SEMARNAT arbitrarily discriminated against Minera Gorrión by denying the MIA outright on the ground that it had not completed indigenous consultations – an obligation that fell squarely on the Mexican Government, not the applicant – thereby shifting the entire burden of that process onto Minera Gorrión, while in comparable projects SEMARNAT granted conditional approval and left the obligation to conduct such consultations where it belonged: with the State.[1050]

361. In the Counter-Memorial, Mexico attempts to rehabilitate the MIA Denial Decision and more broadly to characterize the Project as "unfeasible."[1051] Mexico advances four main arguments in this respect:

a) *First,* Mexico incredulously contends that the MIA Denial Decision was technically and legally justified and free from political intervention.[1052] Mexico identifies seven grounds for denial, including alleged deficiencies in the water balance model, non-compliance with NOM-141, inadequacy of the flora and fauna baseline, failure to assess cumulative and synergistic impacts, and failure to conduct indigenous consultations[1053] – all of which allegedly led SEMARNAT to conclude that Minera Gorrión failed to establish "absolute scientific certainty" that the Project would not cause ecological imbalances.[1054]

1047 Memorial, at Section 2.14.4.1.

1048 Memorial, at Section 2.14.4.2.

1049 Memorial, at Section 2.14.4.3.

1050 Memorial, at Section 2.14.4.

1051 Counter-Memorial, at Section II.D.3.

1052 Counter-Memorial, at paras. 263-266.

1053 Counter-Memorial, at paras. 270-302, 303-307.

1054 Counter-Memorial, at paras. 299-302.

b) *Second*, Mexico asserts that the comparator projects that the Claimants invoke are not similarly situated to Ixtaca and therefore cannot support a finding of discriminatory treatment.[1055]

c) *Third*, conveniently relying on *post hoc* expert opinions about declining water availability, Mexico asserts that the Ixtaca Project would never have succeeded because it was "risky from the perspective of available water."[1056]

d) *Fourth*, Mexico argues that the Claimants failed to exhaust domestic remedies – implying that they consented to the MIA Denial Decision – and that the MIA Denial Decision "absorbed" any prior procedural defects.[1057]

362. Mexico's arguments are incorrect on all four counts. In the remainder of this Section, the Claimants explain that: (i) the MIA Denial Decision was the result of AMLO's political directive to ban open-pit mining and foreclose the Ixtaca Project (**Section 2.12.1**); (ii) SEMARNAT's grounds for denial were arbitrary, discriminatory, factually unsupported, and contradicted by the evidentiary record (**Section 2.12.2**); (iii) the distinctions Mexico draws between the comparator projects and Ixtaca are immaterial and cannot justify its discriminatory treatment of the Project (**Section 2.12.3**); (iv) Mexico's *post hoc* expert opinions are wrong on the facts and cannot cure *ex post* the MIA Denial Decision's flaws (**Section 2.12.4**); and (v) Mexico's exhaustion and acquiescence arguments are without merit (**Section 2.12.5**).

2.12.1. The MIA Denial Decision was the Result of AMLO's Political Directive to Ban Open-Pit Mining and Foreclose the Ixtaca Project

363. The Claimants demonstrated in the Memorial that the MIA Denial Decision executed the AMLO administration's political directive to block environmental permits for open-pit mining.[1058] In the Counter-Memorial, Mexico denies this, asserting that the decision "was based on technical and legal issues of an environmental nature."[1059] But the record leaves no room for doubt: AMLO directed SEMARNAT not to permit any new open-pit mines, including the Ixtaca Project. SEMARNAT duly complied.

1055 Counter-Memorial, at paras. 331-340; Del Razo-Rábago ER, at paras. 260-290.

1056 Counter-Memorial, at paras. 308-330.

1057 Counter-Memorial, at paras. 346-350; Del Razo-Rábago ER, at paras. 242-247.

1058 Memorial, at paras. 311-316, Section 2.14.3.4.

1059 Counter-Memorial, at para. 263.

364. Secretary Toledo was a proud herald of AMLO's mandate and took aim at the Ixtaca Project in particular. As explained above,[1060] in August 2019 he declared publicly that "SEMARNAT is not going to permit"[1061] the Ixtaca Project and that "[w]ith SEMARNAT, Ixtaca will not happen."[1062] SEMARNAT had not yet assembled a colorable basis to deny the MIA outright, so it concocted the suspension of the MIA evaluation to buy time while it manufactured the grounds for denial, as explained above.[1063]

365. On 31 October 2019, AMLO himself reaffirmed Toledo's declarations[1064] in one of his daily *mañaneras*. Asked about the status of the Ixtaca Project MIA, AMLO expressed full confidence in Toledo: "[y]ou have to trust Victor Manuel Toledo. He . . . participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others. I have absolute confidence in him."[1065] This should be taken for what it is – the

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1060 *See supra* Section 2.10.

1061 Memorial, at para. 312; *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, *available at* https://www.youtube.com/watch?v=udbqmCasd7I, last accessed on 8 March 2025 (Spanish original: "*Qué va a pasar con Ixtacamaxtitlán, qué va a pasar con el proyecto minero a cielo abierto en Ixtacamaxtitlán. Toda la Sierra Norte está plagada de proyectos de muerte, hidroeléctricas, proyectos mineros. E internamente en estos días la Secretaría estará dando respuesta a la resolución sobre el sí o no a la explotación... como ciudadanos exigimos la cancelación de todos los proyectos mineros. No es posible que sigamos con este modelo" Toledo's response was "Con respecto a Ixtacamaxtitlán, la SEMARNAT no lo va a permitir si se establece que... [aplausos] No, no lo vamos a permitir, no pensamos permitir que la SEMARNAT [aplausos]*.") (emphasis added), **Exhibit C-309**.

1062 Lado B, "Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser'"', dated 29 August 2019, *available at* https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307**.

1063 *See supra* Section 2.11.

1064 La Jornada de Oriente, "Confío en Victor Manuel Toledo (titular de la Semarnat)" indicó López Obrador respecto a otorgar permisos a la minera Canadiense Almaden Minerals en Ixtacamaxtitlán, dated 31 October 2019, *available at* https://www.facebook.com/LaJornadadeOrientePuebla/videos/%EF%B8%8F-conf%C3%ADo-en-victor-manuel-toledo-titular-de-la-semarnat-indic%C3%B3-l%C3%B3pez-obrador-res/1257317074465900/, **Exhibit C-324**.

1065 La Jornada de Oriente, "Confío en Victor Manuel Toledo (titular de la Semarnat)" indicó López Obrador respecto a otorgar permisos a la minera Canadiense Almaden Minerals en Ixtacamaxtitlán, dated 31 October 2019, *available at* https://www.facebook.com/LaJornadadeOrientePuebla/videos/%EF%B8%8F-conf%C3%ADo-en-victor-manuel-toledo-titular-de-la-semarnat-indic%C3%B3-l%C3%B3pez-obrador-res/1257317074465900/. (emphasis added) (A journalist asked about the Ixtaca Project: "the Nahuas in Puebla against the Almaden Minerals mining company . . . that MIA is about to come out." AMLO responded: "You have to trust Victor Manuel Toledo. He was an advisor to the movements or he participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others, I have absolute confidence in him.") (Spanish original: "*los Nahuas en Puebla contra la minera Almaden Minerals […] esa MIA está por salir." AMLO responded "Si, pero hay que tenerle confianza a Victor Manuel Toledo. El era asesor de los movimientos qo participó con los movimientos que se oponían a las mineras en Puebla. Y es hombre consecuente. No es como otros. Le tengo absoluta confianza*.") **Exhibit C-324**.

highest political leader in the land putting his imprimatur on the Secretary's pretextual decision to block the Ixtaca Project. It is the rare investment treaty case that contains such statements.

366. That same day, the Office of the Presidency hand-delivered to Secretary Toledo a community member's handwritten letter accusing a Canadian mining company – unmistakably Almaden – of arriving in Santa María to "exterminate their people," extract their minerals, and exhaust their water, fauna, and life. The letter demanded that AMLO "expel the miners from Santa María."[1066] The accompanying cover letter, dated 10 October 2019, directed Toledo "by instructions of Lic. Andrés Manuel López Obrador, President of the Republic" to respond to the community member and forward that response to the Presidency.[1067]

[1066] MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, dated December 2018, at pp. 12-13 (*containing* Letter from a community member (name redacted) of Santa María Zotoltepec to AMLO, dated 1 July 2019), **Exhibit C-626**.

[1067] MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, dated December 2018, at p. 11 (*containing* Letter from the Office of the Mexican Presidency to the Secretary of SEMARNAT, dated 10 October 2019), **Exhibit C-626**.


GOBIERNO DE MÉXICO

Coordinación General de Política y Gobierno
Dirección General de Atención Ciudadana

"2019, Año del Caudillo del Sur, Emiliano Zapata".

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Lugar
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En cumplimiento a la instrucción del Lic. Andrés Manuel López Obrador, Presidente de la República, comprometido con dar atención y respuesta a todas las peticiones que presentan las y los ciudadanos a partir de la garantía consagrada en el artículo 8 de la Constitución Política de los Estados Unidos Mexicanos, me permito enviarle el escrito del C. [redacted] el cual plantea su solicitud de intervención ante la autoridad competente para que se revisen los presuntos daños ecológicos a la Comunidad de Santa María Sotoltepec, Ixtacamaxtitlán, Puebla por la explotación de recursos realizada por una compañía minera extranjera, asunto que recae en las atribuciones de la Secretaría de Medio Ambiente y Recursos Naturales.

Fecha
10 de Octubre de 2019

Para agilizar la gestión de peticiones todas son registradas electrónicamente en el Sistema Integral de Atención Ciudadana que compartimos y en el caso que nos ocupa se asignó el folio 20191010MAREXF_2. Mucho agradeceré gire instrucciones a quien corresponda a efecto de analizar el ocurso y dar respuesta directamente al ciudadano, según corresponda, en un tiempo breve que permita al Gobierno de la República refrendar el compromiso con las necesidades del pueblo de México; para tal efecto solicitamos remitir copia de la contestación a través del mismo sistema con la evidencia de notificación.

Cordialmente,

0000854

SEMARNAT

11:50

MEDIO AMBIENTE
OFICINA DEL C. SECRETARIO
31 OCT. 2019
RECIBIDO
HORA 11:46

Leticia Ramírez Amaya
Directora General de Atención Ciudadana

20191010MAREXF_2

Cover letter from the Office of the Mexican Presidency dated 10 October 2019, forwarding a community member's letter to Secretary Toledo's office, stamped as delivered on 31 October 2019 – the same day as AMLO's mañanera.[1068]

367. The timing of these events was no coincidence. The Presidency's letter was a veiled but unmistakable instruction to Toledo – who controlled SEMARNAT's evaluation of the MIA – to halt Ixtaca in its tracks.

368. These circumstances leave no doubt that the Presidency and SEMARNAT exchanged communications about the Ixtaca Project. Accordingly, in these proceedings, the Claimants sought production of those communications.[1069] Request C-4 required Mexico to produce "[d]ocuments exchanged between the Secretary of SEMARNAT . . . AMLO, the Office of the Mexican Presidency . . . concerning the environmental or social impact of the Ixtaca Project" between February 2019 and December 2020.[1070] The Tribunal granted the request. Notwithstanding the Tribunal's order, Mexico produced nothing.

1068 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, dated December 2018, at p. 11 and pp. 12-13 (*containing* Letter from a community member (name redacted) of Santa María Zotoltepec to AMLO, dated 1 July 2019), **Exhibit C-626**.

1069 Procedural Order No. 5, Annex A, at p. 69.

1070 Procedural Order No. 5, Annex A, at pp. 69, 72.

369. The Claimants have since requested in good faith that Mexico comply with the Tribunal's order, but Mexico baldly asserted that no responsive documents had been located.[1071] That contention is not credible. The President's cover letter expressly directed Toledo to respond to the community member and forward that response to the Presidency. A response necessarily existed – yet Mexico produced neither it nor any related correspondence. The only plausible explanation is that these documents are devastating to Mexico's case. The Claimants respectfully request that the Tribunal draw adverse inferences from Mexico's failure to produce and find that the withheld documents confirm that SEMARNAT acted on a political directive from AMLO to deny the Ixtaca MIA and fabricated the suspension as the vehicle to implement that directive.

370. Toledo left SEMARNAT in September 2020. But the political directive survived him. AMLO replaced Toledo with María Luisa Albores – and made no secret of why. At a press conference, he confirmed that Albores was "part of the same team as Toledo" and that he had met them both in Puebla "opposing projects like mining or other polluting initiatives:"[1072]

> *The transition is continuity with change, continuity with change because the same policy continues*. María Luisa Albores, in addition to being a woman of principles and a professional, is an environmentalist. Yes, she is part of the same team as Toledo, as Víctor Manuel Toledo. I met them both in Puebla, in Cuetzalan, Puebla, at a cooperative. There, they have accomplished incredibly important things in defending the environment, specifically in protecting the land and opposing projects like mining or other polluting initiatives. That's where I met them, in that struggle. So, María Luisa Albores will act with the same integrity as Víctor Manuel Toledo.[1073]

[1071] Claimants letter to the Tribunal, dated 27 April 2026; Respondent's letter to the Tribunal, dated 4 May 2026.

[1072] Memorial, at para. 258; Milenio YouTube Channel, *Conferencia matutina de AMLO*, dated 3 September 2020, *available at* https://www.youtube.com/watch?v=V1frDFYHVsM (last accessed 8 March 2025), **Exhibit C-529**.

[1073] Milenio YouTube Channel, *Conferencia matutina de AMLO*, dated 3 September 2020, *available at* https://www.youtube.com/watch?v=V1frDFYHVsM (last accessed 8 March 2025) (emphasis added), (Spanish original: "*El relevo es continuidad con cambio, continuidad con cambio porque continúa la misma política. María Luisa Albores, además de ser una mujer con principios, una profesional, es ambientalista. Sí, es del mismo equipo de Toledo, de Víctor Manuel Toledo. Yo los conocí juntos en Puebla, Cuetzalan, Puebla, en una cooperativa. Ahí han hecho cosas importantísimas de defensa del medio ambiente, precisamente en defensa de la tierra y en contra de estos proyectos, como el de las minas u otros proyectos contaminantes. Ahí los conocí, en esa lucha. Entonces, María Luisa Albores va a actuar con la misma rectitud de Víctor Manuel Toledo*."), **Exhibit C-529**.

371. The newly appointed Secretary of SEMARNAT María Luisa Albores had close ties to environmental activism and NGOs, particularly in the Sierra Nororiental de Puebla,[1074] a region known for vocal opposition to mining. Her history of campaigning against mining projects in Puebla – the very activism through which AMLO said he had met her – left no doubt that she would faithfully execute the directive her predecessor had championed. And she did. On 4 November 2020 – six weeks before the MIA Denial Decision – she confirmed it before the Chamber of Representatives: "[w]e emphasize once again: *Permits are not granted for the exploration and exploitation phases when it comes to open-pit mining or open-cut mining*."[1075] The MIA Denial Decision that followed was the inevitable product of that directive.

2.12.2. SEMARNAT's MIA Denial Decision Was Arbitrary, Politically Motivated, and Contrary to the Law and the MIA Factual Record

372. AMLO's political directive produced a MIA Denial Decision riddled with technical errors, misapplied legal standards, and fabricated grounds for denial. The deficiencies are pervasive. SEMARNAT invented an unattainable "absolute scientific certainty" standard with no basis in either the LGEEPA or common sense, and which misapplied the precautionary principle (**Section 2.12.2.1**). It equated alleged informational gaps with a violation of environmental law to deny the MIA – a ground the LGEEPA does not recognize (**Section 2.12.2.2**). It disregarded Minera Gorrión's water balance model and dam management evidence (**Section 2.12.2.3**). It misapplied NOM-141 to a dry-stack facility that bore no resemblance to the wet tailings pond the standard regulates (**Section 2.12.2.4**). It dismissed robust flora, fauna, and land use assessments relying on untimely DGVS and DGGFS opinions which Minera Gorrión was not given an opportunity to comment upon (**Section 2.12.2.5**). It rejected proven methodologies for evaluating cumulative and synergistic impacts with conclusory assertions (**Section**

1074 La Jornada de Oriente YouTube Page, *López Obrador reconoce a Albores quien apoyaba en la cooperativa "Tosepan Titataniske" en Cuetzalan*, dated 14 February 2024, *available at* https://www.youtube.com/watch?v=ymWZHodYyyw (last accessed 14 March 2025) ("*I come from labour, from social and solidarity economy, working directly with a cooperative located in the Sierra Nororiental of Puebla. It has a beautiful name, Tosepan Titaniske, which in Nahuatl means 'united we will overcome.' This cooperative was created in 1977 and has never stopped its cooperative work. . . I arrived in 2000 as an agronomist. I thought I would stay for one year, but I stayed for many years, until I left the Sierra to work with the president. I had the fortune and privilege of meeting the president while working there.*" Spanish original: "*Yo vengo de trabajo, de economía social y solidaria, trabajando directamente con una cooperativa que se ubica en la Sierra Nororiental poblana. Tiene un nombre muy bonito: Tosepan Titataniske, que en náhuatl significa 'unidos venceremos'. Esta es una cooperativa creada desde 1977; nunca ha interrumpido su vida cooperativista. . . Yo llego en el año 2000 como agrónoma. Creía que iba a quedarme un año, me quedé muchos años, hasta que salí de la Sierra para estar con el presidente. Yo tuve la fortuna y el gusto de conocer al presidente trabajando allá*."), **Exhibit C-530**.

1075 H. Cámara de Diputados, Sesión 4 de noviembre de 2020, Minutes: 3:05:11-3:06:11, *available at* https://x.com/Mx_Diputados/status/1324035146316619776 (emphasis added), **Exhibit C-631**.

2.12.2.6). And it denied the MIA because Minera Gorrión had not conducted indigenous consultations – an obligation that fell solely on the Mexican State (**Section 2.12.2.7**).

2.12.2.1. SEMARNAT demanded that the MIA satisfy an arbitrary and impossible standard of "absolute scientific certainty" based on an erroneous interpretation of the precautionary principle

373. As the Claimants demonstrated in the Memorial, SEMARNAT arbitrarily imposed a standard of "absolute scientific certainty" to justify its denial of the Ixtaca Project MIA.[1076] That threshold has no basis in Mexican environmental law.[1077]

374. In the Counter-Memorial, Mexico doubles down on SEMARNAT's outright rejection of the MIA under Article 35(III)(A) of the LGEEPA, asserting that Minera Gorrión failed to demonstrate "absolute scientific certainty"[1078] that the Project would not cause ecological imbalances and that, read in light of the precautionary principle under Principle 15 of the 1992 Rio Declaration, mere "indications" of possible harm entitled SEMARNAT to deny the MIA.[1079] Mexico further argues that SEMARNAT did not impose an impossibly high standard but rather used the "absolute scientific certainty" expression to describe the insufficiency of the technical and scientific information Minera Gorrión provided.[1080] With respect, that is nonsense.

375. As demonstrated in the Memorial, no provision in the relevant legal and regulatory framework requires an applicant to demonstrate "absolute scientific certainty" for SEMARNAT to approve its MIA.[1081] This makes sense, because on its own terms, the scientific process does not allow for "absolute certainty." It simply does not exist. SEMARNAT arbitrarily conjured up this standard to reject the Ixtaca Project.[1082] Under Article 35, there are only three grounds on which SEMARNAT may deny a MIA:[1083]

1076 Memorial, at Section 2.14.4.3.

1077 Limón ER-1, at para. 151(c).

1078 Counter-Memorial, at paras. 299, 302; *citing* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 133 (translation provided at. p. 276 of the exhibit), **Exhibit C-86**.

1079 Counter-Memorial, at para. 630.

1080 Counter-Memorial, at para. 629.

1081 Memorial, at para. 343.

1082 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 139 (translation provided at. p. 279 of the exhibit), **Exhibit C-86**.

1083 Pablo-Dorantes WS, at para. 18; Limón ER-1, at para. 50.

a) the MIA contravenes the LGEEPA, R-LGEEPA, NOMs, or other applicable legal provisions;[1084]

b) the project endangers species that are at risk of extinction; or

c) the MIA contains misrepresentations or false information.[1085]

376. Mexico does not contend – nor could it – that the precautionary principle or the "absolute scientific certainty" standard it attempts to infer therefrom falls within any of these three enumerated grounds for denial. Instead, Mexico's overarching argument is that the precautionary principle is in and of itself a legitimate basis to outright deny the Ixtaca Project MIA. This is incorrect. As Dr. Limón Aguirre explains, the Mexican environmental legal framework does not empower SEMARNAT to reject outright a MIA on the basis of the precautionary principle.[1086]

377. Principle 15 of the 1992 Rio Declaration, which supplies the definitive articulation of the precautionary principle, states that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[1087] As explained by Dr. Pablo-Dorantes, who worked on numerous environmental evaluations where SEMARNAT applied the precautionary principle, this means that authorities must act proactively to mitigate potentially serious or irreparable risk of harm, even where they lack full scientific certainty about the extent of that harm.[1088]

378. The precautionary principle applies where the existence or extent of the risk remains scientifically uncertain and requires the authority to adopt cost-effective preventive measures notwithstanding that uncertainty – not to deny authorization altogether.[1089] By contrast, the *prevention principle* applies where the risk is *known and scientifically established*, *i.e.*, the

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1084 Pursuant to Article 36 of the LGEEPA, Mexican official norms are technical environmental instruments establishing requirements, specifications, conditions, proceedings, thresholds, and conditions that certain activities must comply. LGEEPA, at Art. 36, Sections I to III, **Exhibit C-156**.

1085 LGEEPA, at Article 35, Sections I to III, **Exhibit C-156**.

1086 Limón ER-2, at paras. 108-116.

1087 Rio Declaration on Environment and Development, dated 12 August 1992, at Principle 15, **CL-18**.

1088 Pablo-Dorantes WS-2, at para. 33.

1089 Limón ER-2, at para. 109; LGEEPA, at Article 35, **Exhibit C-156**.

authority *knows* that a given activity will cause environmental harm and therefore must take measures to prevent or mitigate it.[1090]

379. Minera Gorrión provided extensive scientific information establishing the nature and extent of the Project's environmental risks.[1091] SEMARNAT therefore stood squarely within the domain of the *prevention principle*: the risks were identified and quantified, and Article 35(II) of the LGEEPA empowered SEMARNAT to manage any residual uncertainty by granting conditional MIA authorization subject to project modifications or additional prevention and mitigation measures. Instead, SEMARNAT denied the MIA outright, thus overreaching its discretionary powers under the law.[1092]

380. SEMARNAT turned the precautionary principle on its head. Rather than grant conditional approval as empowered by Article 35(II), SEMARNAT demanded that Minera Gorrión prove with "absolute scientific certainty" that the Project would cause no harm whatsoever.[1093] Dr. Pablo-Dorantes confirms that "no project anywhere in the world can demonstrate with 'absolute scientific certainty' that it will have no environmental impact. Holding a project to such a standard would lead to the rejection of environmental approval of all projects worldwide."[1094] Similarly, Dr. Limón Aguirre opines that "no project proponent can demonstrate with "absolute scientific certainty" that a project will cause no environmental harm, because such certainty is inherently unattainable in the natural sciences."[1095]

381. Mexico's strained attempt in the Counter-Memorial to recast SEMARNAT's "absolute scientific certainty" standard is unavailing.[1096] Mexico asserts that "SEMARNAT did not impose an 'impossibly high legal standard' to be met. . .SEMARNAT's concern was the absence of reliable scientific data and methodological rigor, not the requirement for absolute or infallible evidence."[1097] The MIA Denial Decision itself refutes Mexico's revisionism. Throughout the "Technical Analysis"[1098] section of the resolution, SEMARNAT repeatedly

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1090 Limón ER-2, at para. 112.

1091 *See generally* Pablo-Dorantes WS; Pablo-Dorantes WS-2; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, **Exhibit C-262**.

1092 Limón ER-2, at para. 116.

1093 Pablo-Dorantes WS, at para. 99.

1094 Pablo-Dorantes WS, at para. 99.

1095 Limón ER-2, at para. 118.

1096 Counter-Memorial, at para. 629.

1097 Counter-Memorial, at para. 629.

1098 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 133, **Exhibit C-86**.

demanded that Minera Gorrión demonstrate "absolute scientific certainty" as a precondition for approval. Specifically, in *considerando* 24, DGIRA stated that Minera Gorrión "did not provide the technical and scientific information demonstrating absolute scientific certainty regarding the environmental viability of the project."[1099] It then concluded that "the applicant does not prove the absolute scientific certainty that the project will respect the functional integrity and carrying capacity of the ecosystems associated with it." Further, in *considerando* 27, DGIRA reiterated that "the information produced with regards to environmental impact does not allow this authority to have *scientific certainty or accuracy* [regarding] the environmental impacts and risks that the project implies."[1100]

382. Having imposed that unattainable threshold throughout, SEMARNAT then inverted its own standard in the final paragraphs of the resolution, invoking the precautionary principle to assert that it could deny the MIA "based exclusively on indications of possible damage, ***without requiring absolute scientific certainty***."[1101] Mexico and its experts seize on this latter formulation to argue that SEMARNAT did not in fact require absolute scientific certainty.[1102] But the contradiction is self-evident: SEMARNAT cannot demand that Minera Gorrión establish absolute scientific certainty as the basis for approval and simultaneously claim that it denied the MIA without requiring such certainty.

383. Moreover, even if the Tribunal were to accept Mexico's baseless revisionism and treat the "absolute scientific certainty" language as merely descriptive of informational insufficiency, the result would be no less arbitrary. On that reading, SEMARNAT would possess open-ended discretion to characterize any submission as insufficiently certain and deny a MIA on that basis alone, unconstrained by any objective standard or defined threshold. As Dr. Limón Aguirre explains, this is precisely the vice of the standard SEMARNAT applied: the requirement that the MIA generate "absolute scientific certainty" in the DGIRA constituted an arbitrary exercise of discretion that contradicted both the precautionary principle and the requirement for a duly substantiated and reasoned decision.[1103]

384. Moreover, Mexico's assertion that Minera Gorrión failed to provide the technical elements necessary to establish that the Project would not cause ecological imbalances is factually

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1099 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 135, **Exhibit C-86**.

1100 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 138 (emphasis added), **Exhibit C-86**.

1101 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 139 (emphasis added), **Exhibit C-86**.

1102 Counter-Memorial, at para. 629; Del Razo-Rábago ER, at paras. 213-215.

1103 Limón ER-2, at para. 118.

incorrect. The MIA and the RAI response contained a robust and comprehensive body of technical and scientific evidence.[1104] As Dr. Pablo-Dorantes explains, and as the Claimants address in detail below, Minera Gorrión's MIA identified 1,058 hypothetical interactions between the activities of the Project and the environment, of which only 178 had realistic chances of occurring.[1105] Of those 178 interactions, 41 would constitute positive impacts that would actually benefit the environment, such as the reforestation and mining closure program.[1106] Of the remaining 137 negative effects, only 12 were severe, and none was critical or incompatible with the preservation of the regional ecosystem.[1107] The information before SEMARNAT was thus more than sufficient to evaluate the Project's environmental impacts and to grant conditional MIA authorization.

2.12.2.2. SEMARNAT wrongly concluded that the MIA lacked adequate information, which in any event could not have formed a valid basis for denying the MIA

385. In the Memorial, the Claimants demonstrated that SEMARNAT's MIA Denial Decision rested on the unfounded conclusion that Minera Gorrión failed to provide adequate technical information to assess the Ixtaca Project's environmental effects.[1108] In the Counter-Memorial, Mexico defends SEMARNAT's rejection of the MIA, asserting that Minera Gorrión failed to provide SEMARNAT with sufficient information to assess the Project's environmental impacts[1109] and that therefore "the Project was contrary to the law" under Article 35(III)(A) of the LGEEPA.[1110] That proposition does not withstand scrutiny for two reasons.

1104 Minera Gorrión, Manifestación de Impacto Ambiental (MIA, Chapter), dated December 2018, at Chapter VI, pp. 46-47, **Exhibit C-262**; Minera Gorrión's RAI Response, dated July 2019, at pp. 9-11, **Exhibit C-299**; Pablo-Dorantes WS, at paras. 65-66.

1105 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VI, pp. 22, 47, **Exhibit C-262**; Minera Gorrión, Manifestación de Impacto Ambiental (MIA), Executive Summary, dated December 2018, at pp. 6-7, **Exhibit C-263**; Pablo-Dorantes WS, at para. 32.

1106 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VI, p. 47, **Exhibit C-262**; Minera Gorrión, Manifestación de Impacto Ambiental (MIA), Executive Summary, dated December 2018, at pp. 6-7, **Exhibit C-263**; Pablo-Dorantes WS, at para. 32.

1107 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VI, at p. 47, **Exhibit C-262**; Minera Gorrión, Manifestación de Impacto Ambiental (MIA), Executive Summary, dated December 2018, at pp. 6-7, **Exhibit C-263**; Pablo-Dorantes WS, at para. 32.

1108 Memorial, at Section 2.14.4.2; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 135, para. 24, **Exhibit C-86**.

1109 Counter-Memorial, at para. 629.

1110 Counter-Memorial, at para. 302.

386. *First,* the factual predicate is wrong. Minera Gorrión's MIA complied in full with the legal and technical requirements of the LGEEPA and R-LGEEPA and rested on robust technical information that independent consultants prepared.[1111] Dr. Limón Aguirre confirms that Minera Gorrión "provided all the information that was required and therefore it was sufficient for SEMARNAT to evaluate and approve" the MIA.[1112] Dr. Pablo-Dorantes corroborates that assessment: drawing on his experience preparing more than 80 MIAs, he concludes that "the MIA for the Ixtaca Project was prepared by experienced professionals, applying the highest technical standards for risk prevention and mitigation, and strictly complying with the technical environmental rules and regulations prescribed under Mexican Law."[1113]

387. *Second,* informational insufficiency is not a basis for denying a MIA under Article 35 of the LGEEPA. When SEMARNAT considers the applicant's submission incomplete, it bears an affirmative duty to complete the record. It may not characterize the perceived gap as a substantive violation of law and deny the MIA outright. Dr. Limón Aguirre's first-hand institutional experience confirms this principle.[1114] During his nearly 12 years as a public official at SEMARNAT, including as Undersecretary for Environmental Protection – the office supervising DGIRA – SEMARNAT's standard practice was to ensure that the RAI was clear, precise, and exhaustive, reflecting the understanding that additional information could only be requested once under the R-LGEEPA.[1115] Dr. Limón Aguirre does not recall a single case in which the DGIRA denied a MIA on the ground that the applicant failed to provide sufficient information.[1116] When the DGIRA considered a submission incomplete or unclear, the institutional practice was to request additional information, impose conditions, or modify the project – not to deny the MIA by invoking a purported insufficiency of information as a basis for finding a violation of the LGEEPA and the R-LGEEPA.[1117]

388. In the case of Ixtaca, however, SEMARNAT deviated from this consistent practice.[1118] SEMARNAT issued a single RAI, as required under the applicable regulations. Minera Gorrión responded comprehensively, as Mexico acknowledges in the Counter-Memorial.[1119]

1111 Pablo-Dorantes WS, at para. 23.

1112 Limón ER-1, at paras. 107-124.

1113 Pablo-Dorantes WS, at para. 23.

1114 Limón ER-2, at para. 102.

1115 Limón ER-2, at para. 102.

1116 Limón ER-2, at para. 102.

1117 Limón ER-2, at para. 102.

1118 Limón ER-2, at para. 103.

1119 *See supra* Section 2.11.

Notably, SEMARNAT at no point indicated that the response was deficient. Having accepted that response without objection, SEMARNAT could not then deny the MIA on the ground that the information it had accepted was "insufficient" and therefore constituted a violation of Article 35. As Dr. Limón Aguirre explains, SEMARNAT did not typically equate a perceived "lack of information" with the grounds for denial set forth in Article 35(III)(A) of the LGEEPA;[1120] to do so expands SEMARNAT's discretion beyond what the LGEEPA establishes and lends itself to arbitrariness, as it would suffice for SEMARNAT to consider the information insufficient – for any reason – to deny a MIA on the basis of an alleged violation of law. In Dr. Limón Aguirre's opinion, this is precisely what occurred with the Ixtaca MIA: SEMARNAT used this expedited route to deny authorization.[1121]

389. The *Tribunal Federal de Justicia Administrativa* ("**TFJA**") confirmed this principle as recently as February 2026 in a case involving a coastal hotel project.[1122] There, the TFJA nullified SEMARNAT's denial of a MIA on the basis that it lacked "sufficient information."[1123] The TFJA held that SEMARNAT cannot characterize information as insufficient, treat that characterization as tantamount to a violation of the law, and then invoke it as a ground for denial under Article 35.[1124] As the TFJA explained, this is because the obligation to complete the record rests with the authority, not the applicant.[1125] Accordingly, the TFJA declared SEMARNAT's denial null and void and ordered SEMARNAT to issue a new resolution considering all information the applicant submitted and, if necessary, to request clarifications or supplementary information rather than deny the MIA outright.[1126]

2.12.2.3. SEMARNAT inexplicably omitted information regarding the Project's adequate water balance model and management of the FWD and WSD water dam construction

390. As the Claimants demonstrated in the Memorial, SEMARNAT's MIA Denial Decision also rested on the unfounded conclusion that Minera Gorrión failed to provide adequate technical information regarding the Project's water balance. In the Counter-Memorial, Mexico defends SEMARNAT's findings and advances additional arguments challenging the adequacy of

1120 Limón ER-2, at para. 103.

1121 Limón ER-2, at para. 103.

1122 Limón ER-2, at paras. 98-99, 103.

1123 Expediente 1101/25-EAR-01-3, dated 3 February 2026, **MLA-32**; Limón ER-2, at paras. 98-99, n. 112 (confirming SEMARNAT did not challenge or appealed this decision by the FTAJ thus acknowledging the court's reasoning).

1124 Expediente 1101/25-EAR-01-3, dated 3 February 2026, at pp. 53-56 **MLA-32**; Limón ER-2, at para. 98.

1125 Expediente 1101/25-EAR-01-3, dated 3 February 2026, at pp. 53-56 **MLA-32**; Limón ER-2, at paras. 99-100.

1126 Expediente 1101/25-EAR-01-3, dated 3 February 2026, at pp. 75-76, 77, **MLA-32**; Limón ER-2, at paras. 98-100.

Minera Gorrión's submissions on these issues. Both contentions are wrong. SEMARNAT disregarded the comprehensive technical record that Minera Gorrión submitted with the MIA and the response to the RAI regarding the Project's water balance and dam infrastructure.[1127] **Section (a)** demonstrates that SEMARNAT expediently dismissed Minera Gorrión's comprehensive water balance model and that Mexico's critiques of that model are overstated and erroneous. **Section (b**) shows that SEMARNAT ignored the evidence establishing that the FWD and WSD would not adversely impact water availability for local communities or surrounding ecosystems.

(a) Mexico's water balance critique is overstated and erroneous

391. In the Memorial, the Claimants explained that SEMARNAT wrongly rejected Minera Gorrión's water balance model on the flawed premise that it provided insufficient information to assess the Project's impact on surrounding ecosystems.[1128] In reaching that conclusion, SEMARNAT disregarded information that Minera Gorrión had timely placed on the record and turned a blind eye to the independent water balance report prepared by the mining consultancy SRK, which underpinned the water balance model.[1129]

392. In the Counter-Memorial, Mexico asserts that SEMARNAT rejected the water balance model because it did not cover the Project's entire useful life, which Mexico wrongly asserts to be 30 years.[1130] The water balance model covered only the first 12 years of the Project's operations, during which period Mexico incorrectly states that the water demand of the Project would be lower.[1131]

393. As a preliminary matter, Mexico vastly overstates the useful life of the Project. The Ixtaca Project had a useful life of 14.5 years, as both the MIA and the MIA Denial Decision acknowledged.[1132] Mexico offers no explanation for more than doubling that figure and cites no supporting authority. Moreover, no provision of the LGEEPA or the R-LGEEPA requires an applicant to present a definitive water balance covering the *entirety* of a project's life as a

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1127 Memorial, at para. 338; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 31 to 37, **Exhibit C-86**.

1128 Memorial, at para. 338; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 31 to 37, **Exhibit C-86**.

1129 *See* Pablo-Dorantes WS, at para. 90.

1130 Counter-Memorial, at paras. 276-277.

1131 Counter-Memorial, at paras. 276-277; Del-Razo-Rábago ER, at paras. 276-278; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 33, **Exhibit C-86**.

1132 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at p. 1, **Exhibit C-262**; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 16, **Exhibit C-86**.

precondition for MIA approval; the regulatory framework contemplates that such models may be refined as the project advances.[1133] Indeed, as Dr. Pablo-Dorantes explains, "it is common for applicants to conduct additional water studies after SEMARNAT approves a MIA and construction of the project begins."[1134] Minera Gorrión's 12-year water balance model nevertheless covered the vast majority of the Project's useful life and was more than adequate for this stage of project development. As Dr. Pablo-Dorantes confirms, Minera Gorrión submitted sufficient information – through the MIA, the RAI response, and SRK's water balance model – to allow SEMARNAT to assess the Project's water balance and its effects on the environmental system.[1135]

394. In any event, SEMARNAT never asked Minera Gorrión to extend or revise the water balance model during the RAI process. Indeed, rather than engage with the comprehensive technical record, SEMARNAT dismissed SRK's model[1136] on the sole and superficial ground that it covered a 12-year cycle rather than the full 14.5-year mine life.[1137]

(b) SEMARNAT disregarded evidence that the FWD and WSD would not adversely impact water availability

395. In the Memorial, the Claimants demonstrated that SEMARNAT's MIA Denial Decision rested in part on the baseless conclusion that Minera Gorrión failed to provide adequate technical information to assess the Ixtaca Project's impacts on ecological water flow from the proposed water reservoirs.[1138]

396. In the Counter-Memorial, Mexico parrots SEMARNAT's assertion that Minera Gorrión failed to provide sufficient information on the effects of the Project's proposed water dams on local ecosystems, and in particular the risk of altered flows or water shortages for local

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1133 *See* Pablo-Dorantes WS-2, at para. 36.

1134 *See* Pablo-Dorantes WS-2, at para. 36.

1135 Memorial, at para. 339, Pablo-Dorantes WS, at para. 90.

1136 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, **Exhibit C-286**.

1137 Memorial, at para. 339, Pablo-Dorantes WS, at para. 90.

1138 Memorial, at para. 301; Memoria Calculo Qecol Ixtaca 2019-07-15 spreadsheet, dated 15 July 2019 (Annex D to Minera Gorrión's RAI Response), **Exhibit C-301**; Memorial, at Section 2.14.4.2; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 135, para. 24, **Exhibit C-86**.

communities.[1139] As the MIA record demonstrates, and as Dr. Pablo-Dorantes sets out in his Second Witness Statement,[1140] that assertion is wrong.

397. The Project's proposed water infrastructure consisted of two rainwater reservoirs:

a) a Fresh Water Dam ("**FWD**"), situated west of the Process Plant with a storage capacity of up to 300,000 m³, dedicated solely to processing and serving as the Project's main water source;[1141] and

b) a Water Storage Dam ("**WSD**"), sitting upstream of the open pit, with an upstream drainage area of 848 hectares and a maximum storage capacity of 1,800,000 m³ designed to supply fresh water to local communities and make-up water[1142] to the process plant as required.[1143] A figure reflecting the disposition of the Project's water infrastructure at year 3 appears below:

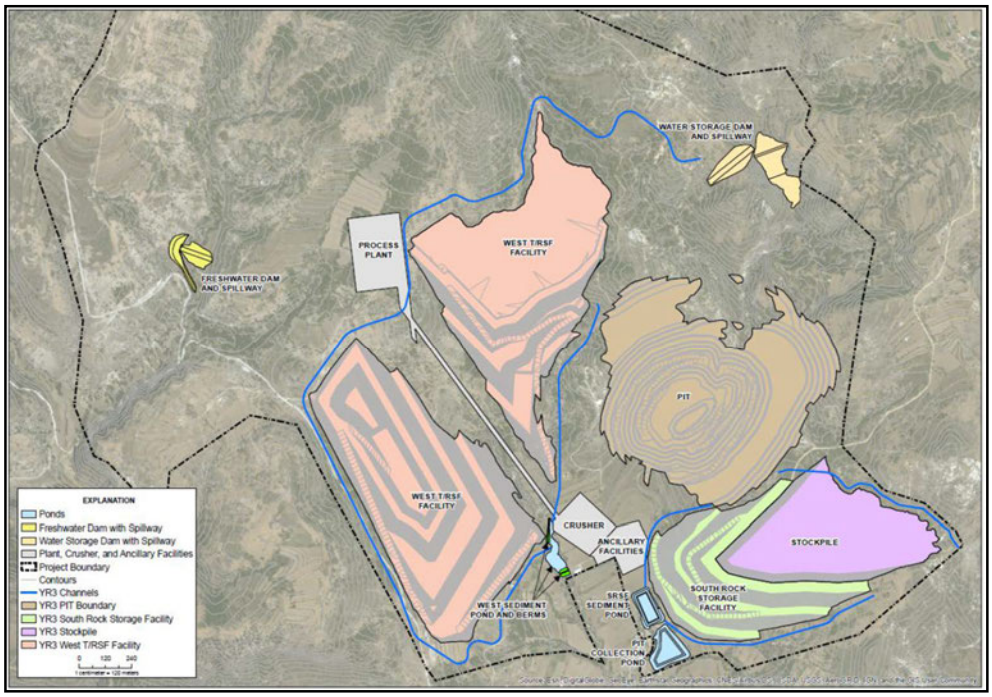
1139 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 34, **Exhibit C-86**; Counter-Memorial, at paras. 275-279.

1140 Pablo-Dorantes WS-2, at para. 37.

1141 Santamaría Tovar WS-2, at para. 75; SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. 23, **Exhibit C-286**; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at p. 4-10, **Exhibit C-262**.

1142 Make up water is freshwater required by the processing plant to sustain the mining operation in the event of any deficit of the existing main water sources. *See* Pablo-Dorantes WS-2, at para. 38; SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. 24, **Exhibit C-286**.

1143 Santamaría Tovar WS-2, at para. 76; SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. 24, **Exhibit C-286**; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at p. 4-10, **Exhibit C-262**.



Project infrastructure layout at year 3, showing water diversion channels from the WSD (yellow, top right) and the FWD (darker yellow, top left).[1144]

398. The Project's water management strategy relied primarily on capturing and storing seasonal rainfall – abundant during the region's rainy season from April to October[1145] – rather than extracting groundwater.[1146] Minera Gorrión designed the WSD specifically to address the region's principal constraint: the lack of infrastructure to capture and store rainwater.[1147] The WSD would thereby have ensured a reliable supply for both local communities and the Project's operational needs.[1148]

399. As Minera Gorrión explained in its July 2019 RAI response, the Project would have only drawn between 2.2% and 3.9% of the 27.6 million m³ of water available for concession from the local aquifer; captured rainfall would have supplied the vast majority of the Project's water needs.[1149] The minimal remaining portion would have come from groundwater seeping into the open

1144 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. 21, **Exhibit C-286**; *see also* Santamaría Tovar WS-2, at para. 76.

1145 Santamaría Tovar WS-2, at para. 74; Video of Apulco River taken by Mr. Daniel Santamaría Tovar from San Francisco bridge in Ixtacamaxtitlán, dated August 2022 (showing the Apulco river during the rainy season), **Exhibit C-656**.

1146 Pablo-Dorantes WS-2, at para. 39.

1147 Pablo-Dorantes WS-2, at para. 39; Santamaría Tovar WS-2, at para. 82.

1148 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at p. 8-10, **Exhibit C-262**.

1149 Minera Gorrión's RAI Response, dated July 2019, at p. 9, **Exhibit C-299**.

pit,[1150] for which CONAGUA would have awarded concessions through a separate process after MIA approval,[1151] as the Claimants explain further below.[1152]

400. SEMARNAT's finding that Minera Gorrión failed to assess the effects of dam construction on water availability for local communities is equally incorrect.[1153] As Dr. Pablo-Dorantes explains in his Second Witness Statement, the proposed WSD site remains dry throughout the dry season and has no surface rivers, and none of the nearby communities rely on runoff from this zone for water supply.[1154] The WSD therefore would not have affected the availability of water for any of those communities.[1155]

401. The MIA record and Minera Gorrión's RAI response also disprove Mexico's contention that Minera Gorrión failed to address the risk of altered flows and the impacts of the dams on surrounding ecosystems.[1156] In requirement (d) of its RAI, SEMARNAT specifically asked Minera Gorrión to evaluate the effects of the proposed dams on the local environment, including the ecological flow (*caudal ecológico*), namely the minimum quality, quantity, and regime of water flow required to maintain the processes and components of the systems of society.[1157] Minera Gorrión submitted a detailed ecological flow assessment included as Annex D to its RAI response, which identified minimum water volumes needed to sustain ecosystem functions and proposed monitoring and mitigation measures, including continuous flow monitoring with redistribution measures, periodic updates to ecological flow calculations, and additional sampling points, as Dr. Pablo-Dorantes describes in full in his Second Witness Statement.[1158]

402. The ecological flow assessment demonstrated that the proposed mitigation framework would adequately address any risks posed by the dams.[1159] Dr. Pablo-Dorantes further confirms that the impacts of constructing the dams would have been mild and temporary.[1160] As Minera

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1150 Minera Gorrión's RAI Response, dated July 2019, at pp. 9-11, **Exhibit C-299**.

1151 Pablo-Dorantes WS-2, at para. 41; Santamaría Tovar WS-2, at para. 87.

1152 *See infra* Section 2.12.

1153 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 34, **Exhibit C-86**.

1154 Pablo-Dorantes WS-2, at para. 46.

1155 Pablo-Dorantes WS-2, at para. 46; Limón ER-2, at para. 125.

1156 Pablo-Dorantes WS-2, at paras. 37, 39.

1157 Minera Gorrión's RAI Response, dated July 2019, at p. 18, **Exhibit C-299**.

1158 Pablo-Dorantes WS-2, at para. 49.

1159 Pablo-Dorantes WS-2, at paras 49; Minera Gorrión's RAI Response, dated July 2019, at p. 21, **Exhibit C-299**.

1160 Pablo-Dorantes WS-2, at para. 50.

Gorrión explained to SEMARNAT in its RAI response, the Claimants planned to construct the dams sequentially – first building the WSD to capture and store rainwater before starting construction on the FWD. This sequential approach would have avoided any interruption to the existing water supply.[1161] Moreover, consistent with standard dam construction practice, Minera Gorrión planned to install a temporary diversion channel at the FWD site before construction began.[1162] Through that channel, Minera Gorrión would have maintained downstream flows during the construction phase and protected the works from extreme precipitation events.[1163] Upon completion, Minera Gorrión would have decommissioned the diversion, commenced reservoir filling, and released water downstream in accordance with the ecological flow requirements, ensuring continuity of supply throughout.[1164]

403. Tellingly, the MIA Denial Decision did not engage with the substance of Minera Gorrión's ecological flow analysis at all.[1165] Rather than identify any specific deficiency in Annex D's methodology or conclusions, SEMARNAT acknowledged that Minera Gorrión had presented "the water balance model is presented, as well as the results obtained from the calculation of the ecological flow of the [watercourses] where the water collection systems for the project will be established,"[1166] but then pivoted to a series of vague and near unintelligible objections. SEMARNAT asserted that Minera Gorrión had not presented "the technical elements to determine the effects that [the dams'] establishment would have on the ecosystems present upstream and downstream of these works"[1167] even though this was precisely what Annex D addressed. SEMARNAT further stated that it was "necessary to determine and model the possible events in scenarios where both drought and atypical rainfall occur,"[1168] disregarding the fact that SRK's probabilistic model had simulated over 500 such scenarios.[1169] SEMARNAT then concluded with a near-garbled assertion that "the functionality of ecosystems is not only governed by the evolution of minimum flow, but is the result of the action of different processes and environmental elements that occur in a given time,"[1170] a

1161 Pablo-Dorantes WS-2, at para. 51.

1162 Minera Gorrión's RAI Response, dated July 2019, at p. 18, **Exhibit C-299**.

1163 Minera Gorrión's RAI Response, dated July 2019, at p. 18, **Exhibit C-299**.

1164 Pablo-Dorantes WS-2, at para. 51.

1165 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 37, **Exhibit C-86**.

1166 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 37, **Exhibit C-86**.

1167 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 37, **Exhibit C-86**.

1168 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 37, **Exhibit C-86**.

1169 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. 3, **Exhibit C-286**; SLR ER-2, at paras. 403, 431-432, 434 and 451.

1170 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 37, **Exhibit C-86**.

truism that identified no concrete gap in Minera Gorrión's submission. In short, SEMARNAT did not identify any specific shortcoming in the ecological flow analysis; it simply restated in opaque terms the very questions that Annex D had already answered.

404. SEMARNAT's conclusion that the MIA failed to demonstrate adequate water availability and that Minera Gorrión failed to assess the effects of dam construction on water flows and surrounding ecosystems is thus irreconcilable with the comprehensive technical record before it.

2.12.2.4. SEMARNAT's application of NOM-141 was arbitrary and disregarded the comprehensive information on the record regarding the Dry Co-Disposal Facility and tailings management

405. As the Claimants explained in the Memorial,[1171] SEMARNAT wrongly concluded that Minera Gorrión had failed to submit sufficient information regarding the Project's tailings. In so doing, it deliberately disregarded a wealth of information in the MIA case file.[1172] In both the MIA and the RAI response, Minera Gorrión analyzed and thoroughly described the tailings that the Project would produce and the filtered dry-stack method that Minera Gorrión would use to store them.[1173] Dr. Limón Aguirre confirmed that the information Minera Gorrión submitted was more than adequate to comply with NOM-141-SEMARNAT-2003 ("**NOM-141**"), the Mexican regulation governing tailings characterization and the construction of tailings dams.[1174]

406. In its Counter-Memorial, Mexico argues that Minera Gorrión's proposal to dispose of dry tailings in the Project's dry stack waste rock and filtered tailings co-disposal facility (*tepetateras*, also "**Dry Co-Disposal Facility**")[1175] failed to comply with NOM-141.[1176]

1171 Memorial, at Section 2.14.4.2.

1172 Pablo-Dorantes WS, at para. 95.

1173 *See* Limón ER-1, at paras. 146-148.

1174 *See* Limón ER-1, at paras. 146-148; NORMA Oficial Mexicana NOM-141-SEMARNAT-2003, dated 13 September 2004, at Sections 5.2 and 5.3, **Exhibit C-173**.

1175 Pablo-Dorantes WS-2, at n. 126 (explaining that "[i]n my First Witness Statement, I referred to the "dry stack waste rock and filtered tailings co-disposal facility" (or "Dry Co-Disposal Facility" in short) as the "overburden-dry tailings stack." While both terms describe the same infrastructure, in my Second Witness Statement I adopt the former, as it provides a more precise description of the facility's function and design.").

1176 Counter-Memorial, at paras. 286-290.

According to Mexico, the DGIRA rejected the *tepetatera*[1177] proposal on the ground that Minera Gorrión had not presented sufficient technical data to prove that the Project would not adversely impact the environment – including measures to prevent leachates from affecting soils and groundwater quality.[1178]

407. Mexico further contends that Minera Gorrión deliberately mislabeled the facility as a *tepetatera* to evade NOM-141[1179], asserting that it constitutes a filtered tailings dam subject to NOM-141. Mexico points to what it characterizes as an internal inconsistency in the MIA – stating that the Project would not require a separate tailings dam while simultaneously describing a filtration process to achieve 15–20% volumetric moisture content[1180] – and maintains that the regulatory link (*vinculación*) turns on the nature of the mining solid waste and the existence of a confinement structure, not on the label the applicant adopts. Mexico argues that the absence of technical standards supporting Minera Gorrión's proposed model creates uncertainty regarding proper mineral waste management.[1181]

408. Mexico's contentions may appear superficially plausible, but they cannot withstand scrutiny. As elaborated below, Mexico has never required comparable dry-stack tailings facilities to demonstrate exhaustive compliance with every provision of NOM-141, and its attempt to do so here is selective and discriminatory.[1182] In any event, Minera Gorrión complied fully with NOM-141 insofar as it applied to the Project. Minera Gorrión complied fully with Section 5.2 of NOM-141, which addresses the characterization of tailings.[1183] In essence, Section 5.2 of NOM-141 seeks to prevent events of acid rock drainage, namely the generation of acidic runoff when mining waste reacts with air and water.[1184] Dr. Pablo-Dorantes confirms that

409. [t]he MIA described how the Dry Co-Disposal Facility (*tepetateras*) would have consisted of a 5:1 ratio of stripping – or "waste" – material for each part of dry tailings.[1185] The waste

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1177 Mexico defined a *tepetatera* by providing the following context: "[f]or further context, 'tepetates' consist of very hard layers of soil that are difficult to excavate and almost impermeable, and a 'tepetatera' is the site where the 'tepetates' would be deposited." Counter-Memorial, at para. 286.

1178 Counter-Memorial, at paras. 286-290.

1179 Counter-Memorial, at paras. 324-330; Del Razo-Rábago ER, at para. 175.

1180 Counter-Memorial, at para. 326; Del Razo-Rábago ER, at para. 172.

1181 Counter-Memorial, at paras. 329-330.

1182 Pablo-Dorantes WS-2, at paras. 66-69; Limón ER-2, at paras. 146-148.

1183 Pablo-Dorantes WS, at paras. 96-97. Tailings are the solid residues generated by the separation and concentration of minerals, as defined under NOM-141-SEMARNAT-2003, at Section 4.11, **Exhibit C-173**.

1184 *See* NOM-141-SEMARNAT-2003 issued by SEMARNAT on 13 September 2004, Sections 5.2 and 5.3, **Exhibit C-173**.

1185 Pablo-Dorantes WS, at para. 25(c).

material – mostly limestone with an alkaline pH – would have helped neutralize any potential chemical reactions with air or water, lowering the risk of acid drainage.[1186] SRK, Knight Piésold, and Moose Mountain collected and analyzed 41 samples from the Project area; only 5 samples showed any slight potential for acid generation, indicating the risk to be minimal, even before accounting for the mitigation of this risk by co-disposal of these filtered tailings within the limestone waste rock.[1187] In any event, to further mitigate any risk, Minera Gorrión allocated MXN 50 million to ongoing monitoring and characterization of tailings and their risk of generating acid drainage.[1188]

410. Dr. Pablo-Dorantes also confirms that these measures fully complied with NOM-141 and ought to have sufficed for SEMARNAT's approval.[1189]

411. Certain portions of NOM-141, however, could not apply to the Project because they were designed for a fundamentally different and far more dangerous method of tailings storage.[1190] SEMARNAT issued NOM-141 in 2004,[1191] when the standard method for tailings disposal involved wet tailings confined in ponds or dams – facilities posing well-documented risks of failure, overflow, and related leaching, and acid drainage.[1192] As Dr. Limón Aguirre explains, the drafters of NOM-141 designed it with wet tailings in mind, involving moisture content of 70-80%.[1193] In essence, large pools of liquid the failure of which could flood surrounding areas. Minera Gorrión's proposed approach was fundamentally different.[1194] Minera Gorrión would have mechanically filtered[1195] the tailings to reduce their moisture content to 15-20%,[1196]

1186 Pablo-Dorantes WS, at paras. 95-97.

1187 Pablo-Dorantes WS, at paras. 95-97; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter III, pp. 18-19, **Exhibit C-262**. Pablo-Dorantes WS-2, at n. 129 ("I correct my previous statement in which I stated that "no risk" was registered. After reviewing the documents a second time, I now see that five of the samples had a slight potential of reaction.").

1188 Pablo-Dorantes WS-2, at para. 64; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VII, Table VII.13, p. 34, **Exhibit C-262**.

1189 Pablo-Dorantes WS-2, at para. 64.

1190 Pablo-Dorantes WS-2, at para. 65.

1191 Pablo-Dorantes WS-2, at para. 65; NORMA Oficial Mexicana NOM-141-SEMARNAT-2003, dated 13 September 2004, at Sections 5.2 and 5.3, **Exhibit C-173**.

1192 Pablo-Dorantes WS-2, at para. 65.

1193 Limón ER-2, at para. 142.

1194 Pablo-Dorantes WS-2, at para. 66.

1195 Santamaría Tovar WS-2, at para. 77; "Filtered" tailings should be understood interchangeably with "dry" tailings. *See* Pablo-Dorantes WS-2, at para. 66, n. 134.

1196 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter II, p. 24, **Exhibit C-262**. *See* Almaden Minerals, Ixtaca Project Overview Video, at Minute 3:05, **Exhibit C-617**.

mixed them with predominantly limestone waste material, compacted them, and stacked them in a stable dry formation.[1197] This dry-stack method recaptures and recirculates a large amount of process water while eliminating any risk of dam failure, as there is no dam.[1198] In short, this creates a terraced rock-like formation, not a massive pool of liquid. Messrs. Del Razo and Rábago themselves acknowledge that the dry-stack tailings method has "gained momentum in recent years because it has fewer risks associated with structural safety."[1199]



Still frames of video by Almaden showing the Dry Co-Disposal Facility (tepetatera) comparing years 2 and 10 of the Project and the progression of the stacking process of the Dry Co-Disposal Facility.[1200]

1197 Pablo-Dorantes WS-2, at para. 66.

1198 Pablo-Dorantes WS-2, at para. 66; SLR ER-2, at paras. 383 and 386.

1199 Del Razo-Rábago ER, at para. 173.

1200 Almaden Minerals, Ixtaca Project Overview Video, at Minutes: 4:01-4:16, **Exhibit C-617**.

412. Because the Dry Co-Disposal Facility would not have involved the storage of wet tailings or the construction of a dam, many of the structural elements that NOM-141 contemplates for conventional wet tailings facilities simply did not apply.[1201] The still frames shown above illustrate the progression of the Dry Co-Disposal Facility. By way of example, Section 5.6.13 of NOM-141 requires the operator to maintain a "freeboard" (*bordo libre*) of up to three meters above the liquid surface to prevent overtopping[1202] – a requirement that presupposes a facility retaining liquid tailings behind a dam wall, neither of which the Dry Co-Disposal Facility involved.[1203] Thus, Minera Gorrión explained in the MIA and the RAI response that it considered Sections 5.6 through 5.8 of NOM-141 inapplicable to its Dry Co-Disposal Facility,[1204] while committing to align its dry-stack technology with the relevant design principles from NOM-141, as well as international standards such as those the Canadian Mining Association issued in 2017,[1205] and to continue engaging constructively with SEMARNAT.[1206]

413. Mexico nonetheless maintains that the regulatory link (*vinculación*) of all sections of NOM-141 turns on the existence of a "confinement structure,"[1207] not on the nomenclature that the applicant gives the structure. But the Dry Co-Disposal Facility contains no dam, no liquid retention basin, and no impoundment of wet tailings.[1208] It is an open, compacted stack of filtered tailings mixed with waste rock. The structural provisions of NOM-141 that Mexico invokes address confinement structures that retain liquid or semi-liquid tailings, which the Dry Co-Disposal Facility does not.[1209] Put more simply, the Dry Co-Disposal Facility does not use the same confinement structure, so it is unclear why Mexico continues to insist on its usage.

1201 Described in Sections 5.5.2, 5.6.2, and 5.7.6 of NOM-141 and used to settle sediments and manage water in tailings ponds. NOM-141-2003, **Exhibit C-173**.

1202 Section 5.6.13 of NOM-141, NORMA Oficial Mexicana NOM-141-SEMARNAT-2003, dated 13 September 2004, **Exhibit C-173**.

1203 Pablo-Dorantes WS-2, at paras. 67-68.

1204 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter III, p. 22, **Exhibit C-262**.

1205 Minera Gorrión's RAI Response, dated July 2019, at p. 40, **Exhibit C-299**; SLR ER-2, at Section 3.4.2.

1206 Pablo-Dorantes WS-2, at para. 68.

1207 Counter-Memorial, at para. 328.

1208 Pablo-Dorantes WS-2, at paras. 67-68.

1209 Pablo-Dorantes WS-2, at paras. 67-68. For the same reason, Dr. Pablo-Dorantes confirms that the Normative Annex to NOM-141, which Mexico's experts also invoke, is inapplicable: that annex applies to thickened tailings containing at least 70% of their original volume of water, whereas the Ixtaca Project's filtered tailings would have contained only 15-20% moisture – a fundamentally different material that does not engage the annex's requirements. Pablo-Dorantes WS-2, at n. 148.

414. Mexico also argues that the MIA was internally "inconsistent because it stated that there would be a tailings dam and in other sections mentioned that a tailings dam would not be required."[1210] Not so. The MIA did not state that it would include a tailings dam, and Mexico points to no such statement. Instead, it relies solely on the report of Messrs. Del Razo and Rábago, who state that dry tailings containment structures such as the Dry Co-Disposal Facility "can also be found in technical literature" described "as a dry tailings dam or filtered tailings dam."[1211] But they fail to engage with the reasons why the specific provisions of NOM-141 do not apply to the Project. In any event, ascribing to the MIA terminology used by "technical literature" cannot plausibly render the MIA internally "inconsistent." But it is telling that Mexico's experts would, in an echo of the SEMARNAT personnel, point to a few mere phrases to support their conclusions rather than engage with the substantive differences between the two facilities.

415. Moreover, Mexico's position in this arbitration effectively concedes that Minera Gorrión complied with NOM-141 to the extent it was applicable. Messrs. Del Razo and Rábago acknowledge that Minera Gorrión presented the link (*vinculación*) with NOM-141 but contend it "lacked the required level of detail."[1212] That concession is irreconcilable with the reasoning of the MIA Denial Decision itself, in which the DGIRA stated that Minera Gorrión "omitted" the regulatory link (*vinculación*) with the totality of NOM-141's criteria altogether.[1213] Mexico's experts thus recognize that the MIA Denial Decision's reasoning on this point was indefensible, and the arguments Mexico now advances are *post hoc* rationalizations that the decision it purports to defend does not contain.[1214]

416. Perhaps most crucially, Mexico's position also contradicts SEMARNAT's past practice with respect to the application of NOM-141 regarding dry tailings stacks and *tepetateras*. As Mexico's own experts acknowledge, SEMARNAT approved the MIA for the Terronera Project in Jalisco, which included dry-stack technology comparable to that proposed for Ixtaca,[1215] without requiring compliance with each construction element of NOM-141. Unlike Ixtaca, however, the Terronera Project did not mix its dry tailings with limestone waste rock, thus

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1210 Counter-Memorial, at para. 326.

1211 Del Razo-Rábagao ER, at para. 172.

1212 Del Razo-Rábagao ER, at para. 177; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 61., **Exhibit C-86**.

1213 Del Razo-Rábagao ER, at para. 177.

1214 Limón ER-2, at para. 138.

1215 Del Razo-Rábago ER, at n. 109; Endeavour Silver Corp. (s.f.), *Manejo de jales y residuos*, Proyecto Terronera – Endeavour Silver, Jalisco, México, *available at* https://terronera.com/es/medio-ambiente/manejo-de-jales-y-residuos/, dated 18 January 2024, **Exhibit CRCR-18**.

actually presenting a *higher* risk of acid rock drainage than Ixtaca's 5:1 waste rock-to-filtered tailings ratio.[1216] SEMARNAT also approved the MIA for the Camino Rojo gold open-pit mining project in Mazapil, Zacatecas, which provided for remnant processed tailings to be left in *tepetateras* following heap leaching with cyanide.[1217] This disposal method presented greater environmental risks than Ixtaca's dry-stack approach, and yet SEMARNAT did not require the project to comply with the applicable sections of NOM-141.[1218]

417. Finally, Mexico's *post hoc* contention that Minera Gorrión failed to propose measures to prevent groundwater contamination by tailings is incorrect.[1219] The MIA explained that the Dry Co-Disposal Facility's footprint sat 500 meters from the nearest groundwater source,[1220] and Minera Gorrión included upstream and downstream groundwater monitoring measures in its *Programa de Vigilancia Ambiental* ("**PVA**")[1221] to prevent and monitor in real time any risk of acid rock drainage.[1222] Thus, this late in the day argument misses the point – Minera Gorrión did not need to propose measures that did not pose any actual risk of groundwater contamination.

2.12.2.5. SEMARNAT arbitrarily disregarded Minera Gorrión's robust assessments of the Project's impacts on flora and fauna

418. As set out in the Memorial[1223] and as explained above,[1224] SEMARNAT violated Minera Gorrión's due process rights by relying on untimely technical opinions – the DGGFS opinion dated 24 October 2019 and the DGVS opinion dated 11 February 2020[1225] – without affording Minera Gorrión any opportunity to review or address them.[1226] On the basis of those opinions, SEMARNAT concluded that Minera Gorrión's MIA failed to demonstrate that the Project

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1216 Pablo-Dorantes WS-2, at para. 70.

1217 Pablo-Dorantes WS-2, at para. 71.

1218 Pablo-Dorantes WS-2, at para. 71.

1219 Counter-Memorial, at Section II.D.5.

1220 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter III, p. 22, **Exhibit C-262**.

1221 The *Programa de Vigilancia Ambiental* encapsulates the strategies and programs to prevent and mitigate the environmental impacts of the Project on the regional environmental system; *See* Pablo-Dorantes WS, at para. 33; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VII, p. 7, **Exhibit C-262**.

1222 Pablo-Dorantes WS-2, at para. 72.

1223 Memorial, at Section 2.14.4.1.

1224 *See supra* Section 2.11.

1225 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 132, Section XXIII, **Exhibit C-86**.

1226 Pablo-Dorantes WS, at paras. 91-94.

would not harm endangered flora and fauna species within the regional environmental system.[1227] That finding was not only incorrect; it disregarded information in the MIA case file and ignored the Project's robust prevention and compensation strategies to offset potential impacts on species in the region.[1228]

419. In the Counter-Memorial, Mexico asserts that SEMARNAT denied Minera Gorrión's MIA for the *additional* reasons that: (i) according to DGIRA, the Project would require a change of land use permit to account for the presence of secondary Táscate forest across the entirety of the Project area;[1229] (ii) the Project would aggravate impacts on flora and fauna species in the Project area, in violation of the restoration policy established by the 2012 *Programa de Ordenamiento Ecológico General del Territorio* ("**POEGT**");[1230] and (iii) Minera Gorrión underestimated the Project's potential harm to endangered species because it failed to sample the Project's "entire surface area" or to conduct "population studies or feasibility assessments."[1231]

420. On Mexico's first assertion—the change of land use permit – Dr. Pablo-Dorantes confirms that although Minera Gorrión would eventually have required such a permit to construct and operate the Project, there was no reason to do so at the MIA approval stage.[1232] Mr. McDonald testifies that at the time it prepared the updated MIA, Minera Gorrión had already prepared a draft of the *Estudio Técnico Justificativo*, which it was ready to submit to the authority.[1233] In any event, SEMARNAT did not base its MIA rejection on the need for a change of land use permit;[1234] it merely noted, in passing, that such a permit would eventually be required.[1235]

421. With respect to Mexico's second assertion, SEMARNAT concluded that the Project ran contrary to the POEGT's "restoration" objective because it would affect 1,044 hectares of flora

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1227 Memorial, at Section 2.14.4.1.

1228 Pablo-Dorantes WS, at para. 91.

1229 Counter-Memorial, at paras. 273-274; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 18, **Exhibit C-86**.

1230 Counter-Memorial, at paras. 280-282, 283; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 38-40, 55-59, **Exhibit C-86**.

1231 Counter-Memorial, at paras. 291-293; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 85-88, **Exhibit C-86**.

1232 Pablo-Dorantes WS-2, at para. 75; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter III, p. 18, **Exhibit C-262**.

1233 McDonald WS-2, at para. 141; *Estudio Técnico Justificativo,* dated 2022, **Exhibit C-640**.

1234 Pablo-Dorantes WS-2, at para. 75.

1235 Counter-Memorial, at para. 274; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 18, **Exhibit C-86**.

and fauna habitat.[1236] SEMARNAT drew that conclusion based mainly on DGGFS's opinion,[1237] which stated that the Project sat between two fragile ecological units containing secondary Táscate forest providing important services such as rainwater conservation and aquifer recharge.[1238]

422. As a preliminary matter, the POEGT is a public policy instrument that SEMARNAT issued in 2012,[1239] with the aim of guiding federal agencies in formulating their sectoral programs.[1240] It is not a binding technical regulation with which an applicant must comply, but rather a policy framework that a proposed project must consider.[1241]

423. SEMARNAT's conclusions were substantively incorrect for three reasons, as Dr. Pablo-Dorantes and Dr. Limón Aguirre explain.

a) *First,* SEMARNAT's characterization of the affected vegetation overstated the Project's impact. "Táscate" is a common name referring to a group of vegetation types, only one of which qualifies as a protected species under NOM-059-SEMARNAT-2010 ("**NOM-059**").[1242] The Project would have affected only 0.05% of the total Táscate forest within the SAR, the majority of which consisted of secondary vegetation that human activity had already altered.[1243]

b) *Second*, the DGGFS opinion on which SEMARNAT relied was inconsistent with the forestry regulatory framework.[1244] On the one hand, DGGFS characterized the Táscate forest as a sensitive ecosystem requiring restoration and invoked that characterization to

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1236 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 40, **Exhibit C-86**.

1237 Pablo-Dorantes WS, at paras. 93-94; Oficio SGPA/DGGFS/712/2185/19 por el que la DGGFS emite la respuesta a la solicitud de Opinión Técnica, dated 24 October 2019, **Exhibit R-66**.

1238 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 41, **Exhibit C-86**.

1239 Pablo-Dorantes WS-2, at para. 76; Limón ER-2, at para. 178(d).

1240 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter III, p. 4, **Exhibit C-262**.

1241 Limón ER-2, at para. 178(d).

1242 NOM-059-2010 identifies the endangered wildlife and flora species in the Mexican territory through lists and establishes criteria of inclusion, exclusion and change of categories. It is worth noting that the catalogue of species changed in November 2019, after Minera Gorrión submitted its MIA in February 2019, and therefore the applicable catalogue was the one in force as of December 2010. *See* NOM-059-SEMARNAT-2010, dated 30 December 2010, **Exhibit R-77**.

1243 Pablo-Dorantes WS-2, at para. 77; Limón ER-2, at para. 178(g); Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), at Chapter II, Table II.5, p. 16, **Exhibit C-262**.

1244 Pablo-Dorantes WS-2, at para. 77; Oficio SGPA/DGGFS/712/2185/19 por el que la DGGFS emite la respuesta a la solicitud de Opinión Técnica, dated 24 October 2019, **Exhibit R-66**.

conclude that the Project conflicted with the POEGT's restoration objective.[1245] On the other hand, the *Comisión Nacional Forestal* ("**CONAFOR**") – the national authority responsible for classifying Mexico's forest resources – classified that very same area as land with potential forestry use (*terrenos de uso potencial forestal*), not as a conservation zone.[1246] Put another way, Mexico's own forestry authority did not consider the area to warrant conservation.[1247] DGGFS therefore lacked any sound basis to invoke the POEGT's restoration policy as a ground to deny the MIA.

c) *Third,* to the knowledge of Dr. Limón Aguirre and Dr. Pablo-Dorantes, SEMARNAT had never previously applied the POEGT as a binding standard to justify denying an MIA outright, and its analysis considered only the Project's potential negative effects while disregarding the comprehensive reforestation and restoration measures that Minera Gorrión would have implemented during the closure phase, which would have included activities such as revegetation of the land, dismantling of the processing plant, covering the land with fertile soil.[1248]

424. Regarding Mexico's third contention,[1249] SEMARNAT concluded that Minera Gorrión underestimated the Project's impact on endangered species by failing to conduct adequate studies. *First*, it is false that Minera Gorrión's survey underestimated the Project's impact by virtue of covering only 1.15% of the Project area.[1250] As Dr. Pablo-Dorantes explains, the representativeness of ecological surveys does not depend solely on the percentage of land sampled.[1251] Rather, accumulation curves (*curvas de acumulación*) measure the representativeness of fauna and flora more effectively – these graphs plot the expected number of observed species as a function of accumulated samples over time.[1252] Dr. Pablo-Dorantes

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1245 Oficio SGPA/DGGFS/712/2185/19 por el que la DGGFS emite la respuesta a la solicitud de Opinión Técnica, dated 24 October 2019, **Exhibit R-66**.

1246 Pablo-Dorantes WS-2, at para. 77; *Acuerdo Por El Que Se Integra Y Organiza La Zonificación Forestal*, CONAFOR, DOF 30/11/2011, dated 30 November 2011, **Exhibit C-641**; *Acuerdo Por El Que Se Integra Y Organiza La Zonificación Forestal*, CONAFOR, DOF 10/12/2025, dated 10 December 2025, **Exhibit C-643**; Map of the *Zonificación Forestal en el AP y el SAR para el Proyecto Ixtaca*, **Exhibit C-642**.

1247 Pablo-Dorantes WS-2, at para. 77.

1248 Pablo-Dorantes WS-2, at para. 77; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VI, at p. 7, **Exhibit C-262**; Minera Gorrión, Ixtaca Project, Cutting-Edge Project, PowerPoint Presentation, dated 10 February 2021, at slide 31, **Exhibit C-620**.

1249 Counter-Memorial, at para. 292.

1250 Pablo-Dorantes WS-2, at para. 78.

1251 Pablo-Dorantes WS-2, at paras. 78-79.

1252 Chao Deng, Timothy Daley, and Andrew D Smith, Applications of species accumulation curves in large-scale biological data analysis, Quant Biol. 2015 September; 3(3): 135-144, **Exhibit C-621**.

confirms that all of the accumulation curves submitted in the MIA flattened as the number of samples progressed, demonstrating that the sampling effort had captured the species present in the Project area and confirming the high representativeness of the surveys conducted.[1253]

425. Importantly, SEMARNAT did not request additional sampling or question the technical basis for the accumulation curves.[1254] Instead, it asked Minera Gorrión to submit additional information showing that the Project would not affect endangered species.[1255] In its RAI response, Minera Gorrión addressed this concern by providing national distribution data – which it drew from the *Comisión Nacional para el Conocimiento y Uso de la Biodiversidad* ("**CONABIO**") – for all 17 endemic species and the one species listed under NOM-059 that it had identified in the Project area.[1256] The distribution data covered each of the species Mexico's Counter-Memorial references, namely *Cupressus lusitanica* (white cedar),[1257] *Barisia imbricata* (Alicante lizard), and *Crotalus ravus* (Mexican pygmy rattlesnake).[1258] That data demonstrated that the Project would affect only a small, localized portion of each species' broader habitat range,[1259] such that the affected populations constituted a negligible fraction of each species' total population and no population-level genetic or demographic effects could reasonably be anticipated.[1260] In other words, the Project did not present any meaningful threat to the relevant endangered species.

426. The significance of this evidence is best understood through the distinction Dr. Limón Aguirre draws between a species, a population, and an individual specimen.[1261] As defined under NOM-059: (i) a "species" is "the basic unit of taxonomic classification, composed of a set of individuals capable of reproducing among themselves and generating fertile offspring, sharing physiognomic, physiological, and behavioral traits;"[1262] (ii) a "population" is "the set of individuals of a wild species that share the same habitat," considered "the basic unit of

1253 Pablo-Dorantes WS-2, at para. 79.

1254 Pablo-Dorantes WS-2, at para. 80.

1255 Minera Gorrión's RAI Response, dated July 2019, at p. 18., **Exhibit C-299**.

1256 Pablo-Dorantes WS-2, at para. 81.

1257 This was the only species classified under special protection in NOM-059. Curiously, this is not a native species to the region and I heard this was planted by Minera Gorrión and Minera Gavilán as part of their reforestation programs.

1258 Minera Gorrión's RAI Response, dated July 2019, at pp. 18-30, **Exhibit C-299**.

1259 Minera Gorrión's RAI Response, dated July 2019, at pp. 21, 31, **Exhibit C-299**.

1260 Minera Gorrión's RAI Response, dated July 2019, at pp. 21, 31, **Exhibit C-299**.

1261 Limón ER-2, at para. 150.

1262 NOM-059-SEMARNAT-2010, dated 30 December 2010, at Sections 2.3, and 2.12, **Exhibit R-77**.

management of wild species in the wild;"[1263] and (iii) an individual specimen (*ejemplar*) is a single organism belonging to a given species.[1264] Mexico conflates these three categories. At the species and population level, the CONABIO national distribution data confirmed that the Project would not compromise the population dynamics, genetic variability, or national distribution of any species: the affected habitat constituted a negligible fraction of each species' broader range, leaving their populations effectively intact.[1265] At the level of individual specimens – the only level at which the Project could have had any effect – Minera Gorrión further explained that the PVA included a comprehensive wildlife rescue and relocation program,[1266] which would fully mitigate any displacement of individual specimens during site preparation.[1267] SEMARNAT's finding thus conflated the displacement of individual specimens with harm to species at the population or distribution level.[1268]

427. Moreover, the mere possibility that the Project might impact a NOM-059-listed species was not a valid basis for SEMARNAT to deny the MIA.[1269] As Dr. Limón Aguirre explains, the TFJA addressed this issue in 2005 in the *Terminal GNL de Sonora* case, which concerned the installation of a natural gas terminal on the Pacific coast of Baja California.[1270] A third party sought annulment of an environmental permit that conditioned the project on the protection of sea turtles and mammals.[1271] The TFJA confirmed the legality of the decision, holding that "the authority was not constrained to deny such authorization, especially when the plaintiff does *not conclusively demonstrate that the project would alter the conditions necessary for the subsistence, development, and evolution of the species it references*."[1272] As Dr. Limón Aguirre opines, interpreting the law to prohibit any project that may affect a listed species would

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1263 NOM-059-SEMARNAT-2010, dated 30 December 2010, at Sections 2.3, and 2.12, **Exhibit R-77**.

1264 NOM-059-SEMARNAT-2010, dated 30 December 2010, at Sections 2.3, and 2.12, **Exhibit R-77**.

1265 Minera Gorrión's RAI Response, dated July 2019, at pp. 25, 35, **Exhibit C-299**.

1266 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. I, dated December 2018, at p. 971 et seq. (Ahuyentamiento y rescate de faune program), **Exhibti C-611**.

1267 Limón ER-2, at para. 156.

1268 Limón ER-2, at para. 157.

1269 Limón ER-2, at paras. 15(c) 151, 154.

1270 Administrative Litigation Case No. 8739/09-17-07-5/1475/11-S2-06-07—Decided by the Second Section of the Superior Chamber of the Federal Court of Fiscal and Administrative Justice, in a session held on 8 January 2013, at pp. 358-361, **MLA-33**.

1271 Administrative Litigation Case No. 8739/09-17-07-5/1475/11-S2-06-07—Decided by the Second Section of the Superior Chamber of the Federal Court of Fiscal and Administrative Justice, in a session held on 8 January 2013, at pp. 358-361, **MLA-33**.

1272 Administrative Litigation Case No. 8739/09-17-07-5/1475/11-S2-06-07—Decided by the Second Section of the Superior Chamber of the Federal Court of Fiscal and Administrative Justice, in a session held on 8 January 2013, at p. 361 (emphasis added), **MLA-33**.

effectively prohibit virtually all human activity, particularly in a country of Mexico's level of biodiversity.[1273]

428. As explained above, Article 35(II) of the LGEEPA empowered SEMARNAT to grant conditional MIA authorization subject to prevention and mitigation measures to safeguard endangered species. As the Claimants demonstrate in Section 2.11.3 below, SEMARNAT consistently applied this conditional approval framework to comparable projects. Yet SEMARNAT refused to follow that framework in the case of Ixtaca. It did so even though Minera Gorrión had already proposed concrete rescue and relocation measures in its PVA. That refusal further evidences the pretextual character of the denial.

2.12.2.6. SEMARNAT arbitrarily dismissed Minera Gorrión's robust analysis of "synergistic, cumulative, and residual" impacts on surrounding ecosystems

429. As set out in the Memorial, Minera Gorrión's MIA complied in full with the legal and technical requirements set out in the LGEEPA and R-LGEEPA, and it included robust technical information prepared by independent consultants.[1274]

430. SEMARNAT nevertheless concluded that Minera Gorrión failed to apply proper "methodological instruments"[1275] that would allow it to identify the Project's synergistic, cumulative, and residual impacts on surrounding ecosystems.[1276] Under SEMARNAT's own guidelines to prepare a MIA, "cumulative" impacts are incremental impacts caused by the action of private parties and their interaction with prior actions that persist in the present;[1277] "synergistic" impacts refer to the joint effect of individual impacts occurring at the same time in the environment, which are larger than the aggregate effect of the individual impacts;[1278] and "residual" effects are impacts that persist after the application of mitigation measures.[1279]

1273 Limón ER-2, at para. 151.

1274 Memorial, at para. 286, Pablo-Dorantes WS, at para. 23.

1275 Counter-Memorial, at paras. 297-298.

1276 Counter-Memorial, at paras. 294-296; Del Razo-Rábago ER, at para. 198; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 103-105, **Exhibit C-86**.

1277 SEMARNAT, Guía para la Elaboración de la Manifestación de Impacto Ambiental Regional, at p. 9, n. 6, **MLA-2**; Limón ER-1, at n. 23.

1278 SEMARNAT, Guía para la Elaboración de la Manifestación de Impacto Ambiental Regional, at p. 4, **MLA-2**; Limón ER-1, at n. 23.

1279 SEMARNAT, Guía para la Elaboración de la Manifestación de Impacto Ambiental Regional, at p. 9, n. 7, **MLA-2**; Limón ER-1, at n. 23.

431. SEMARNAT reached this conclusion – again relying on the technical opinions from DGGFS and DGVS – based on the incorrect premise that Minera Gorrión had not provided sufficient information to "conclu[de] that the Project will not have irreversible effects that could endanger the functional integrity and carrying capacity of these ecosystems."[1280] In the Counter-Memorial, Mexico parrots that conclusion for reasons that are vague and inconsistent with the MIA record.

432. Dr. Pablo-Dorantes confirms that SEMARNAT's approach to the evaluation of cumulative, synergistic, and residual impacts was flawed, hasty, and altogether arbitrary.[1281] SEMARNAT began from the premise that Minera Gorrión's proposed prevention and mitigation measures were inconsistent with the impacts identified in the SAR.[1282] But rather than explaining why, SEMARNAT simply transcribed the 10 sub-programs that made up Minera Gorrión's PVA[1283] – emission and dust control, waste management control measures, and others – and then stated, in conclusory fashion, that this information was insufficient to rule out irreversible harm.[1284] Even on its face, such an approach is insufficient.

433. In any event, and contrary to SEMARNAT's conclusion, Minera Gorrión did not evaluate the Project's impacts in isolation. As explained above,[1285] the MIA included a comprehensive risk matrix[1286] that mapped the interactions between each of the Project's 23 activities and 46 environmental parameters, identifying 178 probable interactions out of 1,058 possible ones.[1287] Minera Gorrión graded each potential impact according to the standardized CONESA 2003[1288] scale and followed established industry guidelines.[1289] This exercise involved identifying every

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1280 Counter-Memorial, at para. 295, SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 105, **Exhibit C-86**.

1281 Pablo-Dorantes WS-2, at para. 84.

1282 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 88, **Exhibit C-86**.

1283 *Compare* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at pp. 88-103, **Exhibit C-86**; *and* Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), at Chapter VII, pp. 10-33, **Exhibit C-262**.

1284 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 103, **Exhibit C-86**.

1285 *See supra* Section 2.11.

1286 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), at Chapter V, pp. 114 et seq., **Exhibit C-262**.

1287 Pablo-Dorantes WS-2, at para. 86.

1288 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), at Chapter VI, Table VI-6, p. 26, **Exhibit C-262**.

1289 *See* Pablo-Dorantes WS-2, at paras. 78-79; *see also* Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), at Chapter IV, p. 124, **Exhibit C-262**.

risk, assessing its interactions with other risks and their combined effects,[1290] and thus required complex modeling and preparation. SEMARNAT and now, Mexico, completely overlook this significant effort.

434. Instead of engaging with that record, SEMARNAT simply echoed the opinions of DGGFS and DGVS, both of which asserted that Minera Gorrión's mitigation measures could not sufficiently address the cumulative impacts on protected species of flora and fauna.[1291] But those conclusions – which Minera Gorrión had no opportunity to comment upon, and to which it was not given access until after SEMARNAT had denied the MIA application – were easily rebutted. Minera Gorrión had based its mitigation strategy on detailed fieldwork conducted over more than a year and specifically tailored it to the limited number of endangered species identified in the SAR. SEMARNAT never explained – and Mexico still does not explain – what additional measures would have been required to adequately mitigate the Project's cumulative impacts on protected species, or why the measures Minera Gorrión proposed were inadequate.[1292]

435. Dr. Pablo-Dorantes confirms that this methodology met professional and regulatory standards and should have been sufficient for SEMARNAT to approve the MIA.[1293] Dr. Limón Aguirre independently corroborates this assessment, explaining that Mexico conflates "methodological instruments" – such as the cartography, photographs, laboratory analyses, field studies, and statistical analyses that technically and documentarily support the MIA – with the methodology used to evaluate impacts.[1294] Indeed, SEMARNAT's own guidelines recognize that no single methodology exists for evaluating environmental impacts; the guidelines require only that the chosen methodology address three analytical functions: identification, characterization, and evaluation. Minera Gorrión's MIA satisfied all three.[1295] Neither SEMARNAT in its MIA Denial Decision nor Mexico belatedly in this arbitration has identified any specific respect in

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1290 For this reason, Dr. Pablo-Dorantes explains that Messrs. Del Razo and Rábago's assertion that the WSD dam required a separate regional MIA would be contrary to this principle informing the MIA evaluation. The objective of a regional MIA is assessing under a same evaluation the cumulative and synergistic impacts generated by the groups of related works. *See* Del Razo-Rábago ER, at para. 170.

1291 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 103-105, **Exhibit C-86**.

1292 Pablo-Dorantes WS-2, at para. 87.

1293 Pablo-Dorantes WS-2, at para. 87.

1294 Limón ER-2, at para. 15(f).

1295 Limón ER-2, at paras. 106, 172-175.

which Minera Gorrión's methodology failed to meet the applicable standard – because it did not.[1296]

436. Finally, Mexico contends that Minera Gorrión failed to include as part of the Project's works a road for vehicular transit and an electrical transmission line, and that this omission undermined the completeness of the MIA's impact assessment.[1297] This contention is factually incorrect. As Dr. Pablo-Dorantes confirms, the Government of Puebla and the *Comisión Federal de Electricidad* bore responsibility for the road and electrical transmission line, respectively. Nonetheless, Minera Gorrión *did include* them in its MIA.[1298] Indeed, SEMARNAT itself acknowledged in the MIA Denial Decision that Minera Gorrión stated these works did not form part of the Project.[1299] Mexico's attempt to recast this as a deficiency contradicts both the MIA record and SEMARNAT's own findings. It would appear that in going out of its way to belatedly bolster the MIA Denial Decision, Mexico has yet again failed to adequately assess the materials before it.

437. In sum, SEMARNAT's evaluation of synergistic, cumulative, and residual impacts was conclusory, its reliance on the belated DGGFS and DGVS opinions was unfounded and breached due process, and Minera Gorrión's methodology met every applicable professional and regulatory standard.

2.12.2.7. SEMARNAT wrongly rejected the MIA based on an erroneous understanding of indigenous consultation

438. As the Claimants demonstrated in the Memorial,[1300] SEMARNAT incorrectly rejected the MIA because it found that Minera Gorrión breached a duty under the International Labour Organisation's Indigenous and Tribal Peoples Convention 169 ("**ILO 169**")[1301] by failing to complete indigenous consultation with the communities that three agencies identified during the MIA evaluation process.[1302] That conclusion lacked any legal or factual foundation. As a

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1296 Limón ER-2, at para. 174.

1297 Counter-Memorial, at paras. 270-272.

1298 *See* Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), at Chapter II, p. 26; *Id*., at Chapter VI, pp. 23-25, 33-34, **Exhibit C-262**; Counter-Memorial, at para. 271; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 24, **Exhibit C-86**.

1299 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 24, **Exhibit C-86**.

1300 Memorial, at Section 2.14.4.4

1301 ILO Convention 169, at Article 6 (emphasis added), **CL-16**.

1302 Memorial, at Section 2.14.4.4; *Comisión Para el Dialogo con los Pueblos Indígenas de México,* INPI's Puebla State, and the *Subsecretaría de Atención a Pueblos Indígenas* of the Government of the State of Puebla. SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 136, **Exhibit C-86**.

legal matter, neither the LGEEPA nor the R-LGEEPA requires indigenous consultations before SEMARNAT can approve a MIA,[1303] and even if such a duty existed, it lay squarely on the Mexican State – not on Minera Gorrión.[1304] As a factual matter, the very opinions upon which SEMARNAT relied – from the CDPI,[1305] the Undersecretary for Indigenous Peoples of the Government of Puebla,[1306] and the Puebla Office of the INPI[1307] – did not assign any consultation obligation to Minera Gorrión, and Minera Gorrión had attached to its RAI response letters from the Mexican Government itself, including SECOTRADE and the CDI, confirming that no indigenous consultations were required.[1308] Moreover, SEMARNAT's refusal to grant conditional MIA approval – as it had done for the Camino Rojo, El Boleo, and Huazamota River projects – was discriminatory and inconsistent with its established practice.[1309]

439. In the Counter-Memorial,[1310] Mexico endorses SEMARNAT's position in full.[1311] But Mexico fails to explain why SEMARNAT was entitled to deny the MIA on a ground that has no basis in the LGEEPA or the R-LGEEPA.[1312] It likewise fails to address the fact that the CDPI and INPI Puebla Office opinions did not require Minera Gorrión to conduct consultations.[1313] Also, it fails to explain why SEMARNAT departed from its established practice of granting conditional approval in comparable cases.[1314]

1303 Limón ER-1, at para. 191.

1304 Limón ER-1, at paras. 185-186. *See supra* Section 2.11.

1305 *Comisión Para el Diálogo con los Pueblos Indígenas de México. See* Memorial, at para. 350; SEGOB's CDPI, Official letter No. SG/CDPIM/102/2019, dated 11 March 2019, **Exhibit C-63**.

1306 Oficio SGG/SAPl/205/2019 por el que la Subsecretaría de Atención a Pueblos Indígenas remite Opinión Técnica, dated 22 April 2019, **Exhibit R-61**.

1307 Memorial, at para. 351; INPI Puebla, Official letter No. DPUE/2019/OF/0373, dated 22 March 2019, **Exhibit C-478**.

1308 Memorial, at Section 2.14.4.4

1309 Memorial, at Section 2.14.4.4; Limón ER-1, at para. 189.

1310 Counter-Memorial, at paras. 303-307; Del Razo-Rábago ER, at paras. 193-196.

1311 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 136, **Exhibit C-86**.

1312 Memorial, at para. 348.

1313 Memorial, at para. 350.

1314 Memorial, at para. 353; *See, e.g.,* SEMARNAT Official Notice SGPA/DGIRA/DG/03478, dated 11 August 2020, at p. 66, **Exhibit C-84** (In Camino Rojo, if the Ministry of the Environment and Natural Resources (SEMARNAT, as per the acronym in Spanish) were the government agency that would implement administrative measures that could affect indigenous peoples and communities that may be settled in the areas mentioned in the preamble of this document, for the assessment and ruling of the Regional Environmental Impact Statement (MIA-R, as per the acronym in Spanish), such Ministry of the Environment and Natural Resources would act as the authority responsible for carrying out the necessary consultations with indigenous peoples.).

440. Most tellingly, Mexico turns a blind eye to the fact that the obligation to consult indigenous communities is an obligation *of the State*, not private parties. It would be contrary to the very nature of the consultation – which must be free and impartial – for a private applicant to organize, lead, and conduct it. As Dr. Limón Aguirre explains, the SCJN's own jurisprudence has consistently held that the duty to consult lies with governmental authorities, not with private parties.[1315] Mexico's attempt to transfer this obligation to Minera Gorrión contravenes not only the constitutional and conventional framework but also the SCJN's settled case law.[1316]

441. What is more, Mexico's attack on the extensive community engagement and outreach work the Claimants did undertake only underscores the absurdity of its position.[1317] Mexico and its social expert Mr. Gustavo Cabrera belatedly and absurdly refer to the Claimants' community engagement and outreach work as "purely transactional"[1318] and accuse them of "implementing social programs presented as benefits to the community but which, in practice, fostered division and polarization."[1319] In other words, Mexico condemns the Claimants for engaging with the communities – while simultaneously faulting them for not conducting the very consultation that its own SCJN insists is the State's exclusive prerogative. Mexico cannot have it both ways: it cannot deride the Claimants' outreach as divisive and then penalize them for failing to discharge a consultation obligation that fell solely on the Mexican State.

442. An internal DGIRA letter dated 3 September 2019 addressed to UCPAST confirms as much.[1320] In that letter, Mr. Salvador Hernández Silva – DGIRA's Director through most of the period preceding the MIA Denial Decision – asked UCPAST to carry out indigenous consultation in connection with the Ixtaca Project, expressly acknowledging the CDPI's opinion that SEMARNAT bore responsibility for conducting any necessary indigenous consultation and citing UCPAST's institutional experience in conducting such consultations for mining projects.[1321] That letter reveals SEMARNAT's hypocrisy. SEMARNAT internally recognized that, to the extent any consultation obligation existed, it was the State's to discharge. SEMARNAT thus took affirmative steps to do so through its own dedicated social participation

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1315 Limón ER-1, at para. 175; Limón ER-2, at paras. 15(e), 166-171.

1316 Limón ER-1, at para. 189; Limón ER-2, at paras. 169-170.

1317 *See supra* Section 2.7; SLR ER-2, at Section 3.2.

1318 Cabrera ER, at para. 172.

1319 Counter-Memorial, at para. 795.

1320 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

1321 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

unit.[1322] Yet 15 months later, SEMARNAT denied the MIA on the ground that Minera Gorrión had allegedly breached an obligation under ILO Convention 169, which SEMARNAT itself had acknowledged was not Minera Gorrión's to fulfill.[1323]

443. As explained in Section 2.10 above, the Claimants requested that Mexico produce documents exchanged within SEMARNAT reflecting discussions about indigenous consultation in connection with the Ixtaca Project.[1324] Mexico failed to produce a single document in response to that request, notwithstanding the Tribunal's express order to do so. Mexico simply produced documents related to opinions issued by INPI, SECOTRADE, CDI, and other indigenous-tasked agencies related to the Ixtaca Project, already existing on the record.[1325] It is simply not credible that UCPAST – SEMARNAT's dedicated social participation unit, which DGIRA tasked with conducting the indigenous consultation – simply failed to respond or take any action whatsoever and that DGIRA kept no record of that response.

444. The absence of any responsive documentation is all the more conspicuous given that DGIRA's letter specifically invoked UCPAST's institutional experience in conducting indigenous consultations for mining projects. The Claimants thus respectfully request that the Tribunal draw adverse inferences from Mexico's failure to produce these documents and find that, had they been produced, they would confirm that SEMARNAT acknowledged the consultation obligation as its own, failed to discharge it through UCPAST, and subsequently sought to shift that failure onto Minera Gorrión.

445. SEMARNAT's conduct is all the more striking when measured against its own established practice. As Dr. Limón Aguirre explains, following the SCJN's *Acueducto Independencia* ruling in 2013,[1326] SEMARNAT adopted a consistent practice of incorporating indigenous consultation into its MIA evaluation process even though it is not expressly enshrined in the statutes.[1327] Following this judicial construct,[1328] when SEMARNAT identifies a potential impact on indigenous communities, SEMARNAT's practice follows a three-step sequence: (i) the applicant coordinates with the relevant State and Federal authorities to confirm whether indigenous consultation is required; (ii) if so, the authorities – not the applicant – initiate and

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1322 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

1323 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 136, para. 25, **Exhibit C-86**.

1324 Procedural Order No. 5, Annex A, at pp. 90-94.

1325 Claimants' letter to the Tribunal, dated 27 April 2026.

1326 Limón ER-2, at para. 169, n. 212; Supreme Corte de Justica de la Nacion, Amparo en revisión 631/2012, dated 2013, **MLA-49**.

1327 Limón ER-2, at para. 171; Supreme Corte de Justica de la Nacion, Amparo en revisión 631/2012, dated 2013, **MLA-49**.

1328 Memorial, at para. 353.

complete the consultation; and (iii) the applicant presents to SEMARNAT the resulting certification before commencing operations.[1329]

446. Mexico has offered no cogent reason why SEMARNAT could not have approved the Ixtaca MIA subject to this same conditional framework – requiring coordination with the competent authorities and, if applicable, completion of a consultation with the affected communities – as it had done in the Camino Rojo, El Boleo, and Huazamota River projects.[1330] Instead, SEMARNAT denied the MIA outright and penalized Minera Gorrión for the Government's own failure to discharge an obligation that SEMARNAT itself had acknowledged was its own.

447. As Dr. Limón Aguirre explains, Mexico has taken an even more permissive approach toward its own Government-owned projects. SEMARNAT approved the MIA for one such project, the Istmo de Tehuantepec railway rehabilitation project (Veracruz-Oaxaca), in May 2020. It did so even though UCPAST and INPI were still in the midst of indigenous consultations, which they had suspended during the COVID-19 pandemic.[1331]

448. There was no reasonable basis for SEMARNAT to depart from this established practice in the case of Ixtaca. SEMARNAT denied the MIA outright – rather than granting conditional approval as it had done for similarly situated and Government-owned projects[1332] – while simultaneously failing to discharge its own obligation to conduct indigenous consultations, further underscoring the pretextual and discriminatory nature of its decision.

2.12.3. Mexico's Attempts to Distinguish Ixtaca from the Comparator Projects Fail and Cannot Justify Its Discriminatory Treatment

449. As set out in the Memorial, SEMARNAT's outright denial of the Ixtaca Project MIA stood in stark contrast to the way it approached similarly situated mining projects such as Camino Rojo, El Boleo, and Huazamota River – all of which were located near indigenous communities.[1333] In each of those instances, SEMARNAT conditionally approved the MIA subject to further indigenous consultation rather than rejecting the MIA outright.[1334]

1329 Limón ER-1, at paras. 199, 209, and 215.

1330 Limón ER-1, at paras. 199, 209, and 215.

1331 Limón ER-2, at para. 171.

1332 Camino Rojo, El Boleo, Huazamota River, and the Istmo de Tehuantepec railway.

1333 Memorial, at para. 354.

1334 Memorial, at para. 353.

450. Mexico contends that these projects differ from the Ixtaca Project in supposedly important ways, such as extraction methods, waste generation, infrastructure, and community relations, and that these differences dictate different environmental standards and consultation requirements. Mexico's experts add that El Boleo and Camino Rojo operate in regions with established mining traditions, whereas Ixtaca lies in an area with no mining history and an indigenous presence, and that Huazamota River involves smaller-scale extraction without metallurgical processes or tailings.[1335]

451. These distinctions are immaterial to the Claimants' claim of discriminatory treatment. Material differences exist among the El Boleo, Camino Rojo, and Huazamota River projects themselves – in extraction methods, scale, waste management, and social context – and yet SEMARNAT took the same conditional approval approach for each. The Claimants address Mexico's specific arguments for distinguishing each comparator project in turn below.[1336]

452. **Camino Rojo:** The Camino Rojo is a precious metals open-pit mining project in Mazapil, Zacatecas. Dr. Pablo-Dorantes confirms that the two projects present comparable permitting risk profiles: both involve precious metals open-pit mining with similar project footprints, regional environmental impacts, and life-of-mine durations, and the differences in processing methods do not materially alter their overall environmental risk assessment.[1337] SEMARNAT approved Camino Rojo's MIA on 11 August 2020 on two conditions: *first*, that its operators obtain a decision from the competent State and Federal authorities to confirm whether indigenous consultation was required,[1338] and *second*, that its operators submit proposed mitigation plans before beginning construction.[1339] By contrast, on the first issue, for Ixtaca, DGIRA requested UCPAST to carry out the indigenous consultation. When UCPAST failed to do so, SEMARNAT denied the MIA outright, thus holding Minera Gorrión accountable for the Government's own omission.[1340] On the second issue, Minera Gorrión submitted comprehensive mitigation plans outlined in the 11 programs in its PVA that, as Dr. Limón Aguirre confirms in his First Expert Report,[1341] satisfied the minimum content requirements

1335 Counter-Memorial, at paras. 331-333.

1336 Pablo-Dorantes WS-2, at para. 88.

1337 Pablo-Dorantes WS-2, at para. 91.

1338 Memorial, at para. 353; Limón ER-1, at paras. 194-203; SEMARNAT Official Notice SGPA/DGIRA/DG/03478, dated 11 August 2020, at p. 96, **Exhibit C-84**; *see also* Pablo-Dorantes WS, at para. 102.

1339 Limón ER-2, at paras. 183-184.

1340 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 136, para. 25, **Exhibit C-86**; Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

1341 Limón ER-1, at paras. 202-203; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter VII, p. 9, **Exhibit C-262**.

under the LGEEPA for conditional approval.[1342] Yet SEMARNAT denied the MIA on the ground that those programs did not generate "absolute scientific certainty" that no harm would occur to natural resources – an unattainable standard it never imposed on Camino Rojo or any other comparator project.[1343]

453. Camino Rojo's MIA did not link the project to NOM-141, and Camino Rojo stated that the standard was entirely inapplicable.[1344] SEMARNAT accepted that position without objection and approved the MIA.[1345] By contrast, SEMARNAT required Minera Gorrión to demonstrate exhaustive compliance with every provision of NOM-141, even though the Dry Co-Disposal Facility involved no tailings pond, no liquid retention basin, and no dam – the very structures NOM-141 was designed to regulate.[1346]

454. Mexico argues that Camino Rojo is not a valid comparator because it operates in a region with a longstanding mining tradition and established community ties and because it involves different extraction methods (heap leaching rather than flotation), different waste management practices, and a different relationship with local indigenous communities.[1347] Mexico contends that these differences justified SEMARNAT's decision to grant conditional MIA approval for Camino Rojo while denying the Ixtaca MIA outright.[1348] That is not a serious argument – nationally applicable mining regulations should not be applied selectively on the basis of whether there is a "mining tradition" in one region over another.

455. In any event, these contentions are without merit. On indigenous consultation, the determinative factor is whether the project might affect indigenous communities in the project area – not the extraction method or the region's mining history. That factor was equally present in both cases. SEMARNAT approved Camino Rojo's MIA on the condition that its operators coordinate with the competent authorities to determine whether indigenous consultation was required.[1349] Nothing about Camino Rojo's heap leaching process or Zacatecas's mining

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1342 Limón ER-1, at para. 202; Limón ER-2, at paras. 134-136, 184.

1343 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 139, **Exhibit C-86**.

1344 Limón ER-2, at para. 148.

1345 Limón ER-2, at para. 148.

1346 *See supra* Section 2.11.

1347 Counter-Memorial, at para. 337.

1348 Counter-Memorial, at para. 337.

1349 Memorial, at para. 353; Limón ER-1, at paras. 194-203; SEMARNAT Official Notice SGPA/DGIRA/DG/03478, dated 11 August 2020, at p. 96, **Exhibit C-84**; *see also* Pablo-Dorantes WS, at para. 102.

tradition explains why SEMARNAT could not extend that same conditional framework to Ixtaca.

456. On mitigation measures, as explained above, the two projects present comparable permitting risk profiles: both involve precious metals open-pit mining with similar project footprints, regional environmental impacts, and life-of-mine durations.[1350] Differences in processing methods do not materially alter their overall environmental risk assessment. SEMARNAT accepted Camino Rojo's mitigation proposals and granted conditional approval. It had no legitimate basis to reject Minera Gorrión's comparably robust mitigation framework – comprising 11 detailed programs in its PVA – outright.

457. With regard to NOM-141, Messrs. Del Razo and Rábago assert that NOM-141 did not apply to Camino Rojo because that project used heap leaching without generating tailings and that therefore only NOM-157 and NOM-155 are applicable.[1351] That assertion is incorrect. As Dr. Pablo-Dorantes explains, both NOM-155, which governs leach pads, and NOM-157, which governs mining waste resulting from leaching pads (*material de lixiviación*), require compliance with normative annexes 1, 2, and 5 of NOM-141.[1352] NOM-141 was therefore indirectly applicable to Camino Rojo through the very standards Mexico's experts invoke. Yet Camino Rojo's MIA did not link the project to NOM-141 at all, and SEMARNAT conditionally approved it without requiring detailed compliance with any element of the technical regulation.[1353] This confirms that SEMARNAT's practice has been to apply NOM-141 flexibly, taking into account the specific design and risk profile of each project. SEMARNAT departed from that practice in the case of Ixtaca: it demanded that Minera Gorrión link the Project with each and every provision of NOM-141, including structural provisions designed for conventional wet tailings ponds that were inapplicable to the Dry Co-Disposal Facility.[1354] That differential treatment is unjustified.

458. **El Boleo:** The El Boleo project is a copper-cobalt-zinc open-pit mining project in Baja California Sur. El Boleo spans approximately 20,490 Ha, *i.e.*, nearly 20 times the size of the Ixtaca Project,[1355] and its expansion posed higher environmental risks than the Ixtaca Project

1350 Pablo-Dorantes WS-2, at para. 91.

1351 Del Razo-Rábago ER, at para. 269.

1352 Pablo-Dorantes WS-2, at para. 71; Manifestación de Impacto Ambiental Regional, MiNera Camino Rojo S.A. de C.V., dated July 2019, at p. 59, **Exhibit C-619**.

1353 Limón ER-2, at para. 148.

1354 Pablo-Dorantes WS-2, at para. 71.

1355 Minería en Línea webpage, "Proyecto Boleo", *available at* https://mineriaenlinea.com/proyectos/proyecto-boleo/, **Exhibit C-449**. Pablo-Dorantes WS, at para. 35.

because it is located within a natural protected area with a frailer ecosystem.[1356] SEMARNAT conditioned El Boleo's MIA approval on 24 June 2021 on the same two requirements it imposed on Camino Rojo – coordination with the competent State and Federal authorities regarding indigenous consultation and submission of mitigation programs prior to the commencement of construction.[1357] With respect to NOM-141, El Boleo's MIA contained only a single conclusory statement of compliance, without any detailed linkage between the standard and the project, and SEMARNAT accepted that statement without objection.[1358]

459. Mexico contends that El Boleo is distinguishable from Ixtaca because it operates in a region with an established mining history, involves different mineral extraction and processing methods, and presents a different social and environmental context, including the absence of active social conflict or indigenous opposition comparable to that alleged in connection with the Ixtaca Project.[1359] These distinctions do not withstand scrutiny.

460. For the same reasons set out above with respect to Camino Rojo, Mexico's attempts to distinguish El Boleo on the basis of extraction methods and regional mining history are unavailing. The determinative factor for SEMARNAT's conditional approval framework – whether the project might affect indigenous communities in the project area – was equally present in both El Boleo and Ixtaca, and SEMARNAT had no legitimate basis to deny Minera Gorrión's comparably robust mitigation framework outright while granting El Boleo conditional approval. If anything, El Boleo presented a higher environmental risk profile than Ixtaca.[1360] As Dr. Pablo-Dorantes confirms – drawing on his direct involvement in the El Boleo project – El Boleo is located within a natural protected area with a frailer ecosystem.[1361] On that basis alone, SEMARNAT should have imposed *more* stringent mitigation requirements on El Boleo than on Ixtaca – not the reverse.

461. The disparity in treatment with regard to NOM-141 is particularly striking. As Dr. Limón Aguirre noted in his First Expert Report, El Boleo's MIA stated with respect to NOM-141

1356 Pablo-Dorantes WS, at para. 35.

1357 Limón ER-1, at paras. 204-212; SEMARNAT Official Notice SGPA/DGIRA/DG/03117 dated 24 June 2021, **C-366**; *see also* Pablo-Dorantes WS, at paras. 35, 102.

1358 Limón ER-1, at paras. 204-212 ("En la MIA respecto de la NOM-141-SEMARNAT-2003 simplemente se dijo: "El Proyecto cumple con lo establecido con la NOM, así como los reportes pertinentes de la presa de jales para el Proyecto Autorizado.")

1359 Counter-Memorial, at para. 335.

1360 Minería en Línea webpage, "Proyecto Boleo", available at https://mineriaenlinea.com/proyectos/proyecto-boleo/, **Exhibit C-449**; Pablo-Dorantes WS, at para. 35.

1361 Minería en Línea webpage, "Proyecto Boleo", available at https://mineriaenlinea.com/proyectos/proyecto-boleo/, **Exhibit C-449**; Pablo-Dorantes WS, at para. 35.

simply that "[t]he Project complies with the provisions of the NOM, as well as the pertinent reports of the tailings dam for the Project,"[1362] without providing any further commentary or detailed linkage between the standard and the project. SEMARNAT accepted that conclusory statement and approved the MIA.[1363] By contrast, Minera Gorrión's MIA for the Ixtaca Project provided a substantive linkage with NOM-141 – notwithstanding that the Dry Co-Disposal Facility did not involve a tailings dam – and yet SEMARNAT denied the MIA on the ground that Minera Gorrión had failed to link the Project with each and every provision of the standard.[1364] The contrast is irreconcilable with consistent regulatory practice and further evidences the pretextual character of the denial.

462. **Huazamota River:** The Huazamota River project is a gravel and sand extraction project in Mezquital, Durango, involving the mechanical extraction of aggregates from a riverbed.[1365] SEMARNAT conditioned the Huazamota River MIA approval on 11 October 2018 on the same two requirements it applied to Camino Rojo and El Boleo – coordination with the competent authorities regarding indigenous consultation and submission of mitigation programs prior to the commencement of works.[1366] Although NOM-141 is inapplicable to this project, the comparison remains significant for the reasons set out below.

463. Mexico contends that the Huazamota River project is not a mining project in the relevant sense, as it involves only the mechanical extraction of gravel and sand without open-pit excavation, tailings generation, or the use of hazardous substances, and that the scale, nature, and environmental risk profile of the project are fundamentally different from those of the Ixtaca Project, rendering any comparison inapposite.[1367] These distinctions do not withstand scrutiny. For the same reasons set out above with respect to Camino Rojo and El Boleo, the determinative factor for SEMARNAT's conditional approval framework is whether the project might affect indigenous communities in the project area – not the extraction method, scale, or waste profile.[1368] That SEMARNAT extended its conditional approval framework even to a small-scale gravel extraction project with a lower environmental risk profile than Ixtaca

1362 Limón ER-1, at para. 211; MIA El Boleo, at p. III-59, **MLA-20**.

1363 Resolución el Boleo, Oficio No. SGPA/DGIRA/DG/03117, dated 24 June 2021, numeral 6, pp. 11 and 86, **MLA-19**.

1364 Limón ER-2, at para. 140.

1365 Memorial, at para. 353.

1366 Limón ER-1, at paras. 213-217; SEMARNAT Official Notice SG/130.2.1.1/2618/18, dated 18 October 2018, at p. 19, **Exhibit C-259**; *see also* Pablo-Dorantes WS, at para. 102.

1367 Counter-Memorial, at para. 338.

1368 Limón ER-2, at para. 182.

underscores the consistency of its established practice and, by contrast, the anomalous and discriminatory character of its refusal to do so for Ixtaca.[1369]

464. Across all three comparator projects – notwithstanding the differences in extraction methods, waste management, scale, and social context that Mexico now invokes – SEMARNAT followed the same conditional approval framework. For the Ixtaca Project alone, SEMARNAT reversed course: it rejected outright the MIA on grounds that in comparable situations should have led to conditional approval. It faulted Minera Gorrión for the Government's own failure to conduct indigenous consultation, imposed an unattainable standard of "absolute scientific certainty" on mitigation measures, and required Minera Gorrión to demonstrate exhaustive compliance with NOM-141 even though the Dry Co-Disposal Facility was not a tailings pond.

2.12.4. Mexico's *Post Hoc* Expert Opinions Regarding Ixtaca's Water Balance are Baseless and Fail to Support the MIA Denial Decision

465. As the Claimants explained in the Memorial, the Ixtaca Project's water management infrastructure included two strategically placed dams designed to capture seasonal rainfall and release stored water throughout the drier months. These dams would have met both the mine's operational needs and the water supply requirements of nearby local communities.[1370] Minera Gorrión developed a comprehensive water-management plan based on a detailed daily hydrological balance model that the international mining consultancy SRK prepared to optimize the collection and use of rainwater.[1371] SRK further compiled an updated Feasibility Study Site-Water Balance Report that addressed in detail the balance between water supply and demand for the Ixtaca Project and confirmed the adequacy of the Company's water management system.[1372]

466. Mexico does not engage with SRK's water balance analysis at any point in the Counter-Memorial. Instead, Mexico argues that the Project was not feasible from the water standpoint for three reasons:

1369 Limón ER-2, at para. 182.

1370 Memorial, at para. 105; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), at p. 271, **Exhibit C-314**.

1371 *See* SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary (Annex A to Minera Gorrión's RAI Response, dated 9 May 2019, **Exhibit C-286**; Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at Chapter II, p. 13, **Exhibit C-262**.

1372 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. 8, **Exhibit C-286**.

a) *First,* Mexico asserts that the Project's water requirements exceeded what captured rainwater alone could have satisfied, necessitating undeclared groundwater extraction,[1373] and relies on a 2022 Mexican Institute of Water Technology ("**IMTA**") report to contend that declining water availability in the Ixtacamaxtitlán area could not sustain the Project's demands;[1374]

b) *Second,* Mexico asserts that Minera Gorrión deliberately mischaracterized the FWD and WSD as "rainwater reservoirs" when they in fact constituted surface water developments (*aprovechamientos de aguas superficiales*), thereby circumventing the obligation to obtain CONAGUA permits and licenses for the exploitation of national waters (*aguas nacionales*); and[1375]

c) *Third,* Mexico asserts that the WSD constituted "major" infrastructure with potentially significant impacts on the region's hydrological dynamics, and that Minera Gorrión failed to provide the technical specifications, hydrological criteria, and downstream monitoring information necessary for SEMARNAT to evaluate the Project's effects on water flows and surrounding ecosystems.[1376]

467. As a preliminary matter, none of these arguments appeared in the MIA Denial Decision. Not one. SEMARNAT did not deny the MIA on the ground that the Project was "unfeasible and risky from the perspective of available water," did not invoke the IMTA report, and did not contend that Minera Gorrión mischaracterized the FWD and WSD to evade CONAGUA permitting requirements. Mexico now asks this Tribunal to uphold the MIA Denial Decision based on justifications that the decision-maker itself never articulated, never considered, and never put to Minera Gorrión. The lawfulness of SEMARNAT's decision must be assessed based on the reasons SEMARNAT actually gave – not on the basis of after-the-fact rationalizations that Mexico's counsel and hired gun experts have reverse-engineered in an attempt to escape liability. To permit otherwise would be to allow a respondent State to sanitize any arbitrary administrative act simply by commissioning, years later, expert reports that backfill the reasoning the agency failed to provide at the time. The Tribunal should give these *post hoc* arguments no weight whatsoever.

1373 Counter-Memorial, at paras. 308-312.

1374 Del Razo-Rábago ER, at paras. 165-170; Pedrozo ER, at paras. 54-82.

1375 Counter-Memorial, at paras. 316-323.

1376 Counter-Memorial, at paras. 316-323.

468. SEMARNAT did not deny the MIA on the ground that the Ixtaca Project was "unfeasible and risky from the perspective of available water" as Mexico now argues. In any event, Mexico's arguments fail for the reasons explained below.

2.12.4.1. The Project's site-specific water balance confirms adequate water supply, and Dr. Pedrozo's generic estimates are grossly overstated

469. Mexico and its expert Dr. Pedrozo contend that the Ixtaca Project's water requirements far exceeded what it could have captured through rainwater alone, and that the Project would therefore have depended on groundwater extraction to make up the difference.[1377] From this premise, Mexico concludes that the Project posed an unacceptable risk to the region's available water resources.[1378] In support of this contention, Dr. Pedrozo advances two lines of argument. *First*, he applies generic industry-wide water intensity factors from Northey et al. (2016) – a high-level, literature-based review comparing water consumption intensity across operating mines globally[1379] – to argue that the Project's consumptive water demand would have been substantially higher than SRK's site-specific water balance estimated.[1380] *Second*, he invokes a 2022 IMTA report to assert that the region allegedly suffers a structural decline in water availability that could not have sustained the Project's demands and that any shortfall would necessarily have required groundwater extraction, risking aquifer overexploitation.[1381] Both arguments are baseless.

470. *First,* Dr. Pedrozo asserts that the Project would have consumed more water than available from rainwater and surface water alone, forcing reliance on groundwater and risking aquifer overexploitation.[1382] To support this claim, he relies principally on Northey et al. (2016) – a high-level, literature-based review comparing water consumption intensity across operating mines globally. That paper examines broad patterns of water use per unit of metal produced across different jurisdictions, climates, and processing methods.[1383] Dr. Pedrozo applies its findings to argue that the Project's consumptive water demand would have been substantially higher than SRK estimated in its 2019 Site-Wide Water Balance Report, and that this increased

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1377 Counter-Memorial, at paras. 313-315; Pedrozo ER, at paras. 87-88.

1378 Counter-Memorial, at para. 315

1379 SLR ER-2, at para. 380.

1380 Pedrozo ER, at paras. 57-58.

1381 Pedrozo ER, at paras. 37-39, 86-87.

1382 Pedrozo ER, at paras. 82, 87-88.

1383 SLR ER-2, at para. 382.

consumption would have constrained community water availability.[1384] This approach is facially unacceptable and, as SLR explains, fundamentally misplaced.

471. Dr. Pedrozo's contention rests on a fundamental methodological error: instead of relying on the Project's site-specific water balance – which SRK prepared using the industry-standard GoldSim probabilistic simulation software and which accounts for water recycling, reclamation, evaporation losses, dry-stack tailings deposition, groundwater seepage inputs, and community water supply volumes – he relies on generic industry-wide water intensity factors drawn from Northey et al. (2016).[1385] As SLR explains, Northey et al. themselves warn of wide variability in water consumption depending on climate, ore type, processing method, and water management strategy, and stress that water recovery via thickening and filtration – precisely the kind of site-specific design the Ixtaca Project would have incorporated through its Dry Co-Disposal Facility – is a principal lever to reduce external make-up water requirements.[1386] Applying generic footprint intensities to the Project therefore misreads the very source Dr. Pedrozo cites and ignores the Project's closed-loop,[1387] filtered tailings configuration.

472. That error causes Dr. Pedrozo to overstate the Project's water demand by nearly an order of magnitude.[1388] SLR calculates that the SRK model shows net plant make-up water of 1,680 m^3/day (Years 1 to 4) increasing to 3,360 m^3/day (Years 5 to 11), whereas Dr. Pedrozo's scenarios yield daily consumptive use ranging from approximately 10,400 to 75,900 m^3/day – figures that are *3 to 23 times higher* than the Project's actual modelled demand.[1389] Even when combined with the full community allocation, total system demand would have been approximately 2,200 to 5,360 m^3/day, which is *2 to 15 times lower* than Dr. Pedrozo's estimates.[1390] To put these figures in perspective, SLR observes that Dr. Pedrozo's estimated consumptive range is comparable to the entire daily municipal water demand of communities with populations ranging from 10,000 to 300,000 people – a result that is plainly incompatible with a single closed-loop mineral processing operation where most water would have been

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1384 Pedrozo ER, at para. 87; SLR ER-2, at para. 386.

1385 Pedrozo ER, at para. 58; Northey, S. A., Mudd, G. M., Werner, T. T., Jowitt, S. M., & Haque, N. (2016). Water footprint of mining and mineral processing industries: A review of global data. Journal of Cleaner Production, 112, 1872-1883 ("**Northey et al. (2016)**"), **APA-033**.

1386 SLR ER-2, at para. 382.

1387 SLR ER-2, at para. 100 ("The system was designed as largely closed-loop, meaning that most process water is recycled and reused rather than continually replaced with new freshwater supplies.").

1388 SLR ER-2, at Section. 3.3.2.

1389 SLR ER-2, at para. 386.

1390 SLR ER-2, at para. 386.

recycled.[1391] The Claimants respectfully refer the Tribunal to Section 3.3 of SLR's Rebuttal Report for the complete technical analysis that explains why Dr. Pedrozo's critiques are flatly wrong.

473. In stark contrast with Dr. Pedrozo's analysis, SRK modelled the Project's water balance using the industry-standard GoldSim probabilistic simulation software. The model simulated over 500 outcomes across a 12-year period, drawing on approximately 54 years of rainfall data and 30 years of evaporation data.[1392] Under base-case conditions, the model would have met both operational and community water demand in approximately 90% of simulations.[1393] Critically, community water supply was not a residual component of the water balance but a binding design constraint:[1394] the SRK model treated community supply as a defined outflow that had to be satisfied alongside process requirements, evaporation losses, and ecological flow conditions in every scenario.[1395] As Mr. Santamaría Tovar testifies, "in our hydrological model. . . we modeled the mine's water requirements against what remained available after community needs were satisfied, not the reverse."[1396]

474. In the remaining approximately 10% of simulations – corresponding to low-probability combinations of prolonged drought and conservative assumptions regarding runoff generation and reservoir yield[1397] – community supply would have still been met in full; only the mine's process water demand would have faced a shortfall, which Minera Gorrión would have addressed by temporarily reducing throughput or drawing supplemental groundwater from concessions that it would have applied to obtain from CONAGUA after the MIA approval.[1398] In SLR's extensive industry experience, identifying these drought-driven outcomes is a normal and expected result of feasibility-level stochastic modelling: it provides insight into system sensitivity, not evidence of project infeasibility.[1399] SLR confirms that these results represent

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1391 SLR ER-2, at para. 388.

1392 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, **Exhibit C-286**.

1393 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, (Annex A to Minera Gorrión's RAI Response), dated 9 May 2019, at p. ii, **Exhibit C-286**.

1394 SLR ER-2, at Section. 3.3.2.

1395 SLR ER-2, at para. 392.

1396 Santamaría Tovar WS-2, at para. 83.

1397 SLR ER-2, at para. 185.

1398 Pablo-Dorantes WS-2, at n. 80.

1399 SLR ER-2, at para. 185.

an appropriate feasibility-level demonstration of system performance.[1400] The Claimants' water balance model was thus well advanced and would have continued to be refined through detailed engineering[1401] had Mexico's unlawful conduct not prevented the Project from proceeding.

475. Mr. Santamaría Tovar's testimony corroborates the reliability of the data underpinning SRK's water-balance calculations.[1402] In 2009 – before the Ixtaca deposit was even discovered – Minera Gavilán engaged the *Universidad Autónoma de San Luis Potosí* to prepare a hydrogeologic study to establish a baseline of surface water.[1403] Building on that baseline, in 2013, Minera Gorrión engaged the engineering firm Knight Piésold and installed rain gauges, monitored wells, and connected sensors via telemetry to measure precipitation across the Project area over a period of approximately 5 years.[1404] That sustained field campaign produced the site-specific dataset on which all subsequent hydrological modeling rested.[1405] Mexico's contention that the Project's water plan was inadequate is irreconcilable with the comprehensive, site-specific hydrological record that Minera Gorrión built over years of sustained field measurement.

476. *Second*, the IMTA report upon which Dr. Pedrozo relies is not an independent scientific study – and Dr. Pedrozo is not an independent witness/expert in commenting upon its conclusions. This is because Dr. Pedrozo served as IMTA's director at the time the report was commissioned,[1406] a fact that further undermines his claim to objectivity. As explained in the Memorial,[1407] Secretary Albores commissioned the IMTA report as part of a series of studies coordinated with anti-Project NGOs through closed-door meetings held in August 2022, the express purpose of which was, in the words of a senior SEMARNAT official recorded in the meeting minutes, "to support with technical and scientific evidence that this mining project affects the environment and, therefore, no more mining concessions can be granted in the region."[1408] As Mr. Santamaría Tovar observes in his Second Witness Statement, the IMTA

1400 SLR ER-2, at para. 185.

1401 McDonald WS-2, at paras. 62-63.

1402 Santamaría Tovar WS-2, at Section 6.

1403 Informe Hidrogeológico, Universidad Autónoma de San Luis Potosi, dated June 2009, **Exhibit C-657**.

1404 Moose Mountain Technical Service, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 254, **Exhibit C-314**; Santamaría Tovar WS-2, at para. 79.

1405 Santamaría Tovar WS-2, at para. 80.

1406 Pedrozo ER, at para. 9.

1407 Memorial, at para. 431.

1408 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1 (Spanish original: "*El objetivo del peritaje mencionado es sustentar con evidencia*

report was one of the "studies [that] were deliberately crafted to justify blocking the Project and create a pretext for denying new mining concessions in the region."[1409] The commissioners – Dr. Pedrozo included – designed the study to reach a predetermined conclusion. In other words, the IMTA report is nothing more than a hit piece and the Tribunal should treat it accordingly.

477. On the merits, Dr. Pedrozo's IMTA-based contentions are misplaced. He characterizes the Project as "hydro-intensive," estimates that its water use would be between 1.76 and 12.82 times the total annual consumption of the inhabitants of Ixtacamaxtitlán, and concludes that reliance on surface water stored in the proposed reservoirs would be "unfeasible" and that any shortfall would have necessarily required groundwater extraction, risking aquifer overexploitation.[1410] These conclusions are baseless. As SLR elaborates in detail in the Rebuttal Report,[1411] Dr. Pedrozo's "hydro-intensive" characterization rests on the same overestimated generic consumption factors rebutted above – factors that bear no relation to the Project's actual site-specific demand and nature as a closed-loop facility.[1412] His assertion that a "water deficit" would "necessarily be covered with groundwater" ignores the very purpose of the WSD: to capture and store wet-season runoff for use during the dry season.[1413] As SRK's water balance model confirms, the Project's water management system would have relied primarily on surface water capture, storage, and internal recycling.[1414] Groundwater inflows into the open pit would have been ancillary additions to the overall water balance, not essential make-up sources. The Project was designed to be self-sufficient in water, not dependent on external groundwater extraction.[1415]

478. But even setting aside Dr. Pedrozo's flawed demand estimates, his broader thesis fails on its own terms. Dr. Pedrozo contends that a "water deficit has been identified that would necessarily be covered with groundwater,"[1416] yet he never demonstrates that the Tecolutla

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técnica y científica que este proyecto minero trastoca el medio ambiente y por lo cual no se pueden dar más concesiones en la región."), **Exhibit C-397**.

1409 Santamaría Tovar WS-2, at para. 129; Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2 **Exhibit C-397**.

1410 Pedrozo ER, at paras. 63, 86-87.

1411 SLR ER-2, at paras. 408-418.

1412 Pedrozo ER, at paras. 37-42, 63.

1413 Pedrozo ER, at paras. 37-42, 63, 87.

1414 Pablo-Dorantes WS-2, at paras. 38-40; SLR ER-2, at para 413.

1415 SLR ER-2, at paras. 408-418; Pablo-Dorantes WS-2, at paras. 39-40.

1416 Pedrozo ER, para. 87.

aquifer – the closest aquifer to the Project – was unable to sustain the Project's minimal groundwater demand.[1417] The sole binding methodology in Mexico for assessing groundwater availability is NOM-011-CONAGUA-2015.[1418] Yet CONAGUA applied that standard to the Tecolutla aquifer and determined that it has a positive water balance – meaning the aquifer recharges faster than it is drawn down.[1419] The aquifer has no deficit and can sustainably support additional extraction well beyond the Project's requirements.[1420] This conclusion was reflected in SEMARNAT's MIA Denial Decision.[1421]

479. As Dr. Pablo-Dorantes and SLR elaborate, the Project would have drawn, at most, approximately 0.6 to 1.2 Mm³/year of make-up water, representing only 2.2% to 3.9% of the groundwater volume that CONAGUA has determined may be awarded for concession without compromising the aquifer's long-term sustainability – a fraction that falls comfortably within the aquifer's available capacity.[1422] Dr. Pedrozo ignores this entirely. Contrary to what Minera Gorrión did in its response to the RAI,[1423] Dr. Pedrozo never applies – or even acknowledges – NOM-011-CONAGUA-2015, [1424] the very standard CONAGUA used to reach its determination.[1425]

2.12.4.2. The Claimants correctly characterized the WSD and FWD dams as rainwater works

480. Mexico's second argument – that Minera Gorrión deliberately mischaracterized the FWD and WSD as "rainwater reservoirs" when they in fact constituted surface water developments requiring CONAGUA permits[1426] – is legally wrong. As Dr. Limón Aguirre explains in detail in his Second Expert Report, rainwater and pluvial waters are not "national waters" under

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1417 SLR ER-2, at paras. 408-418; Pablo-Dorantes WS-2, at para. 43.

1418 SLR ER-2, at paras. 408-418; Pablo-Dorantes WS-2, at para. 44.

1419 SLR ER-2, at paras. 408-418, n. 332; Pablo-Dorantes WS-2, at para. 44.

1420 Pablo-Dorantes WS-2, at para. 45; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 31, **Exhibit C-86**.

1421 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 31, **Exhibit C-86**.

1422 Pablo-Dorantes WS-2, at para. 43 (explaining that the Project would have only used between 2.2% and 3.9% of the 27.6 million m³ of water volume available for concession from the local aquifer.)

1423 Pablo-Dorantes WS-2, at para. 45; Minera Gorrión's RAI Response, dated July 2019, at p. 73, **Exhibit C-299**.

1424 NORMA Oficial Mexicana NOM-011-CONAGUA-2015, dated 27 March 2015, **Exhibit C-737**.

1425 Pablo-Dorantes WS-2, at para. 43. (explaining that the Project would have only used between 2.2% and 3.9% of the 27.6 million m³ of water volume available for concession from the local aquifer.)

1426 Counter-Memorial, at paras. 318-320.

Article 27 of the Mexican Constitution and the applicable National Water Laws,[1427] and their capture and use before reaching a federal watercourse requires no CONAGUA permit.[1428] Minera Gorrión designed the FWD and WSD precisely to capture rainfall and surface runoff before it entered any federal watercourse.[1429]

481. The CONAGUA occupation and works permits that the modification of certain watercourses would have required were downstream authorizations that Minera Gorrión committed to obtaining after MIA approval, in accordance with the standard permitting sequence under Mexican law;[1430] they would not have entailed any exploitation of national waters. The MIA fully described the FWD and WSD, correctly assessed their construction impacts, and adequately proposed mitigation measures.[1431] Mexico's assertion that Minera Gorrión mischaracterized the dams to evade regulatory scrutiny is contradicted by the MIA record itself. The Claimants remit to Dr. Limón Aguirre's Second Expert Report for the complete legal and factual analysis that rebuts Mexico's baseless contention.[1432]

482. Mexico's allegation is also factually incorrect. As Mr. Santamaría Tovar aptly explains in his Second Witness Statement,

> Mexico's argument that our use of rainwater was an attempt to misclassify the Project to avoid required water permits is false. Our initial exploration work did not require water permits from CONAGUA, because Minera Gorrión was not yet extracting or discharging water. Once SEMARNAT had approved the MIA, we would have applied for CONAGUA water permits for industrial water use before commencing mining operations. That permitting obligation, however, applied regardless of the water source, *i.e.*, whether we were planning to use groundwater or rainwater for the mining operations.[1433]

1427 The National Water Law was amended on 11 December 2025 and therefore is not applicable to the factual background of this Project.

1428 Limón ER-2, at paras. 125.

1429 Limón ER-2, at paras. 128-133.

1430 Pablo-Dorantes WS, at para. 18; Limón ER-2, at paras. 125, 178(c).

1431 Limón ER-2, at paras. 121-136; *See supra* Section 2.12.2.3.

1432 Limón ER-2, at Section IV.C.(a).

1433 Santamaría Tovar WS-2, at para. 87.

2.12.4.3. The Ixtaca Project's water infrastructure was supported by robust feasibility-level technical studies addressing hydrogeology and water flow impacts

483. Mexico's third argument – that the Ixtaca Project's water infrastructure lacked the technical studies and documentation necessary to address hydrogeology and water flow impacts at feasibility level[1434] – is wrong. In SLR's technical assessment, the Project's Dry Co-Disposal Facility, rainwater harvesting strategy, limited water footprint, monitoring and adaptive management framework, and potential to enhance regional water resilience together reflected international industry standards and would have improved local water conditions throughout the mine's operating life and beyond.[1435]

484. Mexico's allegations that the Ixtaca Project's water infrastructure lacked the technical studies and documentation necessary to address hydrogeology and water flow impacts at feasibility level are contrary to the factual record. As SLR explains in its Rebuttal Report:[1436]

a) As described above, SRK's site-wide water balance employed the industry-standard GoldSim probabilistic simulation model.[1437]

b) On tailings classification, SLR confirms that the engineering requirements governing stability, seepage control, and closure performance remain the same regardless of how the Dry Co-Disposal Facility is classified under NOM-141; the regulatory label does not alter the facility's technical performance, which was aligned with international industry standards.[1438]

c) On the FWD and WSD, SLR confirms that the available investigation data – including drilling, test pits, and geophysical surveys – adequately characterized subsurface conditions to support stability and seepage assessments; the structures' design basis is technically sound regardless of how they are classified under Mexican regulatory nomenclature.[1439]

1434 Counter-Memorial, at paras. 322-323.

1435 SLR ER-2, at Section. 3.3.2.

1436 SLR ER-2, at Section. 3.4.

1437 *See supra* Section 2.12.2.3.

1438 SLR ER-2, at Sections. 3.4.2.

1439 SLR ER-2, at Section 3.4.3.

d) Finally, SLR confirms that the absence of finalized operating commitments – such as detailed seasonal flow release data, minimum release triggers, and monitoring locations – at the feasibility stage does not indicate that these considerations were overlooked. The feasibility study establishes overall technical viability and the infrastructure framework; detailed engineering then formalizes site-specific parameters, operating controls, and monitoring requirements. This staged approach is consistent with standard industry practice and does not demonstrate that the Project is infeasible or that the identified information gaps cannot be addressed.[1440]

485. As for water flow and ecological flow impacts resulting from the construction of the dams, the Claimants refer to paragraphs 38 and 43 above, where these issues are addressed in detail. Moreover, Minera Gorrión submitted as Annex D to the RAI response a detailed ecological flow assessment – and the Claimants remit to Section 3.2 of Dr. Pablo-Dorantes's Second Witness Statement for the full analysis of why that assessment and the proposed mitigation measures sufficed to address the risk of altered flows during the construction of the water dams.[1441] Mexico's bald allegation is thus without merit.

486. The Claimants respectfully refer the Tribunal to SLR's Rebuttal Report for the complete technical analysis supporting the Claimants' position.

2.12.5. The Updated MIA Reflects Responsible Mining Leadership, not Acquiescence in the MIA Denial Decision

487. In its Counter-Memorial, Mexico argues that the Claimants failed to exhaust three available domestic remedies with respect to the MIA Denial Decision: (i) an appeal for review before SEMARNAT; (ii) a contentious-administrative nullity proceeding before the TFJA; and (iii) an amparo before the federal district courts.[1442] Mexico further contends that the DGIRA's final resolution "absorbed" any procedural defects in the MIA evaluation process, that the Claimants suffered no demonstrable prejudice from those defects, and that by declining to challenge the MIA Denial Decision through domestic channels, the Claimants consented to its legal effects.[1443] Mexico also notes that Minera Gorrión retained the right to submit an updated MIA addressing the identified deficiencies, an avenue it likewise chose not to pursue. Mexico's arguments are misguided.

1440 SLR ER-2, at Section 3.4.4.

1441 Pablo-Dorantes WS-2, at paras. 34-45.

1442 Counter-Memorial, at paras. 343-345.

1443 Counter-Memorial, at paras. 346-350.

488. As elaborated in detail in Section 4 of this Reply, the CPTPP imposes no obligation to exhaust domestic remedies as a precondition to bringing claims under the Treaty. The Claimants' decision not to pursue protracted domestic litigation in the face of a politically predetermined process was a rational and legally permissible election, as the Claimants explain further in the merits section of this Reply Memorial.[1444] The factual record confirms that the Claimants' conduct following the MIA Denial Decision was at every stage consistent with a forward-looking strategic judgment and not consent.[1445]

489. When Almaden learned of the MIA Denial Decision on 17 December 2020, the Company recognized that SEMARNAT's decision reflected an ideological bias against open-pit mining, and on further review its legal deficiencies became clear, all of which are explained in Dr. Pablo-Dorantes's Witness Statements.[1446] Almaden was thus confident that it had sufficient grounds to challenge the decision on its merits.[1447] The Company also recognized that a legal challenge could clarify the internally inconsistent technical grounds for the rejection, which in turn would inform the presentation of any updated MIA.[1448]

490. Ultimately, however, the Company recognized that a judicial challenge would take years and could significantly delay the Ixtaca Project's path to production.[1449] It would also place Almaden and Minera Gorrión in an adversarial posture with SEMARNAT, and if the political environment did not change, no judicial outcome would have made a difference to SEMARNAT's views.[1450] Moreover, SEMARNAT's role would not end with MIA approval; SEMARNAT would also have had to supervise compliance with the prevention and mitigation measures proposed in the MIA throughout the Project's operation.[1451] It was therefore in Minera Gorrión's interest to seek to maintain a collaborative relationship with SEMARNAT.

491. On the basis of these considerations, the executive team, together with Almaden's Directors, concluded that updating the MIA offered a more constructive path forward.[1452] The Claimants

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1444 *See infra* Section 4.

1445 McDonald WS-2, at paras. 134-138.

1446 McDonald WS-2, at para. 324; *See generally* Pablo-Dorantes WS, Pablo-Dorantes WS-2.

1447 McDonald WS-2, at para. 134; Letter from Jesús Enrique Pablo-Dorantes to Duane Poliquin, dated 26 January 2021, **Exhibit C-637**.

1448 McDonald WS-2, at para. 134.

1449 McDonald WS-2, at para. 135.

1450 McDonald WS-2, at para. 135.

1451 McDonald WS-2, at para. 135.

1452 McDonald WS-2, at para. 136; Almaden Board Meeting Minutes, dated 20 January 2021, **Exhibit C-633**.

were confident that the Project met the highest international standards for environmental sustainability and human rights, ensuring respect for the dignity, culture, and property of the communities touched by the Project.[1453] Consistent with Undersecretary Quiroga's comments at Minera Gorrión's community meeting in December 2018,[1454] the Claimants therefore aimed for the Project to set the standard for responsible mining in Mexico – efforts that were confirmed by the Project's selection for the UNECE Mining Pilot Project in June 2022.[1455]

492. Updating the MIA would also afford the Company time to engage with the political forces that it believed had led to the denial.[1456] Although the Claimants were aware of certain biased and uninformed statements by AMLO, former Secretary Toledo, and Secretary Albores against the Project and mining more generally,[1457] they understood that there remained a range of views within Mexico, including substantial support for responsible mining among the population and other officials.[1458] The Claimants believed that Ixtaca exemplified responsible mining, and reasonably assumed that they could engage with SEMARNAT in good faith and pragmatism, and that the fair application of Mexico's mining regulations would ultimately prevail.[1459] As Mr. McDonald explains in his Second Witness Statement, the Claimants did not yet know – and could not have known – that the AMLO administration and Secretary Albores had already determined that the Ixtaca Project would not proceed.[1460]

493. Mexico's characterization of the Claimants' decision to update the MIA as consent to the MIA Denial Decision is therefore unfair and incorrect. As Mr. McDonald states:

> [t]o be clear: we never accepted SEMARNAT's rejection of our MIA, or considered that it had any legal basis. We were, and remain, of the view that the MIA was prepared using a rigorous methodology, based upon thorough fieldwork and engineering

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1453 McDonald WS-2, at para. 136.

1454 Speech by Undersecretary of Mining Francisco Quiroga at Minera Gorrión's 9th Annual Informative Assembly in Santa María Zotoltepec, dated December 2018, **Exhibit C-264**; *see generally* Pablo-Dorantes WS; Pablo-Dorantes WS-2; Limón ER-1; *and* Limón ER-2.

1455 Santamaría Tovar WS-2, at para. 20; Official Invitation to Minera Gorrión for Participation in the UNECE Initiative Kickoff Session, dated 20 June 2022, **Exhibit C-390**.

1456 McDonald WS-2, at para. 137.

1457 McDonald WS-2, at para. 137.

1458 McDonald WS-2, at para. 137.

1459 McDonald WS-2, at para. 137.

1460 McDonald WS-2, at para. 144.

conducted to the feasibility level, and that it complied with Mexican environmental and regulatory requirements in full.[1461]

494. The Claimants' contemporaneous conduct confirms this position. On 21 December 2020, Minera Gorrión issued a press release stating that "the company has legal alternatives with respect to this decision, or even the option of resubmitting the MIA,"[1462] and declaring: "We reiterate our willingness to continue working with the environmental authority to achieve this objective, always in compliance with the law and in promotion of social cohesion and environmental stewardship."[1463] As Mr. McDonald explains, the Company chose these words deliberately to signal that it did not foreclose legal action, but that it remained open to constructive engagement with SEMARNAT going forward.[1464]

495. In the spring of 2021, the Claimants therefore undertook to prepare an updated MIA, to commission and complete the HRIA in parallel,[1465] and to engage with political leaders in Mexico.[1466] To this end, Minera Gorrión engaged Mr. Franco Lammoglia – a Mexican environmental lawyer – to coordinate supplementary updates to the existing environmental baseline, including, *inter alia*, updated species cataloguing during nesting season, a new sonometric study, cartography, dust dispersion modelling, and water sampling.[1467]

496. The Company used the initial MIA as the baseline for these efforts, because it was already robust and, in the Claimants' view, compliant with the legal and regulatory framework.[1468] Throughout this process, Dr. Pablo-Dorantes continued to provide input and guidance on an *ad hoc* basis.[1469] As part of this same effort, Mr. Lammoglia also completed an *Estudio Técnico Justificativo* to support Minera Gorrión's application for change of land use with the Directorate of Forestry at SEMARNAT, which the Company intended to file immediately upon obtaining SEMARNAT's approval of the updated MIA.[1470] The objective was to elevate an

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1461 McDonald WS-2, at para. 138.

1462 Minera Gorrión, Press Release on MIA Decision, dated 21 December 2020, **Exhibit C-353**.

1463 Minera Gorrión, Press Release on MIA Decision, dated 21 December 2020, **Exhibit C-353**.

1464 McDonald WS-2, at para. 139.

1465 *See infra* Section 2.16.

1466 McDonald WS, at para. 93.

1467 McDonald WS-2, at para. 140; Updated MIA, dated 2022, **Exhibit C-639**.

1468 McDonald WS-2, at para. 141; *see generally* Pablo-Dorantes WS, Pablo-Dorantes WS-2.

1469 McDonald WS-2, at para. 141; Pablo-Dorantes WS-2, at para. 93.

1470 McDonald WS-2, at para. 141; *Estudio Técnico Justificativo,* dated 2022, **Exhibit C-640**.

application that already reflected a high standard of excellence.[1471] As Mr. McDonald explained in an email to Almaden's Directors in June 2021, Almaden "fully expect that the initiatives we have underway *will represent the new high water mark in mine permitting in Mexico*, and we are only in a position to do this as a result of the heavy lifting which has taken place by our team on the ground over the past twenty years."[1472]

497. By mid-2022, the Claimants' team had substantially completed the updated MIA, which incorporated additional field data collected by Mr. Lammoglia.[1473] Critically, the updated MIA – which went beyond what the LGEEPA required – reached the same substantive conclusion as the original MIA: the Ixtaca Project was environmentally, technically, and economically viable.[1474] The updated MIA did not correct the original MIA; it confirmed it.[1475] But as the Claimants completed this work, it became clear that the political environment had not changed and the AMLO administration would not permit the Project to proceed, regardless of the strength of the updated MIA.[1476] In addition to AMLO's directive not to permit any new open-pit mining projects, SEMARNAT had issued a series of irregular press statements calling upon the SCJN, and later Economía, to uphold the Tecoltemi amparo and cancel the Concessions.[1477]

498. In fact, on 31 May 2022, Ms. Beatriz Manriquez – the Puebla State Secretary of Environment who had just accompanied Secretary Albores during her visit to Puebla State days earlier – visited the Ixtaca Project site.[1478] Mr. Santamaría Tovar – who was present at Ms. Manriquez's visit – briefed Mr. McDonald after the visit, and Mr. McDonald recorded the exchange in his notebook: "Manriquez: Don't submit MIA w/ Albores; OP mine Ø [null]: Won't even look at it."[1479] Submitting the updated MIA in this political climate would have been a futile act. The

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1471 McDonald WS-2, at para. 142.

1472 Email from Doug McDonald to Morgan Poliquin et al., dated 30 June 2021 (emphasis added), **Exhibit C-636**; McDonald WS-2, at para. 142.

1473 McDonald WS-2, at para. 143.

1474 Updated MIA, at Chapter VII.4, p. 20, **Exhibit C-639**.

1475 McDonald WS-2, at para. 143.

1476 McDonald WS-2, at para. 144.

1477 McDonald WS-2, at para. 144.

1478 X post by Ms. Beatriz Manriquez, dated 27 May 2022, *available at* https://x.com/BetyManrique/status/1530018997919424527/photo/1, **Exhibit C-638**; C. Morales, "Semarnat va contra minas a cielo abierto, fracking y maíz transgénico," *El Milenio*, dated 22 October 2022, *available at* https://www.milenio.com/estados/semarnat-medidas-impedir-cambio-climatico-mexico, **Exhibit C-632**.

1479 McDonald WS-2, at para. 144.

Company therefore decided to withhold the submission until there was a leadership change at SEMARNAT or at least until there was the prospect of an objective and fair evaluation.[1480]

499. The Claimants now understand – through documents obtained in these proceedings – that while they were completing the updated MIA, anti-mining NGOs, including Tecoltemi's lead counsel, enjoyed direct access to Secretary Albores and collaborated with SEMARNAT and other Government agencies behind closed doors to commission and prepare studies designed to discredit the Project and deliver to Economía the pretext needed to rule against the Concessions.[1481]

500. Thus, the AMLO administration had effectively predetermined that the Ixtaca Project would not proceed. This conduct affirms the Claimants' decision at the time not to submit the updated MIA to SEMARNAT, which would have been futile – not because it was deficient in any respect, but because SEMARNAT had already decided to reject any MIA associated with the Project.[1482] The Claimants' decision not to resubmit was a rational response to a politically predetermined process, not an acceptance of the MIA Denial Decision's legitimacy.[1483]

2.13. Economía Opposed Tecoltemi's *Amparo* And Then Appealed The District Court's Decision Upholding It

501. In their Memorial, the Claimants demonstrated that Economía and its DGM defended the legality of the Ixtaca Concessions throughout the *amparo* proceedings, from the District Court to the Supreme Court, emphasizing their full compliance with Mexican law.[1484] This included the DGM's *informe justificado* dated 12 May 2015, filed before the District Court, requesting dismissal of the Tecoltemi *amparo* in full on multiple procedural grounds.[1485] This also included the appeals filed by both Economía and its DGM against the District Court's ruling granting Tecoltemi the *amparo*,[1486] on 8 May 2019 and 17 July 2019, respectively.[1487]

1480 McDonald WS-2, at para. 144.

1481 *See* McDonald WS-2, at para. 145; *see, e.g.,* Minutes of the Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

1482 McDonald WS-2, at para. 145.

1483 McDonald WS, at para. 94; McDonald WS-2, at para. 145.

1484 Memorial, at paras. 233-237.

1485 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, **Exhibit C-34**.

1486 Memorial, at paras. 363-364.

1487 Economía, Revision en Amparo 445/2015, dated 8 May 2019, **Exhibit C-68**; DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, **Exhibit C-528**.

502. In its Counter-Memorial, Mexico seeks to minimize Economía's defense of the Concessions, asserting that Economía "had to defend the legality of the Concession" to "fulfill its duty of legality."[1488] These assertions are erroneous and unsupported. There is no obligation under Mexican law to defend the legality of a challenged act. Economía defended the legality of the Ixtaca Concessions, because Economía believed the Concessions had been properly issued.

503. *First*, the *Ley de Amparo* in effect at that time,[1489] provides that the responsible authorities must provide an *informe justificado* that shall set forth "grounds deemed relevant to support the dismissal of the case and the constitutionality or legality of the challenged act."[1490] The *Ley de Amparo* also provides that, if an *informe justificado* is not provided, the act being challenged will be presumed to exist and the complainant has only the burden of proving its unconstitutionality.[1491] Accordingly, if Economía believed that the granting of the Concessions was not a lawful act, it could have admitted this by not submitting an *informe justificado*. Economía did not do so.

504. *Second*, the *Ley de Amparo* similarly does not require the responsible authorities to defend the act being challenged. To argue otherwise would mean that the *Ley de Amparo* requires the responsible authorities to defend acts as legal even if they do not comply with applicable law – the *Ley de Amparo* contains no such requirement. In other words, if Economía defended the Concessions in its *informe justificado*, it did so because it considered that the Concessions complied with the laws and regulations applicable at the time they were granted. Economía was not required to defend them, as Mexico now suggests.

505. *Third*, the *Ley de Amparo* provides that the responsible authorities "***may*** only file an appeal for review against judgments that directly affect the specific act challenged by each of them."[1492]

1488 Counter-Memorial, at para. 113.

1489 Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, dated 2 April 2013, **Exhibit C-507**.

1490 Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, dated 2 April 2013, at Art. 117 p.5, (Spanish original) "*En el informe se expondrán las razones y fundamentos que se estimen pertinentes para sostener la improcedencia del juicio y la constitucionalidad o legalidad del acto reclamado y se acompañará, en su caso, copia certificada de las constancias necesarias para apoyarlo*," **Exhibit C-507**.

1491 Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, dated 2 April 2013, at Art. 117 p.4, (Spanish original) *"[…] Si no se rindió informe justificado, se presumirá cierto el acto reclamado, salvo prueba en contrario, quedando a cargo del quejoso acreditar su inconstitucionalidad cuando dicho acto no sea en sí mismo violatorio de los derechos humanos y garantías a que se refiere el artículo 1o. de esta Ley*," **Exhibit C-507**.

1492 Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, dated 2 April 2013, at Art. 87, (Spanish original) "*Las autoridades responsables sólo podrán interponer el recurso de revisión contra sentencias que afecten directamente el acto reclamado de cada una de ellas*; …"), **Exhibit C-507**.

Accordingly, it is also not an obligation to file an appeal; rather, it is a possibility. Economía was therefore not required to appeal the District Court's decision and defend the legality of the Concessions for a second time. Regardless, without having any obligation to do so, Economía filed not one but two *recursos de revision*: one through the DGM and one directly.[1493]

506. Notably, as mentioned in the Memorial, neither Economía nor DGM identified in their filings any issues or irregularities with the Concessions – nor did they raise any irregularities with the land or the coordinates.[1494] To the contrary, Economía repeatedly stated in each of its filings that the Concessions complied with applicable legal provisions. For example:

a) In its *informe justificado*, the DGM confirmed that "the mining concessions that are the subject of the complaint were granted to the current aggrieved third parties ***after they had met the requirements set forth in the applicable regulations***, and the complainants have no say in the matter"[1495] and were "issued in accordance with the guidelines set forth in the Mining Law and its Regulations."[1496]

b) In its *recurso* the DGM provided that: "the mere issuance of the mining concession titles in question does not infringe upon any rights of the complainant, and that such ***titles were issued in accordance with the laws in force at the time of their issuance, having met the established requirements***."[1497]

507. *Fourth*, Mexico alleges that the *informe justificado* must indicate at least four aspects: "*i)* whether or not the act being claimed exists; *ii)* the reasons and legal basis for the act; *iii)* the reasons for its legality and constitutionality; and *iv)* whether there are grounds for dismissing the amparo claim."[1498] In its *informe justificado*, the DGM went well beyond these four aspects.

1493 DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, **Exhibit C-528**; Economía, Revision en Amparo 445/2015, dated 8 May 2019, **Exhibit C-68**.

1494 Memorial, at para. 238.

1495 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at pp. 10-11 (emphasis added) (Spanish original: "*las concesiones mineras de las que se quejan, fueron concedidas a los hoy terceros perjudicados previo cumplimiento de los requisitos previstos en las disposiciones aplicables y sobre las cuales los quejosos no tiene injerencia alguna.*"), **Exhibit C-34**.

1496 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 11 (Spanish original: "*los títulos de las concesiones mineras de que se trata, se expidieron de acuerdo a los lineamientos que establecen la Ley Minera y su Reglamento.*"), **Exhibit C-34**.

1497 DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 18 (emphasis added) (Spanish original: "*Por lo que ese Ad quem deberá arribar a la conclusión que la sola expedición de los títulos de concesión minera de mérito, no vulnera derecho alguno de la parte quejosa, además de que los mismos fueron expedidos en términos de los ordenamientos legales vigentes al momento de su emisión, al cumplir con los requisitos establecidos para ello.")*, **Exhibit C-528**.

1498 Counter-Memorial, at para. 113.

508. Specifically, in its *informe justificado*, DGM confirmed that the Concessions had been granted in accordance with applicable legal provisions and provided certified copies of the Concession titles to support their legal existence;[1499] however, it did not stop there. As explained in the Memorial, the DGM further argued: (i) that the action was time-barred because Tecoltemi had been aware of the exploration activities for over two years before filing the *amparo*; (ii) that Tecoltemi lacked legal standing because it failed to prove that it was directly affected by the Concessions; (iii) that Tecoltemi had failed to demonstrate actual harm; and (iv) that Tecoltemi was misrepresenting the nature of the Concessions because mining concessions do not equate to land ownership, but rather confer only rights to subsurface resources.[1500] The DGM also argued that the Mining Law does not contemplate indigenous consultations; and, consequently, Tecoltemi's alleged right to consultation was not impacted, because it had no such right.[1501] Furthermore, the DGM distinguished between consultation and consent, noting that, according to international standards, consultation does not mean that consent is required.[1502] In short, in addition to confirming the legality of the Concessions, the DGM challenged Tecoltemi's rights to an indigenous consultation and Tecoltemi's erroneous constructions of Constitutional law.

509. In sum, the arguments Economía and the DGM presented in the *amparo* proceedings reflected Economía's own views at the time and, more importantly, they reaffirmed the Claimants confidence in the security of their rights and the legitimacy of the Project.[1503] As set forth further below, Economía's subsequent course reversal on the Ixtaca Concessions in February 2023 cannot be attributed to the Supreme Court's decision or the content of its legal directions to Economía; to the contrary, Economía's baseless February 2023 *Oficio* was the product of a political directive and a leadership change at the head of Economía in October 2022.

2.14. The Supreme Court Ordered Economía To Suspend The Concession Titles, While It "Pronounced Again" On The "Feasibility" Of Issuing Them And Conducted Indigenous Consultations

510. As set forth in the Memorial, on 16 February 2022, the Supreme Court issued its decision on the appeals, upholding key aspects of the *amparo* ruling in favor of Tecoltemi.[1504] Specifically, the Supreme Court determined that Economía had granted the Concessions without consulting

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1499 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at pp. 56-67, **Exhibit C-34**.

1500 Memorial, at para. 236.

1501 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 49, **Exhibit C-34**.

1502 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at pp. 43-47, **Exhibit C-34**.

1503 McDonald WS, at para. 80.

1504 Memorial, at para. 375.

the affected indigenous communities, including Tecoltemi.[1505] Consequently, the Supreme Court ordered Economía to declare the Concessions "*insubsistentes*" or ineffective, pending a "pronouncement" by Economía on the "feasibility" of issuing the Concession titles under the "conditions and requirements" in force at the time they were originally granted, and then to conduct consultations with Tecoltemi and other potentially impacted indigenous communities to correct the Constitutional violation the Supreme Court had found in its decision.[1506]

511. The Supreme Court's decision in this respect was irregular and contrary to fundamental Mexican legal principles of non-retroactivity and legal certainty.[1507] As the Claimants explained, the Supreme Court ordered a retroactive reassessment of the "feasibility" of the existing Concession titles and imposed a requirement of mandatory consultation on Economía – which, as set forth below, Economía never carried out.[1508]

512. The decision was also vague: the Supreme Court did not define "feasibility," which is not a term that appears in either the Mining Law or its Regulations in connection with Economía's grant of mining concessions.[1509] The Court likewise did not clarify the meaning, scope, or criteria for reassessing feasibility in the case at hand.[1510] This ambiguity was further compounded by the fact that none of the parties in the *amparo* proceedings had ever referenced or debated the so-called "feasibility" of the Concessions as a relevant legal standard.[1511] That is because Tecoltemi did not raise any challenge to the so-called "feasibility" of the Concessions; it challenged only the lack of indigenous consultations, as recognized by the Supreme Court in its decision:

> 81. FIFTH. Legal issue to be resolved. The legal issue to be resolved by this First Chamber is whether, in this case, the Ministry of Economy (in its capacity as the responsible authority) had the obligation to conduct free, prior, and informed indigenous consultation with the Tecoltemi Indigenous Community prior to the granting of the mining concession titles challenged by the complainant; as well as to determine whether the legislative authority committed a relative

[1505] Memorial, at para. 376.

[1506] Memorial, at para. 376.

[1507] Memorial, at para. 377.

[1508] Memorial, at para. 377.

[1509] Memorial, at para. 378.

[1510] Memorial, at para. 378.

[1511] Memorial, at para. 379.

> omission by failing to bring the Mining Law into compliance with Transitory Article 2 of the constitutional amendment to Article 2 of 2001, in relation to Articles 6, first paragraph; 10, first and fourth paragraphs; and 15 and 19, sections I, II, IV, V, VI, and VIII, of the Mining Law.[1512]

513. There is no dispute between the Parties that Economía issued the Concession titles in 2003 and 2009 without first conducting indigenous consultations with the Tecoltemi community – which, at that time, had not self-declared or registered as "indigenous." There is also no dispute that, to remedy what the Supreme Court found to be a Constitutional violation committed by Economía, the Court ordered Economía to: (i) declare the concession titles "*insubsistentes*;" (ii) pronounce on the "*factibilidad*" of issuing the Concession titles under the "conditions and requirements" in force at the time they were originally granted; and (iii) conduct an indigenous consultation.[1513] The Parties, however, disagree on the interpretation of these orders.

514. As an initial matter, Mexico's assertion that the Supreme Court gave Economía "freedom of jurisdiction" to issue a new ruling with respect to the Concessions is inaccurate.[1514] The Supreme Court did not do so. The "freedom of jurisdiction" language that Mexico quotes comes from the District Court's decision, which was modified by the Supreme Court.[1515] In its decision on the appeals, the Supreme Court did not adopt that language.[1516]

515. Moreover, Article 77 of the *Ley de Amparo* establishes that, in cases where the contested act is of a negative nature or involves an omission (such as the failure to conduct an indigenous consultation), the effects of the *amparo* to be set forth in the court's judgment shall be directed at compelling the responsible authority to respect the right in question.[1517] To that end, the court

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1512 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at para. 81, (emphasis added) **Exhibit C-92**; Counter-Memorial, at para. 386.

1513 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at paras. 296-297, **Exhibit C-92**.

1514 Counter-Memorial, at para. 398.

1515 Resolution of the Second District Court in Matters of Civil Amparo (445/2015), dated 5 March 2019, at p. 134-135, **Exhibit C-66**.

1516 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at para. 297, **Exhibit C-92**.

1517 Cossío ER, at para. 97; Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, at Art. 77 ("The effects of granting the amparo shall be: I. When the contested act is of a positive nature, the complainant shall be restored to the full enjoyment of the violated right, returning matters to the state they were in prior to the violation, and II. When the contested act is of a negative nature or involves an omission, the responsible authority shall be compelled to respect the right in question and to comply with its requirements. In the final recital of the judgment granting the amparo, the adjudicating judge must precisely determine the effects thereof, specifying the measures that the authorities or private parties must adopt to ensure strict compliance and the restoration of the complainant's enjoyment of the right."), **Exhibit C-507**.

must specify the measures that the responsible authority is required to adopt to restore the complainant's enjoyment of the violated right.[1518] In the present case, the Supreme Court set out a series of orders and directions at paragraphs 297 and 299 to ensure that Economía would restore Tecoltemi's Constitutional right, *i.e.*, its right to prior consultation, and carry out the indigenous consultation with "complete, prior, and meaningful information."[1519] The Supreme Court did not give Economía absolute discretion in doing so, but rather elaborated a series of steps Economía was required to take to restore Tecoltemi's Constitutional right.[1520] The fact that Economía decided to ignore these directions does not mean that the Supreme Court granted it absolute freedom of jurisdiction.

516. With respect to the Supreme Court's first order, namely, to declare the Concessions "*insubsistentes*," Mexico argues that this declaration did not simply suspend the legal effects of the Concession titles, while Economía remedied the lack of prior consultations – without disturbing Minera Gorrión's existing legal rights. Rather, Mexico says, the declaration of *insubsistencia* meant the "legal disappearance" of the Concessions[1521] Mexico also argues that the effect of the declaration of *insubsistencia* was to return the situation to the moment prior to the issuance of the Concession titles, meaning that the DGM was required to conduct a *de novo* review of the original concession applications, even though Economía had itself reviewed and approved them decades earlier.[1522] Mexico's arguments are inconsistent with the object and purpose of the Supreme Court's decision, as well as contradictory.

517. *First*, as Former Justice Cossío explains, a declaration of *insubsistencia* pursuant to a judicial ruling is not synonymous with "non-existence."[1523] The term "*insubsistencia*" can be used in judicial rulings to indicate the cessation of the legal effects of an act, consistent with the definition set out in the Supreme Court's Handbook for Litigants on Amparo Proceedings.[1524] Moreover, as Former Justice Cossío explains, according to judicial precedent, where a challenged act is found invalid due to a defect in legality or constitutionality, it is common for the Court to order that the decision be set aside and the proceedings be reinstated to remedy

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1518 Cossío ER, at para. 97.

1519 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 297, 299, **Exhibit C-92**.

1520 Cossío ER, at para. 225.

1521 Counter-Memorial, at para. 395.

1522 Counter-Memorial, at para. 395.

1523 Cossío ER, at para. 79.

1524 Supreme Court of Justice of the Nation, Handbook for Litigants on Amparo Proceedings, Mexico, July 2010, at pp. 78–79 ("Acts *insubsistentes*: These are acts that were effectively in force but were unilaterally revoked or set aside by the responsible party or by another competent authority, such that their effects have ceased."), **Exhibit C-931**.

that defect, while leaving all other aspects of the proceedings intact.[1525] This occurs in various areas of law, such as administrative and labor law.[1526]

518. In the case at hand, the Court did not resolve that the Concessions were non-existent, but rather ordered Economía to declare the titles *insubsistentes* so that Economía could remedy the defect identified by the Court (*i.e.*, the lack of an indigenous consultation), and then re-issue the titles. As explained by Former Justice Cossío, this is supported by the 1992 Mining Law, which was in effect when Economía granted both Concessions.[1527] Article 7, Section VI, expressly provides that Economía is empowered "[t]o issue mining concession and assignment titles, as well as to rule on their nullity or cancellation, *or on the suspension and* insubsistencia *of the rights derived therefrom*."[1528] It follows from this text that nullity and cancellation are distinct from the suspension and *insubsistencia* of rights. Here, the Supreme Court ordered the suspension and *insubsistencia* of the Concession titles, rather than their nullity or cancellation, simply as a provisional status so that the indigenous consultation could be carried out.[1529]

519. *Second*, the Supreme Court's decision – and its order that Economía declare the Concession titles *insubsistentes* – must be analyzed and understood in light of the subject matter of the *amparo* proceedings and the nature of the defect identified by the Supreme Court in its decision.[1530] In this case, both the subject matter of the *amparo* proceedings and the defect identified by the Supreme Court relate exclusively to Economía's own failure to conduct consultations prior to its grant of the Concession titles; no other defect in the Concessions or the titles was argued or identified.[1531] Accordingly, the order to declare the Concession titles *insubsistentes* could apply only to the act of granting the Concession titles to Minera Gorrión, the third party in the *amparo* proceedings.[1532] That is because none of Minera Gorrión's acts was challenged, including the content or validity of its original concession applications.

520. As Former Justice Cossío explains, the invalidity of the act that granted the Concession titles to Minera Gorrión – as opposed to the invalidity of the Concessions as a whole – must be interpreted as a judicial suspension of the legal effects of the Concession titles until Economía

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1525 Cossío ER, at para. 75.

1526 Cossío ER, at para. 75.

1527 Cossío ER, at para. 79.

1528 1992 Mining Law, Art. 7, VI, at p. 3, **Exhibit C-157.**

1529 Cossío ER, at para. 79.

1530 Cossío ER, at para. 107.

1531 Cossío ER, at para. 108.

1532 Cossío ER, at para. 111.

remedied the defect that led to the *amparo*.[1533] Once Economía remedied that defect by carrying out the consultations – which was a defect Economía alone was responsible for – Minera Gorrión was entitled to reissuance of the Concession titles based upon the prior administrative steps it took and the approvals it obtained from Economía, which remained valid and in full effect.[1534] In other words, declaring the titles *insubsistentes* and then reissuing them after consulting Tecoltemi was for the limited purpose of curing the Constitutional defect – not rendering a third party's rights void *ab initio*. This is affirmed by Economía's June 2022 *Oficio*.

521. In its June 2022 *Oficio*, Economía declared that the Concession titles were *insubsistentes* "until the prior consultation with the NÁHUA INDIGENOUS COMMUNITY OF TECOLTEMI is carried out," in accordance with the Supreme Court's decision.[1535] In other words, the titles were *insubsistentes* only until Economía acted to correct its own Constitutional violation.

522. *Third*, if the Supreme Court had intended to annul the underlying concessions in full, which is what Tecoltemi – and INPI – were demanding the Court to do,[1536] the Court would not have expressly affirmed the validity of "the administrative procedure" prior to Economía's act of granting the Concessions titles.[1537]

523. Specifically, in delineating the "informative phase" (*fase informativa*) of the consultation process at paragraph 299, the Supreme Court observed that Economía must provide to the communities "complete, prior, and meaningful information on the measure under consultation, *taking into account that the administrative procedure began with the request for the concession, and various actions were carried out before the ineffective titles were issued*."[1538] In other words, the Supreme Court made clear that the administrative procedure prior to Economía's act of granting the titles (which Tecoltemi had not challenged) remained valid and in full effect – and that the information generated during that administrative procedure was to be shared with

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1533 Cossío ER, at para. 114.

1534 Cossío ER, at para. 115.

1535 Letter from Economía, Director General of Mines to Minera Gorrión, dated 20 June 2022, at p. 4 (Spanish original: "*Lo anterior hasta en tanto se lleve a cabo la consulta previa a la COMUNIDAD INDÍGENA NAHUA DE TECOLTEMI, en términos de la sentencia de mérito.*"), **Exhibit C-95**.

1536 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla) at p. 40 **Exhibit C-32**; Amicus brief filed by INPI before the Mexican Supreme Court in amparo in review 134/2021, dated 18 January 2022, at p. 14 **Exhibit C-800**.

1537 Cossío ER, at para. 115.

1538 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at para. 299, (emphasis added) **Exhibit C-92**.

the communities during the consultation process.[1539] This included the following official letters and approvals, as provided for in Articles 17, 22 and 23 of the Regulations:

a) For the Cerro Grande Concession:

- Study and opinion on the Cerro Grande exploration application by the Puebla Mining Subdirectorate dated 18 November 2002 (**Exhibit C-169**);

- Official Letter No. 120/21/A.4/6.1/2003 from the Mining Subdirectorate of the DGM addressed to the Director of the DGM dated 10 February 2003, confirming that, taking into account the information provided by the mining expert, the Cerro Grande concession application "meets the applicable legal and regulatory requirements" (**Exhibit C-171**); and

- Checklist of requirements issued for the Cerro Grande concession application dated 26 February 2003 (**Exhibit C-172**).

b) For Cerro Grande 2 Concession:

- Study and opinion on the Cerro Grande 2 exploration application by the Puebla Mining Subdirectorate 16 dated July 2008 (**Exhibit C-7**, p. 32);

- Official Letter No. 141.8.1.20087 04713 from the Head of the Mining Concessions Department of the DGM addressed to the Director of the DGM, dated 9 December 2008, confirming that, taking into account the information provided by the mining expert, the Cerro Grande 2 concession application "meets the applicable legal and regulatory requirements" (**Exhibit C-175**); and

- Checklist of requirements issued for the Cerro Grande 2 concession application dated 3 February 2009 (**Exhibit C-176**).

524. As the Supreme Court made clear, all of these administrative acts remained valid. Economía further affirmed the validity of these administrative acts in its June 2022 *Oficio*. As Economía reiterated, all actions taken prior to the issuance of the Concession titles "subsisted:"

> For the issuance of a new pronouncement with respect to the feasibility of the issuance of the concession titles, *everything that was done prior to the granting of the concession titles subsists, that is, taking into*

[1539] Cossío ER, at para. 83.

> *consideration the different actions carried out in terms of Articles 13 of the Mining Law and 16 of its Regulations, in force at the time of the filing of the application, in accordance with [paragraph 297 of the Supreme Court's decision].*[1540]

525. Economía further noted that, "as of the date of notification of this resolution, the mentioned mining concessions will not be subject to the rights and obligations conferred and imposed respectively by articles 19 and 27 of the Mining Law, which are transcribed below[.]"[1541] In other words, consistent with the Supreme Court's decision, Economía made clear that the Concessions remained in effect and that only the rights and obligations arising from Articles 19 and 27 of the Mining Law were suspended, while Economía remedied the defect found by the Supreme Court. In other words, contrary to Mexico's contentions, the Concessions did not legally "disappear." This conclusion is also compelled by principles of Mexican law.

526. As former Justice Cossío affirms, under the principle of action by the aggrieved party,[1542] as well as the principle of closed litigation (*litis contestation*),[1543] in an *amparo* proceeding, neither the parties nor the courts may introduce new or different aspects from the complaints originally raised in the *amparo*, as that would imply altering the Constitutional dispute.[1544] Consequently, in view of the subject matter of Tecoltemi's *amparo*, the Supreme Court could not invalidate the administrative procedure prior to Economía's act of granting the titles – that is because Tecoltemi did not challenge that procedure in any way in its *amparo*.

1540 Letter from Economía, Director General of Mines to Minera Gorrión, dated 20 June 2022, at p. 7 (Spanish original: "*Para la emisión de un nuevo pronunciamiento respecto a la procedencia de la expedición de los títulos de concesión, subsiste todo lo actuado previamente al otorgamiento de los títulos de concesión, es decir, tomando en consideración las diversas actuaciones realizadas en términos de los artículos 13 de la Ley Minera y 16 de su Reglamento, vigentes al momento de la presentación de la solicitud, en apego al numeral 297 de la ejecutoria de mérito.*"), **Exhibit C-95.**

1541 Letter from Economía, Director General of Mines to Minera Gorrión, dated 20 June 2022, at p. 4 (Spanish original: "*Por lo anterior, a partir de la notificación de la presente resolución, las citadas concesiones mineras no estarán sujetas a los derechos ni a las obligaciones, que confieren e imponen respectivamente los artículos 19 y 27 de la Ley Minera, mismos que se transcribe enseguida.*"), **Exhibit C-95.**

1542 Cossío ER, at para. 56 (emphasis added) The principle of aggrieved party means *"that an amparo proceeding can only be initiated—through a legal action—when a citizen requests it; that is, when a person who considers their legal rights to have been infringed upon by a general regulation or an act of authority asks the amparo courts to intervene for their protection. Consequently, based on this principle, neither the amparo proceeding nor the remedies provided for in the relevant law can be initiated ex officio; it is always necessary for someone to file the petition."*.

1543 Cossío ER, at para. 57 (emphasis added) The principle of closed litigation*, "implies that the facts submitted to the competent court for a decision must not be altered during the course of the trial, either by the court or by any of the parties."*.

1544 Cossío ER, at para. 60.

527. *Third*, Mexico's own arguments about the reversion of the Concession titles confirms that the declaration of *insubsistentes* did not definitively extinguish the Claimants' Concession rights.

528. Specifically, Mexico argues in its Counter-Memorial that the Concession titles did not revert to the State upon the declaration of *insubsistentes*, because "the effects of the Supreme Court ruling prevented [Economía] from declaring the land covered by the concessions free—*i.e.*, from allowing third parties to apply for the concessions."[1545] Instead, Economía was required "to respect the existence of the original administrative files of the Concession Applications submitted by Minera Gorrión and Minera Gavilán in 2003 and 2009 and assess, based on that information, whether the issuance of the concessions was feasible."[1546]

529. As Mexico further admits, Economía was prevented from declaring the land covered by the Concessions free until it issued its arbitrary feasibility decision: "The consequence of the Non-Feasibility Resolution was that [Economía] rejected the Plaintiffs' Concession Applications, and therefore proceeded to declare the land free, which would allow third parties—and the Plaintiffs themselves—to resubmit a Concession Application."[1547] In other words, it was Economía's arbitrary and baseless decision in its February 2023 *Oficio* to "reject[]" the original concession applications that cancelled the Claimants' Concessions in full – thereby freeing the land – not the declaration of *insubsistentes*.

530. *Fourth*, Mexico's arguments are contradictory. On the one hand, Mexico argues that the legal effect of the *insubsistencia* declaration was to return the situation to the moment prior to the issuance of the Concession titles, but, on the other hand, it argues that the DGM was required to conduct a *de novo* review of the concession applications, including the mining experts reports.[1548] It cannot be both.

531. As explained above in Section 2.3.1, before the DGM conducts its final 15-day review of the concession application and issues the title under Article 23 of the Mining Regulations, it must (i) confirm under Article 17 that the application is complete, and (ii) review and approve the expert reports under Article 22.[1549] As the Supreme Court made clear, these administrative steps remained valid; as such, there was no basis for the DGM to conduct a *de novo* review of the Concession applications – or the underlying expert reports. Rather, returning the situation

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[1545] Counter-Memorial, at para. 554.

[1546] Counter-Memorial, at para. 554.

[1547] Counter-Memorial, at para. 556.

[1548] Counter-Memorial, at para. 395.

[1549] 1999 Mining Regulations, at Arts. 17, 22, **Exhibit C-164.**

to the moment prior to the issuance of the Concession titles meant that, following consultations, Economía was to reissue the Concessions based upon the prior administrative procedure, which remained valid and undisturbed by the Supreme Court's *amparo* decision.

532. Indeed, as set forth below, SEMARNAT, INPI, and the NGOs themselves understood and appreciated that the Claimants' Concession rights survived and, for that reason, sought a feasibility decision from Economía that cancelled them definitively, without any consultations at all – thus denying the local communities the very right the Supreme Court sought to protect and contradicting Tecoltemi's own *amparo*, which argued the necessity of consultation.

533. With respect to the Supreme Court's second order, namely, to "pronounce again" on the "feasibility" of issuing the titles, Mexico contends that "the absence of an express regulatory definition of the term does not create legal uncertainty for the parties because, in the context of mining concessions, its meaning and scope are clear."[1550] Mexico further contends that the term feasible "implies verifying whether concession applications comply with technical requirements, as well as applicable legal and regulatory conditions."[1551] According to Mexico, "the Supreme Court did not introduce new claims or act *ultra petita*, but rather exercised its discretionary power to ensure the effective protection of fundamental rights."[1552] These contentions too are wrong.

534. *First*, as noted, Tecoltemi's *amparo* focused only on the unconstitutionality of the challenged provisions of the Mining Law and the grant of the Concession titles without prior indigenous consultation.[1553] Tecoltemi did not challenge the technical validity of the Concessions or the original concession applications – or their compliance with legal or regulatory requirements.

535. Consistent with the subject matter of Tecoltemi's *amparo*, the only defect the Supreme Court found in its decision was the *lack* of prior indigenous consultations by Economía. Mexico fails to explain how, in that context, the feasibility "pronouncement" would require a reassessment of technical requirements and legal and regulatory conditions, which (i) Economía had already assessed and ruled on decades earlier, and (ii) which Tecoltemi did not challenge in its *amparo*.

536. As explained above, under the principle of action by the aggrieved party and the principle of closed litigation (*litis contestation*), neither the parties nor the courts may introduce new or

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[1550] Counter-Memorial, at para. 661.

[1551] Counter-Memorial, at para. 661.

[1552] Counter-Memorial, at para. 662.

[1553] Cossío ER, at para. 54; Amparo 134/2021, SCJN Decision, dated 16 February 2022, at para. 81, **Exhibit C-92**.

different aspects from the complaints originally raised in the *amparo*.[1554] Consequently, the Supreme Court did not – and, indeed, could not – order Economía to reopen and reassess the original concession applications, with a view to approving or rejecting those applications retroactively. Indeed, if Mexico were correct, *quod non*, that would imply a violation of both principles – and would also run contrary to fundamental Mexican legal principles of non-retroactivity and legal certainty – because Tecoltemi did not challenge the original concession applications in any way.[1555]

537. As former Justice Cossío explains, the "pronouncement" on "feasibility" that the Supreme Court ordered must be understood within the limits of the *amparo* proceedings.[1556] Specifically, properly understood in the light of Tecoltemi's *amparo*, the feasibility "pronouncement" required Economía to confirm that it had all of the information in the original concession applications required under the Mining Law and its Regulations to issue the Concession titles and, if so, to proceed with the consultation process, as set forth in paragraph 299 of the Supreme Court's decision.[1557] In other words, the Supreme Court ordered Economía, as an initial matter, to review the information in the original concession applications and to "pronounce" on whether they complied with the "conditions and requirements" in force at the time they were granted, such that Economía had in front of it all of the information it needed to share with the communities in the consultation process. And, as former Justice Cossío explains, if the necessary requirements and conditions were not met, Economía had to notify the Court so that it could take appropriate measures regarding the manner of compliance.[1558]

538. The Supreme Court did not – and indeed could not – order Economía to reopen and reapprove (or reject) the original concession applications *de novo*, as Economía had already approved them in 2003 and 2009 – and the Supreme Court ruled that this prior administrative procedure remained valid. As former Justice Cossío notes, this is why the Supreme Court used the term "pronouncement," rather than "determination," in its decision, which does not imply an analysis and resolution, but merely a confirmation.[1559]

1554 Cossío ER, at para. 59.

1555 Memorial, at para. 377; Cossío ER, at para. 119.

1556 Cossío ER, at para. 122.

1557 Cossío ER, at paras. 124-125.

1558 Cossío ER, at para. 83.

1559 Cossío ER, at para. 86.

539. *Second*, there can be no dispute that the term "feasibility" does not appear in the Mining Law or its Regulations in connection with the grant of mining concessions.[1560] There can also be no dispute that the "feasibility" of issuing the Concession titles was never raised or discussed by the parties at any point during the seven-year amparo proceeding. Accordingly, former Justice Cossío's opinion is that the term "feasibility" was used by the Supreme Court colloquially to refer to Economía's verification that, based on the information contained in the original concession applications, it was in a position to carry out the mandated consultation.[1561] In other words, feasibility must be understood within the context of the *amparo* proceeding, in which the only impugned act was Economía's grant of the Concession titles without consultation.

540. *Third*, even assuming, *arguendo*, that Mexico were correct that the DGM was required to conduct a *de novo* review of the original concession applications, which it was not, nowhere in its decision did the Supreme Court order Economía to disregard the due process rights of Minera Gorrión, a third party to the *amparo*, or the Federal Law on Administrative Procedure, as Mexico and its experts Messrs. Aguinaco argue.[1562]

541. Supreme Court precedent, in fact, is clear that due process rights apply and must be observed in any proceeding.[1563] If, as Mexico says, the Supreme Court ordered Economía to conduct a *de novo* review of the original concession applications under the Mining Law and its Regulations, including the expert reports, then Economía was required to guarantee to Minera Gorrión the same rights to be *heard* and to correct provided to it under the Mining Law and its Regulations. Economía denied these due process rights to Minera Gorrión in full. Specifically, as set out in the Memorial and reiterated below, Economía did not notify or grant Minera Gorrión any opportunity to correct the alleged *de minimis* technical deficiencies identified in the expert reports, as required under Article 22 of the Mining Regulations, but instead seized on these alleged technical deficiencies to rule that issuing the Concession titles was "not feasible."

542. More alarmingly, the actual basis of Economía's feasibility "pronouncement" was not the alleged technical deficiencies in the expert reports; rather, as internal DGM documents reveal, the actual basis was ***the INPI study***.[1564] Nothing in the Supreme Court's decision – or in the

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1560 Cossío ER, at para. 131.

1561 Cossío ER, at para. 129.

1562 Counter-Memorial, at paras. 396-397;Aguinaco ER, at para. 234.

1563 Cossío ER, at para. 169.

1564 Email from Rafael Edipo Palma Castillo, Director of Cartography and Mining Concessions, to Maria Deifilia Madrigal Figueroa, dated March 8, 2023, **Exhibit C-804.**

Mining Law or its Regulations – provided any legal basis for Economía to consider this "Study of Social, Cultural, and Indigenous Spirituality Impacts Regarding the Mining Project" – much less a legal basis for Economía to ground its pronouncement on it.[1565]

543. In issuing mining concessions, Economía does not have the power or the authority to consider the social, cultural, or indigenous spirituality impacts of the mining project – nor could it, because Economía's task under the Regulations is limited to issuing mining concessions, not approving mining operations.[1566] Indeed, INPI acknowledged as much in the introduction to its purported study, when it asserted, without basis, that the Supreme Court had allegedly introduced a "*new element*" in its decision, which allowed Economía to consider social and environmental issues.[1567] That self-serving statement finds no support in the text of the Supreme Court's decision. Indeed, this is presumably why, as set forth below, Economía externally represented in its February 2023 *Oficio* and in its submissions to the Mexican courts that it had relied only upon the *de minimis* technical deficiencies in the expert reports for its feasibility decision – while internally it recorded that the actual basis was the INPI study.

2.15. UNECE And Economía Affirmed That The Ixtaca Project Could Serve As A Model For Responsible And Sustainable Mining, And Selected Minera Gorrión For The UNECE Mining Pilot Project

544. As noted above and in the Memorial, in June 2022, UNECE, in collaboration with Economía, selected Minera Gorrión for the UNECE Mining Pilot Project – a global UN initiative aimed at identifying and promoting best practices in responsible mining across the mining lifecycle.[1568] Economía itself sought to bring this UN initiative to Mexico and then co-led it with UNECE, identifying, in coordination with UNECE, suitable mining projects for the Pilot

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1565 Memorial, at paras. 60–65.

1566 Memorial, at para. 57; Reglamento Interior de la Secretaría de Economía, published in the Diario Oficial on 22 November 2002 (as amended on 17 August 2009), Art. 33, VI, **Exhibit C-170**

1567 INPI, Study on the Social, Cultural, and Indigenous Spirituality Impact of the Mining Project: 'Exploitation and Beneficiation of Ixtaca Minerals' in the Municipality of Ixtacamaxtitlán, Sierra Norte de Puebla. Mining Concession Titles: 219469 and 233434 (Cerro Grande and Cerro Grande 2), dated January 2023, at p. 3, **Exhibit C-407**.

1568 Official Invitation to Minera Gorrión for Participation in the UNECE Initiative Kickoff Session, dated 20 June 2022, **Exhibit C-390**; Almaden Press Release, *Almaden Announces Selection by United Nations UNECE for Mining Pilot Project in Coordination with Mexican Ministry of the Economy*, dated 6 July 2022, **Exhibit C-392**; Santamaría WS, at paras. 43–44.

Project that exemplified best-in-class environmental, social, and governance practices across the three stages of the mining lifecycle, including the Ixtaca Project.[1569]

545. As the Claimants noted in their Memorial, Secretary Clouthier herself publicly championed the Pilot Project, emphasizing its importance in shaping the future of mining in Mexico:

> It is also important to mention that we have signed an agreement with the UN to carry out three research and study prototypes, in order to achieve coordination and respect for the environment, the community, and their harmonious development. I think this has become very important to know that mining does not work as it did in the past, and that it is undergoing rapid changes worldwide, and that it will play a major role.[1570]

546. In its Counter-Memorial, Mexico seeks to distance itself from the Pilot Project, asserting that "the UNECE Mining Pilot Project was managed by UNECE;" that "the invitation to participate in the Pilot Project came from UNECE;" that the Pilot Project was "not an awards program;" and that "the selection of the [Ixtaca Project] for the [Pilot Project] did not represent Economía's endorsement" of the Ixtaca Project.[1571] Mexico's attempt to disavow its participation in the Pilot Project fails.

547. As an initial matter, Mexico's assertions are squarely contradicted by documents it recently produced relating to the UNECE Mining Pilot Project, including its "*Plan de Proyecto*."[1572] As that Project Plan states, "the [Pilot Project's] management model considers Economía as the project's leader at the government level through the Coordination Unit for Extractive Activities," and, "within the scope and objectives of the project, [Economía's] participation" included "providing technical, economic, social, environmental, and regulatory information about the candidate projects, coordinate communication and delivery of information with mining companies, and document review."[1573] In other words, Economía was directly

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1569 Santamaría WS-2, at Section 9.

1570 TATIANA CLOUTHIER: Una nueva hoja de ruta – Expansión Summit 2021, Expansión YouTube Channel, dated 6 September 2021, available at https://www.youtube.com/watch?v=Xhx-r89PMlA (Spanish original: "*También es importante hablar que hemos firmado un convenio con la ONU para hacer tres prototipos de investigación y estudios, para poder llevar una coordinación y un respeto al medio ambiente, a la comunidad y al desarrollo armónico de los mismos. Creo que esto se ha vuelto muy importante para saber que la minería no funciona como en el pasado, y que está sufriendo cambios acelerados en el mundo, y que tendrá un papel preponderante*."), **Exhibit C-371**.

1571 Counter-Memorial, at para. 563.

1572 UNECE, Plan de Proyecto – Prueba Piloto Minas, País: México, dated 2022, **Exhibit C-805**.

1573 UNECE, Plan de Proyecto – Prueba Piloto Minas, País: México, dated 2022, **Exhibit C-805**, at pp. 7-8.

responsible for liaising with the "candidate companies" and for providing all relevant information regarding those companies for the Pilot Project. That included Minera Gorrión.

548. The Pilot Project's proposed work schedule also reveals that Economía was to be one of the two "responsible parties" across all three phases of the Pilot Project:

V. CRONOGRAMA DE TRABAJO PROPUESTO

Año: 2022

Fases y/o Productos (outputs) *Línea de base, indicadores incluyendo metas anuales*	Actividades Planeadas *Lista de actividades de resultados y acciones asociadas.*	PLAZO Q1	Q2	Q3	Q4	PARTE RESPONSABLE	PRESUPUESTO PLANEADO Fuente Recursos	Descripción Presupuesto	Valor en USD
Fase 1: Reuniones informativas y recopilación de información	1. Reuniones preparatorias. 2. Recopilación de información. 3. Talleres de trabajo.					SE - ICE-SRM			
Fase 2: Elaboración del documento base considerando los estándares de la ONU.	1. Desarrollo del documento base 2. Aplicación de UNFC-UNRMS					SE - ICE-SRM			
Fase 3: Análisis de la información – conclusiones y recomendaciones.	1. Análisis grupos de expertos. 2. Recomendaciones Generales. 3. Recomendaciones Específicas. 4. Elaboración de documento final.					SE - ICE-SRM			
TOTAL									

Work schedule showing "SE" (Secretaría de Economía) as a co-responsible party during the three phases of the UNECE Pilot Project[1574]

549. As Mr. Santamaría testifies, Minera Gorrión, in fact, first learned about the Pilot Project from Mr. Efraín Alva, the head of the Coordination Unit for Extractive Activities at Economía, which, as the Project Plan confirms, was leading the Project for Economía.[1575] As the head of Economía's Extractives Unit, Mr. Alva reported directly to Secretary Clouthier and had responsibility for five departments, including the DGM and the Mexican Geological Service.[1576]

550. Shortly after Mr. Alva was appointed to work with Secretary Clouthier in early 2021, Minera Gorrión invited him to visit the Ixtaca Project.[1577] During that visit, as Mr. Santamaría recounts, Mr. Alva told Minera Gorrión about the Pilot Project and explained that Secretary Clouthier had pitched for Mexico to become part of the program during a visit to the UN-headquarters in Geneva.[1578] Specifically, at UNECE's 13th Annual Meeting of the Group of Experts on Sustainable Administration of Resources in April 2021, she "expressed [Economía's] interest

1574 UNECE, Plan de Proyecto – Prueba Piloto Minas, País: México, dated 2022, **Exhibit C-805**, at p. 9.

1575 Santamaría WS-2, at Section 9.

1576 McDonald WS-2, at Section 4.

1577 Santamaría WS-2, at Section 9.

1578 Presentation, "Pilot project for the classification of Mexico's mining projects based on the UNRMS-UNFC," by H.E. Tatiana Clouthier Carrillo – Ministry of the Economy, Mexico, **Exhibit C-806**; Santamaría WS-2, at Section 9.

[in] developing a pilot project in Mexico including a sample of representative mining units in Mexico."[1579] During her presentation, Secretary Clouthier underscored how the Pilot Project would "change the paradigm of resource management" in the Mexican mining industry, and how the "requirements of sustainable development are primarily dependent on the optimal and responsible use of natural resources."[1580] To put the Pilot Project in place, Secretary Clouthier proposed, among other things, to "select [three] candidate mining projects in Mexico," "apply and test the [United Nations Resource Management System]" standard, and map "the mining industry in Mexico to the Sustainable Development Goals.[1581] She further emphasized the need for "multi-stakeholder dialogue and collaboration," including at the Governmental level, and the objective of setting "a base to share [Mexico's] experience in Latin America and the world through an International Center of Excellence."[1582]

551. Once Economía signed an agreement with UNECE to launch the Pilot Project, she instructed Mr. Alva to identify suitable projects that could demonstrate responsible mining across the mining lifecycle.[1583] Mr. Alva explained to Mr. Santamaría that the program required one company at the exploration stage, one in active production, and one in mine closure.[1584] He offered Minera Gorrión the opportunity to participate in the selection process, and Mr. Santamaría agreed.[1585]

552. As part of the selection process, on 4 August 2021, Mr. Alva visited the Ixtaca Project again, together with Mr. Ulises Neri Flores, UNECE Vice-Chair for Mexico and Latin America, and Mr. Antonio Suárez from the Unit for Extractive Activities at Economía.[1586] Mr. Santamaría presented the Project to them and explained the mine plan, the dry-stack tailings technology, Minera Gorrión's community program, and the plan for mine closure.[1587] Following the visit, Mr. Neri issued a "visit report" with UNECE's "initial evaluation" on the Project's candidacy

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1579 Plan de Proyecto – Prueba Piloto Minas, País: México, **Exhibit C-805**.

1580 Presentation, "Pilot project for the classification of Mexico's mining projects based on the UNRMS-UNFC," by H.E. Tatiana Clouthier Carrillo – Ministry of the Economy, Mexico, at p. 2, **Exhibit C-806**.

1581 Presentation, "Pilot project for the classification of Mexico's mining projects based on the UNRMS-UNFC," by H.E. Tatiana Clouthier Carrillo – Ministry of the Economy, Mexico, at p. 4, **Exhibit C-806**.

1582 Presentation, "Pilot project for the classification of Mexico's mining projects based on the UNRMS-UNFC," by H.E. Tatiana Clouthier Carrillo – Ministry of the Economy, Mexico, at p. 4, **Exhibit C-806**.

1583 Santamaría WS-2, at Section 9.

1584 Santamaría WS-2, at Section 9.

1585 Santamaría WS-2, at Section 9.

1586 Santamaría WS-2, at Section 9.

1587 Santamaría WS-2, at Section 9.

for inclusion in the Pilot Project.[1588] That report noted that the visit had assessed the Project's "technical, economic, legal, social, cultural, indigenous and environmental features, among which some key features are highlighted for the Project to be considered as a candidate."[1589]

553. Among the Ixtaca Project's "key features," the UNECE report highlighted:

a) **Human Rights Impact Assessment**: the UNECE report noted that the Project was the first mining project in Mexico to conduct an HRIA; that concerns raised by the community were part of an ongoing and continuous due diligence process; and that the issues identified in that due diligence process were being addressed and effectively mitigated.[1590]

b) **Sustainable Water Management**: the UNECE report highlighted: (i) rainwater harvesting via reservoirs and use for drip irrigation; (ii) the use of dry-stack tailings; and (iii) the social investment programs developed to facilitate community access to water resources, with the aim of reducing water poverty in the Project's area of influence.[1591]

c) **Environmental Responsibility**: the UNECE report underscored Minera Gorrión's "rehabilitation since the first year, reforestation and ecological planning."[1592]

d) **Social Responsibility**: the UNECE report noted that Minera Gorrión had a Corporate Social Responsibility and Community Outreach Program, which included a "[p]ermanent information and community social support module, a long-term social management program currently in implementation with tangible and verifiable results," and noted that in the Project's development phase, "[s]ocial investment programs will be selected in an inclusive manner, through annual dialogue mechanisms with communities, and

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1588 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, **Exhibit C-370**.

1589 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, **Exhibit C-370**, at p. 1.

1590 Uzcanga WS, at para. 57; UN Working Visit Report on Minera Gorrión – Assessment for the UNECE Sustainable Mining Pilot Program, dated 4 August 2021, **Exhibit C-370**, at p. 1 (noting that the Project would be "first modern metallic mining project" in Puebla; underscoring "Minera Gorrión's US$ 40 million investment and employment of over 74 local workers" and a "State tax benefit of about US$ 120 million;" observing that the Project is "Mexico's first mining project with a human rights impact assessment," with "continued and permanent due diligence process," which adopts "the community's concerns.").

1591 Uzcanga WS, at para. 57; UN Working Visit Report on Minera Gorrión – Assessment for the UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2 (noting the Project's (i) "focus on sustainable water management;" and (ii) location in a "non-protected area."), **Exhibit C-370**.

1592 UN Working Visit Report on Minera Gorrión – Assessment for the UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2 (further noting the Project's "safe use of chemicals and explosives."), **Exhibit C-370**.

implemented collaboratively and respectfully of the worldviews of the diverse communities located within the project's areas of influence."[1593]

e) **Community Engagement**: the UNECE report underscored that "[c]ommunity dialogue and participation processes are an essential part of the project's social management program," and that "[m]eaningful and culturally relevant dialogue processes are carried out continuously and on an ongoing basis;" it further recognized the existence of a complaints mechanism that was culturally appropriate and in line with international best practices.[1594]

554. On the basis of these observations, the UNECE report concluded – contrary to the *post hoc* arguments Mexico and Mr. Cabrera raise in this arbitration – that the Ixtaca Project's exploration and development model "could be replicated and [could become] a national and international model of how to do responsible and sustainable mining."[1595]

555. In parallel, Mr. Alva wrote to Secretary Clouthier by letter dated 5 August 2021 to report on his observations during the site visit.[1596] Mr. Alva emphasized Minera Gorrión's "methodology to understand the social environment and achieve widespread acceptance of the Project within the community."[1597] He noted that he found the Project to be "highly interesting," in particular "the management and work carried out with the community," and that the Project "met most of the requirements to be considered for the UNECE Pilot Project in the category of a Mine in Development."[1598] He further observed that the Project was paused due to the *amparo* filed by an NGO "claiming that an indigenous consultation had not been conducted for a community,"

1593 Uzcanga WS, para. 57; UN Working Visit Report on Minera Gorrión – Assessment for the UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2 (highlighting the Project's "corporate social responsibility and community care program "tied to the exercise of the human rights of the people interested in the company's activities," and the Project's "more than ten years of community work . . . [including] continuous and ongoing processes of meaningful and culturally relevant dialogue."), **Exhibit C-370**.

1594 Uzcanga WS, at para. 57; UN Working Visit Report on Minera Gorrión – Assessment for the UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2, **Exhibit C-370**.

1595 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 3, **Exhibit C-370**.

1596 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**; Email from Mr. Ulises Neri Flores to Mr. Daniel Santamaría Tovar Forwarding Correspondence to Secretary of Economy Tatiana Clouthier on Ixtaca Project Visit, dated 9 August 2021, **Exhibit C-485**.

1597 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**.

1598 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**.

which "would not even be affected by the mining operations."[1599] In other words, a high-level Economía official – with responsibility over the DGM and the Mexican Geological Service – observed in August 2021 that the Tecoltemi community would not have been affected by the mining operations at the Project and, most critically, that there was "*widespread acceptance of the Project within the community*."[1600]

556. By letter dated 9 August 2021, Mr. Neri advised Secretary Clouthier that, "after the site visit and consultation with the UN's expert group in Geneva," UNECE had concluded that the Ixtaca Project was a suitable candidate to "initiate the study in accordance with the methodology that incorporates UN standards and guidelines."[1601] By email dated 14 September 2021, Mr. Alva wrote to Mr. Neri confirming that "the five initial projects for the pilot" had been selected and that Economía was working to secure SEMARNAT's involvement through the Director of Mexico's *Agencia de Seguridad, Energía y Ambiente*, who had offered to facilitate a meeting with Secretary Albores.[1602] Mexico has not produced any documents reflecting these discussions.

557. Ultimately, UNECE and Economía selected three mining projects for the Pilot Project: (i) the Ixtaca Project to represent the exploration phase; (ii) Argonaut Gold's La Colorada Project for active production; and (iii) Starcore's San Martin Project for mine closure.[1603] Following this selection, Economía co-led an introductory meeting to the Pilot Project, which was held virtually on 1 April 2022.[1604] Economía co-led a further "introductory workshop" regarding "UN standards and methodologies to be used during the pilot test, as well as the respective information requirements," which was held virtually on 21 April 2022.[1605]

1599 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**.

1600 Letter from Efraín Alva Niño, Encargado de la Unidad de Coordinación de Actividades Extractivas, Secretaría de Economía, to Secretary Tatiana Clouthier, dated 5 August 2021, **Exhibit C-682**.

1601 Email from Mr. Ulises Neri Flores to Mr. Daniel Santamaría Tovar Forwarding Correspondence to Secretary of Economy Tatiana Clouthier on Ixtaca Project Visit, dated 9 August 2021, **Exhibit C-546**.

1602 Email from Mr. Efraín Alva Niño to Mr. Ulises Neri Flores and Secretaría de Economía officials on UNECE Mining Pilot Project and SEMARNAT Involvement, dated 10 September 2021, forwarded by Mr. Neri Flores to Mr. Daniel Santamaría Tovar on 14 September 2021, **Exhibit C-486**.

1603 "*La ONU selecciona a México para un programa piloto de sostenibilidad en minería*," Outlet Minero, dated 28 October 2022, **Exhibit C-402**.

1604 Email from Mr. Ulises Neri (UNECE) to Economía officials and UNECE Pilot Project participants, dated 4 April 2022, **Exhibit C-807**.

1605 Email from Ms. Luz María Arredondo Monárrez (Economía) to Economía officials, dated 14 April 2022, **Exhibit C-808**.

558. In addition to co-leading the introductory meeting and workshop, the invitation to the 30 June 2022 UNECE kickoff event was sent by Mr. Neri, copying Mr. Alva, and Economía itself funded the kickoff event.[1606] Furthermore, as the invitation itself reflects, it expressly stated that the program would be undertaken *in coordination with Economía*:

> I am pleased to extend a warm invitation to you to participate in the project kickoff event: 'Pilot Test for the Identification and Evaluation of Sustainability Measures in the Mining Sector in Accordance with UN Standards and Methodologies (UNFC-UNRMS),' which will be conducted by the UN-UNECE Center of Excellence for Extractive Industries and Energy for Mexico and Latin America (ICE-SRM) *in coordination with the Ministry of Economy* and the companies Almaden Minerals, Argonaut Gold, and Starcore International, at their operations in Mexico.[1607]

559. Separately, Mr. Neri sent an invitation to the *Secretaría de Economía* of the State of Puebla, Ms. Olivia Salomón Vibaldo, noting that the Ixtaca Project was the Puebla-based project in the program.[1608] Although Ms. Salomón could not attend the event, Mr. Guillermo Malpica, the Undersecretary of Industry and Commerce of the State of Puebla, attended on her behalf.[1609] Mr. Santamaría and Ms. Uzcanga Vergara attended the kickoff event on behalf of Minera Gorrión.[1610]

560. As Mr. Santamaría explains, Economía's involvement in the UNECE Pilot Project continued beyond the kickoff event.[1611] On 25 August 2022, the first official UNECE Pilot Project

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1606 Santamaría WS-2, at Section 9.

1607 Official Invitation to Minera Gorrión for Participation in the UNECE Mining Pilot Project Kickoff Session ("Oficio ICE-SRM/075-2022"), dated 20 June 2022 (Spanish original: "*me es grato extenderle la más cordial invitación para que participe en el evento de inicio de proyecto: "Prueba Piloto para la identificación y evaluación de medidas de sostenibilidad en el sector minero conforme a los estándares y metodologías de las Naciones Unidas UNFC-UNRMS" que se llevará a cabo por medio del Centro de Excelencia en Industrias Extractivas y Energia de la ONU-UNECE para México y Latinoamérica (ICE-SRM) en coordinación con la Secretaría de Economía y las empresas Almaden Minerals, Argonaut Gold y Starcore International, en sus operaciones en México*.") (emphasis added), **Exhibit C-390**.

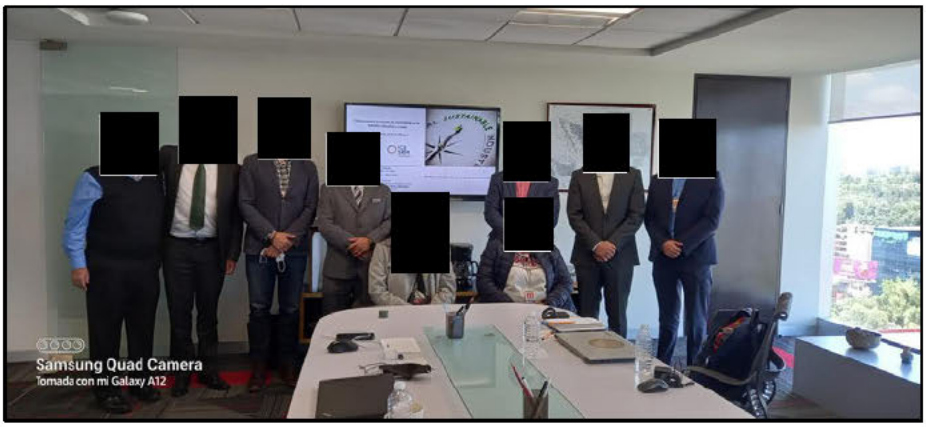
1608 Official Invitation to Ms. Olivia Salomón Vibaldo, Secretaria de Economía, Gobierno de Puebla ("Oficio ICE-SRM/079-2022"), dated 22 June 2022, **Exhibit C-809**; Email from Mr. Ulises Neri Flores to Mr. Daniel Santamaría Tovar forwarding invitation to Secretary of Economy of Puebla, dated 22 June 2022, **Exhibit C-810**.

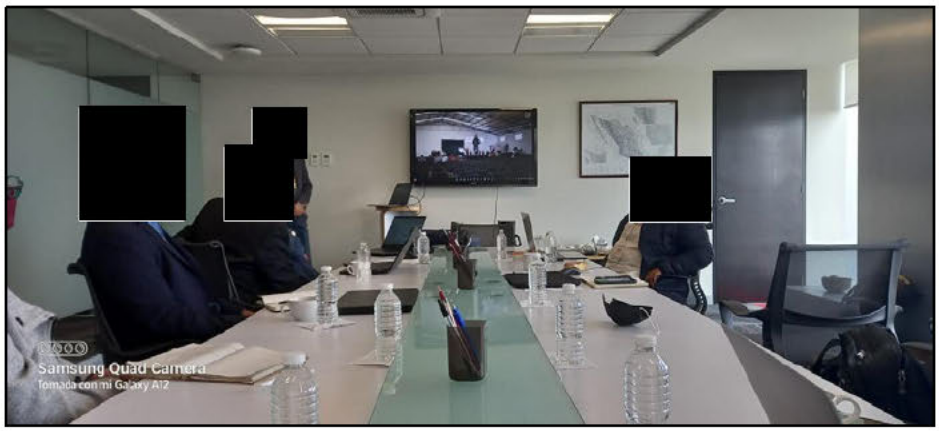
1609 Santamaría WS-2, at Section 9.

1610 Santamaría WS-2, at Section 9.

1611 Santamaría WS-2, at Section 9.

meeting took place at Economía's headquarters in Mexico City.[1612] During that meeting, Mr. Santamaría presented the Ixtaca Project in detail to officials from UNECE and Economía. The presentation included, among other things, (i) the Project's technical and economic background; (ii) Minera Gorrión's corporate social responsibility program; (iii) the EVIS; (iv) the Project's water program; and (v) the environmental restoration plan following the mine's closure.[1613] Mr. Neri also presented on the implementation of sustainable measures in the extractive industries.[1614]





Photos of the 25 August 2022 meeting at Economía

561. In the months that followed, Minera Gorrión continued to meet with UNECE and Economía to discuss the Project, consistent with the Project Plan.[1615] Minera Gorrión's work with UNECE and Economía, however, came to an abrupt halt shortly after AMLO replaced Secretary

1612 Uzcanga Vergara WS-2, at Section 4.

1613 "UN-SE Pilot Program," Presentation, dated 25 August 2022, **Exhibit C-811**.

1614 "Implementación de acciones de sostenibilidad en las industrias extractivas y energía," Presentation, dated 26 August 2022, **Exhibit C-812**.

1615 Santamaría WS-2, at Section 9.

Clouthier with Secretary Buenrostro on 6 October 2022.[1616] Secretary Buenrostro, in turn, replaced Mr. Alva and Ms. Olivas, who had been Minera Gorrión's principal contacts at Economía on the consultations process and the Pilot Project.[1617] As Mr. Santamaría notes, the cooperative relationship Minera Gorrión had built with Secretary Clouthier's team ceased overnight, and Economía refused to engaged with Minera Gorrión at all.[1618]

562. Economía's sudden reversal not only undermined Minera Gorrión's expectations, but also rendered months of collaborative planning on the indigenous consultations process meaningless. As detailed in Section 2.16 below, that sudden reversal was not accidental, but coincided with SEMARNAT's coordinated campaign against the Project.

2.16. In Parallel, SEMARNAT Embarked On A Bad Faith Campaign To Stop The Project In Coordination With INPI And The Anti-Mining Activist NGOs

563. As the Claimants demonstrated in their Memorial, while the appeals were pending before the Supreme Court, SEMARNAT issued a series of highly irregular official public statements attacking the Ixtaca Project and urging the Supreme Court to reject the appeals.[1619] In particular, on 13 January 2022, SEMARNAT issued an official public statement calling upon the Supreme Court to affirm the District Court's decision, stating that it "trusts that the Ministers of the Supreme Court of Justice of the Nation will resolve the matter in accordance with the highest standards of protection of rights for indigenous peoples and agrarian groups" and "will prioritize life, territory and the environment, above the interests of mining companies."[1620]

564. On 14 February 2022, two days before the Supreme Court issued its decision on the *amparo*, SEMARNAT issued another official public statement, this time in coordination with INPI and the *Procuraduría Agraria*.[1621] Consistent with its prior rejection of Minera Gorrión's MIA on pretextual grounds, SEMARNAT framed the case as a "historic opportunity" for the Supreme Court to "prioritize life, land, and the environment" over mining activities and to "expos[e] discriminatory legislation that places mining activities – and with them the interests of the

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1616 Santamaría WS-2, at Section 9.

1617 Santamaría WS-2, at Section 9.

1618 Santamaría WS-2, at Section 9.

1619 Memorial, at Section 2.15.1.

1620 SEMARNAT Public Statement, "*SEMARNAT hace un llamado para que la Ley Minera priorice la vida de los pueblos y no los intereses de las empresas*," dated 13 January 2022, **Exhibit C-380**.

1621 Joint Press Release from SEMARNAT, INPI, and the Agrarian Prosecutor's Office Calling for SCJN Decision in Tecoltemi Case, dated 14 February 2022, **Exhibit C-382**.

beneficiary companies – as preferential and above any other use of the territory."[1622] And, on 12 July 2022, while Economía was working with Minera Gorrión collaboratively on implementing the Supreme Court's decision and on the UNECE Mining Pilot Project, SEMARNAT issued a further official public statement, reaffirming its alignment with the anti-mining NGOs and calling upon AMLO to "intervene so that the Ministry of Economy does not grant new concessions in the municipality of Ixtacamaxtitlán."[1623]

565. The Claimants further demonstrated that SEMARNAT's targeted, bad faith actions against the Project went well beyond public press statements calling for Presidential intervention.

566. In January 2023, Tecoltemi filed four environmental and social "studies" with the District Court presiding over the execution of the Supreme Court's decision, demanding that Economía consider these "studies" in its feasibility assessment.[1624] According to Tecoltemi, these "[c]onclusive studies . . . provide elements for [Economía] to fulfill its obligations under the national and conventional framework on Human Rights and Indigenous Peoples' Rights and that must be considered in the feasibility analysis that was ordered to be carried out by" the Supreme Court.[1625] To understand the genesis of these purported "conclusive studies," which Minera Gorrión was not aware of, it filed a transparency request with Mexico.[1626] The results of that transparency request confirmed Minera Gorrión's long-held suspicions of coordination between SEMARNAT and the anti-mining NGOs that had opposed the Project for years.[1627]

567. Specifically, as those documents reveal, on 4 August 2022, representatives of regulatory agencies SEMARNAT, INECC, and IMTA held a "follow-up meeting" with the NGOs Fundar and IMDEC, including Tecoltemi's lead counsel in the *amparo* proceedings, Ms. [redacted] of IMDEC.[1628] Neither the Claimants nor members of the affected local communities were invited to participate. As the minutes record, a senior SEMARNAT official stated that

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1622 Joint Press Release from SEMARNAT, INPI, and the Agrarian Prosecutor's Office Calling for SCJN Decision in Tecoltemi Case, dated 14 February 2022, at p. 2, **Exhibit C-382**.

1623 Santamaría WS-2, at Section 10; Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, at pp. 2-3, **Exhibit C-393**.

1624 Santamaría WS-2, at Section 10; Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p.2, **Exhibit C-397**; Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 2 January 2023, **Exhibit C-410**.

1625 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 2 January 2023, **Exhibit C-410**.

1626 Memorial, at paras. 405, 417.

1627 Santamaría WS-2, at Section 10.

1628 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1, **Exhibit C-397**.

SEMARNAT's objective was to establish a framework for an environmental assessment of the entire Ixtacamaxtitlán region.[1629] This was not an environmental assessment undertaken in the normal course; as the official made clear, SEMARNAT's intent was to undermine the Ixtaca Project in response to the Supreme Court's decision: "*The Secretary's mandate is to protect the environment but, above all, to protect the community in view of the avant-garde resolution of the Supreme Court of Justice of the Nation in favor of the community of Tecoltemi*."[1630]

568. To that end, the official noted that Secretary Albores had requested an environmental impact assessment of "soil, water, air, and biota in the town of Ixtacamaxtitlán."[1631] Those "studies" had a singular objective: "to support with technical and scientific evidence that *this mining project* [*i.e.*, the Ixtaca Project] affects the environment and, therefore, no more mining concessions can be granted in the region."[1632] In other words, rather than "following the science," the science was to follow the politics.

569. The meeting minutes further reveal that SEMARNAT, IMTA, and INECC planned to conduct a tour of the Ixtaca region at the end of August 2022.[1633] Officials laid out a plan to select sampling points, testing water, and air quality, and to use their findings to reinforce their case against the Ixtaca Project.[1634]

570. As the Claimants noted, SEMARNAT's effort to manufacture a case against the Ixtaca Project was not only improper, but also entirely beyond its jurisdiction.[1635] SEMARNAT had no power or authority over the Ixtaca Project at that time. SEMARNAT had already arbitrarily rejected

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1629 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1630 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1631 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1632 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1633 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1634 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1635 Memorial, at para. 407.

Minera Gorrión's MIA application on pretextual grounds.[1636] Moreover, SEMARNAT had no role to play in implementing the Supreme Court's directives.[1637]

571. Between August 2022 and January 2023, various Government agencies issued, as planned, a series of purported scientific reports aimed at creating a pretext to cancel the Ixtaca Project. These reports included:

a) A Water Study by IMTA (September – November 2022);[1638]

b) A Soil and Air Study by INECC (29 August – 3 September 2022);[1639]

c) A Biodiversity Impact Report by CONABIO (6 December 2022);[1640] and,

d) A Social, Cultural, and Spiritual Study by INPI (1 January 2023).[1641]

572. As the Claimants confirmed in the Memorial, these agencies never consulted, never involved, and never even informed Minera Gorrión that they were preparing these purported studies, despite the fact that they concerned Minera Gorrión's Project.[1642] Accordingly, Minera Gorrión had no chance to review or opportunity to challenge their flawed findings.[1643] Indeed, Minera Gorrión did not even know these studies existed until Ms. [redacted], Tecoltemi's lead counsel – who had worked with SEMARNAT and the other agencies behind closed doors to craft the studies – filed a writ with the District Court on 12 January 2023, insisting that Economía "must" consider them in its feasibility determination.[1644]

1636 Memorial, at para. 407.

1637 Memorial, at para. 407.

1638 IMTA Report, "*Informe de Actividades. Municipio de Ixtacamaxtitlán, Puebla, México, 2022*," at p. 8, **Exhibit C-378**.

1639 INECC Report, "*Determinación de las Concentraciones Ambientales y la Exposición Personal a PM2.5 en el Municipio de Ixtacamaxtitlán, Estado de Puebla. Diciembre 2022*," dated December 2022, **Exhibit C-403**.

1640 CONABIO Report, "*Informe sobre el Proyecto de Exploración de la Minería Gorrión en el municipio de Ixtacamaxtitlán, estado de Puebla (SE/092/2022)*,"dated 6 December, 2022, **Exhibit C-404**.

1641 INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," dated January 2023, **Exhibit C-407**.

1642 Memorial, at para. 431.

1643 Memorial, at para. 431.

1644 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 2 January 2023, at p. 5, **Exhibit C-410**.

573. The Claimants explained that these actions violated the legal obligations that Mexican public officials and agencies must uphold.[1645] Under Article 7 of the *Ley General de Responsabilida des Administrativas*, public servants must safeguard the principles of due process of law and act with impartiality and objectivity, always prioritizing the public interest.[1646] Furthermore, Article 8 of that same Law expressly requires public officials to "perform their duties without incurring in any act or omission that causes the suspension or deficiency of the service or implies any abuse or undue exercise of their position" and behave with "respect, diligence, impartiality, and integrity" in exercising their functions.[1647]

574. By engaging in political advocacy in an attempt to influence the Supreme Court – and then conspiring behind closed doors with the very anti-mining NGOs that had opposed the Project for years, including Tecoltemi's lead counsel, to ensure Economía would act to cancel the Concessions – these regulatory bodies compromised their duty to remain neutral and to act in accordance with the principles of good governance established by law.[1648]

575. In its Counter-Memorial, Mexico contends that the participation of the NGOs in this regulatory process was normal, legal, and consistent with democratic governance.[1649] More specifically, Mexico asserts: (i) that the closed-door meetings between SEMARNAT and the anti-mining NGOs were legitimate regulatory coordination;[1650] (ii) that the 4 August 2022 meeting held between SEMARNAT, INECC, IMTA, and the anti-mining NGOs addressed only the Ixtacamaxtitlán area generally, not the Ixtaca Project specifically;[1651] (iii) that Fundar's comments reflected only the views of a private entity;[1652] and (iv) that there is no evidence that SEMARNAT's decisions were dictated by the NGOs, rather than by its own technical review.[1653] The contemporaneous record tells a different story.

576. As the record reveals, SEMARNAT's work with the NGOs on the "studies" began at a 11 July 2022 meeting at SEMARNAT – 11 days after Economía held the UNECE Mining Pilot Project

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1645 Memorial, at paras. 372-373.

1646 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Art. 7, **Exhibit C-519**.

1647 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Arts. 8.I, 8.VI, **Exhibit C-519**.

1648 Memorial, at para. 373.

1649 Counter-Memorial, at paras. 445–449, 640–643, 715.

1650 Counter-Memorial, at paras. 446–447.

1651 Counter-Memorial, at para. 447.

1652 Counter-Memorial, at paras. 641–642.

1653 Counter-Memorial, at para. 715.

kick-off event on 30 June 2022 with Minera Gorrión.[1654] Mexico has failed to produce any minutes or notes from this seminal 11 July 2022 meeting, despite the Tribunal's order.[1655] Nonetheless, public documents and other documents in the record shed light on what transpired.

577. Specifically, on 11 July 2022, Secretary Albores met with the NGO Atcolhua; AMLO's Spokesperson, Mr. Jesús Ramírez Cuevas; PROFEPA's Head, Ms. Blanca Alicia Mendoza Vera; and INPI's General Coordinator of Indigenous Rights, Mr. Hugo Aguilar Ortiz.[1656] Contemporaneous press articles confirm that the catalyst for this meeting was the UNECE Mining Pilot Project and Economía's forthcoming feasibility determination. As the local press reported, "after it came to light that Economía supports Minera Gorrión's participation" in the UNECE Mining Pilot Project, the NGOs "met with Secretary Albores to reiterate their opposition to the Project."[1657] The local press further reported that "Ixtacamaxtitlán community members consider that Economía's support" for the Pilot Project was "the first step in [Minera Gorrión's] attempt to exploit a gold and silver open-pit mine," *i.e.*, the Ixtaca Project.[1658] In other words, in view of Minera Gorrión's selection for the Pilot Project, the anti-mining NGOs were seriously concerned that Economía might actually conduct the consultations fairly and reissue the Concessions, as ordered by the Supreme Court. To avoid that undesired outcome, the NGOs turned immediately to Secretary Albores at SEMARNAT.

578. The very next day, SEMARNAT issued its 12 July 2022 official public statement, denouncing the Project and endorsing Atcolhua's "legitimate call" on AMLO to order Economía not to

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1654 Official Invitation to Minera Gorrión for Participation in the UNECE Mining Pilot Project Kickoff Session ("Oficio ICE-SRM/075-2022"), dated 20 June 2022, **Exhibit C-390**.

1655 Procedural Order No. 5, dated 11 March 2026, Annex A, at pp. 99, 102 (recording the Tribunal's decision on the Claimants' E.2 request for "All Documents relating to the *preparation and/or approval of SEMARNAT's official public statement dated 12 July 2022* (C-393), calling on AMLO to 'intervene so that the Ministry of Economy does not grant new concessions in the municipality of Ixtacamaxtitlán,' as well as *all minutes or reports of the meetings* held between SEMARNAT, Atcolhua, INPI, PROFEPA, and a spokesperson from the Office of the President, *in or around July 2022*, as referenced in SEMARNAT's official public statement:" "*Granted*, since the requested Documents are relevant and material and the Request is sufficiently circumscribed.").

1656 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**.

1657 La Jornada del Oriente, *Habitantes de Ixtacamaxtitlán se reúnen con Albores para ratificar rechazo a Almaden*, dated 13 July 2022, available at https://www.lajornadadeoriente.com.mx/puebla/habitantes-ixtacamaxtitlan-albores-rechazo-a-minera/, **Exhibit C-729**.

1658 La Jornada del Oriente, *Habitantes de Ixtacamaxtitlán se reúnen con Albores para ratificar rechazo a Almaden*, dated 13 July 2022, available at https://www.lajornadadeoriente.com.mx/puebla/habitantes-ixtacamaxtitlan-albores-rechazo-a-minera/, **Exhibit C-729**.

issue any new concessions.[1659] Mexico too has failed to produce any documents relating to this targeted official public statement.

579. By letter dated 11 July 2022 to Secretary Albores and INPI's Director General, Mr. Adelfo Regino Montes, the NGOs Atcolhua, IMDEC, CTT, CESDER, and Fundar also put their concerns in writing.[1660] That letter belies any suggestion by Mexico that SEMARNAT's actions were not targeted at the Claimants and their Ixtaca Project.

580. Referring specifically to SEMARNAT's "interest in Tecoltemi's case before the Mexican Supreme Court, and in general regarding the Ixtaca mining project of the Canadian company Almaden Minerals," the NGOs "express[ed] their concern and position regarding the decisive but complex situation."[1661] As the NGOs explained, "[c]onsidering that Economía will have to soon make a 'feasibility analysis' on whether re-issuing these concessions is feasible," the Mexican Government has a "historic opportunity to not issue new concessions in [their] territory in accordance with [AMLO's] commitment against issuing new mining concessions, expressed in many instances, including in municipalities of Sierra Norte de Puebla[.]"[1662] The NGOs, however, were "concern[ed]" about Minera Gorrión's selection for the UNECE Mining Pilot Project, which was, in their own words, "pursuant to Economía's proposal."[1663] They considered that this was a "cynical" maneuver by "the same multinationals" using the UN to "keep deceiving us," and demanded that SEMARNAT take action.[1664]

581. The NGOs' request for action was immediately met: shortly after their 11 July 2022 meeting, SEMARNAT convened a series of further closed-doors meetings between the NGOs and various Government agencies, at which those agencies undertook to manufacture scientific "studies" that Tecoltemi could deliver to Economía for use in its feasibility analysis. These meetings were not, as Mexico submits, "legitimate regulatory coordination;" instead, they

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1659 Santamaría WS, at paras. 112; Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, at p. 3, **Exhibit C-393**.

1660 Letter from Unión the Ejidos y Communidades en Defensa de la Tierra, el Agua y la Vida Atcolhua, IMDEC, CTT, CESDER, and Fundar to Secretary Maria Luisa Albores González, dated 11 July 2022, **Exhibit C-730**.

1661 Letter from Unión the Ejidos y Communidades en Defensa de la Tierra, el Agua y la Vida Atcolhua, IMDEC, CTT, CESDER, and Fundar to Secretary Maria Luisa Albores González, dated 11 July 2022, at p. 1, **Exhibit C-730**.

1662 Letter from Unión the Ejidos y Communidades en Defensa de la Tierra, el Agua y la Vida Atcolhua, IMDEC, CTT, CESDER, and Fundar to Secretary Maria Luisa Albores González, dated 11 July 2022, at pp. 2-3, **Exhibit C-730**.

1663 Letter from Unión the Ejidos y Communidades en Defensa de la Tierra, el Agua y la Vida Atcolhua, IMDEC, CTT, CESDER, and Fundar to Secretary Maria Luisa Albores González, dated 11 July 2022, at p. 3, **Exhibit C-730**.

1664 Letter from Unión the Ejidos y Communidades en Defensa de la Tierra, el Agua y la Vida Atcolhua, IMDEC, CTT, CESDER, and Fundar to Secretary Maria Luisa Albores González, dated 11 July 2022, **Exhibit C-730**.

reveal targeted coordination between Government agencies and private NGOs to bring the Ixtaca Project to an end. No clearer instance of arbitrary regulatory action could be imagined.

582. The targeted nature of Mexico's actions is further confirmed by documents recently produced by Mexico.

583. Those documents include a 20 July 2022 letter from SEMARNAT's Head of Indigenous Peoples, Mr. Eduardo Villeda, to the Head of IMTA, Mr. Adrian Pedrozo.[1665] In his letter, Mr. Villeda "refer[s] to the 11 July 2022 letter" from "the legal representative of CTT and Tecoltemi" regarding an alleged "socio-environmental issue" caused by "*Minera Gorrión's operations*."[1666] On that purported basis, Mr. Villeda requested, "*per the instructions of [Secretary Albores]*, . . . a study that analyzes the effects of the exploration activity carried out by *Minera Gorrión* in the Ixtacamaxtitlán Municipality, Puebla State, concerning water."[1667] In other words, these purported "studies" were directly aimed at Minera Gorrión.

584. Notably, the 11 July 2022 NGO letter that formed the basis of this 20 July 2022 request did not refer to any "socio-environmental issue" caused by "Minera Gorrión's operations."[1668] Indeed, there were no operations at Minera Gorrión at that time, as it was still awaiting Economía's feasibility decision and the consultations ordered by the Supreme Court. Rather, as set forth above, in that letter, the NGOs raised the alarm regarding the proximity of Economía's feasibility review, Economía's positive views on the Ixtaca Project, and the attendant risk that Economía would reissue the Concessions, as ordered by the Supreme Court.

585. Nine days later, on 29 July 2022, SEMARNAT held a "follow-up meeting" with IMTA, INECC, and PROFEPA to discuss "the agreements on Ixtacamaxtitlán."[1669] As the 29 July 2022 meeting minutes show, Mr. Daniel Quezada, a senior SEMARNAT official, noted that "the comrades" from Ixtacamaxtitlán would not be able to join, *i.e.*, the NGO representatives.[1670] The agencies therefore used the meeting to "start defining dates to carry out the *second agreement* of the 11 July 2022 meeting with regard to the commission of a technical environmental study analyzing the feasibility of the installation of mining projects in [Ixtacamaxtitlán]; [this study] will include assessments of the studies on water, soil biota,

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1665 Letter from Mr. Eduardo Villeda (SEMARNAT) to Mr. Adrian Pedrozo (IMTA), dated 20 July 2022, **Exhibit C-785**.

1666 Letter from Mr. Eduardo Villeda (SEMARNAT) to Mr. Adrian Pedrozo (IMTA), dated 20 July 2022, **Exhibit C-785**.

1667 Letter from Mr. Eduardo Villeda (SEMARNAT) to Mr. Adrian Pedrozo (IMTA), dated 20 July 2022, **Exhibit C-785**.

1668 Letter from Mr. Eduardo Villeda (SEMARNAT) to Mr. Adrian Pedrozo (IMTA), dated 20 July 2022, **Exhibit C-785**.

1669 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, **Exhibit C-786**.

1670 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, at p. 1, **Exhibit C-786**.

forestry, flora and fauna in charge of IMTA, INECC, and PROFEPA."[1671] The agencies agreed to perform field work during "the fourth week of August to obtain samples" and committed to "do something, but do it right, so we know who will be the ones participating," underscoring that "*more direct communication should be done via WhatsApp*."[1672]

586. Notably, Mexico has not produced any of the agreements reached by and between the NGOs and these agencies, including this "second agreement of the 11 July 2022 meeting."[1673] Mexico also has not produced any WhatsApp messages showing the "more direct communication" exchanged between these agency officials in conjuring up evidence against the Project.

587. Curiously, the 29 July 2022 minutes further record that "PROFEPA has scheduled visits to verify compliance with Regulation 120 in the area . . . However, this issue will not be discussed with the communities at the meeting due to the nature of PROFEPA's actions."[1674] As noted above, mere weeks later, PROFEPA issued its one and only administrative fine against Minera Gorrión for failure to correct the name on its residues permit.[1675]

588. Shortly thereafter, SEMARNAT convened the 4 August 2022 follow-up meeting with the NGO representatives – the minutes of which the Claimants had obtained through a transparency request.[1676] Contrary to Mexico's assertions, that meeting – like the previous meetings and exchanges between the parties – was aimed directly at the Project.[1677]

1671 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, at p. 1, **Exhibit C-786**.

1672 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, at p. 1, **Exhibit C-786**.

1673 Procedural Order No. 5, dated 11 March 2026, Annex A, at pp. 99, 102 (recording the Tribunal's decision on the Claimants' E.2 request for "All Documents relating to the *preparation and/or approval of SEMARNAT's official public statement dated 12 July 2022* (C-393), calling on AMLO to 'intervene so that the Ministry of Economy does not grant new concessions in the municipality of Ixtacamaxtitlán,' as well as *all minutes or reports of the meetings* held between SEMARNAT, Atcolhua, INPI, PROFEPA, and a spokesperson from the Office of the President, *in or around July 2022*, as referenced in SEMARNAT's official public statement:" "*Granted*, since the requested Documents are relevant and material and the Request is sufficiently circumscribed.").

1674 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, at p. 1, **Exhibit C-786**.

1675 *See supra* Section 2.6.

1676 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, at pp. 1-2, **Exhibit C-786**.

1677 Procedural Order No. 5, dated 11 March 2026, Annex A, at pp. 99, 102 (recording the Tribunal's decision on the Claimants' E.2 request for "All Documents relating to the *preparation and/or approval of SEMARNAT's official public statement dated 12 July 2022* (C-393), calling on AMLO to 'intervene so that the Ministry of Economy does not grant new concessions in the municipality of Ixtacamaxtitlán,' as well as *all minutes or reports of the meetings* held between SEMARNAT, Atcolhua, INPI, PROFEPA, and a spokesperson from the Office of the President, *in or around July 2022*, as referenced in SEMARNAT's official public statement:" "*Granted*, since the requested Documents are relevant and material and the Request is sufficiently circumscribed.").

589. As the minutes record, Mr. Quezada opened the meeting by recalling "[Secretary Albores's] request to perform an environmental assessment of soil, water, air, and biota in Ixtacamaxtitlán," explaining that "the Secretary's mandate [was] to protect . . . the community above all in light of the avant-garde resolution of the [Supreme Court] in favor of Tecoltemi, which has some issues because [Almaden] wants to legitimize that *it is a sustainable mining project*"[1678] – an apparent reference to Minera Gorrión's inclusion in the UNECE Mining Pilot Project. Mr. Quezada made clear that the purpose of the studies was "to support with technical and scientific evidence that *this* mining project affects the environment and, therefore, no more mining concessions can be granted in the region."[1679]

590. Noting that "the mining company's problem with regard to the water is availability rather than quality," they instructed IMTA's analysis to "include water availability in the region in the basin of the Apulco river to show the unfeasibility of a mining project in the region."[1680] They also asked IMTA to " take advantage of the tour and identify sampling points to collect samples right away," in order to "evaluate metal presence in water sources and the overall health of regional water bodies."[1681] UCPAST – the SEMARNAT division responsible for organizing Minera Gorrión's earlier RPI – further undertook to "develop a desk-study . . . with IMDEC and FUNDAR" which "must be ready before going into the field."[1682] To complete the "desk-study," UCPAST agreed to meet with Fundar weekly: "UCPAST and FUNDAR will be working on this document and will meet every week until it is ready."[1683] Mexico has not produced any documents related to this "desk-study" or to these weekly meetings.

591. The 4 August 2022 meeting minutes further confirm that this targeted coordination extended to AMLO's office. As the minutes record, Fundar requested that the studies "be sent as soon as possible to the Office of the President (*President's Spokesperson Request*) so that the President can issue a decision and comply with the mandate to Economía of not allowing new

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1678 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1 (emphasis added) **Exhibit C-397**.

1679 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 1 (emphasis added) **Exhibit C-397**.

1680 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1681 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1682 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1683 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

concessions," which was needed "to support that there are no proper conditions for the Ministry of Economy to grant a new concession."[1684] This request was not, as Mexico suggests, simply the words of a private party.[1685] To the contrary, the "Request" came from the President's own Spokesperson – who had attended the seminal 11 July 2022 meeting.[1686]

592. After the 4 August 2022 meeting, the agencies proceeded to prepare their purported studies, as planned. On 17 August 2022, Mr. Quezada "followed up" with IMTA and INECC "on the workstream and agreements regarding [Atcolhua]."[1687] He noted that there was an agreement to "begin field studies" during the last week of August 2022, and requested "support to confirm the attendance of the environmental agencies to the region."[1688] He asked for a response by 19 August 2022.[1689] SEMARNAT also requested assistance "integrating all information gathered at the environmental institutions," and assigned Mr. Enrique Gómez Pech to "create a contextual background of the region that . . . can be shared with all the members of the environmental agencies."[1690] Two days later, Mr. German Ruiz Mendez from SEMARNAT shared information on the MIA processes "to provide follow up and assistance to the colleagues from Ixtacamaxtitlán."[1691] Shortly thereafter, INECC scheduled its site visits to Ixtacamaxtitlán for the last week of August and first week of September 2022.[1692] Mexico has not produced any documents from these field visits.

593. While the studies were underway as planned, Secretary Albores continued SEMARNAT's public campaign against the Project. In October 2022 – with Secretary Clouthier out and AMLO loyalist Secretary Buenrostro in at Economía – Secretary Albores travelled to Puebla to promote "SEMARNAT and Economía's measures to prevent new open-pit mining concessions and review the validity of existing ones."[1693] Although she admitted in her speech

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1684 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1685 Counter-Memorial, at para. 643.

1686 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**.

1687 Email from Mr. Daniel Quezada (SEMARNAT) to IMTEC and INEC dated 17 August 2022, **Exhibit C-787**.

1688 Email from Mr. Daniel Quezada (SEMARNAT) to IMTEC and INEC dated 17 August 2022, **Exhibit C-787**.

1689 Email from Mr. Daniel Quezada (SEMARNAT) to IMTEC and INEC dated 17 August 2022, **Exhibit C-787**.

1690 Email from Mr. Daniel Quezada (SEMARNAT) to IMTEC and INEC dated 17 August 2022, **Exhibit C-787**.

1691 Email from Mr. German Ruiz Mendez (SEMARNAT) to IMTEC and INEC dated 19 August 2022, **Exhibit C-788**.

1692 Plan de Muestreo No. LINECC-001-2022, dated 26 August 2022, at pp. 9-10, **Exhibit C-789**.

1693 C. Morales, *Semarnat va contra minas a cielo abierto, fracking y maíz transgénico*, Milenio, dated 22 October 2022, **Exhibit C-632**.

that SEMARNAT did not issue mining concessions, she underscored that "it does have influence in the MIA process."[1694] She then "highlighted Minera Gorrión's case:"[1695]

> In the case of Ixtacamaxtitlán, [you should] recall that this is also open-pit mining, [its opposition] is a movement by the local people, who opposed this kind of mining. In this regard, they hold concessions which . . . Economía revoked this year, and we now want to review those concessions to determine their duration.[1696]

594. Two points are notable. *First*, contrary to Mexico's arguments in this case that the public statements at issue were general in nature, Secretary Albores again singled out the Ixtaca Project. *Second*, Secretary Albores confirmed that the Claimants' Concessions would be subject to "review" by SEMARNAT and Economía. It is unclear what "review" Secretary Albores was referring to, as SEMARNAT had no role to play in implementing the Supreme Court's decision.

595. On 6 December 2022, CONABIO proceeded to shared its Biodiversity Impact Report with a "member of CTT and representative of the Nahua community and Tecoltemi *ejido*."[1697] Although Mexico has redacted the recipient's name, the description matches that of [redacted], Tecoltemi's lead counsel.[1698] Notably, the CONABIO transmittal letter was signed by Mr. Quezada, the same SEMARNAT official who led the 29 July and 4 August 2022 closed-door meetings and coordinated the IMTA and INECC studies in the weeks that followed.[1699] It is unclear on what authority Mr. Quezada transmitted to [redacted], a private party, "studies"

1694 C. Morales, *Semarnat va contra minas a cielo abierto, fracking y maíz transgénico*, Milenio, dated 22 October 2022, **Exhibit C-632**.

1695 C. Morales, *Semarnat va contra minas a cielo abierto, fracking y maíz transgénico*, Milenio, dated 22 October 2022, **Exhibit C-632**.

1696 C. Morales, *Semarnat va contra minas a cielo abierto, fracking y maíz transgénico*, Milenio, dated 22 October 2022, **Exhibit C-632**.

1697 Letter from Mr. Daniel Quezada (CONABIO) to the member of CTT and representative of Tecoltemi, dated 6 December 2022, **Exhibit C-790**.

1698 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 1, (explaining that the *ejido* was represented in the Amparo proceeding by [redacted] of CTT and [redacted] of FUNDAR), **Exhibit C-32**.

1699 Minutes of Follow-Up Meeting among SEMARNAT, IMTA, INECC, and PROFEPA, dated 29 July 2022, **Exhibit C-786**; Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, **Exhibit C-397**; Letter from Mr. Daniel Quezada (CONABIO) to the member of CTT and representative of Tecoltemi, dated 6 December 2022, **Exhibit C-790**.

prepared by the Government concerning the Ixtaca Project, particularly when that private party was Tecoltemi's lead counsel in an ongoing *amparo* proceeding.

596. By letter dated 19 December 2022, SEMARNAT proceeded to share the IMTA, INECC, and CONABIO studies directly with Economía, copying Secretaries Buenrostro and Albores, as well as Mr. Diego Gómez, the Head of the DGM.[1700] SEMARNAT referred to the Supreme Court's decision, noting that "Atcolhua [had] requested SEMARNAT's support during the process."[1701] Without mincing words, SEMARNAT stated that the studies were intended to "contribute to Economía's feasibility analysis *so it declares [the Concessions] as unfeasible, considering their potential effect in the environment, and human rights to water, health, and healthy environment*."[1702]

597. In parallel, INPI undertook a separate "Social, cultural, and indigenous spirituality study" of the Ixtaca Project.[1703] On 1 September 2022, through two identical letters, the NGO Atcolhua, on the one hand, and unidentified "residents of the Sierra Norte de Puebla," on the other, requested, "as a follow up to the agreements reached at [the] working meeting with different Government agencies,"[1704] that INPI prepare a "social impact study in the Municipality of Ixtacamaxtitlán, in the localities affected by the Cerro Grande and Cerro Grande 2 concessions . . . in cooperation with the indigenous peoples that inhabit the territory."[1705] They further demanded that "the study's findings must be considered as fundamental criteria before any feasibility decision."[1706] In other words, the INPI study too finds its genesis in the seminal 11 July 2022 meeting between the NGOs, SEMARNAT, and the President's Spokesperson.

598. Eight days later, on 9 September 2022, the Chair of INPI's Anthropology Department wrote to INPI's Director of Rights Implementation setting forth a "proposed calendar" for "presenting a study to Economía, with the purpose of evaluating the social, cultural, and spiritual impact

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1700 Letter from Guadalupe Espinoza (SEMARNAT) to Rosa María Gutiérrez (Economía), dated 19 December 2022, **Exhibit C-791**.

1701 Letter from Guadalupe Espinoza (SEMARNAT) to Rosa María Gutiérrez (Economía), dated 19 December 2022, **Exhibit C-791**.

1702 Letter from Guadalupe Espinoza (SEMARNAT) to Rosa María Gutiérrez (Economía), dated 19 December 2022, **Exhibit C-791**.

1703 INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," **Exhibit C-407**.

1704 Letter from Atcolhua requesting INPI Report, dated 1 September 2022, **Exhibit C-792**; Letter from Residents of the Sierra Norte de Puebla to INPI, dated 1 September 2022, **Exhibit C-793**.

1705 Letter from Atcolhua requesting INPI Report, dated 1 September 2022, **Exhibit C-792**; Letter from Residents of the Sierra Norte de Puebla to INPI, dated 1 September 2022, **Exhibit C-793**.

1706 Letter from Atcolhua requesting INPI Report, dated 1 September 2022, **Exhibit C-792**; Letter from Residents of the Sierra Norte de Puebla to INPI, dated 1 September 2022, **Exhibit C-793**.

of mining concessions in the Sierra Norte de Puebla."[1707] The letter underscored that "the goal is to deliver the study in December" and attached an "activities schedule" to that end.[1708]

599. By letter dated 9 January 2023, INPI's General Coordinator of Indigenous Rights, Mr. Hugo Aguilar Ortiz, sent the study to unidentified "residents of the Sierra Norte de Puebla," noting that, "as you are well aware," INPI had "designated Social Anthropologist Ms. Amar López Torres, who, following field work," issued the study.[1709] Mr. Aguilar affirmed that the study had been "sent to Economía today for their consideration when issuing their decision with respect to the mining project," as "the final conclusion of the study is that the project is capable of affecting the communities' culture, as well as their social organization and, in particular, their spiritual relationship with their sacred places."[1710]

600. That same day, Mr. Aguilar also shared the INPI study with Secretary Buenrostro at Economía and the Head of the DGM.[1711] In his transmittal letter, Mr. Aguilar noted:

> [C]onsidering that in order to authorize the implementation of large scale development projects like mining projects, our country's legal framework requires the completion of studies assessing the [project's] environmental impact through a [MIA], as well as the social impact through an [EVIS], the Generation Coordination of Indigenous Rights, that I am in charge of, also deems it necessary to consider the harm that such projects generate over the culture, identity, organization, and spiritual relationship of the peoples and indigenous communities with their land and territory, because these are elements that may cause the decline, and even the disappearance, of said cultural specificity.[1712]

601. He continued:

[1707] Letter from Anamar López Torres (INPI) to José Hernández Hernández (INPI), dated 9 September 2022, (setting forth a work schedule for the INPI report during September and December 2022), **Exhibit C-794**.

[1708] Letter from Anamar López Torres (INPI) to José Hernández Hernández (INPI), dated 9 September 2022, (setting forth a work schedule for the INPI report during September and December 2022), **Exhibit C-794**.

[1709] Letter from Hugo Aguilar Ortiz to members of indigenous communities, dated 9 January 2023, **Exhibit C-795**.

[1710] Letter from Hugo Aguilar Ortiz to members of indigenous communities, dated 9 January 2023, **Exhibit C-795**.

[1711] Letter from Mr. Hugo Aguilar Ortiz (INPI) to Ms. Raquel Buenrostro and Mr. Angel Diego Gomez (Economía), dated 9 January 2023, **Exhibit C-796**.

[1712] Letter from Mr. Hugo Aguilar Ortiz (INPI) to Ms. Raquel Buenrostro and Mr. Angel Diego Gomez (Economía), dated 9 January 2023, **Exhibit C-796**.

> [T]he study's conclusions warn us of the large risk that is present for the communities located within the area of influence of the project, because, if the mining project materializes, their cultural and social decline would increase and, in particular, the communities' spiritual relationship with their sacred places would be broken, [these are places] where they permanently make pilgrimages and traditional ceremonies.[1713]

602. Leaving no doubt as to the purpose and objective of the study, Mr. Aguilar noted that he was providing it to Economía, "given that the study, and its findings and conclusions, could be of great use for Economía to decide on the feasibility of issuing a new mining concession."[1714] He did not, however, provide a copy to Minera Gorrión – nor did he provide a copy to the local communities within the Project's area of influence, including Santa María Zotoltepec.

603. Mr. Aguilar's letter to Secretary Buenrostro and the DGM is notable in several respects. *First*, Mr. Aguilar misrepresented what Mexican law requires. As noted in Section 2.9.1 above, Mexican law does not require an EVIS for the approval of mining projects or for the issuance of a mining concession.[1715] *Second*, Mr. Aguilar misrepresented the authorship of the INPI study. Contrary to Mr. Aguilar's statements, SEMARNAT's own subsequent publication makes clear that the INPI study was, in fact, "conducted by Atcolhua, *en compañía del INPI*."[1716] In other words, the study was led by the NGO Atcolhua, not INPI. *Third*, the letter refers to an alleged social impact to "the communities located within the area of influence of the project." As explained above, Tecoltemi was not located within the Project's area of influence.[1717] While Santa María Zotoltepec was located within the Project's area of influence, as Mr. García Herrera explains, the community of Santa María Zotoltepec was not involved in this study.[1718]

1713 Letter from Mr. Hugo Aguilar Ortiz (INPI) to Ms. Raquel Buenrostro and Mr. Angel Diego Gomez (Economía), dated 9 January 2023, **Exhibit C-796**.

1714 Letter from Mr. Hugo Aguilar Ortiz (INPI) to Ms. Raquel Buenrostro and Mr. Angel Diego Gomez (Economía), dated 9 January 2023, **Exhibit C-796**.

1715 *See supra* Section 2.9.1.

1716 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at p. 12, available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*el segundo Estudio de impacto comunitario indígena estaría a cargo de la Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua, en compañía del INPI.*)," **Exhibit C-797**.

1717 *See supra* Section 2.8.

1718 García Herrera WS-2, at Section 3.

604. Most alarmingly, in its introduction, the INPI study states that it was allegedly "requested" by "the authorities" of several "indigenous communities," including Santa María Zotoltepec."[1719] As Mr. García Herrera confirms, he was Santa María Zotoltepec's elected *Inspector de Vigilancia* at that time.[1720] Neither he nor the Santa María Zotoltepec community assembly, however, requested, or was involved in, the INPI study.[1721] Indeed, he was not even aware that INPI was conducting a study in Santa María Zotoltepec or that the study even existed, as he was never given a copy of it.[1722] As he notes, the INPI study includes a photo of a woman from the Santa María Zotoltepec community, [redacted].[1723] [redacted] was one of the 10 residents in Santa María Zotoltepec (out of 450) who actively opposed the Project.[1724] Mr. García Herrera affirms that she had no authority or right to speak on behalf of the community.[1725]

605. As noted above, Minera Gorrión was also unaware of these studies until January 2023, when Tecoltemi filed a writ with the District Court presiding over the execution of the Supreme Court's decision and demanded that Economía consider them in its feasibility assessment.[1726] Notably, that filing was made by [redacted] on behalf of Tecoltemi.[1727] As noted above, [redacted] had attended the closed-door meetings and coordinated the preparation of the studies.[1728] Acting as Tecoltemi's lead counsel, she then put those studies before the District Court for Economía to use in its feasibility assessment.

1719 INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," at p. 3, **Exhibit C-407**.

1720 García Herrera WS-2, at Section 3.

1721 García Herrera WS-2, at Section 3.

1722 García Herrera WS-2, at Section 3.

1723 García Herrera WS-2, at Section 3.

1724 García Herrera WS-2, at Section 3.

1725 García Herrera WS-2, at Section 3.

1726 Santamaría WS, at paras. 113–117; Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through FOIA Request, dated 9 August 2022, **Exhibit C-397**; Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 2 January 2023, **Exhibit C-410**.

1727 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 2 January 2023, **Exhibit C-410**.

1728 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

606. When the District Court accepted the studies into the case file,[1729] Minera Gorrión took immediate legal action, filing a writ with the District Court on 24 January 2023; two additional writs with the DGM at Economía on 25 January 2023; and an *amparo indirecto* on 2 February 2023, challenging the legitimacy of the studies.[1730] None of these challenges prevailed.

607. In its Counter-Memorial, Mexico relies heavily upon the INPI study to attack, among other things, Minera Gorrión's community engagement program; the EVIS and the HRIA; the alleged failure to respect the communities' link with the Cerro Mikixochio; and the alleged failure to conduct an indigenous consultation at the outset.[1731]

608. The INPI study is not – and was never intended to be – a neutral, technical assessment of the Ixtaca Project. As an initial matter, it was authored by the NGO Atcolhua "*en compañía del INPI*," not by INPI itself.[1732] The study suggests that the Supreme Court "introduce[d] the need to analyze a new element," namely "feasibility," which "must include the cultural and organizational impact, and [the impact] concerning the indigenous communities' relationship with their land and territory."[1733] The Supreme Court, however, did not order the analysis of any "new element," nor did it order INPI to prepare any cultural report.

609. The INPI study's treatment of indigenous consultations is particularly notable. Addressing the issue only in passing, the study asserts that, because Economía granted the Concessions in 2003 and 2009 without an indigenous consultation, that fact alone "calls into question the principle

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1729 Lower Court Ruling Admitting SEMARNAT-Commissioned Reports Against the Ixtaca Project, dated 13 January 2023, at p. 1 ("Likewise, it forwards copies of various studies submitted by the Ministry of the Environment and Natural Resources to the Ministry of Economy. These statements will be taken into consideration at the appropriate procedural momento." Spanish original: "*Asimismo, remite copias de diversos estudios entregados por la Secretaría de Medio Ambiente y Recursos Naturales a la Secretaría de Economía. Manifestaciones que serán tomadas en consideración en su momento procesal oportuno*."), **Exhibit C-552**.

1730 Minera Gorrión Writ to Lower Court Challenging SEMARNAT-Commissioned Reports Submitted to Economía, dated 24 January 2023, **Exhibit C-554**; Minera Gorrión Legal Submission to the DGM Opposing SEMARNAT-Commissioned Reports Regarding Cerro Grande Concession, dated 24 January 2023, **Exhibit C-556**; Minera Gorrión Legal Submission to the DGM Opposing SEMARNAT-Commissioned Reports Regarding Cerro Grande 2 Concession, dated 24 January 2023, **Exhibit C-559**; Minera Gorrión Amparo Submission Against SEMARNAT-Commissioned Reports, dated 2 February 2023, **Exhibit C-557**,

1731 *See*, *e.g.*, Counter-Memorial, at para. 152 (citing to Mr. Cabrera's report, at paras. 165, 156, 160, 795).

1732 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at p. 12, available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*el segundo Estudio de impacto comunitario indígena estaría a cargo de la Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua, en compañía del INPI.*)." **Exhibit C-797**.

1733 INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," at p. 3, **Exhibit C-407**.

of good faith with which a consultation process would be carried out."[1734] On that purported basis, the study declares that it is "not feasible to perform a belated free, prior, and informed consultation necessary to obtain the full consent of the communities" with respect to the Ixtaca Project.[1735] In other words, SEMARNAT, INPI, and the NGOs never intended to pursue a free, prior, and informed consultation at Ixtaca – they instead aimed to end the Ixtaca Project definitively at the feasibility stage, denying the local communities within the Project's area of influence, including Santa María Zotoltepec, their own human rights to be consulted.

610. Despite their central roles in this case, Mexico has not proffered any testimony from INPI's Director General, Mr. Adelfo Regino Montes, or its General Coordinator on Human rights, Mr. Hugo Aguilar Ortiz. AMLO appointed Mr. Regino as Director General of INPI in December 2018, and he continues in that role today.[1736] Before joining INPI, Mr. Regino co-founded *Servicios del Pueblo Mixe* – an indigenous NGO in Oaxaca – participated as a member of the advisory body of the Zapatista National Liberation Army during the San Andrés' dialogues in the 1990s; co-founded the National Indigenous Congress in 1996; and served as Indigenous Affairs Secretary of the Government of Oaxaca from 2010 to 2016.[1737]

611. Explaining his role at INPI in a contemporaneous interview, Mr. Regino noted that the AMLO administration had "not issued any new concessions [and] those that have already been issued, the peoples have the right to challenge them before the courts because they were issued in violation of their human rights."[1738] Mr. Regino made no mention of the peoples' right to have their voices heard in support of concessions – a right that he sought to deny.

612. With respect to the Tecoltemi *amparo* proceedings, Mr. Regino expressed his hope that "the judges respect the rights [of the indigenous peoples] and refuse to be swayed by the economic

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[1734] INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," at p. 41, **Exhibit C-407**.

[1735] INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," at pp. 40-41, **Exhibit C-407**.

[1736] Adelfo Regino Montes, Director General, Instituto Nacional de Pueblos Indígenas, available at https://www.gob.mx/inpi/estructuras/adelfo-regino-montes, (last accessed 15 May 2026) **Exhibit C-798**.

[1737] Adelfo Regino Montes, Director General, Instituto Nacional de Pueblos Indígenas, available at https://www.gob.mx/inpi/estructuras/adelfo-regino-montes, (last accessed 15 May 2026) **Exhibit C-798**.

[1738] Adelfo Regino, *Esperamos que los jueces no se dejen someter por las mineras*, dated 20 May 2020, available at https://piedepagina.mx/esperamos-que-los-jueces-no-se-dejen-someter-por-las-mineras-adelfo-regino/, **Exhibit C-799**.

interests of transnational corporations."[1739] Notably, on 18 January 2022, Mr. Regino filed an *amicus* brief in those proceedings. That submission demanded that the Supreme Court "annul the underlying concession,"[1740] which, as explained above, the Court did not do.[1741]

613. In April 2023, two months after Economía cancelled the Concessions definitively, Mr. Regino issued an official public statement endorsing AMLO's reform of Mexico's Mining Law, in which he characterized pre-2023 mining concessions in indigenous areas as having been issued "in breach of the human rights of indigenous peoples."[1742] Mr. Regino added that the reform would serve to "solve many issues caused by the neoliberal legislation" on mining.[1743]

614. Like Mr. Regino, AMLO appointed Mr. Aguilar as INPI's General Coordinator on Human Rights in 2018.[1744] Mr. Aguilar co-founded SerMixe with Mr. Regino, attended the San Andrés dialogues alongside Regino as a member of the Zapatista advisory body in November 1996, and served as Undersecretary of Indigenous Rights of Oaxaca from 2011 to 2016 with Mr. Regino as his immediate superior.[1745] Press coverage describes Mr. Aguilar as Mr. Regino's "right hand, best friend, and closest collaborator."[1746] For 30 years, they have moved as a single unit through the same institutions.

615. Notably, Mr. Aguilar attended the seminal 11 July 2022 meeting to coordinate the opposition plan to the Ixtaca Project.[1747] After the cancellation of the Concessions, press reports portrayed

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1739 Adelfo Regino, *Esperamos que los jueces no se dejen someter por las mineras*, dated 20 May 2020, available at https://piedepagina.mx/esperamos-que-los-jueces-no-se-dejen-someter-por-las-mineras-adelfo-regino/, **Exhibit C-799**.

1740 Amicus brief filed by INPI before the Mexican Supreme Court in *amparo* in review 134/2021,, dated 18 January 2022, at p. 28, **Exhibit C-800**.

1741 *See supra* Section 2.14.

1742 *INPI apoya iniciativa de reforma a Ley Minera, para que empresas respeten derechos indígenas*, dated 10 April 2023, available at https://www.contrareplica.mx/nota-INPI-apoya-iniciativa-de-reforma-a-Ley-Minera-para-que-empresas-respeten-derechos-indigenas-202310432, **Exhibit C-801**.

1743 *INPI apoya iniciativa de reforma a Ley Minera, para que empresas respeten derechos indígenas*, dated 10 April 2023, available at https://www.contrareplica.mx/nota-INPI-apoya-iniciativa-de-reforma-a-Ley-Minera-para-que-empresas-respeten-derechos-indigenas-202310432, **Exhibit C-801**.

1744 Milenio, *Hugo Aguilar, el abogado mixteco que presidirá la SCJN*, dated 3 June 2025, available at https://www.milenio.com/politica/hugo-aguilar-ortiz-perfil-abogado-mixteco, **Exhibit C-802**.

1745 La Prensa de Minnesota, *Un abogado mixteco en la cumbre de la Suprema Corte: las tres vidas de Hugo Aguilar*, dated 5 June 2025, available at https://laprensademn.com/un-abogado-mixteco-en-la-cumbre-de-la-suprema-corte-las-tres-vidas-de-hugo-aguilar/, **Exhibit C-803**.

1746 La Prensa de Minnesota, *Un abogado mixteco en la cumbre de la Suprema Corte: las tres vidas de Hugo Aguilar*, dated 5 June 2025, available at https://laprensademn.com/un-abogado-mixteco-en-la-cumbre-de-la-suprema-corte-las-tres-vidas-de-hugo-aguilar/, **Exhibit C-803**.

1747 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**.

Mr. Aguilar as the person who, "from inside INPI, accompanied the Tecoltemi community in Puebla in its struggle against a mining company."[1748]

616. As elaborated below, the INPI study had its desired effect: on 9 February 2023, Economía cancelled the Concessions in full, ruling that reissuing the titles Economía had itself approved decades earlier was "not feasible."[1749] Although Economía's non-feasibility decision was, on its face, based upon alleged technical deficiencies in the mining expert reports, documents produced by Mexico show that the actual basis for its decision was the INPI study.[1750]

2.17. Following A Change In Leadership, Economía Ruled That Issuing The Concession Titles Was Allegedly "Not Feasible," Thereby Cancelling The Ixtaca Project In Full

617. As explained in the Memorial, following the Supreme Court's decision on the *amparo*, Minera Gorrión met with Economía to convey its ability and willingness to support the Mexican Government's compliance with its duty to guarantee the human rights of the Tecoltemi community through consultation.[1751] At that time, Ms. Clouthier remained the Secretary of Economía, and she and her officials were receptive, maintaining an open dialogue with Minera Gorrión and organizing several meetings to discuss the indigenous consultation process.[1752]

618. These meetings made clear that Minera Gorrión had nothing to fear from an indigenous consultation carried out in good faith.[1753] Minera Gorrión was confident that the consultation would reflect both the Project's broad support – particularly from the local communities within the Project's area of influence – and the substantial efforts Minera Gorrión had made over the years to understand and address community concerns.[1754] Moreover, as the Supreme Court

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1748 La Prensa de Minnesota, *Un abogado mixteco en la cumbre de la Suprema Corte: las tres vidas de Hugo Aguilar*, dated 5 June 2025, available at https://laprensademn.com/un-abogado-mixteco-en-la-cumbre-de-la-suprema-corte-las-tres-vidas-de-hugo-aguilar/, **Exhibit C-803**.

1749 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, at p. 6, dated 9 February 2023, **Exhibit C-111**.

1750 Email from Rafael Edipo Palma Castillo (DGM's Cartography and Mining Concessions Director) to Maria Deifilia Madrigal Figueroa (DGM's Director of Document Management Divison), dated 8 March 2023, (noting that the INPI study "served as the basis for the DGM's decision" on the Concessions), **Exhibit C-804**.

1751 Memorial, at para. 388; McDonald WS, at paras. 107-108.

1752 Email from Mr. Efraín Alba Niño to Mr. Daniel Santamaría Tovar Regarding Proposal for Indigenous Consultation in Ixtaca, dated 4 March 2022, **Exhibit C-384**; Email from Mauricio Heiras to Mr. Douglas J. McDonald Regarding Meeting with the DGM in Mexico City, dated 1 April 2022, **Exhibit C-487**; Santamaría Tovar WS, at paras. 121-122.

1753 Memorial, at paras. 389-390.

1754 Memorial, at para. 390.

made clear in its decision, the consultation was to be informative only and did not give Tecoltemi – or any other community – a veto over the grant of the Concessions.[1755]

619. In the June 2022 *Oficio*, Economía addressed the first directive set out in the Supreme Court's ruling – namely, declaring the Concession titles without effect until indigenous consultations were carried out.[1756] While Minera Gorrión awaited further direction from Economía on the consultation process, it submitted to Economía formal requests for adjustment of the perimeter and reduction of the surface area of its original concession applications.[1757] Minera Gorrión also submitted an independent social impact assessment to serve as the foundation for the consultation process, further to instructions from the DGM.[1758] Minera Gorrión submitted these revised applications in good faith, seeking to demonstrate its continued willingness to work constructively with Economía on the consultations and the reinstatement of the Concessions in full.[1759] Economía never responded to or took any action on these revised applications.[1760] Although Mexico acknowledges the submission of these revised applications in its Counter-Memorial,[1761] it fails to explain why Economía never responded to them at all.

620. As noted above, in October 2022, AMLO proceeded to replace Secretary Clouthier with Ms. Buenrostro as Secretary of Economía.[1762] Ms. Buenrostro was an AMLO loyalist and a vocal critic of the mining industry.[1763] Shortly after Secretary Buenrostro's appointment, Economía

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1755 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 72 ("It should be noted that in no way was it intended that the Indigenous peoples and communities had a veto right over decisions that could have to do with national development or in relation to the strategic resources and property of the Mexican Nation." Spanish original: "*Se advierte que de ninguna manera se pretendió que los pueblos y comunidades indígenas tuvieran un derecho de veto sobre decisiones que pudieran tener que ver con el desarrollo nacional o con relación a los recursos estratégicos y propiedad de la Nación Mexicana*."), **Exhibit C-92**.

1756 McDonald WS, at para. 106; Letter from Economía, Director General of Mines to Minera Gorrión, Oficio No. SE/610/2907/2022, dated 20 June 2022, at p. 4, **Exhibit C-95**.

1757 Solicitud de Ajuste del Perímetro y Reducción de Superficie CERRO GRANDE, dated 15 November 2022, **Exhibit C-108**; Solicitud de Ajuste del Perímetro y Reducción de Superficie CERRO GRANDE 2, dated 15 November 2022, **Exhibit C-107**.

1758 *See supra Section 2.9.1*; Información Técnica en Alcance a la Solicitud de Concesión Minera CERRO GRANDE, dated 9 November 2022, **Exhibit C-105**; Información Técnica en Alcance a la Solicitud de Concesión Minera CERRO GRANDE 2, dated 9 November 2022, **Exhibit C-106**.

1759 McDonald WS-2, at Section 11.1.

1760 McDonald WS-2, at Section 11.1.

1761 Counter-Memorial, at para. 429.

1762 Memorial, at para. 400.

1763 SPR Informa, "*Mineras prácticamente no pagan impuestos: Raquel Buenrostro,*" dated 8 December 2022, **Exhibit C-109**.

abruptly halted communications with Minera Gorrión regarding the consultation, and refused further meetings and collaboration.[1764]

621. Roughly two months later, on 5 December 2022, the District Court finally ruled that Economía had complied with the Supreme Court's first directive by declaring in its June 2022 *Oficio* the existing Concessions "*insubsistentes*" until Economía carried out the indigenous consultation – and had formally notified Tecoltemi (which had evaded notification for months, presumably to allow more time for the "studies" to be finalized) – but found that Economía had not yet pronounced on the feasibility of issuing the Concession titles under the Mining Law and Regulations in force at the time of their issuance.[1765] It therefore ordered Economía to do so within *three days*.[1766] Economía failed to comply.

622. With no response in nearly a month, Minera Gorrión filed a further motion on 9 January 2023 with the District Court, demanding immediate compliance.[1767] The District Court issued on 26 January 2023 a final, non-extendable five-day deadline for Economía to comply.[1768] Economía still failed to comply.

623. On 9 February 2023, nearly nine months after Economía ordered the indigenous consultation in its June 2022 *Oficio*, Economía finally issued its February 2023 *Oficio*, ruling that issuing the Concessions titles was allegedly "not feasible."[1769] As explained in the Memorial, that *Oficio* was a baseless and pretextual exercise that bore no relationship to the subject matter of the *amparo* proceedings.[1770] It also denied Minera Gorrión its due process rights in full.[1771]

624. As Mr. McDonald notes, Economía's refusal to comply with the Court's orders – not once, but twice – cannot be attributed to mere bureaucratic delay.[1772] Economía had spent seven years defending the legality of the Concessions in the *amparo* proceedings and had confirmed, as recently as June 2022 in its first *Oficio*, that all prior administrative steps in the concession

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1764 Memorial, at para. 401.

1765 Memorial, at para. 421.

1766 District Court's Ruling on Compliance with First Effect of Supreme Court Amparo Ruling, dated 5 December 2022, at p. 9, **Exhibit C-553**.

1767 Submission of Interested Third Party Minera Gorrión, H. Juzgado Segundo de Distrito en Materias de Amparo Civil, Administrativa y de Trabajo, y de Juicios Federales, Ambos, del Estado de Puebla, dated 9 January 2023, **Exhibit C-110**.

1768 Memorial, at paras. 422-423.

1769 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1770 Memorial, at para. 424.

1771 *See supra* Section 2.16.

1772 McDonald WS-2, at Section 11.1.

application process remained valid.[1773] Yet, Economía was delaying to issue a pronouncement that should have confirmed what it had always maintained: that the Concessions were "feasible" and that Economía would proceed with the consultation as ordered.[1774] Rather than do so, Economía, under Secretary Buenrostro, joined forces with SEMARNAT, INPI, and the anti-mining NGOs to bring the Ixtaca Project to a definitive end by declaring the Concessions "not feasible."[1775] As detailed below, in 2024, SEMARNAT celebrated this landmark achievement, proclaiming that it reflected the Government's commitment of "not granting new mining concessions anywhere in the national territory, which has been endorsed by [SEMARNAT]."[1776]

625. As the Claimants explained in their Memorial, Economía's findings in its February 2023 *Oficio* centered on *de minimis* technical defects in the mining expert reports that had supported the original concession applications – which Economía had expressly approved some 20 and 14 years earlier – including alleged incorrect coordinates, excessive distance between the starting point and the lots' perimeter, and missing land surveys.[1777] Economía purported to rely upon the Manual of Public Mining Service – a document that neither the Supreme Court, nor Economía or its DGM, had referenced in the *amparo* proceedings.[1778]

626. Specifically, Economía found the three alleged defects:

a) **Incorrect coordinates**: Economía asserted that the expert report for the Cerro Grande 2 Concession allegedly lacked the necessary coordinate values, particularly those related to the control point, which was necessary for defining the position of the starting point of the mining lot – a lot that had been known for 14 years.[1779] Furthermore, Economía contended that the numerical values provided in the expert report did not represent valid geographical coordinates, allegedly making it impossible to validate the location of the lot.[1780]

1773 McDonald WS-2, at Section 11.1.

1774 McDonald WS-2, at Section 11.1.

1775 *See supra* Section 2.17.

1776 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, at Section I (Spanish original: "*En la nueva relación del Estado mexicano con los pueblos y comunidades indígenas se ha priorizado el diálogo genuino, así como el reconocimiento y respeto a su libre determinación y autonomía sobre sus tierras, territorios y recursos naturales*;" "*uno de los compromisos actuales del Gobierno, ha sido no otorgar ninguna concesión minera en el territorio nacional.*"), **Exhibit C-797**.

1777 Memorial, at para. 426; Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

1778 Memorial, at para. 426.

1779 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 10, **Exhibit C-111**.

1780 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 10, **Exhibit C-111**.

Additionally, Economía raised concerns about the validity of the control point used in the expert report. The expert report referenced a control point in Toluca, Estado de México, which was located far from the proposed mining site, leading to alleged doubts about the validity of the translocation method used. Because the geodetic reference point was allegedly unverifiable, Economía determined that the coordinates could not be validated, leading to its alleged non-compliance.[1781]

b) **Excessive distance between the starting point and the lots' perimeter**: Economía also asserted that the configuration of both the Cerro Grande and Cerro Grande 2 mining lots, as presented in the expert reports, allegedly did not comply with regulatory standards due to the excessive distance between the starting point and the first perimeter point.[1782] The expert report referenced a distance of 5,213.625 meters,[1783] while the Manual of Public Mining Service established a strict maximum limit of 3,000 meters unless specific exceptions apply.[1784] Because these exceptions allegedly did not apply, the 5,213.625-meter distance was non-compliant.[1785]

c) **Missing or defective land surveys**: The final alleged deficiency was that the expert land surveys for the Cerro Grande 2 Concession failed to meet required legal and technical standards.[1786] According to Economía, the Mining Regulations and Manual required that all applications include a precise topographical survey of the lot.[1787] However, Economía found that the land survey allegedly did not meet the necessary technical specifications.[1788] Furthermore, Economía found that the coordinates in the expert reports were allegedly not expressed in the correct geographic format (degrees, minutes, and seconds), further contributing to its determination that the surveys allegedly did not meet technical standards.[1789]

627. With respect to the Cerro Grande Concession, Economía therefore concluded that:

1781 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 9, **Exhibit C-111**.

1782 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1783 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1784 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1785 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1786 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 11-12, **Exhibit C-111**.

1787 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 11-12, **Exhibit C-111**.

1788 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 11-12, **Exhibit C-111**.

1789 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 9, **Exhibit C-111**.

> It is concluded from the foregoing, that the issuance of the concession title IS NOT FEASIBLE, since the assumptions referred to in Articles 10, last paragraph, 12 and 13, first paragraph of the Mining Law, and 16, third paragraph 21, first paragraph, as well as the provisions NINETEEN and TWENTY-NINE of the Manual are not fulfilled, that is, the conditions and requirements for the granting of concession title are not met.[1790]

628. Similarly, with respect to the Cerro Grande 2 Concession, Economía concluded that:

> It is noted that the coordinates of the starting point were not presented in accordance with the indicated technical specifications, in addition to the fact that the expert work in the field was not carried out in accordance with the indicated method and the survey of the terrain is not submitted. Consequently, the legal requirements set forth in the applicable legal framework are not complied with, and therefore, the granting of the concession title IS NOT FEASIBLE.[1791]

629. Following these conclusions, Economía included an additional Section D, entitled "Considerations regarding the promotion, protection, respect, and guarantee of human rights."[1792] In this Section, Economía referenced the purported "studies" that SEMARNAT had orchestrated behind closed doors with INPI and the NGOs, and that Tecoltemi had introduced into the case file.[1793] Notably, however, Economía purported not to rely upon any of these studies for its actual conclusion or *dispositif* on feasibility.[1794] As explained below, that was false.

630. The Claimants demonstrated that the February 2023 *Oficio* was flawed for several reasons:

a) *First*, Economía's own 20 June 2022 *Oficio* had stated that "everything that was done prior to the granting of the concession titles subsists."[1795] That ruling plainly covered the mining expert reports filed in support of the original concession applications, as well as

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1790 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1791 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 12, **Exhibit C-111**.

1792 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 13-16, **Exhibit C-111**.

1793 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 13-16, **Exhibit C-111**.

1794 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 16, **Exhibit C-111**.

1795 Letter from Economía, Director General of Mines to Minera Gorrión dated 20 June 2022 at p. 7, at **Exhibit C-95**; McDonald WS, at para. 118.

Economía's express approval of those reports some 14-20 years earlier.[1796] Moreover, during the almost 20 years in which the Claimants had held their Concessions, Economía had never once questioned the so-called feasibility of the Concession titles or the validity of the underlying, approved expert reports.[1797]

b) *Second*, the alleged minor technical defects Economía relied upon were *de minimis* on their face and did not warrant the cancellation of the entire Project.[1798] This is particularly so given that *none* of the alleged defects Economía relied upon in its *Oficio* had ever been discussed in the *amparo* proceedings.[1799]

c) *Third*, in declaring the Concessions "not feasible" on the basis of such alleged trivial errors, Economía breached Mexico's Mining Regulations and the Federal Law of Administrative Procedure, which obliged Economía to (i) notify Minera Gorrión of any defects in the concession applications or related expert reports, and (ii) provide Minera Gorrión the opportunity to correct those defects.[1800] Where the relevant administrative authority fails to do so, it is legally prohibited under Mexican law from rejecting an application on those grounds.[1801]

d) *Fourth*, even after a mining concession is granted, Economía has the power to correct minor technical defects in the concession, rather than revoke the concession outright.[1802] Under Article 24 of the Mining Regulations, if a concession contains errors in its data or does not correspond precisely to the land it should legally cover, Economía may modify the concession rather than invalidate it.[1803] Economía failed to do so.

e) *Fifth*, the February 2023 *Oficio* breached a number of additional fundamental principles of Mexican law, including "*seguridad jurídica*" (legal certainty) and "*confianza legítima*" (legitimate trust), as well as the principle of "*buena fe administrativa*" (good faith in

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1796 Memorial, at para. 432.

1797 McDonald WS, at paras. 118-119; Santamaría Tovar WS, at para. 118.

1798 Memorial, at para. 433.

1799 Santamaría Tovar WS, at para. 118.

1800 Federal Law on Administrative Procedure, at Article 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**; 1999 Mining Regulations, at Art. 22, Section III, **C-164**.

1801 Federal Law on Administrative Procedure, at Article 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1802 Memorial, at para. 437.

1803 1999 Mining Regulations, at Art. 24, second paragraph, **Exhibit C-164**.

administrative actions).[1804] These principles require administrative authorities to act with consistency, integrity, and fairness in their dealings.[1805] Economía did not respect these principles vis-à-vis Minera Gorrión.

f) *Sixth*, where, as here, an entity has already obtained an official authorization, such as a concession or permit, it develops a legitimate legal expectation that the Government will not arbitrarily revoke it; therefore, public authorities must provide a *heightened justification* if they decide to deny, revoke, or modify previously granted rights.[1806] Likewise, the doctrine of "*actos propios*" (estoppel) prevents Government authorities in Mexico from contradicting their own prior actions to the detriment of entities which have reasonably relied upon them in good faith, like Minera Gorrión here.[1807]

1804 Federal Law on Administrative Procedure, at Article 13 (published in the official gazette on 24 December 1996), **Exhibit C-160**; *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Arts. 6-8, 16, **Exhibit C-519**; *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, dated 13 March 2002, at Art. 7, **Exhibit C-583**; *Código de Ética de la Administración Pública Federal*, dated 8 May 2022, at Arts. 4, 6, 8-9, 18-19, **Exhibit C-573**.

1805 Suprema Corte de Justicia de la Nación, Primera Sala, Tesis I.9o.A.28 A (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 32, Julio de 2016, Tomo III, página 2184. Registro digital: 2012089 ("Administrative morality. . . as a principle of administrative function, should be understood as the parameter of ethical conduct of public servants and individuals who exercise this function, consisting of an axiological and deontological obligation of functional behavior, according to the postulates of honesty, neatness, rectitude, good faith, primacy of the general interest, and honesty." Spanish original: "*La moralidad administrativa. . . como principio de la función administrativa, debe entenderse como aquel parámetro de conducta ética de los servidores públicos y particulares que ejercen dicha función, consistente en una obligación axiológica y deontológica del comportamiento funcional, según los postulados de la honradez, pulcritud, rectitud, buena fe, primacía del interés general y honestidad.*"), **Exhibit C-575**.

1806 Suprema Corte de Justicia de la Nación, Tesis I.18o.A.81 A (10a.), T.C.C., Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 56, Julio de 2018, Tomo II, página 1599. Registro digital: 2017384 (Spanish original: "*Los principios de buena fe y equidad que imperan en estos casos (permisos, concesiones o licencias) en las relaciones jurídicas entre particulares y administración permiten establecer que, a quien se ubica en esta situación (de ser permisionario) le asiste una legítima expectativa a obtener la revalidación, misma que, precisamente, por ser legítima, exige que la autoridad, si ha de negarla, motive ampliamente (motivación reforzada) por qué lo hace*."), **Exhibit C-579**.

1807 Suprema Corte de Justicia de la Nación, Tesis I.3o.C. J/11 (10a.), T.C.C., Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 17, Abril de 2015, Tomo II, página 1487. Registro digital: 2008952 ("The doctrine or theory of estoppel, which derives from the rule set out in the maxim that reads: *venire contra factum proprium, nulla conceditur*, is based on the inadmissibility of a litigant basing his position on invoking facts that contradict his own statements or adopting an attitude that places him in opposition to his previous conduct and finds its basis on the trust aroused in another subject in good faith, by reason of a first behavior carried out, which would be violated if it were considered admissible to accept and proceed with a subsequent and contradictory claim." Spanish original: "*Doctrina o teoría de los actos propios, que deriva de la regla consignada en el brocardo que reza: venire contra factum proprium, nulla conceditur, se basa en la inadmisibilidad de que un litigante fundamente su postura al invocar hechos que contraríen sus propias afirmaciones o asuma una actitud que lo coloque en oposición con su conducta anterior y encuentra su fundamento en la confianza despertada en otro sujeto de buena fe, en razón de una primera conducta realizada, la cual quedaría vulnerada si se estimara admisible aceptar y dar curso a una pretensión posterior y contradictoria*."), **Exhibit C-586**.

631. As the Claimants further explained, the bad faith nature of Economía's actions is further reinforced by its reference to the four purported "studies" manufactured by SEMARNAT behind closed doors with Tecoltemi's lead counsel and the very NGOs that had opposed the Project for years – without any review or response from Minera Gorrión.[1808]

632. By relying on these purported studies, Economía breached multiple provisions of Mexican law governing administrative integrity and due process, including: (i) Article 13 of the Federal Law of Administrative Procedure, which mandates that administrative actions adhere to principles of economy, celerity, effectiveness, legality, publicity, and good faith;[1809] (ii) Articles 6 to 8 and 16 of the General Law of Administrative Responsibilities, as well as Article 7 of the Federal Law of Administrative Responsibilities, all of which impose obligations on public officials to act with impartiality, legality, loyalty, efficiency, and objectivity in their decision-making;[1810] and (iii) the ethical standards set forth in the Code of Ethics of the Federal Public Administration, specifically Articles 4, 6, 8-9, and 18-19, which reinforce the duty of public officials to ensure transparency, accountability, and integrity in their administrative functions.[1811] Economía's incorporation of – and indeed reliance on – the targeted, bad faith "studies" into its *Oficio* – while denying Minera Gorrión the opportunity to review and address those studies – constitutes a clear violation of these fundamental administrative principles.[1812]

633. In their Memorial, the Claimants also detailed Minera Gorrión's good faith efforts to seek redress following the February 2023 *Oficio*.[1813] In particular, on 27 February 2023, after months of unanswered requests, representatives of Minera Gorrión, accompanied by community leaders from Zacatepec, Santa María Zotoltepec, and San Francisco Ixtacamaxtitlán, as well as representatives of UNECE and the Canadian Embassy in Mexico, met with Secretary Buenrostro.[1814] Secretary Buenrostro was indifferent and dismissive toward Minera Gorrión and the community members.[1815]

1808 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 2 January 2023, at p. 7, **Exhibit C-410**.

1809 Federal Law on Administrative Procedure, at Article 13 (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1810 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Art. 6-8, 16, **Exhibit C-519**; *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, dated 13 March 2002, at Art. 7, **Exhibit C-583**.

1811 *Código de Ética de la Administración Pública Federal*, dated 8 May 2022, at Arts. 4, 6, 8-9, 18-19, **Exhibit C-573**.

1812 Memorial, at para. 444.

1813 Memorial, at para. 452.

1814 Memorial, at para. 452.

1815 Santamaría Tovar WS, at para. 125; García Herrera WS, at paras. 21-22.

634. Minera Gorrión also sought legal recourse against the February 2023 *Oficio* through appeals, an *amparo* proceeding, and a nullity action before the Mexican Courts.[1816] So too did the affected communities, arguing in their own appeal that Economía's decision violated their right to consultation and the Supreme Court's directives.[1817] All of these efforts failed. After the Second District Court and the Collegiate Court rejected Minera Gorrión's appeals,[1818] the Company withdrew the nullity proceedings to commence this arbitration on 3 June 2024.[1819]

635. In its Counter-Memorial, Mexico does not address Economía's initial engagement with Minera Gorrión in preparing for the indigenous consultation, nor does it explain the *volte-face* at Economía following AMLO's installation of Secretary Buenrostro.[1820] Most concerning, Mexico has not produced any documents from Economía reflecting its preparation of the February 2023 *Oficio*, including documents reflecting the basis for its approval, as ordered by the Tribunal.[1821] Mexico has produced no documents showing the review of the mining expert reports, including when and on whose instructions that review occurred. It also has produced no documents showing the review of the purported "studies" delivered by SEMARNAT in January 2023.

636. Instead, with no factual witness or any documentary support, Mexico asserts *ipse dixit* that Economía's February 2023 *Oficio* was lawful and well founded, because: (i) the alleged *de minimis* technical deficiencies identified in the expert reports were serious; (ii) Minera Gorrión allegedly had no due process right to present any new information as part of Economía's feasibility review;[1822] (iii) the Collegiate Court subsequently "confirmed that Economía's actions . . . complied with the Supreme Court's decision;"[1823] (iv) the Claimants' "attempt to fabricate alleged deficiencies in Economía's actions arguing that [they were] based on alleged 'political motivations'" and breaches of Mexican Administrative law . . . is incorrect and not

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1816 Memorial, at para. 453.

1817 Memorial, at para. 454.

1818 Lower Court Ruling on Compliance with SCJN Decision and Feasibility Determination, dated 11 April 2023, at p. 11, **Exhibit C-582**; Collegiate Court Ruling on Compliance with SCJN Decision and Feasibility Determination, dated 13 October 2023, Collegiate Court Ruling on Compliance with SCJN Decision and Feasibility Determination, dated 13 October 2023, **Exhibit C-588**.

1819 Memorial, at para. 459; Court Decree from the Second Regional Chamber of the Federal Tribunal of Administrative Justice, dated 3 June 2024, **Exhibit C-432**.

1820 Counter-Memorial, at Section II.E.2.c-e.

1821 Procedural Order No. 5, dated 11 March 2026, Annex A, at pp. 136-137.

1822 Counter-Memorial, at para. 406.

1823 Counter-Memorial, at para. 419.

backed by evidence;"[1824] and (v) the Claimants failed to file "available legal actions" and "withdrew" the ones they filed "without any justification."[1825] Mexico's *post hoc* justifications are meritless, unsupported, and belied by the record, as elaborated below.

2.17.1. Economía Worked Collaboratively With Minera Gorrión To Organize The Indigenous Consultation Under Secretary Clouthier

637. Following the Supreme Court's decision, Economía actively engaged with Minera Gorrión to prepare for the indigenous consultation.[1826] Minera Gorrión's principal contacts at Economía during this process were Ms. Margarita Olivas, Head of the Legal Support Unit, and Mr. Alva, Head of the Unit for the Coordination of Extractive Activities.[1827] As set forth above, Mr. Alva was also responsible for the UNECE Mining Pilot Project.[1828] In addition, Mr. Santamaría worked closely with Mr. Eduardo Enrique Flores Magón, Director General of Mines, and Mr. José Rafael Jabalera Batista, Director General of Mining Development at Economía.[1829] Mexico has not presented any of these individuals as factual witnesses in this case, nor has it produced any of their contemporaneous documents. It is not credible that Mexico does not have in its possession, custody, or control documents reflecting their efforts to implement the consultation.

638. Indeed, the documentary record reflects that, by email dated 4 March 2022, Mr. Alva invited Minera Gorrión representatives and key Government officials, including Ms. Olivas and Mr. Jabalera, to a first meeting at Economía on 8 March 2022 to discuss the indigenous consultation process.[1830] That email, titled "*Propuesta de Consulta Indígena en Ixtaca*," showed Economía's willingness to conduct the consultation in line with international best practices.[1831]

639. Mr. Santamaría attended the 8 March 2022 meeting on behalf of Minera Gorrión, together with Messrs. Héctor Garza Cervera and Franco Lammoglia, Minera Gorrión's external counsel.[1832]

1824 Counter-Memorial, at para. 420.

1825 Counter-Memorial, at para. 424.

1826 Santamaría WS-2, at Section 11.

1827 Santamaría WS-2, at Section 11.

1828 *See supra* Section 2.15.

1829 Santamaría WS-2, at Section 11.

1830 Email from Mr. Efraín Alva Niño to Mr. Daniel Santamaría Tovar Regarding Proposal for Indigenous Consultation in Ixtaca, dated 4 March 2022, **Exhibit C-384**.

1831 Email from Mr. Efraín Alva Niño to Mr. Daniel Santamaría Tovar Regarding Proposal for Indigenous Consultation in Ixtaca, dated 4 March 2022, **Exhibit C-384**.

1832 Santamaría WS-2, at Section 11.

Economía explained at the meeting that it was working to develop a formal indigenous consultation protocol that would apply to mining projects generally.[1833] Economía and Minera Gorrión's legal counsel further agreed that the process under the ILO 169 Convention was not prescriptive, but was flexible and could be adapted depending upon the circumstances of each case.[1834] Economía indicated that it would coordinate with INPI to understand its position on the proposed approach.[1835] Economía also confirmed that it had been in contact with the Governor of the State of Puebla, Mr. Miguel Barbosa Huerta, and that the State of Puebla would play a role in identifying the relevant indigenous communities through the State's official records.[1836]

640. At an event hosted by the Mexican Association of Mining Engineers, Metallurgists, and Geologists in early May 2022, Mr. Jabalera affirmed that Economía had, by then, a protocol in place for the indigenous consultation and that, while no legislation had been passed to provide clarity over how consultations should be conducted, the protocol was based on the best information available.[1837] Responding to concerns about NGOs stopping or delaying projects by pushing for new consultations, Mr. Jabalera confirmed that Mexico was "not going to stop projects, we are not going to stop investment because of these situations," adding that he would take industry points of view into account: "The idea is to keep progressing . . . If we have to adapt or adjust, we are open to that, but we want this to continue, to advance."[1838] As Mr. Santamaría notes, Minera Gorrión was encouraged by Mr. Jabalera's comments and Economía's intention to proceed with the consultation swiftly.[1839]

1833 Email from Mr. Daniel Santamaría Tovar to Messrs. Doug McDonald, Duane Poliquin, and Patricio Cumming, dated 9 March 2022, **Exhibit C-862**.

1834 Email from Mr. Daniel Santamaría Tovar to Messrs. Doug McDonald, Duane Poliquin, and Patricio Cumming, dated 9 March 2022, **Exhibit C-862**.

1835 Email from Mr. Daniel Santamaría Tovar to Messrs. Doug McDonald, Duane Poliquin, and Patricio Cumming, dated 9 March 2022, **Exhibit C-862**.

1836 Email from Mr. Daniel Santamaría Tovar to Messrs. Doug McDonald, Duane Poliquin, and Patricio Cumming, dated 9 March 2022, **Exhibit C-862**.

1837 Bnamericas, "Indigenous consultations 'not going to stop investment' in Mexican mining," dated 16 May 2022, available at https://www.bnamericas.com/en/analysis/indigenous-consultations-not-going-to-stop-investment-in-mexican-mining, **Exhibit C-924**.

1838 Bnamericas, "Indigenous consultations 'not going to stop investment' in Mexican mining," dated 16 May 2022, available at https://www.bnamericas.com/en/analysis/indigenous-consultations-not-going-to-stop-investment-in-mexican-mining, **Exhibit C-924**.

1839 Email from Mr. Patricio Cumming to Mr. Doug McDonald and Mr. Daniel Santamaría Tovar, dated 6 June 2022, **Exhibit C-863**.

641. During this period, the Canadian Embassy likewise engaged with Economía on Minera Gorrión's behalf.[1840] [redacted], the First Secretary (Trade) and Trade Commissioner, maintained regular contact with both Economía and Minera Gorrión's team.[1841] During a phone call in early June 2022, [redacted] advised Messrs. McDonald and Santamaría that, given the particularities of the Project, *i.e.*, that Economía would conduct a consultation on the Concessions while the Project had already been under development for many years, Economía intended to resolve the Ixtaca consultation as a priority and on an *ad hoc* basis, in advance of establishing a formal consultation protocol for other mining projects.[1842] She affirmed that the consultation would be informative, rather than determinative, meaning that Tecoltemi would not have a veto over the re-granting of the Concessions.[1843] The first step, she explained, would be for Minera Gorrión to commission an independent social impact study, which would then form the basis for the consultation.[1844] Following delivery of that study, the consultation itself would last approximately four to six months.[1845] The Embassy further reported that there was agreement within Economía that the underlying application process for the Concessions was fully valid up to the re-issuance of the titles.[1846]

642. Consistent with the Embassy's report, on 20 June 2022, Economía issued the June 2022 *Oficio*, in which, as explained, Economía declared the Concession titles "*insubsistentes*" until it carried out the consultation.[1847] Consistent with [redacted] report – and the Supreme Court's decision – Economía also underscored that "everything that was done prior to the granting of the concession titles subsists," and ordered the indigenous consultation.[1848] Based upon the June 2022 *Oficio*, the Claimants understood that their original concession applications, including the supporting documents and expert reports, as approved by Economía in 2003 and

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1840 Santamaría WS-2, at Section 11; McDonald WS-2, at Section 11.1.

1841 Santamaría WS-2, at Section 11; McDonald WS-2, at Section 11.1.

1842 Email from Mr. Patricio Cumming to Mr. Doug McDonald and Mr. Daniel Santamaría Tovar, dated 6 June 2022, **Exhibit C-863**.

1843 Email from Mr. Patricio Cumming to Mr. Doug McDonald and Mr. Daniel Santamaría Tovar, dated 6 June 2022, **Exhibit C-863**.

1844 Email from Mr. Patricio Cumming to Mr. Doug McDonald and Mr. Daniel Santamaría Tovar, dated 6 June 2022, **Exhibit C-863**.

1845 Email from Mr. Patricio Cumming to Mr. Doug McDonald and Mr. Daniel Santamaría Tovar, dated 6 June 2022, **Exhibit C-863**.

1846 Email from Mr. Patricio Cumming to Mr. Doug McDonald and Mr. Daniel Santamaría Tovar, dated 6 June 2022, **Exhibit C-863**.

1847 Letter from Economía, Director General of Mines to Minera Gorrión, dated 20 June 2022, at p. 4 (Spanish original: "*Lo anterior hasta en tanto se lleve a cabo la consulta previa a la COMUNIDAD INDÍGENA NAHUA DE TECOLTEMI, en términos de la sentencia de mérito*."), **Exhibit C-95**.

1848 Letter from Economía, Director General of Mines to Minera Gorrión, dated 20 June 2022, at p. 4 (Spanish original: "*Lo anterior hasta en tanto se lleve a cabo la consulta previa a la COMUNIDAD INDÍGENA NAHUA DE TECOLTEMI, en términos de la sentencia de mérito*."), **Exhibit C-95**.

2009, remained valid and in good order, and that Economía would proceed with the indigenous consultation accordingly.[1849] The Embassy confirmed that understanding in August 2022.

643. Specifically, by email dated 1 August 2022, [redacted] advised Minera Gorrión that she had spoken with Mr. Jabalera that same day and that he had confirmed that Economía had submitted its "framework for the consultation (protocol) to the INPI for their review," but that it had not yet received INPI's comments.[1850] That is unsurprising because, as explained below, INPI was, at that time, busy meeting with SEMARNAT and the NGOs on the preparation of the "studies" to undermine the Project and ensure that Economía would rule against feasibility, without any consultation at all.[1851]

644. Mr. Jabalera advised [redacted] that Economía was "aware that Tecoltemi and Fundar [were] trying to drag things down," and that Economía would seek to "impose the timing on them."[1852] Mr. Jabalera further confirmed that Economía had "spoken with the State Government of Puebla" and that it was "well aligned" with Economía.[1853] He noted that, as soon as INPI responded on the draft protocol, it "would be ready to proceed."[1854] [redacted] "reinforced the emergency" of the matter and "voiced [the Embassy's] concerns about SEMARNAT's rhetoric and positioning," which concerns she noted Mr. Jabalera "obviously share[d]."[1855] As detailed above, that rhetoric included the irregular press statements from SEMARNAT in July 2022 calling upon AMLO to ensure that Economía would not reissue the Ixtaca Concessions.[1856]

645. As set forth above, in October 2022, shortly after AMLO replaced Secretary Clouthier with Secretary Buenrostro, Economía reversed course and refused to engage further with Minera Gorrión on the consultation, signaling an abrupt shift in Economía's stance.[1857] Minera Gorrión, however, continued liaising with officials within Economía who supported the Project. Those officials, as Mr. Santamaría explains, gave to Minera Gorrión an initial draft of Economía second *oficio*, in which it ruled that issuing the Concession titles *was* feasible.[1858] As set forth

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1849 Santamaría WS-2, at Section 11.

1850 Email from [redacted] to Mr. Daniel Santamaría Tovar, dated 1 August 2022, **Exhibit C-864**.

1851 *See supra* Section 2.16.

1852 Email from [redacted] to Mr. Daniel Santamaría Tovar, dated 1 August 2022, **Exhibit C-864**.

1853 Email from [redacted] to Mr. Daniel Santamaría Tovar, dated 1 August 2022, **Exhibit C-864**.

1854 Email from [redacted] to Mr. Daniel Santamaría Tovar, dated 1 August 2022, **Exhibit C-864**.

1855 Email from [redacted] to Mr. Daniel Santamaría Tovar, dated 1 August 2022, **Exhibit C-864**.

1856 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**.

1857 Memorial, at para. 400.

1858 Santamaría WS-2, at Section 11.

below, that draft not only contradicts Mexico's arguments regarding feasibility, but confirms that Mexico is withholding relevant and material documents at the heart of this case.

2.17.2. Economía's February 2023 *Oficio* Contradicted The Supreme Court's Decision And Denied Minera Gorrión Its Due Process Rights

646. Economía's February 2023 *Oficio*, denying the so-called "feasibility" of the Concession titles was based upon alleged technical defects in the mining expert reports supporting the original concession applications – reports that Economía had itself reviewed, approved, and relied upon for approximately 14 to 20 years.[1859] These alleged defects were *de minimis*, pretextual on their face, and entirely unrelated to the substantive issues raised in the *amparo* proceeding.[1860]

647. As set forth above, Economía's feasibility "pronouncement" should have been limited to the subject matter of the *amparo*, which concerned exclusively Tecoltemi's right to an indigenous consultation, and aimed at ensuring that Economía had before it all of the information required under the Mining Law and Regulations so that it could be shared with the communities for that consultation. [1861] Instead, Economía improperly reopened and reassessed the original concession applications that it had approved decades earlier and performed a *de novo* review of the mining expert reports underlying those applications.[1862] In doing so, Economía not only disregarded the Supreme Court's decision and its own earlier June 2022 *Oficio* (issued under Secretary Clouthier), but it violated fundamental principles of Mexican law, including, among other things, non-retroactivity and legal certainty, action of the aggrieved party, closed litigation, and due process in administrative proceedings.[1863]

648. In its Counter-Memorial, Mexico contends that the alleged minor technical defects Economía identified for the first time in 2023 are "substantive legal and technical irregularities that directly affected the definition and boundaries of the concession areas," and that Economía had no choice but to cancel the Concessions.[1864] Mexico further asserts that "Economía had no obligation to request Minera Gorrión to correct" the alleged technical defects;"[1865] rather, Mexico says, Economía had "discretion, confirmed by the Supreme Court as freedom of

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1859 McDonald WS, para. 118.

1860 Santamaría WS-2, at Section 11.

1861 Cossío Expert Report, at para. 92.

1862 Cossío Expert Report, at para. 91.

1863 *See supra* Section 2.14.

1864 Counter-Memorial, paras. 666 and 700.

1865 Counter-Memorial, at para. 699.

jurisdiction to declare that issuing the concessions was not feasible under applicable law,"[1866] and the District Court's decision ordering Economía to decide on the feasibility of issuing the concession titles "did not require the total reopening of an administrative proceeding regulated by the Mining Law and its Regulations, which entailed the impossibility of assessing new information provided by Minera Gorrión."[1867] These contentions are baseless.

649. *First*, the alleged technical defects Economía identified in its February 2023 *Oficio* were not, as Mexico says, "substantial legal and technical irregularities."[1868] As Mr. Santamaría testifies, the alleged minor defects are the kinds of details that can be corrected in minutes using the right software – and that any regulatory authority acting in good faith would invite the applicant to correct.[1869] Furthermore, if the defects were as serious as Mexico claims, it is inconceivable that Economía would have failed to identify them during the approximately 14-20 years in which it reviewed, approved, transferred, reduced, certified, and defended the Concessions.[1870]

650. There is little doubt that these pretextual "legal and technical irregularities" served to disguise the political reasons behind the cancellation of the Concessions. This is confirmed by the fact that Economía was ready to approve the feasibility of the Concession titles in December 2022. Around that time, Economía circulated a draft *oficio*, which, given the novelty of the issues, it asked Minera Gorrión to comment on.[1871] As the draft *oficio* reflects, Economía interpreted the feasibility order in the Supreme Court's decision as a confirmation that Minera Gorrión had provided the necessary information in the original concession applications in accordance with the Mining Regulations to permit the consultation to take place.[1872] This information included:

a) due legal representation of the person who submitted the application;

b) confirmation that no competing applications over the same land existed;

c) the existence, or lack thereof, of a preferential claim over the land by indigenous communities;

d) confirmation that the land has no existing concessions in place; and

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1866 Counter-Memorial, at para. 699.

1867 Counter-Memorial, at para. 406.

1868 Counter-Memorial, at para. 700.

1869 Santamaría WS-2, at Section 11.

1870 McDonald WS-2, at Section 11.2.

1871 Economía, Draft Feasibility Oficio, dated November 2022, **Exhibit C-930**.

1872 Economía, Draft Feasibility Oficio, dated November 2022, at pp. 2-3, **Exhibit C-930**.

e) compliance with technical requirements, including, description of the land, coordinates for the concessioned land, studies over the same, calculation reports, and expert reports.[1873]

651. Once Economía confirmed the existence of the listed documents – which were required for the consultation process – the draft *oficio* concluded that it *was* feasible to issue the Concession titles under Articles 13 and 16 of the Mining Regulations.[1874] Formal issuance of the Concession titles was conditioned on the consultation with Tecoltemi, in accordance with the terms articulated by the Supreme Court in its decision.[1875] In other words, until as late as November 2022, Economía itself interpreted the feasibility "pronouncement" as requiring a review and confirmation that all of the documents and information needed to issue the Concession titles were in order – and, therefore, could be shared with the communities in the consultation process.

652. As explained above, in parallel, SEMARNAT, INPI, and the NGOs delivered their purported studies to Economía, as planned, and, in early January 2023, Secretary Albores met with Secretary Buenrostro at Economía to discuss mining concessions and the protection of indigenous communities.[1876] As noted, in delivering these purported studies to Economía, SEMARNAT laid bare their object and purpose: the studies, Economía noted, were intended to "contribute to Economía's feasibility analysis so it declares [the Concessions] as unfeasible, considering their potential effect in the environment, and human rights to water, health, and healthy environment."[1877] These studies had their intended effect: on 9 February 2023, Economía reversed course on feasibility, ruling in its February 2023 *Oficio* that issuing the Concessions was "not feasible."[1878]

653. *Second*, as noted above, the Supreme Court did not give Economía "freedom of jurisdiction" to implement the Court's decision. As set forth above and in Former Justice Cossío's opinion, Economía was required to implement the Tribunal's orders strictly and within the limitations of the *amparo*.[1879] Moreover, even assuming, *arguendo*, that Economía had "freedom of

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1873 Economía, Draft Feasibility Oficio, dated November 2022, at pp. 2-3, **Exhibit C-930**.

1874 Economía, Draft Feasibility Oficio, dated November 2022, at p. 3, **Exhibit C-930**.

1875 Economía, Draft Feasibility Oficio, dated November 2022, at p. 4, **Exhibit C-930**.

1876 *See supra* Section 2.16.

1877 Letter from Guadalupe Espinoza (SEMARNAT) to Rosa María Gutiérrez (Economía), dated 19 December 2022, **Exhibit C-791**.

1878 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 13-17, **Exhibit C-111**.

1879 *See supra* Section 2.14.

jurisdiction" to review the full concession applications *de novo*, which it was not, Economía was still required to accord Minera Gorrión its due process rights in that *de novo* review.[1880]

654. As explained above, Mexican case law establishes that due process rights must be observed in all types of proceedings.[1881] Indeed, nowhere in its decision requiring Economía to comply with the Supreme Court's orders did the District Court say that Economía should disregard the rules of the administrative proceeding, as Mexico now contends.[1882] Under Mexican law, Economía is at all times required to abide by its own administrative rules and due process protections, which included according to Minera Gorrión the possibility of being heard and submitting corrections under Article 22 of the Mining Regulations. By seizing on the alleged technical errors in the expert reports – and then denying Minera Gorrión any opportunity to correct those alleged technical errors, as required under Article 22 – Economía breached both the Mining Regulations and the Federal Law on Administrative Procedure, which serve to guarantee an adequate defense, before the authority issues a decision affecting legal rights.[1883]

655. *Third*, the alleged technical defects Economía identified in the expert reports were not "substantial legal and technical irregularities that directly affected the definition and limits of the concession zones, and, accordingly, the State's capacity to determine whether they overlapped with indigenous territory subject to consultation."[1884] Nor was it necessary "to declare [the Concession titles] 'non-feasible' so that Mexico could reestablish legality and avoid new constitutional breaches."[1885] These arguments are meritless. As an initial matter, these alleged minor coordinate and perimeter issues did not impair "the State's capacity to determine whether they overlapped with indigenous territory subject to consultation."[1886] At most, correcting these alleged minor discrepancies would have meant placing a new milestone for the perimeter and using a specialized software to change the format of the coordinates[1887]

1880 Cossío Expert report, at para. 169.

1881 *See supra* Section 2.14.

1882 District Court's Ruling on Compliance with First Effect of Supreme Court Amparo Ruling, dated 5 December 2022, at p. 9, **Exhibit C-553**.

1883 Cossío Expert Report, at para. 210.

1884 Counter-Memorial, at para. 700.

1885 Counter-Memorial, at para. 700.

1886 Counter-Memorial, at para. 700.

1887 The milestones or *mojoneras* are the monuments erected for the purpose of marking and designating the perimeter of the desired concession area.

– this would not have changed in any significant way the actual Concession areas or the indigenous territory subject to consultation, as Mexico asserts without support.[1888]

656. In any event, these alleged minor discrepancies could have been easily addressed and remedied through the correction process under Article 22 of the Mining Regulations – or Economía could have itself corrected the alleged discrepancies under Article 24. In other words, Economía was not left with "no choice" but to cancel the Concessions, as Mexico says – indeed, as set forth below, these alleged discrepancies were not even the real reason for Economía's finding of "non-feasibility," further undermining the alleged "substantial legal and technical" nature of the discrepancies that Economía failed to identify for more than 14-20 years.[1889]

657. *Finally*, Mexico's assertion that that the Second Collegiate Court's rejection of Minera Gorrión's appeal confirms the legality of Economía's February 2023 *Oficio* is unavailing.[1890] As former Justice Cossío explains, in resolving Minera Gorrión's appeal, the Collegiate Court incurred in the same irregularity that Economía did when issuing the February 2023 *Oficio*: namely it overlooked the subject matter of the *amparo*, as well as the nature and purpose of the relief granted to Tecoltemi in the *amparo*.[1891] In any event, Mexico cannot use its domestic courts to immunize and shield its arbitrary actions from scrutiny under international law; that is particularly so where, as here, there was a lack of candor with the Mexican courts as to the actual basis for the February 2023 *Oficio,* as detailed below.

2.17.3. Internal Documents Reveal That Economía, In Fact, Based Its Feasibility Decision On The INPI Study

658. Mexico contends that "instead of being based in pretexts, Economía feasibility assessment was the next administrative step needed to comply" with the Supreme Court's decision.[1892] As such, Mexico argues, the feasibility assessment "was neither a discretionary act nor was it politically motivated."[1893] Mexico further contends that "the Claimants do not submit substantive proof of a link between the political rhetoric with SEMARNAT's or Economía's decisions."[1894]

1888 Counter-Memorial, at para. 700.

1889 *See infra* Section 2.17.3.

1890 Counter-Memorial, at paras. 417-419.

1891 Cossío Expert Report, at para. 227.

1892 Counter-Memorial, at para. 665.

1893 Counter-Memorial, at para. 665.

1894 Counter-Memorial, at para. 710.

According to Mexico, "Economía and its public servants strictly followed judicial orders," and their actions "were lawful."[1895] The documentary record shows otherwise.

659. Throughout this arbitration, the Claimants have maintained that the alleged technical defects Economía seized upon in its February 2023 *Oficio* were pretextual.[1896] This is now confirmed. Specifically, the evidence shows that, although Economía grounded its feasibility decision on the alleged technical defects in the expert reports – and informed the District Court that it had relied only upon the "mining concession application[s]" and the "expert reports" filed with those applications in issuing the February 2023 *Oficio* – this was not so: internally, Economía acknowledged and recorded that it was ***the INPI study*** that "served as the basis for the DGM's decision" on the Concessions.[1897]

660. Specifically, by email dated 8 March 2023, Mr. Rafael Palma Castillo, DGM's Cartography and Mining Concessions Director, advised Ms. María Deifilia Madrigal Figueroa, DGM's Director of Document Management Division, that the INPI study, which "Economía had received on 9 January 2023 and transmitted to the Unit for the Coordination of Extractive Activities on 19 January 2023," had been "included in the administrative file of mining concession 'Cerro Grande,' title 219469, ***because said report served as the basis for DGM's resolution" on "the feasibility of re-issuing a concession title with respect to that plot of land, and in relation to the indigenous consultation . . . as challenged in the amparo***."[1898] This is confirmed by the fact that the INPI "study" is the only one of the four "studies" in the concession files produced by Mexico.[1899] In other words, as planned by SEMARNAT, INPI, and the NGOs in their closed-door meetings, Economía used one of their purported "studies" to cancel the Concessions definitively. Moreover, the fact that DGM's Cartography and Mining Concessions Director sent this email is telling – he would have understood the underpinnings of the alleged technical defects, but wanted to make clear in the concession files that those alleged defects were not the real reason for the non-feasibility determination – the real reason was the INPI study.

1895 Counter-Memorial, at para. 421-423.

1896 Counter-Memorial, at para. 426.

1897 Email from Mr. Rafael Edipo Palma Castillo (DGM's Cartography and Mining Concessions Director) to Ms. Maria Deifilia Madrigal Figueroa (DGM's Director of Document Management Division), dated 8 March 2023, **Exhibit C-804**.

1898 Email from Mr. Rafael Edipo Palma Castillo (DGM's Cartography and Mining Concessions Director) to Ms. Maria Deifilia Madrigal Figueroa (DGM's Director of Document Management Division), dated 8 March 2023, **Exhibit C-804**.

1899 Administrative File for Mining Concession No. 219469 ("Cerro Grande"), Volumes I to VII and Appendices I to IV, dated 2002-2023, **Exhibit C-658**; Administrative File for Mining Concession No. 233434 ("Cerro Grande 2"), Volumes I to VII and Appendices I to III, dated 2008-2023, **Exhibit C-659**.

661. SEMARNAT itself has confirmed this. On 10 June 2024, SEMARNAT hosted an event at its headquarters in Mexico City titled, *Foro con Organizaciones y Movimientos Sociales*, at which it convened the NGOs that had worked hand-in-hand with SEMARNAT and its affiliated agencies during the AMLO administration.[1900] SEMARNAT's stated purpose for the event was to recognize "fulfilled commitments" and "deliverables" achieved through that partnership.[1901] As part of the forum's materials, SEMARNAT published on its website a report profiling the NGO Atcolhua and its work with SEMARNAT in the cancellation of the Concessions.[1902]

662. In that report, SEMARNAT noted that, in 2022, Atcolhua and Tecoltemi had "expressed to SEMARNAT their opposition to new mining concessions, and their concern that the Project would come to fruition, given that the *amparo* had been pending for years, and the [Supreme Court's decision] was then in its execution phase."[1903] According to SEMARNAT, given these concerns, it had "an initial approach" that was agreed with "members of [CTT and Atcolhua], along with PROFEPA, INPI, and the Office of the Spokesperson of the Presidency"[1904] – *i.e.*, the seminal 11 July 2022 meeting for which Mexico has produced no documents.[1905] The IMTA, INECC, CONABIO, and INPI studies were then "coordinated by the Mexican

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1900 SEMARNAT, *Foro con Organizaciones y Movimientos Sociales*, Events page, held at Ejército Nacional 223, Col. Anáhuac, Miguel Hidalgo, CDMX on 10 June 2024, available at https://eventos.semarnat.gob.mx/evento/566fbecb-531b-4c2d-9ea1-1907b7fba0eb, (Spanish original: "*el sector ambiental ha caminado de manera conjunta con organizaciones de la sociedad civil, colectivos y comunidades*"; "*Reconocer los compromisos cumplidos, los entregables, las herramientas y capacidades que se fortalecieron y construyeron*"), **Exhibit C-867**.

1901 SEMARNAT, *Foro con Organizaciones y Movimientos Sociales*, Events page, held at Ejército Nacional 223, Col. Anáhuac, Miguel Hidalgo, CDMX on 10 June 2024, available at https://eventos.semarnat.gob.mx/evento/566fbecb-531b-4c2d-9ea1-1907b7fba0eb, (Spanish original: "*el sector ambiental ha caminado de manera conjunta con organizaciones de la sociedad civil, colectivos y comunidades*"; "*Reconocer los compromisos cumplidos, los entregables, las herramientas y capacidades que se fortalecieron y construyeron*"), **Exhibit C-867**.

1902 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (presentation at the SEMARNAT *Foro con Organizaciones y Movimientos Sociales*), **Exhibit C-797**.

1903 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section III (*Metodología*) available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, **Exhibit C-797**.

1904 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (presentation at the SEMARNAT *Foro con Organizaciones y Movimientos Sociales*), **Exhibit C-797**.

1905 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section III (*Metodología*), available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*A raíz de estas demandas, la SEMARNAT mantuvo un primer acercamiento con integrantes del Consejo Tiyat Tlali por la defensa de la vida y de nuestro territorio, así como con la Unión de Ejidos y Comunidades en defensa de la tierra, el agua, la vida Atcolhua, del municipio de Ixtacamaxtitlán, en el que además participaron la Procuraduría Federal de Protección al Ambiente (PROFEPA), el Instituto Nacional de los Pueblos Indígenas (INPI), y el Vocero de la Presidencia de la República*"), **Exhibit C-797**.

Government" for submission to the courts as part of the feasibility review.[1906] After the studies were concluded, "they were made known to Economía to issue a decision as the Supreme Court required," which Economía did, ruling against feasibility.[1907]

663. SEMARNAT's report confirms two further points. *First*, it confirms that the INPI study was not prepared by INPI on an independent basis; instead, the INPI study was led by the NGO Atcolhua, "*en compañía del INPI*."[1908] In other words, the principal basis for the February 2023 *Oficio* was a study led by one of the NGOs that had opposed the Ixtaca Project for years. The INPI study was also not prepared by independent and technically capable entities, as required by the Inter-American Court of Human Rights in *Saramaka v. Suriname*.[1909]

664. Specifically, as detailed above, Atcolhua was one of the NGOs that had actively opposed the Project since approximately 2014.[1910] Despite having sought leave to file an *amicus curiae* in this arbitration, to date, it remains wholly unclear what Atcolhua is and who it represents – or how it had the capacity to lead an independent and technically capable study on social and cultural impacts.[1911] There is no public information regarding Atcolhua's establishment, legal structure, activities, or ownership. Nor is there any evidence that Atcolhua has or had the authority to speak on behalf of the indigenous communities in Ixtacamaxtitlán. Atcolhua does

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1906 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section III (*Metodología*) , available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*A raíz de estas demandas, la SEMARNAT mantuvo un primer acercamiento con integrantes del Consejo Tiyat Tlali por la defensa de la vida y de nuestro territorio, así como con la Unión de Ejidos y Comunidades en defensa de la tierra, el agua, la vida Atcolhua, del municipio de Ixtacamaxtitlán, en el que además participaron la Procuraduría Federal de Protección al Ambiente (PROFEPA), el Instituto Nacional de los Pueblos Indígenas (INPI), y el Vocero de la Presidencia de la República*"; "*A partir de ese momento se estimó la elaboración de dos estudios que serían considerados por la Suprema Corte de Justicia de la Nación en lo relativo al estudio de factibilidad*"), **Exhibit C-797**.

1907 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section III (*Metodología*), available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, **Exhibit C-797**.

1908 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section III (*Metodología*) , available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*el segundo Estudio de impacto comunitario indígena estaría a cargo de la Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua, en compañía del INPI.*)," **Exhibit C-797**.

1909 *Case of the Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 28, 2007, Series C No. 172, **Exhibit C-770**.

1910 *See supra* Section 2.9.5.

1911 Application to file an *amicus curiae* submission filed by Mr. Oscar Pineda of the non-governmental organization PODER on behalf of the *Unión de Ejidos y Comunidades en Defensa de la Tierra, el Agua y la Vida Atcolhua*, dated 18 December 2024, **Exhibit C-932**.

not have a website, and the only website that refers to Atcolhua is PODER's – the U.S.-based and Ford-foundation-funded NGO that for years fronted the opposition to the Project.[1912] Despite Atcolhua's obscurity, this purported organization had direct access to Secretary Albores and to other SEMARNAT senior officials, as well as IMTA, INECC, and, INPI.

665. *Second*, in its report, SEMARNAT frames the cancellation of the Concessions that it achieved with Atcolhua around a "new relationship" between the Mexican State and indigenous communities, and a Government commitment of "not granting new mining concessions anywhere in the national territory."[1913] In other words, Mexico's contention that "the Claimants do not submit substantive proof of a link between the political rhetoric with SEMARNAT's or Economía's decisions" is contradicted by SEMARNAT's own words.[1914] The cancellation of the Ixtaca Concessions did not result from any failure by Minera Gorrión to meet legal, environmental, or social requirements, as Mexico would have this Tribunal believe; rather, as SEMARNAT itself put it, the cancellation stemmed from a Government commitment under AMLO of "not granting new mining concessions anywhere in the national territory."[1915]

666. *Finally*, Mexico contends that the Claimants have pursued an alleged "deficient" legal strategy, because they "did not file available legal challenges" to Economía's acts and "withdrew those they did file, without any justification."[1916] These assertions too are meritless.

667. As Mr. McDonald explains, Minera Gorrión's decision to withdraw the nullity proceedings was a considered decision, taken on the advice of counsel and as required to invoke the Claimants' rights and protections under the CPTPP.[1917] It was not an abandonment of legal recourse; it was a decision to pursue the only forum in which the Claimants believed an

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1912 *See supra* Section 2.9.5.

1913 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section I, ,available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*En la nueva relación del Estado mexicano con los pueblos y comunidades indígenas se ha priorizado el diálogo genuino, así como el reconocimiento y respeto a su libre determinación y autonomía sobre sus tierras, territorios y recursos naturales*;" "*uno de los compromisos actuales del Gobierno, ha sido no otorgar ninguna concesión minera en el territorio nacional*"), **Exhibit C-797**.

1914 Counter-Memorial, at para. 710.

1915 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section I , available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*En la nueva relación del Estado mexicano con los pueblos y comunidades indígenas se ha priorizado el diálogo genuino, así como el reconocimiento y respeto a su libre determinación y autonomía sobre sus tierras, territorios y recursos naturales*;" "*uno de los compromisos actuales del Gobierno, ha sido no otorgar ninguna concesión minera en el territorio nacional*"), **Exhibit C-797**.

1916 Counter-Memorial, at para. 425.

1917 McDonald WS-2, at Section 11.3.

impartial adjudication of their claims could be obtained.[1918] The waivers required under the CPTPP were duly provided in connection with the filing of the Request for Arbitration on 14 June 2024,[1919] and before submitting those waivers, Minera Gorrión formally withdrew all local proceedings in Mexico and has taken no action to continue those proceedings since then.[1920]

668. Mexico's further suggestion, namely that the Claimants are using this arbitration as "an appeals mechanism" to "bypass the national legal system of a sovereign State," is equally false.[1921] Far from "eluding" the Mexican legal system, the Claimants first sought relief in Mexico – including meetings with Economía, judicial appeals, and nullity proceedings – to no avail.[1922] Mexico, in acceding to the CPTPP, guaranteed that it would not act under the guise of regulatory action to destroy covered investments for purely political ends. Yet, that is precisely what Mexico did in this case. It is that breach that brings the Claimants before this Tribunal, not any attempt to "bypass the national legal system" of Mexico.

2.18. Mexico's Social License Defense Is A Red Herring

669. Having failed to justify the cancellation of the Claimants' concessions on any ground that animated Mexico's measures at the time, Mexico now seeks to recast this case as one concerning "social justice", "cultural identity", and the "protection of indigenous rights", invoking a purported "Social License to Operate" ("**SLO**") defense.[1923] But Mexico did not raise the absence of social license when Economía issued its cancellation decision, did not invoke social conflict or community opposition as a basis for its measures, and made no reference to any SLO requirement in the contemporaneous record.[1924] Mexico's defense is thus a post hoc construct, assembled after the fact to divert the Tribunal's attention from Mexico's manifest breaches of the Treaty.

670. The Claimants reject, for the reasons set out in this section, that social license constitutes a legally cognizable requirement, a regulatory standard, or any basis upon which a State may

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1918 McDonald WS-2, at Section 11.3.

1919 Consent and Waiver Letter by Almaden dated 13 June 2024, at **Exhibit C-139**; Consent and Waiver Letter by Almadex dated 13 June 2024, at **Exhibit C-140**; Consent and Waiver Letter by Minera Gavilán dated 13 June 2024, at **Exhibit C-141**; Consent and Waiver Letter by Minera Gorrión dated 13 June 2024, at **Exhibit C-142**.

1920 McDonald WS-2, at Section 11.3.

1921 Counter-Memorial, at para. 433.

1922 *See supra* Section 2.17.1.

1923 Counter-Memorial, at para. 1.

1924 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 1-14, **Exhibit C-111**.

lawfully extinguish vested investment rights without incurring treaty liability.[1925] That rejection is dispositive on its own. But even setting aside that threshold legal problem entirely, Mexico's SLO defense fails on the facts: the record shows – with a degree of documentation that is exceptional for any exploration-stage mining company – that the Claimants did precisely what any reasonable articulation of the social license concept demands, and then some.[1926]

671. The Claimants address Mexico's SLO defense on two distinct and independently sufficient grounds. *First*, as a matter of law, the SLO is an informal, non-legal concept that no Mexican statute, regulation, or administrative rule defines or operationalizes; that no investment arbitration tribunal to date has accepted as a valid defense to treaty liability;[1927] and that – as Mexico's own expert Mr. Cabrera concedes – lacks a normative definition, a competent authority capable of issuing it, and any procedure for assessing compliance.[1928] *Second*, as a matter of fact, Mexico's characterization of the Claimants as an investor that failed to achieve community acceptance finds no support in the contemporaneous evidence; in fact, the record contradicts it. The Claimants invested for many years in structured, transparent, and internationally recognized community engagement,[1929] voluntarily commissioned the first social impact assessment and one of the first human rights impact assessments ever undertaken by an exploration-stage mining company in Mexico.[1930] It secured the active, documented support of the community that stood to be most directly affected by the Project – a community whose elected indigenous representative now appears before this Tribunal to testify in the Claimants' favor.[1931] Both grounds defeat Mexico's defense. The section below develops each in turn.

672. Moreover, there is no basis to conclude – as Mexico and its experts do – that the Project would not have been viable due to social opposition. In reality, local communities supported the Project. The fact that one isolated community – located well outside the Project's area of influence ("**AOI**") – launched an *amparo* proceeding at the instigation of anti-mining NGOs hellbent on undermining the Project does not change that fact. Mexico's SLO defense is

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1925 Cabrera ER, at para. 13 ("it is not obtained in a national or local government office").

1926 Memorial, at paras. 134-136, 153; Uzcanga WS-2, at paras. 8, 11-12, 46-47; Santamaría Tovar WS-1, at paras. 16, 21-42; Anaya WS, at para. 138; García Herrera WS-2, at paras. 2-3, 36.

1927 *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award, dated 30 June 2025, **CL-225**.

1928 Cabrera ER, at paras. 13-28.

1929 Memorial, at paras. 134-136; Uzcanga WS-2, at paras. 8, 11-12, 46-47; Santamaría Tovar WS-1, at paras. 16, 21-42; Santamaría Tovar WS-2, at paras. 14-30.

1930 Memorial, at para. 153; Santamaría Tovar WS-1, at para. 38; Uzcanga WS-2, at paras. 8, 48(a).

1931 García Herrera WS-1, at para. 11; Letter from Community Members to SEMARNAT, dated 25 July 2019, at pp. 1-2, **Exhibit C-77**; García Herrera WS-2, at paras. 2-3.

therefore a red herring, intended to distract the Tribunal from the contemporaneous evidence, which shows that Mexico's measures were arbitrary and pretextual.

673. The Claimants develop this record further below. As they will demonstrate, Mexico and its expert Mr. Cabrera invoke the SLO paradigm as though it were a legal requirement that the Claimants failed to meet, transforming a descriptive concept into a sword to justify the cancellation of the Claimants' concessions.[1932] However, the record, the law, and the governing legal instruments all point in the opposite direction. Below the Claimants show that, far from lacking community acceptance, they built one of the most sustained and extensively documented community engagement frameworks ever undertaken by an exploration-stage mining company in Mexico – a framework that secured active, documented support from the communities closest to the Project, and that the Mexican State systematically chose to ignore.

674. This section proceeds as follows:

a) **Section 2.18.1** demonstrates that Economía did not cancel the concessions on social license grounds, and that the community whose opposition Mexico relies upon as evidence of social conflict – Tecoltemi – lay entirely outside the Project's AOI and could not have been affected by its operations.

b) **Section 2.18.2** demonstrates that social license has no independent legal status in international investment law and cannot function as a defense to treaty liability.

c) **Section 2.18.3** establishes that Mexican law imposes no social license requirement as a condition for mining concessions; that the obligation to conduct indigenous consultation, including FPIC, belongs exclusively to the State and cannot be delegated to the Claimants; and that Mexico cannot recast its own failure to consult as a due diligence failure by the Claimants.

d) **Section 2.18.4** shows that the Inter-American human rights system, on which Mexico relies, does not recognize social license as a legal doctrine and provides no authority for cancelling concessions based on social opposition.

e) **Section 2.18.5** addresses the evidence of community support, including the testimony of the elected indigenous authority of Santa María Zotoltepec, the community impacted most directly by the Project and most conspicuously ignored by the State.

[1932] Cabrera ER, at paras. 60-62.

f) **Section 2.18.6** demonstrates that the Claimants' concession reduction efforts would have remedied any alleged impact on Tecoltemi of the grant of the Concessions, and that Mexico's decision to block such efforts eliminates the entire basis for its post hoc social license defense.

g) Finally, **Section 2.18.7** shows that, even accepting social license as a relevant standard, the Claimants' conduct exceeded any reasonable benchmark, and the evidence Mexico relies on to argue otherwise consists of biased advocacy documents, not independent analysis.

2.18.1. Economía Did Not Cancel The Concessions On Social License Grounds

2.18.1.1. Economía's stated basis for the cancellation was technical, not social

675. Mexico's central argument – that Almaden failed to achieve a social license and therefore the cancellation of the concessions was warranted – is a red herring that fundamentally mischaracterizes the nature of the challenged measures. The Tribunal must keep clearly in focus what actually happened here: Economía permanently cancelled the Claimants' Concessions on 9 February 2023, through the February 2023 *Oficio*, issued by the General Directorate of Mining, in purported compliance with the Supreme Court's judgment of 16 February 2022 in the Tecoltemi *amparo* proceeding.[1933] Its stated reasons for doing so were not based on any "social license" grounds, but rather on alleged technical defects in the original concession applications and accompanying expert reports that rendered the granting of the concessions "not feasible". That decision was arbitrary and pretextual, and was engineered to fulfil AMLO's anti-mining directives. Mexico cannot now retroactively reframe Economía's stated reasoning before this Tribunal.

676. Moreover, Economía's actions were entirely contrary to the principles of indigenous consultation it now invokes in its defense. Having reached its purportedly technical conclusions, Economía concluded that it was not necessary to carry out the consultation the Supreme Court had ordered.[1934] Economía thus subverted the central objective of the judgment it purported to implement. The practical effect was to deny the communities that had actively sought to participate in the consultation process – including Santa María Zotoltepec – any voice in the decision whether or not to reissue the Concessions. As further addressed in Section 2.18.7

[1933] Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023 (with translation), dated 9 February 2023, at p. 1, **Exhibit C-111**.

[1934] Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023 (with translation), dated 9 February 2023, at p. 14, **Exhibit C-111**.

below, this foreclosure was not incidental; it was the outcome that anti-mining NGOs and their allies within the Government had actively sought to bring about.

677. Finally, as demonstrated in **Section 2.16** above, recently produced internal documents reveal that the February 2023 *Oficio* – through which Mexico cancelled the concessions – did not accurately reflect even the stated technical basis for Economía's decision. Internal DGM communications show that Economía acknowledged and recorded internally that it was the INPI report – not the mining concession applications or the expert reports filed with them – that "served as the basis for the DGM's pronouncement"[1935] on the Concessions. Economía thus affirmatively misrepresented its reasoning to the courts and to the Claimants. Moreover, the INPI report itself was not an independent government evaluation: it was co-authored by the Atcolhua NGO, one of the private anti-mining organizations that had opposed the Ixtaca Project for years.[1936]

678. Far from being an objective assessment of the social impact of the Project, the INPI report was biased, flawed and pretextual. As explained in Section 2.16 above, the INPI study did not emerge from any neutral regulatory process. The anti-mining NGOs and SEMARNAT jointly conceived the study at the seminal 11 July 2022 closed-door meeting – which was attended by INPI's General Coordinator of Indigenous Rights, Mr. Hugo Aguilar, a longtime collaborator of INPI Director General Mr. Regino – and was blatantly directed to influence Economía's feasibility determination. INPI transmitted the completed study to Economía on 9 January 2023, without providing a copy to Minera Gorrión or to the pro-Project communities within the Project's AOI.[1937]

679. The INPI study rested on several misrepresentations. It falsely claimed that Mexican law required an EVIS before granting mining concessions, and SEMARNAT later confirmed that the NGO Atcolhua – not INPI – actually led the study. Moreover, while it purported to have been compiled at the request of local communities, as Mr. García Herrera – Santa María Zotoltepec's elected Inspector – confirms in his testimony, INPI never consulted the community about the report let alone provided it with a copy.[1938]

[1935] Internal communication from Mr. Rafael Edipo Palma Castillo (DGM's Director of Cartography and Mining Concessions) to Ms. María Deifilia Madrigal Figueroa (DGM's Director of Document Management), sent on Wednesday, 8 March 2023, **Exhibit C-804**.

[1937] Letter from Hugo Aguilar Ortiz to members of indigenous communities, dated 9 January 2023, **Exhibit C-795**; Letter from Mr. Hugo Aguilar Ortiz (INPI) to Ms. Raquel Buenrostro and Mr. Ángel Diego Gómez (Economía), dated 9 January 2023, **Exhibit C-796**.

[1938] *See supra* Section 2.14; INPI Report, at p. 3, **Exhibit C-407**; García Herrera WS-2, at paras. 29-33.

680. On substance, the study sought to eliminate the Project at the feasibility stage by advancing two new arguments, each of which misrepresents the scope of the Supreme Court's order. *First*, the study invented a new "element" for Economía's feasibility analysis, asserting that the Supreme Court's judgement introduced a requirement to assess cultural, social-organizational, and spiritual/territorial impacts beyond the MIA and EVIS – which it did not.[1939] *Second*, the study declared that a belated free, prior, and informed consultation was "not feasible," grounding that conclusion in the finding that good-faith requirements under ILO Convention 169 Article 6(2) had been violated "from the outset" due to the lack of indigenous consultation prior to the granting of the Concessions, and that the circumstances were not appropriate for a consultation procedure "without vices of origin."[1940] In other words, the INPI report sought to convert the State's own omission into a permanent bar to the very consultation sequence the Supreme Court had ordered.[1941] In other words, the study was not designed to implement the Court-ordered consultation but to ensure that consultation would never occur, by engineering an unfeasibility finding that bypassed and thereby subverted the Supreme Court's two-step process of feasibility analysis followed by consultation.[1942]

2.18.1.2. Tecoltemi was outside the Project's area of influence and would not have been affected by the Project

681. Even setting aside the lack of any relevance of social license to Economía's cancellation of the Concessions, Mexico's invocation of Tecoltemi's opposition as evidence of a lack of social license is misplaced. As explained in Section 2.8 above, Tecoltemi is a small, isolated mountain village comprising roughly 142 residents, sitting well outside the Project's AOI, located 45 minutes to an hour by car from the Project site over steep, narrow mountain roads, with two mountain ranges separating it from the Project.[1943] Prof. Anaya's own January 2022 field visit confirmed that Tecoltemi was "remote" and "lay outside of the watershed in the immediate area of the mine," meaning it was not situated downstream in any way that would expose it to contamination or degradation from the Project.[1944]

1939 INPI Report, at p. 3, **Exhibit C-407**.

1940 INPI Report, at p. 40, **Exhibit C-407**.

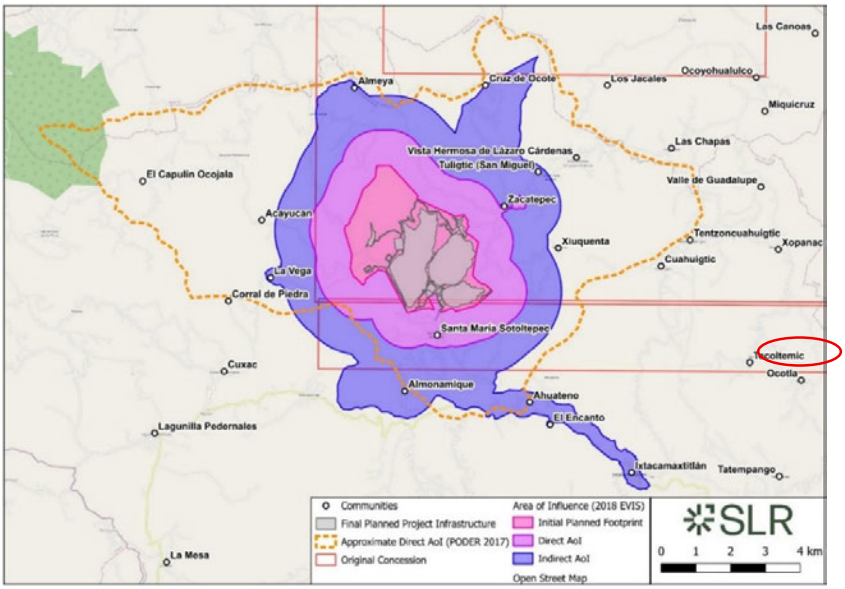
1941 INPI Report, at pp. 40-41, **Exhibit C-407**.

1942 INPI Report, at pp. 40-41, **Exhibit C-407**.

1943 *See supra* Section 2.8; Santamaría Tovar WS-1, at para. 82; Santamaría Tovar WS-2, at paras. 43, 46; Continuous video from Ixtaca Project site to Tecoltemi, dated April 2026, **Exhibit C-828**; García Herrera WS-2, at para. 19.

1944 Anaya WS, at para. 38; Santamaría Tovar WS-1, at para. 78; SLR ER-2, at para. 369.

682. SLR confirms it would have been "physically impossible for the Project to cause impacts to water quality or quantity in Tecoltemi"[1945] – which is precisely one of the reasons Tecoltemi was not included in the Project's AOI,[1946] and the Claimants did not plan to locate any mining operations, components, or access routes within Tecoltemi's land.[1947] The figure below illustrates the remote distance of Tecoltemi from the Ixtaca Project, with Tecoltemi appearing in the bottom right hand corner of the map, well outside the AOI.[1948]



683. These geographical realities fundamentally undermine Mr. Cabrera's conclusions that Tecoltemi was legitimately "concern[ed] about the threat that the mining project posed to their 'water supply sources'",[1949] or that the mine's operations would constitute a "desecration, a violent and irreversible rupture of the integrity" of Tecoltemi's ritual landscape," *i.e.*, its territory.[1950] On the contrary, the Project's operations would have no impact at all on Tecoltemi's territory. A community located beyond multiple mountain ranges, almost eight kilometers from the nearest edge of the Project, outside the environmental AOI, and separated from the Project by natural barriers that made any impact on its water sources physically

1945 SLR ER-2, at para. 369.

1946 SLR ER-2, at para. 369.

1947 McDonald WS-2, at para. 107.

1948 SLR ER-2, at p. 68, Figure 3-8: Incorrect Conflation of Areas of Influence (PODER versus GMI Consultores' 2018 EVIS).

1949 Cabrera ER, at para. 109.

1950 Cabrera ER, at para. 73.

impossible, cannot serve as evidence of a generalized absence of social license – still less as a basis for justifying the retroactive extinction of vested concession rights.

2.18.2. Social License Has No Independent Legal Status Under International Law And Cannot Operate As A Liability Shield

684. Even if social license were somehow relevant to the cancellation of the Concessions – which it is not – Mexico's argument fails because social license has no independent legal status under international investment law and cannot function as a defense to treaty liability.

685. Mexico's argument regarding the SLO has two dimensions: *first*, that the absence of social license justified revocation of the concessions as a matter of law; and *second*, relevant to damages, that the Project never would have been developed because it lacked the community acceptance necessary to proceed. Both limbs fail.

686. The fundamental reason for this is that the SLO concept is not a measurable standard that is capable of evaluation by a tribunal when assessing a State's compliance with its international obligations. The SLO is not a legal requirement, a regulatory standard, or a condition that can lawfully ground the deprivation of vested rights. It is an "informal, non-legal concept" – at most, it is a descriptive shorthand for community sentiment over time.[1951] No statute, regulation, or administrative rule in Mexico defines what "social license" is, how it is obtained, what threshold of community acceptance would suffice to obtain it, who may grant or withdraw it, or what procedure governs its assessment. The SLO is, by design, a relationship, not a permit.

687. As SLR explains in its second report, "the social license concept should be seen as nothing more than a metaphor, and certainly not something that should be measured. Social license must be seen as an ongoing dynamic, not as a single point-in-time assessment."[1952] In the same vein, Professor Anaya describes the social license as "the ongoing acceptance or approval of a project by affected communities and stakeholders."[1953] That indeterminate and evolving character is the defining feature of the concept – and it is one of the many reasons why it is incapable of functioning as a legal standard or serving as a lawful basis for a State to escape liability for breaches of its treaty obligations.[1954] The SLO concept provides no legal

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1951 SLR ER-2, at para. 282; Anaya WS, at para. 136.

1952 SLR ER-2, at para. 282 (*quoting* Vanclay, F., "Questioning the origin of the expression 'social licence to operate': challenging current beliefs. Impact Assessment and Project Appraisal", 44(1), 2-12, **SLR-77**).

1953 Anaya WS, at 136, n. 147; *citing* Alice Stuart et al., *Social License to Operate*, Resources Policy 85 (2023), **Exhibit C-773**.

1954 Anaya WS, at para. 136-138.

benchmark against which compliance can be assessed, let alone one capable of justifying the retroactive cancellation of valuable concession rights.[1955]

688. Indeed, Mexico's own expert, Mr. Cabrera concedes that SLO "remains a limited concept without a clear normative definition. Its binary nature and the lack of uniform criteria on who can grant it generate uncertainty for companies."[1956] This acknowledgement is dispositive. A concept defined by indeterminacy cannot serve as a measurable legal standard, still less as a basis to justify the deprivation of protected rights under the Treaty or as evidence that a project would never have succeeded.

689. To the Claimants' knowledge, no prior investment arbitration tribunal has ever upheld a social license defense to justify the extinction of an investor's property rights. On the contrary, in *Lupaka Gold Corp. v. Republic of Peru*, the Tribunal dismissed the State's attempt to invoke the claimant's alleged lack of a "social license" as a defense on liability and damages for its failure to protect the claimant's project from an unlawful blockade by a rural community. The Tribunal found that Peru's reliance on the concept "raise[d] serious questions in light of the fundamental international legal principle that a State cannot invoke its national law to avoid its international legal obligations."[1957] Likewise, as discussed in Section 5.6 below, the majority of the tribunal in *Bear Creek v.* Peru declined to hold that the investor was contributorily negligent for failing to obtain a social license. The same conclusions pertain here – Mexico cannot rely on the social license concept to excuse or evade responsibility for its actions under international law.

2.18.3. Mexico Cannot Transplant Its Own Failure To Carry Out Indigenous Consultations Onto The Claimants

690. In its 2022 ruling, the Supreme Court found that the Mexican State violated Tecoltemi's rights by granting the Cerro Grande and Cerro Grande 2 mining concessions without having carried out indigenous consultations.[1958] That finding placed the omission squarely where it belongs – on the State. Mexico and its expert Mr. Cabrera, however, seek in this arbitration to reallocate that State failure to the Claimants. Mr. Cabrera frames the absence of consultation as the "primary human rights violation" in this case and attributes it to the Claimants' own due diligence failures, asserting that the company failed in its "early, proactive" obligation to

1955 SLR ER-2, at para. 282.

1956 Cabrera ER, at paras. 13-28.

1957 *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award, at para. 206, dated 30 June 2025, **CL-225**.

1958 Cabrera ER, at paras. 113-114; Amparo en Revisión 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**.

identify the indigenous presence in the Project's AOI.[1959] That reattribution is legally and factually flawed for the reasons set out below.

2.18.3.1. Mexican law does not codify social license or indigenous consultation as a condition for granting or maintaining mining concessions

691. First of all, Mexico's argument is unsupported by its own legal framework. No provision of the Mexican Mining Law, its Regulations, or any applicable Mexican norm imposes social license as a requirement for a concession application or for the maintenance of concession rights.[1960] Nor does Mexican law require mining companies to prepare an EVIS or an HRIA. Moreover, the concept of social license carries no defined legal content under Mexican law. There is no competent authority, no certification process, no administrative act, and no legal criteria by which it may be established or assessed.[1961]

692. Mexico does not, because it cannot, identify any legal provision that conditions the validity or continuity of a mining concession on evidence of community acceptance. Regardless of this fact, Mr. Cabrera repeatedly treats international industry standards relevant to the social license – including the IFC Performance Standards and the UNGPs – as if they were binding obligations incumbent on the Claimants, artificially raising the compliance threshold beyond what Mexican law demands.[1962] In any event, as elaborated in further detail below, the Claimants met and exceeded those international standards.

2.18.3.2. The consultation obligation belongs exclusively to the State and the State cannot transfer it to the investor

693. Mexico's argument also fails because, under both Mexican law and international law, the obligation to conduct prior indigenous consultation – including obtaining free, prior informed consent ("**FPIC**") – belongs exclusively to the State, and the State cannot delegate it to or impose it upon a private investor. The 2013 CDI Protocol states expressly that "the obligation to consult is the responsibility of the State, and therefore the planning and execution of the consultation process is a duty that cannot be avoided nor delegated to third parties, companies,

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1959 Cabrera ER, at paras. 11, 60, 105-106.

1960 Santamaría Tovar WS-1, at para. 38; Uzcanga WS-2, at paras. 8, 48.

1961 *See* SLR ER-2, at para. 282.

1962 SLR ER-2, at para 277(c) and Section 3.2.7; Cabrera ER, at paras. 91-93.

or private individuals."[1963] The INPI Protocol reaffirms this , characterizing consultation and FPIC as an "unrenounceable, unavoidable, and non-transferable duty of the State."[1964]

694. International human rights standards confirm the same principle. Elaborating on the UN Declaration on the Rights of Indigenous Peoples ("**UNDRIP**"), the UN Human Rights Council has stated that "as States are the duty bearers in implementing indigenous peoples' rights, their human rights obligations cannot be delegated to a private company or other entity . . . and they remain responsible for any inadequacy in the process."[1965] Prof. Anaya is emphatic on this point: "Mexico's obligation to consult Tecoltémic is one that it alone had and that could not be delegated." As he explains, "responsibility for the failure to consult Tecoltémic is Mexico's alone, and not the company's"[1966] – an obligation he characterizes as "non-transferable" under UNDRIP and ILO Convention 169.

695. As SLR similarly confirms, under UNDRIP and the ILO Convention 169 "only the State – not the individual operator of a project – has the legal mandate to design, lead, validate, and conclude consultation processes with Indigenous Peoples, to reach either agreements or consent."[1967] The IACHR confirmed the same principle in *Sarayaku v. Ecuador*, holding that

> the obligation to consult is the responsibility of the State; therefore, the planning and implementation of the consultation process is not a duty that can be avoided by delegating it to a private company or to third parties, much less to the same company interested in exploiting the resources in the territory of the community subject to the consultation.[1968]

696. Critically, even Mr. Cabrera does not dispute that the consultation obligation is a State duty. His report acknowledges, citing the Supreme Court's ruling, that

> the Mexican State violated the fundamental right to consultation and consent of the Indigenous Community Náhua de Tecoltemi by

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1963 CDI Protocol (2013), at p. 23, **Exhibit C-499**; Memorial, at para. 350.

1964 SLR ER-2, at para. 288 (*quoting* INPI Oficio núm. DPUE/2019/OF/0373, dated 22 March 2019, at p. 45, **Exhibit SLR-47**).

1965 SLR ER-2, at para. 289 (*quoting* UN Human Rights Council. 2018. A/HRC/39/62, dated 10 August 2018, **Exhibit SLR-82**).

1966 Anaya WS, at paras. 86, 111.

1967 SLR ER-2, at para. 287.

1968 SLR ER-2, at para. 291 (*quoting Sarayaku v. Ecuador*, IACtHR, Judgment of 27 June 2012, at para. 187, **Exhibit SLR-83**).

> granting the mining concessions . . . without having previously carried out a culturally appropriate consultation process.[1969]

697. Mr. Cabrera further accepts, drawing on the *Sarayaku* case, that "consultation is a non-delegable state obligation,"[1970] and expressly concedes that "the legal obligation to organize and guarantee consultation lies with the State."[1971]

698. Despite these admissions, Mr. Cabrera inexplicably asserts that the company's alleged "omission of prior consultation with the Nahua community of Tecoltemic" constituted the "primary human rights violation that triggered the socio-legal conflict" in this case.[1972] He thus seeks to leverage the State's own omission into a corporate due diligence failure.[1973] That move is analytically incoherent: the acknowledgment that the State bears a non-delegable consultation obligation is incompatible with the assertion that the company was to blame for failing to carry out indigenous consultation.

699. Mr. Cabrera's analysis is also untenable on the facts, for three reasons. *First*, at the time the Claimants applied for the Concessions, Mexican law provided no statutory mechanism governing the identification of indigenous communities and carrying out consultations with them.[1974] It was only in 2013, several years after the Concessions were granted that Mexico introduced the 2013 CDI Protocol which set out a tentative framework for indigenous identification and consultation.[1975] Even then, the framework was not legally binding and provided only for *the Government* to carry out an "initial diagnostic" to determine whether indigenous consultations are required. That procedure was unavailable when the Claimants applied for the Concessions. Mexico cannot now fault the Claimants for failing to comply with a procedure that the State itself had not codified or operationalized at the time it issued the concessions.

700. *Second*, Tecoltemi did not self-identify as indigenous until 2015 – respectively 12 and 6 years after the State granted the Cerro Grande and Cerro Grande 2 concessions. Specifically, on 15 March 2015, encouraged by anti-mining NGOs, the Tecoltemi *ejido* self-declared as an

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1969 Cabrera ER, at para. 113.

1970 Cabrera ER, at paras. 36(iii).

1971 Cabrera ER, at para. 112.

1972 Cabrera ER, at para. 60.

1973 Cabrera ER, at paras. 105-106.

1974 Memorial, at para. 178.

1975 Memorial, at paras. 178–179; CDI Protocol for the Implementation of Consultations with Indigenous Peoples and Communities (Feb. 2013), **Exhibit C-499**.

"indigenous community" and filed the *amparo* lawsuit against the Mexican Government for failing to consult prior to granting the Concessions.[1976] Due diligence is assessed against what an investor reasonably could have known at the relevant time, and the Claimants cannot face criticism for failing to identify a community as indigenous when that community had not even asserted the identity that purportedly triggered the consultation obligation.[1977]

701. *Third*, Mexico's own authorities repeatedly confirmed that no consultation was required, and the Claimants relied on those assurances in good faith. The full historical sequence of official government representations – from the Indigenous Issues Commission of the House of Representatives, [1978] the Municipal Government of Ixtacamaxtitlán, [1979] CDI, [1980] and SECOTRADE[1981] – each confirming that no indigenous communities were present in the Project's AOI and no consultation was required, is addressed in full in Section 2.14 above.[1982]

702. In these circumstances, the argument that the Claimants should have somehow identified Tecoltemi and carried out consultations with them – when there was no framework to do so, even Tecoltemi had not declared themselves as indigenous, and multiple government agencies had confirmed no consultations were required – cannot be sustained.

703. A further flaw in Mr. Cabrera's analysis is that he systematically conflates two distinct legal concepts: (i) prior consultation with indigenous communities regarding activities that may affect them or their lands; and (ii) free, prior, and informed consent (*i.e.*, FPIC) from indigenous peoples. Whereas indigenous consultation is a State-led, good-faith procedural obligation to engage indigenous peoples through culturally appropriate mechanisms "with the objective of achieving agreement or consent,"[1983] it does not require a particular result in every case. FPIC, in its strict consent-as-outcome sense, is an outcome-based requirement that arises only in specified, high-impact circumstances, so that consent becomes a legal precondition, rather than

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1976 Anaya WS, at para. 28; Santamaría Tovar WS-1, at para. 81; Notice of Admission of Amparo Indirecto 506/2015, Sixth Judicial District, San Andrés Cholula, Puebla, dated 8 April 2015, **Exhibit C-33**.

1977 SLR ER-2, at para. 370.

1978 Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Tecoltemi, dated 10 August 2016, **Exhibits C-225**, Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Ixtacamaxtitlán and Surrounding Localities, dated 12 November 2016, **Exhibit C-227**.

1979 Municipal government of Ixtacamaxtitlán, Oficio Nº 272/PM/2017, dated 7 September 2017, **Exhibit SLR-45**.

1980 Oficio CGPE/2018/OF/0802, dated 28 September 2018, **Exhibit C-256**.

1981 Oficio No. SECOTRADE/SDE/DGP/074/2018, dated 5 October 2018, **Exhibit C-257**.

1982 *See supra* Section 2.17 regarding Mexico's failure to act on those representations.

1983 UN Declaration on the Rights of Indigenous Peoples, dated 2007, at Article 6.1(a), **Exhibit SLR-79**; SLR ER-2, at para. 267.

merely an objective.[1984] Critically, while consultation is always a key component in seeking agreement and potentially reaching consent, consultation alone does not always require consent.[1985]

704. Mr. Cabrera's conflation of these two concepts is not accidental; it serves a specific analytical purpose. By treating these concepts as interchangeable and asserting that both obligations fell on the Claimants, Mr. Cabrera is able to manufacture a corporate failure where none exists and to present Mexico's own omissions as an investor-generated risk that the Claimants knowingly assumed.[1986]

705. The mechanics of this maneuver are as follows. The Supreme Court's *amparo* finding was that the State failed to consult Tecoltemi before granting the concessions – an act that only the State could perform, at the concession-granting stage, before any investor involvement in the relevant decisions. Mr. Cabrera recharacterizes this as evidence that the Claimants "operated" without FPIC, thereby transforming a governmental procedural deficiency into a due diligence failure by the investor.[1987] Having done so, he asserts that the cancellation of the concessions was the "predictable" and "legally unavoidable" consequence of that failure.[1988] This logic is circular: the State violated its obligation under its own framework; the State cancelled the concessions; and the investor is blamed for both. The more straightforward reading – and the legally correct one – is that the State cannot weaponize its own consultation omission as a defense in investment arbitration.

706. International standards on indigenous consultation and FPIC – as reflected in both ILO Convention 169 and UNDRIP – are not identical to the way FPIC has been implemented under Mexican law. As SLR explains, while international standards use FPIC in an outcome-oriented sense – requiring consent as a precondition in specified high-impact scenarios – Mexican law, as implemented through the 2013 CDI Protocol and the 2019 INPI Protocol, treats FPIC as a consultation-aimed-at-consent obligation, distinguishing between levels of participation depending on the degree of potential impact.[1989] Mr. Cabrera conflates these different standards and applies the most demanding version (*i.e.*, FPIC) across the board, without regard for the

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1984 *See* SLR ER-2, at para. 285.

1985 SLR ER-2, at para. 285.

1986 Cabrera ER, at para. 60; SLR ER-2, at paras. 283-286.

1987 Cabrera ER, at para. 148

1988 Cabrera ER, at para. 239.

1989 SLR ER-2, at paras. 284-85.

applicable legal framework or the question of who – the State or the investor – is legally required to discharge them.

2.18.4. The Inter-American Human Rights System Does Not Recognize Social License As A Legal Doctrine, And No Inter-American Decision Authorizes States To Cancel Concessions Based Solely On Social Opposition

707. Mexico's social license argument draws, through its expert Mr. Cabrera, on the indigenous rights framework developed by the Inter-American system.[1990] Specifically, Mr. Cabrera relies on the following two alleged precedents to argue that the lack of FPIC – and by extension, the alleged absence of social license – constitutes a valid ground for suspending or cancelling mining operations:[1991]

a) The 2010 Inter-American Commission on Human Rights ("**IACHR**") precautionary measures in the case of *Communities of the Sipakapense and Mam Mayan People of the Municipalities of Sipacapa and San Miguel Ixtahuacán v. Guatemala* (IACHR Petition 1566-07) ("**Marlin Mine case**"). In this case, the IACHR required Guatemala to suspend mine operations at the Marlin gold mine to prevent "irreparable damage" to 18 communities, citing concerns about water contamination;[1992] and

b) The 2018 Constitutional Court of Guatemala ruling in the case of *Xinka Indigenous Parliament v. Ministry of Energy and Mines* (Case 4785-2017) ("**Escobal Mine case**"), which suspended the Escobal silver mine's exploitation license for failure to consult the Xinka indigenous people.[1993]

708. Relying on the Marlin Mine Case, Mr. Cabrera states that

> the viability of a project does not depend only on its national permits, but also on its capacity to guarantee human rights, demonstrating that

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1990 Cabrera ER, at para. 36.

1991 Cabrera ER, at para. 36.

1992 Cabrera ER, at para. 36(i); IACHR, Resolution Expanding Precautionary Measures No. MC 260-07, dated 20 May 2010, **Exhibit GCS-10**.

1993 Cabrera ER, at para. 36(ii); Constitutional Court of Guatemala, Judgment dated 3 September 2018, Case 4785-2017, **Exhibit GCS-11**.

> the lack of a social license and the environmental threat are valid grounds for the suspension of extractive activities.[1994]

709. This reliance is misconceived, for several reasons. *First*, contrary to Mr. Cabrera's characterization, the precautionary measures in the Marlin Mine case were directed exclusively at State conduct, namely Guatemala's obligation to prevent and remedy environmental contamination of indigenous communities' water sources, and refrain from the governmental persecution of community leaders who opposed the project.[1995]

710. *Second*, the environmental concerns at issue in the Marlin Mine case arose from the project's ongoing operations. By contrast, the Ixtaca Project never reached the operational stage – due to Mexico's arbitrary measures – and no contamination occurred or was alleged.

711. *Third*, Mr. Cabrera omits a critical subsequent development in the case. On 7 December 2011, after examining additional information submitted by both the State and the petitioners, the IACHR modified the precautionary measures and withdrew the suspension requirement entirely, concluding that, upon further consideration, the wholesale suspension of operations was not warranted.[1996]

712. As regards the Escobal Mine, the Constitutional Court of Guatemala suspended the operator's mining license because the Ministry of Energy and Mines – not the investor – had granted the license on a false and discriminatory premise regarding indigenous populations, without carrying out the required consultation.[1997] Again, the legal finding was one of State failure, not investor failure.

713. Taken together, both cases reinforce, rather than undermine, the Claimants' position. They confirm that the duty to consult is the State's, and when that duty is breached, the Inter-American system imposes remedies against the State. Neither case establishes that social opposition, independently of State consultation obligations, constitutes a valid basis for cancellation of investment rights.

714. More fundamentally, neither the IACHR nor the IACtHR has recognized "social license" as an autonomous legal standard, nor held that a State may extinguish vested mining concession

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1994 Cabrera ER, at para. 36(i).

1995 IACHR, Resolution Expanding Precautionary Measures No. MC 260-07, dated 20 May 2010, **Exhibit GCS-10**.

1996 IACHR, Executive Summary on the Precautionary Measure Granted, "MC 260-07 - Communities of the Maya People (Sipakepense and Mam) of the Municipalities of Sipacapa and San Miguel Ixtahuacán in the Department of San Marcos, Guatemala", dated 20 May 2010, **RL-30**.

1997 Constitutional Court of Guatemala, Case 4785-2017, dated 3 September 2018, **Exhibit GCS-11**.

rights solely because a project lacks community acceptance. The Inter-American jurisprudence concerning consultation and FPIC addresses distinct State obligations toward Indigenous communities; it does not transform "social license" into an independent legal basis for cancelling concessions.

2.18.5. The Claimants Had Genuine And Documented Community Support In The Closest Communities; Mexico's Counter-Evidence Has No Foundation

715. As the Claimants demonstrated in their Memorial and at length in Section 2.7 above, through its community engagement efforts Minera Gorrión built direct, collaborative relationships with the communities surrounding the Ixtaca Project from the outset, implementing a consistent framework of initiatives that earned UN-level recognition for setting new benchmarks in transparency, inclusivity, and sustainable local collaboration.[1998]

716. Mr. García Herrera – the President of the indigenous community of Santa María Zotoltepec, which was the largest and most proximate community to the Project, which Mexico itself describes as "the main nucleus of the Ixtaca Project,"[1999] appears before this Tribunal in support of the Claimants and the Project. According to Mr. García Herrera's testimony, of approximately 450 residents in Santa María Zotoltepec, only around 10 actively opposed the Project; the remainder supported it.[2000] Mexico's assertion that the community lacked social license thus finds no support in the actual composition of community opinion in the area closest to the Project. The full body of evidence regarding community support, including Mr. García Herrera's testimony and the documentary record of the community's sustained and repeated expressions of support to the Mexican Government, is set out in full in Section 2.7 above.

717. Moreover, Mexico's arguments regarding the alleged lack of community support for the Project either distort the evidence or disregard it entirely. For example, Ms. Torres argues that Minera Gorrión's 2023 collaboration agreement with the Santa María Zotoltepec community – which referenced "the Nahua indigenous community of Santa María Zotoltepec" – shows that the company was supposedly "forced" to recognize an indigenous identity it had

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1998 Memorial, at paras. 134-136; *see also* Uzcanga WS-2, at paras. 8, 11-12.

1999 Counter-Memorial, at para. 169; García Herrera WS-2, at paras. 2-3; Pre-Feasibility Study of the Ixtaca Gold-Silver Project Puebla State, Mexico, dated 17 May 2017, Section 20.3.1, Exhibit C-230; Minutes of the Meeting Approving the Registration of the Santa María Zotoltepec Community as Indigenous with INPI, dated 15 December 2022, and Evidence of Receipt of the Relevant Filing, dated 24 January 2023, **Exhibit C-379**.

2000 García Herrera WS-2, at para. 18.

previously denied.[2001] But the record does not support that argument. On 15 December 2022, the Santa María Zotoltepec community held an assembly and voted by majority, in accordance with its own customs, to register as an indigenous community with INPI.[2002] Mr. García Herrera, then serving as *Inspector de Vigilancia* for the community, submitted the formal registration request on behalf of the community on 24 January 2023, and INPI registered the community that same day.[2003] The reference to the community as "Nahua indigenous" – which Minera Gorrión agreed to without hesitation – simply reflected the community's registered status and the institutional framework that emerged after INPI reversed the CDI's prior position in 2019. That conduct shows adaptation to the prevailing institutional framework, not bad faith.

718. Mexico also relies heavily on the January 2023 INPI study. For the reasons detailed in Sections 2.16.1 and 2.17 above, that study (i) was prepared as part of a covert lobbying campaign to improperly influence Economía's decision to cancel the Project; (ii) purported to have been requested by the Santa María Zotoltepec community, when this was not the case; and (iii) was not led by INPI itself, but rather was prepared and drafted by Atcolhua, one of the NGOs that had spread misinformation about the Project and sought to derail the RPI process on spurious grounds. The study's conclusions therefore carry no evidentiary weight.

719. Regarding Mexico's allegation that the Project generated "polarization, division, and confrontation"[2004] within local communities, the evidence again shows otherwise. While it is true that Tecoltemi expressed opposition to the Project, as reflected in the *amparo*, its opposition did not originate from the community itself; as explained in Section 2.8 above, outside activists and NGOs introduced it through pressure tactics and attempts to speak on the community's behalf.[2005]

720. Mexico also cites the removal of Santa María Zotoltepec *ejido* President, [redacted] on 12 March 2023 as supposed evidence of company-induced community conflict.[2006]

2001 Torres ER, at para. 257.

2002 García Herrera WS-2, at para. 31; Minutes of the Meeting Approving the Registration of the Santa María Zotoltepec Community as Indigenous with INPI, dated 15 December 2022, and Evidence of Receipt of the Relevant Filing, dated 24 January 2023, **Exhibit C-379**.

2003 García Herrera WS-2, at para. 31; Minutes of the Meeting Approving the Registration of the Santa María Zotoltepec Community as Indigenous with INPI, dated 15 December 2022, and Evidence of Receipt of the Relevant Filing, dated 24 January 2023, **Exhibit C-379**.

2004 Counter-Memorial, at para. 152; Cabrera ER at para. 247.

2005 García Herrera WS-2, at para. 14; *see also supra* Section 2.8, which addresses in full how the NGOs, having failed to persuade Santa María Zotoltepec to oppose the Project, shifted their efforts to more distant communities with less familiarity with the Project, with Tecoltemi being the ideal target, geographically remote from the Project and well outside its AOI.

2006 García Herrera WS-2, at para. 24; Counter-Memorial, at para. 169.

As the Claimants explain in full in Section 2.5 above, the full factual record – including the *ejidatario*'s public rejection of [redacted] unauthorized use of the ejido's stamp, the ejido's democratic removal of her, and the immediate assumption of office by the alternate president –shows that the removal reflected democratic self-governance, not corporate interference.[2007]

721. The single most critical fact undermining Mexico's narrative – and one that Mexico's experts consistently fail to address – is that Mexico never consulted the communities most likely to be affected by the Ixtaca Project, despite the sustained and documented efforts of local community members to have their voice heard.[2008] As detailed in Section 2.7 above, those efforts included a 25 July 2019 letter to SEMARNAT signed by 808 community members supporting the Project,[2009] a 30 August 2019 letter to AMLO requesting that their views in the development of the Ixtaca Project be taken into account,[2010] and a 4 October 2019 follow-up letter to AMLO expressly disavowing attempts by NGOs to speak on their behalf."[2011]

722. The Government ignored all of these communications.[2012] The Mexican courts then compounded that failure by again refusing to hear from people who lived nearby the Ixtaca Project during the *amparo* proceeding. On 13 January 2022, community members wrote directly to the Justices of the Supreme Court's First Chamber, again expressly rejecting the NGOs that had sought to speak on their behalf and requesting that their own voice be heard. The letter stated plainly: "Enough of external organizations speaking for us. Our communities are small, and we don't know why these organizations are suddenly so interested in the project." The local residents explained that they were afraid of being labeled as "sellouts aligned with the company," but insisted that "[t]his is completely false. We defend the self-determination and autonomy of our communities." They also asked the Court directly why only the voices

2007 *See supra* Section 2.5; García Herrera WS-2, at para. 24; Counter-Memorial, at para. 169.

2008 García Herrera WS-2, at para. 22.

2009 García Herrera WS-1, at para. 11; Letter from Community Members to SEMARNAT, dated 25 July 2019, at pp. 1-2, 13, **Exhibit C-77**.

2010 García Herrera WS-2, at para. 12; Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, **Exhibit C-308**.

2011 García Herrera WS-1, at para. 31; Letter from Community Members to President Andrés Manuel López Obrador, dated 4 October 2019, **Exhibit C-315**.

2012 Santamaría Tovar WS-1, at para. 33; García Herrera WS-2, at para. 22.

opposed to the project were being heard, while the communities closest to the Project – those with families in favor and against – were excluded.[2013]

723. The Supreme Court did not respond and did not hear the community members in the *amparo*. Economía then cancelled the Concessions without carrying out indigenous consultations, despite the Supreme Court's express order for it to do so. Rosario Uzcanga, who spent years developing and overseeing community initiatives at Ixtaca and building relationships with local communities, summarizes her perspective as follows:

> what saddens me the most is that external interference overshadowed the voices of those who supported and truly stood to benefit from the Project – denying the local communities within the Project's area of influence the very human right that the Supreme Court of Mexico sought to protect.[2014]

724. Taken together, the above evidence directly defeats Mexico's social license defense on its own terms. To the extent social license has any relevance as a concept in this case – even as a descriptive metric of community sentiment – it must be assessed by reference to the communities that would actually have been affected by the Project. However, the record shows that Mexico consistently ignored the community members who would have been affected most directly by the Project, including those living in Santa Maria Zotoltepec. Mexico's counter-evidence rests entirely on studies co-authored by anti-mining NGOs that the same community members publicly rejected, on an INPI report falsely attributed to community request, and on a Supreme Court process that excluded the very voices it purported to protect. That evidence does not establish an absence of social license; it establishes an absence of good faith in how Mexico constructed its post-hoc defense.

2.18.6. Mexico Violated the Claimants' Rights by Blocking and Then Disregarding the Concession Reduction Efforts

725. A striking aspect of this case – and one that Mexico and its experts deliberately avoid addressing – is that the Claimants twice attempted in good faith to resolve the issue underlying the *amparo*, namely the overlap between the concession areas and Tecoltemi's *ejido* lands, by

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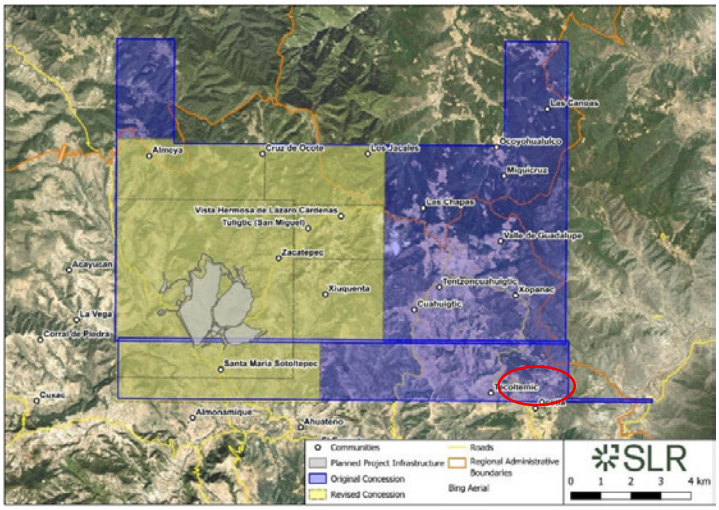
2013 García Herrera WS-2, at para. 21; Letter from Community Members to the Supreme Court Justices, dated 13 January 2022, at pp. 3-4, **Exhibit C-814**; Uzcanga WS-2, at paras. 36-37; *see supra* Section 2.7.

2014 Uzcanga WS-2, at para 65.

relinquishing the portions of their Concessions that overlapped with Tecoltemi's lands. However, Mexico blocked them from doing so each time.

726. As explained in Section 2.8 above, the relevant sequence of events began in July 2015, when Minera Gorrión filed voluntary requests to reduce its concessions.[2015] In May 2017, Economía accepted those reductions.[2016] Tecoltemi nevertheless filed a *queja*,[2017] after which the Second Collegiate Court, in February 2018, blocked the reduction process.[2018] The DGM then reinstated the original concessions in December 2018.[2019] Finally, in November 2022, Minera Gorrión submitted amended applications, to which the DGM never responded.

727. The map below illustrates the original concession areas (outlined in blue) against the proposed reduced concession areas (shaded green);[2020] it makes plain that the Claimants' proposed concession reductions would have placed Tecoltemi well outside the concession areas of the Project, thereby eliminating any residual impact on the *ejido*'s territory.



728. The above sequence carries two critical legal implications that Mexico cannot escape. *First*, it undercuts Mexico's narrative that the Claimants acted in disregard of indigenous rights. A

2015 Minera Gorrión, Application to DGM to Reduce Cerro Grande, dated 31 July 2015, **Exhibit C-35**; Minera Gorrión, Application to DGM to Reduce Cerro Grande 2, dated 31 July 2015, **Exhibit C-51**.

2016 Títulos de Concesión Minera: Cerro Grande R, Cerro Grande 2 R2, and Cerro Grande 2 R3, dated 29 May 2017 to 23 February 2059, **Exhibit C-152**.

2017 Notice of Admission of Amparo Indirecto 506/2015, dated 8 April 2015, at pp. 3-4, **Exhibit C-33**.

2018 Queja 184/2017, Segundo Tribunal Colegiado en Materia Administrativa del Sexto Circuito, dated 1 February 2018, **Exhibit C-53**.

2019 *See* SLR ER-2, at para. 299; CIIJA 2022 EVIS, at Section 2.6, **SLR-49**.

2020 SLR ER-2, at p. 64, Figure 3-7.

company acting in bad faith does not voluntarily relinquish thousands of hectares of concession area in an effort to accommodate indigenous people's concerns. As Prof. Anaya, the world's pre-eminent authority on indigenous rights, explains, this was Minera Gorrión's

> concrete effort to operationalize the mitigation component of the due diligence standard: The modification would mitigate – if not entirely eliminate – any future risks of adverse impacts on Tecoltémic that the existence of the mining concessions might pose.[2021]

729. Prof. Anaya further adds that "[t]he exclusion of Tecoltémic ejido from the concession areas would have entirely removed that encumbrance and therefore remedied the impacts on the community's rights."[2022] Thus, far from disregarding Tecoltemi's rights, the Claimants took active steps to seek to safeguard them.

730. *Second*, and more fundamentally, it shows that Mexico itself stymied the Claimants' good faith efforts to eliminate any impact that the concessions themselves might have had on Tecoltemi's lands. Once again, Prof. Anaya's testimony is instructive:

> This judicial move [*i.e.*, refusing to uphold the concession reductions] effectively frustrated Minera Gorrión's mitigation and remedial efforts. The soundness of its apparent rationale – that the issuance of the new concessions excluding Tecoltémic's ejido would infringe the suspension ordered in the amparo proceedings and affect the ejido's agrarian rights – is highly questionable in the light of general principles of law of justiciability and fair judicial process.[2023]

731. Mexico's obstruction of the Claimants' concession reduction efforts is fundamentally incompatible with its obligations to indigenous communities. As Prof. Anaya notes:

> States have an obligation to prevent and redress human rights impacts, which necessarily includes an obligation not to frustrate efforts by a company to mitigate and remedy human rights impacts in which it is involved.[2024]

2021 Anaya WS, at para. 133.

2022 Anaya WS, at paras. 134-135.

2023 Anaya WS, at para. 135.

2024 Anaya WS, at para. 135.

732. Mexico and its experts fail to confront these issues. Instead, they merely parrot the reasoning of the Second Collegiate Court, that the concession reductions would have violated the suspension in the *amparo* and affected Tecoltemi's agrarian rights.[2025] However, for the reasons highlighted above, these arguments do not withstand scrutiny. The very purpose of the Claimants' attempt to reduce the concessions was to *avoid* any potential impact of their concessions on Tecoltemi's rights.[2026] However, Mexico blocked that attempt and now invokes the consequences of its own conduct as a post hoc justification for its treaty breaches.

2.18.7. Almaden's Social Programs And Due Diligence Satisfied Social License Best Practices, Even On Mexico's Own Terms

733. Even accepting, for the sake of argument, that social license constituted a relevant benchmark and a company obligation, the record establishes that the Claimants' conduct met, and exceeded, the international standards of corporate responsibility that are geared towards obtaining an SLO. As extensively described in the Memorial, the witness statements of Mr. Santamaría Tovar, Mr. Herrera and Ms. Uzcanga and in Section 2.7 above, Almaden's engagement activities were significant, thorough and sustained, encompassing more than 130 meetings with representatives of educational institutions reaching approximately 8,000 people; donations to 150 events related to traditional and cultural preservation reaching approximately 41,000 people; donations to 45 infrastructure rehabilitation projects; 160 scholarships to local students; 24 dialogue table meetings with local communities during 2018 and 2019; a mobile information stand reaching approximately 4,000 people between 2015 and 2019; community information meetings reaching approximately 4,650 people between 2012 and 2023; and organized visits by 500 community members to operating mines across Mexico on 25 separate occasions.[2027]

734. The Claimants' community relations efforts were memorialized in a series of agreements with local stakeholders. As Prof. Anaya explains, such agreements are "important and practical form of impact mitigation", as they "transform situations in which rights may be affected into arrangements that are respectful of those rights under bilateral commitments that can be monitored and enforced."[2028]

2025 Counter-Memorial, at paras. 169-171, and Section E.1.b.

2026 McDonald WS-1, at paras. 81-83.

2027 *See supra* Section 2.7; Santamaría Tovar WS-2, at Sections 3-4; SLR ER-1, at paras. 249-255; Uzcanga WS-2, at paras. 29-30.

2028 Anaya WS, at para. 121.

735. In August 2019, Minera Gorrión signed its first agreement with the Zacatepec Small Landowners Group. This agreement contained a series of water-related commitments, including to construct geomembrane-lined reservoirs,[2029] establish modern drip irrigation systems, and implement water infrastructure improvements.[2030] Minera Gorrión built the reservoir in 2020 with community members participating in its construction and maintenance, and the community remains in charge of its operation, resulting in Zacatepec becoming a year-round producer of strawberries – a concrete example of Minera Gorrión's efforts to encourage long-term, self-sustaining economic diversification that would outlast the mine life. The photos below show the reservoir and the strawberry fields.[2031]



2029 Uzcanga WS-2, at para. 42, (The reservoir was built in 2020 with community members themselves participating in its construction and maintenance, and the community remains in charge of its operation. The project resulted in Zacatepec becoming a year-round producer of strawberries – a concrete example of Minera Gorrión's efforts to encourage long-term, self-sustaining economic diversification that would outlast the mine life.)

2030 SLR ER-1, at paras. 256-263; First General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the Grupo de Pequeños Propietarios del Barrio de Zacatepec A.C., dated 16 August 2019, **SLR-39**.

2031 Minera Gorrión YouTube Channel (Web page), Reservorio de agua en Zacatepec-Etapa final, *available at* https://www.youtube.com/watch?v=_1w52tJGb64, dated 21 April 2023, **Exhibit C-424**.



736. In July 2022, Minera Gorrión and the Zacatepec Small Landowners Group signed a Second General Collaboration Agreement expanding the water infrastructure work begun under the 2019 agreement to address community demand.[2032]

737. The depth and breadth of community support for the Project is reflected in formal letters that local residents sent directly to the Mexican Government to ensure that their voices – not those of external NGOs – were heard. As explained above,[2033] on 25 July 2019, 808 community members from 57 communities across the Municipality of Ixtacamaxtitlán signed and submitted a letter to SEMARNAT affirming their support for the Ixtaca Project and their confidence in the environmental review process. Significantly, nine of those communities were located within the Project's AOI, and accounted for 334 signatures between them – representing approximately 41% of the total – demonstrating that support for the Project was strongest among those living closest to it.[2034]

738. Mexico and its experts characterize the Claimants' community outreach programs – including scholarships, medical equipment, summer camps, support for local festivities, and water infrastructure – as a purely "transactional" model of engagement, amounting to "gifts" for which the company expected consent in return.[2035] According to Mr. Cabrera, this model caused regional polarization rather than building genuine social license.[2036] These arguments run counter to established principles of corporate responsibility.

2032 SLR ER-1, at paras. 256-263; Second General Collaboration Agreement, dated 29 July 2022, **SLR-40**; *see supra* Section 2.7.

2033 *See supra* Section 2.18.2.

2034 SLR ER-1, at para. 263; Letter to Dr. Victor Toledo M., Secretario de SEMARNAT, dated 26 July 2019, **SLR-43**; Letter from community members to SEMARNAT, dated 25 July 2019, **Exhibit C-77**.

2035 Cabrera ER, at paras. 147, 155 and 245-248.

2036 Cabrera ER, at para. 147.

739. As SLR explains, combining early social investment with longer-term relational engagement is standard and accepted industry practice during early exploration, not evidence of a deficient approach: the two methods are complementary, not mutually exclusive, and communities routinely expect tangible support alongside dialogue and access to information.[2037] Internationally – under the Equator Principles, for instance – signed community agreements providing tangible benefits such as those Minera Gorrión entered into are recognized as evidence of trust-based relationships and are treated as important in FPIC consent determinations, not as evidence of their absence.[2038]

740. The Zacatepec irrigation system illustrates the point precisely. SLR confirmed on a March 2026 site visit that the system's operating and maintenance costs are funded entirely from farmers' own revenues, with no ongoing reliance on Almaden – the opposite of the economic dependency Cabrera alleges.[2039]

741. The incomplete irrigation project in Santa María Zotoltepec would have told an equally compelling story: designed to provide approximately 20,000 m³ of freshwater storage for *ejido* lands. However, the project was not completed after Mexico cancelled the concessions, and it remains unfinished because the Puebla state government has not prioritized the approximately five million pesos needed to complete it.[2040] The irony here should not be lost on the Tribunal – Mexico invokes corporate responsibility and community engagement principles as a defense in this case, but it was Mexico's own actions that denied local communities the critical infrastructure that they needed for their livelihoods.

742. The Claimants' own stated objective throughout its community relations initiatives was to avoid creating dependency on the mine, understanding that Ixtaca, like all mines, would eventually close – an objective confirmed by independent site visits and community testimony.[2041] Mr. Cabrera's argument that Minera Gorrión's social programs constituted "clientelism" – that the Company social investment to manufacture an artificial dependency designed to suppress opposition and secure intergenerational buy-in[2042] – is thus at odds with the facts.

2037 SLR ER-2, at paras. 335-337.

2038 SLR ER-2, at paras. 350-352.

2039 SLR ER-2, at para. 353.

2040 SLR ER-2, at para. 347.

2041 SLR ER-2, at para. 353.

2042 Cabrera ER, at paras. 136-138.

743. The Claimants' commitment to going above and beyond with respect to social responsibility is exemplified by the fact that, as mentioned above, the Claimants were the first mining company in Mexico to voluntarily commission an EVIS.[2043] The Claimants' EVIS assessed the Project's potential social impacts across the full AOI, identified 37 potential positive and negative impacts, and proposed mitigation measures to be implemented through the Project's environmental and social management system – including substantive design modifications to the Project itself.[2044]

744. Minera Gorrión was also, as far as the Claimants are aware, the first mining company ever to complete an HRIA to international standards for a mineral development project in Mexico. The HRIA identified 34 scenarios of potential impacts with corresponding avoidance, minimization, and/or compensation measures, and concluded that there was no evidence linking the Company to any human rights violations towards individuals and communities surrounding the Project.[2045] Section 2.9 above show the full account of the HRIA commissioning, the CIIJA methodology, Professor Anaya-chaired Advisory Committee's oversight work, and the HRIA's substantive findings.[2046]

745. SLR's report concludes that the Claimants' efforts to address social and human rights impacts and risks associated with the Project were "exemplary and go above and beyond standard practice for mining projects in Latin America and other parts of the world."[2047] However, Economía never provided feedback either to the HRIA or the EVIS or indicated that they even reviewed them.[2048]

746. Mr. Cabrera treats the 2017 PODER HRIA – produced by PODER, IMDEC, CESDER, and *Atcolhua* – as independent technical evidence of corporate non-compliance and community opposition to the Project.[2049] That characterization is incorrect. Unlike Minera Gorrión's HRIA – which was conducted by an independent and technically capable research organization,

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2043 SLR ER-1, at para. 275; Santamaría Tovar WS-1, at paras. 38-39.

2044 *See supra* Section 2.9 for the full account of the EVIS commissioning, methodology, findings, and the Project design changes it directly informed, including the shift to a dry-stack filtered tailings facility and the engineering of a permanent post-closure water reservoir for community use.

2045 SLR ER-1, at para. 285; CIIJA 2023 EIDH, at Section 7.4, p. 197, **SLR-50**.

2046 *See supra* Section 2.9.

2047 SLR ER-1, at para. 288.

2048 Santamaría Tovar WS-1, at para. 41; Uzcanga WS-2, at para. 54, (Economía discontinued the UNECE Pilot Project shortly after Ms. Raquel Buenrostro replaced Ms. Tatiana Clouthier as Secretary of Economía in October 2022 – without any explanation or feedback to Minera Gorrión.).

2049 Cabrera ER, at para. 199.

CIIJA, under the supervision of an Advisory Committee of international experts chaired by Prof. Anaya[2050] – the PODER HRIA was a vehicle for anti-mining advocacy designed by PODER and its allies to build opposition to the Project. As explained above, when PODER and other NGOs first arrived in Santa María Zotoltepec in or around 2012, they immediately began spreading false information about the Project, telling community members that they were "all going to die because of the mine," showing photographs of disfigured babies, children missing limbs, and people burned by cyanide, and warning that the same would happen to their families if they supported the Project.[2051] They also sought to sow division by declaring that the entire community opposed the Project as soon as one or two individuals expressed opposition.[2052]

747. Through the PODER HRIA, PODER sought to perpetuate misinformation about the Project. The study relied on outdated project designs, speculative worst-case scenarios, and unverified claims.[2053] Moreover, its support team included [redacted], who simultaneously served as lead counsel for Tecoltemi in the *amparo* proceeding.[2054] The Atcolhua organization's lack of any verifiable legal standing, ownership structure, or public profile independent of PODER's own website is addressed in Section 2.16 above.

748. The defects in the PODER HRIA and INPI study carry through to the core of Mexico's analysis. The PODER HRIA's five compounding technical defects – each of which the INPI report and Mr. Cabrera's testimony, inherit – are as follows:

749. *First*, the 2017 PODER HRIA provides limited methodology or field protocols, relies on non-verifiable data sources, and lacks environmental, hydrological and technical analysis concerning the Project. Instead, it relies on wider industry assumptions and includes outdated and incorrect Project information.[2055] A report that lacks verifiable methodology, substitutes industry-level generalizations for site-specific analysis, and was published before the Project's mine plan had even been finalized cannot serve as a credible technical foundation for any

2050 Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca" (HRIA), at p. 101, **Exhibit C-408**; Anaya WS, Section II.

2051 García Herrera WS-2, at paras. 16-17; Santamaría Tovar WS-2, at Section 4.

2052 García Herrera WS-2, at para. 18.

2053 *See supra* Section 2.9; McDonald WS-2, at Section 5.

2054 PODER HRIA, at p. 26, **Exhibit C-229**.

2055 SLR ER-2, at para. 314.

impact assessment. By relying on the PODER HRIA as its primary input, the INPI Report inherits these defects in their entirety.[2056]

750. *Second*, INPI relies on PODER's maps, which use broad hydrological units – such as the Apulco sub-basin – to define the Project's Social AOI. However, standard impact assessment practice requires defining a social AOI based on the project's footprint, planned activities, and interaction with surrounding communities – not by applying a blanket geographic boundary. PODER's AOI is therefore technically incompatible with standard social impact assessment practice.[2057]

751. *Third*, PODER's HRIA treats the Project's AOI as if it automatically reflects the scope of direct impacts, skipping the critical step of evaluating the significance of those impacts and designing targeted mitigation measures. It thereby overstates both the scale and severity of the Project's supposed effects.[2058]

752. *Fourth*, the 2023 INPI report reproduces maps depicting concession areas for the Project that are significantly overstated, showing a footprint far exceeding the official boundaries of Cerro Grande and Cerro Grande 2. As SLR explains

> INPI uses an unverified map sourced from Consejo Civil Mexicano para la Silvicultura Sostenible (CCMSS), which appears to expand the concession footprint across vast portions of Ixtacamaxtitlán […]. Instead of highlighting the appropriate Concession Area, the map incorrectly depicts "all areas in orange" as the Project. This misrepresentation leads INPI to incorrectly classify numerous communities as "within the concession area".[2059]

753. This map, with the overstated concession areas in orange, appears below:[2060]

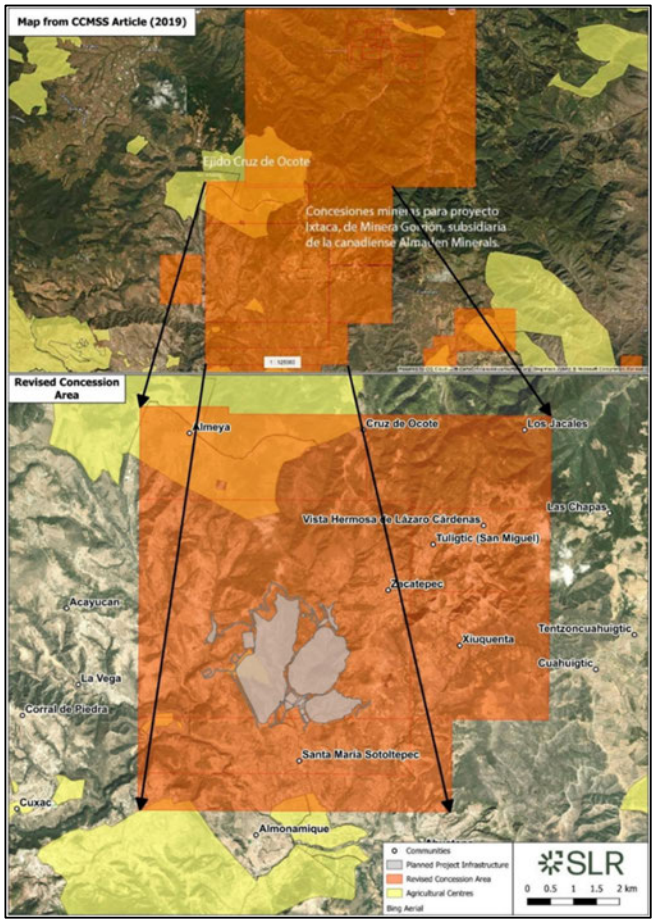
2056 SLR ER-2, at para. 314; *see* Memorial, at para. 161.

2057 SLR ER-2, at para. 315.

2058 SLR ER-2, at para. 316.

2059 SLR ER-2, at para. 317.

2060 SLR ER-2, at p. 69, Figure 3-9: Incorrect Depiction of the Mining Concession Areas (CCMSS, CIIJA).



754. INPI, or more accurately Atcolhua, sourced these maps from the Consejo Civil Mexicano para la Silvicultura Sostenible ("**CCMSS**"), an unverified third-party source that enlarges the concession footprint across vast portions of Ixtacamaxtitlán. The maps incorrectly describe "all areas in orange" as representing the Project, causing INPI to misclassify numerous communities as being "within the concession area" when they are not.[2061] INPI has therefore mapped the wrong area, and all of its community classification conclusions built on that foundation are unreliable.[2062]

755. *Fifth*, and as a direct consequence of the overstated AOI and the inflated concession maps, both the 2023 INPI report and the 2017 PODER HRIA include communities and sites in their analyses that were not identified by the CDI, SEMARNAT, or the National Institute of Statistics and Geography ("**INEGI**") as communities potentially affected by the Project, and

2061 INPI Report, "Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)", at para. 90, map 3, **Exhibit C-407**.

2062 SLR ER-2, at Section 3.2.3.3.

that fall outside both the EVIS and the MIA areas of influence. By artificially expanding the geographic scope of the analysis to encompass communities with no established connection to the Project's operations, INPI and PODER artificially broaden their conclusions from a project-specific impact assessment – *i.e.*, an analysis of what the Ixtaca Project would actually have done – into a sweeping regional-level critique of mining activity in Ixtacamaxtitlán as a whole. When combined with the industry-level generalizations already noted above, this escalation systematically overstates both the geographic and human scope of the Project's supposed effects and strips the analysis of any meaningful connection to the Ixtaca Project as actually designed.[2063]

756. One final dimension of the record deserves attention: the current status of the community of Santa María Zotoltepec. Mr. García Herrera describes a community in decline following the cancellation – a stark contrast to the period when Minera Gorrión was actively working on the Project.[2064] Section 2.7 above details the full account of the Project's economic benefits to the community and the extent of the post-cancellation deterioration. As Mr. García Herrera also confirms, the NGOs that spent over a decade agitating in the community have since departed, leaving nothing behind, having achieved their objective of cancelling the Project without any interest in what would happen to the community afterward.[2065] Promised improvements to water resources and essential infrastructure by the Government never materialized.[2066] In other words, the State that now invokes corporate responsibility and indigenous protection as justifications for cancelling the Claimants' Project has provided neither. Mr. García Herrera himself now works in [redacted] because he could not find employment in his own community.[2067]

757. The image below illustrates the direct consequences of Mexico's actions. It shows the incomplete irrigation water reservoir in Santa María Zotoltepec, a community project left unfinished following the very measures that Mexico now seeks to justify as necessary to protect local communities and their human rights.[2068]

2063 SLR ER-2, at para. 318.

2064 García Herrera WS-2, at paras. 37-38; *see supra* Section 2.7.

2065 García Herrera WS-2, at para. 39; *see supra* Section 2.7.

2066 García Herrera WS-2, at paras. 39; Uzcanga WS-2, at para. 65.

2067 García Herrera WS-2, at paras. 4, 38.

2068 SLR ER-2, at p. 77, Figure 3-12: Incomplete Irrigation Water Supply Pond in Santa María Zotoltepec, March 2026.



758. This is the human consequence of Mexico's breaches of its international obligations. The communities that Mexico claims it protected by cancelling the Project are materially worse off for that cancellation.

759. In sum, Mexico bases its social criticism on a flawed study produced by organizations that opposed the Project since 2012, relying on limited methodology, non-verifiable sources, and an AOI that is technically incompatible with standard impact assessment practice.[2069] Mexico does not engage with the substantial evidence of the Claimants' community engagement efforts and their results – including the 808-signature support letter, the community collaboration agreements, the water infrastructure projects, the HRIA, or the Advisory Committee's conclusions.[2070]

760. Ultimately, while Mexico invokes the social license and indigenous consultation concepts in an attempt to excuse its actions and defeat liability, its actions in this case were entirely inconsistent with those concepts. Not only did it circumvent the Supreme Court's order to carry out indigenous consultations – thereby denying a voice to local communities in favor of the project – but it obstructed the Claimants' attempts to remediate the alleged impacts of its investment and resolve the same issues that the Supreme Court's ruling was designed to protect. This serves to underscore that the issue here was never the absence of a social license; it was the State's decision to disregard both its own legal framework and the evidence before it in

2069 *See* SLR ER-2, at Section 3.2.3.3.

2070 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023 (with translation), dated 9 February 2023, **Exhibit C-111**; Santamaría Tovar WS-1, at paras. 33, 40-41.

order to cancel the Claimants' Project. "Social license" does not explain Mexico's conduct – it is the label it now invokes to obscure it.

3. THE TRIBUNAL HAS JURISDICTION OVER THIS DISPUTE

761. The Claimants established in their Memorial that the Tribunal has jurisdiction over the present dispute, as they have satisfied all of the jurisdictional requirements under the CPTPP and the ICSID Convention.[2071] Specifically, the Tribunal has jurisdiction *ratione personae*, because the Claimants are covered investors under the CPTPP and the ICSID Convention;[2072] the Tribunal has jurisdiction *ratione materiae*, because the Claimants' claims arise out of covered investments within the meaning of Article 9.1 of the CPTPP and ICSID Convention Article 25(1);[2073] the Tribunal has jurisdiction *ratione temporis*, because the Claimants have met all of the temporal requirements under the CPTPP;[2074] and the Tribunal has jurisdiction *ratione voluntatis*, because both the Claimants and Mexico consented to the submission of the present dispute to ICSID arbitration.[2075]

762. In its Counter-Memorial, Mexico raises five unfounded objections to jurisdiction:

a) *First*, Mexico contends that the Tribunal lacks jurisdiction *ratione personae*, because the Claimants – Canadian corporations duly incorporated under the laws of British Columbia – allegedly do not qualify as "investors of a Party" under the CPTPP, on the purported basis that mandatory standard-form declarations in the bylaws of their Mexican subsidiaries, Minera Gavilán and Minera Gorrión (the "**Declarations**"), establish that the Claimants accepted to be treated as Mexican nationals with respect to their investments in the Ixtaca Project, such that they are now allegedly estopped from invoking their Canadian nationality to claim protection under the CPTPP.[2076]

b) *Second*, Mexico contends that the Tribunal lacks jurisdiction *ratione voluntatis*, because, through those same Declarations, the Claimants purportedly waived their

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2071 Memorial, at Section 3.

2072 Memorial, at Section 3.1; Comprehensive and Progessive Agreement for Trans-Pacific Partnership ("**CPTPP**"), dated 30 December 2019, at Art. 9.1, **CL-7**; ICSID Convention, at Art. 25(2)(b), **CL-1**.

2073 Memorial, at Section 3.2; CPTPP, at Art. 9.1, **CL-7**; ICSID Convention, at Art. 25(1), **CL-1**.

2074 Memorial, at Section 3.3; CPTPP, at Arts. 9.2.3, 9.21.1, **CL-7**.

2075 Memorial, at Section 3.4; CPTPP, at Arts. 9.18–9.19, Annex 9-J, **CL-7**.

2076 Counter-Memorial, at paras. 451–502.

rights to invoke the protection of their Government, which Mexico incorrectly reads as encompassing the right to bring this arbitration under the CPTPP.[2077]

c) *Third*, Mexico contends that the Tribunal lacks jurisdiction *ratione temporis* over the Claimants' claims, because the facts upon which those claims are based allegedly occurred before the CPTPP entered into force for Mexico on 30 December 2018.[2078]

d) *Fourth*, Mexico contends that the Tribunal lacks jurisdiction *ratione temporis*, because the Claimants' claims are allegedly time-barred under Article 9.21.1 of the CPTPP, on the ground that the Claimants first acquired – or should have acquired – knowledge of the alleged breaches and resulting losses before 14 December 2020, that is, three years and six months before the filing of the Request for Arbitration.[2079]

e) *Fifth*, Mexico contends that the Tribunal lacks jurisdiction *ratione materiae* over the claims of Almadex and Minera Gavilán, because their alleged covered investments – specifically, the net smelter return royalty they hold in the Ixtaca Project ("**NSR**") – purportedly lacks the hallmark characteristics of a qualifying investment under Article 9.1 of the CPTPP and Article 25(1) of the ICSID Convention, including a contribution involving risk, sufficient duration, and contribution to the host State's economy.[2080]

763. Mexico sought bifurcation of four of these five objections, requesting that the Tribunal decide them as preliminary issues at the outset, separate from the merits.[2081] In its Procedural Order No. 3 dated 25 July 2025 ("**PO3**"), the Tribunal rejected Mexico's request in its entirety.[2082]

764. Notably, with respect to Mexico's *ratione personae* and *ratione voluntatis* objections concerning the mandatory Declarations, the Tribunal found that Mexico had "failed to provide sufficient support for its position that [these objections] raise issues requiring consideration in a preliminary phase of the proceedings separate from the merits."[2083] In so finding, the Tribunal identified several points that weighed against Mexico's position. The Tribunal noted that, at the time the Declarations were signed – in 1996 and 2011 – "the CPTPP had not yet entered into force, so that the Declarations could not amount to an informed waiver by Claimants of

2077 Counter-Memorial, at paras. 498–502.

2078 Counter-Memorial, at paras. 503–511.

2079 Counter-Memorial, at paras. 512–529.

2080 Counter-Memorial, at paras. 530–538.

2081 Bifurcation Request, dated 5 May 2025.

2082 Procedural Order No. 3, dated 25 July 2025 ("**PO3**"), at para. 49(i).

2083 PO3, at para. 33.

treaty rights that did not yet exist."[2084] The Tribunal further observed that "adopting Respondent's interpretation of the mandatory declarations imposed under Mexican law . . . as a waiver by foreign investors of their rights under international investment treaties, would render meaningless all of Mexico's investment treaties and the protection they purport to afford foreign investors" – an interpretation that, if accepted, would mean that "*every* foreign investor with a Mexican subsidiary would in practice be estopped from asserting treaty claims against Mexico."[2085] The Tribunal likewise found that Mexico's position was "incompatible" with its treaty practice of concluding and continuing to negotiate investor protection treaties, "unless one accepts that Mexico negotiated and continues to negotiate those treaties 'with its fingers crossed behind its back.'"[2086] Finally, with respect to Mexico's objection concerning the temporal scope of the Claimants' claims – namely, that the claims allegedly arise from pre-CPTPP events and are time-barred under Article 9.21.1 – the Tribunal equally declined to bifurcate, finding that resolution of this objection would require "extensive evidence, possibly including fact witnesses testimony and expert evidence," and that the relevant factual matrix "substantially overlaps with that relevant to the merits of the case."[2087]

765. As elaborated below, none of Mexico's jurisdictional objections has any merit:

a) *First*, the Tribunal has jurisdiction *ratione personae* and *ratione voluntatis* over the Claimants' claims.[2088] The Declarations are mandatory statements deriving from the Calvo Doctrine, whose sole purpose – as confirmed by their text, Constitutional origins, Mexico's own courts, and investment treaty jurisprudence – is limited to the renunciation of diplomatic protection. These Declarations have no bearing on the Claimants' international law rights under the CPTPP. Furthermore, mandatory domestic law Declarations cannot override Treaty rights; Mexico has failed to establish any element of estoppel under international law; and the Declarations do not meet the legal standard for a valid waiver of Treaty rights – and cannot have waived prospectively rights that did not exist at the time of their adoption.[2089]

2084 PO3, at para. 37, first indent.

2085 PO3, at para. 37, second indent (emphasis in original).

2086 PO3, at para. 37, third indent (citing to Response to Request for Bifurcation, dated June 19, 2025 ("**Response**"), para. 78.)

2087 PO3, at paras. 45, 47.

2088 Memorial, at Sections 3.1, 3.4; Response, at paras. 43–85.

2089 *See infra* Section 3.1.

b) *Second*, the Tribunal has jurisdiction *ratione temporis* over all of the Claimants' claims.[2090] The State measures the Claimants challenge – including SEMARNAT's arbitrary denial of the MIA on 17 December 2020; the Mexican Supreme Court's 16 February 2022 decision ordering suspension of the Concessions, the feasibility pronouncement, and indigenous consultations; SEMARNAT's bad faith campaign against the Project from at least December 2020 until February 2023; and Economía's 9 February 2023 *Oficio* arbitrarily and retroactively cancelling the Concessions in full – each post-date the CPTPP's entry into force and constitute independently actionable breaches. Moreover, no crystallized breach or loss existed before 17 December 2020 – the date of SEMARNAT's arbitrary MIA denial – and therefore the limitation period does not begin to run before that date, rendering the Claimants' Request for Arbitration dated 14 June 2024 timely under Article 9.21.1 of the CPTPP.[2091]

c) *Third*, the Tribunal has jurisdiction *ratione materiae* over the claims of Almadex and Minera Gavilán.[2092] Almadex's shareholding in Minera Gavilán and the NSR royalty Almadex and Minera Gavilán hold in the Project – itself the product of Minera Gavilán's contribution of the foundational concession rights to Minera Gorrión in 2011 – qualify as protected investments under the broad definition of "investment" in Article 9.1 of the CPTPP and Article 25(1) of the ICSID Convention.[2093]

3.1. The Tribunal Has Jurisdiction *Ratione Personae* And *Ratione Voluntatis* Under The CPTPP And The ICSID Convention

766. Mexico contends that the Tribunal lacks jurisdiction *ratione personae* and *ratione voluntatis* over this dispute, because Minera Gorrión and Minera Gavilán adopted Declarations in their bylaws, pursuant to which their foreign shareholders (*i.e.*, the Claimants) purportedly "agreed to be considered Mexican nationals" with respect to their investments in Mexico.[2094] By signing these Declarations, Mexico argues, the Claimants renounced the protection of their Government (*i.e.*, Canada), which Mexico construes as encompassing the right to arbitration under the CPTPP.[2095] As a result, the Claimants are not only allegedly estopped from invoking

2090 Memorial, at Section 3.3; Response, at paras. 88–99.

2091 *See infra* Section 3.2.

2092 Memorial, at Section 3.2.

2093 *See infra* Section 3.3.

2094 Counter-Memorial, at para. 453.

2095 Counter-Memorial, at paras. 451–502.

their Canadian nationality to assert claims under the CPTPP,[2096] but they also allegedly waived the right to bring this arbitration under the Treaty.[2097]

767. Mexico is wrong in all respects. The Claimants are covered investors under the CPTPP and the ICSID Convention because, as addressed below: (i) the Declarations are mandatory standard-form Calvo clauses aimed at preventing foreign investors from seeking diplomatic protection, and have no bearing on their rights under the CPTPP; (ii) even if the Declarations had created a valid commitment, mandatory domestic law declarations cannot override Treaty rights; (iii) Mexico has failed to prove the necessary elements of an estoppel defense under international law; and (iv) the Declarations do not meet the standard for a valid waiver under international law, and cannot waive rights that did not exist at the time of their adoption.

3.1.1. The Declarations Are Mandatory Standard-Form Calvo Clauses Directed At Diplomatic Protection, Not Investor-State Arbitration

768. In its Counter-Memorial, Mexico contends that the Declarations are not Calvo clauses directed at diplomatic protection, but rather are broad commitments made by the Claimants to forgo any form of Governmental protection deriving from foreign nationality, including investor-State Treaty rights.[2098] Mexico is mistaken.

769. *First*, the Declarations are neither novel nor were they freely negotiated; they reproduce, verbatim, the mandatory language prescribed by Mexican law.[2099] Clause Three of Minera Gavilán's bylaws provides that any foreigner acquiring an interest in the company "shall be considered, by that mere fact, as Mexican" and "shall be deemed to agree not to invoke the protection of their government."[2100] Article Eight of Minera Gorrión's bylaws, in turn, provides

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2096 Counter-Memorial, at paras. 490–497.

2097 Counter-Memorial, at paras. 498-502.

2098 Counter-Memorial, at para. 480.

2099 In PO3, the Tribunal noted that the mandatory nature of the Declarations is not disputed between the Parties. *See* PO3, at para. 34 ("It is undisputed that the inclusion of the Declarations in the bylaws of Claimants' local subsidiaries was a mandatory precondition for their incorporation under Mexican law."). *See also* PO3, at para. 35 (observing that "[t]he Parties equally agree that the Declarations are standard form declarations insofar as their content and even their wording is imposed by, or directly derived from, the law.").

2100 *Escritura No. 3,635*, dated 17 September 1996, Third Clause, at p. 16 ("[Minera Gavilán] is incorporated under the laws of the Mexican Republic. Any foreigner who, at the time of incorporation or at any time thereafter, acquires an interest or share in the company shall be considered, by that mere fact, as Mexican with respect to one and the other and shall be deemed to agree not to invoke the protection of their government, under penalty, in the event of breach of this agreement, of losing such interest or share for the benefit of the Nation." Spanish original: "*La sociedad se constituye conforme a las leyes de la República Mexicana. Todo extranjero que en el acto de la constitución o cualquier tiempo ulterior, adquiera un interés o participación social en la sociedad, se considerará por ese simple hecho como mexicano respecto de uno y otra y se entenderá que conviene en no invocar la*

that its foreign shareholders formally undertake "to consider themselves as nationals" with respect to their shares and rights in the company, and "renounce to invoke the protection of their governments."[2101]

770. As the Claimants explained in their Response, this language traces directly to Article 27 of the Mexican Constitution, which, since 1917, has required foreign investors seeking to acquire land or mineral concession rights to agree before the Ministry of Foreign Affairs that: "*a considerarse como nacionales respecto de dichos bienes*, *y en no invocar, por lo mismo, la protección de sus Gobiernos*" – namely, "to consider themselves as nationals with respect to the property and, *for that very reason*, not to invoke the protection of their Governments."[2102] Mexico's 1995 Foreign Investment Law extended this requirement to all Mexican companies with foreign shareholders as a condition of their incorporation, and the 1998 Regulations prescribed the precise wording to be incorporated in the bylaws.[2103] The Declarations are the product of this mandatory statutory scheme.

771. *Second*, Mexico argues that the Declarations contain two distinct and independent obligations – the commitment to be considered Mexican and the waiver of Governmental protection – and that the waiver stands independently even if the nationality commitment were set aside.[2104] Mexico's own Constitutional text defeats this argument. The phrase "*por lo mismo*" – "for that very reason" or "therefore" – embedded in Mexico's Constitution since 1917 makes plain that the two elements are not independent. Indeed, the Constitutional text creates one composite

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protección de su gobierno, bajo la pena, en caso de faltar a su convenio, de perder dicho interés o participación en beneficio de la Nación."), **Exhibit C-162**.

2101 *Escritura No. 10,470*, dated 4 January 2011, at p. 12 ("[Minera Gorrión] is Mexican, expressly establishing that: The current or future foreign partners of this Company formally undertake before the Ministry of Foreign Affairs to consider themselves as nationals with respect to: I. The shares or rights they acquire from this Company. II. The assets, rights, concessions, participations, or interests owned by the Company, and III. The rights and obligations arising from contracts to which the Company is a party. And they waive the right to invoke the protection of their governments, under penalty, in the contrary case, of losing to the benefit of the Nation the rights and property they may have acquired." Spanish original: "*La sociedad es mexicana, estableciéndose expresamente que: Los socios extranjeros, actuales o futuros, de esta Sociedad se obligan formalmente ante la Secretaría de Relaciones Exteriores a considerarse como nacionales respecto de: I. Las acciones o derechos que adquieran de esta Sociedad. II. Los bienes, derechos, concesiones, participaciones o intereses de que sea titular la Sociedad, y III. Los derechos y obligaciones que deriven de los contratos en que sea parte la Sociedad. Y renuncian a invocar la protección de sus gobiernos, bajo la pena, en caso contrario, de perder en beneficio de la Nación los derechos y bienes que hubiesen adquirido*."), **Exhibit C-178**.

2102 Political Constitution of the United Mexican States, dated 1917, at Art. 27, ("[Q]ue convengan ante la Secretaría de Relaciones en considerarse como nacionales respecto de dichos bienes y en no invocar, por lo mismo, la protección de sus Gobiernos por lo que se refiere a aquellos"). **Exhibit C-594**. The current Constitution retains this same language, *see* Political Constitution of the United Mexican States, at Art. 27, **Exhibit C-439**.

2103 Foreign Investment Law, dated 7 June 1995, at Art. 15, **Exhibit R-3**; Regulations to the Foreign Investment Law and the National Registry of Foreign Investments, dated 8 September 1998, Art. 14, **Exhibit R-4**.

2104 Counter-Memorial, at para. 460.

obligation: the investor agrees to be considered Mexican with respect to the property, and as a consequence of that agreement – "*por lo mismo*" – it will not invoke the protection of its Government.[2105] The waiver therefore is the logical consequence of the nationality commitment; it is not a stand-alone obligation capable of bearing independent weight.

772. The scope of what the clause forbids is equally clear. The protection a foreign Government provides to its nationals in international disputes is diplomatic protection. The Calvo Doctrine – and these mandatory declarations – were conceived specifically to disable that mechanism.[2106] Indeed, when the 1917 Constitution was drafted, investor-state arbitration did not exist. As the Claimants have explained, the purpose of these Calvo declarations was to prevent European Governments from intervening through State-to-State action in Latin American affairs to protect their investors.[2107]

773. *Third*, Mexico's own courts have confirmed this narrow interpretation. The First Collegiate Court of the Twenty-Fourth Circuit has found that the obligation under Article 27 of the Mexican Constitution means only that "the foreigner must . . . agree . . . to consider himself as a national with respect to those assets, that is, *not to invoke the protection of his government when any dispute arising from this property occurs*."[2108] The First Chamber of Mexico's Supreme Court, examining the legislative history of Article 27, likewise concluded that the legislator intended foreign investors to agree "not to invoke the protection of their government" so that "foreigners were subject to national legislation for the purposes of *contractual*

2105 Political Constitution of the United Mexican States, dated 1917, at Art. 27, **Exhibit C-594**; Political Constitution of the United Mexican States, at Art. 27, **Exhibit C-439**.

2106 *See*, *e.g.*, Francisco González de Cossío, *Arbitraje de Inversión* (Porrúa ed.), dated 2009, at p. 913 (noting with respect to Article 27 of the Mexican Constitution that, "[f]irst, the way it was reflected in our constitutionalism only establishes the obligation of foreigners not to request diplomatic intervention. Why should that prevent Mexico from entering into investment treaties? Second, investment arbitration not only does not violate the clause, but also achieves its ultimate goals: to prevent foreigners from seeking relief from their home country." Spanish original: "*En primer lugar, la forma en que fue reflejada en nuestro constitucionalismo únicamente establece la obligación del extranjero de no pedir la intervención diplomática. ¿Por qué habría ello de evitar que México celebre tratados de inversión? En segundo lugar, el arbitraje de inversión no solo no viola la cláusula, sino que logra sus fines últimos: evitar que el extranjero busque socorro del Estado del que es originario*."), **CL-183**.

2107 Manuel R. Garcia-Mora, *The Calvo Clause in Latin American Constitutions and International Law*, 33 Marq. L. Rev. 205 (1950), available at https://scholarship.law.marquette.edu/mulr/vol33/iss4/1 (last accessed 18 May 2026), at pp. 205-206 ("The origins of the Calvo Clause may be traced back to the 19th century when European governments practiced aggression and conquest on the basis of the inability of weak countries to meet their financial obligations . . . Historically, the Calvo Doctrine was directed to the Latin American countries, especially to Mexico where Napoleon III had sent an expedition in 1861 to make effective certain claims of French citizens against the Mexican government."), **CL-185**.

2108 Primer Tribunal Colegiado del Vigésimo Cuarto Circuito, Amparo Directo No. 560/2011, dated 17 May 2012, at p. 76 ("[N]ecesariamente el extranjero debe convenir ante el gobierno de la nación, a través de la Secretaría de Relaciones Exteriores, en considerarse como nacional respecto aquellos bienes, es decir, en no invocar la protección de su gobierno al presentarse cualquier conflicto derivado de esta propiedad") (emphasis added), **Exhibit C-591**.

disputes."[2109] Mexico entirely disregards these authorities, which confirm that the declarations are aimed at curtailing diplomatic protection – not international rights under a Treaty.

774. *Fourth*, a number of investment tribunals have confirmed that the scope of Calvo clauses – like the Declarations – are limited to investor recourse to diplomatic protection. In *AES v. Argentina*, for example, the tribunal explained that "the 'Calvo Clause' was in essence a clause by which private persons mistakenly pretended to renounce to a right which in law did not belong to them but to their national State: the right for this State to exercise in favor of its nationals its diplomatic protection."[2110] In *Mobil v. Venezuela*, the tribunal traced the historical origins of the Calvo Doctrine to European military interventions, confirming that Calvo clauses commit investors "not to ask for diplomatic protection by its State of origin."[2111] Indeed, Arbitrator Nikken's separate opinion in *AWG v. Argentina* observed that the ICSID Convention and modern investment treaties represent an evolution beyond the Calvo Doctrine: as he notes, investor-state arbitration provides direct access to a neutral forum, thereby achieving the Calvo Doctrine's underlying goal of avoiding State-to-State intervention, without requiring investors to waive their direct rights.[2112]

775. *Fifth*, Mexico argues that the phrase "protection by their government" in the Declarations is broader than "diplomatic protection" and encompasses all forms of Governmental protection, including investor-State Treaty rights.[2113] That argument fails. The Claimants do not invoke or seek the protection of the Government of Canada in this arbitration; the Claimants, as covered investors, have invoked their own rights under CPTPP Chapter 9. Mexico's further fallback, namely that the Parties would have specified "diplomatic protection" had they meant to limit the clause to it, is equally unavailing. If Mexico intended foreign investors to renounce all international treaty rights at the time of their investment, that renunciation would need to be express; it is not. Rather, as Mexico's own courts have ruled, these standard-form declarations

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2109 Primera Sala de la Suprema Corte de Justicia de la Nación, Contradicción de Tesis 132/2002-PS, dated 29 March 2005, at p. 30 (emphasis added), **Exhibit C-590**.

2110 *AES Corporation v. Argentine Republic*, ICSID Case No. ARB/02/17, Decision on Jurisdiction, dated 26 April 2005, at para. 98, **CL-146**.

2111 *Mobil Cerro Negro Holding, Ltd. and others v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, dated 10 June 2010, at para. 125, **CL-150**.

2112 *AWG Group Ltd. v. Argentine Republic*, Ad hoc Arbitration, Separate Opinion of Arbitrator Pedro Nikken (Decision on Liability), dated 30 July 2010, at para. 13 (noting that "[t]he ICSID Convention and the widespread involvement of Latin American countries in BITs can be seen, in a way, as an implicit abandonment of the Calvo Clause, which is not entirely accurate, since that Clause was directed against diplomatic protection."), **CL-151**.

2113 Counter-Memorial, at paras. 480, 482.

require the foreign investor to renounce the right "*to invoke the protection of his government when any dispute arising from this property occurs*."[2114]

776. *Sixth*, unable to dispute the text and the history of the Declarations, Mexico largely relies upon the decision in *Carlos Sastre v. Mexico* to support its argument that the Declarations extend to investor-State arbitration under the CPTPP.[2115] This case is readily distinguishable. In *Sastre*, the claimants voluntarily renounced their original nationalities and obtained Mexican citizenship; as a condition for obtaining Mexican nationality, they expressly renounced "all rights that international treaties or conventions grant to foreigners."[2116] The *Sastre* tribunal found the waivers to be "voluntary, clear, and express," because the claimants had chosen to acquire Mexican nationality.[2117] In addition, because the waivers expressly addressed treaty rights, no inference was required.[2118] There are no such circumstances here.

777. The Claimants Almaden and Almadex are, and have always been, Canadian corporations. They have not renounced their Canadian nationality nor have they acquired Mexican nationality.[2119] Moreover, the Declarations contain no reference to international treaties, the CPTPP, or investor-State arbitration. Far from supporting Mexico, *Sastre* in fact confirms the precise requirements that an effective waiver of treaty rights must meet – none of which is satisfied here. *Sastre* also confirms that where Mexico requires a renunciation of international treaty rights, as when a foreign national acquires Mexican citizenship, that renunciation is express.

778. Mexico also relies upon *Niko Resources v. Petrobangla* for the proposition that an agreement on nationality between contracting Parties "carr[ies] considerable weight."[2120] *Niko* is, however, inapposite and addresses facts that bear no resemblance to this dispute. *Niko* involved production sharing contracts that identified the claimant as a Barbados company for jurisdictional purposes; both parties had freely negotiated and signed those contracts with the

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2114 Primer Tribunal Colegiado del Vigésimo Cuarto Circuito, Amparo Directo No. 560/2011, dated 17 May 2012, at p. 76 ("*[N]ecesariamente el extranjero debe convenir ante el gobierno de la nación, a través de la Secretaría de Relaciones Exteriores, en considerarse como nacional respecto aquellos bienes, es decir, en no invocar la protección de su gobierno al presentarse cualquier conflicto derivado de esta propiedad*") (emphasis added), **Exhibit C-591**.

2115 Counter-Memorial, at paras. 467-468.

2116 *Sastre and others v. Mexico*, ICSID Case No. UNCT/20/2, Award on Jurisdiction, dated 21 November 2022, at para. 259, **RL-9**.

2117 *Sastre and others v. Mexico*, ICSID Case No. UNCT/20/2, Award on Jurisdiction, dated 21 November 2022, at para. 251, **RL-9**.

2118 *Sastre and others v. Mexico*, ICSID Case No. UNCT/20/2, Award on Jurisdiction, dated 21 November 2022, at para. 251, **RL-9**.

2119 *Sastre and others v. Mexico*, ICSID Case No. UNCT/20/2, Award on Jurisdiction, dated 21 November 2022, at para. 252, **RL-9**.

2120 Counter-Memorial, at para. 469.

nationality identification as an express agreed term.[2121] Here, the Declarations are not freely negotiated agreements with respect to the Claimants' nationality. The Declarations are statutory language required for foreign investors to obtain mining concessions in Mexico, and contain no agreed statement about the Claimants' Canadian nationality under the CPTPP or any other international instrument.

779. *Finally*, Mexico's litigation history confirms that its *ratione personae* and *ratione voluntatis* objections are a mere *post-hoc* litigation tactic. The declarations have been a feature of Mexican law for over a century, and foreign investors with Mexican subsidiaries have been subject to them throughout Mexico's entire modern investment treaty practice. Yet, Mexico had never once invoked these declarations as a basis for challenging an investment tribunal's jurisdiction in any treaty arbitration until 2023.[2122] Mexico's revisionist reading of the declarations cannot be reconciled with its own Treaty practice.

3.1.2. Mexico Cannot Use Its Own Domestic Law Requirements To Override The Treaty Rights It Granted Foreign Investors

780. Mexico argues that, even if the Declarations were treated as domestic law requirements rather than voluntary contractual commitments, their legal effect under Mexican law is to prevent the Claimants from bringing this arbitration.[2123] Mexico's argument is without merit. It is well established that Mexico "cannot invoke its domestic law to avoid its obligations under international law."[2124] Mexico attempts to sidestep this principle by recasting the Declarations as *voluntary* contractual commitments governed by *pacta sunt servanda*, rather than as

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2121 *Niko Resources (Bangladesh) Ltd. v. Bangladesh Oil Gas and Mineral Corporation (Petrobangla)*, ICSID Case No. ARB/10/18, Decision on Jurisdiction, dated 19 August 2013, at paras. 205-207, **RL-37**.

2122 *See*, *e.g.*, *Espíritu Santo Holdings, LP and L1bre Holding, LLC v. United Mexican States*, ICSID Case No. ARB/20/13, Rejoinder on the Merits, dated 7 March 2023, at paras. 327–337, **CL-188** (Mexico first raised these objections in 2023; notably, Mexico raised the objections in the Rejoinder, not in the Counter-Memorial); *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3 (Decision on Bifurcation), dated 16 October 2024, at paras. 20–21, **CL-180**; *Mario Noriega Willars v. United Mexican States*, ICSID Case No. ARB/23/29, Procedural Order No. 3 (Decision on Bifurcation), dated 24 March 2025, at paras. 47–49, **RL-25**. Rejecting the same objection, the *Espíritu Santo* tribunal recently found that "if the Parties' intention had been to waive Claimants' right to bring a treaty claim or to waive Claimants' nationality for the purposes of treaty claims in general or NAFTA in particular, such an intent would have had to be recorded in unequivocal, clear, and explicit terms." *See also Espíritu Santo Holdings, LP and L1bre Holding, LLC v. United Mexican States*, ICSID Case No. ARB/20/13, Award of the Tribunal, dated 26 March 2026, at para. 310, **CL-226**.

2123 Counter-Memorial, at paras. 474–489.

2124 SGS Société Générale de Surveillance S.A. v. Republic of Paraguay, ICSID Case No. ARB/07/29, Decision on Jurisdiction, dated 12 February 2010, at para. 72, **CL-149**. *See also* Greco-Bulgarian "Communities," Advisory Opinion, 1930, P.C.I.J., Series B, No. 17, at p. 32, **CL-141**; Free Zones of Upper Savoy and the District of Gex, Order, 6 December 1930, P.C.I.J., Series A, No. 24, at p. 12, **CL-140**; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 44, at p. 24, **CL-142**.

domestic statutory requirements.[2125] This is incorrect and disingenuous. The Declarations were not voluntary.[2126] They are mandatory statutory requirements whose content and wording are prescribed by regulation: the Declarations had to be incorporated into the bylaws of the Claimants' Mexican subsidiaries as a non-negotiable condition of their incorporation.

781. Mexico's reliance on the decisions in *Anderson v. Costa Rica*, *SunReserve v. Italy*, and *Pawlowski v. Czech Republic* is equally unavailing. Mexico cites these cases for the proposition that an investor's pre-investment due diligence obligation means that the Claimants accepted the effects of the Declarations with respect to their Treaty rights.[2127] None of these cases assists Mexico. All three cases involved investors who deliberately structured their investments to capture certain benefits and then sought to disavow the resulting obligations. In *Anderson*, the claimant structured its investment through a specific corporate vehicle to qualify for treaty protection and then invoked that treaty while seeking to disavow the obligations the structure entailed.[2128] In *SunReserve* and *Pawlowski*, the investors accepted regulatory frameworks as a precondition for specific advantages and then challenged those frameworks.[2129] There are no comparable circumstances here.

782. In the present case, the Claimants signed mandatory standard-form Calvo clauses that apply only to diplomatic protection; they did not restructure their investment to access CPTPP protection and they have not challenged Mexico's regulatory framework applicable to their investments. *Anderson*, *SunReserve*, and *Pawlowski* are thus irrelevant. In any event, this is not a case about the Claimants' alleged lack of due diligence. The Claimants invested in Mexico in full compliance with Mexican law and regulations, including by adopting the Declarations in their subsidiaries' bylaws, as required by law. If anything, proper due diligence

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2125 Counter-Memorial, at paras. 460–473. Mexico also relies on *SGS v. Philippines* and *BIVAC v. Paraguay* for the proposition that binding commitments voluntarily assumed must be respected. *See Id.*, para. 466. These cases are inapposite because they concerned contractual, freely negotiated forum selection clauses – not mandatory standard-forms like the Declarations. *See Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Republic of Paraguay* , Decision on Objections to Jurisdiction, ICSID Case No. ARB/07/9, dated 29 May 2009, at paras. 8, 148, **RL-36**; *SGS v. Philippines*, ICSID Case No. ARB/02/06, Decision of the Tribunal on Objections to Jurisdiction, dated 29 January 2004, at para. 138, **RL-35**.

2126 *See supra* Section 3.1.1.

2127 Counter-Memorial, at para. 473.

2128 *Anderson et al. v. Costa Rica*, ICSID Case No. ARB(AF)/07/3, Award, dated 19 May 2010, at para. 58, **RL-39**.

2129 *SunReserve Luxco Holdings SRL v. Italy*, SCC Case No. 132/2016, Final Award, dated 25 March 2020, at para. 714, **RL-40**; *Pawlowski AG and Project Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award, dated 1 November 2021, at para. 293, **RL-41**.

would have showed that these mandatory declarations relate only to diplomatic protection and have no impact on the Claimants' separate rights under international investment treaties.[2130]

783. Mexico further argues that, because Article 27 of the Constitution is a "sectoral rule that applies only to entities engaged in mining," the Tribunal's concern in PO3 about rendering all Mexico's investment treaties meaningless is overstated.[2131] Mexico's argument is again incorrect and disingenuous. As Mexico is well aware, the Foreign Investment Law of 1995 – which applied to Minera Gavilán and Minera Gorrión at the time of their incorporation in 1996 and 2011, respectively – extended the declaration requirement to *all* Mexican companies with foreign investment, as a condition for their incorporation.[2132] In other words, the requirement is *not* limited to entities engaged in mining, as Mexico represents – rather, it applies to *all* foreign investors with Mexican subsidiaries regardless of industry sector.[2133]

784. In other words, the Tribunal's concern still stands: if, as Mexico says, these mandatory standard form declarations give rise to both estoppel and waiver of treaty rights, *quod non*, every single one of Mexico's investment treaties would be devoid of any purpose or protection. Because Mexican law requires concessions and other rights to be held through Mexican entities,[2134] that would disqualify nearly all foreign investors from treaty protection. That is plainly absurd and would mean that the 42 multilateral and bilateral investment treaties ratified by the Mexican Government over the past 30 years – including the CPTPP as recently as 2018 – conveyed essentially no rights at all.

3.1.3. The Claimants Are Not Estopped From Bringing This Arbitration

785. Mexico argues that, even if the Declarations do not alter the Claimants' Canadian nationality, they are estopped from invoking it in this arbitration.[2135] As the Claimants explained in their Response, to establish estoppel under international law, Mexico must demonstrate: (i) a clear

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2130 *See supra* Section 3.1.1.

2131 Counter-Memorial, at paras. 483–486. *See* PO3, at para. 37, second indent ("adopting Respondent's interpretation of the mandatory declarations imposed under Mexican law (including the Declarations) was a waiver by foreign investors of their rights under international investment treaties, would render meaningless all of Mexico's investment treaties and the protection they purport to afford foreign investors.").

2132 Foreign Investment Law, dated 7 June 1995, at Art. 15, **Exhibit R-3**; Foreign Investment Law, dated 20 August 2008, at Art. 15, **Exhibit R-7**.

2133 Counter-Memorial, at para. 483.

2134 Indeed, this would include ***all*** foreign investors in the mining, energy, telecommunications, air transport, financial services, and broadcasting sectors, among others, since only Mexican companies may hold mining concessions, electricity generation permits, telecommunications licenses, operate airlines, or provide banking or media services. *See* Foreign Investment Law, dated 7 June 1995, at Arts. 5-8, **Exhibit R-3**; Foreign Investment Law, dated 20 August 2008, at Arts. 5-8, **Exhibit R-7**.

2135 Counter-Memorial, at paras. 490–497.

and unequivocal representation by the Claimants; (ii) Mexico's good-faith reliance on that representation; and (iii) a material detriment suffered by Mexico as a result.[2136] Mexico fails on each element.

786. *First*, the Claimants made no clear and unequivocal representation that they would forgo their rights under the CPTPP or any other international treaty. The Declarations say nothing about international treaties, investor-state arbitration, or the Claimants' standing as covered investors under the CPTPP. As the Tribunal noted in PO3, the CPTPP did not exist when the bylaws were signed in 1996 and 2011.[2137] Accordingly, the Claimants could not have made any representations about their not-yet-existent CPTPP rights. Mexico further argues that the penalty clause in the Declarations – under which non-compliant foreign shareholders forfeit their property interests to Mexico – demonstrates that the statement under the Declarations was unambiguous.[2138] This argument is irrelevant. The Declarations' penalty clause establishes the domestic regulatory consequence of breaching the Mexican-law incorporation requirement. It says nothing about international treaties, and Mexico cannot expand the scope of the Declarations beyond what its text plainly provides.

787. *Second*, Mexico has produced no evidence that it relied upon the Declarations with respect to any alleged representation about the Claimants' CPTPP rights. That is because no such reliance was possible, as the CPTPP had not yet been concluded. Mexico's suggestion that it relied upon the Declarations because it granted the Concessions, as the Claimants' subsidiaries had satisfied the applicable Mexican-law requirements is misplaced.[2139] Mexico presents no evidence that, when it granted those domestic law rights, it did so on the condition that the Claimants had renounced their rights under the CPTPP and other international treaties, as it requires foreign nationals to do when they acquire Mexican citizenship.

788. *Third*, Mexico has not identified any material detriment it suffered from the Claimants' exercise of their CPTPP rights. The record shows the opposite: the Claimants' investment brought significant economic benefit to Mexico, including decades of tax payments. Likewise, as noted, Mexico does not and cannot claim that it granted the Concessions in exchange for any commitment about international treaty arbitration, or that it changed its position

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2136 *Mamidoil Jetoil v. Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, at para. 469, **CL-155**; *Pope & Talbot v. Canada*, Interim Award, dated 26 June 2000, at para. 111, **CL-143**; *ADC v. Hungary*, ICSID Case No. ARB/03/16, Award, dated 2 October 2006, at para. 475, **CL-45**; *Orazul International España Holdings S.L. v. Argentina*, ICSID Case No. ARB/19/25, Award, dated 14 December 2023, at paras. 364, 506–510, **CL-177**.

2137 PO3, at para. 37, first indent.

2138 Counter-Memorial, at para. 493.

2139 Counter-Memorial, at paras. 494–495.

detrimentally in any respect as a consequence of such a commitment. Without material detriment, Mexico cannot show estoppel.

789. In contending otherwise, Mexico again relies upon the decision in *Sastre*.[2140] As shown, that case is inapposite.[2141] In *Sastre*, investors who had voluntarily acquired Mexican nationality and expressly renounced "all rights that international treaties or conventions grant to foreigners" were found to have created legitimate expectations upon which Mexico relied.[2142] *Sastre*, however, involved a specific, affirmative, and express commitment of the kind the estoppel doctrine requires. The mandatory Declarations here – which contain no such specific, affirmative, or express commitment – cannot serve the same function. *Sastre* does not support Mexico's estoppel argument.

790. *Finally*, Mexico argues that ignoring the Claimants' commitments as reflected in the Declarations would "undermine the balance of the arbitration system" and grant investors an undue advantage for failing to comply with their obligations.[2143] The systemic concern, if anything, runs the other way. Accepting Mexico's position would give any host State *carte blanche* to unravel its investment treaty obligations through domestic regulatory requirements – rendering *pacta sunt servanda* meaningless and investment treaties effectively hollow. For these reasons, the Tribunal should reject Mexico's baseless estoppel defense.

3.1.4. The Declarations Do Not Constitute A Waiver Of The Claimants' CPTPP Rights

791. In its Counter-Memorial, Mexico argues further that the Declarations amount to an effective waiver of the Claimants' right to initiate this arbitration.[2144] That argument fails for three independent reasons.

792. *First*, a waiver of treaty rights must be "formulated in clear and specific terms" and reflect "knowledge and intent of forgoing a right."[2145] The Declarations do not do so. They make no mention of the CPTPP or investor-State arbitration. The Declarations provide only that Minera

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2140 Counter-Memorial, at para. 496.

2141 *See supra* Section 3.1.1.

2142 *Sastre and others v. Mexico*, ICSID Case No. UNCT/20/2, Award on Jurisdiction, dated 21 November 2022, at para. 259, **RL-9**.

2143 Counter-Memorial, at para. 497.

2144 Counter-Memorial, at paras. 498-502.

2145 *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 481 ("[A] waiver, if and when admissible at all, is never to be lightly admitted as it requires knowledge and intent of forgoing a right, a conduct rather unusual in economic transactions."), **CL-156**; *Aguas del Tunari S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, dated 21 October 2005, at para. 122, **CL-148**.

Gavilán and Minera Gorrión's foreign shareholders (*i.e.*, the Claimants) will "not invoke the protection of their governments."[2146] This language, as demonstrated, refers exclusively to diplomatic protection.[2147] A waiver that does not identify the right being surrendered cannot be clear and specific. The Declarations fail that test.

793. *Second*, the Declarations predate the CPTPP by years. Indeed, the CPTPP entered into force for Mexico on 30 December 2018, while Minera Gavilán adopted its bylaws 22 years earlier,[2148] and Minera Gorrión did so seven years earlier.[2149] As the Tribunal noted in PO3, the Claimants did not, and could not have, knowingly and intentionally waived a right that did not yet exist.[2150] Mexico's argument that the Declarations are "prospective in nature" and "necessarily supersede any rights that Mexico and other States may have negotiated in subsequent treaties," is meritless.[2151] A mandatory standard-form declaration executed decades earlier cannot operate as a blanket advance waiver of all treaty rights Mexico may grant in any future agreement. As noted above, if this were the case, the 42 multilateral and bilateral investment treaties ratified by Mexico over the past 30 years conveyed essentially no rights at all.

794. *Third*, Mexico's attempt to distinguish *Crystallex* and *Aguas del Tunari* on the basis that both cases address "forum selection clauses" in contracts that do not relate to nationality or Government protection fails.[2152] The operative question in *Crystallex* was not whether the relevant clause was labeled a forum selection clause, but rather whether its text clearly and specifically addressed the claimant's right to bring treaty claims; the *Crystallex* tribunal held that no waiver existed because the relevant clause "ma[de] no mention of the Claimant's rights under the BIT, and no reference to the BIT in general terms or to the Claimant's right to seek recourse in arbitration," and, accordingly, the claimant could not have knowingly or voluntarily relinquished its rights under the BIT.[2153] The *Aguas del Tunari* tribunal conducted the same textual analysis and found no waiver existed because the clause made no reference to ICSID

2146 *Escritura No. 3,635*, dated 17 September 1996, Third Clause, at p. 16, **Exhibit C-162**; *Escritura No. 10,470*, dated 4 January 2011, at p. 12, **Exhibit C-178**.

2147 *See supra Section 3.1.1*.

2148 *Escritura No. 3,635*, dated 17 September 1996, **Exhibit C-162**.

2149 *Escritura No. 10,470*, dated 4 January 2011, **Exhibit C-178**; CPTPP, **CL-7**.

2150 PO3, at para. 37, first indent.

2151 Counter-Memorial, at para. 501.

2152 Counter-Memorial, at para. 498.

2153 *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at paras. 481–482, **CL-156**.

jurisdiction.[2154] The same inquiry governs here. The Declarations make no mention of the CPTPP, the ICSID Convention, or treaty rights of any kind. Under the very test that *Crystallex* establishes, they cannot constitute a waiver.

795. In summary, the Declarations are mandatory standard-form Calvo clauses whose purpose is limited to the renunciation of diplomatic protection. The Claimants are not estopped from invoking their Canadian nationality under the CPTPP, nor have they waived their rights under the CPTPP to commence this arbitration. Accordingly, Mexico's *ratione personae* and *ratione voluntatis* objections are without merit and should be rejected.

3.2. The Tribunal Has Jurisdiction *Ratione Temporis* Over The Claimants' Claims

796. The Claimants have established that the Tribunal has jurisdiction *ratione temporis* over each of their claims.[2155] Article 9.2.3. of the CPTPP limits the scope of the Treaty's application to acts that occurred after its entry into force,[2156] and Article 9.21.1 of the CPTPP requires that claims must be submitted within three years and six months of the date on which the Claimants first acquired knowledge of Mexico's breach and of the resulting loss or damage.[2157]

797. As the Claimants have shown, their claims arise from four measures, each of which occurred or crystallized *after* 30 December 2018, the date when the CPTPP entered into force for Mexico: (1) SEMARNAT's arbitrary denial of the MIA for the Ixtaca Project on 17 December 2020;[2158] (2) the Supreme Court's decision ordering Economía to suspend the Concession titles, pronounce on their feasibility, and conduct indigenous consultations on 16 February 2022;[2159] (3) SEMARNAT's bad-faith campaign against the Project, which spans the entire period from December 2020 until February 2023;[2160] and (4) Economía's arbitrary and retroactive decision that issuing the Concession titles was "not feasible" – thereby cancelling the Claimants' investment in full – on 9 February 2023.[2161] The Claimants have also demonstrated that they

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2154 *Aguas del Tunari S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, dated 21 October 2005, at para. 122, **CL-148**.

2155 Memorial, at paras. 485-486; Response, at paras. 88-99.

2156 CPTPP, at Art. 9.2.3, **CL-7**.

2157 CPTPP, at Art. 9.21.1, ("no claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed since the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 and knowledge that the claimant . . . has incurred loss or damage."), **CL-7**.

2158 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**; Memorial, at Section 2.14.4.

2159 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Memorial, at Section 2.16.

2160 Memorial, at Sections 2.13, 2.17.3.

2161 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**; Memorial, at Section 2.17.5.

filed their Request for Arbitration on 14 June 2024, *i.e.*, less than three-and-a-half years after the earliest challenged measure.[2162]

798. Mexico contends that the Tribunal allegedly lacks jurisdiction *ratione temporis*, because the Claimants' claims allegedly arise from events that pre-date the CPTPP's entry into force, and the subsequent administrative measures the Claimants rely upon are merely "repetitive, not transformative" of earlier conduct.[2163] Mexico further argues that the Claimants' claims are time-barred under Article 9.21.1 of the CPTPP, because the Claimants knew – or should have known – of Mexico's Treaty breaches and resulting losses to the Claimants' investments before 14 December 2020 (the "**Critical Date**").[2164] Mexico is wrong on both counts. The Tribunal has jurisdiction *ratione temporis* over all of the Claimants' claims because, as explained below, (i) every measure the Claimants challenge post-dates the CPTPP's entry into force and constitutes a new, independently actionable breach, and (ii) no crystallized breach or loss existed before 17 December 2020, the date of SEMARNAT's rejection of the Project's MIA.[2165]

3.2.1. The Claimants' Claims Arise From Acts That Post-Date the CPTPP's Entry Into Force

799. In its Counter-Memorial, Mexico seeks to recast the Claimants' claims, arguing that they are rooted in the Tecoltemi *amparo* of April 2015 and that the measures that followed are merely the "inevitable culmination" of that pre-Treaty proceeding.[2166] Mexico is wrong.

800. As a threshold matter, the Claimants do not dispute the general principle that a tribunal "may not deal with acts or omissions that occurred before" a treaty's entry into force.[2167] In this case, however, each of the measures the Claimants challenge occurred *after* 30 December 2018.

801. The Claimants' claims rest on four self-standing measures, each of which is independently actionable:

2162 Request for Arbitration, dated 14 June 2024.

2163 Counter-Memorial, at paras. 503–511.

2164 Counter-Memorial, at paras. 512–529.

2165 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**; Memorial, at para. 486.

2166 Counter-Memorial, at paras. 503–511.

2167 *Feldman v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Interim Decision on Preliminary Jurisdictional Issues, dated 6 December 2000, at para. 62, **RL-46**.

a) **SEMARNAT's MIA Denial Decision**, in which SEMARNAT arbitrarily and retroactively denied the MIA for the Ixtaca Project.[2168] The breach crystallized with SEMARNAT's final, definitive denial on 17 December 2020. The irregularities that preceded it serve as context, they do not constitute a breach. Without the MIA, the Ixtaca Project could not proceed to production – the denial therefore caused immediate and direct loss to the Claimants.[2169]

b) **The Mexican Supreme Court's Decision** of 16 February 2022, in which the Court ordered Economía to suspend the Cerro Grande and Cerro Grande 2 Concession titles, pronounce on their "feasibility," and conduct indigenous consultations.[2170] That decision was not a mere reiteration of the District Court's first-instance ruling. It introduced an entirely novel feasibility assessment and amended many of the legal findings the District Court had made. The Claimants' Concessions – which had been valid and in force since 2003 and 2009 – were suspended with the June 2022 *Oficio*, until Economía conducted the indigenous consultation.[2171]

c) **SEMARNAT's Bad Faith Campaign** against the Ixtaca Project following the MIA denial, in which SEMARNAT sought to obstruct and undermine the Project after the permitting process had concluded through a series of closed-door meetings with private NGOs, including Tecoltemi's lead counsel, to manufacture evidence against the Project and deliver to Economía a pretext to cancel the Concessions in full.[2172]

d) **Economía's February 2023 Oficio**, in which Economía arbitrarily and retroactively determined that issuing the Concession titles it had approved and granted years earlier was "not feasible," thereby cancelling the Ixtaca Project and the Claimants' investments therein in full.[2173] That determination was not a mechanical consequence of the Supreme Court's order. Economía ignored the content of the Supreme Court's decision and exercised its own administrative discretion in reaching it – which was shaped by SEMARNAT's bad-faith campaign against the Project.[2174]

2168 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**; Memorial, at para. 486.

2169 Response, at para. 94(a).

2170 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Memorial, at paras. 357–384.

2171 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Memorial, at para. 358; Response, at para. 94(b).

2172 Memorial, at paras. 357–384.

2173 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**; Memorial, at paras. 425–450.

2174 Response, at para. 94(c).

802. Each of the four challenged measures independently crystallized into breaches of the CPTPP after the CPTPP entered into force. It is well established that a measure constitutes an independent breach, if it is "separable from the conduct that preceded it."[2175] As the tribunals in *Gold Reserve v. Venezuela* and *Hydro v. Albania* recognized, a breach arises when a sequence of pre-treaty events progressively crystallizes into a concrete, post-treaty violation – the crystallization occurring when the state takes a final, definitive act.[2176] That is precisely what occurred here. The MIA permitting process remained open and undecided until SEMARNAT issued its definitive denial on 17 December 2020, completing that breach.[2177] The Supreme Court's February 2022 decision introduced a novel feasibility standard that no prior court had applied, completing a separate and distinct breach.[2178] And Economía's February 2023 *Oficio* crystallized the final breach – definitively cancelling the Concessions, as SEMARNAT had intended to achieve through its bad-faith campaign.[2179] These are independent post-treaty breaches.[2180] Mexico cannot rewrite the facts or the Claimants' case.

803. Mexico further argues that, because the Claimants describe events beginning with the Tecoltemi *amparo* in 2015, the "origin" of their claims is pre-Treaty.[2181] That argument conflates factual background with actionable breach and, in any case, the filing of the *amparo* by the NGOs on behalf of the Tecoltemi community is not an act attributable to Mexico.

804. As the tribunal in *Jak Sukyas v. Romania* observed, "[e]vents or conduct prior to the entry into force of an obligation for the State may be relevant in determining whether the State has subsequently committed a breach of the obligation" – but they do not themselves constitute that breach.[2182] The Tribunal in *Spence v. Costa Rica* drew the critical line: "[a]n alleged breach will not come within the jurisdiction of the Tribunal if the Tribunal's adjudication would

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2175 *Spence International Investments et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, dated 30 May 2017, at para. 298, **RL-18**.

2176 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at paras. 580–582, **CL-153**; *Hydro S.r.l. and others v. Republic of Albania* (I), ICSID Case No. ARB/15/28, Award, dated 24 April 2019, at paras. 557–558, **CL-162**.

2177 Response, at para. 94(a).

2178 Amparo 134/2021, SCJN Decision, 16 February 2022, **Exhibit C-92**; Memorial, para. 358; Response to Request for Bifurcation, at para. 94(b).

2179 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, 9 February 2023, **Exhibit C-111**; Memorial, paras. 427–436; Response, at para. 94(c).

2180 Response, at para. 89.

2181 Counter-Memorial, at paras. 509–511.

2182 *Jak Sukyas v. Republic of Romania*, PCA Case No. 2020-53, Partial Award on Jurisdiction, dated 6 November 2024, at para. 298, **CL-181**; *Spence International Investments et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, dated 30 May 2017, at para. 217, **RL-18**.

necessarily and unavoidably require a finding going to the lawfulness of conduct judged against treaty commitments that were not in force at the time."[2183] The Claimants' claims do not cross that line. Again, the pre-treaty history – the *amparo*, the Concessions' reduction attempts, the Collegiate Court ruling – is important contextual background, not a treaty breach.[2184]

805. Mexico also misstates the scope of the *amparo* injunction.[2185] Mexico asserts that the injunction "suspended the Concessions when it was filed" in 2015, and that the Second District Court later issued an "ex officio and outright suspension, halting all exploration and exploitation activities."[2186] Neither assertion is accurate. The District Court's injunction – as confirmed by the Court itself in its October 2019 response to SEMARNAT – suspended exploration works in the Concession areas only "with respect to the ejido's land," to protect Tecoltemi's property and agrarian rights.[2187] That scope is irrelevant to the Claimants' case. Tecoltemi's lands did not overlap with the Ixtaca Project site or its area of influence.[2188] Indeed, Minera Gavilán had never conducted any exploration work on Tecoltemi's land and had no interest in doing so.[2189] The injunction therefore had no material effect on the Claimants' ability to develop the Project. It was a provisional measure in pending litigation – not a cancellation of rights.[2190] The Concessions remained in full force throughout the *amparo* proceedings, as the Economía certificates of December 2019 confirm.[2191]

806. Mexico also seeks to rely upon the 1 February 2018 Collegiate Court ruling – which blocked Minera Gorrión's voluntary Concession reduction applications – and Economía's December 2018 *acuerdo* cancelling those reductions.[2192] Neither event caused permanent harm, as Mexico argues. The Collegiate Court ruling prevented only a voluntary administrative modification that Minera Gorrión had itself proposed in good faith to resolve the *amparo* and address what it believed to be the actual aim of the *amparo*: to remove the Concessions from

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2183 *Spence International Investments et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, dated 30 May 2017, at para. 222, **RL-18**.

2184 Response, at para. 89; Memorial, at paras. 485–492.

2185 Counter-Memorial, at para. 510.

2186 Counter-Memorial, at para. 510.

2187 *Oficio* issued by the Second District Court in Puebla, dated 14 October 2019, **C-316**; Memorial, at para. 318.

2188 Memorial, at paras. 228–230; MIA, Chapter IV, at p. 161, **Exhibit C-262**.

2189 Memorial, paras. 228–230; MIA, Chapter IV, at p. 161, **Exhibit C-262**.

2190 Oficio issued by the Second District Court in Puebla, dated 14 October 2019, **Exhibit C-316**; Memorial, at para. 318.

2191 Certificate No. Exp. 185/3, Deputy Director of the Public Mining Registry, Economía, dated 16 December 2019, **Exhibits C-330-C-331**; Memorial, at paras. 249–250.

2192 Queja 184/2017, Segundo Tribunal Colegiado en Materia Administrativa del Sexto Circuito, dated 1 February 2018, **Exhibit C-53**.

Tecoltemi's land.[2193] The Concessions were not definitively cancelled until Economía's *Oficio* of 9 February 2023 – more than three years after the CPTPP entered into force.[2194]

807. Mexico also seizes upon the Claimants' description of the Tecoltemi *amparo* as "a vehicle through which the NGOs sought to nullify the Concessions," to assert that this characterization shows that the Claimants knew their rights were at risk from a pre-Treaty date.[2195] Mexico conflates awareness that litigation threatens an investment with knowledge that a Treaty breach has occurred and caused loss. Those are fundamentally different things.[2196]

808. An investor who is aware of pending litigation does not have knowledge of a completed breach and resulting loss – particularly where the challenged concessions remain valid and Governmental authorities act to defend them in the same proceedings.[2197] Indeed, throughout the *amparo* proceedings, Mexico itself – through Economía – vigorously defended the legality of the Concessions and denied that any of Tecoltemi's rights had been harmed.[2198] There was no Treaty breach at that time – nor any knowledge of an impending Treaty breach.

809. Mexico's further suggestion that the Supreme Court's decision was not a "new alleged [violation]" but the "inevitable culmination" of the District Court *amparo* proceedings that had begun in 2015 misconstrues Mexican procedural law.[2199] Under the *Ley de Amparo*, lower court decisions in *amparo* proceedings are provisional only and create no binding precedent until appeals are exhausted.[2200] The Supreme Court was not bound by the District Court's findings and was free to apply entirely different standards – which it did.[2201] Notably, the District Court had found that the Mining Law did not require prior indigenous consultation as

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2193 Subsecretaría de Minería, Dirección de Cartografía y Concesiones Mineras, Acuerdo, dated 21 December 2018, **Exhibit C-59**; Memorial, at para. 247.

2194 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

2195 Counter-Memorial, at para. 511.

2196 *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on Respondent's Expedited Preliminary Objections, dated 31 May 2016, at para. 195, **CL-157**; CPTPP, Art. 9.21.1, **CL-7**.

2197 Memorial, at paras. 248-249.

2198 Memorial, at para. 248; Queja 184/2017, Segundo Tribunal Colegiado en Materia Administrativa del Sexto Circuito, dated 1 February 2018, **Exhibit C-53**.

2199 Counter-Memorial, at paras. 527–529.

2200 Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, at Art. 192, **Exhibit C-507**.

2201 Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, at Art. 192, **Exhibit C-507**.

a precondition to the validity of the Concessions.[2202] The Supreme Court disregarded those findings entirely and imposed a feasibility and consultations framework that no prior court had applied – this was a novel act, not the culmination of earlier proceedings.[2203]

810. With respect to the limitations period, Mexico relies upon a number of cases for the proposition that an investor does not need to know the exact amount or extent of the loss for the limitations period to begin to run. These cases are inapposite, as the claims rested upon demonstrable pre-treaty conduct. In *Feldman v. Mexico*, the claimants challenged a tax regime that predated the NAFTA's entry into force.[2204] In *Mondev v. United States*, the claimant's contractual rights had been extinguished before the NAFTA took effect.[2205] And, in *Astrida Carrioza v. Colombia*, the challenged fiscal and administrative measures all predated the US-Colombia TPA.[2206] The opposite is true here. As demonstrated, the CPTPP entered into force on 30 December 2018, well before the measures at issue in this case.[2207] None of these cases is relevant here.

811. Mexico further relies upon *LSF-KEB v. Korea* to argue that the post-treaty measures of SEMARNAT, the Supreme Court, and Economía are "repetitive, not transformative" of the pre-Treaty *amparo* proceeding.[2208] That reliance is misplaced. In *LSF-KEB*, before the applicable 2011 BLEU-Korea BIT entered into force, Korea's Financial Services Commission stalled for years the investors' attempts to sell its investment in a local bank.[2209] After the BIT entered into force, the same Korean regulator forced the investors to sell their investment within a fixed date and at a price the authorities determined.[2210] The *LSF-KEB* tribunal denied jurisdiction over Korea's pre-treaty conduct, because it amounted to a "series of repeated

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2202 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Memorial, at paras. 357–384.

2203 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Response, at para. 94(b).

2204 *Feldman v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Interim Decision on Preliminary Jurisdictional Issues, dated 6 December 2000, at para. 62, **RL-46**.

2205 *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, dated 11 October 2002, at para. 68, **RL-16**.

2206 *Astrida Benita Carrioza v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, dated 19 April 2021, at para. 126, **RL-10**.

2207 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**; Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**; Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

2208 Counter-Memorial, at para. 509.

2209 *LSF-KEB Holdings SCA and others v. Republic of Korea*, ICSID Case No. ARB/12/37, Award, dated 30 August 2022, at para. 8, **RL-47**.

2210 *LSF-KEB Holdings SCA and others v. Republic of Korea*, ICSID Case No. ARB/12/37, Award, dated 30 August 2022, at para. 9, **RL-47**.

actions" by the same regulator.[2211] The opposite is true here. SEMARNAT's MIA denial, the Supreme Court's February 2022 decision, and Economía's February 2023 *Oficio* are acts by different State organs, under different legal frameworks, each producing consequences that could not have arisen earlier.[2212] The *amparo* did not predetermine SEMARNAT's environmental decision; it did not dictate the Supreme Court's decision; nor did it compel Economía's cancellation of the Concessions – indeed, the common thread is not Tecoltemi, it is AMLO's anti-foreign-investment and anti-mining agenda.

3.2.2. The Claimants' Claims Are Timely Because They Acquired Knowledge Of Mexico's Breach And The Loss Of Their Investments After The Critical Date

812. Article 9.21.1 of the CPTPP requires investors to submit claims within three years and six months of the date on which they first acquired knowledge of the breach and the resulting loss or damage.[2213] The Claimants have complied with this requirement, because, as reiterated below, Mexico's first breach occurred on 17 December 2020, after the Critical Date.

813. Mexico contends that the Claimants had constructive knowledge of breach and loss before 14 December 2020, the Critical Date, because (i) SEMARNAT's 2019 conduct during the MIA evaluation and the AMLO administration's public statements against the Ixtaca Project showed that a MIA denial was inevitable, and (ii) the ultimate MIA denial of 17 December 2020 cannot restart the limitation period.[2214] Mexico is wrong. The Claimants' awareness that a regulatory process is facing hurdles, or that Mexican officials were hostile to mining, is not knowledge that a Treaty obligation has been violated. A treaty obligation is breached when the State takes action that impairs or alters the investor's rights.[2215] Here, the MIA evaluation process remained open until SEMARNAT's denial on 17 December 2020. Because no breach was

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2211 *LSF-KEB Holdings SCA and others v. Republic of Korea*, ICSID Case No. ARB/12/37, Award, dated 30 August 2022, at paras. 318, 355, 357, **RL-47**. Mexico further omits that the *LSF-KEB* tribunal noted that it would consider pre-treaty conduct as it "[threw] light" on post-treaty measures, precisely as the Claimants are asking the Tribunal in this arbitration. *See Id.*, at para. 357.

2212 Memorial, at paras. 485–486.

2213 CPTPP, at Art. 9.21.1, **CL-7**.

2214 Counter-Memorial, at paras. 512–529.

2215 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at paras. 580–582 (noting that a breach accrues when the definitively adverse act issues, not during the sequence of escalating conduct that precedes it), **CL-153**; *Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Decision on Jurisdiction and Admissibility, dated 30 January 2018, at para. 158 (finding that "the breach nonetheless occurs when the State act is first perfected"), **RL-12**.

complete, and no loss was suffered before that date, the limitation period did not begin to run until then.[2216]

814. Further, the Claimants do not allege that AMLO's political directive was itself a violation of the CPTPP. Rather, they allege that SEMARNAT's denial of the MIA on 17 December 2020 was arbitrary, pretextual, and in breach of Mexico's obligations under the Treaty. The political directive is simply evidence of why the denial was predetermined and the grounds cited pretextual; it is not the breach itself. Likewise, Secretary Toledo's August 2019 statement that the Ixtaca Project would not be approved confirms the impact of that political directive.[2217] The loss the Claimants ultimately suffered – the denial of the environmental permit – had not materialized by then, because SEMARNAT's decision on the MIA was still pending.[2218]

815. Mexico also argues that the Claimants had a "first appreciation" of loss once SEMARNAT's irregularities became apparent in 2019, and that quantification of loss is not required to trigger the limitation period.[2219] Mexico again conflates two distinct questions. The question is not when loss must be quantified, but whether a breach had occurred at all. As shown, there was no completed breach before 17 December 2020 because SEMARNAT had not yet denied the MIA and the evaluation remained on foot.[2220]

816. In support of its argument that first appreciation of loss can arise before a final adverse decision, and that quantification is not required to trigger the limitation period, Mexico relies upon the decisions in *Carlos Ríos v. Chile*, *Spence v. Costa Rica*, and *Mondev*.[2221] These cases are readily distinguishable because, in each, the claimant already had knowledge of a final, completed Governmental act before the critical date.

817. In *Carlos Ríos*, the limitation period was triggered when Chile issued definitive renegotiation terms for the claimants' bus concession contracts; those terms were formally operative, had immediate financial consequences, and were known to the claimants on a specific date.[2222] In

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2216 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**; Memorial, at para. 486.

2217 Lado B, "Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser'", dated 29 August 2019, **Exhibit C-307**; Desarrollo y Medio Ambiente ¿Nuevos Horizontes?, Organized by Benemérita Universidad Autónoma de Puebla, dated 23 August 2019, **Exhibit C-309**; Memorial, at paras. 311–315.

2218 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, **Exhibit C-86**.

2219 Counter-Memorial, at para. 515.

2220 Response to Request for Bifurcation, at para. 94(a).

2221 Counter-Memorial, at para. 515.

2222 *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award, dated 11 January 2021, at Section VII.C.3, **RL-17**.

Spence, Costa Rica enacted a law that directly and irrevocably prohibited coastal development on the claimants' land; the period ran from the date the law was enacted.[2223] In *Mondev*, the claimant's contractual rights had been extinguished by a Massachusetts court before the NAFTA entered into force.[2224] These cases stand for the principle that an investor who knows of a completed adverse legal act cannot escape the limitation period by claiming the full extent of its loss was still uncertain. In this case, as of the Critical Date, the Claimants held valid concession titles certified by Economía's own registry, as well as a pending MIA application that SEMARNAT had not yet rejected, and were continuing to invest in the Project. There was no completed adverse legal act before the Critical Date.

818. Finally, Mexico argues that the MIA Denial Decision cannot extend a limitation period that was already running, because it was the inevitable result of a chain of events set in motion by the Tecoltemi *amparo* in 2015.[2225] In this respect Mexico relies upon inapposite cases because, in all of them, the post-critical date act was an implementation or continuation of a breach the claimant had already known about, not a new and distinct wrong.

819. In *Grand River*, the claimants had constructive knowledge of the entire U.S. escrow-statute regime that affected their cigarette business before the applicable critical date; each subsequent State enforcement act was an application of the same known scheme.[2226] In *Infinito Gold*, the claimant had knowledge of the judicial decision confirming the annulment of its mining concession before the critical date; later administrative steps implementing that decision produced no new breach and no new loss.[2227] In *Apotex*, the underlying FDA decisions were issued, final, and known to the claimant before the critical date; subsequent agency conduct was downstream of a breach already complete and known.[2228] Here, the MIA denial does not fit that pattern. It was not the mere implementation of anything that preceded it, but a first and final decision that rejected arbitrarily and without basis the MIA for the Ixtaca Project. While

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2223 *Spence International Investments et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, dated 30 May 2017, at para. 217, **RL-18**.

2224 *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, dated 11 October 2002, at para. 87, **RL-16**.

2225 Counter-Memorial, at para. 527.

2226 *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, dated 20 July 2006, at para. 81, **RL-13**.

2227 *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award, dated 3 June 2021, at Section V.D.3, **RL-14**.

2228 *Apotex Inc. v. United States of America*, ICSID Case No. UNCT/10/2, Award on Jurisdiction and Admissibility, dated 14 June 2013, at paras. 314, 325–328, 335, **RL-15**.

this Decision was preceded by various procedural irregularities, including the suspension of the MIA evaluation process, the breach crystallized with the MIA denial itself.

820. Moreover, the MIA application and the Tecoltemi *amparo* were legally independent proceedings before different institutions and under different legal frameworks.[2229] The Claimants were not a direct party to the *amparo*, which challenged Economía's issuance of the Concession titles in 2003 and 2009 without prior indigenous consultation; the *amparo*'s subject matter, parties, and remedy were all directed at that administrative act by Economía.[2230] The MIA application was a separate regulatory proceeding before SEMARNAT under the General Environmental Law, addressing whether the proposed mining project met the statutory environmental requirements for an operating permit. SEMARNAT's obligation to evaluate that application existed regardless of the *amparo* and was not governed by it. Accordingly, the MIA denial was a new and independently actionable breach separable from any preceding conduct.

821. In summary, the Tribunal has jurisdiction *ratione temporis* over each of the Claimants' claims.

3.3. The Tribunal Has Jurisdiction *Ratione Materiae* Over Almadex and Minera Gavilán's Claims

822. In the Memorial, the Claimants established that Almadex made covered investments in Mexico under the broad definition of "investment" set forth in Article 9.1 of the CPTPP and Article 25(1) of the ICSID Convention.[2231] Almadex's investments include its shareholding in Minera Gavilán and the NSR held by Minera Gavilán in the Ixtaca Project, which it duly registered with the Public Mining Registry.[2232] These investments fall within the protected asset categories identified in CPTPP Article 9.1 – which, in any event, are illustrative and not exclusive. Treaty jurisprudence further affirms that Almadex made protected investments in Mexico within the meaning of Article 25(1) of the ICSID Convention.[2233]

2229 Memorial, at paras. 208-209, 267–286.

2230 Amparo Indirecto 506/2015, Comunidad Indígena Nahua de Tecoltemi y el Ejido de Tecoltemi, dated 7 April 2015, **Exhibit C-32**; Memorial, at paras. 208–209.

2231 Memorial, at Section 3.2.

2232 Minera Gavilán S.A. de C.V., *Libro de Registro de Accionistas,* dated 10 July 2023, at p. 1, **Exhibit C-426**; *Octavo Registro de Accionistas* (Minera Gavilán), dated 10 July 2023, **Exhibit C-489**; *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, **Exhibit C-13**; *see also* Agreement duly filed under number 62 page 33, Volume 32 of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**; *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, **Exhibit C-17**.

2233 Memorial, at Section 3.2.2.

823. In its Counter-Memorial, Mexico contends that Almadex's investments purportedly lack the required elements of contribution, risk, duration, and contribution to the host State's economy.[2234] Mexico is wrong in all respects.

824. As Mr. McDonald explains in his second statement, an NSR is a royalty payment made by the mining operator to the royalty holder based upon a percentage of the net revenue generated from mineral sales.[2235] The NSR in this case was structured by reference to established industry benchmarks (the Bullion Market specifications for gold or Handy & Hardman specifications for silver).[2236] Minera Gorrión agreed to pay Minera Gavilán during the production phase of the Ixtaca Project a 2% royalty based on the final mineral products sold, in addition to further payments on the last day of each quarter, with deductions for processing, transportation, insurance storage, and taxes of sold minerals.[2237] As Mr. McDonald notes, the NSR ensured that Minera Gavilán, having invested significantly in the high-risk early stage exploration works, would benefit from some of the Project upside.[2238] Economía approved and registered the amended assignment agreement reflecting the NSR on 8 February 2013.[2239]

825. As shown in the Claimants' Memorial, Article 9.1 of the CPTPP broadly defines "investment" as "***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."[2240] Article 9.1 further provides an illustrative, but not exhaustive, list of the various forms of investment that this definition "***include[s]***," such as "shares, stock and other forms of equity participation in an enterprise," "other tangible or intangible, movable or immovable property, and related property rights," and "revenue-sharing" agreements.[2241]

2234 Counter-Memorial, at para. 534.

2235 McDonald WS-2, at Section 2.2.

2236 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, at Clause 2, **Exhibit C-17**.

2237 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, at Clause 2 and Annex 1, **Exhibit C-17**.

2238 McDonald WS-2, at Section 2.2.

2239 McDonald WS, at para. 26; *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, at p. 37, **Exhibit C-17**.

2240 CPTPP, Art. 9.1, **CL-7** (emphasis added).

2241 CPTPP, Art. 9.1, **CL-7** (emphasis added).

826. Mexico does not and cannot dispute that the definition of a covered "investment" under the Treaty is broad and inclusive.

827. Instead, Mexico first contends that the "commercial transaction" under which Minera Gavilán transferred the Concession rights to Minera Gorrión, and the "intra-company agreement" under which Minera Gorrión granted the 2% NSR to Minera Gavilán, do "not constitute a protected investment" under the Treaty or the ICSID Convention.[2242] Mexico's argument finds no basis in the plain language of the Treaty. Minera Gavilán validly transferred the Concession rights to Minera Gorrión and, in return, received a 2% NSR in the Ixtaca Project; Economía duly registered the agreements effectuating these transactions and recorded the transfer of rights, as well as Minera Gavilán's 2% NSR.[2243] That these transactions were "intra-company" does not mean that legal rights were not conveyed under Mexican law and registered; they were.

828. Mexico next argues that Almadex's investments lack the "hallmark characteristics" of an investment, particularly "a contribution that involves risk."[2244] This argument too is misplaced.

829. In support of its argument, Mexico relies upon *Nova Scotia v. Venezuela*, in which the tribunal found that it lacked jurisdiction because the claimant's alleged investment was a commitment to pay a pre-agreed price for coal after delivery – a "value for value" commercial exchange whose price, quantity, and delivery terms were all specified in advance.[2245] Unlike the transaction at issue in *Nova Scotia*, the NSR in this case is not a contract for the sale of goods or a one-off commercial transaction; it is an economic interest that begins paying out when a mineral project commences commercial operations.

830. Furthermore, Almadex's investments, including the NSR, satisfy the *Salini* criteria:

a) **Contribution:** Minera Gavilán held the Ixtaca Concessions from 2003 and 2009 until it transferred them to Minera Gorrión in December 2011.[2246] There can be no question that Minera Gavilán made contributions during this time period, including the investments that led to the discovery of the Ixtaca deposit in 2010.[2247] Almadex

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2242 Counter-Memorial, at para. 533.

2243 McDonald WS, at para. 26. *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, at p. 37, **Exhibit C-17**.

2244 Counter-Memorial, at para. 534.

2245 *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela (II)*, ICSID Case No. ARB(AF)/11/1, Award, dated 30 April 2014, at paras. 90–97, **RL-136**.

2246 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, **Exhibit C-13**.

2247 Memorial, at Sections 2.3-2.4.

acquired Minera Gavilán in 2015, when Almaden underwent a strategic restructuring to, among other things, allow Almaden and Minera Gorrión to focus exclusively on developing the Ixtaca Project.[2248] In contending that the CPTPP required Almadex to make an active contribution as part of its investment, Mexico relies upon *Komaksavia v. Moldova*, a case where the applicable treaty's definition of investment included the words "invested by investors" – a qualifier that the tribunal noted "confirm[s] the Contracting Parties' intention that the term be given this objective meaning."[2249] Following a textual analysis of the words "invested by investors," the *Komaksavia* tribunal found that the treaty required the investor to have actively invested, more than "merely 'owning' or 'holding' an asset."[2250] The CPTPP does not contain such qualifiers and, accordingly, Mexico's attempt to import those terms is without basis.

b) **Risk:** Almadex incurred substantial risk. Indeed, the very existence of this dispute is an indication of risk.[2251] Minera Gavilán's initial investments in the Project and Almadex's NSR were subject to the same risks as the Project. If geological conditions at Ixtaca proved unfavorable, commodity prices fell, or the mine failed to produce for any reason, the NSR generated no return. To argue that Almadex did not incur "investment risk," as opposed to "commercial risk," Mexico relies upon *Romak v. Uzbekistan* and *Postova Banka v. Greece*.[2252] These cases are readily distinguishable and not relevant here. In *Romak*, the dispute involved a sale-of-goods contract for grain.[2253] *Postova* is equally inapposite because the dispute turned on a textual finding that the applicable treaty excluded sovereign bonds from its definition of investment; the claimant had no direct contractual relationship with Greece, having acquired bonds on the secondary market through a depository.[2254]

2248 *See* Minera Gavilán S.A. de C.V., *Libro de Registro de Accionistas*, dated 10 July 2023, at p. 5, **Exhibit C-426**; Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at p. 70, **Exhibit C-247**.

2249 *Komaksavia Airport Invest Ltd. v. Republic of Moldova*, SCC Case No. 2020/074, Award, dated 3 August 2022, at para. 152, **RL-135**.

2250 *Komaksavia Airport Invest Ltd. v. Republic of Moldova*, SCC Case No. 2020/074, Award, dated 3 August 2022, at para. 154, **RL-135**.

2251 *FEDAX N.V. v. The Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, dated 11 July 1997, at para. 40 (ruling that "the very existence of a dispute as to the payment . . . evidences the risk"), **CL-229**.

2252 Counter-Memorial, at paras. 535-536.

2253 *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. 2007-07/AA280, Award, dated 26 November 2009, at paras. 12-13, **RL-138**.

2254 *Poštova Banka, A.S. and Istrokapital SE v. The Hellenic Republic*, ICSID Case No. ARB/13/8, Award, dated 9 April 2015, at paras. 332-334, **RL-137**.

Mexico further argues, without any support, that Almadex did not incur risk, because it held a "passive, non-operating interest" in the Project, and did not "participate in the management of the project."[2255] As an initial matter, the CPTPP's definition of investment does not require the claimant to have an active, operating interest for an investment to qualify for protection.[2256] In fact, the CPTPP expressly covers "shares, stock, and other forms of equity participation in an enterprise," a category that, by definition, includes passive shareholding with no management role. Likewise, there is no language in the ICSID Convention limiting protection to investors who participate in the management of their investments. Accordingly, this argument too has no merit.

c) **Duration:** Mexico does not dispute that Almadex's investment satisfied the duration requirement. The NSR dates from December 2012, and runs for the productive life of the mine. The duration element is plainly satisfied.

d) **Contribution to Economic Development:** Mexico contends that Almadex has made no contribution to Mexico's economic development because it injected no funds, transferred no technology, and assumed no operational obligations.[2257] This *Salini* factor is particularly disfavored, and many tribunals have rejected it.[2258] In any event, the Project contributed to Mexico's economic development. Almadex and its Mexican subsidiary Minera Gavilán created local employment in Puebla, generated tax revenue for Mexico, and would have brought a world-class gold and silver mining operation into production had Mexico not unlawfully cancelled the Concessions. Minera Gavilán's initial investments in the Project enabled and supported that economic activity. The NSR is the economic legacy of that contribution.

831. In summary, Almadex's investments readily meet the definition of "investment" under Article 9.1 of the Treaty and Article 25(1) of the ICSID Convention, and thus are entitled to Treaty

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2255 Counter-Memorial, at para. 537.

2256 CPTPP, at Art. 9.1, **CL-7**.

2257 Counter-Memorial, at para. 538.

2258 *See*, *e.g.*, *Phoenix Action v. Czech Republic*, ICSID Case No. ARB/06.05, Award dated 15 April 2009, at para. 85 ("A less ambitious approach should therefore be adopted, centered on the contribution of an international investment to the economy of the host State, which is indeed normally inherent in the mere concept of investment as shaped by elements of contribution/duration/risk, and should therefore in principle be presumed."), **CL-227**; *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 31 October 2012, at para. 295 ("The development of ICSID case law suggests that only three of the above criteria, namely contribution, risk and duration should be used as the benchmarks of investment, without a separate criterion of contribution to the economic development of the host State . . ."), **CL-228**.

protection. The Tribunal therefore has jurisdiction *ratione materiae* over Almadex and Minera Gavilán's claims.

4. MEXICO HAS BREACHED ITS OBLIGATIONS UNDER THE CPTPP

4.1. Mexico Unlawfully Expropriated The Claimants' Protected Investments

832. There is no dispute between the Parties that Article 9.8 of the CPTPP prohibits Mexico from expropriating or nationalizing a covered investment, either directly or indirectly, except where the expropriation or nationalization is (a) for a public purpose; (b) non-discriminatory; (c) on payment of prompt, adequate and effective compensation; and (d) in accordance with due process of law.[2259] There is also no dispute between the Parties that the failure to comply with any of the four cumulative criteria set out in Article 9.8 by Mexico renders its expropriatory measure or set of measures unlawful under the CPTPP.[2260]

833. In their Memorial, the Claimants demonstrated that (i) Mexico's acts and omissions amounted to a direct expropriation of the Claimants' protected investments in the Ixtaca Project, and (ii) Mexico's direct expropriation was unlawful under Article 9.8 of the CPTPP, as it was not done for a public purpose, in a non-discriminatory manner, accompanied by payment of prompt, adequate, and effective compensation, or in accordance with due process of law.[2261]

834. Specifically, Mexico arbitrarily and retroactively cancelled the Claimants' mining Concessions in full – which Mexico itself had repeatedly validated – based upon alleged trivial technical defects that Mexico could have (and indeed was legally required to) allow correction of, all in furtherance of a declared anti-foreign-investment and anti-mining agenda.[2262] That cancellation, in turn, resulted in the total loss of the Claimants' protected investments in the Ixtaca Project, which they had made over the course of more than two decades in reliance on their Concession rights.[2263] As detailed in the Memorial, to cure Economía's own failure to conduct indigenous consultations decades earlier, the Supreme Court ordered Economía to suspend the existing Concession titles and to "pronounce" on their feasibility, before carrying out an indigenous consultation and reissuing the titles under the Mining Law and its Regulations.[2264] Rather than do so in good faith, Economía instead seized upon alleged *de minimis* technical defects in the

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2259 Memorial, at para. 495; Counter-Memorial, at para. 558.

2260 Memorial, at para. 495; Counter-Memorial, at paras. 558-559.

2261 Memorial, at paras. 493-494.

2262 Memorial, at paras. 435, 605.

2263 Memorial, at para. 654.

2264 Memorial, at para. 375-384.

underlying expert reports – that were not at issue before the Supreme Court – to rule that the Concessions were allegedly "not feasible," thus resulting in their definitive cancellation.[2265] That these alleged *de minimis* technical defects were pretextual is obvious on their face – and, indeed, is now proven by documents produced by Mexico.[2266] Those alleged defects did not give rise to any basis for the rescission of the Concessions, nor did Economía have any legal basis to reopen the approved expert reports, as Former Justice Cossío sets out in his expert opinion.[2267] As a result, Mexico has deprived the Claimants in whole of their fundamental rights of ownership and of the use, enjoyment, and economic benefit of their protected investments in the Ixtaca Project.[2268]

835. In its Counter-Memorial, Mexico does not dispute the content or legal standard for an unlawful expropriation under CPTPP Article 9.8, as set out by the Claimants.[2269] Nor does Mexico dispute that it has not paid prompt, adequate, and effective compensation to the Claimants for the deprivation of their protected investments in the Ixtaca Project.[2270] Instead, Mexico argues that the Claimants' expropriation claim allegedly founders at the threshold, because the Claimants have not shown: (i) that the Claimants had legal rights "susceptible to expropriation;" (ii) that Mexico transferred or confiscated any property of the Claimants; or (iii) that Mexico's actions were not "in good faith, non-discriminatory, and aimed at a public purpose."[2271] As elaborated below, Mexico's expropriation arguments are erroneous and do not withstand scrutiny.

4.1.1. The Claimants Held Protected Legal Rights In The Ixtaca Project

836. In an effort to defeat the Claimants' expropriation claim at the threshold, Mexico asserts that "the Claimants have not demonstrated that they are the holders of the alleged mining rights,"[2272] and that "[t]here can be no expropriation of a right that does not exist in the first place."[2273] Specifically, Mexico argues that, "when the Concessions were reevaluated in February 2023, they had already been declared invalid in June 2022" and that, because "the Concessions were

2265 Memorial, at para. 502.

2266 Memorial, at paras. 502, 611. *See supra* Section 2.17.

2267 Cossío ER-1, at Section VI.

2268 Memorial, at para. 494.

2269 Counter-Memorial, at paras. 558-559.

2270 Counter-Memorial, at Section IV.A, 3; paras. 558-559.

2271 Counter-Memorial, at para. 540.

2272 Counter-Memorial, at para. 540.

2273 Counter-Memorial, at para. 541.

declared invalid, they ceased to exist legally and their effects were retroactively eliminated."[2274] Accordingly, Mexico says, there can be no expropriation.[2275] Mexico's attempt to suggest that the Claimants did not possess any protected legal rights "susceptible to expropriation" is absurd.

837. There is no dispute between the Parties that CPTPP Annex 9-B codifies the well-recognized principle that an expropriation requires interference with "a tangible or intangible property right or property interest in an investment."[2276] As the *Emmis v. Hungary* tribunal put it: "the existence and nature of any such rights must be determined in the first instance by reference to [domestic] law, before the Tribunal proceeds to decide whether any such rights can constitute investments capable of giving rise to a claim for expropriation."[2277]

838. As the Claimants have shown, they held a series of protected property rights and interests in the Ixtaca Project under Mexican law and within the meaning of Article 9.1 of the CPTPP, including the Cerro Grande and Cerro Grande 2 Concession titles.[2278] These Concession titles accorded to Minera Gorrión, among other things, the rights to explore, exploit, and benefit from the mineral resources in the Concession areas for a renewable term of 50 years.[2279] This is confirmed by the Mining Law, which elaborates at Article 19 the bundle of rights conferred upon the concessionaire pursuant to the concession title.[2280] As explained in the Memorial, on 28 April 2005, the Mining Law was amended to merge the exploration and exploitation regimes into one single regime, under which mining concessions have a renewable term of 50 years.[2281]

839. Throughout the life of the Ixtaca Project, Economía and its DGM repeatedly affirmed and reaffirmed that the Claimants held, through Minera Gavilán and subsequently Minera Gorrión, valid Concession rights under Mexican law.[2282] Specifically, as set forth above, Economía and

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2274 Counter-Memorial, at para. 544.

2275 Counter-Memorial, at Section IV.A.1.

2276 Memorial, at paras. 497-498; Counter-Memorial, at paras. 27 and 541; CPTPP, Annex 9-B, **CL-7**.

2277 *Emmis International Holding, B.V., Emmis Radio Operating, B.V., MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. The Republic of Hungary*, ICSID Case No. ARB/12/2, Award, dated 16 April 2014, at para. 44, **CL-85**.

2278 *See supra* Section 2.3; Memorial, at para. 474.

2279 Memorial, at paras. 59, 70, and 83.

2280 As set forth above, that bundle of rights includes: the right to carry out exploration and exploitation works within the concessioned area; the right to use water for exploration activities and for employee consumption; the right to transfer or option the rights under the concession to qualified persons; and the right to reduce, divide, or apportion the lots that comprise the concession area. *See supra* Section 2.3; Mining Law, at Art. 19, **Exhibit C-158**.

2281 Memorial, at para. 59.

2282 *See supra* Section 2.3.

its DGM approved the Concession applications and formally registered the Concession titles in the Public Mining Registry in 2003 and 2009;[2283] transferred the Concession titles to Minera Gorrión in 2012;[2284] approved the voluntary reduction of the Concessions in 2017;[2285] issued certificates confirming the validity of the original Concession titles in 2019;[2286] and defended the legality of the Concessions throughout the *amparo* proceedings.[2287] Minera Gorrión also duly paid taxes on the Concessions.[2288] As such, there can be no dispute that, as a matter of Mexican law, the Claimants held rights in the Concessions, including the bundle of rights set out in Article 19 of the Mining Law.[2289]

840. There can also be no dispute that Mexico extinguished those rights in full, as reflected in the Public Mining Registry entries for the Cerro Grande and Cerro Grande 2 Concessions, which show that the 50-year mining concession titles were "cancelled."[2290] The only question, therefore, is "the date on which due to the governmental interference, the legal and economic use of the concessions was *definitively* lost."[2291] As the Claimants have shown, that date is 9 February 2023, *i.e.*, when Economía declared the Concession titles "not feasible," thus prematurely ending the implementation of the Supreme Court's decision and cancelling the Concessions definitively.

841. Mexico's argument that "the Claimants did not have a right to the Concessions or related rights when the Project was declared unfeasible" is unavailing.[2292] As set forth above, the Supreme Court's decision did not operate to extinguish the Claimants' rights definitively, as Mexico contends.[2293] To the contrary, in its decision, the Supreme Court ordered Economía to suspend

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2283 *See supra* Section 2.3.

2284 *See supra* Section 2.3.

2285 *See supra* Section 2.3.

2286 *See supra* Section 2.3.

2287 *See supra* Section 2.3.

2288 *See supra* Section 2.3.

2289 *See supra* Section 2.3.

2290 Tarjeta de Registro Informativa, Lote Cerro Grande 2, dated 28 February 2025, **Exhibit C-927**; Tarjeta de Registro Informativa, Lote Cerro Grande, dated 18 May 2026, **Exhibit C-928**.

2291 *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia, ICSID Case No. ARB/06/2* ("***Quiborax v. Bolivia***"), Award, dated 16 September 2015, at para. 234, **CL-94**. *See also Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (II)*, PCA Case No. 2015-32, Award, dated 20 August 2019, paras. 576-581 (ruling that the cancellation of licenses by the licensing authority following judicial decisions amounted to an unlawful "dispossession," as "[t]he Respondent's measures, whether individually or collectively, deprived the Claimants of the effective use and control of the mining Licenses."), **CL-111**.

2292 Counter-Memorial, at para. 544.

2293 *See supra* Section 2.14.

the legal effects of the Concession titles provisionally so that it could cure a single defect in those titles before reissuing them to Minera Gorrión – namely, Economía's own failure to conduct indigenous consultations with the Tecoltemi community decades earlier.[2294] As Former Justice Cossío explains, the Supreme Court's order that Economía declare the existing Concession titles "*insubsistentes*" was for that limited purpose only – it did not render the Claimants' Concessions void *ab initio*, as Mexico contends.[2295]

842. Former Justice Cossío further explains that, under Article 7, Section VI, of the Mining Law, Economía is empowered "[t]o issue mining concession and assignment titles, as well as to rule on their nullity or cancellation, *or on the suspension and insubsistencia of the rights derived therefrom*."[2296] As Article 7 makes clear, nullity and cancellation are distinct from suspension and invalidity.[2297] In this case, as Former Justice Cossío observes, the Supreme Court ordered the suspension and *insubsistencia* of the rights derived from the Concession titles – *not* their nullity or cancellation – as a temporary measure so that Economía could cure the defect in the Concession titles and then restore them to Minera Gorrión.[2298] Specifically, the Supreme Court ordered Economía to suspend the legal effects of the Concession titles, while Economía: (i) verified that it had all of the information required under the Mining Law and Regulations to respect Tecoltemi's right to consultation; and (ii) carried out the indigenous consultation, in accordance with the five-step consultation process elaborated at paragraph 299 of the decision.[2299] It did not order Economía to revoke or annul the Concessions. In other words, the legal effects of the Concessions were not "retroactively eliminated," as Mexico says.[2300]

843. Moreover, even assuming that the Supreme Court *did* order Economía to annul and extinguish the Claimants' Concession rights retroactively and in full under Article 7 of the Mining Law, *quod non*, that decision would itself amount to an unlawful judicial expropriation of the Claimants' protected legal rights without any compensation or due process, as set forth below.

2294 *See supra* Section 2.14.

2295 *See supra* Section 2.14; Cossío ER-1, at Section VI.B.

2296 Cossío ER-1, at Section IV.C.

2297 Cossío ER-1, at Section IV.C.

2298 Cossío ER-1, at Section IV.C.

2299 *See supra* Section 2.14; Cossío ER-1, at Section IV.C; Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**.

2300 Counter-Memorial, at para. 544.

844. Mexico's further argument, namely that "the Claimants never had the right to extract the minerals and enjoy their benefits" and that "[t]hat right was conditional upon obtaining government authorizations that the Claimants did not have," is equally unavailing.[2301]

845. As set forth above, Article 19 of the Mining Law defines the bundle of rights granted to the holder of a mining concession for a 50-year renewable term.[2302] These rights include the right to carry out exploration and exploitation works within the concessioned area; the right to use water for exploration activities and for employee consumption; the right to transfer or option the rights under the concession to qualified persons; and the right to reduce, divide, or apportion the lots that comprise the concession area.[2303] While the exercise of some of these rights is subject to additional permits and authorizations – including, for exploitation, an approved MIA – there can be no dispute that the mining concession title grants rights "susceptible to expropriation," including the right to "[c]arry out exploration and exploitation works and projects within the mining lots" covered by the mining concession.[2304] As demonstrated, the Claimants held, through Minera Gorrión, two mining Concessions in Ixtacamaxtitlán for 50-year renewable terms.[2305] Moreover, as shown in the Memorial and below, Mexico arbitrarily denied the Claimants' MIA Application on pretextual grounds in breach of the Treaty.[2306] Mexico's reliance on the decisions in *Red Eagle v. Colombia*,[2307] *Pac Rim v. El Salvador*,[2308] and *Feldman v. Mexico*[2309] for the proposition that an investor cannot claim expropriation of rights that it never obtained is therefore misplaced.[2310]

846. In *Red Eagle v. Colombia*, the claimant acquired 11 gold mining titles in the *Santurbán páramos* area in the Department of Santander, Colombia: one exploration license, eight

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2301 Counter-Memorial, at para. 545.

2302 *See supra* Section 2.3; Memorial, para. 66; Mining Law, at Art. 19, **Exhibit C-158**.

2303 *See supra* Section 2.3; Memorial, para. 66; Mining Law, at Art. 19, **Exhibit C-158**.

2304 Mining Law, at Art. 19, **Exhibit C-158**.

2305 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**; Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, **Exhibit C-8**.

2306 *See infra* Section 4.2.

2307 *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12 ("***Red Eagle v. Colombia***"), Award, dated 28 February 2024, **RL-52**.

2308 *Pac Rim Cayman LLC v. The Republic of El Salvador*, ICSID Case No. ARB/09/12 ("***Pac Rim v. El Salvador***"), Award, dated 14 October 2016, **RL-53**.

2309 *Marvin Feldman v. United Mexican States*, Case No. ARB(AF)/99/1 ("***Feldman v. Mexico***"), Award, dated 16 December 2002, **CL-31**.

2310 Counter-Memorial, at paras. 549-550.

exploitation licenses, and two concession contracts.[2311] Colombia adopted a series of measures that prohibited mining in the *páramos*.[2312] The claimant asserted that it was "unable to advance the [p]roject because Colombia's unlawful delimitation of the *páramos* area rendered the [p]roject unviable."[2313] The tribunal ruled that there could be no expropriation, because, as a matter of domestic law, the claimant had never acquired the right to carry out mining activities in the *páramos*.[2314] There are no analogous circumstances here and no specific limitations under Mexican law on any part of the Claimants' concessioned areas.

847. The decision in *Pac Rim v. El Salvador* is equally inapposite. Unlike mining concessions under the Mexican Mining Law, the mining regime at issue in *Pac Rim* did not provide for a single mining concession for both exploration *and* exploitation; rather, in that case, the claimant held (through its subsidiary) exploration licenses.[2315] The claimant applied to convert its two exploration licenses into a mining concession,[2316] but its application was incomplete.[2317] Upon receipt, the directorate kept the claimant's application under review – without initiating a formal assessment – for nearly two years, in an effort to afford the claimant additional time to complete its feasibility study.[2318] The directorate then issued a first warning letter requiring the claimant to submit the missing documentation within 30 days.[2319] When the claimant failed to comply, the directorate issued a second.[2320] Rather than comply, the claimant attempted to secure a legislative amendment to resolve the deficiency, to no avail.[2321] The claimant's expropriation claim failed, because the tribunal found that the claimant had never fully complied with the documentary requirements in support of its application and, as a result, did not have a legal right under the Salvadoran Mining Act to obtain the mining concession it sought; correspondingly, El Salvador had no legal obligation to grant it.[2322] There are no similar circumstances here, as the Claimants had already obtained and held, through Minera Gorrión,

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2311 *Red Eagle v. Colombia*, at para. 129, **RL-52**.

2312 *Red Eagle v. Colombia*, at para. 63, **RL-52**.

2313 *Red Eagle v. Colombia*, at para. 332, **RL-52**.

2314 *Red Eagle v. Colombia*, at para. 399, **RL-52**.

2315 *Pac Rim v. El Salvador*, at para. 3.10, **RL-53**.

2316 *Pac Rim v. El Salvador*, at paras. 6.13-6.14, **RL-53**.

2317 *Pac Rim v. El Salvador*, at paras. 6.19, **RL-53**.

2318 *Pac Rim v. El Salvador*, at paras. 6.3, **RL-53**.

2319 *Pac Rim v. El Salvador*, at paras. 6.96, **RL-53**.

2320 *Pac Rim v. El Salvador*, at paras. 6.99, **RL-53**.

2321 *Pac Rim v. El Salvador*, at paras.7.31, **RL-53**.

2322 *Pac Rim v. El Salvador*, at para. 10.4, **RL-53**.

Concession titles that accorded it the right to "[c]arry out exploration and exploitation works and projects within the mining lots" covered by the Concessions.[2323]

848. *Feldman v. Mexico* is likewise distinguishable. In that case, the claimant owned and controlled CEMSA, a Mexican export trading company whose business was purchasing cigarettes from domestic sellers and exporting them.[2324] The expropriation claim centered on Mexico's refusal to rebate excise taxes applied to cigarettes exported by CEMSA and its continuing refusal to recognize CEMSA's right to such rebates.[2325] The tribunal rejected the claimant's expropriation claim, finding that "the Claimant never really possessed a 'right' to obtain tax rebates upon exportation of cigarettes, but only a right to the 0% tax rate."[2326] Contrary to the claimant in *Feldman*, the Claimants here held, through Minera Gorrión, valid Concession rights.[2327] It is these rights that Economía extinguished in full when it ruled on 9 February 2023 that the Concession titles were allegedly "not feasible."[2328]

4.1.2. Mexico Cancelled The Concessions In Their Entirety

849. In its Counter-Memorial, Mexico asserts, contrary to fact, that Mexico "did not transfer or confiscate any property of the Claimants," and that, "[e]ven assuming that the claimants had mining rights, those rights did not 'revert' to the State."[2329] Mexico's arguments again fail.

850. There can be no question that Mexico "confiscated" the Claimants' property rights and interests in the Concessions, thereby depriving the Claimants of their protected investments in the Ixtaca Project in their entirety. As the tribunal remarked in *Quiborax v. Bolivia* with respect to an analogous revocation of mining concessions: "What gave value to the investment were the concessions; without them, the investment was lost in its entirety."[2330] The same is true here.

851. As shown above and in the Memorial, Economía – under Secretary Buenrostro and in coordination with SEMARNAT, INPI, and the anti-mining NGOs – ruled in its February 2023 *Oficio* that the Concession titles it had granted 14-20 years earlier were purportedly "not

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2323 Mining Law, at Art. 19, **Exhibit C-158**.

2324 *Feldman v. Mexico*, at para. 1, **CL-31**.

2325 *Feldman v. Mexico*, at para. 1, **CL-31**.

2326 *Feldman v. Mexico*, at para. 118, **CL-31**.

2327 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, at p. 1, **Exhibit C-3**; Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, at p. 1, **Exhibit C-8**.

2328 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

2329 Counter-Memorial, at paras. 551-552.

2330 *Quiborax v. Bolivia*, at para. 231, **CL-94**.

feasible," thereby prematurely ending the implementation of the Supreme Court's decision and cancelling the Concessions outright.[2331] That cancellation was irreversible and permanent, thus depriving the Claimants of the use and enjoyment of their protected investments in the Ixtaca Project in full.[2332] The Claimants have no prospect of ever regaining title to their longstanding Concessions, as demonstrated by Economía's failure even to acknowledge Minera Gorrión's revised concession applications, filed in November 2022.[2333]

852. Moreover, Economía's February 2023 *Oficio* had the effect of transferring the titles back to the State within the meaning of Annex 9-B.[2334] As noted in the Memorial, this is readily confirmed by the Public Mining Registry entry for the Cerro Grande Concession, which reflects that the concession title was "cancelled."[2335] Mexico also expressly admits this in its Counter-Memorial.

853. Specifically, as detailed above, Mexico recognizes that the Supreme Court decision prevented Economía "from declaring the land covered by the concessions free," and required Economía "to respect the existence of the original administrative files of the Concession Applications submitted by Minera Gorrión and Minera Gavilán in 2003 and 2009 and assess, based on that information, whether the issuance of the concessions was feasible."[2336] Economía was not permitted to declare the land "free" until it issued its feasibility decision: "The consequence of the Non-Feasibility Resolution was that the Ministry of Economy rejected the Plaintiffs' Concession Applications, and therefore proceeded to declare the land free[.]"[2337] In other words, it was the February 2023 *Oficio* that cancelled the Concessions outright, thus allowing Economía to "declare the land free." On Mexico's own case, Economía's February 2023 *Oficio* is "the date on which due to the governmental interference, the legal and economic use of the concessions was *definitively* lost."[2338]

854. Moreover, even assuming that the Supreme Court *did* order Economía to annul and extinguish the Claimants' Concession rights in full, *quod non*, that act would itself amount to an indirect judicial expropriation under CPTPP Article 9.8. In other words, Mexico cannot hide behind its

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2331 *See supra* Section 2.17; Memorial, at paras. 400; 425-426.

2332 Memorial, at para. 503.

2333 Memorial, at para. 503.

2334 Memorial, at para. 498.

2335 Memorial, at para. 498.

2336 Counter-Memorial, at paras. 552-555.

2337 Counter-Memorial, para. 556.

2338 *Quiborax v. Bolivia*, at para. 234, **CL-94**.

Supreme Court – if, as Mexico says, the Supreme Court rendered the Concessions void *ab initio* such that "they ceased to exist legally" before Economía's February 2023 *Oficio*, then that decision itself constitutes an expropriatory act. And, like Economía's February 2023 *Oficio*, that act failed to accord with the requirements of CPTPP Article 9.8 – including the payment of prompt, adequate and effective compensation – and was therefore equally unlawful.

855. It is well established that judicial acts can give rise to an unlawful expropriation.[2339] In *Saipem v. Bangladesh*, for example, the claimant entered into a pipeline construction contract with a Bangladeshi state entity.[2340] A dispute arose which was referred to ICC arbitration seated in Dhaka.[2341] Following adverse procedural rulings, the Bangladeshi courts revoked the authority of the ICC tribunal, stayed the arbitral proceedings, and declared the resulting ICC award "a nullity."[2342] The claimant brought a BIT claim alleging expropriation of its contractual rights through the illegal intervention of Bangladesh's courts.[2343] Applying an abuse of right analysis, the tribunal found that the courts had "exercised their supervisory jurisdiction for an end which was different from that for which it was instituted," establishing the illegality of the court's intervention.[2344] The tribunal went on to find that Bangladesh had substantially deprived the claimant of the benefit of the ICC award, amounting to an expropriation of the claimant's rights.[2345] The same reasoning applies here: assuming, as Mexico says, that the Supreme Court's decision extinguished the Concessions, the Supreme Court exercised its "jurisdiction for an end which was different from that for which it was instituted," namely, it went beyond the subject matter of the *amparo* proceedings and ordered the permanent cancellation of existing legal rights retroactively, without due process of law or the payment of any compensation.[2346] In doing so, the Supreme Court would have violated a number of

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2339 *See, e.g.*, *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/15/41, Award, dated 11 October 2019, at para. 279 ("[J]udicial decisions that permit the actions or inactions of other branches of the State and which deprive the investor of its, property or property rights, can still amount to expropriation. While denial of justice could in some case result in expropriation, it does not follow that judicial expropriation could only occur if there is denial of justice."), **CL-113**.

2340 *Saipem S.p.A v. The People's Republic of Bangladesh* ("***Saipem v. Bangladesh***"), ICSID Case No. ARB/05/7, Award, dated 30 June 2009, para. 7, **CL-230**.

2341 *Saipem v. Bangladesh*, para. 25, **CL-230**.

2342 *Saipem v. Bangladesh*, paras. 37, 40, 50, **CL-230**.

2343 *Saipem v. Bangladesh*, para. 52, **CL-230**.

2344 *Saipem v. Bangladesh*, para. 134, **CL-230**.

2345 *Saipem v. Bangladesh*, para. 161, **CL-230**.

2346 *See supra* Section 2.14.

fundamental Mexican legal principles, including principles of legal certainty and non-retroactivity.[2347]

856. Similarly, in *Karkey Karadeniz v. Pakistan*, the claimant had entered into a contract for the provision of barge-mounted rental power, backed by a sovereign guarantee.[2348] The Pakistan Supreme Court declared the contract void *ab initio*, and the claimant's bank accounts were frozen and its vessels detained.[2349] The tribunal found the Supreme Court judgment to be arbitrary, with no effect in international law,[2350] and held that Pakistan had expropriated the claimant's investment by depriving it of the use and enjoyment of its contractual rights.[2351] The deprivation, moreover, could not be considered a legitimate regulatory taking, as it stemmed from an arbitrary Supreme Court judgment.[2352] The same would be true here. Likewise, the tribunal in *Sistem v. Kyrgyz Republic* held that a State court's decision which deprived the claimant of its property rights in a hotel, constituted a measure tantamount to expropriation.[2353]

857. Accordingly, if, as Mexico says, the Supreme Court's decision itself rendered the Concessions void *ab initio* and extinguished the Claimants' property rights and interests in full, that decision constituted an expropriatory act in violation of Article 9.8 of the Treaty.

4.1.3. Mexico's Expropriation Was Unlawful

858. In its Counter-Memorial, Mexico contends that "it is a complete defense for the State if, considering all relevant circumstances, its actions were in good faith, non-discriminatory, and aimed at a public purpose," and that this "defense substantially overlaps with the unlawful expropriation standard in Article 9.8(1) of the CPTPP."[2354] Mexico further contends that Annex 9-B of the CPTPP – which provides that "non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations, *except in rare*

2347 *See supra* 2.14.

2348 *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan* ("***Karkey v. Pakistan***"), ICSID Case No. ARB/13/1, Award dated 22 August 2017, **CL-231.**

2349 *Karkey v. Pakistan*, at paras. 102-105, **CL-231**.

2350 *Karkey v. Pakistan*, at para. 645, **CL-231**.

2351 *Karkey v. Pakistan*, at para. 648, **CL-231**.

2352 *Karkey v. Pakistan*, at para. 649, **CL-231**.

2353 *Sistem Mühendislik Insaat Sanayi ve Ticaret A.S v. Kyrgyz Republic*, ICSID Case No ARB(AF)/06/1, Award, dated 9 September 2009, at para. 118, **CL-232**.

2354 Counter-Memorial, at para. 559.

circumstances"[2355] – allegedly applies to the Claimants' claim for direct expropriation, because Economía's actions were "regulatory" in nature.[2356] Mexico further argues that those actions were "in good faith, non-discriminatory, and taken in compliance with the orders of the Supreme Court, Mexican mining regulations, and respect for the human rights of indigenous communities" – and thus "within the authority of [Economía] to regulate mining concessions.[2357] Mexico's *ipse dixit* contentions are meritless and belied by the record.

859. It bears repeating that Mexico's exhortations regarding the alleged *bona fides* of Economía's actions are uncorroborated by witness testimony and untethered to the contemporaneous documentary record. In addition, as set forth above, Mexico is withholding large swaths of relevant and material evidence, including documents reflecting Economía's preparation and approval of its own February 2023 *Oficio*. Even without that evidence, the record is clear: the February 2023 *Oficio* was nothing more than a baseless and pretextual expedient to end the Ixtaca Project, consistent with SEMARNAT's bad faith campaign.

860. *First*, contrary to Mexico's contentions, CPTPP Annex 9-B, on its face, does not apply to the Claimants' claim for direct expropriation.[2358] It would also not operate to bar any claim for indirect judicial expropriation, assuming that Mexico were correct that the Supreme Court's decision resulted in the definitive cancellation of the Claimants' Concessions, *quod non*.

861. The text of Annex 9-B is unequivocal: it provides that "*[n]on discriminatory regulatory actions* by a Party that are designed and applied to protect legitimate welfare objectives, such as public health, safety and the environment, *do not constitute indirect expropriations, except in rare circumstances*."[2359] On its face, this provision does not apply to claims for direct expropriation; it also does not apply to acts of judicial expropriation. Indeed, the Contracting Parties to the CPTPP could have made Annex 9-B applicable to all types of direct and indirect expropriations; they did not do so. Mexico's attempt to modify unilaterally the plain terms of the Treaty is without basis. Furthermore, Mexico deliberately elides the final clause of CPTPP Annex 9-B, which makes clear that it is not a blanket carve-out, but that, in certain "rare circumstances,"

2355 CPTPP, Annex 9-B, (emphasis added) **CL-7**.

2356 Counter-Memorial, at para. 560; CPTPP, Annex 9-B, **CL-7**.

2357 Counter-Memorial, at para. 561.

2358 Counter-Memorial, at para. 560.

2359 CPTPP, Annex 9-B, **CL-7**.

even non-discriminatory regulatory actions aimed at protecting legitimate welfare objectives *can* constitute an indirect expropriation.[2360]

862. In any event, even if Annex 9-B were applicable here, it does not help Mexico's case. That is because, as the evidence shows, Mexico's actions were discriminatory and were not taken for any genuine "welfare objective."[2361] To the contrary, Mexico's actions were taken pursuant to AMLO's political directives and in furtherance of his anti-foreign-investment and anti-mining agenda.[2362] This is confirmed not only by public statements of high-ranking Mexican officials, including AMLO,[2363] but also by SEMARNAT's own 2024 report, in which it celebrated the Government's historic achievement and commitment of "not granting new mining concessions anywhere in the national territory."[2364] The discriminatory nature of Mexico's actions is further reinforced by the evidence of SEMARNAT's closed-door meetings with the anti-mining NGOs, at which they conspired to manufacture purported "studies" and deliver to Economía a pretext to cancel the Concessions outright.[2365] Then, rather than reveal that it had relied upon one of these purported "studies" for its feasibility decision, Economía instead conjured up a series of alleged technical deficiencies as the stated basis, misleading the Claimants *and* the Mexican courts.[2366] These actions were targeted, discriminatory, and in total disregard of due process.

863. *Second*, contrary to Mexico's contentions, Economía's February 2023 *Oficio*, and the stated reasons for its non-feasibility decision (*i.e.*, the alleged *de minimis* technical defects in the expert reports) bear no relationship to any conceivable public purpose, let alone a stated one.[2367] They also have nothing to do with the subject matter of the Supreme Court's decision, namely, the indigenous rights of the Tecoltemi community.[2368] Nor did the February 2023 *Oficio*

2360 CPTPP, Annex 9-B, **CL-7**.

2361 Counter-Memorial, at para. 560.

2362 *See supra* Section 2.10.

2363 *See supra* Sections 2.10, 2.12.

2364 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, at Section I (Spanish original: "*En la nueva relación del Estado mexicano con los pueblos y comunidades indígenas se ha priorizado el diálogo genuino, así como el reconocimiento y respeto a su libre determinación y autonomía sobre sus tierras, territorios y recursos naturales*;" "*uno de los compromisos actuales del Gobierno, ha sido no otorgar ninguna concesión minera en el territorio nacional.*"), **Exhibit C-797**.

2365 *See supra* Section 2.12.

2366 *See supra* Section 2.17.

2367 Counter-Memorial, at para. 565.

2368 *See supra* Section 2.14.

respect the rights of indigenous communities, as Mexico contends.[2369] To the contrary, the February 2023 *Oficio denied* the human rights of the indigenous communities within the Project's area of influence – cancelling the Ixtaca Project in full, without consulting them at all.

864. Moreover, as the Claimants have explained, Economía could have addressed the alleged *de minimis* technical defects without cancellation of the Concessions.[2370] Economía not only has the authority to correct such minor defects in a concession under Article 31 of the Mining Regulations,[2371] but Economía cannot reject a concession application based upon such defects, unless it has given the applicant notice and an opportunity to correct.[2372] Here, Economía gave Minera Gorrión no such notice or opportunity; instead, Economía invoked the alleged defects as a pretext to cancel the Concessions outright, without any due process whatsoever.[2373] To deprive investors of legal rights that they had held for more than 14-20 years – and in reliance upon which they had invested tens of millions of dollars – based upon such trivial and easily correctable errors – and without any due process – is plainly not in accordance with any genuine public purpose, and Mexico has failed to show otherwise.

865. Mexico's further suggestion, namely that the February 2023 *Oficio* was for a public purpose because it was allegedly issued in compliance with the Supreme Court's decision, is equally unavailing.[2374] As the Claimants have shown, Economía did *not* comply with the Supreme Court's decision.[2375] Specifically, the Supreme Court expressly preserved the validity of the administrative procedure prior to Economía's issuance of the Concession titles.[2376] Ignoring the Supreme Court's decision – and Minera Gorrión's due process rights – Economía proceeded to reopen that administrative procedure *de novo* and to reassess expert reports that it itself had approved 14-20 years earlier.[2377] It then used alleged technical defects in those

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2369 Counter-Memorial, at para. 565.

2370 *See supra* Section 2.17.

2371 *See supra* Sections 2.14, 2.17.

2372 *See supra* Sections 2.14, 2.17.

2373 *See supra* Sections 2.14, 2.17.

2374 Counter-Memorial, at para. 566. In *Stans Energy v. Kyrgyz Republic*, for example, the tribunal did not hesitate to find an unlawful expropriation, where the licensing authority cancelled licenses following judicial decisions ruling that the issuance of the licenses without tender was illegal under Kyrgyz law; the fact that the cancellations were carried out in furtherance of judicial decisions did not render those cancellations lawful, particularly because, as here, the State paid no compensation. *Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (II)*, PCA Case No. 2015-32, Award, dated 20 August 2019, paras. 598-615, **CL-111**.

2375 *See supra* Section 2.14.

2376 *See supra* Section 2.14.

2377 *See supra* Section 2.14.

reports as the purported basis for its feasibility decision, all while recording internally that the actual reason was the INPI report – a report that finds no basis in the Supreme Court's decision.[2378] As Mexico's own documents reveal, the February 2023 *Oficio* was devoid of any public purpose.

866. Notably, Mexico continues its lack of candor in this case, arguing that "Economía's evaluation was not based on [the studies]."[2379] That is untrue. As the Claimants demonstrated, by email dated 8 March 2023, DGM's Cartography and Mining Concessions Director affirmed that the INPI study, which "Economía had received on 9 January 2023 and transmitted to the Unit for the Coordination of Extractive Activities on 19 January 2023," had been "included in the administrative file, ***because said report served as the basis for DGM's resolution" on "the feasibility of re-issuing a concession title with respect to that plot of land, and in relation to the indigenous consultation . . . as challenged in the amparo***."[2380] In other words, the actual reasons for the February 2023 *Oficio* are different from those put forward by Economía in the *Oficio* and in its submissions to the Mexican courts.[2381] This evidence shows the February 2023 *Oficio* for what it is: a baseless and pretextual expedient to end the Ixtaca Project, consistent with AMLO's anti-foreign-investment and anti-mining agenda and the bad faith campaign SEMARNAT led together with INPI and the anti-mining NGOs.[2382]

867. *Third*, Mexico's reliance on *Chemtura*, *Naturgy*, and *Nelson* for the proposition that "this Tribunal is not authorized to review Economía's decision as if it were a local tribunal" is misguided and mischaracterizes those cases.[2383] In each case, the deference language Mexico quotes addressed a narrow question: whether the tribunal should re-examine the regulator's underlying technical determination on the merits. The tribunals declined to do so. *First*, in *Chemtura*, the tribunal declined to second-guess a scientific assessment of lindane's risk.[2384] *Second*, in *Naturgy*, the tribunal declined to reassess a determination that the stature grounds for an administrative receivership was in accordance with local law.[2385] *Third*, in *Nelson*, the

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2378 *See supra* Section 2.17.

2379 Counter-Memorial, at para. 566.

2380 Email from Mr. Rafael Edipo Palma Castillo (DGM's Cartography and Mining Concessions Director) to Ms. Maria Deifilia Madrigal Figueroa (DGM's Director of Document Management Division), dated 8 March 2023, **Exhibit C-804**.

2381 *See supra* Section 2.17.

2382 *See supra* Sections 2.10, 2.16-2.17.

2383 Counter-Memorial, at para. 567.

2384 *Chemtura Corporation v. Government of Canada*, UNCITRAL, Award, dated 2 August 2010, at para. 134, **CL-76**.

2385 *Naturgy Energy Group, SA and Naturgy Electricidad Colombia, SL y otros c. Republic of Colombia*, Caso CIADI No. UNCT/18/1, Laudo, dated 12 March 2021, at para. 263, **RL-56**.

tribunal declined to revisit a decision by Mexico's Federal Institute of Telecommunications dealing with issues of interconnection of telecom networks.[2386] Instead, in each case, the tribunal engaged with the claimant's evidence of improper motive, finding that the claimants had failed to demonstrate any improper motive.[2387] Unlike in those cases, there is ample evidence here of improper motive, including the various closed-door meetings between the Mexican Government and private NGOs to manufacture targeted evidence against the Project.

868. Mexico's reliance on *Bank Melli v. Bahrain* is likewise misplaced.[2388] In *Bank Melli*, the tribunal accepted that a *bona fide* and proportionate response to unlawful activity may fall within the State's regulatory powers and that it owed a "certain degree" of deference to the State's determination of a public purpose.[2389] However, the tribunal held that Bahrain's measures (administration and liquidation of a bank) were *not* genuine regulatory measures, because the State lacked contemporaneous reasons, acted in a political context, failed to consider less restrictive alternatives, and advanced pretextual justifications.[2390] The public-purpose requirement was accordingly not met. The same is true in this case.

869. *Fourth*, Mexico's assertion that "there is absolutely no evidence" of discrimination is flatly wrong.[2391] So too is Mexico's assertion that there is no evidence linking AMLO's arbitrary anti-foreign-investment and anti-mining agenda to Economía.[2392] As set forth above, SEMARNAT has confirmed that, in pursuit of the Government's commitment of "not granting new mining concessions anywhere in the national territory,"[2393] it worked hand-in-hand with

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2386 *Joshua Dean Nelson y Jorge Blanco c. Estados Unidos Mexicanos*, Caso CIADI No. UNCT/17/1, Laudo, dated 5 June 2020, at para. 257, **CL-117**.

2387 *Chemtura Corporation v. Government of Canada*, UNCITRAL, Award, dated 2 August 2010, at para. 138, **CL-76**; *Naturgy Energy Group, SA and Naturgy Electricidad Colombia, SL y otros c. Republic of Colombia*, Caso CIADI No. UNCT/18/1, Laudo, dated 12 March 2021, at paras. 465-464, **RL-56**; *Joshua Dean Nelson y Jorge Blanco c. Estados Unidos Mexicanos*, Caso CIADI No. UNCT/17/1, Laudo, dated 5 June 2020, at para. 325 *et seq*, **CL-117**.

2388 Counter-Memorial, at para. 566.

2389 *Bank Melli Iran and Bank Saderat Iran v. The Kingdom of Bahrain* ("***Bank Melli v. Bahrain***"), PCA Case No. 2017-25, Award, November 9, 2021, para. 692, **RL-57**.

2390 *Bank Melli v. Bahrain*, paras. 631, 651-652, **RL-57**.

2391 Counter-Memorial, at para. 568.

2392 Counter-Memorial, at para. 568.

2393 SEMARNAT, *Unión de Ejidos y Comunidades en defensa de la tierra, el agua y la vida Atcolhua – Ixtacamaxtitlán, Puebla*, dated 10 June 2024, at Section I , available at https://eventos.semarnat.gob.mx/files/uploads/rodolfo/2024/06/12/plantilla-informes-ixtacamaxtitl-n.pdf, (Spanish original: "*En la nueva relación del Estado mexicano con los pueblos y comunidades indígenas se ha priorizado el diálogo genuino, así como el reconocimiento y respeto a su libre determinación y autonomía sobre sus tierras, territorios y recursos naturales*;" "*uno de los compromisos actuales del Gobierno, ha sido no otorgar ninguna concesión minera en el territorio nacional*"), **Exhibit C-797**.

anti-mining NGOs to deliver to Economía a pretext to cancel the Concessions outright.[2394] Contrary to Mexico's contentions, this targeted, coordinated work is indisputable evidence of the Mexican State's "hostility" against the Ixtaca Project and the Claimants.[2395]

870. Likewise, Mexico's assertion that Economía's February 2023 *Oficio* cannot be a discriminatory act because the Second Collegiate Court rejected Minera Gorrión's appeal is baseless and demonstrates no such thing.[2396] As an initial matter, the Court was not examining whether Economía's actions were discriminatory – as a matter of Mexican law or international law. [2397] Nor did the Court have before it the evidence demonstrating Economía's discriminatory intent, including the evidence showing that its February 2023 *Oficio* had been issued for reasons different than those set out in its *Oficio*.[2398] In any event, Mexico cannot use the decisions of its own domestic courts to immunize its discriminatory actions under international law: it well established that "a governmental act may constitute expropriation in international law even though it is lawful under the law of the State taking that act."[2399]

871. *Fifth*, Mexico's argument that it did not deny Minera Gorrión any due process, because Minera Gorrión "did not have the right to correct [its] application," is without merit.[2400] As explained above, Supreme Court jurisprudence establishes that due process rights must be observed in all types of proceedings.[2401] Indeed, if, as Mexico says, the Supreme Court ordered Economía to conduct a *de novo* review of the original concession applications under the Mining Law and its Regulations, including the expert reports, then Economía was required to guarantee to Minera Gorrión the same rights to be heard and to correct provided to it under the Mining Law and its Regulations. Economía denied these due process rights to Minera Gorrión in full. Specifically, as the Claimants have shown, Economía did not notify or grant Minera Gorrión any opportunity

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2394 *See supra* Section 2.16.

2395 Counter-Memorial, at para. 568.

2396 Counter-Memorial, at paras. 417-419.

2397 *See supra* Section 2.14.

2398 *See supra* Section 2.17.

2399 *EcoDevelopment in Europe AB and EcoEnergy Africa AB v. United Republic of Tanzania*, ICSID Case No. ARB/17/33, Award (Excerpts), dated 13 April 2022, at para. 346 (rejecting Tanzania's arguments that expropriation was lawful because its actions were in accordance with its domestic laws), **CL-233**. *See also Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, dated 6 October 2023, at para. 345 (noting that Dominican courts endorsement of termination of a concession agreement cannot be the end of the analysis because "[o]therwise, any decision to terminate a contractual relationship, adopted by a local entity and upheld by a local court, no matter how ludicrous and irregular it may be, could never be assessed as a potential violation of the applicable treaty"), **CL-234**.

2400 Counter-Memorial, at para. 574.

2401 *See supra* Section 2.14.

to correct the alleged *de minimis* technical deficiencies identified in the expert reports, as required under Article 22 of the Mining Regulations, but instead seized upon these alleged technical deficiencies to rule that issuing the Concession titles was "not feasible."[2402]

872. Moreover, Article 9.8 CPTPP does not require a "total absence of due process," as Mexico asserts – and, even if it did, *quod non*, there was a total absence of due process in this case.[2403]

873. Mexico's reliance on *Waste Management II* and *Glamis* is misplaced: neither case supports a "total absence of due process" requirement. *Waste Management II* treated the lack of due process as one way in which the minimum standard of FET may be breached and emphasized that the standard is "a flexible one which must be adapted to the circumstances of each case,"[2404] while *Glamis* treated a "complete lack of due process" as one alternative within a broader list that included manifest arbitrariness, blatant unfairness, and a manifest lack of reasons.[2405] *Glamis* further confirms that domestic legality does not determine or control international legality, which further defeats Mexico's attempt to treat Mexican court review as dispositive of the analysis under CPTPP Article 9.8.[2406]

874. The Claimants established in their Memorial that due process requires, at a minimum, that the expropriation accord with a "lawful procedure,"[2407] including "basic legal mechanisms."[2408] As the tribunal found in *ADC v. Hungary*:

875. The Tribunal agrees with the Claimants that 'due process of law', in the expropriation context, demands an actual and substantive legal procedure for a foreign investor to raise its claims against the depriving actions already taken or about to be taken against it. 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. In general, the legal procedure must be of a nature to grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard. If no legal procedure of such nature exists

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2402 *See supra* Section 2.17.

2403 Counter-Memorial, at para. 577.

2404 *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, dated 30 April 2004, paras. 98-99, **CL-35**;

2405 *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award, dated 8 June 2009, para. 616, **RL-58**.

2406 *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award, dated 8 June 2009, para. 770, **RL-58**.

2407 Memorial, para. 531; *Antoine Goetz and others v. Republic of Burundi (I)*, ICSID Case No. ARB/95/3, Award (Embodying the Parties' Settlement Agreement) (unofficial translation), dated 10 February 1999, at para. 127, **CL-19**.

2408 Memorial, para. 531; *ADC v. Hungary*, Award, dated 2 October 2006, at para. 435, **CL-45**.

at all, the argument that 'the actions are taken under due process of law' rings hollow. And that is exactly what the Tribunal finds in the present case.[2409]

876. Several tribunals have applied this standard. In *Quiborax v. Bolivia*, the tribunal, citing *ADC v. Hungary*, held that the revocation of mining concessions constituted a direct expropriation and was unlawful, because it failed to comply with due process and lacked valid reasons.[2410] In *PrivatBank v. Russia*, the tribunal, also applying *ADC v. Hungary*, concluded that, whether assessed by reference to international law or domestic law, the respondent "failed to provide any meaningful avenue" through which the claimant could be heard or pursue a claim in respect of its dispossessed investment.[2411] The same is true in this case.

877. The tribunal in *Ioannis Kardassopoulos v. Georgia* also agreed with *ADC*.[2412] It found a "classic case of direct expropriation" that had been planned in advance, with government officials and entities central to "squeezing the Claimants out of the investment picture."[2413] The expropriation was carried out "in a manner that can at best be described as opaque:" the claimants received comfort from senior government officials that they "need not worry," while learning from a newsletter that their rights were being challenged.[2414] The tribunal notably agreed that "*[b]ack-door press reports are the opposite of due process*" and were "a reflection of a process afoot within the Georgian Government."[2415]

878. In short, none of these cases required proof of a total absence of due process; they instead confirm that an expropriation is without due process of law, where, as here, the State withholds meaningful notice, conducts the decisive process opaquely, and denies the investor a reasonable opportunity, within a reasonable amount of time, to defend its rights.

879. *Finally*, it is undisputed that Mexico has not provided the Claimants any compensation – much less prompt, adequate and effective compensation, as the CTPP requires for a lawful expropriation. This alone is dispositive.[2416] In its Counter-Memorial, Mexico nonetheless

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2409 *ADC v. Hungary*, Award, dated 2 October 2006, at para. 435, **CL-45**.

2410 *Quiborax v. Bolivia*, Award, dated 16 September 2015, at para. 221, **CL-94**, *citing ADC v. Hungary*, Award, dated 2 October 2006, at para. 435, **CL-45**.

2411 *PJSC CB PrivatBank v. Russia*, PCA Case No. 2015-21, Partial Award, dated 4 February 2019, **CL-235**.

2412 *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID ARB-05-18, Award, dated 3 March 2010, para. 396, **CL-70**.

2413 *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID ARB-05-18, Award, dated 3 March 2010, paras. 400-401, **CL-70**.

2414 *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID ARB-05-18, Award, dated 3 March 2010, paras. 400-401, **CL-70**.

2415 *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID ARB-05-18, Award, dated 3 March 2010, para. 402 (emphasis added), **CL-70**.

2416 *See*, *e.g.*, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, dated 14 December 2012, at paras. 543, 545 ("It is **undisputed that Ecuador has neither paid nor offered compensation** to Burlington. Many

contends that the Claimants "do not identify with precision what investment warrants compensation . . . what 'effective' compensation would consider . . . what investment they made or the amount of an 'effective compensation.'"[2417] Mexico's arguments are without merit.

880. The Claimants have already established the covered investments they made in Mexico.[2418] These include the Claimants' shareholding rights in Minera Gorrión and Minera Gavilán; Almaden's indirect interest in the Project assets and in the rights granted under the Concessions; the funds that Almaden provided to Minera Gavilán and Minera Gorrión to finance the development of the Project; the NSR held by Almadex and Minera Gavilán in the Project, which was duly registered with the Mining Public Registry and entitled them to two percent of net revenue; the surface rights that the Claimants acquired in relation to the Project; and the Project's equipment and infrastructure, including, among other things, movable and immovable, as well as tangible and intangible, property.[2419]

881. Article 9.8 of the CPTPP establishes the standard for an "effective" compensation, noting that 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); not reflect any change in value occurring because the intended expropriation had become known earlier; and (d) be fully realizable and freely transferable."[2420] The World Bank Guidelines on the Treatment of Foreign Direct Investment confirm the CPTPP's approach, and provide that "[c]ompensation will be deemed 'effective' if it is paid in the currency brought in by the investor where it remains convertible, in another currency

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tribunals have held that the lack of payment is sufficient for the expropriation to be deemed unlawful. . . . Accordingly, the **Tribunal cannot but conclude that Ecuador's expropriation was unlawful**.") (emphasis added), **CL-83**; *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic (II)*, ICSID Case No. ARB/97/3, Award, dated 20 August 2007, at para. 7.5.21 (ruling that "there will be a violation of [the Treaty] **even if the measures might be for a public purpose and non-discriminatory**, because no compensation has been paid.") (emphasis added), **CL-236**; *Magyar Farming Company Ltd, Kintyre Kft and Inicia Zrt v. Hungary,* ICSID Case No. ARB/17/27, Award, dated 13 November 2019, at para. 368 ("It is undisputed that Hungary has not compensated the Claimants for the expropriation of their statutory pre-lease right. Thus, the expropriation is unlawful for lack of compensation."), **CL-237**; *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, UNCITRAL, PCA Case No. 2011-17, Award, dated 31 January 2014, at paras. 441-442 (holding that expropriation was unlawful on the basis that Bolivia had failed to compensate the claimants, without finding that the State had violated other conditions for a lawful expropriation), **CL-238**.

2417 Counter-Memorial, at para. 583.

2418 *See supra* Section 3; Memorial, at para. 474.

2419 *See supra* Section 3.3; Memorial, at para. 474.

2420 CPTPP, at Art. 9.8.2, **CL-7**.

designated as freely usable by the International Monetary Fund or in any other currency accepter by the investor."[2421]

882. Further, the Claimants' experts have established that Mexico must pay compensation for the loss and damage sustained by the Claimants as a result of Mexico's breaches of the CPTPP, including CPTPP Article 9.8, in amount not less than US$ 2,682.4 million.[2422]

4.2. Mexico Failed To Accord The Claimants' Protected Investments Fair And Equitable Treatment

883. The Claimants demonstrated in their Memorial that Mexico has breached the minimum standard of treatment set out in CPTPP Article 9.6 by failing to accord fair and equitable treatment ("**FET**") to their protected investments.

884. As the Claimants have shown, Mexico's environmental assessment of the Ixtaca Project was riddled with procedural improprieties and an improper suspension, before it ultimately denied Minera Gorrión's MIA pursuant to political directives and in a manner that did not comport with established SEMARNAT practice or basic due process.[2423] Mexico then arbitrarily and retroactively ruled that the Concessions it had granted years earlier were "not feasible," also on baseless and pretextual grounds, thus resulting in their definitive cancellation.[2424] Mexico's conduct was not based upon a fair or objective assessment of the Ixtaca Project under the law, but rather was driven by AMLO's anti-foreign-investment and anti-mining agenda, which adopted and endorsed the views of the anti-mining NGOs that had opposed the Ixtaca Project for years, while ignoring the voices of the local communities most affected by the Project. Such conduct was arbitrary, non-transparent, inconsistent, discriminatory, disproportionate, and in violation of due process, and therefore breached Article 9.6 of the CPTPP. It also violated the human rights of the local communities within the Project's area of influence.

885. In its Counter-Memorial, Mexico agrees with the Claimants that the FET standard under CPTPP Article 9.6 does not require treatment in addition to or beyond that required by the minimum standard of treatment under customary international law ("**MST**").[2425] Mexico, however, disputes the content and scope of that legal standard and then misapplies it. Mexico also denies that the minimum standard of FET encompasses a general prohibition against

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2421 1992 World Bank Guidelines on the Treatment of Foreign Direct Investment, IV(7), **Exhibit C-929**.

2422 *See infra* Section 5.

2423 *See supra* Section 2.12.

2424 *See supra* Section 2.17.

2425 Counter-Memorial, at para. 584.

arbitrary conduct, discrimination, inconsistent or retroactive measures, disproportionate decision-making, bad faith conduct, and a lack of transparency.[2426] On that purported basis, Mexico incorrectly concludes that it has complied in full with its Treaty obligations.

886. As elaborated below, Mexico's self-serving arguments misstate the relevant legal standard and then ignore the evidence of its own wrongdoing. As that evidence shows, Mexico's conduct was not motivated by any legitimate regulatory considerations, as Mexico now contends, but rather by an institutional animus against mining generally and the Claimants' Ixtaca Project specifically, with its origins in the anti-mining-NGO campaign that had sought and failed to cancel the Ixtaca Project for years. Indeed, there could be no clearer example of arbitrary State conduct than the closed-door collaboration between the Mexican Government and the anti-mining NGOs that brought the Ixtaca Project to its end.

4.2.1. The Legal Standard

887. The Claimants demonstrated in their Memorial that Article 9.6 of the CPTPP obliges Mexico to accord covered investments FET and full protection and security, in accordance with the MST under customary international law.[2427] CPTPP Annex 9-A, as the Claimants explained, confirms that "customary international law," as that phrase is used in Article 9.6, "results from a general and consistent practice of States that they follow from a sense of legal obligation," and that "customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens."[2428] The Claimants also explained that, while customary international law results from State practice and *opinio juris*, the Tribunal can be guided in its interpretation by arbitral awards, which constitute "subsidiary means for the determination of rules of law" pursuant to Article 38 of the ICJ Statute.[2429] As the tribunal in *ADF v. United States* remarked, the interpretation of the MST "must be disciplined by being based upon State practice *and judicial or arbitral caselaw or other sources of customary or general international law*."[2430]

2426 Counter-Memorial, at Sections IV.B.1.a-f.

2427 CPTPP, at Art. 9.6(2), **CL-7**; Memorial, at para. 537.

2428 CPTPP, at Annex 9-A, **CL-7**; Memorial, at para. 538.

2429 Memorial, at para. 539; *see also IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru* ("***IC Power v. Peru***"), ICSID Case No. ARB/19/19, Award, dated 3 October 2023, at para. 288 (observing that "in analyzing [the language of the FET/MST provision], the Tribunal can be guided by investment tribunals awards that have applied similar provisions, as they constitute "subsidiary means for the determination of rules of law" pursuant to Article 38 of the Statute of the ICJ."), **CL-128**.

2430 *ADF Group Inc. v. United States of America* ("***ADF v. USA***"), ICSID Case No. ARB(AF)/00/1, Award, dated 9 January 2003, at para. 184, (emphasis added), **CL-60**.

888. In addition, the Claimants demonstrated that investment treaty tribunals have consistently found that the MST has evolved over time and, therefore, historical articulations of the standard are of limited relevance, as the MST "has evolved since *Neer*, when it only prohibited 'outrageous' behavior, and now forbids a wider range of conducts."[2431] As the tribunal in *Mondev v. United States* observed with respect to the scope of the minimum standard of FET, in modern times, "what is unfair or inequitable need not equate with the outrageous or the egregious," and "a State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith."[2432] The tribunal further noted that each State party to the NAFTA, including Mexico, had accepted that the MST "can evolve" and "has evolved."[2433]

889. As to the content of the minimum standard of FET, the Claimants referred to the standard as articulated by the tribunal in *Waste Management II*, which a number of investment treaty tribunals have affirmed.[2434] The tribunal in *TECO v. Guatemala*, for example, adopted that standard, finding that the minimum standard of FET is violated if the State's "conduct is arbitrary, grossly unfair or idiosyncratic, is discriminatory or involves a lack of due process leading to an outcome which offends judicial propriety."[2435] The tribunal in *Merrill & Ring v. Canada* similarly found that "the standard protects against all such acts or behavior that might infringe a sense of fairness, equity and reasonableness."[2436] And the tribunal in *Rumeli v. Kazakhstan* underscored that both the minimum standard of FET and the autonomous FET standard encompass four "concrete principles" – *first*, "the State must act in a transparent manner;" *second*, "the State is obliged to act in good faith;" *third*, "the State's conduct cannot be arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, or lacking in due process;" and *fourth*, "the State must respect procedural propriety and due process."[2437]

890. Accordingly, as the Claimants explained, Mexico has a legal obligation under the minimum standard of FET as set forth in Article 9.6 of the CPTPP to refrain from exercising its regulatory powers arbitrarily; to provide a stable and secure legal environment; to act consistently and in

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2431 *IC Power v. Peru*, Award, dated 3 October 2023, at para. 289, **CL-128**.

2432 *Mondev International Ltd. v. United States of America* ("***Mondev v. USA***"), ICSID Case No. ARB(AF)-99-2, Award, dated 11 October 2022, at paras. 116, 124, **CL-29**.

2433 *Mondev v. USA*, Award, dated 11 October 2022, at para. 109, 124, **CL-29**.

2434 Memorial, at para. 541.

2435 *TECO Guatemala Holdings, LLC v. Republic of Guatemala* ("***TECO v. Guatemala***"), ICSID Case No. ARB/10/23, Award, dated 19 December 2013, at para. 454, **CL-84**.

2436 *Merrill and Ring v. Canada*, Award, dated 31 March 2010, at para. 210, **CL-72**; *see also Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at para. 435, **CL-91**.

2437 Memorial, at para. 544; *Rumeli v. Kazakhstan*, Award, dated 29 July 2008, at para. 583, **CL-58.**

good faith; and to accord the Claimants' covered investments due process of law.[2438] The Claimants also explained how Mexico violated each of these obligations in this case.[2439]

891. In its Counter-Memorial, Mexico advances a series of flawed arguments regarding the content of the minimum standard of FET under CPTPP Article 9.6, including:

a) The MST under customary international law and any autonomous FET standard are "materially different," and the Claimants' assertion to the contrary is "exaggerated;"[2440]

b) The minimum standard of FET imposes a "high" threshold for finding a breach;[2441]

c) Arbitral tribunals "cannot question" Governmental decisions in examining the State's conduct under the MST and, in accordance with CPTPP Article 9.16, they must accord States a "wide regulatory space" and a "high degree of deference" to measures taken in the public interest, particularly those aimed at environmental protection and the rights of indigenous communities;[2442]

d) Arbitral awards do not constitute practice capable of establishing custom with respect to the MST;[2443] and

e) The MST contains (i) no general prohibition on arbitrary conduct; (ii) no general obligation of good faith; (iii) no general obligation of transparency or due process; (iv) no general prohibition on discrimination; and (v) no general prohibition on inconsistent conduct, retroactive decision making, or disproportionate measures.[2444]

892. Mexico's self-serving arguments are misguided and inconsistent with multiple decisions interpreting and applying the minimum standard of FET.

893. *First*, contrary to Mexico's contentions, a number of investment treaty tribunals – particularly in the post-*Waste Management II* era – have found that the minimum standard of FET is not

2438 Memorial, at Section 4.2.

2439 Memorial, at Section 4.2.

2440 Counter-Memorial, at para. 585.

2441 Counter-Memorial, at para. 586.

2442 Counter-Memorial, at paras. 588-589.

2443 Counter-Memorial, at para. 590.

2444 Counter-Memorial, at paras. 595, 598, 600, 605, 609-610.

materially different from an "autonomous" FET standard found in many BITs.[2445] This includes not only the tribunals in *Deutsche Bank v. Sri Lanka*,[2446] *Rusoro Mining v. Venezuela*,[2447] and *Rumeli v. Kazakhstan*,[2448] as cited in the Claimants' Memorial, but also the tribunals in *Duke Energy v. Ecuador*[2449] and *ELA USA v. Estonia*.[2450]

894. In *Duke Energy*, the tribunal noted "the evolution in the latest ICSID decisions," and held that the standard for fair and equitable treatment under the BIT and the minimum standard of treatment under customary international law are "essentially the same."[2451] The tribunal also concurred with the findings of earlier tribunals that "a standard of fair and equitable treatment in international law has indeed emerged," and that an "essential element" of that standard is "a stable and predictable legal and business environment."[2452]

895. Likewise, in *ELA USA*, the tribunal observed that "several ICSID tribunals" had found "no material difference" between an autonomous FET standard and the international minimum standard of treatment, and confirmed that the "distinction is more perceived than material."[2453]

896. There is, in any event, no dispute between the Parties that, as the *Waste Management II* tribunal found, the minimum standard of FET is infringed by conduct that "is arbitrary, grossly unfair, unjust or idiosyncratic," or "involves a lack of due process."[2454] Nor does Mexico dispute the *Waste Management II* tribunal's recognition that the MST evolves and is "constantly in a

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2445 Counter-Memorial, at para. 585.

2446 Memorial, at para. 543; *Deutsche Bank v. Sri Lanka,* Award, dated 31 October 2012, at para. 419, **CL-81**.

2447 Memorial, at para. 543; *Rusoro v. Venezuela*, Award, dated 22 August 2016, at para. 520, **CL-99**.

2448 Memorial, at para. 544; *Rumeli v. Kazakhstan,* ICSID Case No. ARB/05/16, Award, dated 29 July 2008, **CL-58**.

2449 *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador ("**Duke Energy v. Ecuador**")*, ICSID Case No. ARB/04/19, Award, dated 18 August 2008, **CL-239**.

2450 *ELA U.S.A., Inc. v. The Republic of Estonia ("**ELA v. Estonia**")*, PCA Case No. 2018-42, Award, dated 21 February 2025, **CL-240**.

2451 *Duke Energy v. Ecuador*, Award, dated 18 August 2008, at paras. 333, 335-337, **CL-239**.

2452 *Duke Energy v. Ecuador*, Award, dated 18 August 2008, at para. 339, **CL-239**.

2453 *ELA v. Estonia*, Award, dated 21 February 2025, paras. 744-745, **CL-240**.

2454 *Waste Management, Inc. v. United Mexican States (Number 2) ("**Waste Management v. Mexico (II)**")*, ICSID Case No. ARB(AF)/00/3, Award, dated 30 April 2004, at para. 98, (emphasis added), **CL-35**.

process of development."[2455] Both Parties also agree with the observations of the tribunal in *Cargill v. Mexico* regarding the minimum standard of FET.[2456]

897. The *Cargill* tribunal made clear that a State violates the minimum standard of FET if its regulatory authority takes arbitrary, abusive, or pretextual actions against the investment.[2457] It also agreed with the International Court of Justice in the *ELSI* case that "[a]rbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law . . . [i]t is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety."[2458] The *Cargill* tribunal held that a State violates the minimum standard of FET if its conduct "constitutes an unexpected and shocking repudiation of a policy's very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive."[2459] This is precisely what the record evinces in this case.

898. *Second*, Mexico overstates the threshold required for an FET breach under CPTPP Article 9.6 and the level of deference that should be accorded to the State and its regulatory actions.[2460]

899. Mexico's *ipse dixit* statement that "tribunals cannot question governmental decisions" is wrong and flatly contradicted by the legal authorities upon which Mexico itself relies.[2461] The Claimants do not dispute that States retain discretion in regulating their affairs. However, when States accede to international investment treaties, such as the CPTPP, they agree to exercise their regulatory powers in accordance with the standards set forth in those treaties.[2462] As the tribunal in *Parkerings v. Lithuania* remarked, "[i]t is each State's undeniable right and privilege to exercise its sovereign legislative power,"[2463] but it is prohibited for a State "to act unfairly, unreasonably or inequitably in the exercise of its legislative power."[2464] As the tribunal in *TECO* put it: "deference to the State's regulatory powers cannot amount to condoning

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2455 *Mondev v. USA*, Award, dated 11 October 2002, at paras. 119, 124, **CL-29**. *See also ADF v. USA*, Award, dated 9 January 2003, at para. 179 (holding that the MST "is not a static photograph" and that "customary international law and the minimum standard of treatment of aliens it incorporates, are constantly in a process of development"), **CL-60**.

2456 Memorial, at para. 547; Counter-Memorial, at para. 587.

2457 *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 291, **CL-12**.

2458 *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 291, **CL-12**.

2459 *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 293, **CL-12**.

2460 Counter-Memorial, at paras. 586-593.

2461 Counter-Memorial, at para. 588.

2462 *TECO v. Guatemala*, Award, dated 19 December 2013, at para. 493, **CL-84**.

2463 *Parkerings-Compagniet AS v. Republic of Lithuania ("**Parkerings v Lithuania**")*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, at para. 332, **CL-52**.

2464 *Parkerings v Lithuania*, Award, 11 September 2007, at para. 332, **CL-52**.

behaviors that are manifestly arbitrary, idiosyncratic, or that show a complete lack of candor in the conduct[] of the regulatory process."[2465] It continued:

900. [A]lthough the role of an international tribunal is not to second-guess or to review decisions that have been made genuinely and in good faith by a sovereign in the normal exercise of its powers, it is up to an international arbitral tribunal to sanction decisions that amount to an abuse of power, are arbitrary, or are taken in manifest disregard of the applicable legal rules and in breach of due process in regulatory matters.[2466]

901. Mexico further argues, without support, that Article 9.16 of the CPTPP gives Mexico "a high degree of deference with respect to measures taken in good faith, in particular those destined to prevent environmental damage and protect the rights of indigenous communities."[2467] Article 9.16 does not assist Mexico.

902. As an initial matter, Article 9.16 provides that "[n]othing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure *otherwise consistent with this Chapter* that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives."[2468] In other words, Article 9.16 does not carve out from the Treaty's ambit State action taken in pursuit of environmental, health or other regulatory objectives. To the contrary, that State action must still be "otherwise consistent with" the obligations set forth in CPTPP Chapter 9, including Article 9.16.[2469] This has been affirmed by a number of investment treaty tribunals.

903. For example, in *Montauk v. Colombia*, the tribunal, in interpreting a similar provision in the Canada-Colombia FTA, held that the provision would have no application if the measures were found to be "arbitrary" or "unjustifiabl[y] discrimina[tory]."[2470] The majority of the tribunal further found that, even if the measures were found to be lawful under the Treaty, this provision would not "preclude the payment of compensation" to the investor.[2471]

2465 *TECO v. Guatemala*, Award, 19 December 2013, at para. 493, **CL-84**.

2466 *TECO v. Guatemala*, Award, dated 19 December 2013, at para. 493, **CL-84**.

2467 Counter-Memorial, at para. 589.

2468 CPTPP, at Article 9.16, **CL-0007**.

2469 CPTPP, at Article 9.16, **CL-0007**.

2470 *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia ("**Montauk v. Colombia**")*, ICSID Case No. ARB/18/13, Award dated 7 June 2024, at para. 977, **CL-241**.

2471 *Montauk v. Colombia*, Award dated 7 June 2024, at para. 982, **CL-241**.

904. As set forth above, Mexico's actions in this case were not good faith regulatory actions – nor were they undertaken to prevent environmental damage or protect the rights of indigenous communities, as Mexico says.[2472] To the contrary, Mexico's actions were driven by AMLO's discriminatory anti-mining policy, which sought to drive foreign companies out of the mining sector under the guise of environmental protection and indigenous rights. Indeed, if Mexico truly sought to protect indigenous rights, it would have conducted the indigenous consultation ordered by the Supreme Court and allowed all community voices to be heard on equal terms. Because SEMARNAT, INPI, and the anti-mining NGOs, however, knew and understood that the Ixtaca Project had widespread local support, they acted to manufacture purported "studies" to support the Project's definitive cancellation, without any consultations at all.[2473] In such circumstances, Article 9.16 finds no application.

905. *Third*, it is well established, including in the legal authorities upon which Mexico itself relies, that arbitral awards serve as indicators of customary international law. In *Glamis Gold*, for example, the tribunal observed that arbitral awards may "serve as illustrations of customary international law if they involve an examination of customary international law, as opposed to a treaty-based, or autonomous, interpretation."[2474] In *Railroad Development Corporation v. Guatemala*, Professor Michael Reisman similarly confirmed in his legal expert report that, "[i]n any examination of state practice, such arbitral awards, by virtue of their very judgment of lawfulness, are a reliable indicator of relevant state practice."[2475] Indeed, Mexico itself relies upon arbitral awards when articulating its own, more restrictive view of the MST.

906. *Finally*, Mexico's attempt to artificially narrow the minimum standard of FET is meritless. In its Counter-Memorial, Mexico advances five arguments through which it seeks to deprive the standard of any meaning.[2476] Specifically, Mexico contends that there is: (i) no general prohibition on arbitrary conduct; (ii) no general obligation of good faith; (iii) no general obligation of transparency; (iv) no general prohibition on discrimination; and (v) no general prohibition on inconsistent conduct, retroactive decision making, or disproportionate measures.

2472 *See supra* Section 2.12.

2473 *See supra* Section 2.17.

2474 *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Award, dated 8 June 2009, para. 605, **RL-58**.

2475 Second Opinion of W. Michael Reisman on Legal Issues Raised in the Respondent's Counter-Memorial, *Railroad Development Corp. v. Guatemala, DR-CAFTA*, ICSID Case No. ARB/07/23, dated 11 March 2011, at para. 52, **CL-242**; *see also*, *id.*, at para. 54 ("Under recognized standards of international law the Claimant need not conduct a vast research of pertinent state practice and opinion juris itself, as the Respondent would have it, to confirm the emergence of a new norm of customary international law. Under Article 38(1)(d) of the Statute of the International Court of Justice, it is entitled to rely on the evidence of customary international law norms provided by pertinent decisions of tribunals and the teachings of the most highly qualified publicists.").

2476 Counter-Memorial, at Section IV. B. 1, paras. 584-612.

As elaborated below, each of these contentions is wrong and indeed belied by the *Waste Management II* and *Cargill* formulations of the FET standard Mexico itself endorses.

4.2.1.1. The arbitrary or abusive exercise of regulatory powers is incompatible with the minimum standard of FET

907. As demonstrated in the Memorial, a State breaches the minimum standard of FET when it exercises its regulatory powers in an arbitrary or abusive manner.[2477]

908. In its Counter-Memorial, Mexico contends that arbitrariness does not constitute a standalone basis for a breach of the minimum standard of FET,[2478] and that arbitrariness and FET are "different concepts."[2479] In support of this argument, Mexico invokes *Waste Management II* to assert that "'arbitrary' conduct is only one of the elements used to determine whether FET has been violated."[2480] That is incorrect. As tribunal in *Waste Management II* plainly stated, the minimum standard of FET is infringed where the State conduct at issue is "*arbitrary*, grossly unfair, unjust *or* idiosyncratic."[2481] The disjunctive language of that formulation – "or" – makes it clear that a finding of arbitrariness by the State is sufficient to establish a breach.

909. Indeed, the tribunal in *TECO* found there was "*no doubt*" that the minimum standard of FET is violated when the State acts "arbitrarily" or "show[s] a complete lack of candor or good faith in the regulatory process."[2482] Similarly, in *Cargill*, the tribunal held that there is a violation of the minimum standard of FET where the State's conduct "constitutes an unexpected and shocking repudiation of a policy's very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive."[2483] A number of tribunals have relied upon *Cargill* in finding that the minimum standard of FET prohibits arbitrariness by the State.[2484]

910. Mexico also takes issue with the Claimants' identification of measures constituting arbitrary treatment, including: a measure that inflicts damage on the investor without serving any apparent legitimate purpose; a measure that is not based on legal standards but on discretion,

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2477 Memorial, at Section 4.2.2.

2478 Counter-Memorial, at paras. 594-597.

2479 Counter-Memorial, at para. 594.

2480 Counter-Memorial, at para. 595.

2481 *Waste Management v. Mexico (II)*, Award, dated 30 April 2004, Award, 30 April 2004, at para. 98 (emphasis added), **CL-35**.

2482 *TECO v. Guatemala,* Award, dated 19 December 2013, at para. 465, **CL-84**.

2483 Memorial, at para. 547; *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 293, **CL-12**.

2484 *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 293, **CL-12**; *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB-19-19, Award, dated 3 October 2023, at para. 299, **Exhibit CL-128**; *Resolute Forest Products Inc. v Government of Canada*, PCA Case No. 2016-13, Award, dated 25 July 2022, at para. 741, **CL-123**.

prejudice or personal preference; and a measure taken for reasons that are different from those put forward by the decisionmaker.[2485] As noted in the Memorial, these measures do not reflect merely the Claimants' view; Professor Christoph Schreuer identified these measures in his capacity as a legal expert in *EDF v. Romania*.[2486]

911. Mexico, moreover, cannot credibly deny that State conduct is arbitrary when it is motivated by pressure from political interest groups. Indeed, Mexico itself argued in *PACC Offshore Services Holdings v. Mexico* that State action breaches the minimum standard of FET when the State acts as a result of "mass interest group or electoral pressure" or "pressure from special or narrow interest groups."[2487] That is precisely what led to the State actions at issue in this case.

912. Mexico's attempt to distinguish *Odyssey v. Mexico* from the present case likewise fails. Mexico argues that the similarities between *Odyssey* and this case are "false parallels,"[2488] because the tribunal's finding of arbitrariness in *Odyssey* rested upon "personal motives" supported by witness statements, whereas Mexico's actions here were taken in pursuit of "a legitimate public interest."[2489] Mexico goes further still, asserting that the majority in *Odyssey* "misinterpreted domestic judicial findings, inferred motives without evidentiary basis," and that the *Odyssey* award therefore "lacks persuasive authority."[2490] These contentions are without merit.

913. As a threshold matter, the *Odyssey* tribunal's finding of arbitrariness was not confined to "personal motives." The tribunal concluded that, to establish a violation:

> it is necessary to analyze the conduct and the reasons the State had to reach a specific decision. Accordingly, in the present case, if the administrative decision that Respondent was entitled to make regarding the MIAs 'was not founded on reason or fact, nor on the law' or was 'clearly improper and discreditable,' then the State's conduct will be considered arbitrary under the applicable FET standard.[2491]

2485 Counter-Memorial, at para. 596.

2486 *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 303, **CL-68**.

2487 *Pacc Offshore Services Holdings LTD v. United Mexican States*, ICSID Case No. UNCT/18/5, Rejoinder on the Merits, dated 10 June 2020, at para. 407, **CL-73**.

2488 Counter-Memorial, at para. 597.

2489 Counter-Memorial, at para. 597.

2490 Counter-Memorial, at para. 597.

2491 Counter-Memorial, at n. 712; *Odyssey v. Mexico*, Final Award, dated 17 September 2024, at para. 307, **CL-134**.

914. As is evident from the text of the tribunal's decision, the nature of the extraneous motivation – whether personal ambition or political ideology – is immaterial. What matters is whether the State's conduct was "arbitrary, grossly unfair, unjust or idiosyncratic," not the character of the external motivating factor.[2492] The *Odyssey* tribunal's reasoning confirms this.

915. The *Odyssey* tribunal found, by majority, that the rejection of the claimant's new MIA in that case "was not the result of a mere administrative error or a questionable assessment of the potential environmental impact of the Project and its mitigation measures," but rather was "the direct result of a manifestly and grossly arbitrary decision by Mr. Pacchiano, who decided that the MIA should be rejected for personal reasons, *resulting in a rejection based on pretextual and arbitrary reasons rather than on objective scientific and technical evidence and the law*."[2493] The tribunal underscored that "attempts to legitimately exercise regulatory powers should be encouraged; conduct that constitutes an abuse of regulatory powers should be sanctioned."[2494] This principle applies with equal force to the present case, regardless of whether the extraneous motivation was personal or political – indeed, here it was both.

916. The tribunal's decision in *B-Mex v. Mexico* was to similar effect. In that case, the tribunal concluded that Mexico's "decision to bring about the termination of the Claimants' business, *driven as it was found to be by political predisposition rather than considerations of public or regulatory policy*," was "grossly unfair" and "arbitrary beyond a merely inconsistent or questionable application of administrative or legal policy or procedure."[2495]

917. Finally, even assuming, *arguendo*, that the threshold for a breach of the minimum standard of FET were "much higher," such that conduct must be arbitrary "beyond a mere contradictory or questionable application of administrative or legal policy or procedures" so that it "constitutes an unforeseen and shocking repudiation of the very aims and objectives of a policy, or otherwise seriously subverts a national law or policy for a hidden motive," *quod non*,[2496] Mexico's arbitrary conduct in this case, as demonstrated above, meets that elevated standard.

918. Additionally, the Claimants demonstrated that, in addressing arbitrary or abusive State conduct, tribunals have consistently referred to the international principle of good faith.[2497]

2492 Counter-Memorial, at para. 586; *Waste Management v. Mexico (II)*, Award, dated 30 April 2004, at para. 98, **CL-35.**

2493 *Odyssey v. Mexico*, Final Award, dated 17 September 2024, at para. 440, (emphasis added), **CL-134**.

2494 *Odyssey v. Mexico*, Final Award, dated 17 September 2024, at para. 447, **CL-134**.

2495 *B-Mex v. Mexico*, Final Award, dated 21 June 2024, at para. 119, (emphasis added), **CL-30**.

2496 Counter-Memorial, at para. 595.

2497 Memorial, at para. 557.

919. Mexico disagrees, asserting that the Claimants have not met the burden of proving a widespread custom and reiterating that "arbitral awards are not state practice."[2498] These assertions too are misguided.

920. The principle of good faith is not, as Mexico contends, extraneous to the MST. It is a well-established component of the MST under customary international law.[2499]

921. For its contrary view, Mexico first relies upon the non-disputing party submissions of the United States and Canada in *Mesa Power Group v. Canada* for the proposition that tribunals cannot rely upon arbitral decisions as evidence of the content of customary international law.[2500] Mexico's reliance on these submissions is misplaced. In its award, the *Mesa Power Group* tribunal did not adopt this view or rule in favor of Mexico's position on the notion of "state practice."[2501] Instead, the tribunal concluded that the decision in *Waste Management II* "correctly identifie[d] the content of the customary international law minimum standard of treatment."[2502]

922. Mexico next asserts that there is no obligation of "good faith" under the CPTPP.[2503] In support of this argument, Mexico relies upon the ICJ's decision in *Nicaragua v. Honduras* for the proposition that good faith is not an "independent obligation" and "only relevant when invoked in relation to a subject matter that is already part of customary international law."[2504] Mexico misses the point. The Claimants do not assert a freestanding obligation of good faith divorced from the minimum standard of FET under the Treaty. Rather, the Claimants invoke good faith as a component of the standard itself, a proposition that is well established.

923. For example, the *Merrill Ring* tribunal held that, even in the absence of "stand-alone obligations," good faith and the prohibition of arbitrariness are "the expression of general principles of law."[2505] Likewise, the tribunal in *Abengoa v. Mexico* held that "the minimum

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2498 Counter-Memorial, at para. 598.

2499 *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States* ("***Tecmed v. Mexico***"), ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 153 ("The Arbitral Tribunal finds that the commitment of [fair and equitable treatment under customary international law] included in Article 4(1) of the [Mexico-Spain BIT] is an expression and part of the *bona fide principle recognized in international law*") (emphasis added), **CL-33**.

2500 Counter-Memorial, at para. 590.

2501 *Mesa Power Group LLC v. Government of Canada* ("***Mesa Power v. Canada***"), PCA Case No. 2012-17, Award, dated 24 March 2016, paras. 495-501, **CL-243**.

2502 *Mesa Power v. Canada*, Award, dated 24 March 2016, para. 501, **CL-243**.

2503 Counter-Memorial, at para. 598.

2504 Counter-Memorial, at para. 598.

2505 Memorial, at para. 557; *Merrill and Ring v. Canada*, Award, dated 31 March 2010, at para. 187, **CL-72**.

standard of treatment under customary international law is an expression of and an integral part of the principle of good faith."[2506] And the *TECO* tribunal, applying the minimum standard of FET in the DR-CAFTA, held that FET is "part and parcel of the international principle of good faith," and that the "principle of good faith is part of customary international law."[2507]

924. In summary, Mexico's attempt to exclude arbitrary or abusive conduct, as well as the principle of good faith, from the minimum standard of FET is without foundation.

4.2.1.2. Failure to act in a transparent manner and with due process is incompatible with the minimum standard of FET

925. As set out in the Memorial, the minimum standard of FET requires a host State to act in a transparent manner and with due process of law.[2508]

926. In its Counter-Memorial, Mexico fails to engage with the substance of the Claimants' arguments. Instead, Mexico argues that transparency is not an obligation under the Treaty.[2509] Mexico's position is baseless.

927. As noted above, Mexico itself endorses the standard set out in *Waste Management II*, which identifies both "a lack of due process leading to an outcome which offends judicial propriety," and "a complete lack of transparency and candour in an administrative process," as conduct in breach of the minimum standard of FET.[2510] Mexico cannot, on the one hand, endorse the *Waste Management II* standard, while, on the other hand, disavow the components of that standard.

2506 *Abengoa, S.A. y COFIDES, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, dated 18 April 2013, at para. 643, **CL-244**.

2507 Memorial, paras. 557-558; *TECO v. Guatemala*, Award, dated 19 December 2013, at para. 456, **CL-84**.

2508 Memorial, para. 566; *Cargill, Incorporated v. Republic of Poland*, ICSID Case No. ARB(AF)/04/2 ("Cargill v Poland"), Final Award, dated 29 February 2008, at para. 511, ("[i]t is, however, generally accepted that [transparency] forms part of fair and equitable treatment."), **CL-56**; *Tecmed v. Mexico*, Award, dated 29 May 2003, at para. 154, ("[t]he 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), **CL-33**; *Rumeli v. Kazakhstan*, Award, dated 29 July 2008, at para. 609, ("The parties rightly agree that the fair and equitable treatment standard encompasses inter alia the following concrete principles: . . . the State must respect procedural propriety and due process."), **CL-58**.

2509 Counter-Memorial, at para. 600.

2510 *See supra* Section 4.2.1.

928. Mexico's further assertion, namely that there is "clear and consistent agreement" that there is "no rule of customary international law on transparency," is baseless and a clear attempt to avoid the application of arbitral awards unfavorable to its case.[2511]

929. As the Claimants have explained, investment treaty tribunals, including the tribunal in *Metal-Clad v. Mexico*, have affirmed that transparency requires, at a minimum, that the host State make known to the investor "all relevant legal requirements for the purpose of initiating, completing and successfully operating investments made, or intended to be made, under the Agreement should be capable of being readily known to all affected investors of another Party," and in the event of any scope for misunderstanding or confusion, "ensure that the correct position is promptly determined and clearly stated the relevant legal requirements that apply to its investment, and that it resolve any misunderstanding or scope for confusion."[2512]

930. The tribunal in *Tecmed v. Mexico* similarly held that "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."[2513] Explaining the practical effect of the standard, the *Tecmed* tribunal noted that the investor expects to know beforehand "the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations."[2514] Similarly, in *Binder v. Czech Republic*, the tribunal underscored that "[i]t is universally accepted that the minimum protection afforded [to] investors under international law generally includes, but is not limited to, requirements of [. . .] *transparency*."[2515] Other tribunals have held similarly.[2516]

2511 Counter-Memorial, at para. 604.

2512 Memorial, para. 566; *Metalclad Corporation v. The United Mexican States* ("***Metalclad v. Mexico***"), ICSID Case No. ARB(AF)-97-1, Award, dated 30 August 2000, at para. 76, **CL-22**.

2513 *Tecmed v. Mexico*, Award, dated 29 May 2003, at para. 154, **CL-33**.

2514 *Tecmed v. Mexico*, Award, dated 29 May 2003, at para. 154, **CL-33**.

2515 *Rupert Joseph Binder v. Czech Republic*, UNCITRAL, Final Award, dated 15 July 2011, at para. 176 (emphasis added), **CL-245**.

2516 *See*, *e.g.*, *Murphy Exploration & Production Company International v. Ecuador*, PCA Case No. 2012-16, Partial Award, dated 6 May 2016, at paras. 205-206 ("The Parties dispute the extent to which Article II(3)(a) of the BIT represents an autonomous treaty standard that is distinct from the standard established under customary international law. This debate is more theoretical than substantial. It is clear from the repeated reference to 'fair and equitable' treatment in investment treaties and arbitral awards that the FET treaty standard is now generally accepted as reflecting recognisable components, such as: *transparency*, consistency, stability, predictability, conduct in good faith and the fulfilment of an investor's legitimate expectations") (emphasis added), **CL-246**; *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, dated 6 October 2023, at para. 445 (noting that "a requirement of a certain degree of transparency has reached the level of customary international law"), **CL-234**.

931. As the Claimants further demonstrated, the obligation of transparency is closely associated with the principle of due process, which requires that the State provide the investor with notice and the opportunity to be heard.[2517] In *Glencore v. Colombia*, for example, the tribunal observed that the relevant authority must provide certain procedural guarantees, giving "each party a fair opportunity to present its case and to marshal appropriate evidence, and then must assess the submissions and the evidence in a reasoned, even-handed, and unbiased decision."[2518]

932. Likewise, the tribunal in *Odyssey* confirmed the importance of due process, underscoring that a "violation of administrative due process may occur not only when there is 'complete lack of transparency and candour,' but also specifically when 'an investor is denied a permit based on reasons that are unrelated to specific existing requirements for issuing that permit.'"[2519]

933. Mexico does not dispute the relevance of due process to the minimum standard of FET.

4.2.1.3. Inconsistent conduct, retroactive decision-making, and discriminatory conduct are incompatible with the minimum standard of FET

934. As explained in the Memorial, inconsistent conduct, retroactive decision-making, and failing to act in a proportionate manner are incompatible with the minimum standard of FET.[2520] The standard also requires a host State to act in a non-discriminatory manner.[2521]

935. Mexico's defense is simply to reiterate that the Claimants "fail to provide state practices to support their assertions" and that the cases relied upon by the Claimants are "not applicable," as they "concerned the autonomous standard of FET."[2522] For the reasons already set forth above, Mexico's assertions are meritless.

936. Moreover, it cannot be seriously disputed that, as the tribunal in *Telefónica v. Colombia* held, the State has a "duty not to act in a contradictory manner."[2523] Nor can it be seriously disputed that, as the tribunal in *ADC v. Hungary* observed, "[a]lmost all systems of law prevent parties

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2517 Memorial, at para. 569.

2518 Memorial, at n. 1371; *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia (I), ICSID Case No. ARB/16/6* ("***Glencore v. Colombia (I)***"), Award, dated 27 August 2019, at para. 1318, **CL-112**.

2519 Memorial, at para. 570; *Odyssey v. Mexico*, Final Award, dated 17 September 2024, at para. 310, **CL-134**.

2520 Memorial, at Sections 4.2.2.1 and 4.2.2.4.

2521 Memorial, at Section 4.2.2.3.

2522 Counter-Memorial, at para. 609.

2523 *Telefónica v. Colombia*, Award, dated 12 November 2024, at para. 447, **CL-137**.

from blowing hot and cold."[2524] The fact that these well-established principles were articulated by tribunals interpreting an "autonomous" FET standard does not render them irrelevant.

937. Mexico's further assertion, namely that the minimum standard of FET does not encompass discrimination, is equally unfounded.[2525] It is also belied by the standards set out in *Waste Management II* and in *Cargill*, which Mexico itself relies upon for its formulation of the minimum standard of FET, and which confirm that the minimum standard of FET prohibits discrimination by the host State.[2526] This is further confirmed by a number of other tribunals.[2527]

4.2.2. Exhaustion of Local Remedies Is Not A "Necessary Prerequisite"

938. In an effort to defeat the Claimants' FET claim at the threshold, Mexico contends that the exhaustion of local remedies is a "necessary prerequisite" to establish a violation of CPTPP Article 9.6, which the Claimants have allegedly failed to fulfill.[2528] According to Mexico, this requirement extends to both judicial and administrative remedies and is excused only where the remedy is "obviously futile," that is, "actually unavailable" or "manifestly ineffective."[2529] On that basis, Mexico asserts that the Claimants' decision not to challenge SEMARNAT's MIA denial in the Mexican courts and the abandonment of the nullity proceedings against Economía's February 2023 *Oficio* are "fatal" for their FET claim under CPTPP Article 9.6.[2530] These arguments are without foundation.

939. It is well established that the exhaustion of local remedies is required only for a claim for denial of justice, which the Claimants do not raise here.[2531] Indeed, Mexico has itself acknowledged

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2524 *ADC v. Hungary*, dated 2 October 2006, Award, at para. 475, at **CL-45**.

2525 Counter-Memorial, at para. 591.

2526 *Cargill v. Mexico*, Award, dated 18 September 2009, at para. 293, **CL-12**.

2527 *See, e.g.*, *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB-19-19, Award, dated 3 October 2023, para. 299 (holding that "MST/FET prohibits both arbitrariness and discrimination by the host State"), **Exhibit CL-128**; *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award, dated 26 June 2003, at para. 135 (finding that "[a] decision which is in breach of municipal law and is discriminatory against the foreign litigant amounts to manifest injustice according to international law"), **CL-34**.

2528 Counter-Memorial, at paras. 592-593.

2529 Counter-Memorial, at para. 592.

2530 Counter-Memorial, at para. 707.

2531 *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, dated 26 July 2018, at para. 889 ("It follows from Article 26 and decisions of investor-state tribunals such as *Arif v Moldova* that there is ***no general requirement to exhaust local remedies for a treaty claim to exist***, unless a treaty requires the exhaustion of local remedies as a condition for the commencement of an ICSID arbitration or such a claim is for denial of justice.") (emphasis added) **CL-248**; *Chevron Corporation (U.S.A.) and Texaco Petroleum Corporation (U.S.A.) v. Republic of Ecuador I*, PCA Case No. 2007-02/AA277, Partial Award on the Merits, dated 30 March 2010, at para. 321 (noting that "the Tribunal is amply satisfied that a requirement of exhaustion of local remedies applies generally to claims for denial of justice"), **CL-249**; *ATA Construction, Industrial and Trading*

that, in *Odyssey v. Mexico*, the tribunal did not require the claimant to exhaust local remedies with respect to the MIA denial in that case.[2532] This is for two reasons.

940. *First*, Article 26 of the ICSID Convention provides that consent to arbitration is "unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy."[2533] As the tribunal in *Arif v. Moldova* explained, "Article 26 of the ICSID Convention constitutes an express waiver of the rule of exhaustion of local remedies in ICSID arbitrations," and, as such, "there is no general requirement to exhaust local remedies for a treaty claim to exist (unless such a claim is for denial of justice)."[2534]

941. The tribunal in *Gavrilovic v. Croatia*, applying the decision in *Arif v. Moldova*, similarly concluded that "there is no general requirement to exhaust local remedies for a treaty claim to exist, unless a treaty requires the exhaustion of local remedies as a condition of the commencement of an ICSID arbitration or such a claim is for denial of justice."[2535]

942. *Second*, there is no exhaustion of local remedies requirement in the CPTPP. To the contrary, CPTPP Article 9.21 contains a "no u-turn" provision, which requires all claims to be submitted accompanied by "written waivers of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach" referred to arbitration.[2536] In accordance with Article 9.21, the Claimants provided unconditional waivers from each of the Claimants and their Mexican enterprises with the Request for Arbitration.[2537] Before the Claimants and their Mexican enterprises executed and submitted those waivers, Minera Gorrión formally withdrew all local proceedings in Mexico and has taken no action to

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Company v. Hashemite Kingdom of Jordan, ICSID Case No. ARB/08/2, Award, dated 18 May 2010, at para. 107 (finding that "despite the fact that exhaustion [of local remedies] is not required by BITs, the principle seems now to have been carried over specifically for denial of justice claims"), **CL-250**.

2532 Counter-Memorial, at para. 651.

2533 ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated 14 October 1966, Article 26, **CL-1**.

2534 *Franck Charles Arif v Republic of Moldova*, ICSID Case No ARB/11/23, Award, dated 8 April, 2013, paras. 333-334, **CL-251**. *See also Generation Ukraine, Inc. v Ukraine*, ICSID Case No ARB/00/9, Award, dated 16 September 2003, paras. 13.4-13.5, **CL-252**; *CMS Gas Transmission Company v. The Republic of Argentina*, ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction, dated 17 July 2003, at paras 72-32, **CL-253**.

2535 *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award dated 26 July 2018, at para 889, **CL-248**.

2536 CPTPP, at Art. 9.21, **CL-7**.

2537 Memorial, at para. 492; Consent and Waiver Letter by Almaden, dated 13 June 2024, **Exhibit C-139**; Consent and Waiver Letter by Almadex, dated 13 June 2024, **Exhibit C-140**; Consent and Waiver Letter by Minera Gavilán, dated 13 June 2024, **Exhibit C-141**; Consent and Waiver Letter by Minera Gorrión, dated 13 June 2024, **Exhibit C-142**.

continue those proceedings since then.[2538] The consent and waiver provisions set out in the CPTPP are inconsistent with any purported requirement for the exhaustion of local remedies; this is particularly so given the strict time limitations imposed by CPTPP Article 9.21.1.[2539]

943. Moreover, *all* of the legal authorities Mexico relies upon for this defense relate to denial of justice claims – they are entirely inapposite.[2540] The Claimants' FET claim in this case is not a denial of justice claim.

944. In any event, even if the exhaustion of local remedies were a requirement here – which it is not – the Claimants have established that any further litigation in Mexico *was* futile. An administrative appeal against the MIA Denial Decision would have been futile. SEMARNAT had adopted AMLO's blanket policy: no new open-pit mines. An authority that denied the MIA on political grounds would not reverse itself on appeal. The May 2022 visit of Ms. Beatriz Manriquez – the Puebla State Secretary of Environment – to the Ixtaca Project site confirmed this. As Mr. McDonald recorded in his contemporaneous notes: "Manriquez: Don't submit MIA w/ Albores; OP mine Ø [null]: Won't even look at it."[2541] If SEMARNAT would not even consider an updated MIA, it would not entertain an appeal of the MIA Denial Decision. A nullity proceeding before the Mexican courts would have been equally futile. Even if a court annulled the decision, SEMARNAT could simply move the goalposts – redeploying its fabricated "absolute scientific certainty" standard or capriciously invoking purported informational insufficiency, as it did the first time. As the Almaden executive team recognized, annulment would have been a pyrrhic victory, returning the matter to the very authority that refused to evaluate the Ixtaca Project on its merits.[2542]

945. The same is true for the Concessions. In light of the Collegiate Court's rejection of Minera Gorrión's appeal in October 2023, the Claimants had no confidence that the Mexican legal system would provide a meaningful remedy.[2543] By that time, AMLO had adopted an

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2538 Submission for Withdrawal of Lawsuit by Minera Gorrión and Minera Gavilán, dated 3 June 2024, **Exhibit C-491**; Attestation of Lawsuit Withdrawal by Minera Gorrión and Minera Gavilán, dated 12 June 2024, **Exhibit C-492**; Court Recognition of Minera Gorrión's and Minera Gavilán's Withdrawal of Lawsuit, dated 11 July 2024, **Exhibit C-494**.

2539 CPTPP, at Art. 9.21.1 ("No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage."), **CL-7**.

2540 Counter-Memorial, at para. 592.

2541 McDonald WS-2, at para. 144.

2542 Email chain exchanged between Alberto Vasquez and Morgan Poliquin et al., dated 21 December 2020, (email from Douglas McDonald to Duane Poliquin et al., dated 22 December 2020), **Exhibit C-635**.

2543 McDonald WS-2, at para. 200.

increasingly adversarial stance not only towards mining, but towards the judiciary itself,[2544] challenging its legitimacy on no fewer than 312 occasions across his 1,359 morning press conferences from 2019 to June 2023.[2545] On 8 May 2023, AMLO then enacted the Mining Reform Act, reversing Mexico's long-standing "free land, first applicant" system for mining concessions, and cementing a policy shift that had already been in effect. That legislative change confirmed what the Claimants had already come to understand: that the political and regulatory environment in Mexico was fundamentally hostile to their investment and to foreign mining investment more broadly. Moreover, in January 2024, AMLO ratified the appointment of 20 judges for the Federal Court of Administrative Justice, reinforcing the Claimants' concerns about executive influence over the court before which Minera Gorrión's nullity proceedings were then pending.[2546] As detailed above, Minera Gorrión's decision to withdraw the nullity proceedings was a considered decision, taken on the advice of counsel and as required to invoke the Claimants' rights and protections under the CPTPP.[2547] It was not an abandonment of legal recourse; it was a decision to pursue the only forum in which the Claimants believed an impartial adjudication of their claims could be obtained.[2548]

946. Accordingly, Mexico's exhaustion of local remedies argument fails. Neither the ICSID Convention, the CPTPP, nor the authorities Mexico relies upon support the imposition of any such requirement in this case. And, even if such a requirement applied, *quod non*, any further litigation by Minera Gorrión in Mexico would have been futile.

4.2.3. Mexico Breached Its Treaty Obligation To Accord The Claimants' Investments Fair and Equitable Treatment When It Arbitrarily And Pretextually Denied the MIA and Cancelled the Concessions

4.2.3.1. SEMARNAT's Politically Driven MIA Denial Decision was arbitrary and pretextual

2544 El País, *Clashes between President López Obrador and Supreme Court bog down Mexican politics*, dated 2 July 2023, available at https://english.elpais.com/international/2023-07-01/clashes-between-president-lopez-obrador-and-supreme-court-bog-down-mexican-politics.html, **Exhibit C-865**.

2545 Rice University's Baker Institute for Public Policy, Unpacking the Rhetoric behind Mexico's judicial reform, dated 30 April 2025, available at https://www.bakerinstitute.org/research/unpacking-rhetoric-behind-mexicos-judicial-reform, **Exhibit C-866**.

2546 Infobae, *"Conflict of interest": Morena ratifies 20 TFJA magistrates; some are children of civil servants*, dated 30 January 2024, available at https://www.infobae.com/mexico/2024/01/30/conflicto-de-interes-morena-ratifica-a-20-magistrados-del-tfja-algunos-hijos-de-funcionarios/, **Exhibit C- 868**.

2547 McDonald WS-2, at para. 201.

2548 McDonald WS-2, at para. 201.

(a) SEMARNAT's suspension of the MIA evaluation was pretextual

947. In the Counter-Memorial, Mexico advances three arguments in defense of the suspension: (i) SEMARNAT suspended the MIA evaluation pursuant to its constitutional mandate to protect the environment and indigenous rights, and to avoid conflicting with the Tecoltemi *amparo* injunction;[2549] (ii) SEMARNAT complied with all procedural requirements and promptly resumed the evaluation once the amparo Court clarified the injunction's scope;[2550] and (iii) the suspension was neither arbitrary nor grossly unjust, did not deny Minera Gorrión due process, and therefore does not meet the threshold for a breach of the MST under CPTPP Article 9.6.[2551] Each argument is without merit.

948. *First*, Mexico's assertion that the suspension was necessary to avoid conflicting with the Tecoltemi *amparo* injunction is baseless.[2552] The District Court expressly stated in its 14 October 2019 order that its injunction was limited to the protection of the *ejido*'s "property, possession, or enjoyment of agrarian rights"[2553] over the surface land of the ejido which overlapped with the Cerro Grande and Cerro Grande 2 Concessions.[2554] The MIA evaluation bore no relation to those rights. The environmental licensing procedure does not deprive anyone of their property, possession, or agrarian rights.[2555] The MIA evaluation process could therefore have had no impact on Tecoltemi's indigenous rights.

949. Mexico's related contention, that continuing the MIA evaluation risked judicial invalidation of future SEMARNAT decisions, is equally unfounded.[2556] As Dr. Limón Aguirre explains, an *amparo* suspension binds only the authorities designated as responsible parties.[2557] SEMARNAT was not a responsible authority in the Tecoltemi *amparo*. The injunction therefore imposed no constraint on the MIA evaluation.[2558] The District Court itself confirmed this when it rejected Minera Gorrión's February 2020 motion to compel SEMARNAT to

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2549 Counter-Memorial, at paras. 617-621.

2550 Counter-Memorial, at paras. 622-623.

2551 Counter-Memorial, at para. 616.

2552 *See supra* Section 2.10.4.

2553 *Oficio* issued by the Second District Court in Puebla, dated 14 October 2019, **Exhibit C-316**.

2554 *See supra* Section 2.12.

2555 Limón ER-1, at para. 91.

2556 Counter-Memorial, paras. 617-621.

2557 Limón ER-1, at para. 82.

2558 Limón ER-1, at para. 82.

resume the evaluation.[2559] The Court held that because SEMARNAT was not a party to the *amparo*, the motion was inadmissible.[2560] A court that lacked jurisdiction over SEMARNAT could not have invalidated its acts. Mexico is aware of this, but seems content to mislead the Tribunal about basic tenets of its own administrative and judicial procedures.

950. SEMARNAT also lacked any factual basis to conclude that the MIA evaluation or the execution of the Ixtaca Project would threaten Tecoltemi's rights. As Dr. Pablo-Dorantes explains, Tecoltemi lies outside the Project's area of direct and indirect influence and outside the broader *Sistema Ambiental Regional*, *i.e.*, the geographic space within which the Project's environmental impacts would manifest.[2561] The Project's area of influence extended only to the municipality of Ixtacamaxtitlán. No mining activity had occurred or would occur on Tecoltemi's land, which sits more than 8 km from the Project area, beyond three steep mountain ranges.[2562] Suspending the MIA evaluation in the absence of any conceivable risk to Tecoltemi was arbitrary and capricious. As the *Odyssey* tribunal held, a decision "not founded on reason or fact, nor on the law" is arbitrary under the applicable FET standard.[2563]

951. The timing of the suspension confirms its pretextual character. Mexico asserts in the Counter-Memorial that "[o]nce the DGIRA (SEMARNAT) became aware of Amparo 445/2015, it requested the Second District Court to clarify whether the suspension had been granted."[2564] This is farcical. SEMARNAT learned of the Tecoltemi amparo no later than June 2019, during the RPI,[2565] yet waited more than three months to write to the District Court. It did so only on 4 October 2019, barely one month before the statutory deadline to issue a final decision.[2566] Had SEMARNAT been genuinely concerned, it would have acted immediately, not on the eve of its own deadline. In sum, the suspension did not protect the environment. It froze the regulatory process designed to evaluate and mitigate environmental risk. Nor did it protect indigenous rights. Tecoltemi lies outside the Project's area of influence, the *amparo* concerned agrarian property rights unrelated to the MIA process, and the amparo Court itself confirmed

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2559 Minera Gorrión, *incidente por exceso o por defecto en el cumplimiento de la suspensión*, Juicio de Amparo 445/2015, dated 5 February 2020, **Exhibit C-653**.

2560 Second District Court of Puebla, decision on *incidente por exceso o por defecto en el cumplimiento de la suspensión*, Juicio de Amparo 445/2015, dated 9 September 2020, **Exhibit C-652**.

2561 Pablo-Dorantes WS-2, at para. 22.

2562 Pablo-Dorantes WS-2, at para. 23.

2563 Counter-Memorial, at n. 712; Odyssey v. Mexico, Final Award, 17 September 2024, at para. 307, **CL-134**.

2564 Counter-Memorial, at para. 618.

2565 Pablo-Dorantes WS-2, at para. 27.

2566 Memorial, at paras. 316-317.

that SEMARNAT had no standing in those proceedings. Mexico's invocation of environmental protection and indigenous rights to justify the suspension merely repackages SEMARNAT's own pretextual rationale, which served to conceal the political motivation behind the decision to freeze the MIA evaluation.

952. *Second,* Mexico's assertion that SEMARNAT complied with all procedural requirements and promptly resumed the evaluation upon the *amparo* Court's September 2020 decision distorts the facts.[2567] Minera Gorrión first learned of the suspension on 24 October 2019, when Dr. Pablo-Dorantes happened upon a SINAT entry indicating that the authority had suspended the MIA evaluation based on a "*sentencia de amparo.*"[2568] SEMARNAT did not formally notify Minera Gorrión until five days later. Mexico elides this evidence.

953. Minera Gorrión challenged the suspension through every available channel and met only silence or procedural dead-ends. On 28 November 2019, it objected to SEMARNAT that the *amparo* injunction had no bearing on the MIA evaluation; SEMARNAT responded only one year and seven months later, on 24 June 2021, in a letter that appears backdated to 21 February 2020.[2569] This is in and of itself is alarming – any government agency that appears to be *backdating* its own communications will struggle to convince a tribunal that has behaved in a fair and equitable manner. Even accepting Mexico's *post hoc* explanation at face value (*quod non*) – that Minera Gorrión's request could not be resolved "until the Second District Court ruled on its question of whether the PEIA violated the suspension of Amparo 445/2015"[2570] – serves only to underscore the irregularity. The *amparo* Court confirmed in September 2020 that SEMARNAT was free to resume the evaluation, yet SEMARNAT took more than *nine months* to decide a motion that the MIA Denial Decision had already rendered moot.

954. Mexico's assertion that SEMARNAT promptly resumed the evaluation after the Court's 3 September 2020 decision is flatly wrong. The suspension remained in place for more than three months – until the very day SEMARNAT denied the MIA.[2571] An internal DGIRA email confirms that on the morning of 17 December 2020, the Deputy Director of Mining and Aquaculture asked the help desk to reactivate the file, change its status from "suspended" to "evaluation," and assign it to a new evaluator, Miguel Barrera Perales – who denied the MIA

2567 *See supra* Section 2.10.4.

2568 *See* Pablo-Dorantes WS, at para. 70.

2569 SEMARNAT Official Notice No. SGPA/DGIRA/DG/01596, dated 21 February 2020, notified to Minera Gorrión on 24 June 2021, **Exhibit C-334**.

2570 Counter-Memorial, at para. 622.

2571 Email chain between Minero y Acuicola and SEMARNAT requesting a change to the project status, dated 17 December 2020, **Exhibit C-627**.

that same day, purportedly reviewing more than 3,200 pages of technical documentation in a matter of hours.[2572] This evidence is dispositive. SEMARNAT did not suspend the evaluation to protect Tecoltemi's rights; it froze the proceeding until the politically expedient moment came to execute AMLO's directive. Surely Mexico will make Mr. Miguel Barrera Perales available for cross examination on this point.

955. *Third*, Mexico's contention that the suspension does not meet the threshold for a breach of Article 9.6 is misguided.[2573] The Claimants do not challenge the suspension as a standalone measure.[2574] Rather, as noted in Section 3 above, the suspension – together with the litany of procedural irregularities that characterized the MIA evaluation process – forms an important part of the context to the MIA Denial Decision. Specifically, the record confirms that the suspension formed part of the sequence of events through which SEMARNAT implemented AMLO's directive to block the development of all open-pit mines in Mexico,[2575] including the Ixtaca Project—that sequence culminated with the MIA Denial Decision. Secretary Toledo declared publicly in August 2019 that "SEMARNAT is not going to permit"[2576] the Ixtaca Project and that "[w]ith SEMARNAT, Ixtaca will not happen."[2577] SEMARNAT had not yet assembled a colorable basis to deny the MIA outright, and because the statutory deadline fell on 8 November 2019,[2578] it is apparent that it concocted the suspension to buy time while it manufactured the grounds for denial.

956. Mexico is also wrong on the law. A regulator that fabricates a pretext on political instructions to freeze an administrative licensing proceeding commits a clear violation of Article 9.6. As the *Cargill* tribunal held, State conduct that "grossly subverts a domestic law or policy for an ulterior motive"[2579] breaches its FET obligations. Mexico's contention that "there is no

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2572 Email chain between Minero y Acuicola and SEMARNAT requesting a change to the project status, dated 17 December 2020, **Exhibit C-627**.

2573 Counter-Memorial, at para. 616.

2574 Memorial, at para. 592.

2575 *See supra* Section 2.11.

2576 Memorial, at para. 312; *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019, **Exhibit C-309**.

2577 Lado B, "Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser,'" dated 29 August 2019, available at https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307**.

2578 *See* Pablo-Dorantes WS, at para. 67; *see also* Limón ER-1, at para. 93.

2579 *Cargill v. Mexico*, Award, 18 September 2009, at para. 293, **CL-12**.

evidence that SEMARNAT's decision to suspend the assessment was motivated by the[] statements"[2580] of AMLO and Toledo is disingenuous.

957. As demonstrated in Section 2.11.4 above, the evidentiary record confirms that political directives motivated the suspension of the MIA evaluation, yet Mexico effectively asserts that without some form of "smoking gun," that evidence does not demonstrate a clear treaty breach. That is a bad argument – as will be borne out at the evidentiary hearing. In any event, Mexico failed to produce the very documents that would establish the connection it says is missing. The Claimants sought contemporaneous internal documents setting out the legal basis for the suspension, yet Mexico withheld the responsive documents from UCAJ – SEMARNAT's legal counsel.[2581] Consequently, the Tribunal should draw an adverse inference that Mexico withheld those documents because political directives, not legitimate legal concern, drove the suspension.[2582]

958. Finally, the fact that the suspension preceded the limitations cut-off date of 14 December 2020 does not preclude the Tribunal from considering it as context when evaluating Mexico's conduct after the cut-off date. As the tribunal in *Gabriel Resources v. Romania* observed, "there is nothing preventing this Tribunal from taking into account earlier acts not within its jurisdiction as part of the factual matrix establishing a pattern or underlying purpose that links the acts in the series together, where those acts occur within the scope of the Tribunal's temporal jurisdiction."[2583] The suspension is precisely such an earlier act: it forms part of the factual matrix concerning SEMARNAT's execution of AMLO's directive to block open-pit mines like Ixtaca, culminating in the MIA Denial Decision of 17 December 2020 – a measure that falls squarely within the Tribunal's temporal jurisdiction.

(b) The MIA Denial Decision was an arbitrary and politically ordained decision

959. As set out in the Memorial, the Claimants showed that the MIA Denial Decision was arbitrary, discriminatory, non-transparent, inconsistent, disproportionate, and in breach of due process under CPTPP Article 9.6.[2584] SEMARNAT: (i) pretextually invoked informational insufficiency despite the comprehensive technical record; (ii) relied on undisclosed expert

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2580 Counter-Memorial, at para. 616.

2581 *See supra* Sections 2.10 and 2.11.

2582 *See supra* Section 2.1.

2583 *Gabriel Resources v. Romania*, ICSID Case No. ARB/15/31, Award, dated 8 March 2024, at para. 839, **CL-196**.

2584 Memorial, at Section 4.2.3.1.

opinions from DGVS and DGGFS in violation of Mexican law; (iii) imposed an unattainable standard of "absolute scientific certainty;" (iv) denied the MIA outright when the LGEEPA required conditional approval or additional mitigation measures; and (v) penalized Minera Gorrión for the Government's own failure to conduct indigenous consultations under ILO 169.[2585] The decision was also discriminatory, as (vi) SEMARNAT granted conditional approvals to the Camino Rojo, El Boleo, and Huazamota River projects in comparable circumstances yet denied the Ixtaca MIA outright.[2586]

960. In the Counter-Memorial, Mexico denies that SEMARNAT acted arbitrarily in rejecting the Ixtaca Project's MIA under Article 9.6 of the CPTPP, advancing six arguments: (i) the MIA Denial Decision resulted from a transparent, reasoned, and scientifically based process that complied with the LGEEPA and its Regulations;[2587] (ii) SEMARNAT properly solicited and relied upon undisclosed technical opinions from DGVS and DGGFS, which identified genuine deficiencies justifying denial under the precautionary principle;[2588] (iii) SEMARNAT did not impose an impossible standard of "absolute scientific certainty" but merely noted the absence of reliable data as required by Article 44 of the R-LGEEPA;[2589] (iv) SEMARNAT properly discharged its obligations regarding indigenous consultation under ILO Convention 169;[2590] (v) SEMARNAT exercised its lawful discretion to deny the MIA outright rather than grant conditional approval;[2591] and (vi) the Claimants' comparator projects are incomparable to the Ixtaca Project. None of these arguments withstand scrutiny.

961. *First,* Mexico's assertion that the MIA Denial Decision was the product of a transparent, reasoned, and scientifically based process is risible. As set out above,[2592] AMLO directed SEMARNAT not to permit any new open-pit mines, and SEMARNAT complied.[2593] Secretary Toledo publicly declared in August 2019 that the Ixtaca Project would not proceed, and AMLO endorsed those declarations during his 31 October 2019 *mañanera*.[2594] That same day, the

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2585 Memorial, at Section 4.2.3.1.

2586 Memorial, at Section 4.2.3.1.

2587 Counter-Memorial, at para. 625.

2588 Counter-Memorial, at paras. 627-628.

2589 Counter-Memorial, at paras. 629-630.

2590 Counter-Memorial, at paras. 631-632.

2591 Counter-Memorial, at para. 634.

2592 *See supra* Section 2.11.1.

2593 *See supra* Section 2.11.1.

2594 La Jornada de Oriente, "Confio en Victor Manuel Toledo (titular de la Semarnat)" indicó López Obrador respecto a otorgar permisos a la minera Canadiense Almaden Minerals en Ixtacamaxtitlán, dated 31 October 2019, available at https://www.facebook.com/LaJornadadeOrientePuebla/videos/%EF%B8%8F-conf%C3%ADo-en-victor-manuel-toledo-

Office of the Presidency hand-delivered to Toledo a community member's handwritten letter demanding that AMLO "expel the miners from Santa María"[2595] – a transparent reference to Almaden – accompanied by a cover letter directing Toledo "by instructions of Lic. Andrés Manuel López Obrador, President of the Republic" to respond and forward that response to the Presidency.[2596]

962. The message was clear: halt the Ixtaca Project. When Albores replaced Toledo in May 2020, AMLO made clear that "[t]he transition is continuity with change, continuity with change because the same policy continues."[2597] Albores confirmed as much before the Chamber of Representatives on 4 November 2020 – six weeks before the MIA Denial Decision – declaring that "[p]ermits are not granted for the exploration and exploitation phases when it comes to open-pit mining or open-cut mining."[2598] The MIA Denial Decision was the inevitable product of that directive. In the words of the *Cargill* tribunal, it constituted "an unexpected and shocking repudiation of a policy's very purpose and goals"[2599] and a gross subversion of SEMARNAT's environmental mandate for an ulterior political motive. Neither science nor fair technical judgment guided the outcome of Minera Gorrión's MIA. It was pure politics.

963. *Second*, SEMARNAT relied upon undisclosed technical opinions from DGVS and DGGFS to deny the MIA without affording Minera Gorrión any opportunity to respond thereto. Mexico's contention that SEMARNAT bore no obligation under Article 24 of the R-LGEEPA to disclose those opinions is wrong.[2600] As Dr. Limón Aguirre explains, Article 24 empowers SEMARNAT to request technical opinions from "entities and dependencies of the Federal

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titular-de-la-semarnat-indic%C3%B3-l%C3%B3pez-obrador-res/1257317074465900/. (emphasis added) (A journalist asked about the Ixtaca Project: "the Nahuas in Puebla against the Almaden Minerals mining company . . . that MIA is about to come out." AMLO responded: "You have to trust Victor Manuel Toledo. He was an advisor to the movements or he participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others, I have absolute confidence in him."), **Exhibit C-324**.

2595 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, at p. 11 and pp. 12-13 (*containing* Letter from a community member (name redacted) of Santa María Zotoltepec to AMLO, dated 1 July 2019), **Exhibit C-626**.

2596 MIA Case File for the Ixtaca Project No. 21PU2019M0014 produced by Mexico in document production, Vol. II, at p. 11 and pp. 12-13 (*containing* Letter from a community member (name redacted) of Santa María Zotoltepec to AMLO, dated 1 July 2019), **Exhibit C-626**.

2597 Milenio YouTube Channel, *Conferencia matutina de AMLO*, dated 3 September 2020, available at https://www.youtube.com/watch?v=V1frDFYHVsM (last accessed 8 March 2025) (emphais added), **Exhibit C-529**.

2598 H. Cámara de Diputados, Sesión 4 de noviembre de 2020, Minutos: 3:05:11-3:06:11, available at https://x.com/Mx_Diputados/status/1324035146316619776 (emphasis added), **Exhibit C-631**.

2599 Memorial, para. 547; *Cargill v. Mexico*, Award, 18 September 2009, at para. 293, **CL-12**.

2600 Counter-Memorial, at paras. 237, 239, n. 253; Del Razo-Rábago ER, at paras. 133-137.

Public Administration" or "groups of experts," but requires it to forward expert opinions to the applicant.[2601] DGVS and DGGFS fall squarely within the category of "groups of experts" under the second paragraph of Article 24: they serve as SEMARNAT's specialized technical directorates for forestry and wildlife, respectively, and DGIRA consults them precisely for their technical-scientific competence – not as separate dependencies issuing generic administrative opinions.[2602] SEMARNAT therefore bore an obligation to forward those opinions to Minera Gorrión for comment before relying on them to deny the MIA. Its failure to do so denied Minera Gorrión what the *Glencore* tribunal required: "a fair opportunity to present its case" and to receive a "reasoned, even-handed, and unbiased decision."[2603]

964. Moreover, the comprehensive technical record submitted with the MIA and the RAI response contradicts the purported deficiencies that SEMARNAT identified – in the water balance model, NOM-141 compliance, biodiversity data, and groundwater protection – as elaborated in Section 2.12.2 of this Reply. But even accepting Mexico's characterization of the data as inadequate (*quod non*) SEMARNAT's invocation of the precautionary principle to deny the MIA outright was arbitrary. The precautionary principle does not fall within any of the three enumerated grounds for denial under Article 35 of the LGEEPA.[2604] As Dr. Pablo-Dorantes confirms, the principle[2605] requires the regulator to impose preventive or mitigating measures in the face of uncertain risk – not to reject authorizations altogether.[2606] Rather than conditioning approval on additional safeguards, as Article 35(II) expressly empowered it to do, SEMARNAT wielded the precautionary principle as a ground for outright rejection.[2607]

965. Nor does Mexico's fanciful recharacterization of the "absolute scientific certainty" standard as merely descriptive of "informational insufficiency" assist it.[2608] Informational insufficiency does not constitute a ground for denial under Article 35 of the LGEEPA; when SEMARNAT considers the applicant's submission incomplete, it bears an affirmative duty to complete the record rather than deny the MIA outright. As Dr. Limón Aguirre confirms, SEMARNAT must *never* deny a MIA on the ground that the applicant failed to provide sufficient information – a

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2601 Counter-Memorial, at paras. 237, 239, n. 253; Del Razo-Rábago ER, at paras. 133-137.

2602 Limón ER-2, at para. 45; *Reglamento Interno de la SEMARNAT*, dated 26 November 2012, Art. 24, Fraction II, **Exhibit C-190**.

2603 Memorial, n. 371; Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia (I), ICSID Case No. ARB/16/6, Award, 27 August 2019, at para. 1318, **CL-112**.

2604 Limón ER-2, at paras. 108-116.

2605 Rio Declaration on Environment and Development, dated 12 August 1992, at Principle 15, **CL-18**.

2606 Pablo-Dorantes WS-2, at para. 33.

2607 Pablo-Dorantes WS, at para. 99.

2608 Counter-Memorial, at para. 629.

principle the TFJA reaffirmed as recently as February 2026, nullifying a MIA denial on precisely that basis.[2609]

966. *Third,* the MIA Denial Decision itself refutes Mexico's contention that SEMARNAT did not impose an impossible standard of "absolute scientific certainty" but merely noted the absence of reliable scientific data. Throughout the "Technical Analysis"[2610] section of the resolution, SEMARNAT repeatedly demanded that Minera Gorrión demonstrate "absolute scientific certainty" as a precondition for approval. For instance, in *considerando* 24, DGIRA stated that Minera Gorrión "did not provide the technical and scientific information demonstrating absolute scientific certainty regarding the environmental viability of the project."[2611] It then concluded that "the applicant does not prove the absolute scientific certainty that the project will respect the functional integrity and carrying capacity of the ecosystems associated with it."[2612] Mexico's revisionist reading of the MIA Denial Decision is misguided; Section 2.12.2.1 of this Reply addresses it in detail.

967. *Fourth*, Mexico's argument that SEMARNAT properly considered its obligations regarding indigenous consultation under ILO Convention 169 and the Mexican Constitution is baseless. Neither the LGEEPA nor the R-LGEEPA requires indigenous consultations before SEMARNAT can approve a MIA, and even if such a duty existed, it lay squarely on the Mexican State – not on Minera Gorrión.[2613] The Supreme Court's jurisprudence has consistently held that the obligation to consult indigenous communities lies with governmental authorities, not private parties.[2614] SEMARNAT has acknowledged as much. An internal DGIRA letter dated 3 September 2019 confirms that SEMARNAT itself recognized this obligation as its own: DGIRA's Director asked UCPAST to carry out indigenous consultation for the Ixtaca Project, expressly acknowledging the CDPI's opinion that SEMARNAT bore responsibility for any necessary consultation.[2615] Yet 15 months later, SEMARNAT denied the MIA on the ground that Minera Gorrión had breached that very obligation.[2616]

2609 Limón ER-2, at paras. 98-99, 103.

2610 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 133, **Exhibit C-86**.

2611 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 135, **Exhibit C-86**.

2612 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 135, **Exhibit C-86**.

2613 Limón ER-1, at paras. 185-186. *See supra* Section 2.10.

2614 Limón ER-1, at para. 175; Limón ER-2, at paras. 15(e), 166-171.

2615 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

2616 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at p. 136, **Exhibit C-86**.

968. *Fifth*, Mexico's assertion that SEMARNAT exercised its lawful discretion to deny the MIA outright rather than grant conditional approval – ignores the constraints that the LGEEPA imposes on that discretion and the discriminatory manner SEMARNAT exercised it. Article 35 of the LGEEPA provides only three grounds on which SEMARNAT may deny a MIA: the MIA contravenes applicable legal provisions; the project endangers species at risk of extinction; or the MIA contains misrepresentations or false information.[2617] Minera Gorrión's MIA did not offend any of these grounds. By contrast, Article 35(II) empowered SEMARNAT to grant conditional MIA authorization subject to project modifications or additional prevention and mitigation measures – precisely the framework it applied to the Camino Rojo, El Boleo, and Huazamota River projects.[2618] SEMARNAT's refusal to follow that established framework for Ixtaca alone without basis is not a legitimate exercise of regulatory discretion. As the *TECO* tribunal held, "deference to the State's regulatory powers cannot amount to condoning behaviors that are manifestly arbitrary, idiosyncratic, or that show a complete lack of candor in the conduct[] of the regulatory process."[2619] SEMARNAT's conduct here is arbitrary, discriminatory, and wholly incompatible with the minimum standard of treatment under Article 9.6 of the CPTPP.

969. *Sixth*, Section 4.3.2 below addresses in detail Mexico's blithe assertion that the comparator projects involved different environmental conditions, regulatory frameworks, and procedural stages. For present purposes, it suffices to observe that material differences exist among the El Boleo, Camino Rojo, and Huazamota River projects themselves – in extraction methods, scale, waste management, and social context – and yet SEMARNAT took the same conditional approval approach for each. The determinative factor in each case was whether the project might affect indigenous communities in the project area – a factor equally present for the Ixtaca Project. Nevertheless, rather than conditioning approval on additional safeguards or mitigation measures as it did for each of those projects, SEMARNAT denied Minera Gorrión's MIA outright. SEMARNAT's departure from its established conditional approval framework for the Ixtaca Project alone further evidences the pretextual and arbitrary character of the MIA Denial Decision in this case.

4.2.3.2. Mexico's arbitrary and retroactive cancellation of the Claimants' rights under the Concessions breached FET

2617 LGEEPA, at Art. 35, Sections I to III, **Exhibit C-156**.

2618 *See supra* Section 2.11.3.

2619 *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award, 19 December 2013, at para. 45, **CL-84**.

970. As shown in the Memorial and above, Mexico's decision suspending the legal effects of the Concessions and then refusing to reissue them on baseless and pretextual grounds, thereby cancelling the Ixtaca Project and the Claimants' rights and investments therein in full was arbitrary, contradictory, retroactive, disproportionate, discriminatory, non-transparent, and breached due process in violation of the minimum standard of FET under CPTPP Article 9.6.

971. Economía had an obligation under CPTPP Article 9.6 to conduct its feasibility reassessment of the Concessions in an objective, fair, and reasonable manner, in compliance with administrative due process, and not in an arbitrary or capricious manner or in willful disregard of the applicable legal and regulatory framework.[2620] Economía failed to adhere to that obligation – and instead joined forces with SEMARNAT, INPI, and the NGOs to bring the Ixtaca Project to an end in line with AMLO's anti-foreign-investment and anti-mining agenda.

972. In its Counter-Memorial, Mexico contends that Economía's actions were consistent with CPTPP Article 9.6.[2621] Specifically, Mexico argues that the February 2023 *Oficio* was made after an "objective, fair and reasonable reassessment of feasibility, in accordance with due administrative process and Mexican laws and regulations."[2622] The record shows otherwise.

(a) Mexico's cancellation of the Claimants' Concessions was contradictory and violated the principle of non-retroactivity

973. In its Counter-Memorial, Mexico reiterates that "the obligations of consistency, *estoppel*, or non-retroactivity" are allegedly not part of the minimum standard of FET under CPTPP Article 9.6.[2623] Mexico further says that, in any event, Economía's conduct here was not contradictory, retroactive, or contrary to the principle of estoppel because the Supreme Court determined that the original grant of the Concessions was "legally defective" as a result of "the absence of prior indigenous consultations," and that, in executing the Supreme Court's decision, Economía was required to "declare the [C]oncessions invalid and then verify whether those concessions could legally survive under Mexican law."[2624] According to Mexico, the "prior confirmations of validity by Economía predate the Supreme Court ruling," and Economía's compliance with the Supreme Court's decision "cannot be considered bad faith or contradictory conduct."[2625]

2620 Memorial, at Section 4.2.

2621 Counter-Memorial, at para. 656.

2622 Counter-Memorial, at para. 656.

2623 Counter-Memorial, at para. 675.

2624 Counter-Memorial, at para. 676.

2625 Counter-Memorial, at para. 677.

Mexico further contends that its conduct was not retroactive – and that, although Economía's feasibility evaluation was "retrospective," this does not mean that it violated the principle of non-retroactivity.[2626] Mexico's assertions are misguided and incorrect.

974. *First*, Mexico's attempt to further narrow the minimum standard of FET under CPTPP Article 9.6 fails: as shown in the Memorial and above, the standard prohibits both inconsistent and contradictory actions, as well as retroactive measures, which inherently reflect inconsistent Government conduct.[2627] The principle of non-retroactivity stems from the requirement for legal certainty, which is one of the core tenets of the rule of law – as well as a fundamental principle of Mexican law.[2628] Estoppel is a related principle, which "rest[s] on principles of good faith and consistency"[2629] and provides that a party cannot change its position after it has "made or consented to a particular statement upon which another party relies in subsequent activity to its detriment or the other's benefit."[2630]

975. *Second*, Mexico's defense of Economía's inconsistent, retroactive actions fares no better. That defense rests upon the premise that the Supreme Court's decision compelled Economía to cancel the Concessions in full and to reassess the underlying concession applications *de novo* – and that, in doing so, Economía was merely complying with a judicial mandate.[2631] It also rests upon the premise that the stated reasons in Economía's February 2023 *Oficio* were the actual reasons for that *Oficio*. These premises are false.

976. As demonstrated in Section 2.14 above, the Supreme Court ordered the suspension and *insubsistencia* of the Concession titles, rather than their nullity or cancellation, on a provisional basis, so that Economía could cure the defect that the Supreme Court had identified – namely, Economía's failure to conduct an indigenous consultation with Tecoltemi decades earlier – before reissuing them to Minera Gorrión.[2632] As Former Justice Cossío explains, once Economía remedied that defect – the only defect found by the Supreme Court – by carrying out the consultation, Minera Gorrión was entitled to reissuance of the Concession titles based upon the prior administrative steps it had taken and the approvals it had obtained from

2626 Counter-Memorial, at paras. 677-680.

2627 *See supra* Section 4.2.1.

2628 Memorial, at para. 563.

2629 James Crawford, *Brownlie's Principles of Public International Law (9th ed.)*, at p. 407, **CL-108**.

2630 Shaw, M. N., *International Law (9th ed.),* 2021, Cambridge: Cambridge University Press, at p. 437, **CL-119**.

2631 Counter-Memorial, at paras. 676–677, 680.

2632 Cossío ER, at para. 79; *see supra* Section 2.14.

Economía.[2633] That prior administrative process, the Supreme Court expressly confirmed, remained valid and in full effect.[2634] Indeed, that confirmation was compelled by the fact that Tecoltemi had not put that prior administrative process at issue in its *amparo* – accordingly, Mexican law did not permit the Supreme Court, or Economía, to disturb that administrative record.

977. In other words, the Supreme Court's order that Economía declare the titles *insubsistentes* was for the limited purpose of curing the Constitutional defect Tecoltemi raised in its *amparo* – not rendering a third party's rights void *ab initio*.

978. Moreover, the fact that Economía's "prior confirmations of validity by the Ministry of Economy predated the Supreme Court ruling" is irrelevant. Those confirmations not only gave the Claimants comfort in the security and validity of their legal rights in the Ixtaca Project,[2635] but they belie Mexico's suggestion in this case that the alleged "irregularities" were "substantive legal and technical irregularities."[2636] Indeed, if that were so, it is inconceivable that Economía would have failed to identify them during the approximately 20 years in which it reviewed, approved, transferred, reduced, certified, and defended the Concessions.[2637]

979. The contradiction is all the more glaring considering that Economía and its DGM defended the Concessions vigorously before the Mexican courts for seven years.[2638] As the Claimants have explained, there was no obligation under Mexican law for Economía to do so: Economía defended the Concessions because it believed they had been properly issued.[2639] As the DGM stated unequivocally in its *informe justificado* dated 12 May 2015: "the mining concessions that are the subject of the complaint were granted to the current aggrieved third parties *after they had met the requirements set forth in the applicable regulations*."[2640]

980. Economía's own June 2022 *Oficio* further confirms the contradiction. In that *Oficio*, Economía not only suspended the Concession titles *until* it carried out the indigenous consultation ordered by the Supreme Court, but it expressly confirmed that "everything that was done prior to the

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2633 Cossío ER, at para. 163.

2634 *See supra* Section 2.14; Cossío ER, at para. 204.

2635 *See supra* Section 2.14.

2636 McDonald WS-2, at para. 186.

2637 McDonald WS-2, at para. 186.

2638 *See supra* Section 2.13.

2639 *See supra* Section 2.13.

2640 *See supra* Section 2.13.

granting of the concession titles subsists."[2641] That plainly included the expert reports that Economía had reviewed and approved some 14 and 20 years earlier. Economía further noted that, as of the date of the *Oficio*, the Concessions remained in effect and that only the rights and obligations arising from Articles 19 and 27 of the Mining Law were suspended while Economía addressed the defect found by the Supreme Court.[2642] In other words, the Concessions did not legally "disappear."[2643]

981. Furthermore, as detailed above, until as late as November 2022, Economía itself interpreted the feasibility "pronouncement" in the Supreme Court's decision as requiring a review and confirmation that all of the documents and information needed to issue the Concession titles were in order – and, therefore, could be shared with the communities in the consultation process.[2644] The draft *oficio* Economía circulated in November 2022 concluded that it *was* feasible to issue the Concession titles under Articles 13 and 16 of the Mining Regulations, with formal issuance conditioned on the consultation with Tecoltemi.[2645]

982. What changed between November 2022 and February 2023 was not the legal or technical position of the Concessions – rather, what changed was the leadership at Economía and its newfound receptiveness to SEMARNAT's bad faith, anti-mining campaign, which Economía had resisted under former Secretary Clouthier.[2646] As set forth above, in October 2022, AMLO replaced Secretary Clouthier – under whom Economía had defended the Ixtaca Concessions in the *amparo* proceedings, engaged with Minera Gorrión on indigenous consultations, and selected Minera Gorrión for the UNECE Mining Pilot Project – with Ms. Raquel Buenrostro, an AMLO loyalist and vocal opponent of the mining industry.[2647]

983. That replacement had its intended effect. Shortly after Secretary Buenrostro's appointment, Economía abruptly halted communications with Minera Gorrión regarding the consultation and refused further meetings and collaboration.[2648] In parallel, SEMARNAT, INPI, and the anti-mining NGOs delivered the fruit of their closed-door collaboration to Economía, making clear that the purpose of their purported "studies" was to "*contribute to Economía's feasibility*

2641 *See supra* Section 2.14.

2642 *See supra* Section 2.14.

2643 *See supra* Section 2.14.

2644 *See supra* Section 2.17.

2645 *See supra* Section 2.17.

2646 *See supra* Section 2.17.

2647 *See supra* Section 2.17.

2648 *See supra* Section 2.17.

analysis so it declares [the Concessions] as unfeasible."[2649] Within less than a month, Economía reversed course on feasibility, ruling in its February 2023 *Oficio* that issuing the Concessions was "not feasible."[2650]

984. The inconsistency in Mexico's conduct does not end there. As internal documents confirm, although Economía grounded its feasibility decision upon the alleged technical defects in the expert reports – and submitted to the District Court that it had relied *only* upon the "mining concession application[s]" and the "expert reports" filed with those applications – this was untrue: internally, Economía acknowledged and recorded that it was ***the INPI study*** that "served as the basis for the DGM's decision" on the Concessions.[2651] In other words, the true reason for Economía's *volte-face* on the Concessions lies in SEMARNAT's bad faith campaign. As shown above, SEMARNAT's own 2024 report independently confirms this.[2652]

985. *Finally*, Mexico's attempt to distinguish the case law upon which the Claimants rely is unavailing. Mexico contends that *EnCana v. Ecuador*, *Tecmed v. Mexico*, *and Telefónica v. Colombia* are factually distinct because those cases concerned contradictions between different State organs, whereas Economía's actions here were "a direct and consistent application of the Supreme Court's ruling."[2653] That distinction is inapposite. In the present case, the contradiction is within the same organ: Economía. Moreover, as the evidence shows, Economía's actions were not, as Mexico says, "a direct and consistent application of the Supreme Court's ruling" – they were instead shaped and driven by the anti-mining campaign SEMARNAT led with INPI and the anti-mining NGOs behind closed doors. And they were grounded in a "study" led by one of these same NGOs, which addressed social and cultural issues that were manifestly outside the Supreme Court's decision – and Economía's own jurisdiction under the Mining Law and Regulations. In short, the Supreme Court's ruling provides no refuge for Economía's inconsistent and retroactive actions.

4.2.3.3. Mexico's cancellation of the Claimants' Concessions was arbitrary

986. With respect to arbitrariness, Mexico advances three principal arguments. *First*, Mexico asserts that "arbitrariness is a very demanding requirement under the MST" and that the Claimants

2649 *See supra* Section 2.17.

2650 *See supra* Section 2.17.

2651 *See supra* Section 2.17.

2652 *See supra* Section 2.17.

2653 Counter-Memorial, at paras. 681-683.

have not established a state custom of lowering that requirement.[2654] *Second*, Mexico claims that the February 2023 *Oficio* "followed the clear and legal mandate of the Supreme Court" and that the technical inconsistencies identified in the concession files were "significant" and "prevented Economía from validating the continued legality of the concessions."[2655] *Third*, Mexico maintains that its decision was "transparent, reasoned, and consistent with the guidelines of the Supreme Court and mining legislation" and "pursued a legitimate purpose: the protection of the constitutional rights of communities and the Mexican legal system."[2656]

987. *First*, as addressed above, Mexico's self-serving arguments regarding the threshold for arbitrariness are baseless – and, even if "arbitrariness is a very demanding requirement," as Mexico says, its conduct in this case readily meets that threshold. Indeed, Mexico's own documents show that Economía's feasibility decision was "taken for reasons that are different from those put forward by the decisionmaker" – a hallmark of arbitrary State conduct.[2657]

988. *Second*, as also addressed above, the February 2023 *Oficio* did not "follow[] the clear and legal mandate of the Supreme Court," nor were the technical inconsistencies identified in the concession files "significant."[2658] They likewise did not in any way prevent Economía from validating the continued legality of the concessions."[2659] To the contrary, Economía could have addressed the alleged *de minimis* technical defects without cancellation of the Concessions.[2660] Economía not only has the authority to correct such minor defects in a concession under Article 31 of the Mining Regulations,[2661] but Economía cannot reject a concession application based upon such defects, unless it has given the applicant notice and an opportunity to correct.[2662] Here, Economía gave Minera Gorrión no such notice or opportunity; instead, Economía invoked the alleged defects as a pretext to cancel the Concessions outright, without any due process whatsoever.[2663] Indeed, even DGM's Cartography and Mining Concessions Director

2654 Counter-Memorial, at para. 689.

2655 Counter-Memorial, at para. 690.

2656 Counter-Memorial, at para. 691.

2657 Memorial, at para. 550.

2658 *See supra* Section 2.17.

2659 Counter-Memorial, at para. 690.

2660 *See supra* Section 2.17.

2661 *See supra* Section 2.14.

2662 *See supra* Sections 2.14, 2.17.

2663 *See supra* Section 2.17.

wanted to make clear in the concession files that those alleged minor defects were not the real reason for the non-feasibility determination – the real reason was the INPI study. That is telling.

989. Furthermore, the closed-door meetings held between the NGOs and various Government agencies, at which those agencies undertook to manufacture "studies" that would support cancellation of the Project, including the INPI study, are the very definition of arbitrariness: they reveal targeted coordination between Government agencies and private NGOs to bring the Claimants' Ixtaca Project to an end for political reasons. Economía then used the product of those closed-door meetings for its feasibility decision – while misleading the Claimants *and* the Mexican courts as to the true basis for its decision.[2664] As noted above, no clearer instance of arbitrary regulatory action could be imagined.

990. *Finally*, Economía's decision served no legitimate regulatory purpose because it bore no relationship to the subject matter of the *amparo* proceedings. As elaborated above, the core grievance in the *amparo* proceedings was Tecoltemi's right to an indigenous consultation – not the technical adequacy of the expert reports.[2665] The Supreme Court's decision was designed to correct Economía's failure to consult and uphold Tecoltemi's legally protected right to participate in decisions affecting its land.[2666] Instead of carrying out the consultations, Economía obstructed them entirely, violating both domestic and international law – and the human rights of the communities within the Project's area of influence.

991. In summary, Economía's February 2023 *Oficio* was arbitrary on the very formulations Mexico endorses. Economía told the Mexican courts that the basis for its decision was the *de minimis* technical defects in the expert reports, while, internally, the DGM's own Cartography and Mining Concessions Director recorded that the actual basis was the INPI study. That decision was not based on legal standards – or the Supreme Court's decision – but on political directives from the highest levels of the AMLO administration aimed at advancing its anti-mining agenda. And it was taken in violation of the very human rights the Supreme Court sought to protect.

4.2.3.4. Mexico's cancellation of the Claimants' Concessions was non-transparent and breached due process

992. In its Counter-Memorial, Mexico also seeks to establish that the February 2023 *Oficio* was allegedly transparent and did not violate due process.[2667] Specifically, Mexico contends that:

2664 *See supra* Section 2.17.

2665 Memorial, at para. 445; 611.

2666 Memorial, at para. 445.

2667 Counter-Memorial, at para. 692.

(i) transparency is not part of the minimum standard of treatment under customary international law;[2668] (ii) Mexico's conduct was "entirely transparent and procedurally fair," because the "reassessment of feasibility was conducted pursuant to a public court order and in accordance with published legal procedures;"[2669] (iii) Economía "was not obligated to give Minera Gorrión the opportunity to correct" the alleged technical defects;[2670] and (iv) the Claimants had an "opportunity to participate" in the relevant legal proceedings, and "challenge them, and receive reasoned decisions."[2671] Mexico's contentions are meritless.

993. As the Claimants have shown, transparency and due process are key components of the minimum standard of FET, and components that Mexico breached. Specifically, the Supreme Court's decision did *not* authorize or order Economía to dispense with the due process protections guaranteed to Minera Gorrión under Mexican law. As Former Justice Cossío explains, the Supreme Court did not give Economía "freedom of jurisdiction" to conduct a *de novo* review of the underlying concession applications – and even if it did, Economía was still required to accord Minera Gorrión its due process rights in that review process.[2672] Yet, Economía did not notify or grant Minera Gorrión any opportunity to correct the alleged *de minimis* technical deficiencies identified in the expert reports, as required under Article 22 of the Mining Regulations.[2673] By seizing upon the alleged technical errors – and then denying Minera Gorrión any opportunity to address or correct them – Economía breached both the Mining Regulations and the Federal Law on Administrative Procedure.[2674]

994. The circumstances surrounding the February 2023 *Oficio* confirm the absence of any transparent or fair process. Following the Supreme Court's decision, Economía under Secretary Clouthier worked collaboratively with Minera Gorrión to prepare for the indigenous consultations.[2675] In its June 2022 *Oficio*, Economía affirmed that "everything that was done prior to the granting of the concession titles subsists."[2676] Economía further circulated a draft *oficio* in November 2022 confirming that it was feasible to issue the Concession titles under

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2668 Counter-Memorial, at para. 692.

2669 Counter-Memorial, at para. 693.

2670 Counter-Memorial, at para. 693.

2671 Counter-Memorial, at para. 695.

2672 *See supra* Section 2.14.

2673 *See supra* Section 2.14.

2674 Memorial, at para. 617.

2675 *See supra* Section 2.17.

2676 *See supra* Section 2.14.

Articles 13 and 16 of the Mining Regulations.[2677] Yet, following AMLO's replacement of Secretary Clouthier with Secretary Buenrostro, Economía abruptly halted communications with Minera Gorrión and, mere weeks after it had prepared a draft confirming feasibility, reversed course, declaring the Concessions "not feasible" on the very same documentary record.[2678] In parallel, SEMARNAT held closed-door meetings with anti-mining NGOs, including Tecoltemi's lead counsel, to coordinate the preparation of purported "studies" to support Economía's cancellation of the Concessions in full.[2679] SEMARNAT delivered those studies to Economía by letter dated 19 December 2022, expressly requesting that they be used to declare the Concessions unfeasible.[2680] Minera Gorrión was not informed of these studies, was given no opportunity to review or respond to them, and was afforded no hearing before Economía acted upon them.

995. Furthermore, a decision whose actual basis is deliberately concealed from the affected investor, and from the domestic courts, like the February 2023 *Oficio*, represents a paradigmatic violation of transparency and due process, in violation of the minimum standard of FET under CPTPP Article 9.6.

4.2.3.5. The cancellation of the Claimants' rights was disproportionate

996. In its Counter-Memorial, Mexico contends that the February 2023 *Oficio* was allegedly "proportionate" and satisfied all three elements of the international law test for proportionality: (i) the measure pursued a legitimate public objective; (ii) "less restrictive" alternatives were not available because the Supreme Court's ruling required a "specific procedural sequence;" and (iii) the measure was "proportionate in the strict sense."[2681] Mexico's arguments fail on each limb, as articulated in *PL Holdings v. Poland* and *Electrabel v. Hungary*.[2682]

997. The factual record, as set forth in this Reply, demonstrates the grossly disproportionate nature of Mexico's actions in this case. Mexico's assertion that the February 2023 *Oficio* pursued the "legitimate public objective" of protecting indigenous rights is belied by its operative effect. The Supreme Court ordered Economía to declare the Concession titles *insubsistentes* – a form of judicial suspension of legal effects – pending a "pronouncement" on feasibility and then

2677 *See supra* Section 2.17.

2678 *See supra* Section 2.17.

2679 *See supra* Section 2.16.

2680 *See supra* Section 2.17.

2681 Counter-Memorial, at paras. 697-701.

2682 Memorial, at paras. 576-578; 619-621.

indigenous consultations.[2683] The Supreme Court did not order the annulment of the underlying Concessions; it affirmed the validity of "the administrative procedure" prior to the grant of the Concession titles.[2684] Instead of carrying out consultation, as ordered, Economía cancelled the Concessions altogether on pretextual grounds – thereby denying the very consultation right the Supreme Court ordered the State to protect. A measure cannot pursue the legitimate objective of protecting indigenous rights when its consequence is to eliminate those rights entirely.

998. Mexico's contention that less restrictive alternatives were unavailable is equally without merit. Less restrictive alternatives were available in abundance: Articles 22 and 31 of the Mining Regulations provided mechanisms for Economía to correct any alleged technical deficiencies without cancellation.[2685] Economía's refusal to employ this mechanism confirms that the February 2023 *Oficio* was not a proportionate regulatory response, but a politically directed cancellation that was disproportionate by any measure.

999. Finally, the cancellation was grossly disproportionate *stricto sensu*. The contrast between cause and effect – a coordinate discrepancy correctable in minutes, set against the permanent destruction of mining concessions held for 14 and 20 years – speaks for itself. But the disproportion is further compounded by the political motivation underlying the measure. AMLO's anti-mining policies specifically targeted the Ixtaca Project,[2686] and SEMARNAT embarked on a bad faith campaign to manufacture the "studies" – devised behind closed doors with anti-mining NGOs – with the express purpose of ensuring that Economía would declare the Concessions "not feasible."[2687] That SEMARNAT subsequently celebrated the cancellation as implementing the Government's commitment of "not granting new mining concessions anywhere in the national territory"[2688] confirms that Economía's *Oficio* was not the product of a proportionate balancing of competing interests, but the culmination of a coordinated political campaign to end the Ixtaca Project definitively. On any formulation of the proportionality test, the measures constitute a violation of CPTPP Article 9.6.

4.2.3.6. Mexico discriminated against the Claimants

1000. Mexico contends that it did not discriminate against the Claimants, advancing two principal arguments: *First*, Mexico asserts that discrimination is not part of the minimum standard of

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2683 *See supra* Section 2.14.

2684 *See supra* Section 2.14.

2685 *See supra* Sections 2.14, 2.17.

2686 *See supra* Section 2.16.

2687 *See supra* Section 2.16.

2688 *See supra* Section 2.16.

treatment under customary international law.[2689] *Second*, Mexico contends that the Claimants' discrimination claim is "completely unfounded" because the Claimants have allegedly "not identified any Mexican investor in a similar situation who has received more favorable treatment in equivalent circumstances" and that the assessment of feasibility was "applied uniformly to all mining concession applications" with "no connection with political motives or any alleged 'anti-mining policy.'"[2690]

1001. Mexico's arguments are without merit. Mexico's cancellation of the Claimants' Project rights was discriminatory both in design and in effect. By declaring the Claimants' Concessions ineffective and then infeasible, Economía carried through AMLO's discriminatory anti-mining policy, which sought to drive foreign companies out of the mining sector under the guise of "resource nationalism."[2691] Economía's actions favored State-owned enterprises, which did not face any of the obstacles or barriers that Mexico placed in the path of legitimate foreign-owned projects such as Ixtaca.[2692] Mexico's assertion that the *Oficio* was a uniform application of the law, untethered to any political motive, is contradicted by the record in its entirety.[2693]

1002. Moreover, AMLO's anti-mining policies specifically targeted the Ixtaca Project: Secretary Toledo publicly declared that "with SEMARNAT, Ixtaca will not happen;" AMLO himself expressed his "absolute confidence" that Secretary Toledo would not authorize the Project; and Secretary Albores confirmed before Mexico's Chamber of Deputies that AMLO's position was that "no more open-pit mining concessions will be allowed."[2694] In June 2024, SEMARNAT further celebrated the cancellation of the Concessions as reflecting the Government's commitment of not granting new mining concessions.[2695] The evidence demonstrates that the cancellation of the Claimants' Concessions was not a uniform application of the Mining Law; it was the targeted implementation of AMLO's discriminatory anti-mining policy against the Claimants and their Ixtaca Project, in clear breach of CPTPP Article 9.6.

4.2.4. Mexico Cannot Shelter Behind the Supreme Court Decision to Avoid International Responsibility

2689 Counter-Memorial, at para. 605.

2690 Counter-Memorial, at para. 703.

2691 Memorial, at para. 622.

2692 Memorial, at para. 652.

2693 *See supra* Sections 2.16, 2.17.

2694 *See supra* Section 2.16.

2695 *See supra* Section 2.17.

1003. In its Counter-Memorial, Mexico asserts that the Claimants do not allege that the Mexican Supreme Court itself violated CPTPP Article 9.6.[2696] Such assertion is nothing more than a transparent attempt to distract from the substance of the Claimants' case. The Claimants do not advance a standalone denial of justice claim. But that does not assist Mexico. It is axiomatic that a State cannot escape international responsibility by pointing to a domestic judicial ruling where that ruling, or the conduct of State organs in implementing it, violates the State's treaty obligations. That is particularly so in this case, where there was a deliberate lack of candor with the Mexican courts as to the actual basis for Economía's February 2023 Oficio.

1004. The principle is reflected in the ILC Articles on State Responsibility. Article 3 provides that "[t]he characterization of an act of State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."[2697] Likewise, Article 32 provides that "[t]he responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations" under international law.[2698] Article 27 of the Vienna Convention on the Law of Treaties further provides "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[2699]

4.3. Mexico Discriminated Against The Claimants And Their Investments

1005. The Claimants demonstrated in their Memorial that Mexico breached its obligations to accord to the Claimants and their investments national treatment under Article 9.4 of the CPTPP and most-favored nation ("**MFN**") treatment under Article 9.5 of the CPTPP.[2700]

1006. Specifically, Mexico adopted a *de facto* discriminatory anti-mining policy that targeted foreign mining investors, including the Claimants, to favor State interests and to transfer back to State control large sections of the Mexican mining industry.[2701] Mexico applied this policy to destroy the Claimants' Ixtaca Project by: (i) unjustifiably rejecting Minera Gorrión's MIA, including because Minera Gorrión had allegedly failed to carry out indigenous consultations (a legal duty imposed on the Government, not on private commercial parties like Minera Gorrión), even

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2696 Counter-Memorial, at para. 28.

2697 International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), Art. 3, **CL-139**.

2698 International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts (2001), Art. 32, **CL-139**.

2699 Vienna Convention on the Law of Treaties, 23 May 1969, Art. 27, **CL-209**.

2700 Memorial, at Section 4.3.1.

2701 Memorial, at para. 622.

though Mexico had conditionally approved similar projects in like circumstances; and (ii) by cancelling the Claimants' Concessions in full and without any compensation whatsoever.[2702]

1007. As the Claimants explained, in assessing national treatment and MFN claims, investment treaty tribunals routinely apply a three-stage analysis: (i) whether the host State afforded "treatment" to the investor or its investment "with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments;"[2703] (ii) whether the investor or investment is in "like circumstances" compared to a domestic or foreign investor or investment, *i.e.*, the comparator;[2704] and (iii) whether the treatment was less favorable than that accorded to the comparator.[2705] Each of these elements is satisfied in the present case.

1008. Mexico's treatment of the Claimants and their protected investments – namely, SEMARNAT's politically driven rejection of Minera Gorrión's MIA and Economía's arbitrary and retroactive cancellation of the Claimants' Concessions – plainly constitutes "treatment" within the scope of CPTPP Articles 9.4 and 9.5.[2706] Furthermore, Mexico treated the Claimants and their protected investments less favorably than it treated investors and investments in like circumstances, including the Camino Rojo, El Boleo, and Huazamota River projects, all of which secured conditional MIA approvals despite the presence of indigenous communities.[2707] Furthermore, Mexico has not, and cannot, reasonably advance any rational policy justification to support its discriminatory treatment of the Claimants and their protected investments.[2708]

1009. In its Counter-Memorial, Mexico advances a range of defenses to the Claimants' claims under CPTPP Articles 9.4 and 9.5, including that: (a) SEMARNAT's MIA Denial Decision and

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2702 *See supra* Sections 2.12, 4.1.

2703 Memorial, at para. 632; *United Parcel Service of America Inc. v. Government of Canada*,UNCT/02/1 ("**UPS v Canada**"), Award, dated 24 May 2007, at para. 83(a), **CL-49**; *Corn Products International, Inc. v. The United Mexican States,* ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 117, **CL-55**; *Cargill, Incorporated v. United Mexican States,* ICSID Case No. ARB(AF)/05/2, dated 18 September 2009, at para. 189, **CL-12**; and *William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon of Delaware, Inc. v. Government of Canada,* UNCITRAL ("**Bilcon v Canada**"), Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 717-718, **CL-91**.

2704 Memorial, at para. 634; *UPS v Canada*, Award, dated 24 May 2007, at para. 83(b), **CL-49**; *Corn Products International, Inc. v. The United Mexican States,* ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 117, **CL-55**; *Bilcon v Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 717-718, **CL-91**.

2705 Memorial, at para. 639; *UPS v Canada*, Award, dated 24 May 2007, at para. 83(c), **CL-49**; *Cargill, Incorporated v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, dated 18 September 2009, at para. 193, **CL-12**; *Corn Products International, Inc. v. The United Mexican States,* ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 117, **CL-55**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 717-718, **CL-91**.

2706 Memorial, at paras. 632-633, and 647; CPTPP, dated 30 December 2018, at Arts. 9.4 and 9.5, **CL-7**.

2707 *See supra* Section 2.12; Memorial, at para. 590.

2708 Memorial, at paras. 651-653.

Economía's "Non-Feasibility Resolution" do not constitute "treatment" within the meaning of CPTPP Articles 9.4 and 9.5;[2709] (b) the Interpretative Note on Articles 9.4 and 9.5 and footnote 14 to Article 9.4 support a narrow reading of the national treatment and MFN obligations;[2710] (c) "no less favorable" treatment does not mean the "most favorable" or "best" treatment accorded to any comparator;[2711] (d) the Claimants' proposed comparators are not in "like circumstances;" [2712] (e) intent alone is insufficient to establish discrimination; [2713] (f) SEMARNAT and Economía apply the same standards uniformly to all investors regardless of nationality;[2714] and (g) the burden of proof rests entirely on the Claimants and does not shift to the Respondent.[2715] As set out below, none of these arguments withstands scrutiny.

4.3.1. The Claimants Identified The Relevant Treatment

1010. The notion of "treatment" under CPTPP Articles 9.4 and 9.5 captures any State measure taken "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."[2716] It is a broad and undemanding requirement, encompassing all conceivable measures taken by the State with respect to the investment.[2717] As the *Merrill & Ring* tribunal remarked with respect to the similarly-worded NAFTA provision, this formulation encompasses "almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor's business activity."[2718]

1011. The Claimants demonstrated in their Memorial that Mexico's conduct readily satisfies this requirement. Specifically, Mexico arbitrarily and unlawfully denied Minera Gorrión's MIA based on AMLO's political directives, not true environmental considerations.[2719] This is

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2709 Counter-Memorial, at paras. 733-736.

2710 Counter-Memorial, at paras. 723–726.

2711 Counter-Memorial, at paras. 727–729.

2712 Counter-Memorial, at paras. 737–744.

2713 Counter-Memorial, at para. 730.

2714 Counter-Memorial, at para. 745–747.

2715 Counter-Memorial, at para. 722, 731.

2716 Memorial, at para. 632; *UPS v Canada*, Award, dated 24 May 2007, at para. 83(a), **CL-49**; *Corn Products International, Inc. v. The United Mexican States,* ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 117, **CL-55**; Cargill v. Mexico, Award, 18 September 2009, at para. 189, **CL-12**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 717-718, **CL-91**.

2717 *Merrill & Ring v. Canada*, Award, 31 March 2010, at para. 79, **CL-72**.

2718 Memorial, at para. 632; *Merrill & Ring Forestry L.P. v. The Government of Canada*, ICSID Case No. UNCT-07-1, Award, dated 31 March 2010, at para. 79, **CL-72**.

2719 *See supra* Section 2.12; Memorial, at para. 647.

confirmed by public statements made by AMLO and Secretaries Toledo and Albores themselves.[2720] Such denial undoubtedly had a lasting and adverse impact on the Claimants and their investments, as the Ixtaca Project could not proceed to exploitation without an approved MIA.[2721] Likewise, Mexico arbitrarily and retroactively cancelled the Claimants' Concessions some 14-20 years after it granted them, in furtherance of AMLO's *de facto* discriminatory anti-mining policy.[2722] That cancellation permanently deprived the Claimants of their protected investments in the Ixtaca Project, which they had made over more than two decades in reliance upon their protected rights in the Concessions.[2723]

1012. In its Counter-Memorial, Mexico argues that these measures fall outside the scope of "treatment" under CPTPP Articles 9.4 and 9.5, because they were allegedly "lawful, discretionary, and based on a specific assessment of regulatory and judicial requirements, not on the nationality of the Claimants."[2724] Mexico goes on to assert that "[p]olitical motivations cannot transform legitimate regulatory conduct into 'treatment' within the meaning of Articles 9.4 and 9.5."[2725] This argument is misguided and wrong.

1013. Mexico deliberately conflates two distinct elements of the three-stage test. The concept of "treatment" is a threshold inquiry concerned solely with whether the State has taken a measure affecting the investor or its investment. Whether that treatment was motivated by nationality-based discrimination – or was instead the product of legitimate non-discriminatory policy – is a separate inquiry that arises at the third stage of the analysis, namely, whether the treatment was less favorable than that accorded to comparators and, if so, whether it was justified.[2726]

1014. Indeed, if Mexico's argument were correct, any State could shield discriminatory conduct from scrutiny simply by asserting that the impugned measure was "lawful." That is not the relevant test. As the tribunal in *Corn Products v. Mexico* confirmed, the notion of "treatment" is broad, covering "the establishment, acquisition, expansion, management, conduct, operation and sale

2720 *See supra* Section 2.12; Memorial, at paras. 311-314; 329-330.

2721 *See supra* Section 2.12; Memorial, at para. 647.

2722 *See supra* Section 4.1; Memorial, at para. 652.

2723 *See supra* Section 4.1; Memorial, at para. 503.

2724 Counter-Memorial, at para. 733.

2725 Counter-Memorial, at para. 735.

2726 *See supra* Section 4.3.

or other disposition" of the relevant investments.[2727] Whether that measure is lawful or discretionary in nature is immaterial to whether it qualifies as "treatment."[2728]

1015. The first limb, namely whether the Claimants and their protected investments were accorded treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments," is plainly satisfied.

4.3.2. Mexico Treated The Claimants And Their Investments Less Favorably Than Relevant Comparators In "Like Circumstances"

1016. As explained in the Memorial, the criterion of "like circumstances" does not require the investor or its investment and the comparator to be in identical circumstances.[2729] The CPTPP itself confirms this, providing at Article 9.4, footnote 14 that "like circumstances" depends upon "the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives."[2730]

1017. The Claimants further explained that tribunals have identified three principal factors relevant to analyzing "like circumstances:" (i) whether the entities operate under the same legal regime; (ii) whether the entities operate in the same business or economic sector; and (iii) whether the entities provide the same or competing products or services.[2731] It is sufficient for the claimant to identify a single comparator that received more favorable treatment in order to discharge this element of the test.[2732]

2727 *Corn Products International, Inc. v. The United Mexican States,* ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 117, **CL-55**.

2728 *Marvin Feldman v Mexico*, ICSID Case No. ARB(AF)/99/1, dated 16 December 2002, **CL-31**.

2729 Memorial, at para. 637; *Corn Products International, Inc. v. The United Mexican States*, ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 129, **CL-55**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, dated 17 March 2015, at para. 692, **CL-91**.

2730 CPTPP, at n. 14, **CL-7**.

2731 Memorial, at para. 638; *Grand River Enterprises Six Nations, Ltd., et.al. v. United States of America*, Award, 12 January 2011, at paras. 165-167, **CL-77**; *Merrill & Ring v. Canada*, Award, 31 March 2010, at para. 89, **CL-72**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, at para. 692, **CL-91**; *S.D. Myers v. Canada*, Partial Award, 13 November 2000, at para. 250, **CL-23**; *UPS v Canada*, Award on the Merits, at paras. 101-104, **CL-49**; *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, 10 April 2001, at para. 118, **CL-25**; *Corn Products International, Inc. v. The United Mexican States,* ICSID Case No. ARB(AF)-04-1, Decision on Responsibility, dated 15 January 2008, at para. 117, **CL-55**; *Cargill v. Mexico*, Award, 18 September 2009, at para. 205, **CL-12**; *Apotex Holdings Inc. v. United States of America*, ICSID Case No. ARB(AF)-12-1, Award, dated 25 August 2014, at para. 8.15, **CL-89**.

2732 Memorial, at para. 638; Andrea K. Bjorklund, 'National Treatment', in August Reinisch (ed.), Standards of Investment Protection (Oxford, 2008, p. 38), **CL-63**.

1018. In its Counter-Memorial, Mexico invokes the Interpretative Note to Articles 9.4 and 9.5 of the CPTPP and footnote 14 to Article 9.4 in support of its narrow reading of this limb. Specifically, Mexico argues that footnote 14 "places a limit on the meaning of 'similar circumstances'" for the purposes of national treatment and MFN,[2733] such that "if the difference in treatment stems from a 'legitimate public welfare objective,' then the investor or the investment is not in circumstances similar to those of any other investor or investment."[2734] Mexico characterizes the Interpretative Note as "context" within the meaning of Article 31(2) of the Vienna Convention and submits that it is "binding on the Tribunal."[2735] These arguments too are misguided.

1019. The Claimants do not dispute that the Interpretative Note and footnote 14 form part of the interpretative context for CPTPP Articles 9.4 and 9.5, and thus that "legitimate public welfare objectives" may bear upon the assessment of "like circumstances." Indeed, the Claimants' Memorial expressly acknowledged footnote 14 in setting out the applicable legal standard.[2736]

1020. What the Claimants dispute, however, is Mexico's attempt to convert footnote 14 from one factor among others into a dispositive gating issue that, if satisfied, precludes any further analysis.[2737] The language of footnote 14 is clear: it provides that "like circumstances" depend on the "totality of the circumstances, *including* whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives."[2738] The use of the word "including" signifies that this is one factor in a broader, multi-factor evaluation – not a stand-alone test capable of defeating a claim under Article 9.4 at the threshold.

1021. In any event, the question is not whether Mexico was, in the abstract, pursuing legitimate public welfare objectives – which it was not, as elaborated above – but rather whether the difference in treatment as between the Claimants' Ixtaca Project and the comparator projects bore a rational connection to those objectives.[2739] The Claimants have demonstrated that SEMARNAT's MIA Denial Decision was not driven by genuine environmental concerns, but rather by AMLO's anti-mining policy and political directives.[2740] The same is true for

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2733 Counter-Memorial, at para. 725.

2734 Counter-Memorial, at para. 725; CPTPP, at n. 14, **CL-7**; Interpretative Note on Articles 9.4 and 9.5 of the CPTPP, **RL-134**.

2735 Counter-Memorial, at para. 723; Interpretative Note on Articles 9.4 and 9.5 of the CPTPP, **RL-134**.

2736 Memorial, at para. 635; CPTPP, at n. 14, **CL-7**.

2737 Counter-Memorial, at paras. 723-726.

2738 CPTPP, at n. 14 (emphasis added), **CL-7**.

2739 *See supra* Section 4.1.

2740 *See supra* Section 2.12. *See* Memorial, at paras. 267-268; 311-314; 582-584.

Economía's arbitrary cancellation of the Concessions on the basis of the impugned INPI study.[2741] Where the invocation of public welfare objectives is pretextual, rather than legitimate, it cannot be invoked to defeat a finding of like circumstances under footnote 14.

1022. Mexico separately contends that the obligation to afford "no less favorable" treatment does not require the State to extend the "most favorable" treatment available to any comparator, citing *Feldman v. Mexico*.[2742] This argument is baseless. As the Claimants explained in their Memorial, the Tribunal "must determine whether Mexico treated the Claimants or their investments less favorably than the relevant comparators."[2743] The issue is not whether the Claimants' investment received the best treatment, but rather whether it received treatment "no less favorable" than the treatment of comparator investments. It is the Claimants' case that SEMARNAT treated their investment *less favorably* than comparators in like circumstances when it rejected the MIA outright on pretextual grounds and arbitrarily failed to follow the conditional approval framework that it had adopted with the comparable projects.

1023. Mexico also argues that "the assertion that a demonstrated intent to discriminate is 'sufficient' to prove a violation is without legal basis,"[2744] and that the *Corn Products v. Mexico* tribunal treated intent as "decisive" only in relation to the third element of the test.[2745] Mexico mischaracterizes the Claimants' position and the applicable law.

1024. *First*, the Claimants do not rely solely upon intent. As elaborated in the Memorial and above, the Claimants have discharged their burden in relation to each of the three elements of the test on the basis of the discriminatory *effects* of Mexico's conduct. The Claimants have identified: treatment,[2746] comparators in like circumstances,[2747] and less favorable treatment.[2748] Evidence of discriminatory intent is relied upon as additional, corroborative evidence of discrimination, not as a free-standing substitute for satisfying the tripartite test.

1025. *Second*, Mexico's reliance on *Corn Products* for the proposition that intent is relevant only to the third limb is incorrect – the tribunal in *Corn Products* expressly stated that there is a "close

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2741 *See supra* Section 2.17.

2742 Counter-Memorial, at paras. 727-729; *Marvin Feldman v Mexico*, ICSID Case No. ARB(AF)/99/1 dated 16 December 2002, at para. 185, **CL-31**.

2743 Memorial, at para. 639.

2744 Counter-Memorial, at para. 730.

2745 Counter-Memorial, at para. 730.

2746 Memorial, at para. 647.

2747 Memorial, at paras. 648-649.

2748 Memorial, at paras. 650-653.

relationship between whether the State *intentionally* discriminated on grounds of nationality and the test of like circumstances," *i.e.*, the second limb of the test.[2749] As the tribunal further remarked, "[w]hile the existence of an *intention to discriminate* is *not a requirement for a breach* . . . where such an intention is shown, that is sufficient."[2750] The Claimants' evidence here – including the public statements of Mexico's own high-ranking officials and the content of their closed-door meetings – establishes such a discriminatory intent.[2751]

1026. Moreover, the authorities upon which Mexico relies do not support its case. In *S.D. Myers v. Canada*, the tribunal did not hold that intent was irrelevant, as Mexico suggests; rather, it held that "intent is important, but protectionist intent is not necessarily decisive on its own."[2752] Similarly, in *Siemens v Argentine Republic*, the tribunal held that discriminatory intent was "not decisive or essential for a finding of discrimination," not that it was irrelevant.[2753] Likewise, the *IC Power v. Peru* tribunal observed that "an overwhelming majority of tribunals have considered that the discriminatory effect (as opposed to intent) is sufficient for a finding of discrimination."[2754] While the tribunal in the *IC Power* case confirmed that an effects-based analysis is sufficient, it in no way suggested that intent cannot be taken into account.

1027. As set forth in their Memorial, the Claimants have identified several instances in which Mexico afforded different and more favorable treatment to investors and investments in "like circumstances." These include: (i) the Camino Rojo precious metals open-pit mining project, which is owned by the Canada-based Orla Mining Group;[2755] (ii) the El Boleo copper, cobalt and zinc open-pit mining project, which is owned by a consortium of Korean investors;[2756] and (iii) the Huazamota River gravel extraction project, which is owned by Mexican company Comisariado de Bienes Comunales Comunidad Santa Maria Huazamota Mexicana.[2757]

2749 *Corn Products v. Mexico*, ICSID Case No. ARB (AF)/04/1, Decision on Responsibility, dated 15 January 2008, at para. 118, **CL-55**.

2750 *Corn Products v. Mexico*, ICSID Case No. ARB (AF)/04/1, Decision on Responsibility, dated 15 January 2008, at para. 138, **CL-55**.

2751 *See supra* Section 2.17.

2752 Counter-Memorial, at n. 940; *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000, at para. 254, **CL-23**.

2753 Counter-Memorial, at n. 940; *Siemens v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award, 17 January 2007, at para. 321, **CL-47**.

2754 *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB/19/19, Award, 3 October 2023, at para. 507, **CL-128**.

2755 Memorial, at para. 648; SEMARNAT Official Notice SGPA/DGIRA/DG/03478, dated 11 August 2020, at p. 96, **Exhibit C-84**.

2756 Memorial, at para. 648; SEMARNAT Official Notice SGPA/DGIRA/DG/03117, dated 24 June 2021, **Exhibit C-366**.

2757 Memorial, at para. 648; SEMARNAT Official Notice SG/130.2.1.1/2618/18, dated 26 September 2018, at p. 19, **Exhibit C-259**.

1028. In its Counter-Memorial, Mexico takes issue with one of the Claimants' comparators for their MFN claim on the basis that it is also Canadian-owned, apparently referencing Orla Mining's Camino Rojo project in Mazapil, Zacatecas.[2758] According to Mexico, "[t]he Claimants cannot seriously argue that they have been treated discriminatorily in comparison to other Canadian investors."[2759] The Claimants understand Mexico's position to be that a claimant cannot bring an MFN claim where the comparator investor shares its nationality. This is incorrect. Article 9.5 of the CPTPP provides that "[e]ach Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party."[2760] The provision thus prohibits Mexico from according the Claimants less favorable treatment than it affords to investors of "any other Party"[2761] – a phrase that plainly includes Canada. The shared nationality of Orla Mining and the Claimants is no bar to this comparison.

1029. The award in *Apotex* is instructive.[2762] There, the tribunal accepted that Sandoz (Canada) was a *prima facie* appropriate comparator for the Canadian claimant Apotex under NAFTA Article 1103,[2763] whose language is nearly identical to CPTPP Article 9.5. The tribunal did not treat the two entities' shared Canadian nationality as precluding the comparison.[2764] Neither should this Tribunal, as the Treaty's text does not exclude investors of the Claimants' own nationality from the MFN obligation.

1030. Mexico seeks to distinguish these comparators on multiple grounds. Mexico asserts that the Camino Rojo, El Boleo, and Huazamota River projects presented "different environmental conditions, regulatory frameworks, and procedural stages."[2765] Mexico also submits that the Ixtaca Project was uniquely affected by the Supreme Court's ruling in the *amparo* proceedings, "which required the declaration of invalidity of the concessions, the assessment of the feasibility of granting the concessions, and, if feasible, consultation with indigenous

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2758 Counter-Memorial, at para. 734.

2759 Counter-Memorial, at para. 734.

2760 CPTPP, Art. 9.5, **CL-7**.

2761 CPTPP, Art. 9.5, (emphasis added) **CL-7**.

2762 Apotex Holdings Inc. v. United States of America, ICSID Case No. ARB(AF)-12-1, Award, 25 August 2014, **CL-89**.

2763 Apotex Holdings Inc. v. United States of America, ICSID Case No. ARB(AF)-12-1, Award, 25 August 2014, at paras. 8.23, 8.61, **CL-89**.

2764 Apotex Holdings Inc. v. United States of America, ICSID Case No. ARB(AF)-12-1, Award, 25 August 2014, at paras. 8.23, 8.61, **CL-89**.

2765 Counter-Memorial, at para. 738.

peoples."[2766] None of these purported distinctions undermines the comparability of the identified projects.

1031. The Claimants reiterate that the "like circumstances" standard has never required – and does not require – identical circumstances. The *Corn Products v. Mexico* tribunal stated that the treaty in that case (the NAFTA) "requires that the investors (or investments) which are being compared are in like, not identical, circumstances."[2767] That principle is equally applicable under CPTPP Articles 9.4 and 9.5. In *ADM v. Mexico*, the tribunal drew a comparison between fructose and cane sugar producers – products that were "similar but not identical" – holding that "when no identical comparators exist, the foreign investor may be compared with less like comparators, if the overall circumstances of the case suggest that they are in like circumstances."[2768]

1032. In the present case, the Claimants' comparators readily satisfy the "like circumstances" requirement. All three comparator projects – Camino Rojo, El Boleo, and Huazamota River – operated in the same economic sector (mining). Each was subject to the same regulatory regime (the LGEEPA and the R-LGEEPA),[2769] and each required the same type of authorization to exploit its mining resources (a MIA approval from SEMARNAT).[2770] Critically, each project was also located in proximity to indigenous communities, raising the same question of indigenous consultation that SEMARNAT invoked to deny the Ixtaca Project MIA, *i.e.,* whether the project would affect the rights of indigenous communities such that consultation was required.[2771]

1033. In each of those cases, SEMARNAT conditionally approved the MIA.[2772] It required the competent State and Federal authorities to determine whether indigenous consultations were necessary.[2773] If the authorities determined that consultations were not required, the applicant

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2766 Counter-Memorial, at para. 737.

2767 *Corn Products v. Mexico*, ICSID Case No. ARB (AF)/04/1 ("**Corn Products v Mexico**"), Decision on Responsibility, dated 15 January 2008, at para. 129, **CL-55**.

2768 *Archer Daniels Midland Company v. United Mexican States*, ICSID Case No. ARB(AF)/04/05, Award, dated 21 November 2007, at para. 202, **CL-53**.

2769 Limón ER-1, at Section V.

2770 SEMARNAT Official Notice SGPA/DGIRA/DG/03478, dated 11 August 2020, at p. 96 (approving MIA for Camino Rojo), **Exhibit C-84**; SEMARNAT Official Notice SGPA/DGIRA/DG/03117, dated 24 June 2021 (approving MIA for Boleo), **Exhibit C-366**; SEMARNAT Official Notice SG/130.2.1.1/2618/18, dated 18 October 2018, at p. 19 (approving MIA for Huazamota River Project), **Exhibit C-259**.

2771 *See supra* Section 2.12.

2772 *See supra* Section 2.12.

2773 Memorial, at para. 353.

was obligated to submit to SEMARNAT a certification from the State and Federal authorities to that effect.[2774] If the authorities determined that consultations were required, the authorities would carry out those consultations, and the applicant would then submit to SEMARNAT a certification of their completion. Following those steps, the project could proceed. By contrast, SEMARNAT treated the Claimants' Ixtaca Project less favorably; it departed from this established framework and denied the MIA outright without carrying out consultations at all.[2775]

1034. Mexico contends that the comparator projects are not in "like circumstances" with respect to the Ixtaca Project. In essence, Mexico seeks to distinguish the comparators to Ixtaca on the basis of three factors: (i) their locations and what it has labeled a "historical" mining tradition in the regions where the comparators' projects are located; (ii) their production and processing methods, including the application of regulatory standards such as NOM-141 on tailings ponds, and (iii) the sufficiency of the prevention and mitigation standards proposed by the applicant.[2776]

1035. However, as noted in *Corn Products*, the comparator projects need not be in identical circumstances to the investor, and the similarities the Claimant has identified are sufficient to meet the relevant test. Moreover, none of the factors cited by Mexico had any bearing on the central issue that drove SEMARNAT's decision in each case, namely whether the investor's mining activities might affect indigenous communities in the project area – a factor equally present for the Ixtaca Project.[2777] Indeed, the comparators themselves have differences between them in relation to the factors Mexico cites, but SEMARNAT took the same conditional approval approach for each one of the proposed comparators.

1036. The award in *Bilcon v. Canada* is instructive here.[2778] In that case, the tribunal rejected Canada's attempt to distinguish comparator projects in Nova Scotia on the basis of differences in project type (marine terminals and quarries), mode of environmental review, and degree of local community opposition for the projects.[2779] The tribunal held that confining the choice of comparators to projects reviewed under the same procedural mechanism would "unreasonably

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2774 Memorial, at para. 353; Limón ER-1, at paras. 199, 209, 215.

2775 Limón ER-1, at para. 185. *See supra* Section 2.12.

2776 Counter-Memorial, at paras. 738-743.

2777 *See supra* Section 2.12.

2778 *Bilcon v. Canada*, Award on Jurisdiction and Liability, PCA Case No. 2009-04, dated 17 March 2015, at paras. 701-725, **CL-91**.

2779 *Bilcon v. Canada*, Award on Jurisdiction and Liability, PCA Case No. 2009-04, dated 17 March 2015, at para. 701 *et. seq*., **CL-91**.

limit the examination of comparisons that are relevant,"[2780] and that strong local community opposition, while potentially justifying a different procedural approach, did not warrant the application of a different evaluative standard under NAFTA Article 1102 (National Treatment).[2781] The tribunal further stressed that the determinative question was whether the Canadian authority had applied the same legal standard of assessment – not whether the projects were identical in scale, extraction method, or social context.[2782] The same reasoning applies here: the relevant question is whether SEMARNAT applied the same conditional approval framework to the Ixtaca Project as it did to the comparator projects, not whether the projects differed in their extraction methods, waste management practices, or regional mining traditions. As the Claimants have demonstrated, Mexico did not apply that framework to the Claimants and their Project, and thereby treated them less favorably than the relevant comparators, in breach of Articles 9.4 and 9.5 of the CPTPP.

1037. Mexico additionally observes that the Claimants "did not identify a comparator" for Economía's Non-Feasibility Resolution and the resulting cancellation of the Concessions, and submits that "this further underscores the lack of seriousness with which they present these claims."[2783] This argument is without merit.

1038. As explained in the Memorial, the "like circumstances" analysis does not require an identical comparator nor does it require a comparator for each individual measure taken by the State – it requires sufficient similarity assessed against the totality of the circumstances.[2784] Economía granted the Concessions under the same Mining Law, Regulations, and concession application framework applicable to every other mining concession holder in Mexico.[2785] Economía arbitrarily and retroactively cancelled the Concessions some 14-20 years later, in furtherance of AMLO's *de facto* discriminatory anti-mining policy.[2786] It used the Supreme Court's February 2022 Judgment as a pretext to target and permanently cancel the Ixtaca Project, under political pressure from SEMARNAT and anti-mining NGOs aligned with AMLO's

2780 *Bilcon v. Canada*, Award on Jurisdiction and Liability, PCA Case No. 2009-04, dated 17 March 2015, at para. 701, **CL-91**.

2781 *Bilcon v. Canada*, Award on Jurisdiction and Liability, PCA Case No. 2009-04, dated 17 March 2015, at para. 708, **CL-91**.

2782 *Bilcon v. Canada*, Award on Jurisdiction and Liability, PCA Case No. 2009-04, dated 17 March 2015, at para. 724, **CL-91**.

2783 Counter-Memorial, at para. 744.

2784 Memorial, at paras. 636-638.

2785 *See supra* Section 2.3.

2786 Memorial, at para. 652.

directives.[2787] There is no reasonable justification for Mexico's differential treatment of the Claimants' Concessions.

1039. For all of these reasons, the Claimants have discharged their burden of establishing discriminatory treatment in breach of CPTPP Articles 9.4 and 9.5.

4.3.3. There Is No Reasonable Justification For Mexico's Less Favorable Treatment Of The Claimants And Their Investments

1040. As the Claimants established in their Memorial, once a *prima facie* case of discrimination has been demonstrated, the evidentiary burden shifts to the respondent to demonstrate that the "State's legitimate objective justifies such different treatment in relation to the specificity of the investment."[2788] Mexico has failed to discharge that burden.

1041. It is well established that, as the tribunal in *Bilcon v. Canada* observed, "once a prima facie case is made out under [the national treatment obligation], the onus is on the host state to show that a measure is still sustainable within the terms of [that obligation]."[2789] Applying this principle, the tribunal in *Feldman v. Mexico* found Mexico in breach of its national treatment obligation in part because Mexico failed to adduce any rebuttal evidence.[2790] The tribunal noted that the differential treatment was "obvious" and remarked that "if the Respondent had had available to it evidence showing that the [comparator companies] had not been treated in a more favorable fashion . . . it has never been explained why it was not introduced."[2791]

1042. In its Counter-Memorial, Mexico contends that the burden of proof "rests always on the Claimant."[2792] Mexico's contention is misleading. Investment treaty jurisprudence draws a clear distinction, which Mexico elides, between the *legal* burden of proof, which remains with the Claimants throughout, and the *evidentiary* burden, which passes to the respondent once the claimant has made out a *prima facie* case.

2787 Memorial, at paras. 652-653.

2788 *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSD Case No. ARB/05/08, Award, dated 11 September 2007, at para. 371(iii), **CL-52**; *(1) Apotex Holdings Inc. (2) Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, dated 25 August 2024, at para. 8.65, **CL-89**.

2789 *Bilcon v. Canada*, Award on Jurisdiction and Liability, PCA Case No. 2009-04, dated 17 March 2015, at para. 723, **CL-91**. *See also Mercer International, Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award, 6 March 2018, at para. 7.16, **CL-104**.

2790 *Marvin Feldman v Mexico*, ICSID Case No. ARB(AF)/99/1, dated 16 December 2002, at paras. 177-178, **CL-31**.

2791 *Marvin Feldman v Mexico*, ICSID Case No. ARB(AF)/99/1, dated 16 December 2002, at para. 178, **CL-31**.

2792 Counter-Memorial, at para. 721, fn. 916: *Mercer International, Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award, 6 March 2018, at para. 7.16 ("the legal burden of proof rests always on the Claimant to prove its claims under NAFTA Articles 1102 [NT] and 1103 [MFN]"), **CL-104**.

1043. As the *Apotex v. United States* tribunal articulated, the claimants in that case retained the "legal burden of proof, which defines which party has to prove what in order for its case to prevail," while the evidential burden of establishing "the relevant fact[s] on which it relies in support of its case or defence" – that is, the rational, non-discriminatory basis for the challenged conduct – had shifted to the respondent.[2793] Mexico acknowledges as much in its Counter-Memorial, when it observes that "the Claimants do not dispute that if they met the three requirements described above, the burden would then fall on the State, which would have to demonstrate that its conduct was based on a rational and non-discriminatory public policy."[2794] This is particularly important, given Mexico's multiple document production failures in this case. As the tribunal in *Apotex* observed, were it "[o]therwise, the claimant would be left to prove its case from whatever incomplete documentary evidence and witness testimony the respondent State may choose to present. That burden would be, invariably, an almost impossible task."[2795]

1044. In this case, the Claimants have established a *prima facie* showing of discrimination, with the consequence that the evidentiary burden has passed to Mexico to justify the differential treatment. Mexico attempts to do so through what it says are uniform regulatory standards, asserting that "SEMARNAT and the Economía apply the same environmental and indigenous peoples' consultation standards to all investors, regardless of their nationality."[2796] That is untrue. Indeed, Mexico did not even apply the same human rights standards uniformly across the communities at Ixtaca.

1045. With respect to the MIA Denial Decision, Mexico states that it was "firmly based on legitimate and non-discriminatory public policy objectives," in order "to protect the environment and guarantee prior consultation with indigenous communities. These obligations are not discretionary, but rather mandatory rules."[2797] This argument is as wrong as it is hypocritical.

1046. As demonstrated in sections 2.11 and 2.12 above,[2798] SEMARNAT denied the MIA on the ground that Minera Gorrión had breached a duty under ILO 169 by failing to complete indigenous consultation.[2799] But neither the LGEEPA nor the R-LGEEPA imposes any such

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2793 *(1) Apotex Holdings Inc. (2) Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, dated 25 August 2024, at para. 8.7, **CL-89**.

2794 Counter-Memorial, at para. 731.

2795 *(1) Apotex Holdings Inc. (2) Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, dated 25 August 2024, at para. 8.68, **CL-89**.

2796 Counter-Memorial, at para. 745.

2797 Counter-Memorial, at para. 746.

2798 *See supra* Sections 2.11, 2.12.

2799 ILO Convention 169, at Art. 6 (emphasis added), **CL-16**.

duty on a MIA applicant.[2800] It is well-established under international standards and the Mexican Supreme Court's own jurisprudence that the obligation to consult indigenous communities lies with the State alone, and cannot be delegated to private parties.[2801] The opinions upon which SEMARNAT relied – from the CDPI, the Puebla Office of the INPI, and the Undersecretary for Indigenous Peoples of the Government of Puebla – did not assign any consultation obligation to Minera Gorrión.[2802] Moreover, the Mexican government had itself repeatedly confirmed to the Claimants that no indigenous consultations were required.[2803]

1047. SEMARNAT knew all of this. An internal DGIRA letter dated 3 September 2019[2804] shows that DGIRA's Director asked UCPAST to carry out indigenous consultation for the Ixtaca Project, expressly acknowledging the CDPI's opinion that SEMARNAT bore responsibility for any necessary consultation. SEMARNAT thus recognized the obligation as its own and took affirmative steps to discharge it through its dedicated social participation unit.[2805] Yet 15 months later, SEMARNAT denied the MIA on the ground that Minera Gorrión had breached that very obligation. Mexico's refusal to produce any documents reflecting UCPAST's response – notwithstanding the Tribunal's express order during document production[2806] – only reinforces the inference that SEMARNAT deliberately concealed its own failure to discharge its consultation obligation and then shifted the blame to Minera Gorrión by denying the MIA outright. Moreover, as has become a sad motif of this arbitration, in doing so SEMARNAT denied the indigenous communities their right to be consulted in relation to the Project.

1048. The comparator projects confirm the pretext. As set out in section 4.3.2 above, SEMARNAT conditionally approved the MIAs for Camino Rojo, El Boleo, and Huazamota River by requiring the operators to coordinate with the competent authorities regarding consultation before commencing operations. This evidence flatly contradicts Mexico's assertion that its "objective policy considerations" were "applied uniformly to all investors, both domestic and foreign, operating in sectors with a potential environmental or social impact."[2807] Notably, in its Counter-Memorial, Mexico has proffered no evidence as to why SEMARNAT extended

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2800 Limón ER-1, at para. 191.

2801 Limón ER-1, at para. 175; Limón ER-2, at paras. 15(e), 166-171. *See supra* section 2.12.

2802 *See supra* Section 2.12.

2803 Memorial, at Section 2.14.4.4

2804 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

2805 Oficio No. SGPA/DGIRA/DG/06913, dated 3 September 2019, **Exhibit C-628**.

2806 Procedural Order No. 5, Annex A, at pp. 90-94.

2807 Counter-Memorial, at para. 747.

that conditional framework to the comparator projects, but not this one. The reason for this is simple—there was no legitimate policy that justified that differential treatment.

1049. As with the MIA Denial Decision, the contemporaneous record reveals that Economía's February 2023 *Oficio* was not the product of legitimate regulatory action, but rather the culmination of a politically orchestrated campaign to destroy the Claimants' investment.

1050. Minera Gorrión is plainly in "like circumstances" to any other concession holder under the Mining Law – yet no other holder was subjected to the politically orchestrated campaign that destroyed the Claimants' investment. Economía's February 2023 *Oficio* did not serve any legitimate public purpose; it served only to implement AMLO's directive of "not granting new mining concessions anywhere in the national territory" – a commitment SEMARNAT itself celebrated in its June 2024 report.[2808] By cancelling the Concessions on the basis of errors that could have been corrected within a day, without affording Minera Gorrión any opportunity to remedy the alleged deficiencies as required under Article 22 of the Mining Regulations, Economía's conduct was not merely unjustified – it was deliberately designed to ensure the permanent destruction of the Claimants' investment in furtherance of Mexico's discriminatory anti-mining and anti-foreign-investment agenda.

1051. Mexico's reliance on its "constitutional and international obligations to protect the environment and guarantee prior consultation with indigenous communities"[2809] fares no better. The Claimants have never questioned Mexico's sovereign right to regulate for the protection of the environment or to fulfil its obligations in respect of indigenous communities. The Claimants' contention is that Mexico's actions in this case were not *bona fide*, proportionate, non-discriminatory regulatory measures taken in the public interest; they were, as the evidence establishes, discriminatory, arbitrary, and pretextual. As the tribunal in *S.D. Myers v. Canada* observed, the national treatment obligation permits differential treatment that results from "legitimate public policy measures that are pursued in a reasonable manner."[2810] However, where, as here, the alleged policy rationale is a mere pretext for politically-motivated, discriminatory conduct, it cannot furnish a defense to Mexico's breaches of Articles 9.4 and 9.5.

1052. In summary, there is no reasonable justification for Mexico's nationalist and protectionist measures. As detailed above and in the Memorial, the Claimants invested tens of millions of

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2808 *See supra* Section 2.17.

2809 Counter-Memorial, at para. 746.

2810 *S.D. Myers, Inc. v. Government Canada*, UNCITRAL, Partial Award, dated 13 November 2000, at para. 246, **CL-23**.

dollars to bring the Project to development and worked tirelessly to benefit local communities and improve their livelihoods. By eviscerating the Claimants' legal rights in furtherance of an anti-mining and anti-foreign-investment agenda, Mexico discriminated against the Claimants and their investments, and thereby breached Articles 9.4 and 9.5 of the CPTPP.

5. THE CLAIMANTS ARE ENTITLED TO COMPENSATION IN AN AMOUNT NEEDED TO WIPE OUT ALL THE CONSEQUENCES OF MEXICO'S BREACHES OF THE CPTPP

1053. As the Claimants demonstrated in the Memorial, Mexico's breaches of the CPTPP destroyed the entire value of the Claimants' investments in the Ixtaca Project.[2811] International law entitles the Claimants to full reparation, amounting to no less than the fair market value ("**FMV**") of their investments, which Brattle measures primarily through the income approach and, specifically, the DCF method, on an *ex post* basis.[2812] The Claimants retained Messrs. Florin Dorobantu and Darrell Chodorow, Principals at The Brattle Group ("**Brattle**"), to quantify the resulting losses.[2813]

1054. In the Counter-Memorial, Mexico rejects the Claimants' damages claims, arguing *inter alia* that:

a) *First,* Article 9.8.2 of the CPTPP prescribes the measure of compensation, and the Claimants improperly present a single damages figure without separate quantification for each breach and unlawful measure;[2814]

b) *Second,* Article 9.8.2 mandates an *ex ante* valuation date;[2815]

c) *Third,* the DCF methodology is excessively speculative because the Ixtaca Project never reached construction, and Brattle's DCF inputs are unreliable;[2816]

d) *Fourth*, WGM's analysis exposes flaws in SLR's independent assessment of the Ixtaca Project;[2817]

2811 Memorial, at paras. 654-655.

2812 Memorial, Section 5.2.

2813 Brattle Expert Report ("**Brattle ER-1**"), at para. 137, table 5.

2814 Counter-Memorial, at Section V.A.

2815 Counter-Memorial, at Section V.B.

2816 Counter-Memorial, at Section V.G.1.

2817 Counter-Memorial, at Section V.E.

e) *Fifth*, Almaden's market capitalization provides a reliable alternative to quantify damages;[2818]

f) *Sixth,* the Tribunal should reduce the Claimants' compensation by 50% on account of their contributory fault;[2819] and

g) *Seventh,* the Tribunal should calculate interest using the risk-free U.S. Treasury rate.[2820]

1055. Mexico relies on Dr. Daniel Flores, Managing Director of Quadrant, who proposes market capitalization as his primary valuation methodology and challenges Brattle's DCF inputs.

1056. Mexico's arguments are rote respondent positions and do not withstand scrutiny, as set out below. Brattle's Reply Expert Report ("**Brattle ER-2**"),[2821] accompanying this Reply, confirms its main conclusions and methods, responds to each criticism raised in Quadrant's Expert Report,[2822] and updates the Claimants' damages figure to **US$ 2,682.4 million**[2823] as of 30 April 2026. As elaborated below:

a) **Section 5.1** establishes that customary international law governs the measure of compensation and that the Claimants need not separately quantify each breach and unlawful measure;

b) **Section 5.2** demonstrates that the Tribunal should adopt an *ex post* approach;

c) **Section 5.3** demonstrates that DCF is the appropriate methodology to measure the Project's FMV given the Ixtaca Project's advanced stage of development, rebuts Mexico's contention that DCF is speculative, and addresses Mexico's challenges to Brattle's DCF inputs;

d) **Section 5.4** addresses WGM's criticisms of SLR's independent assessment;

2818 Counter-Memorial, at Section V.G.2.

2819 Counter-Memorial, Section V.F.

2820 Counter-Memorial, Section V.H.

2821 Brattle ER-2, at Section II.

2822 Expert Report of Quadrant Economics, ("**Quadrant ER**").

2823 Brattle ER-2, at paras. 16-18.

e) **Section 5.5** demonstrates that the Tribunal should adopt Brattle's DCF valuation and reject Quadrant's market capitalization methodology, which fails to capture the Project's But-For FMV;

f) **Section 5.6** addresses Mexico's contributory negligence defense;

g) **Section 5.7** establishes the appropriate interest rate; and

h) **Section 5.8** sets out the Claimants' updated claim for compensation.

5.1. Mexico Owes the Claimants Full Reparation Subject to Customary International Law and Separate and Distinct Quantification is Not Required

1057. As the Claimants demonstrated in the Memorial, the CPTPP contains no express provision on the measure of damages for the breaches at issue, *i.e.*, unlawful expropriation and violations of FET, national treatment, and MFN.[2824] The only relevant provision, Article 9.8.2, prescribes the standard of compensation for *lawful* expropriations and has no application here, because Mexico *unlawfully* expropriated the Claimants' investment.[2825] Customary international law therefore governs.[2826] Under that source, a State must make "full reparation" for injuries caused by its internationally wrongful acts, in accordance with the *Chorzów Factory* doctrine.[2827] Investment tribunals have consistently held that compensation must "wipe out" the consequences of the wrongful act regardless of which treaty obligation the State breached.[2828] Where, as here, the breach results in the total loss of an investment, full reparation requires

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2824 Memorial, at para. 656.

2825 Memorial, at para. 656; CPTPP, at Article 9.8.2, **CL-7**.

2826 *See*, *e.g., S.D. Myers v. Canada*, Partial Award, dated 13 November 2000, at para. 310, **CL-23**; *Archer Daniels v. Mexico*, Award, dated 21 November 2007, at paras. 277-278, **CL-53**; *ADC v. Hungary*, Award, dated 2 October 2006, at para. 483, **CL-45**.

2827 *See* International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts ("***ILC Articles***"), at Article 31, ("The responsible State is under an obligation to make a full reparation for the injury caused by the internationally wrongful act."), **CL-139**; *Case Concerning the Factory at Chorzów*, PCIJ, Claim for Indemnity – Merits, Judgment No. 13, dated 13 September 1928 ("***Chorzów Factory, Judgment No. 13 (Merits)***"), at p. 47 (holding that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if the act had not been committed."), **CL-13**.

2828 Memorial, at para. 658; *see, e.g.*, *S.D. Myers v. Canada*, Partial Award, dated 13 November 2000, at para. 311, **CL-23**; *Gemplus v. Mexico*, ICSID Case No. ARB(AF)/04/3, Award, dated 16 June 2010, at para. 13.81, **CL-75**.

compensation at FMV,[2829] placing the Claimants in the financial position they would have occupied had the wrongful acts never occurred.[2830]

1058. In the Counter-Memorial, Mexico raises three objections to this rather uncontroversial position. *First,* it contends that Article 9.8.2, which prescribes FMV compensation determined immediately prior to the taking for lawful expropriations, should control the assessment of damages in the instant matter.[2831] *Second*, Mexico argues that the Claimants present a single damages figure without separate quantification for each alleged breach, failing to account for the possibility that the Tribunal may find only some measures unlawful.[2832] *Third*, Mexico asserts a disconnect between the expropriation of the Claimants' mining concessions and Brattle's valuation of the Ixtaca Project as a producing mine, contending that the concessions' value does not equal that of an operating mine that no one ever built.[2833] Each objection is misplaced.

1059. As a preliminary matter, Mexico does not challenge the Claimants' submission that FMV is the appropriate basis for assessing damages. Its objections concern only how to measure FMV. The Tribunal thus need not dwell on this threshold question, as the Parties agree on it.

1060. Mexico's first argument – that Article 9.8.2 of the CPTPP should govern the standard of compensation – is misguided. As set out in the Memorial, this provision prescribes the measure of damages only for *lawful* expropriations, and it is the Claimants' case that Mexico *unlawfully* expropriated the Claimants' investment.[2834] On rebuttal, Mexico relies on two cases, neither of which assists its position. In *Santa Elena v. Costa Rica*, the tribunal characterized the expropriation as *lawful* and assessed compensation under the standard for lawful takings; it never addressed the measure of reparation for an unlawful expropriation.[2835] In *Glencore v. Bolivia*, the tribunal expressly declined to "discuss whether Article 5 of the Treaty provides a compensation standard applicable to both lawful and unlawful expropriations and whether the

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2829 Memorial, at para. 659; *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 850, **CL-97**.

2830 Memorial, at para. 659; *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 850, **CL-97**.

2831 Counter-Memorial, paras. 752-754.

2832 Counter-Memorial, paras. 765-767.

2833 Counter-Memorial, para. 766.

2834 Memorial, at Section 5.1.

2835 *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, dated 17 February 2000, at paras. 71-72, **CL-21**.

Treaty standard would be more appropriate than the customary international law standard."[2836] Mexico has thus failed to identify a single authority supporting its position. Therefore, customary international law governs, and the Claimants' compensation must "wipe out" the consequences of Mexico's unlawful conduct.

1061. Mexico's second assertion – that the Claimants did not specify distinct damages figures for each breach or individual measure[2837] – is also misguided. The measure of damages does not change depending on which CPTPP obligation the Tribunal finds Mexico breached. Each breach, whether unlawful expropriation, or a violation of MFN, NT, or FET,[2838] individually or cumulatively destroyed the Claimants' investments in their entirety, and the appropriate measure in all cases is the FMV of the Ixtaca Project. Separate quantification serves no purpose where the result is identical.

1062. Investment tribunals have consistently applied FMV as the measure of damages where a State's breach – whether of FET, NT, or MFN obligations – results in the total loss of an investment. In *Gemplus v. Mexico*, the tribunal applied the same measure for FET as for unlawful expropriation, drawing no distinction between the two.[2839] In *CMS v. Argentina,* the tribunal held that "the cumulative nature of the breaches discussed here is best dealt with by resorting to the standard of fair market value," recognizing that this standard is "not excluded" for "breaches different from expropriation if their effect results in important long-term losses."[2840] In *Odyssey v. Mexico*, the tribunal confirmed that "the FMV standard has been used by investment tribunals when called upon to calculate damages"[2841] for both expropriations and other violations such as FET. And in *Gold Reserve v. Venezuela*, the tribunal held that "the serious nature of the [FET] breach"[2842] and "the total deprivation of mining rights" warranted

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2836 *Glencore Finance (Bermuda) Limited v. the Plurinational State of Bolivia*, PCA Case No. 2016-39, Award, dated 8 September 2023, at para. 291. **RL-115**.

2837 Counter-Memorial, paras. 765-767.

2838 Memorial, at para. 656.

2839 *Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, dated 16 June 2010, at para. 12.52, **CL-75**; s*ee also Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 792, ("[i]n assessing compensation for internationally wrongful acts other than expropriation, the Tribunal considers that it should apply the principle of the *Factory at Chorzow* case."), **CL-58**.

2840 *CMS Gas Transmission Company v. The Republic of Argentina,* ICSID Case No. ARB/01/8, Award, dated 12 May 2005, operative part, at para. 410, **CL-39**.

2841 *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 558, **CL-134**.

2842 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, para. 680, **CL-153**.

FMV "under the principles of full reparation and wiping-out the consequences of the breach."[2843]

1063. Mexico's contention that the Claimants have not demonstrated standalone harm from each measure is flatly wrong. The Claimants' case is that Mexico's unlawful measures operated in tandem to deprive the Claimants of the use, enjoyment, and economic value of their investment: the MIA Denial Decision arbitrarily stripped the Claimants of the regulatory approval necessary to advance the Project to construction, and Mexico's pretextual cancellation of the Concessions eliminated the legal basis for exploiting the mineral resources altogether.[2844] Together, these measures cumulatively and progressively foreclosed the Ixtaca Project in its entirety. The Claimants present a unified damages figure because the measures are not divisible as they formed part of a single course of conduct directed at the same investment and producing the same result. Moreover, even if the Tribunal were to find that any individual measure did not constitute a breach (*quod non*), each of the remaining measures independently caused substantial harm to the Claimants' investment sufficient to warrant full compensation at FMV.[2845]

1064. Mexico's third challenge – that a disconnect exists between the expropriation of the mining concessions and Brattle's valuation of the Ixtaca Project as a producing mine – is equally misplaced.[2846] Mexico conflates the legal object of the expropriation with the economic measure of the loss. As established above, full reparation requires placing the Claimants in the position they would have held but-for the unlawful act. The Cerro Grande and Cerro Grande 2 concessions legally enabled the advancement and execution of a mining project that had completed a Feasibility Study, declared Mineral Reserves, and was on a defined path toward construction and production, as explained in Section 2.2 above.[2847] In the but-for scenario, the Project would have commenced production by January 2022,[2848] would have generated revenue from the sale of silver and gold, and the Tribunal must assess its value accordingly.

5.2. The Tribunal Should Adopt An *Ex Post* Valuation In This Case

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2843 *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, paras. 680, 863, **CL-153**.

2844 *See generally* Brattle ER-2.

2845 *See generally* Brattle ER-2.

2846 Counter-Memorial, at para. 766.

2847 *See supra* Section 2.2.; McDonald WS-2, at Section 3.

2848 SLR ER-1, at para. 350.

1065. As the Claimants demonstrated in the Memorial, the Tribunal should assess damages on an *ex post* basis using the date of the award as the valuation date.[2849] An *ex post* approach substitutes actual, observed data – including realized commodity prices, costs, and market conditions – for the forecasts an *ex ante* analysis would require. This approach enables the Tribunal to determine the loss utilizing maximum information and thereby achieve full reparation more reliably.[2850] Where, as here, the investment has appreciated in value since the breach, customary international law entitles the investor to receive the benefit of that increase.[2851] In its ER2, Brattle has thus updated its calculated damages as of 30 April 2026 as a proxy for the date of the award ("**2026 Proxy Valuation Date**").[2852] In the alternative, the Tribunal should set the valuation date at 9 February 2023 ("**2023 Valuation Date**"), *i.e.*, the date Economía issued the arbitrary and pretextual *Oficio* ruling that the original Concessions granted in 2003 and 2009 were allegedly not feasible.[2853]

1066. In the Counter-Memorial, Mexico raises three challenges to the Claimants' *ex post* approach. *First*, Mexico contends that because the 9 February 2023 Economía *Oficio* constituted an instantaneous measure, the valuation date should fall on the day before that measure.[2854] *Second*, Mexico argues that the rationale for an award-date valuation rests on restitution, and that because the Claimants seek damages under Article 9.29(1)(a) of the CPTPP, this approach does not apply.[2855] *Third*, Mexico contends that the authorities the Claimants rely upon involved operational investments, making an *ex post* valuation inappropriate for a project that had not commenced construction.

1067. Mexico's first assertion – that the Economía *Oficio* constitutes an instantaneous measure and therefore mandates an *ex ante* valuation date – is a *non sequitur*.[2856] Whether the measure was instantaneous does not dictate the valuation date. Mexico merely seeks to reintroduce the

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2849 Memorial, Section 5.1.3.

2850 Memorial, Section 5.1.3; *Burlington Resources Inc. v. Republic of Ecuador*, Decision on Reconsideration and Award, dated 7 February 2017, at para. 332, **CL-223**.

2851 Memorial, Section 5.1.3; *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226 ("***Hulley v Russia***"), Final Award, dated 18 July 2014, at para. 1769, **CL-86**; *Yukos Universal Limited (Isle of Man) v. Russian Federation,* UNCITRAL, PCA Case No. 2005-04/AA227 ("***Yukos v Russia***"), Final Award, dated 18 July 2014, at para. 1769, **CL-88**; *Veteran Petroleum Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-05/AA228 ("***Veteran Petroleum v Russia***"), Final Award, 18 July 2014, at para. 1769, **CL-87**.

2852 Brattle ER-2, at paras. 17, 182.

2853 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

2854 Counter-Memorial, para. 760.

2855 Counter-Memorial, paras. 761-762.

2856 Counter-Memorial, at para. 760.

Article 9.8.2 compensation standard for lawful expropriations, a standard that, as established above, has no application to Mexico's *unlawful* expropriation.[2857] Customary international law prescribes no fixed valuation date for unlawful expropriation; it requires only full reparation. The Tribunal should select the valuation date that most accurately places the Claimants in the position they would have occupied absent Mexico's breaches, and an *ex post* approach achieves this because it captures all circumstances to which the investor would, in all probability, have been exposed absent the wrongful conduct.[2858]

1068. Mexico's second contention – that an *ex post* valuation requires a claim for restitution, and that because the Claimants seek damages under Article 9.29(1)(a), the *ex post* approach does not apply – lacks merit.[2859] Mexico rests its argument on the formalistic premise that a claimant must frame its claim as one for restitution to obtain the monetary equivalent thereof. Mexico's sole authority, *Tidewater v. Venezuela*, does not support this position.[2860] Mexico misrepresents the tribunal's reasoning: the *Tidewater* tribunal did not reject the *ex post* approach because the claimants failed to seek restitution.[2861] Rather, the tribunal classified the expropriation as lawful and on that basis it had no occasion to determine the content of the full reparation standard for unlawful expropriations.[2862] This case is directly distinguishable: Mexico unlawfully expropriated the Claimants' investment.

1069. The very framework underpinning full reparation confirms that a claimant need not formally claim restitution to obtain its monetary equivalent. As Professor Marboe has explained, the considerations of the PCIJ in *Factory at Chorzów*,

> "have thus rightfully been interpreted in such a way [that] the value of the expropriated property at the time of the expropriation has to be compensated in case of lawful expropriations. In case of unlawful expropriations, by contrast, restitutio in integrum would be the first remedy. *If restitution is not possible or not claimed, an amount of money has to be paid which puts the former owner in the same financial position as physical restitution would do*. Furthermore,

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2857 *See supra* Section 5.1.

2858 ILC Articles, Commentary to Article 36, at p. 69, **CL-138**.

2859 Counter-Memorial, at paras. 761-762.

2860 Counter-Memorial, at para. 762, n. 975.

2861 *See Tidewater Inc. v. Venezuela,* ICSID Case No. ARB/10/5, Award, dated 13 March 2015, at para. 162, **RL-118**.

2862 *See Tidewater Inc. v. Venezuela,* ICSID Case No. ARB/10/5, Award, dated 13 March 2015, at para. 162, **RL-118**.

> additional damage which physical restitution would not remedy must be compensated in order to make him or her whole."[2863]

1070. Mexico's third argument – that *ex post* valuations apply only to investments "in operation" at the time of the breach – is Mexico's own creation, without foundation in any damages literature. An *ex post* valuation does not depend on whether the asset was operational; its purpose is to ensure the Tribunal decides with "'maximum information' rather than 'maximum ignorance.'"[2864] An *ex post* approach substitutes actual data – observed commodity prices, realized costs, known market conditions – for the forecasts and assumptions that an *ex ante* analysis would require. That advantage holds regardless of whether the investment had commenced production, because the relevant inquiry is whether the Claimants can establish the but-for scenario with reasonable certainty. Here, the Claimants' Feasibility Study, particularly when discounted to account for certain risks, provides an accurate assessment of the Project's production potential. What the *ex post* approach enables the Tribunal to do here is to assess the reasonableness of the inputs in that Feasibility Study against real-time, real-world developments.

1071. *ConocoPhillips v. Venezuela* confirms the point. There, the tribunal applied an *ex post* valuation to the Corocoro concession even though "[p]roduction did not take place prior to ConocoPhillips' . . . formal expropriation."[2865] The tribunal used actual post-expropriation production and sales data from the company's other productive assets and treated the absence of operations as no obstacle to relying on such data.[2866] The same logic applies here: the Ixtaca Project completed a final feasibility study, declared Mineral Reserves, and followed a defined path to production. But for Mexico's unlawful measures, the Project would have commenced operations and generated returns under the very market conditions that have prevailed since Mexico deprived the Claimants of their investment.

1072. For the foregoing reasons, Mexico's arguments lack merit. The Tribunal should assess the Claimants' damages on an *ex post* basis, which better reflects the position the Claimants would, in all probability, have occupied absent Mexico's breaches. Should the Tribunal instead adopt

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2863 I. Marboe, *Chapter 7 Conclusions*, in CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL LAW (2nd edition), at para. 3.105 (emphasis added), **CL-102**.

2864 Memorial, at para. 677; *Burlington Resources Inc. v. Republic of Ecuador*, Decision on Reconsideration and Award, dated 7 February 2017, at para. 332, **CL-223**.

2865 *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela,* ICSID Case No. ARB/07/30 ("***ConocoPhillips v. Venezuela***"), Award, dated 8 March 2019, at para. 521, **CL-215**.

2866 *ConocoPhillips v. Venezuela,* ICSID Case No. ARB/07/30, Award, dated 8 March 2019, at para. 556, **CL-215**.

an *ex ante* approach, the relevant valuation date should be 9 February 2023.[2867] Mexico itself appears to agree, having identified the day before the Economía *Oficio* as the appropriate valuation date.

5.3. The Ixtaca Project's FMV Should be Measured by Reference to Brattle's DCF Valuation Considering the Ixtaca Project's Advanced Stage

1073. As the Claimants demonstrated in the Memorial, the CIMVAL Code – the leading Canadian industry standard for valuing mineral properties – provides the appropriate framework for assessing the Ixtaca Project's FMV.[2868] Under the CIMVAL Code, the Project qualifies as a "Development Property"[2869] that had completed a final Feasibility Study,[2870] declared Mineral Reserves, and was on a defined path toward production.[2871] For properties at this stage, the CIMVAL Code indicates that the income approach is "usually the most appropriate." Brattle accordingly calculated the Project's FMV primarily using the income approach and, then, specifically, through the DCF method.[2872] Brattle then checks the reasonableness of that methodology by reference to a market approach[2873] and an alternative MEE cost approach.[2874]

1074. In the Counter-Memorial, Mexico raises three objections to the Claimants' DCF valuation. *First,* it contends that the Claimants' damages are speculative and unforeseeable,[2875] and that principles of causation and reasonable certainty preclude recovery.[2876] *Second,* it argues that a DCF approach is inappropriate for a project that was never constructed and has no track record of profitable operations.[2877] *Third,* it asserts that Brattle's model requires estimating 35

2867 Brattle ER-2, at paras. 2, 182.

2868 Memorial, at para. 664.

2869 Brattle ER-1, at para. 59(a). A Production Property is defined as "a Mineral Property with an operating mine, with or without a processing plant, which has been fully commissioned and is in production." *See* Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL), The CIMVAL Code for the Valuation of Mineral Properties, adopted 29 November 2019, at p. 40, **Exhibit DC-24**.

2870 Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, **Exhibit C-314**; *see also* McDonald WS, at para. 41.

2871 Canada's National Instrument 43-101 is a Canadian regulatory standard published by the Canadian Securities Administrators that outlines the requirements for disclosing scientific and technical information on mineral projects by companies that are publicly traded on Canadian stock exchanges. Brattle ER-1, at para. 12; *see also* McDonald WS, at para. 41.

2872 Memorial, Section 5.2; Brattle ER-1, at para. 35.

2873 Memorial, Section 5.2.2; Brattle ER-1, at paras. 61-63.

2874 Brattle ER-1, at para. 65.

2875 Counter-Memorial, at paras. 777-778.

2876 Counter-Memorial, at paras. 786-787.

2877 Counter-Memorial, at paras. 777-778, 781-782.

variables, each subject to error, rendering the valuation intrinsically unreliable.[2878] Each of these contentions is without merit.

1075. Mexico's first argument – that the Claimants' damages are speculative and unforeseeable – is specious. Mexico asserts that it "should not be held liable for losses based on a set of circumstances so unpredictable that they have temporarily pushed gold prices to unprecedented levels,"[2879] and complains that investors "speculate on the valuation date to obtain the highest possible compensation, without risk of loss."[2880] These read more like the complaints of an oft-sued Sovereign rather than actual arguments against the adoption of the DCF methodology.

1076. In any event, Mexico confuses foreseeability of the *loss* with foreseeability of its *quantum*. As the *Amco v. Indonesia* tribunal held, "foreseeability goes to causation and damages, and normally not to the quantum . . ."[2881] and "[t]he principle of foreseeability does not require that the party causing the loss is at that moment of time able to foresee the precise quantum of the loss actually sustained."[2882] Mexico challenges the magnitude of the Claimants' loss driven by the subsequent rise in gold and silver prices.[2883] But this is precisely the type of market development the Claimants would have experienced in the but-for scenario, making the but-for Ixtaca substantially more valuable, and from which Mexico's breaches excluded them.

1077. Mexico invokes the principle of reasonable certainty, arguing that "only legally relevant losses are compensable," that "damage must be sufficiently certain and not speculative," and that the concern to avoid speculation is "particularly relevant" where a claimant seeks compensation based on a DCF for a project that was never built and never entered into commercial operation. Mexico applies this principle as though it imposed a single standard across all elements of a damages claim – existence of loss, causation, and quantum alike.[2884] Investor-state tribunals have not drawn such an equivalence. Rather, tribunals consistently distinguish between the standard for establishing the existence of a loss and the standard for quantifying it. Mexico's argument collapses this distinction: it applies to the quantification of loss the heightened burden that the law reserves for the prior, threshold question of whether a compensable loss exists at

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2878 Counter-Memorial, at paras. 783-784.

2879 Counter-Memorial, at paras. 786-787.

2880 Counter-Memorial, at paras. 786-787.

2881 *Amco Asia Corporation and others v. Republic of Indonesi*a, ICSID Case No. ARB/81/1, Award in Resubmitted Proceeding, dated 31 May 1990, at para. 175, **CL-216**.

2882 *Amco Asia Corporation and others v. Republic of Indonesi*a, ICSID Case No. ARB/81/1, Award in Resubmitted Proceeding, dated 31 May 1990, at para. 175, **CL-216**.

2883 Counter-Memorial, paras. 786-787.

2884 Counter-Memorial, paras. 775-777.

all. However, the *Crystallex v. Venezuela* tribunal held that "once the fact of future profitability is established and is not essentially of speculative nature, the amount of such profits need not be proven with the same degree of certainty," and that while the existence of the loss is subject to the "balance of probabilities," a claimant need only prove its quantum with a "reasonable basis" and "with reasonable confidence."[2885]

1078. The *Tethyan Copper* tribunal agreed, holding that absolute certainty cannot apply to quantum because "it would mean that damages would – almost certainly – never be awarded"[2886] and that "there can hardly be absolute proof for a hypothetical situation."[2887] That tribunal also articulated a persuasive two-part test to establish when a tribunal should adopt a DCF methodology: first, the tribunal must be satisfied that, absent the respondent's breaches, the project would have become operational and profitable;[2888] second, it must be satisfied that it can determine the amount of those profits "with reasonable confidence."[2889] Only where "fundamental uncertainties"[2890] preclude satisfaction on the first question does DCF become unavailable. The Claimants readily satisfy both limbs. On the first, the Ixtaca Project completed a final Feasibility Study, declared Mineral Reserves, attracted financing proposals from three established mining lenders, and followed a defined path to construction and production – there is no fundamental uncertainty about whether the Project would have become operational and profitable.[2891] On the second, Brattle's DCF derives its inputs from the completed Feasibility Study and independently verified technical data, providing the "reasonable basis" and "reasonable confidence."[2892]

1079. A State that expropriates an income-generating asset assumes liability for the consequences of that act, including subsequent market movements. As Marboe observes, "an increase in value

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2885 *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at paras. 868-869, 875, **CL-97**; *see also Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic,* ICSID Case No. ARB/97/3, Award II, dated 20 August 2007, at para. 8.3.3, ("compensation for lost profits is generally awarded only where future profitability can be established (the fact of profitability as opposed to the amount) with some level of certainty."), **CL-51**; *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, dated 3 March 2010, at para. 594, (once the loss is proved, the tribunal must "make the best estimate that it can of the amount of the loss."), **CL-70**.

2886 *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1 *("**Tethyan v. Pakistan**")*, Award, dated 12 July 2019, at para. 290, **CL-109**.

2887 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at para. 290, **CL-109**.

2888 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at para. 330, **CL-109**.

2889 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at para. 330, **CL-109**.

2890 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at para. 330, **CL-109**.

2891 *See supra* Section 2.4.

2892 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at paras. 330, 334, **CL-109**.

between the date of the expropriation and the date of the judgment or award should not be to the benefit of the expropriating state in cases of unlawful expropriation,"[2893] and it is "necessary to compare two values of the expropriated property and award the higher one in cases of unlawful expropriations."[2894] A number of tribunals have endorsed this approach.[2895] Mexico does not engage with these authorities. Its complaint that the Claimants "speculate on the valuation date" inverts reality: the Claimants did not choose to divest themselves of their investment – Mexico forcibly deprived them of it. Compensating the Claimants at current market values is the necessary consequence of Mexico's decision to expropriate. To hold otherwise would reward the expropriating State for the passage of time and penalize the investor for a dispossession it did not choose.

1080. Mexico's second contention – that DCF is inappropriate because no one ever constructed the Ixtaca Project and it lacks a track record of profitable operations – is wrong.[2896] The leading industry standard, arbitral authority, and the very sources Mexico invokes all contradict its position. As established above, the CIMVAL Code defines a "Development Property" as "a Mineral Property that is being prepared for mineral production and for which economic viability has been demonstrated by a Feasibility Study."[2897] For such properties, the CIMVAL Code recommends income- and market-based methodologies and advises against cost-based approaches.[2898] In fact, Brattle explains, "once Mineral Reserves have been declared, CIMVAL does not just 'accept' the income approach – it goes further and notes that 'the income approach

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2893 I. Marboe, *Chapter 7 Conclusions*, in CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL LAW (2nd edition), at para. 3.107, **CL-102**; *see also* P. Ziegler & C. Gallorini, *The Case for the Ex-Post Valuation of Damages Under International Investment Law*, 24(1) *The Journal of World Investment & Trade* (2023), at p. 137, **CL-131**.

2894 I. Marboe, *Chapter 7 Conclusions*, in CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL LAW (2nd edition), at para. 3.108, **CL-102**.

2895 *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226 ("***Hulley v Russia***"), Final Award, dated 18 July 2014, at para. 1769, **CL-86**; *Yukos Universal Limited (Isle of Man) v. Russian Federation,* UNCITRAL, PCA Case No. 2005-04/AA227 ("***Yukos v Russia***"), Final Award, dated 18 July 2014, at para. 1769, **CL-88**; *Veteran Petroleum Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-05/AA228 ("***Veteran Petroleum v Russia***"), Final Award, 18 July 2014, at para. 1769, **CL-87**.

2896 Counter-Memorial, at paras. 757, 777.

2897 Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL), The CIMVAL Code for the Valuation of Mineral Properties, adopted 29 November 2019, at 35, **Exhibit DC-24**.

2898 Brattle ER-1, at para. 59(a).

is usually the most appropriate.'"[2899] And as Brattle elaborates in its reports, the Ixtaca Project falls squarely within this category.[2900]

1081. Mexico mentions the Code only once in its Counter-Memorial and does not challenge it.[2901] Indeed, numerous tribunals have endorsed the Code's authority. The *Tethyan Copper* tribunal held that the CIMVAL Code "reflects international best practices"[2902] and constitutes "good evidence of the valuation methodology likely in practice to have been used by an actual buyer in the limited market for large-scale mining enterprises at the relevant time."[2903] The *Crystallex* tribunal relied on the Code to confirm that forward-looking income-based methodologies are appropriate for development-stage properties with an approved feasibility study.[2904] As set out above, the appropriateness of DCF for a pre-operational mine is a fact-specific inquiry, and the Claimants satisfy the *Tethyan Copper* test on both limbs. The cases Mexico invokes confirm rather than undermine this conclusion.

1082. Mexico presents *Gemplus* and *Energía y Renovación* as establishing a categorical bar on DCF for projects without a history of profitable operations.[2905] They do no such thing. These decisions turned on specific evidentiary shortcomings. In *Energía y Renovación*, the hydropower projects at issue were "long from being complete[d]" and there was "no concrete data" on their financial or commercial performance;[2906] by contrast, the Ixtaca Project completed a final Feasibility Study, declared Mineral Reserves, and stood on a defined path to production. In *Gemplus*, the business had never operated as contemplated, the track record was too short and distorted to anchor projections, and the claimants' expert figures were grossly

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2899 Brattle ER-2, at para. 63.

2900 *See supra* Section 2.2; Moose Mountain Technical Services, Ixtaca Feasibility Study (updating 24 January 2019 version), dated 3 October 2019, at p. 21, **Exhibit C-314**; McDonald WS-2, at Section 3.

2901 *See* Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL), The CIMVAL Code for the Valuation of Mineral Properties, adopted 29 November 2019, **Exhibit DC-24**.

2902 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, paras. 347-348, **CL-109**.

2903 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, par. 348, **CL-109**; *see also Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, para. 650, ("The Tribunal follows in this respect the VALMIN and CIMVAL parameters, since both parties have confirmed that those are the leading mining industry groups in the development of valuation standards, guidelines and definitions that are generally followed in the mining sector."), **CL-134**.

2904 *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, paras. 883, 884, **CL-97**.

2905 Counter-Memorial, paras. 778-780.

2906 *Energía y Renovación Holding, S.A. v. the Republic of Guatemala*, ICSID Case No. ARB/21/56, Award, dated 31 March 2025, at para. 452, **RL-122**.

inflated;[2907] here, Brattle's DCF inputs derive from the completed Feasibility Study and independently verified technical data, and its resulting figures are sound, as elaborated below. These cases therefore reflect fact-specific findings that the evidentiary record was insufficient to support a DCF analysis; they did not establish a bright-line rule against DCF for non-going concern assets. Mexico's position ultimately asks the Tribunal to disregard the CIMVAL Code – the very standard that multiple tribunals, including *Tethyan Copper* and *Crystallex*, have endorsed as reflecting international best practices for valuing mineral properties at the Ixtaca Project's stage of development. That position is not credible.

1083. Mexico also invokes the commentary to Article 36 of the ILC Articles on State Responsibility[2908] and the 1992 World Bank Guidelines, the latter of which only recommends a DCF valuation for going concerns with a proven record of profitability.[2909] Importantly, neither supports a categorical bar on utilizing a DCF for pre-operational projects. The ILC commentary observes that the DCF approach "analyses a wide range of inherently speculative elements," leading tribunals to "adopt a cautious approach."[2910] To state the obvious, a cautious approach is not a prohibition. The same commentary acknowledges that tribunals have awarded lost future profits "where an anticipated income stream has attained sufficient attributes to be considered a legally protected interest of sufficient certainty to be compensable."[2911] That description applies directly here. Although the World Bank Guidelines recommend the DCF approach for "a going concern with a proven record of profitability," Marboe observes that the Guidelines "do not seek to impose rigid criteria or hard and fast rules, but rather formulate proposals for the calculation of fair market value."[2912] Section 6 of the same Guidelines operates "[w]ithout implying the exclusive validity of a single standard for the fairness by which compensation is to be determined,"[2913] and Section 5 requires valuation "according to reasonable criteria related to the market value of the investment," taking into account "the circumstances in which it would operate in the future."[2914] The reference to a going concern is

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2907 *Gemplus S.A. et al. v. the United Mexican States*, Award, dated 16 June 2010, at Part XIII, **CL-75**.

2908 Counter-Memorial, para. 782.

2909 Counter-Memorial, para. 781.

2910 Crawford, James; "The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries"; Cambridge University Press (2002), at p. 227, para. 26. **RL-124**.

2911 Crawford, James; "The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries"; Cambridge University Press (2002), at p. 228, para. 27. **RL-124**.

2912 I. Marboe, *Chapter 4 International Standards, Bases of Value, and Valuation Approaches*, in CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL LAW (2nd edition), at para. 4.14, **CL-224**.

2913 World Bank Guidelines on the Treatment of Foreign Direct Investment (1992), at p. 6. **RL-123**.

2914 World Bank Guidelines on the Treatment of Foreign Direct Investment (1992), at p. 6. **RL-123**.

illustrative, but does not exclude assets at earlier stages of development. The Guidelines contemplate forward-looking assessment and do not confine their application to enterprises with an existing record of profitable operations.

1084. The CIMVAL Code supplies a comprehensive framework that the ILC commentary's "cautious approach" demands.[2915] As established above, the Code provides that for Development Properties with a completed Feasibility Study and declared Mineral Reserves, the income approach is "usually the most appropriate" valuation methodology. Section 3.4.4 of the Code further specifies that it is "generally acceptable" to use Mineral Reserves in the income approach, and to use Mineral Resources where Mineral Reserves are also present and are mined ahead of the Mineral Resources in the same cash flow model.[2916] These are structured criteria that channel the DCF analysis through a recognized industry standard, constraining the speculation the ILC commentary cautions against. The Ixtaca Project satisfies each of these criteria, and Brattle's DCF derives its inputs from the completed Feasibility Study and independently verified technical data, as elaborated in Section 5.5.1 below. The cautious approach the ILC commentary contemplates is therefore satisfied.

1085. Tribunals have accepted DCF for pre-operational projects where the evidentiary foundation was sufficient. In *Tethyan Copper*, the tribunal applied the DCF methodology to a project that had completed a feasibility study and applied for a mining lease but had not begun construction or production; the feasibility study and the investor's commitment and experience provided the necessary foundation.[2917] In *Gold Reserve v. Venezuela*, the tribunal accepted a DCF valuation for a project that was "never a functioning mine and therefore did not have a history of cashflow which would lend itself to the DCF model,"[2918] holding that "the commodity nature of the product and detailed mining cashflow analysis previously performed" provided a reliable basis.[2919] Obviously, the same is true here.

1086. The relevant inquiry is therefore not whether DCF is categorically available for a pre-operational project, but whether the evidentiary record supports it. As the *Vivendi* tribunal held, "the absence of a history of demonstrated profitability does not absolutely preclude the use of DCF valuation methodology," but "to overcome the hurdle of its absence, a claimant must lead

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2915 Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL), The CIMVAL Code for the Valuation of Mineral Properties, adopted 29 November 2019, **Exhibit DC-24**.

2916 Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL), The CIMVAL Code for the Valuation of Mineral Properties, adopted 29 November 2019, at p.21, **Exhibit DC-24**.

2917 *Tethyan v. Pakistan*, ICSID Case No. ARB/12/1, Award, dated 12 July 2019, at para. 1601, **CL-109**.

2918 *Gold Reserve v. Venezuela*, ICSID Case No. ARB(AF)/09/1, dated 22 September 2014, Award, at para. 830, **CL-153**.

2919 *Gold Reserve v. Venezuela*, ICSID Case No. ARB(AF)/09/1, dated 22 September 2014, Award, at para. 830, **CL-153**.

convincing evidence of its ability to produce profits in the particular circumstances it faced."[2920] The Claimants have satisfied this threshold. As Mr. McDonald explains, the Claimants made significant investments to advance the Ixtaca Project toward development, including: the completion of a NI 43-101-compliant FS in December 2018;[2921] the recruitment of a team of experienced mining professionals to bring the Project into production;[2922] and the receipt of three formal financing proposals from established project funders.[2923] The Project was thus sufficiently advanced to give the Tribunal the requisite comfort that a DCF is a reliable means of valuing loss.

1087. Mexico's third assertion – that Brattle's DCF contains 35 inputs and is therefore intrinsically unreliable – is simplistic and wrong. As a starting point, most DCF analyses contain a similar number of inputs. That is what makes them accurate – assessing risk in a wide range of areas and accounting for the unique aspects of the project being valued in order to accurately forecast a project's performance. But on Mexico's case, that makes them *unreliable*. This is, unfortunately, a lawyerly complaint devoid of any familiarity with finance.

1088. Of course the presence of multiple inputs does not render a DCF analysis speculative.[2924] Uncertainty is inherent in virtually all valuation exercises, including mines that have already started production, and the DCF method accounts for it by design: expected cash flows incorporate probability-weighted outcomes, and the discount rate reflects the risks of those cash flows.[2925] Quadrant itself concedes that "according to mining standards, a DCF valuation, which is an income-based valuation approach, is an accepted method for feasibility-study stage projects like Ixtaca."[2926] Having made that concession, Mexico cannot credibly maintain that the method is inherently speculative and urge the Tribunal to reject it outright by reference to the number of inputs.

5.4. WGM Failed To Support Its Criticisms Of SLR's Independent Assessment Of The Ixtaca Project

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2920 *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated 20 August 2007, at para. 8.3.8, **CL-51**.

2921 McDonald WS-2, at Section 3.1; *see supra* Section 2.4.

2922 McDonald WS-2, at Section 3.3; *see supra* Section 2.4.

2923 McDonald WS-2, at Section 3.2; *see supra* Section 2.4.

2924 Brattle ER-2, at para. 70.

2925 Brattle ER-2, at para. 70.

2926 Quadrant ER, at para. 45.

1089. As explained in the Memorial, the Claimants retained SLR Consulting (Canada) Ltd. ("**SLR**") to provide an independent technical opinion on the Project.[2927] SLR reviewed the 2019 FS and its underlying technical and cost assumptions, evaluated the Project's Mineral Resources and Mineral Reserves, metallurgy, mine plan, and execution schedule, and produced an adjusted life-of-mine model for use by Brattle.[2928]

1090. Based on that detailed review, SLR concluded that the FS had reliably estimated the Project's Mineral Resources and Mineral Reserves.[2929] SLR thus ratified the FS's declaration of Proven and Probable Mineral Reserves of approximately 1.4 Moz gold and 85.2 Moz silver and its average metallurgical recovery rates.[2930] SLR concluded that the Project was technically and economically feasible and that but for Mexico's actions, Almaden would have developed the Ixtaca Project with production commencing in January 2022.[2931] SLR adjusted certain aspects of the FS CAPEX assumptions, estimating a revised initial capital cost of US$ 211.0 million before further escalation to the valuation dates.[2932] For its adjusted mining scenario, SLR incorporated 75% of the Project's Inferred Resources within the reserve pit, consistent with CIMVAL guidance.[2933]

1091. In a lone paragraph of its Counter-Memorial, Mexico identifies a series of alleged "inconsistencies" in SLR's analysis that purportedly "cast further doubt on the reliability" of the Claimants' DCF valuation.[2934] Each of these alleged "inconsistencies" derives from the expert report of Mexico's technical mining experts, Watts, Griffis and McOuat Limited ("**WGM**"). For the reasons described below, WGM's criticisms are irrelevant and unpersuasive.

1092. *First*, Quadrant adopts none of those criticisms in its damages analysis. Mexico argues only that they cast "doubt" upon "the reliability of the assumptions implicit in the Claimants' DCF."[2935] Even if that were so (it is not), neither Mexico nor Quadrant attempts to quantify that doubt. And as set forth below, WGM actually endorses the FS and SLR's updated

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2927 Memorial, at paras. 22, 690.

2928 SLR ER-1, at Sections 6-8.

2929 SLR ER-1, at para. 34.

2930 SLR ER-1, at paras. 34-35.

2931 SLR ER-1, at paras. 31-32.

2932 SLR ER-1, at para. 36.

2933 SLR ER-1, at paras. 40, 314-15.

2934 Counter-Memorial, at para. 789.

2935 Counter-Memorial, at p. 249.

assumptions in many material respects. By contrast, its quibbles with the FS and SLR's analysis are incorrect, inconsequential, or both. Consequently, WGM's report is of very little assistance to the Tribunal.

1093. *Second*, WGM concedes that the FS rested on robust fundamentals. WGM acknowledges the adequacy of the drilling program, stating that "the drilling density, drilling grid, number of drill holes and total meters of drilling were adequate to establish a mineral resource and reserve for Ixtaca," and that "the number of holes and total meters are adequate for establishing mineral resources for a feasibility level study."[2936] WGM likewise acknowledges the soundness of Almaden's metallurgical testwork;[2937] ore-sorting trials;[2938] and process, water, and tailings design assumptions.[2939] Indeed, "WGM notes that, for the most part, the FS studies were prepared in accordance with industry standards."[2940] WGM also recognizes that the FS and SLR addressed long-term water supply and foundation stability "to industry best practice norms."[2941] WGM acknowledges that those analyses established the sufficiency of the early-mine water balance.[2942] Those concessions are fatal to Mexico's suggestion that the technical foundation of Brattle's valuation is unreliable.

1094. *Third*, many of WGM's assertions are speculative, unsupported, or flat out incorrect. WGM's report takes what SLR aptly describes in its Second Report as a "shotgun approach."[2943] Rather than proposing an alternative mining scenario or resource estimate, WGM puts forth a long series of clumsily articulated concerns that lack factual support or contradict the underlying data. Notably, WGM cannot seem to decide whether to criticize the FS or the refinements in the SLR's First Report and instead picks and chooses where it suits its client's position. Of course, such an approach is of no assistance to the Tribunal. In any event, SLR addresses each

2936 WGM ER-1, at paras. 53, 61.

2937 WGM ER-1, at para. 101 ("Almaden's projected gold and silver recoveries are based on extensive, domain-specific test work carried out between 2012 and 2018, following industry-standard procedures.").

2938 WGM ER-1, at para. 102 ("[T]he ore sorting assumptions were derived from commercial-scale trials using a full-capacity Tomra XRT sorter on large bulk samples of all three rock types, not laboratory tests.").

2939 WGM ER-1, at para. 125 ("[T]he process, water, and tailings design assumptions in the FS are appropriate for a Feasibility-level study.").

2940 WGM ER-1, at para. 165.

2941 WGM ER-1, at para. 103 ("Long-term water supply and foundation stability are likewise addressed to industry best practice norms in both the FS and SLR Expert report.").

2942 WGM ER-1, at para. 103 ("Long-term water supply and foundation stability are likewise addressed to industry best practice norms in both the FS and SLR Expert report.").

2943 SLR ER-2, at para. 32.

of WGM's assertions in its Second Report.[2944] In the interests of concision, the Claimants therefore address only a handful of representative examples below.

1095. For instance, WGM asserts that "a number of irregularities . . . may materially overstate" the Project's mineral resources and reserves.[2945] WGM concedes that "in general industry best practice was followed,"[2946] but nonetheless contends that together, "these factors warrant a material adjustment" downward of the Project's resources and reserves.[2947] According to WGM, the "most significant" alleged irregularity relates to Almaden's compliance with mineral resource reporting requirements. WGM asserts that the FS's resource disclosures were "not valid under current NI 43-101 guidelines and CRIRSCO standards" because the FS disclosed them on an "in-situ" as opposed to a "pit-constrained" basis.[2948] An "in-situ" resource estimate describes the total amount of mineralized material estimated to exist in the ground,[2949] whereas a "pit-constrained" resource estimate only reports material that falls within an economically optimized open-pit boundary: in other words, just the material that a mine would realistically extract at prevailing prices.[2950]

1096. But as WGM acknowledges,[2951] SLR performed precisely the exercise WGM alleges the FS did not, by "includ[ing] a pit optimization to report mineable resources."[2952] This is just one of many examples of WGM choosing to quibble with the FS rather than the updated scenario provided by SLR. In any event, WGM's critique relates to whether SLR should have formally re-classified and re-labelled those resource figures as pit-constrained to comply with NI 43-101 – not whether FS had correctly estimated the resource.[2953]

1097. To take another example, WGM asserts that the Project's block model overestimated the grades of gold and silver present in the deposit. As SLR explains, a block model is "a three-dimensional representation" of a mineral deposit, depicting the deposit as a series of small

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2944 SLR ER-2, at Section 3.1.

2945 WGM ER-1, at para. 97.

2946 WGM ER-1, at para. 97.

2947 WGM ER-1, at para. 98.

2948 WGM ER-1, at paras. 82-83, 97(a).

2949 WGM ER-1, at para. 29.

2950 WGM ER-1, at para. 83.

2951 WGM ER-1, at para. 85.

2952 WGM ER-1, at para. 97(a).

2953 WGM ER-1, at paras. 18(b)(v), 97(a).

blocks, each of which represents information from drillholes.[2954] The "grade of a deposit refers to the concentration of economically valuable metals within a unit of rock."[2955] WGM cherry-picks figures from portions of that model, where its analysis shows slight overestimation.[2956] But those areas are not representative of the deposit as a whole. By contrast, SLR validated the entire block model using standard industry verification techniques. SLR concluded that, "on a global basis," the model underestimates gold and silver grades compared to the underlying drill data.[2957] "Accordingly, the model is conservative and more likely to understate than overstate metal content."[2958]

1098. To take a third example, WGM contends that the FS understates mining costs because it relies on non-binding vendor quotes "rather than firm, contract-level pricing."[2959] WGM fundamentally misunderstands the progression of cost estimates in a mining project. As SLR explains, binding quotations come later, during the detailed engineering stage. During that stage,

> the exact equipment design is finalized, and the vendor will update the prices and provide a binding quotation. As there are often some refinements made between the FS phase and detailed engineering phase, it does not make sense to ask vendors to provide binding quotes.[2960]

1099. Indeed, many of WGM's criticisms boil down to the unremarkable observation that further work would eventually be required for the Project to become a producing mine. For instance, WGM asserts that "some areas of the FS relied on estimates which require detailed engineering input to fully assess the risks and required CAPEX requirements."[2961] Yet in the same breath, WGM concedes that reliance on estimates requiring further detailed engineering input "is not uncommon" at the feasibility study stage, which, of course, was the actual stage of the Project

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2954 SLR ER-2, at para. 44.

2955 SLR ER-2, at para. 43.

2956 SLR ER-2, at para. 50.

2957 SLR ER-2, at para. 74.

2958 SLR ER-2, at para. 74.

2959 WGM ER-1, at para. 134.

2960 SLR ER-2, at para. 252.

2961 WGM ER-1, at para. 31; *see also* WGM ER-1, at para. 135 ("Almaden's FS-level capital estimate lacks sufficient detailed engineering . . . .").

at the time of loss.[2962] As SLR explains, detailed engineering is a separate, subsequent phase of mine development, during which "additional site-specific investigations" such as "targeted drilling, in situ testing, and refined foundation analyses."[2963] These are "standard next steps," and the fact that Almaden had not yet completed them does not entail any shortcomings.[2964]

1100. In sum, WGM largely applauds the FS, recognizing that it is methodologically sound and fulfils industry best practices in numerous respects. WGM's critiques of the FS and of SLR's updated assumptions represent little more than quibbles. Those critiques have no adverse impact on Brattle's valuation. Nor, as explained further below, does Quadrant's proposed valuation approach based on Almaden's market capitalization.

5.5. The Tribunal Should Adopt Brattle's DCF Valuation and Reject Quadrant's Market Capitalization Approach

1101. The Claimants' claim for damages is supported by Brattle's expert testimony.[2965] In its First Report, Brattle assessed the Ixtaca Project's FMV in accordance with the CIMVAL Code's guidelines for valuing mining properties.[2966] As discussed above, the CIMVAL Code recommends the income approach[2967] for projects at the Ixtaca Project's stage of development. Brattle accordingly measured the Project's FMV primarily through a DCF approach,[2968] cross-checked its assumptions using the market approach,[2969] and undertook an alternative assessment under the cost approach.[2970]

1102. In its First Report, Brattle valued the Ixtaca Project primarily through a DCF analysis.[2971] Brattle projected revenues using observed market prices and futures prices for gold and silver, and deducted capital expenditures, operating costs, taxes, royalties, and closure costs derived from the Feasibility Study and SLR's updated cost assessment.[2972] Brattle discounted the resulting cash flows for project-related risks (permit denial, cost overruns, and schedule

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2962 WGM ER-1, at para. 31.

2963 SLR ER-2, at para. 158.

2964 SLR ER-2, at para. 158.

2965 *See* generally Brattle ER-1; Brattle ER-2.

2966 Brattle ER-1, at paras. 58-59.

2967 Brattle ER-1, at paras. 59-60.

2968 Brattle ER-1, at para. 61.

2969 Brattle ER-1, at Section VI.

2970 Brattle ER-1, at Section VII.

2971 Brattle ER-1, at para. 63.

2972 Brattle ER-1, at Sections V.C-V.F, at paras. 86-101.

delays)[2973] and modelled social risks (NGO opposition, adverse court decisions, and regulatory action) through a further delay in the permitting process.[2974] Brattle cross-checked its DCF against a market approach and an alternative cost approach using the CIMVAL-recognized MEE method.[2975] As of 31 January 2025, Brattle determined that the Claimants' damages amounted to US$ 1,060.1 million; using the 2023 Valuation Date, damages totaled US$ 416.8 million, including pre-award interest through Brattle's report date of 20 March 2025.[2976]

1103. In its Counter-Memorial, Mexico relies on Quadrant's Expert Report to challenge Brattle's DCF valuation. Mexico contends that Brattle's model projects future cash flows based on numerous assumptions unsupported by observed operational data,[2977] and that the DCF method becomes extremely sensitive to variations in those assumptions for projects without a history of operations.[2978] Mexico further argues that feasibility studies in the mining industry have a poor track record of predicting actual financial returns, and concludes that the Claimants' DCF valuation is inherently speculative.[2979] In contrast, Mexico espouses Quadrant's market capitalization approach, arguing that because Almaden was a single-asset company trading on the stock market when SEMARNAT issued the MIA Denial Decision on 17 December 2020, its market capitalization reflects the value the market attributed to the Ixtaca Project.[2980] These arguments are baseless as further elaborated in Section 5.5.2 below.

1104. As a preliminary issue, Mexico argues that the Claimants do not specify which entity suffered the claimed damages,[2981] contending that the distinction between losses suffered by the Claimants as investors under Article 9.19(a) and losses suffered by their investment under Article 9.19(b) is material given the different remedial consequences prescribed by Articles 9.29(2) and 9.29(5)(b). This argument is entirely misconceived. The Claimants made clear from the outset that they filed claims under the CPTPP on their own behalf and on behalf of their respective Mexican subsidiaries, Minera Gorrión and Minera Gavilán. Minera Gorrión held the concession titles forming the legal foundation of the Ixtaca Project; Minera Gavilán holds a two percent net smelter return royalty interest. The Claimants' investments in Mexico –

2973 Brattle ER-1, at Section V.G, at paras. 102-109.

2974 SLR ER-1, at para. 206.

2975 Brattle ER-1, at paras. 63-65.

2976 Brattle ER-1, at paras. 137, tab. 5.

2977 Counter-Memorial, at para. 798; Quadrant ER.

2978 Counter-Memorial, at para. 799; Quadrant ER, at para. 44.

2979 Counter-Memorial, at para. 800; Quadrant ER, at para. 124.

2980 Counter-Memorial, at para. 838; Quadrant ER, at para. 26.

2981 Counter-Memorial, at para. 773.

including shares in these subsidiaries, mining concession titles, funds provided to finance exploration and development, surface rights, and equipment – were all made for the purpose of advancing the Ixtaca Project. Accordingly, Brattle valued the Project as a whole, rather than analyzing the value of its individual elements, and the Claimants have suffered losses as a result of Mexico's unlawful conduct.[2982]

5.5.1. Quadrant failed to rebut Brattle's DCF valuation of the Claimants' investment

1105. Quadrant raises three main criticisms of Brattle's DCF valuation: (i) metal price projections; (ii) adjustments for pre-operational risks, including permit denial, CAPEX overruns, construction delays, and financing risk; and (iii) adjustments for risks faced by the Ixtaca Project after reaching production, including operational failure risk, country risk, and cost of capital. Mexico's objections are baseless, as addressed in turn below. Brattle addresses those objections in greater detail in Sections V and VI of Brattle's Second Report.[2983]

5.5.1.1. Futures prices are more reliable forecasts of gold and silver prices than Quadrant's Consensus Economics projections

1106. Quadrant contends that futures contracts are not price projections but reflect hedging and speculation, and therefore should not serve as the basis for forecasting gold and silver prices.[2984] Quadrant proposes Consensus Economics forecasts, compiled from banks and investment firms such as J.P. Morgan, Moody's, and Morgan Stanley, as a more reliable alternative.[2985] Quadrant posits that Brattle's futures-based projections exceed Consensus Economics forecasts across all years and calculates that substituting Consensus Economics prices would reduce the Project's FMV on the 2023 Valuation Date by 85.1%, from US$ 367.8 million to US$ 54.7 million. These contentions lack merit.

1107. As Brattle explains in its ER2, futures prices reflect committed capital: buyers and sellers stake real money on their expectations of where prices will trade at maturity.[2986] A buyer would not commit to purchase gold at US$ 1,900/oz if it expected the price to fall to US$ 1,700/oz, and a seller would not accept that price if it expected gold to rise further. The empirical record confirms that futures prices are superior forecasters to Consensus Economics. Brattle

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2982 CPTPP, at Article 9.29, **CL-7**.

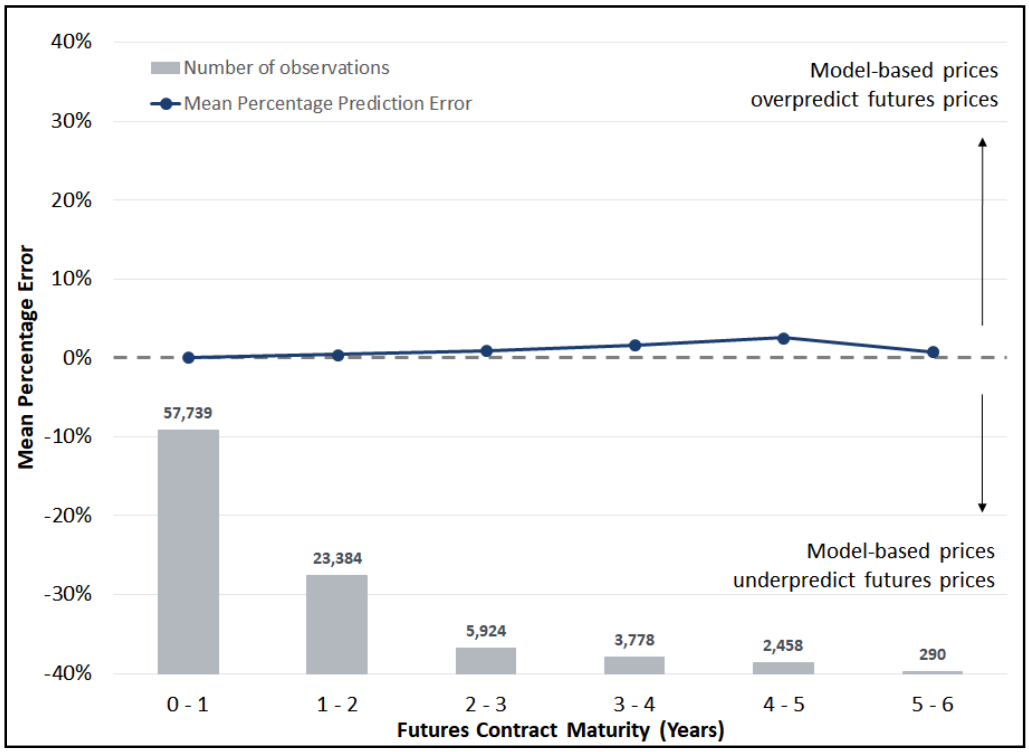
2983 Brattle ER-2, at Sections V-VI.

2984 Counter-Memorial, at para 803; Quadrant ER, at para. 50-51, n. 87.

2985 Counter-Memorial, at para 804; Quadrant ER, at para. 50-51.

2986 Brattle ER-2, at para. 77.

demonstrates that, over approximately fifty years, futures-based forecasts have proven close to "unbiased," neither systematically too high nor too low, as shown in the figure below.



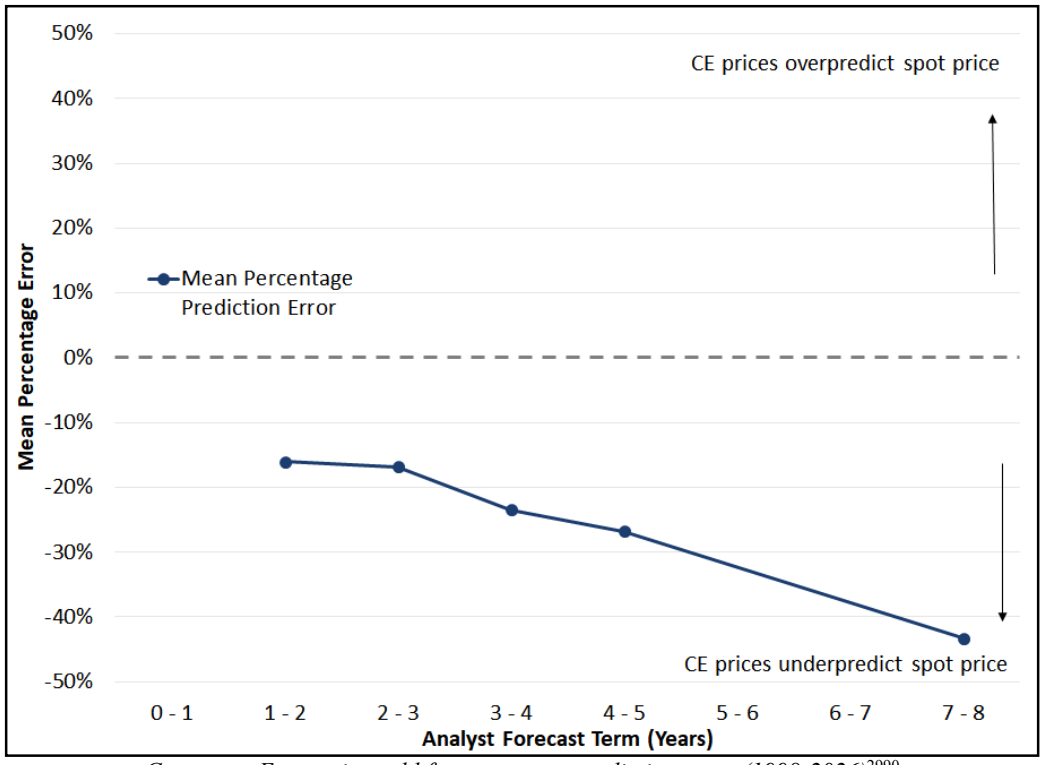
Gold futures prices: cost-of-carry model prediction error.[2987]

1108. Consensus Economics forecasts, by contrast, exhibit a substantial and persistent downward bias.[2988] Brattle's analysis of Consensus Economics gold forecasts since 1998 shows that the longer the forecast horizon, the larger the understatement: at the 7-to-8-year horizon, Consensus Economics under-projected gold prices by over 40% on average, meaning actual prices turned out to be approximately 70% higher than predicted, as illustrated in the graph below. Silver forecasts display a similar pattern, under-predicting prices by more than 30% at comparable horizons.[2989]

[2987] Brattle ER-2, at p.32, figure 5.

[2988] Brattle ER-2, at p. 28, figure 3.

[2989] Brattle ER-2, at para. 83.



Consensus Economics gold forecast mean prediction error (1998-2026)[2990]

1109. Quadrant asserts that Consensus Economics forecasts "do not have known biases," but provides no empirical analysis to support that claim. Brattle does, and the data refutes it.[2991] Quadrant's calculation that substituting Consensus Economics prices would reduce the Project's FMV by 85.1% does not expose a flaw in Brattle's methodology; it demonstrates the extreme sensitivity of Quadrant's alternative to systematically biased price inputs. Adopting those inputs would undervalue the Project without a compelling reason. Indeed, with the benefit of hindsight, actual gold and silver prices have since surpassed Brattle's futures-based projections, confirming that those projections were not inflated but, if anything, conservative.[2992]

5.5.1.2. Quadrant's proposed adjustments to account for the risk of entry into commercial operation are overstated

1110. Quadrant challenges Brattle's DCF on four fronts. *First,* Quadrant argues that Brattle's 13% permit denial discount, derived from SilverCrest's Las Chispas MIA approval announcement, is too low because Las Chispas is not comparable to Ixtaca (less populated area, underground versus open-pit mining, brownfield versus greenfield) and because Brattle's event window is

2990 Brattle ER-2, at figure 3.

2991 Brattle ER-2, at Section VI.A.

2992 Brattle ER-2, at figure 5.

too narrow; using a later date that captures full permit resolution yields a 32.5% discount.[2993] *Second,* Quadrant contends that Brattle's 21% CAPEX overrun assumption is insufficient, citing McKinsey and Ernst & Young studies finding average overruns of approximately 40%.[2994] *Third,* Quadrant argues that Brattle's delay analysis suffers from "survivorship bias" because it examines only projects that overcame social opposition and ignores those abandoned because of it.[2995] *Fourth,* Quadrant challenges Brattle's treatment of financing risk, noting that [redacted] are non-binding, and that [redacted] suggest that Brattle's price projections are inflated or that [redacted] considered the Feasibility Study's production projections overly optimistic.[2996] Each argument is misguided.

1111. Quadrant's first contention – that Brattle's 13% permit denial discount is too low – is baseless. Brattle derived the 13% figure from observable market data: the stock price reaction when SilverCrest's Las Chispas project received MIA approval from SEMARNAT.[2997] Quadrant contends that Las Chispas is not comparable to Ixtaca, but neither Brattle nor Quadrant is an expert in Mexican environmental permitting, and the comparison Quadrant purports to make is itself speculative. In any event, Brattle did not rely on a single data point. It considered four other silver and gold projects in Mexico and confirmed that SilverCrest carried the highest implied risk of MIA denial among the group, making the 13% estimate conservative.[2998] Dr. Pablo-Dorantes confirms that Camino Rojo is reasonably similar to Ixtaca in terms of MIA permitting complexity[2999] and yet the market reaction to Camino Rojo's MIA approval does not support Quadrant's assertion that Ixtaca's permitting risk was materially higher than Brattle's estimate.[3000] Quadrant's alternative, a 32.5% discount derived by extending the event window from one day to over five weeks, is improper. According to Brattle, this violates "standard event-study methodology."[3001] During that extended period, SilverCrest released financial results, filed an amended technical report, and closed approximately CAD 30 million in financing (an important milestone for a project that had not yet even conducted a pre-feasibility study, much less a full feasibility study, like Ixtaca). Quadrant attributes the entire

2993 Counter-Memorial, at paras. 808-813; Quadrant ER, at para. 63-70.

2994 Counter-Memorial, at paras. 814-816; Quadrant ER, at para. 71-75.

2995 Counter-Memorial, paras. 817-818; Quadrant ER, at paras. 76-78.

2996 Counter-Memorial, at paras. 819-822; Quadrant ER, at paras. 83-84.

2997 Brattle ER-2, at para. 94.

2998 Brattle ER-2, at para. 95.

2999 Pablo-Dorantes WS-2, at para. 71.

3000 Brattle ER-2, at para. 95.

3001 Brattle ER-2, at para. 97.

price movement to permitting and ignores these confounding events. Its 32.5% discount is therefore distorted and overstated.[3002]

1112. Quadrant's second argument – that Brattle underestimates capital expenditure overruns – is equally baseless. Brattle's model increases the Feasibility Study's CAPEX by 52% in total: a 21% real adjustment by SLR plus a 23% escalation for post-2018 construction cost inflation.[3003] This 52% adjustment exceeds the benchmarks in every study Quadrant cites. Nevertheless, Quadrant proposes a 40% adjustment (before applying the 21% adjustment for inflation) based on four non-peer-reviewed studies, but each focuses on megaprojects with CAPEX exceeding US$ 500 million to US$ 2 billion, compared to Ixtaca's US$ 264 million.[3004] When properly read, these studies confirm that smaller projects like Ixtaca experience lower overruns.

1113. Quadrant's third assertion – that Brattle's delay analysis suffers from "survivorship bias" – is meritless. In its First Report, Brattle added 21 months to the Feasibility Study's original schedule: SLR's updated timeline accounts for COVID-19 impacts, and Brattle layered on a full additional year for potential social opposition based on actual experience at the Dolores mine in Mexico.[3005] Quadrant argues that Brattle examined only projects that reached production and ignored those abandoned due to opposition.[3006] This misses the point. As the Claimants demonstrated through their extensive community outreach, social opposition could not have prevented the Ixtaca Project from advancing altogether.[3007] Social opposition may cause delays, but Brattle accounted for that through its one-year delay adjustment.[3008]

1114. Quadrant's fourth critique – that Brattle understates financing risk – lacks merit. As Mr. McDonald explains, following the Feasibility Study, [redacted].[3009] The Project's economic viability attracted capital providers. Quadrant notes that [redacted] are non-binding. But that is unremarkable: binding commitments do not precede permit approvals in any normal project development

3002 Brattle ER-2, at para. 98.

3003 Brattle ER-2, at para. 113.

3004 Brattle ER-2, at para. 112.

3005 Brattle ER-1, at paras. 108-110; Brattle ER-2, at para. 117.

3006 Quadrant ER, at para. 78.

3007 *See supra* Section 2.7.

3008 Brattle ER-2, at paras. 117-121.

3009 McDonald WS-2, at Section 3.2.

sequencing.[3010] Moreover, Quadrant suggests that [redacted] imply inflated price projections. This reads too much into a [redacted] that would have been subject to further negotiation and due diligence had the Project received its permits in the ordinary course.

5.5.1.3. Quadrant's proposed adjustments to account for risk of failure after reaching production are exaggerated

1115. Quadrant raises three objections to Brattle's quantification of post-production risk. *First,* Quadrant challenges Brattle's 99.2% survival probability for operational failure risk, arguing that it derives from a study of North American gold mines that closed 20 to 40 years ago, a period when environmental considerations carried less weight, and that Brattle incorrectly assumes risk-neutral agents when a risk-averse buyer would apply a larger discount.[3011] *Second,* Quadrant disputes Brattle's country risk adjustment, contending that Brattle should have used the wide political risk sovereign spread rather than the narrow spread because the Project depended on local labor, suppliers, and contractors.[3012] Quadrant also objects to Brattle's exclusion of treaty-protected political risks, arguing that willing buyers would not ignore such risks when negotiating a stake in a Mexican mining project.[3013] *Third,* Quadrant contends that Brattle's cost of capital is too low (8.2% versus Quadrant's 11.9% for the 2023 Valuation Date), arguing that standard practice requires using U.S. market data for US$-denominated cash flows in emerging markets and that a size premium applies.[3014] Quadrant's objections are, once again, without basis.

1116. Quadrant's first critique – that Brattle's 99.2% annual survival probability derives from outdated data and assumes risk-neutral agents – lacks merit. Quadrant offers no evidence that mine failure rates have increased over the past 20 years as a result of heightened environmental concerns; a trend that, in any event, would be obviated in the event of Ixtaca by the enhanced environmental stewardship demonstrated by Almaden.[3015] Moreover, its comparison to Equinox Gold's Los Filos mine is inapposite: Los Filos depended on a community land access agreement, whereas Ixtaca relied on private land purchases and leases with individual

3010 Brattle ER-2, at para. 124.

3011 Counter-Memorial, at paras. 824-827; Quadrant ER, at paras. 87-91.

3012 Counter-Memorial, at para. 832; Quadrant ER, at paras. 103-104.

3013 Counter-Memorial, at paras. 828-833; Quadrant ER, at paras. 94-94.

3014 Counter-Memorial, at paras. 834-835; Quadrant ER, at paras. 109-111.

3015 Brattle ER-2, at paras. 128-130.

landowners.[3016] Further, Quadrant's contention that a risk-averse buyer would apply a larger discount conflates two distinct issues: how risk enters expected cash flows and whether investors demand an additional premium for bearing it.[3017] Specific risk is diversifiable and does not command such a premium under standard corporate finance principles. Brattle's 0.8% adjustment already reduces expected cash flows to reflect the probability of shutdown.[3018]

1117. Quadrant's second contention – that Brattle's country risk adjustment is too low – is equally unfounded. Quadrant argues that Brattle should have used a wide political risk sovereign spread rather than the narrow spread because the Project depended on local labor, suppliers, and contractors.[3019] This is wrong. Brattle correctly used a narrow spread because the Project was an export-oriented asset, with output sold at globally determined prices in global markets, insulating the Project from many (but not all) risks associated with Mexico's economy.[3020] Quadrant further objects to Brattle's exclusion of treaty-protected political risks, arguing that willing buyers would not ignore such risks when negotiating a stake in a Mexican mining project.[3021] Brattle does not assume buyers would ignore these risks. Excluding them from the damages calculation, however, is necessary to maintain consistency with the but-for scenario, which assumes the non-existence of unlawful conduct under the CPTPP.[3022]

1118. Quadrant's third objection – that Brattle's cost of capital is too low at 8.2% compared to Quadrant's 11.9% – is without merit. Quadrant argues that standard practice requires using U.S. market data for US$-denominated cash flows in emerging markets. This is incorrect. Brattle uses the global market risk premium because the Capital Asset Pricing Model measures risk relative to a market portfolio, which is intended to reflect all investable assets worldwide, not just assets in the US.[3023] The Claimants refer the Tribunal to Section VI.C.3 of Brattle's Second Report for Brattle's complete rebuttal of this objection.[3024]

5.5.1.4. Brattle's DCF stands as a reliable measure of the Claimants' damages

3016 Brattle ER-2, at para. 131; Santamaría Tovar WS-2, at Section 2.

3017 Quadrant ER, at para. 89.

3018 Brattle ER-2, at para. 133.

3019 Counter-Memorial, at para. 832; Quadrant ER, at paras. 103-104.

3020 Brattle ER-2, at para. 138.

3021 Quadrant ER, at para. 105.

3022 Brattle ER-2, at paras. 146-147.

3023 Brattle ER-2, at paras. 148, 150.

3024 Brattle ER-2, at Section VI.C.3.

1119. For the foregoing reasons, Brattle's DCF approach stands as a reasonable and well-calibrated measure of the Claimants' damages. Quadrant's objections do not withstand scrutiny; taken together, Quadrant engineered them to eliminate the Project's value entirely. When Quadrant applies its preferred sensitivities simultaneously, Brattle's but-for FMV estimate of the Project as of the 2023 Valuation Date becomes negative.[3025] That conclusion is absurd on its face. Only in the context of an investment treaty arbitration would someone suggest that the Project had no value (or negative value) given its Feasibility Study and declared Mineral Reserves.

1120. The Ixtaca Project declared proven and probable Mineral Reserves of 73 million metric tons, completed a Feasibility Study projecting an after-tax IRR of 42%, attracted financing proposals from three established mining lenders, and sat on a defined path toward construction and production.[3026] Again, no reasonable buyer would assign negative value to such a project, and no credible valuation methodology would produce that result. Quadrant reaches it only by stacking extreme assumptions, each individually overstated as demonstrated above, and compounding their effect. The Tribunal should treat Quadrant's exercise for what it is: a tailored effort not to approximate the Ixtaca Project's FMV, but to drive it to the lowest figure its model can produce.

5.5.2. Almaden's market capitalization does not reflect the Ixtaca Project's FMV and must be rejected

1121. In the Counter-Memorial, Mexico endorses Quadrant's contention that Almaden's market capitalization provides a reliable basis for assessing the Ixtaca Project's FMV.[3027] Because Almaden was a single-asset company publicly traded on the TSX when SEMARNAT issued the MIA Denial Decision on 17 December 2020 (the earliest of the challenged measures),[3028] Quadrant reasons that its market capitalization directly reflects the value the market attributed to the Project. Quadrant employs a three-step methodology to infer the Project's FMV: (i) establishing a "Base Value" from Almaden's market capitalization immediately prior to the MIA Denial Decision;[3029] (ii) updating that Base Value to the Claimants' valuation dates using gold and silver ETF indices;[3030] and (iii) subtracting Almaden's actual value on those dates.[3031]

3025 Quadrant ER, at para. 131.

3026 *See supra* Section 2.4.

3027 Counter-Memorial, at para. 837.

3028 Counter-Memorial, at para. 842; Quadrant ER, at paras. 24-25.

3029 Counter-Memorial, at para. 841.

3030 Counter-Memorial, at para. 843; Quadrant ER, at para. 31.

3031 Counter-Memorial, at para. 841.

This yields total damages of US$ 66.7 million as of the 2023 Valuation Date and US$ 73.6 million as of 31 January 2025.[3032] It would appear that Quadrant considers the Project had *some* value after all – even if grossly understated.

1122. This approach fails to capture the Ixtaca Project's FMV. It rests on two critical and incorrect assumptions: first, that Almaden's market capitalization on 17 December 2020, immediately prior to the MIA Denial Decision, remained unaffected by concerns that Mexico would engage in the very conduct the Claimants challenge;[3033] and second, that the Project would have remained frozen at its December 2020 development stage through the 2023 Valuation Date and beyond. [3034] Both assumptions are wrong, and both lead Quadrant to suggest undercompensating the Claimants for Mexico's unlawful conduct.

1123. As a preliminary matter, Quadrant's reasoning is flawed. The fact that the MIA Denial Decision constitutes the first challenged measure does not require anchoring Almaden's market capitalization to that date irrespective of the events that preceded it.[3035] The Tribunal should consider circumstances occurring before the unlawful measures, as they constitute relevant antecedents for assessing the investment's FMV and the harm the Claimants suffered as a result of Mexico's unlawful conduct. *In Odyssey v. Mexico*, for instance, the tribunal rejected Mexico's proposed reliance on the market capitalization of a junior mining company because, *inter alia*, "Odyssey's stock price may have been 'contaminated' by different factors at the Valuation Date and, in addition, does not reflect all the circumstances that affect its value

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3032 Counter-Memorial, at para. 843; Quadrant ER, at para. 32.

3033 Brattle ER-2, at Section IV.A.

3034 Brattle ER-2, at Section IV.B.

3035 *RosInvestCo UK Ltd. v. The Russian Federation*, SCC Case No. 079/2005, Final Award, dated 12 September 2010, at paras.407, 408, (observing that "[the tribunal] is able to review factual matters and legal steps that occurred prior to Claimant's purchase of Yukos shares in order to inform its investigation of the alleged acts which, taking into account the Tribunal's conclusion on meeting the definition of 'investor' and 'investment', indisputably occurred when Claimant held Yukos shares."), **CL-217**; *see also M.C.I. Power Group L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award, dated 31 July 2007, at para. 84, **CL-218**; *Jak Sukyas v Romania, PCA Case No. 2020-53*, Partial Award on Jurisdiction, dated 6 November 2024, at para. 298, (finding that "[e]vents or conduct prior to the entry into force of an obligation for the State may be relevant in determining whether the State has subsequently committed a breach of the obligation…"), **CL-181**; *Gabriel Resources v Romania*, ICSID Case No. ARB/15/31, Award, dated 8 March 20204, para. 738, (noting that "[the tribunal] is not precluded from considering facts arising before that date to provide context or evidence of intent with respect to claims of alleged violations after that date."), **CL-196**; *Freeport-McMoRan*, ICSID Case No. ARB/20/08, Award, dated 17 May 2024, at para. 583 (observing that "[t]he Tribunal is not prevented from taking into consideration any acts or facts that pre-date the entry into force of the Treaty."), **CL-194**.

factors which may lead to the determination of an erroneous (higher or lower) value of the company."[3036] Almaden's market capitalization falls squarely within this category.

1124. Brattle's ER2 confirms that Almaden's share price had already fallen materially by 17 December 2020. Stock markets incorporate value-relevant information as it becomes available. When the likelihood of adverse government action increases, informed investors sell and the share price declines.[3037] By anchoring to 17 December 2020, Quadrant ignores the cumulative impact that anticipation of Mexico's conduct had already exerted on Almaden's shares. As demonstrated in this Reply,[3038] the record contains extensive evidence that the AMLO administration targeted open-pit mining broadly and the Ixtaca Project specifically, including:

- AMLO's election in 2018 and statements by the members of his ruling MORENA party raised immediate concerns about restrictive mining policies. Legislative proposals contemplated empowering authorities to revoke existing concessions.[3039] AMLO also installed as Secretaries of SEMARNAT and Economía partisan loyalists publicly opposed to mining and open-pit mining projects.[3040]

- With respect to the Ixtaca Project specifically, SEMARNAT delayed the MIA review well beyond the statutory 60-business-day period. In August 2019, the Secretary of Environment publicly declared that "with SEMARNAT, Ixtaca will not happen."[3041]

- On 29 October 2019, SEMARNAT suspended the MIA review.[3042] As the graph below illustrates, Almaden's share price dropped approximately 20% on heavy trading volume, while the ETFs Quadrant uses as a benchmark rose nearly 5%. As Mr. McDonald recalls in his Second Witness Statement, "[t]he suspension caused a significant drop in our share price and some apprehension among investors,

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3036 *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 715, **CL-134**.

3037 Brattle ER-2, at para. 32.

3038 *See supra* Section 2.10.

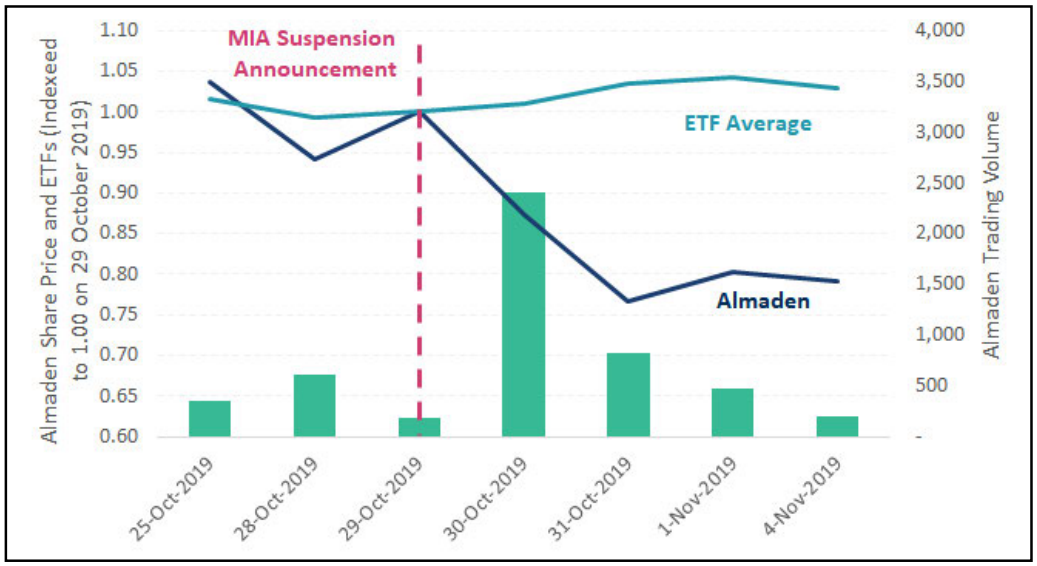
3039 Brattle ER-2, para. 32.

3040 Memorial, at paras. 256-257.

3041 Lado B.*, "Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser'",* dated 29 August 2019, **Exhibit C-307**.

3042 SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394, dated 3 October 2019, notified on 29 October 2019, **Exhibit C-322**.

particularly in the context of the increasing anti-mining rhetoric at the time from the AMLO administration."[3043]



Almaden's share price reaction to MIA suspension on 29 October 2019[3044]

- Regarding the mining concessions, in December 2018 Mexico's General Directorate of Mines cancelled the reduced Concessions without notice to Almaden.[3045] On 1 December 2020, just weeks before Quadrant's anchor date, a Mexican court rejected Almaden's appeal of that cancellation;[3046] Almaden's share price fell 20–30% on intense trading, while the benchmark ETFs remained flat.[3047]

1125. Brattle concludes that between 28 January 2019 (following the Feasibility Study release) and 17 December 2020, Almaden's share price rose only 12%, while gold rose 45%, silver rose 66%, and the junior mining ETFs on which Quadrant relies increased between 80% and 92%.[3048] Quadrant's anchor value is therefore already tainted by the conduct the Claimants challenge, and its damages estimate is correspondingly understated.

1126. Quadrant's second error freezes the Project in time. By indexing Almaden's December 2020 market capitalization to junior mining ETFs, Quadrant assumes that the only factor affecting

3043 McDonald WS-2, at para. 55.

3044 Brattle ER-2, at p. 11, figure 1.

3045 Subsecretaría de Minería, Dirección de Cartografía y Concesiones Mineras, *Acuerdo*, dated 21 December 2018, at p. 4, **Exhibit C-59**.

3046 Almaden Minerals Ltd., Court Confirms Almaden's Original Ixtaca Claim Block, dated 1 December 2020, **Exhibit DC-22**; Almaden Minerals Ltd., Almaden Confirms 100% Ownership of Ixtaca Project, dated 1 December 2020, **Exhibit DC-149**.

3047 Brattle ER-2, at paras. 42-43.

3048 Brattle ER-2, at para. 45.

the Project's but-for value is broad sector performance[3049] and makes no adjustment for the expected advancement of the Project itself. In the but-for scenario, SEMARNAT would have concluded the MIA review by November 2019,[3050] and the Project would have advanced through design and construction, commencing production by January 2023 at the latest.[3051] By the 2023 Valuation Date, the Ixtaca Project would therefore have been an operating mine generating revenue from gold and silver sales. A passive junior ETF index tracking a basket of exploration- and development-stage companies cannot capture the value accretion that occurs when a single project transitions from development to production.[3052] Quadrant effectively values a producing mine as though it was still awaiting its first permit decision. This assumption is economically unreasonable and explains the bulk of the difference between Quadrant's damages estimate and Brattle's DCF-based assessment.

1127. Finally, investment tribunals have routinely rejected market capitalization as a reliable measure of FMV for junior mining companies, particularly where an industry standard such as the CIMVAL Code recommends an income approach. In *Khan Resources v. Mongolia*, the tribunal declined to adopt a market capitalization approach that valued the claimants' interest at a fraction of the net value independently estimated in the project's Definitive Feasibility Study, holding that market capitalization bore "little or no relation to the inherent value of the project as set out in the DFS" and "is not an accurate method for ascertaining the fair value of a mine." [3053] In *Eco Oro Minerals v. Colombia*, the tribunal likewise rejected market capitalization, finding it unpersuasive given the limited trading volume in the claimant's stock and the respondent's reliance on a Junior Gold Mining Index "as opposed to calculating the impact of the actual market news and press releases publicly available."[3054] Both holdings apply squarely here: Quadrant anchors its valuation to a share price already depressed by Mexico's conduct and projects it forward using a junior mining ETF index rather than accounting for the Project's actual advancement. Quadrant's market capitalization approach should therefore be rejected as it does not reflect the Project's FMV.

3049 Brattle ER-2, at para. 48.

3050 Pablo-Dorantes WS-1, at para. 67; Limón ER-1, at para. 99.

3051 Brattle ER-1, at para. 110.

3052 Brattle ER-2, at para. 48.

3053 *Khan Resources v. Mongolia*, PCA Case No. 2011-09, Award, dated 2 March 2015, at paras. 407, 409, **CL-219**; *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1, Award, dated 17 September 2024, at para. 724, (holding that "as per the CIMVAL Standards, the market capitalization method is secondary and thus not suitable to assess the FMV of a company as Respondent seeks to do"), **CL-134**.

3054 *Eco Oro Minerals v. Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 898, **CL-220**.

5.6. Mexico's Contributory Fault Defense is Meritless

1128. Mexico argues that any award of compensation should be reduced by 50% on the basis of contributory fault principle under Article 39 of the ILC Articles on State Responsibility.[3055] Relying on cases such as *MTD v. Chile* and the dissent in *Bear Creek v. Peru*, Mexico contends that tribunals "typically apply reductions of 30% to 50%" in investor-State arbitration where the claimant's conduct is a causal factor in the loss.[3056] It further invokes Article 9.17 of CPTPP (Corporate Social Responsibility) to argue that the treaty itself contemplates investor conduct being weighed in the allocation of loss.[3057]

1129. On the facts, Mexico alleges that the Claimants did not have a social license for their mining concessions and that this deficiency contributed directly to the losses they now allege. In particular, Mexico asserts that the Claimants' own Social Impact Assessment (EVIS) concluded erroneously that there were no indigenous communities in the Project's area of influence, that the Claimants compounded this error by opposing the Tecoltemi ejido's *amparo* in 2015, and that they adopted what Mr. Cabrera calls "a transactional approach" to community engagement that fostered division and polarization rather than meaningful consultation.[3058] Mexico further alleges that the Claimants' MIA lacked certainty regarding water availability and the Project's environmental impacts, which reinforced community opposition and further eroded the Project's legitimacy.[3059] On Mexico's case, these deficiencies, coupled with the Claimants' reactive and belated approach to due diligence, directly provoked community opposition and legitimate judicial intervention, turning the absence of a social license into a foreseeable and self-inflicted barrier to the Project's viability, warranting a material reduction in any damages awarded.

1130. As the Claimants demonstrate below, these arguments are hopeless, both on the facts and on the law. Mexico is asking this Tribunal to let it off the hook for its own treaty breaches because the Claimants were allegedly imperfect neighbors. This frivolous argument does not prevail on the law or the facts.

1131. *First*, Mexico's contributory fault defense is wrong and misplaced on the law. The thrust of Mexico's argument is that the Claimants did not have a social license to operate. As explained

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3055 Counter-Memorial, at para. 791.

3056 Counter-Memorial, at para. 792.

3057 Counter-Memorial, at para. 794.

3058 Counter-Memorial, at para. 795; Cabrera ER, at paras. 71-74.

3059 Counter-Memorial, at para. 796.

by SLR and corroborated by Prof. Anaya, social license is not a legal requirement, a regulatory standard, or a condition that can lawfully ground the deprivation of vested rights.[3060] It is an informal, non-legal concept with no codified criteria or issuing authority.[3061] Prof. Anaya explains that the social license concept is "not necessarily a standard of accountability, but rather a standard that projects optimal conditions for a company to operate."[3062]

1132. *Second*, it is telling that Mexico resorts to this novel concept in international investment jurisprudence in an attempt to advance a creative argument in the absence of any identifiable conventional fault on the Claimants' part. More fundamentally, however, Mexico has failed to present this Tribunal with the full body of jurisprudence dealing with this concept, which is necessary for the Tribunal to make an informed determination. All three decisions on which Mexico does rely are inapposite.

1133. For instance, in *MTD v. Chile*, the tribunal reduced damages on the basis that the claimant had exercised poor business judgment by paying the full price for land upfront without first obtaining assurances that Chile would grant the rezoning decision necessary to permit the development of an urban project[3063] – conduct which bears no resemblance to the facts of the present case and had nothing to do with an alleged absence of social license.

1134. Mexico also relies on *Abengoa v. Mexico*, where it argued that the investor failed to implement a timely and transparent social communication program explaining to the local population that the hazardous waste treatment plant would in fact treat hazardous waste,[3064] thereby provoking the social opposition that allegedly caused the loss of the investment. Yet here Mexico fails to mention that the tribunal rejected the contributory fault argument in its entirety, finding no evidence that the alleged deficiencies in the investor's social communication program had contributed in any significant way to the damage suffered.[3065] The applicable legal test – that there must be a causal link between the alleged omission or fault and the damage suffered, such

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3060 SLR ER-2, at para. 273; Section 2.18.

3061 SLR ER-2, at para. 273.

3062 Anaya WS, at para. 139.

3063 *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, dated 25 May 2004, at para. 177, **CL-221**.

3064 *Abengoa S.A. and Cofides S.A. v. the United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, dated 18 April 2013, at para. 660, **RL-126**.

3065 *Abengoa S.A. and Cofides S.A. v. the United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, dated 18 April 2013, at para. 671, **RL-126**.

that absent the failing the events leading to the loss would not have occurred[3066] – was not met in *Abengoa*, and it is equally not met here. Mexico comes nowhere close to satisfying it.

1135. The only decision that engages, to any degree, with the concept of a social license to operate and on which Mexico relies is the dissenting opinion of Professor Sands in *Bear Creek v. Peru*. Mexico expressly acknowledges that the majority in that case rejected the contributory negligence argument because causation had not been established.[3067] It offers no explanation as to why this Tribunal should prefer a lone dissenting opinion over a carefully reasoned majority award, and none is available. The causation deficiency that proved fatal to the argument in *Bear Creek* is equally present here because the Project enjoyed broad support among local communities, and the only genuine opposition was political opposition from AMLO's anti-mining administration.[3068]

1136. Furthermore, Mexico's assertion that a reduction of 30–50% represents "standard practice" in investor-State arbitration is without foundation and should be firmly rejected. There is no such standard – Mexico has simply invented one. Cherry-picking two data points, including a case where the argument failed entirely (*Bear Creek*) does not constitute "standard practice"; it constitutes selective and misleading citation of authority. If anything, the standard practice would be to reject this defense.

1137. The only investment tribunal to have applied the contributory fault principle in a case where strong social opposition foreclosed the advancement of the project is the tribunal in *Copper Mesa v. Ecuador*. However, the facts of that case set an exceptionally high threshold – one that the present facts are far removed from meeting. In *Copper Mesa*, faced with community protests against its mining operations, the investor responded by recruiting and deploying armed personnel, firing weapons, and spraying mace at civilian protesters as part of what the tribunal described as a premeditated, disguised, and well-funded plan to take the law into its own hands. The tribunal, expressing unambiguous disapproval of this conduct, held that:

> A foreign investor… should not resort to recruiting and using armed men, firing guns and spraying mace at civilians… as part of

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3066 *Abengoa S.A. and Cofides S.A. v. the United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, dated 18 April 2013, at para. 671, **RL-126**.

3067 *Bear Creek Mining Corporation v. Peru*, ICSID Case No. ARB/14/21, Partial Dissenting Opinion of Professor Philippe Sands, dated 30 November 2017, at para. 5, **RL-128**.

3068 *See supra* Section 2.18.

> premeditated, disguised and well-funded plans to take the law into its own hands.[3069]

1138. The tribunal in *Copper Mesa* found that the claimant's active and direct provocation of social conflict contributed causally to the unstable operating environment and, ultimately, to its losses. Even still, the tribunal found that Ecuador had breached its treaty obligations – but in light of that provocation, it reduced compensation by 30%.[3070] The threshold established by *Copper Mesa* – active, deliberate, and egregious investor conduct directly provoking the very conflict that caused the loss – is plainly not met in the present case. For instance, the Claimants did not hire a private militia. Completely the opposite. As set out above,[3071] from the outset of the Ixtaca Project, Almaden made transparent and proactive engagement with the local communities the foundation of its approach, investing early in community programs, long before the Project reached production or even had a resource.[3072] Through inclusive information-sharing initiatives and mechanisms, Almaden and Minera Gorrión ensured that community voices were heard, understood, and incorporated into their development plans.[3073] They built direct, collaborative, and strong relationships with the local communities surrounding the Ixtaca Project, earning recognition for their pioneering approach from industry peers and setting new benchmarks for transparency, inclusivity, and sustainable local collaboration, as recognized by Economía and UNECE.[3074] These efforts reflected Almaden's core belief that a successful mining project must not only respect but contribute meaningfully to the well-being of its host communities.[3075] Thus, the comparison is not just inapt – it is absurd. The tribunal in *Copper Mesa* reduced compensation by 30% precisely because of that egregious, direct, and deliberate provocation of conflict. None of that is present in this case.

1139. The legal threshold for any tribunal to apply the contributory negligence principle on the basis of an alleged absence of the informal non-legal concept of social license is therefore very high – higher than Mexico acknowledges, and higher than anything the Claimants' conduct could conceivably reach. The Tribunal must apply the established legal test, which requires a

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3069 *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA No. 2012-2, Award, dated 15 March 2016, at para. 6.99, **CL-222**.

3070 *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA No. 2012-2, Award, dated 15 March 2016, at para. 6.102, **CL-222**.

3071 *See supra* Section 2.7.

3072 McDonald WS-1, at para. 60.

3073 Uzcanga Vergara WS-1, at Section 3.

3074 Santamaría Tovar WS-1, at Section 7.

3075 Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, dated 1 December 2019, at p. 5, ("Our mandate now, for everyone's sake, is to develop this resource into a meaningful and valued contributor to the wellbeing of the communities that surround it and the area as a whole."), **Exhibit C-80**.

demonstration that the relevant action or omission constituted "negligent and reproachable behaviour."[3076] Nothing in the Claimants' conduct approaches that standard. Mexico's contributory defense – which suffers from a serious hindsight bias – is predicated on the Claimants' allegedly deficient EVIS, their purported lack of meaningful community engagement, and their alleged failure to correctly assess the Project's water impacts in the MIA. Each of these arguments is without merit and is addressed in turn.

1140. Mexico's contributory fault argument also fails on the facts. For instance, its attack on the EVIS – that its finding of no indigenous communities within the Project's area of influence rested on a "restrictive" reliance on census data – inverts the record.[3077] GMI Consulting relied not only on official INEGI and 2010 CDI data – which presented conflicting information[3078] – but also on independent fieldwork conducted by a 9-person team across 12 communities and more than 300 families.[3079] The team identified no indigenous authorities, no claims of indigenous self-identification, and only two individuals whose mother tongue had been Nahuatl, neither of whom still spoke the language.[3080] One elderly resident expressly confirmed that no indigenous communities were settled in the area of influence.[3081] The EVIS reflected the reality of the region at the time.

1141. Mexico's position depends on standards and classifications that emerged only after the 2018 election of AMLO, the replacement of CDI with INPI, and the subsequent nationwide campaign to register indigenous communities.[3082] INPI's national catalogue was not formally published until August 2024.[3083] SLR observes correctly that Almaden's conduct must be assessed against the legal and institutional framework in force at the time, not against post-2019 reinterpretations.[3084] Holding the EVIS to standards adopted years later is not a legal critique; it is hindsight.

3076 I. Marboe, *Chapter 7 Conclusions*, in CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL LAW (2nd edition), at para. 3.243, **CL-102**.

3077 *See supra* Section 2.9.

3078 *See supra* Section 2.9; Evaluación de Impacto Social Proyecto Ixtaca ("**EVIS**"), Executive Summary, dated July 2018, at p. 20, **Exhibit C-252**.

3079 EVIS, at pp. 8, 20–22, **Exhibit C-252**; Reply Sections 2.9, 2.16, and 2.18; Santamaría Tovar WS-1, at para. 39.

3080 EVIS, at pp. 21-22, **Exhibit C-252**; Reply Sections 2.9, 2.16, and 2.18; Santamaría WS-2, at Section 5.1.

3081 EVIS, at p. 22, **Exhibit C-252**; Reply Sections 2.9, 2.16, and 2.18.

3082 Santamaría WS-2, at para. 57; SLR ER-2, at para. 275.

3083 Acuerdo por el que se expide el Catálogo Nacional de Pueblos y Comunidades Indígenas y Afromexicanas, dated 9 August 2024, **Exhibit C-724**.

3084 SLR ER-2, at para. 298(g).

1142. Moreover, Mexico's attempt to recast the EVIS as evidence of investor negligence fails both legally and factually. Neither study was required under Mexican law (as this is only mandatory for energy projects), yet Almaden voluntarily commissioned comprehensive social and human-rights assessments and expanded its engagement processes well beyond domestic legal requirements.[3085]

1143. Dr. Cabrera's assertion that the Claimants' approach to community engagement was "transactional"[3086] and reactive is a critique delivered from an ivory tower, untethered from the practical realities of operating a mining project in a complex social environment. For over 20 years – beginning with door-to-door conversations with local landowners as early as 2001 and continuing through February 2023 when Economía issued its cancellation – the Claimants invested substantially in engaging with the communities in the Project's Area of Influence, listening to their needs and concerns, and working together with community authorities and members to properly inform them of the Project.[3087] As stated above, through structured and sustained programs,[3088] Almaden built direct, documented, and collaborative relationships with surrounding communities, earning formal recognition from UNECE as a benchmark for responsible mining practices.[3089]

1144. Those efforts generated concrete, measurable community support, as reflected in a letter to SEMARNAT signed by 808 members of local communities, affirming their support for the Project,[3090] and the formal collaboration agreements with the Zacatepec Small Landowners Group.[3091] SLR concludes that these efforts "are exemplary and go above and beyond standard practice for mining projects in Latin America and other parts of the world."[3092]

1145. Mexico's third factual argument on contributory fault – that the MIA "lacked certainty about water availability and the Project's impacts on the local environment, which reinforced the

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3085 Santamaría Tovar WS-1, at para. 38; Memorial, at para. 153.

3086 Counter-Memorial, para. 795; Cabrera ER, paras. 71-74.

3087 McDonald WS-2, at Section 4; Santamaría Tovar WS-2, at paras. 18–30; Uzcanga WS-2, at paras. 40–47.

3088 *See supra* Sections 2.7 and 2.18.

3089 SLR ER-1, at paras. 253–255; Comunidades y Instituciones 2022, **SLR-38**; Uzcanga WS-2, at paras. 61–64; Santamaría Tovar WS-1, at paras. 23–25.

3090 Letter from Community Members to SEMARNAT, dated 25 July 2019, **Exhibit C-77**; McDonald WS-2, at para. 77, n. 181.

3091 First General Collaboration Agreement between Minera Gorrión S.A. de C.V. and the Grupo de Pequeños Propietarios del Barrio de Zacatepec A.C., dated 16 August 2019, **SLR-39**; Second General Collaboration Agreement, dated 29 July 2022, **SLR-40**; Uzcanga WS-2, at para. 41.

3092 SLR ER-1, at para. 288.

community's negative attitudes"[3093] towards the Project – is misguided. As demonstrated in Section 2.12.2.3 above, SEMARNAT wrongly rejected Minera Gorrión's water balance model,[3094] disregarding information that Minera Gorrión had timely placed on the record, including the independent water balance report prepared by SRK.[3095] Moreover, the Project's water management strategy relied primarily on capturing and storing seasonal rainfall[3096] rather than extracting groundwater.[3097] The WSD was designed to address the region's principal constraint – the lack of infrastructure to capture and store rainwater[3098] – ensuring a reliable supply for both local communities and the Project's operational needs.[3099] As Mr. Santamaría Tovar explains in his Second Witness Statement,

> In our hydrological model, we treated the existing water needs of the communities as a prior claim; in other words, we modeled the mine's water requirements against what remained available *after* community needs were satisfied, not the reverse.[3100] The Project and the communities were, therefore, not competing for the same water resource; the Project was expanding the total resource available to both.[3101]

1146. Moreover, as explained in Section 2.12.4 above, most of Mexico's water-related criticisms are *post hoc* fabrications invented for this arbitration. They are strawmen that bear no relation to the grounds on which the MIA was actually denied or the concessions cancelled. SEMARNAT did not reject the MIA on the basis that the Project was "unfeasible and risky from the perspective of available water," did not invoke the IMTA report, and did not contend that Minera Gorrión mischaracterized the FWD and WSD to evade CONAGUA permitting requirements. Nor did Economía rely on any such reasoning when it cancelled the mining

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3093 Counter-Memorial, para. 796.

3094 Memorial, at paras. 338-339; SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pp. 31 to 37, **Exhibit C-86**.

3095 *See* Pablo-Dorantes WS-1, at para. 90.

3096 Santamaría Tovar WS-2, at para. 74; Video of Apulco River taken by Mr. Daniel Santamaría Tovar from San Francisco bridge in Ixtacamaxtitlán, dated August 2022 (showing the Apulco river during the rainy season), **Exhibit C-656**.

3097 Pablo-Dorantes WS-2, at para. 39.

3098 Pablo-Dorantes WS-2, at para. 39; Santamaría Tovar WS-2, at para. 74.

3099 Minera Gorrión, Manifestación de Impacto Ambiental para el Proyecto de Ixtaca (MIA), dated December 2018, at p. 8-10, **Exhibit C-262**.

3100 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, at p. 1, Annex A to Minera Gorrión's RAI Response, **Exhibit C-286**.

3101 Santamaría Tovar WS-2, at para. 83.

concessions. These arguments were conjured after the fact by Mexico's counsel and hired experts in a transparent attempt to reverse-engineer a justification that no Mexican authority ever articulated or put to Minera Gorrión at the relevant time. The Tribunal should give them no weight at all, let alone to reduce the Claimants' compensation.

1147. The causation analysis confirms that no act or omission by the Claimants broke the chain between Mexico's treaty breaches and the Claimants' loss. It was SEMARNAT's unlawful denial of the MIA that destroyed the Project's path to production, and Economía's baseless cancellation of the mining concessions that extinguished the investment entirely. Neither the Claimants' EVIS methodology, nor their community engagement efforts, nor their lawful participation in the Tecoltemi amparo contributed in any way to those outcomes. Mexico has not established – and cannot establish – that any aspect of the Claimants' conduct constituted the kind of negligent and reproachable behavior required to engage the contributory fault principle, still less that such conduct bore a causal connection to the harm suffered. Rather, it is Mexico's attempt to shield itself from damages exposure by once again blaming the victim that qualifies as questionable conduct here.

1148. The bottom line is this: Mexico wants a 50% discount on its liability for breaching the CPTPP because the Claimants were not perfect. That is not a legal defense – it is a negotiating position dressed up in the language of international law. For the reasons set out above, Mexico's contributory fault defense fails both on the law and on the facts. No reduction to any award of damages is warranted.

5.7. The Claimants Are Entitled To Pre- And Post-Award Interest

1149. As explained in the Memorial, the Claimants are entitled to pre- and post-award interest.[3102] Because Mexico's treaty breaches have essentially turned the Claimants into coerced lenders, interest must compensate the Claimants at a rate at least equal to Mexico's cost of borrowing.[3103] To that end, Brattle computed an interest rate based on the one-month yield on US Treasury Bills, adjusted for Mexico's default risk as observed in the premium charged by its sovereign debt creditors.[3104] The resulting interest rate is approximately 4.8%, compounded monthly.[3105] Brattle applies that rate equally for pre- and post-award interest.[3106]

[3102] Memorial, at paras. 709-11.

[3103] Memorial, at para. 709; Brattle ER-1, at paras. 186-87.

[3104] Brattle ER-1, at para. 186.

[3105] Brattle ER-1, at para. 188.

[3106] Brattle ER-1, at para. 188

1150. Quadrant agrees that the interest rate should be based on the yield on US Treasury bills but disputes only the addition of a default risk premium.[3107] Quadrant instead maintains that interest must accrue at a risk-free rate and that adding a risk premium would overcompensate the Claimants for risks they did not bear after the loss of their investment.[3108] Quadrant's main basis for that assertion is an academic article on pre-judgment interest in US litigation, which does not address awarding interest at the defendant's borrowing rate but rather at the plaintiff's opportunity cost of capital (*i.e.*, WACC).[3109] But Brattle does not advocate using the Claimants' WACC or any other measure of their opportunity cost of capital. Quadrant's position is therefore misplaced.

1151. As Brattle explains, "the economically coherent and commercially reasonable rate is Mexico's borrowing rate; the risk-free rate would be commercially unreasonable and undercompensate the Claimants."[3110] Brattle notes that applying the respondent's borrowing rate is also consistent with investment treaty jurisprudence, whereas Quadrant's proposal reflects, at best, a minority position seemingly predicated on US court practice.[3111] Indeed, a lower rate would only incentivize Mexico to delay paying the Award, since by doing so it would effectively be borrowing at below-market rates.[3112]

5.8. The Claimants' Updated Claim For Compensation

1152. The Claimants' damages are as follows:

- DCF model (income approach) utilizing the 2026 Proxy Valuation Date: **US$ 2,682.4 million**.[3113]

3107 Counter-Memorial, at para. 854; Quadrant ER, at paras. 148, 155.

3108 Quadrant ER, at paras. 148, 153, 155.

3109 Franklin M. Fisher and R. Craig Romaine, "Janis Joplin's Yearbook and the Theory of Damages," Journal of Accounting Auditing & Finance, 1990, at p. 146, **QE-74**. Neither of the other authorities Quadrant cites establishes that the risk-free rate is always economically appropriate. *See* Quadrant ER, at paras. 151, 154 (*citing* Mark Kantor, "Valuation for Arbitration: Compensation Standards, Valuation Methods and Expert Evidence," at p. 49, **QE-75**; *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic* (ICSID Case No. ARB(AF)/06/1), Award, dated 9 September 2009, at para. 194, **QE-76**).

3110 Brattle ER-2, at para. 195.

3111 Brattle ER-2, at para. 193 n. 303("The risk-free rate has been used by tribunals, but has been used less frequently than respondent's cost of borrowing or other risky rates of interest.") (*citing* Darrell Chodorow and Bennet Berger, "The Determination of Financial Interest Rates in Investment Arbitration," Investment Treaty Arbitration, Edition 10 (2025), **DC-181**).

3112 Brattle ER-2, at para. 191.

3113 Brattle ER-2, at Section XI.

- DCF model (income approach) utilizing the 2023 Valuation Date: **US$ 439.6 million**.[3114]

1153. The Claimants reserve the right to update their claim for damages to reflect a valuation date closer to the date on which the Tribunal renders its award, such as the date of the hearing.

6. REQUEST FOR RELIEF

1154. The Claimants respectfully request the Tribunal to:

i) **DECLARE** that Mexico has breached its obligation not to expropriate the Claimants' investments under Article 9.8 of the CPTPP;

j) **DECLARE** that Mexico has breached its obligation to accord fair and equitable treatment to the Claimants' investments under Article 9.6 of the CPTPP;

k) **DECLARE** that Mexico has breached its obligation to accord national treatment to the Claimants and their investments under Article 9.4 of the CPTPP;

l) **DECLARE** that Mexico has breached its obligation to accord most-favored nation treatment to the Claimants and their investments under Article 9.5 of the CPTPP;

m) **ORDER** Mexico to pay compensation for the loss and damage sustained by the Claimants, Minera Gorrión and Minera Gavilán as a result of Mexico's breaches of its obligations under the CPTPP, in an amount of not less than **US$ 2,682.4 million**, or such other amount quantified during the course of this proceeding;

n) **ORDER** Mexico to pay post-award interest on the amount of the award compounded at a rate equal to one-year US Treasury yields plus one-year credit default swap rates on Mexican sovereign debt as of the date of the Award;

o) **ORDER** Mexico to bear the costs of the arbitration and compensate the Claimants for all their costs and expenses incurred in relation to this proceeding, including the fees and expenses of their counsel, in-house counsel, witnesses and experts and reasonable funding costs, the fees and expenses of the Tribunal, and ICSID's other costs and fees;

p) **DECLARE** that the award is net of all Mexican taxes;

[3114] Brattle ER-2, at Section XI.

q) **DECLARE** that Mexico may not tax or attempt to tax the award;

r) **ORDER** Mexico to indemnify the Claimants in respect of any adverse consequences that may result from the imposition of double taxation liability by the Canadian tax authorities; and

s) **AWARD** such other and further relief as the Tribunal deems appropriate.

1155. The Claimants reserve their rights further to amend, develop, and quantify their claims and requests for relief, assert additional claims and requests for relief, and to present further argument and evidence in the course of the arbitration, in accordance with the ICSID Convention and the ICSID Arbitration Rules.

Respectfully submitted,

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19 May 2026