

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

CONTINENTAL GOLD INC.

Claimant,

v.

THE REPUBLIC OF COLOMBIA

Respondent.

ICSID Case No. ARB/24/25

RESPONDENT'S COUNTER-MEMORIAL AND OBJECTIONS TO JURISDICTION AND ADMISSIBILITY

8 May 2026

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I. INTRODUCTION

1. Respondent the Republic of Colombia (“**Respondent**” or “**Colombia**”)¹ respectfully submits the following Counter-Memorial and Objections to Jurisdiction and Admissibility (the “**Counter-Memorial**”) to the Tribunal in response to the Updated Memorial filed by Continental Gold Inc. (“**Claimant**”, or “**CGI**”) on 20 October 2025 pursuant to the Canada-Colombia Free Trade Agreement (the “**Treaty**” or the “**FTA**”)² and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”). Colombia submits its Counter-Memorial pursuant to the revised schedule set out by the Tribunal in Procedural Order No. 7 (“**PO7**”).
2. This dispute cannot be understood through the isolated account Claimant presents. The development of the Buriticá mining project (“**Buriticá Mine**” or the “**Mine**”)—which introduced both large-scale mining and illegal mining controlled by armed criminal groups to the Municipality of Buriticá—fundamentally altered the security landscape of the Municipality. The coexistence of small-scale miners, armed groups, and large-scale mining at Buriticá has created a complex security challenge for the State. Colombia has not abandoned Claimant, nor has it allowed organized crime to grow unchecked. Rather, Colombia has pursued a responsive, coordinated, and multi-institutional strategy to address illegal mining and its links to organized crime while providing the Mine with permanent, highly specialized armed forces protection. Colombia’s approach to combat illegal mining balances protection of important foreign investment in Colombia with the needs of local development and the rights and safety of Colombian citizens. Claimant’s preferred campaign—indeed, its demand that the State “undertake an operation waged in blood and fire”³—cannot solve this problem. To the contrary, as history and the dictates of best practices in the mining industry have shown, campaigns focused only on military operations to remove illegal miners, absent more, serve to further entrench illegal miners, contrary to the long-term interests of Colombia (and Claimant).
3. Claimant’s case depends on ignoring both that broader context and its own role in the circumstances of which it now complains. Illegal mining was a known reality at Buriticá from the outset of Claimant’s investment. This was acknowledged by Continental Gold Limited Sucursal Colombia (“**Continental Colombia**”) when it, along with its original parent company, Continental Gold Limited (Bermuda), entered into the exploratory phase of the concession in 2008 and signed the Concession Agreement (the “**Concession**”).

¹ Colombia includes a complete list of defined terms as **Annex A**. Where possible, and for ease of reference by the Tribunal, Colombia has adopted the definitions used by Claimant to avoid confusion.

² The version of the Treaty submitted by Claimant as **CL-001** is incomplete. It contains only the English language version of the Treaty, and only Chapter 8. To ensure that the complete text is before the Tribunal, Colombia hereby submits as exhibit **RL-001** a complete copy of the FTA, containing both its English and Spanish authentic texts.

³ **C-0394**, Santiago Rodríguez Álvarez and Manuela Galvis, *The Clan del Golfo is winning the underground gold war in Buriticá*, La Silla Vacía, 10 March 2024, p. 13.

Agreement”) in 2011. It was acknowledged by Claimant, when it was incorporated in 2015 to begin trading and fundraising on the Toronto Stock Exchange. It was considered an acceptable risk in the Feasibility Study undertaken to open the Mine beyond exploration in 2016. And in all of CGI’s public filings until 2019, illegal mining was acknowledged and discussed, alongside CGI’s plan for addressing it. For years, CGI managed that risk through community programming, engagement with local stakeholders, and close cooperation with Colombian authorities. That approach changed after Zijin Mining Group (“**Zijin Mining**”) acquired CGI in 2020 and reduced certain community-engagement functions that had helped manage local tensions. Zijin Mining simultaneously increased its demands of the Colombian Government and expanded the Concession area to obtain access to additional mineral reserve. Even then, it was not until 2023-2024, after Zijin Mining had gutted CGI of any function save its Canadian nationality and threatened arbitration, that Zijin Mining even acknowledged any loss suffered due to illegal mining. This newly found loss to Claimant – one that first appeared in a handmade documentary record created just months before Claimant filed its Request for Arbitration – is now cast as the fault and responsibility of the Colombian Government.

4. Claimant has manufactured a Treaty claim out of risks it long knew and managed. Claimant attempts—necessarily, for purposes of jurisdiction *ratione temporis*—to anchor its claim around a supposed shift in Government policy and conduct with the inauguration of President Gustavo Petro in August 2022. In reality, Colombia’s conduct under the administration of President Petro has not materially differed from its conduct under prior administrations. Yet conduct that CGI did not previously characterize as a breach of the Treaty is now alleged to violate Colombia’s substantive obligations to CGI and to justify [REDACTED]. Claimant’s inability to identify any relevant change in Colombia’s treatment of its investment confirms the artificial nature of its claim, supports Colombia’s admissibility objections, and is fatal to the Tribunal’s jurisdiction under the Treaty’s 39-month prescription period.
5. Claimant’s case also fails on the merits. Claimant bears the burden of proving both the content of the applicable Treaty standards and a breach of those standards. It has done neither. The Treaty contains qualified protections for full protection and security (“**FPS**”) and fair and equitable treatment (“**FET**”), as well as an Annex on indirect expropriation that preserves the State’s police powers. Colombia’s response to the circumstances at Buriticá has been reasonable, sustained, and substantial. Indeed, Colombia has devoted exceptional attention and resources to the Mine, more so than any other in Colombia, reflecting the importance it has placed on addressing illegal mining in Buriticá and the region as a whole.
6. Claimant’s damages case is equally flawed. Claimant has not established that any act or omission of Colombia caused the harm it alleges, and its quantum case is both overstated and internally inconsistent. The Mine, in short, remains producing and profitable, and Claimant has not (and cannot) produce evidence that the ore reserve in the Mine is insufficient to sustain production through the end of its Concession.
7. Furthermore, Claimant’s conduct in this Arbitration reinforces the need for careful scrutiny of its claims. As Colombia explained in its letter of 12 March 2026, the positions Claimant advances before this Tribunal contrast with the positive outlook advanced by

its controlling company in Hong Kong, which publicized a rosy outlook of the Mine for purposes of a September 2025 Initial Public Offering (the “**IPO**”). That conduct raises serious concerns about abuse of process, securities fraud, and the use of this proceeding in a manner inconsistent with the integrity of both this Arbitration and arbitral proceedings generally.

8. Given Claimant’s complex ownership structure, which will be discussed in greater detail in Section II below, Respondent will take care to be accurate in how it refers to Claimant and its various related entities, the most relevant of which are the following:
 - Claimant will be referred to as “**Claimant**” or “**CGI**,”
 - Continental Gold Limited Sucursal Colombia, the direct owner of the Buriticá Mine, will be referred to as “**Continental Colombia**,”
 - Zijin Mining Group Co. will be referred to as “**Zijin Mining**,”
 - Continental Gold post-acquisition by Zijin will be referred to as “**Zijin-Continental Gold**.”
9. Colombia’s Counter-Memorial is supported by the following evidence and witness testimony:
 - a) Exhibits **R-0001** through **R-0171**;
 - b) Legal Authorities **RL-001** through **RL-141**;
 - c) The Witness Statement of Lieutenant Colonel Hugo Nelson Gallego Aguirre dated 7 May 2026, designated **RWS-1** (“**RWS-1**, Gallego First Witness Statement”); and
 - d) The Witness Statement of Brigadier General José James Roa Castañeda dated 22 April 2026, designated **RWS-2** (“**RWS-2**, Roa First Witness Statement”).
10. Colombia’s Counter-Memorial is also supported by the following Expert Reports:
 - a) The Expert Report of Mr. Nathan Dentice of MinterEllison LLP on Hong Kong Securities Law dated 8 May 2026, designated **RER-1** (“**RER-1**, Dentice First Expert Report”);
 - b) The Expert Report of Mr. Patrick W. Gorman of Negotient on the Mining Industry, dated 8 May 2026, designated **RER-2** (“**RER-2**, Negotient First Expert Report”); and
 - c) The Expert Report of Dr. Daniel Flores of Quadrant Economics on Damages, dated 8 May 2026, designated **RER-3** (“**RER-3**, Quadrant First Expert Report”).

II. CLAIMANT’S CLAIMS ARE INADMISSIBLE

11. Separate and apart from the case that Claimant presents in its Request for Arbitration and Updated Memorial, to which Colombia responds in Sections III-VI below, as is evident from Colombia’s letter of 12 March 2026 requesting leave to submit an application for summary dismissal, Colombia considers Claimant’s conduct in the Arbitration in parallel with its controlling company’s fundraising in Hong Kong highly disturbing and warranting of serious scrutiny. Colombia therefore takes the Tribunal’s invitation in Paragraph 77 of PO7 to “address all substantive issues raised in its letter of 12 March 2026 at the appropriate stage of the proceedings,” and includes those arguments in full herein.

A. Good Faith is a Basic Principle of International Investment Arbitration

12. Hesiod describes Zeus’s daughter Dike—goddess of judgment and law—as sitting “by her father Zeus” and “whenever anyone scorns and thwarts her crookedly [...] she relates the lawless men’s intent, that the people may pay for the wickedness of kings who, with evil intent, pervert judgement and state it crookedly.”⁴ In this sense, the principle of good faith is not merely an axiom of investment arbitration, but a basic and general principle of law and justice.⁵ Claimant’s abuse of the good faith of the Tribunal, the Respondent, and the system of international arbitration writ large abrogates its right to have its complaints heard. Sir Hersch Lauterpacht, quoted in the *Phoenix v. Czech Republic* award, stated that “[t]here is no right, however well established, which could not, in some circumstances, be refused recognition on the ground that it has been abused.”⁶
13. Good faith, as recognized by the tribunal in *Inceysa v. El Salvador*, is a “supreme principle, which governs legal relations in all of their aspects and content.”⁷ Its substance, particularly in the jurisdictional and admissibility context in which good faith has been most often abused in international arbitration, consists of the absence of deceit, artifice, and dissimulation or fraud by a party.⁸
14. The result of a party’s failure to act in good faith is the dismissal of its claims in consequence of the Tribunal’s duty to “prevent an abuse of the system of international investment protection under the ICSID Convention, in ensuring that only investments that are made in compliance with the international principle of good faith and do not attempt to misuse the system are protected.”⁹

⁴ **Exhibit R-0171**, Hesiod, *Works and Days*, Lines 258-264.

⁵ **RL-117**, Statute of the International Court of Justice, Charter of the United Nations, 26 June 1945, Art. 38(1)(c).

⁶ **RL-069**, *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶ 107.

⁷ **RL-088**, *Inceysa Vallisoletana, S.A. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, ¶ 230.

⁸ **RL-088**, *Inceysa Vallisoletana, S.A. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, ¶¶ 230–235.

⁹ **RL-069**, *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶ 113; *see also RL-089*, *Churchill Mining PLC and Planet Mining Pty. Ltd. v. Republic of Indonesia*, ICSID Case No.

15. This obligation also specifically extends to the manner in which investors litigate their investment claims.¹⁰ Thus, as the tribunal in *Phoenix Action* explained, “[t]he principle requires parties to deal honestly and fairly with each other, to represent their motives and purposes truthfully, and to refrain from taking unfair advantage [...] This principle governs [...] the legal rights and duties of those seeking to assert an international claim under a treaty.”¹¹ As the *Methanex* tribunal summarized it, “the Disputing Parties each owed in this arbitration a general legal duty to the other and to the Tribunal to conduct themselves in good faith during these arbitration proceedings[.]”¹²
16. As a corollary to this, investors also have an obligation not to act in ways that adversely affect the integrity of the arbitration.¹³ As the tribunal in *Quiborax* noted, the obligation to arbitrate contained in the applicable BIT:

[I]mplics the duty not to act in a manner that will undermine or frustrate the arbitral process. This includes, for instance, the duty to refrain from harming the procedural integrity of the arbitration or aggravating the dispute. Thus, actions directed against the efficient conduct of the arbitral proceedings may breach this duty even if such action is not prohibited by the express terms of the BIT or the ICSID Convention.¹⁴
17. Pursuant to international public policy,¹⁵ tribunals are also prevented from upholding or enforcing claims that are tainted by fraud.

ARB/12/14 and 12/40, Award, 6 December 2016, ¶ 489; see also **RL-118**, *Europe Cement Investment & Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, ¶ 180.

¹⁰ **RL-089**, *Churchill Mining PLC and Planet Mining Pty. Ltd. v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, 6 December 2016, ¶¶ 488–506.

¹¹ **RL-069**, *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶ 107 (citation modified); see also **CL-068**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 589 (“the duty to arbitrate in good faith [...] is undeniable. It arises out of Article 26 of the VCLT in connection with [...] the BIT. Article 26 of the VCLT provides that ‘[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.’ As stated by the ICJ in the Nuclear Tests case, ‘[o]ne of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. [...] the very rule of pacta sunt servanda in the law of treaties is based on good faith [...]’”).

¹² **CL-140**, *Methanex Corp. v. United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 2005, ¶ 54.

¹³ **RL-090**, *Case Concerning The Gabčíkovo-Nagymaros Project*, ICJ, Judgment, 25 September 1997, p. 79 (“The principle of good faith obliges the Parties to apply [an obligation] in a reasonable way and in such a manner that its purpose can be realized.”).

¹⁴ **CL-068**, *Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 593.

¹⁵ See **RL-091**, *Renée Rose Levy and Gremcital S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015, ¶¶ 194–195.

B. Claimant's Fraudulent Misrepresentations to the Tribunal Render its Claims Inadmissible

18. Arbitral jurisprudence generally recognizes three categories of fraud on the tribunal: fraudulent misrepresentation; artificial restructuring of investment; and a fabrication of investment. While there is no evidence that Claimant has fabricated its investment – to the contrary, ██████████ in operation and ██████████ – Claimant has engaged in fraudulent misrepresentations and has artificially restructured its investment to take advantage of treaty protections to which it is not entitled.

1. Claimant Has Misrepresented Material Facts Before the Tribunal

19. The nature of the Prospectus for Initial Public Offering (“**IPO Prospectus**”) prepared by Zijin Gold International Company Ltd. (“**ZGI**”) reveals the extent of CGI’s misrepresentations of material fact before the Tribunal. The IPO Prospectus contains information about the Buriticá Mine which is either artful drafting to present a misleading (and fraudulent) picture of a healthy mine with no significant problems to potential investors (not possible, given the Hong Kong requirements), or which represent the truth of the matter, making the statements to the Tribunal outright lies. These statements have the sum effect of presenting a Mine with no major impairments and presenting the “risks of illegal mining as relatively less serious” to how Claimant portrays them in this Arbitration.¹⁶

a. Hong Kong Securities Law Requires Careful Vetting of the Statements Made in Securities Filings

20. ZGI is incorporated in Hong Kong, and its IPO and corresponding Prospectus are governed by the securities filings laws of that jurisdiction. As Colombia’s Expert on Hong Kong Securities Laws, Nathan Dentice, explains, Hong Kong’s regulatory framework imposes exacting and severe requirements on the accuracy and completeness of information which is disclosed in securities filings, and particularly prospectuses.

(i) Requirements Prior To and Upon Listing

21. New applicants for listing on the Hong Kong Exchange are required to publish a listing document, i.e., a prospectus, which must contain all information required to enable investors to properly evaluate the company.¹⁷ The content of a prospectus must

[C]ontain such particulars and information which, having regard to the particular nature of the applicant and the securities, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities and financial position,

¹⁶ **RER-1**, Expert Report of Nathan Dentice of Minter Ellison LLP, 8 May 2026 (“**Dentice First Expert Report**”), ¶ 55.3.

¹⁷ **RER-1**, Dentice First Expert Report, ¶ 20.

of the applicant at the time of the application and its profits and losses and of the rights attaching to the securities.¹⁸

22. Such information must be accurate in all material respects and not be misleading or deceptive through the omission of material facts of an unfavorable nature or a failure to present risk factors in a faithful and accurate manner so as to misinform a prospective investor.¹⁹
23. In addition to the general requirements that all issuers are subject to, ZGI as a gold mining company is subject to additional and specialized requirements under Chapter 18 of the Listing Rules.²⁰ These require the inclusion of a Competent Person's Report—in this case prepared by SRK for the Buriticá Mine—which sets out the applicant's gold resources, reserves, and the disclosure of any material risks associated with the applicant's mining projects.²¹ These disclosures, also, may not omit material facts of an unfavorable nature or present risk factors in a misleading manner.²²
24. Should a company or a person who authorized the issue of a listing document make any material misstatement in that prospectus, the consequences under Hong Kong law include civil and criminal liability.²³ For untrue statements, a person who authorized a prospectus is open to a prison sentence of up to three years or a fine of up to 700,000 Hong Kong Dollars (HKD).²⁴ Civil liabilities include a payment of compensation to all persons who subscribed for any shares on the faith of a prospectus which includes untrue statements – a liability which extends to any experts who have presented financial statements or competent person's reports in the prospectus.²⁵ Directors who are found to have committed market misconduct can also be disqualified from acting as a director or acquiring securities for up to five years, in addition to being obliged to disgorge any illicit profits they may have made.²⁶
25. As ZGI controls the operations of the Buriticá Mine pursuant to the Colombia Entrustment Arrangement (“CEA”), discussed further below, ZGI is obliged to include details related to Buriticá in its IPO Prospectus including its financial information, gold reserve information, and associated risks. [REDACTED]

¹⁸ Dentice First Expert Report, ¶ 24.2 (quoting **Exhibit ME-07**, Listing Rules, Rule 11.07).

¹⁹ **RER-1**, Dentice First Expert Report, ¶ 20.

²⁰ **RER-1**, Dentice First Expert Report, ¶ 24.

²¹ **RER-1**, Dentice First Expert Report, ¶ 24.5–24.7.

²² **RER-1**, Dentice First Expert Report, ¶ 24.1.

²³ **RER-1**, Dentice First Expert Report, ¶¶ 38, 39.6.

²⁴ **RER-1**, Dentice First Expert Report, ¶ 39.2.

²⁵ **RER-1**, Dentice First Expert Report, ¶ 39.3.

²⁶ **RER-1**, Dentice First Expert Report, ¶ 39.11.

26.

(ii) Verification and Vetting

27. Due to the complex requirements thrust upon issuers and the immensity of the task, the Hong Kong system has grown in such a way that there are authors and agents who verify prospectuses for accuracy – often verifying the entire document line by line. Accuracy is also ensured by the fact that there are serious consequences for a company and its directors should there be any misstatements in a listing document.³¹
28. First, all applicants must appoint a sponsor licensed to conduct the regulated activity of corporate financial advising.³² This sponsor, often a large multinational bank, is subject to regulatory obligations which include the duty to perform due diligence on the listing document and ensure that all required information is disclosed and that the information is correct.³³ This duty includes a positive responsibility to ensure that the non-expert sections of the listing document present information that is “true, accurate, and complete in all material respects and not misleading or deceptive.”³⁴ Should the sponsor subsequently become aware of any misleading information or information that “casts doubt on the truth, accuracy or completeness” of the information provided in the listing document, it must promptly inform the appropriate listing authority.³⁵ A sponsor’s failure to discharge its duties may result in disciplinary action against the sponsor, with up to 10

²⁷ Claimant’s Updated Memorial, ¶¶ 238, 307.

²⁸ Claimant’s Updated Memorial, ¶ 238 (emphasis added).

²⁹ Claimant’s Updated Memorial, ¶ 426.

³⁰ RER-1, Dentice First Expert Report, ¶ 57.

³¹ RER-1, Dentice First Expert Report, ¶ 26.

³² RER-1, Dentice First Expert Report, ¶ 27.1.

³³ RER-1, Dentice First Expert Report, ¶ 27.3.

³⁴ RER-1, Dentice First Expert Report, ¶ 27.3.

³⁵ RER-1, Dentice First Expert Report, ¶ 27.3.

million Hong Kong Dollars (HKD) in fines.³⁶ In the present case, the Joint Sponsors of ZGI's IPO Prospectus were Morgan Stanley and Citic Securities.³⁷

29. Second, the prospectus must include an accountants' report—in the case of ZGI provided by Ernst & Young—disclosing the applicant's financial information for three years prior to listing and in accordance with the Hong Kong Standards on Auditing.³⁸ The auditor would have examined all financial information to ensure that it is free from material misstatement arising from either fraud or error.³⁹
30. Though not required as a matter of course, it has nevertheless become standard practice in Hong Kong for lawyers acting for an IPO Applicant and its sponsor(s) to verify the correctness of each statement made in the prospectus "by reference to independent documentary evidence where possible," adding another layer of verification beyond the formal regulatory requirements.⁴⁰
31. It is only after this exhaustive process of due diligence that the draft listing may be referred to the Stock Exchange and the SFC for the information's official vetting and ultimate verification.⁴¹ The document, before official designation as a prospectus, undergoes several rounds of comments and edits between the Exchange, the applicant, and the sponsor.⁴²
32. The rigor of this vetting process has certain evidentiary implications. Indeed, Mr. Dentice opines that, given the involvement of Morgan Stanley and Citic Securities as Joint Sponsors and the involvement of several law firms—including Latham & Watkins—the likely explanation for the lack of disclosure of Claimant's claim for damages in this Arbitration as part of the IPO Prospectus suggests that those claimed damages are simply **"not credible."**⁴³

(iii) Other Relevant Rules Following Issuance

33. After listing, a company and its directors have an ongoing obligation to disclose any "inside information" which has come to their knowledge as soon as reasonably practicable.⁴⁴ For the purposes of a corporation's post-listing obligations, inside information is defined as specific information about the corporation or its securities that is not generally known to persons who would be likely to deal in the listed securities but

³⁶ RER-1, Dentice First Expert Report, ¶ 39.18.

³⁷ Exhibit R-0001, IPO Prospectus, "Important" (PDF p. 3).

³⁸ RER-1, Dentice First Expert Report, ¶ 28.

³⁹ RER-1, Dentice First Expert Report, ¶ 28.

⁴⁰ RER-1, Dentice First Expert Report, ¶ 26.

⁴¹ RER-1, Dentice First Expert Report, ¶ 29.

⁴² RER-1, Dentice First Expert Report, ¶ 29.5.

⁴³ RER-1, Dentice First Expert Report, ¶ 59.

⁴⁴ RER-1, Dentice First Expert Report, ¶ 30.

which—if known—would be likely to materially affect the price of those securities.⁴⁵ The relevant regulations provide both the definition of inside information and place obligations upon directors and officers of the company to disclose relevant inside information and take all reasonable measures from “time to time” to ensure that proper safeguards exist to “prevent a breach of a disclosure requirement.”⁴⁶ The intentional or negligent failure to disclose relevant inside information carries severe penalties in Hong Kong, including proceedings before the Market Misconduct Tribunal which can issue individual fines against directors and officers of corporations of up to 8 million Hong Kong Dollars (HKD).⁴⁷ It is the opinion of Mr. Dentice that, if Claimant’s claim for damages became known to ZGI only **after** the publication of the IPO, then ZGI and its directors would have had a duty of disclosure by way of public announcement under the Hong Kong regulations following the IPO.⁴⁸

34. As a mineral company, ZGI must also present updates on its resources and reserves in its Annual Reports under Rules 18.15 and 18.16 of the Listing Rules. Furthermore, ZGI is required under the Listing Rules to publish its financial statements on a half-yearly basis. To the extent that there may be an impairment or loss in respect of the Mine, this would accordingly be reflected as a reduction in the value of the Mine in such reports.⁴⁹

b. Comparison Between CGI’s Claimed Losses and ZGI’s Positive Outlook

35. As Colombia noted in its letter of 12 March 2026, there are many instances of contradictions between the claims that the Claimant has made in the Arbitration and the statements made by ZGI – and vetted by numerous parties – for purposes of the IPO. The following chart summarizes, by direct quote to each set of documents, the most egregious of these discrepancies:

⁴⁵ **RER-1**, Dentice First Expert Report, ¶ 30.

⁴⁶ **RER-1**, Dentice First Expert Report, ¶¶ 31.2–31.3.

⁴⁷ **RER-1**, Dentice First Expert Report, ¶ 39.13.

⁴⁸ *See, generally*, **RER-1**, Dentice First Expert Report, ¶¶ 31.1–31.4, 33.

⁴⁹ **RER-1**, Dentice First Expert Report, ¶ 36.2.

Claimant's Statements in the Arbitration	Statements in the IPO Prospectus
“ [REDACTED] ” (Claimant's Updated Memorial ¶ 340(a))	The IPO Prospectus does not mention any permanent loss of proven and probable reserves or mineral resources due to illegal mining.
“Claimant's mining and financial experts [...] assess that [REDACTED]” (Claimant's Updated Memorial, ¶ 401)	
“The reduction in proven and probable reserves resulting from illegal mining activity at this time ([REDACTED]) was [REDACTED] the reduction in reserves resulting from the Company's legal mining ([REDACTED]).” ([REDACTED] WS, ¶ 57)	
“Claimant is entitled to damages of [REDACTED]” (Claimant's Updated Memorial ¶ 422)	The IPO Prospectus does not disclose any losses, let alone close to [REDACTED] in losses, for lost mineral reserves, infrastructure, or equipment in occupied areas of the Buriticá Mine.
“The attacks carried out at the Mine by the Gulf Clan and other illegal miners have resulted in a significant loss of unexploited mineral resources within the Project. They have also had a deep operational impact on the Company.” ([REDACTED] WS, ¶ 5) “On 17 January 2025, a group of illegal miners broke into a further section of the Higabrá tunnels and detonated powerful explosives [...] with [REDACTED]” (Wang WS, ¶ 69)	“Illegal mining, gold theft and robbery may occur on some of our properties. These activities are difficult to control and can disrupt our business and expose us to liability. [...] Any theft or robbery of gold may reduce the amount of gold that we are able to recover from our operations. Rising gold prices may increase the likelihood of such thefts or robbery occurring. There can be no assurance that our security measures will effectively prevent illegal activities — which may be committed by third parties, employees or former employees [...] Illegal mining, gold theft and robbery could result in the loss of reserves, mine stoppages, and have a material and adverse effect on our business, results of operations and financial position.” (IPO, p. 72)

Claimant's Statements in the Arbitration	Statements in the IPO Prospectus
“[REDACTED] resulting from the lack of security in the Mine. [REDACTED]” ([REDACTED] WS, ¶ 7(a)) “[REDACTED]” ([REDACTED] WS ¶ 51(d))	“In 2024, the deep exploration program at the Colombia Buriticá Gold Mine has led to significant increases in Mineral Resources. Notably, drilling activities have intercepted substantial high-grade gold ore bodies, with promising results indicating the extension of the Veta Sur vein to the southwest. Additionally, high-grade mineralization at depths between 850m and 450m elevation remains open, suggesting considerable potential for discovering large-scale high-grade gold or porphyry copper ore bodies below 400m elevation. [...] Continental Gold has identified deposits with significant exploration potential in both deep margins and greenfield projects. In the neighboring areas of the Colombia Buriticá Gold Mine and the Berlin mine, located further north of Medellin in Colombia, numerous gold and copper ore indicators have been discovered and partially verified. For these prospecting rights areas, we anticipate achieving substantial exploration and Mineral Resources increases by enhancing the comprehensive study of mineralization patterns in the future.” (IPO, p. 334)
“Colombia suspended all law-enforcement operations aimed at repelling the criminals who were illegally exploiting the mine’s resources, and quickly declared a unilateral ceasefire with the Clan del Golfo.” (Claimant’s Updated Memorial, ¶ 7) “Colombian [sic] effectively terminated Operation Hades and, for over two and a half years following the inauguration of President Petro, the Colombian security forces stopped all operations in the Mine aiming at recovering areas unlawfully occupied by the Clan del Golfo and illegal miners working at its direction.” (Claimant’s Updated Memorial, ¶ 165) “From November 2022 to 2025, there has been no effective action by the State to evict those engaging in criminal activities from these private properties. Colombian authorities, including, among others, the Mayor’s Office of Buriticá and the Police, have not, during this period, enforced the multiple administrative protection requests that the Company submitted concerning illegal mining.” ([REDACTED] WS, ¶ 59)	“The Buritica [sic] Project site is protected daily by armed security guards and local police forces, and additional military forces nearby can be deployed to the site immediately if needed.” (IPO, SRK Report, p. IIIC-155) “SRK opines that in order to mitigate the risks of illegal mining area occupation and potential armed attacks, a multi-faceted approach is needed, including strengthening legal frameworks, enhancing security measures, promoting community engagement, and addressing the root causes of illegal mining.” (IPO, SRK Report, p. IIIC-155)

Claimant's Statements in the Arbitration	Statements in the IPO Prospectus
“As of today, the <i>Clan del Golfo</i> and its illegal miners remain in control of [REDACTED].” ([REDACTED] WS, ¶ 71) “To date, the State’s conduct has caused Continental Gold to be expelled from [REDACTED].” ([REDACTED] WS, ¶ 51)	“Some of the Buritica [sic] Project site has been illegal [sic] occupied by the criminal organization named Clan del Golfo or Gulf Clan recently. Starting in late 2022, illegal artisanal miners organised by Gulf Clan primarily operate in parts of the underground mining area within concession area above 1,200 m ASL.” (IPO, SRK Report, p. IIIC-155)
“Through 2023, the Company recorded [REDACTED].” (Claimant’s Updated Memorial, ¶ 172) “In an internal report dated 2 November 2022, the Company documented how the situation at the Mine had deteriorated during the second half of 2022 with [REDACTED] and extracting their mineral resources. The Company also documented their use of heavy machinery and firearms.” (Claimant’s Updated Memorial, ¶ 167) “These illegal activities during the 2023–2024 period resulted in 84 people injured and two people killed. All of this has occurred alongside road blockades lasting approximately 50 days between 2022 and the present, which have impacted the Project’s operations.” ([REDACTED] WS, ¶ 81)	“The incidents of illegal mining and violent attacks have posing [sic] challenges to Continental Gold’s operation activities.” (IPO, p. 72)

Claimant's Statements in the Arbitration	Statements in the IPO Prospectus
“By the end of 2022, illegal miners had made their way to Level 1450 of the Rampa Sur section. [REDACTED] (Claimant's Updated Memorial, ¶ 169) “ [REDACTED] ” (emphasis added) (Claimant's Updated Memorial, ¶ 340(a)) “ [REDACTED] ” (Naranjo WS, ¶ 38) “ [REDACTED] ” (Boyd Report, Appendix D, p. D-11, ¶ 34) “ [REDACTED] (Boyd Report, Section 1, p. 1-20, ¶ 44) “ [REDACTED] ” (Boyd Report, Appendix D, p. D-11, ¶ 34)	“The tunnels above 1,150 m [Above Sea Level] for the Yaragua [sic], excluding the Yaragua [sic] Decline, have been sealed due to issues caused by the illegal mining activities. Below the 1,150 m [Above Sea Level], a decline is set to access the mining block 9524. The decline 9524 has been connected with the Higabra Adit and Decline 1150 at 1150 m [Above Sea Level] and 1030 m [Above Sea Level], respectively. The ore from the mining block 9524 is transported to the surface crusher via the Decline 9524, Decline 1150 or Higabra Adit.” (emphasis added) (IPO, SRK Report, p. IIC-119) “The tunnels above 1,315 m ASL for the Veta Sur, excluding the Veta Sur Decline and Yaragua [sic], have been sealed.”⁵⁰ (IPO, p. IIC-119)

⁵⁰ Claimant's 26 March 2026 letter to the Tribunal cites this portion of the SRK Report as “expressly confirm[ing] that the tunnels above certain elevations in Veta Sur and Yaragua had been physically sealed and abandoned due to illegal mining activity.” See Claimant's Letter dated 26 March 2026, p. 8, n. 34. This is not what the SRK CPR Report says. To the contrary, while the SRK Report says that the tunnels above a certain elevation in the Yaragua “excluding the Yaragua Decline, have been sealed due to issues caused by the illegal mining activities,” with respect to Veta Sur, SRK Reported only that the tunnels “have been sealed.” **R-0001**, IPO Prospectus, p. 111C-119 (PDF p. 1280). And neither section says that the tunnels “were abandoned.”

Claimant's Statements in the Arbitration	Statements in the IPO Prospectus
"We also specifically identified (flagged) the areas and blocks that were lost to illegal miners starting in 2022. Continental Gold provided us with a 3D CAD file that shows the geolocation, erection date and levels of the barricades that the security and protection team of Continental Gold constructed in the Mine to seal off areas that had been affected by illegal mining." (Boyd Report, Appendix D, p. D-10, ¶ 34) "[REDACTED]" (Boyd Report, Appendix D, p. D-11, ¶ 34)	"Almost all Mineral Resources above 1,400 m ASL and 1,120 m ASL have been depleted to date for Yaragua and Veta Sur, respectively." (IPO, SRK Report, p. IIIC-118)
"On 17 May 2023, illegal miners reached the deepest section of the Mine – the Higabra tunnels – and detonated improvised explosive devices to expel the Mine's personnel. Tragically, two contractors were killed and several others injured." ([REDACTED] WS, ¶ 45) "In November 2024, illegal miners undertook a new invasion of the tunnels to advance to within meters of the main access portal to the Higabra tunnel, threatening our ability to continue to use this sole remaining entrance to the only section of the Mine that remains under the Company's control." ([REDACTED] WS, ¶ 68)	"CGL Colombia is considering building another backfilling system in Higabra to expand annual backfilling capacity from the current 455 thousand cubic metres ("km3") to 498 km3, solve the problems caused by the illegal artisanal mining invasion, decrease the transportation distance between the backfilling plant and TSF, and facilitate the maintenance of backfilling pipelines." (IPO, SRK Report, p. IIIC-125)

c. Claimant's Claimed Damages are a Fraudulent Misrepresentation

36. Based on the strict requirements in Hong Kong that statements be carefully vetted, Colombia draws the inevitable conclusion that the statements in the IPO Prospectus regarding the extent of the incursions of illegal mining in Buriticá are true. This is to a significant extent admitted to by Claimant through its requests for redactions over the course of the Arbitration. As Mr. Dentice explains, by requesting redactions in accordance with Procedural Order No. 2, Claimant confirms that the "Redacted Damages-Related Information is not in the public domain and is material to investors (in the sense that were it to become public, it may have an impact on the market value of CGI/ZGI)."⁵¹ The information detailed in the IPO Prospectus and the information which Claimant sought to have redacted contradict each other, particularly regarding Claimant's control over large portions of the Mine and the amount the Mine's silver and gold reserves have

⁵¹ RER-1, Dentice First Expert Report, ¶ 74; see also Procedural Order No. 6, ¶¶ 16-18.

been depleted.⁵² If the information in the IPO Prospectus—and particularly the information in the SRK Report—is taken as true and reliable, as indeed Mr. Dentice assumes it to be, then the information provided in the Boyd Report and in Claimant’s quantum arguments must be false.⁵³ Thus: Claimant has provided misleading information regarding its damages to the Tribunal which should, at the very least, be discounted in their entirety.⁵⁴

37. In addition, and assuming that the Redacted Damages-Related Information is credible and became known to ZGI after the publication of its IPO Prospectus but that ZGI has not chosen to disclose as it is obliged to, Claimant has further abused the good faith of both the Respondent and the Tribunal in attempting to launder its misrepresentations using the mechanisms set forth by the Tribunal for the redaction of confidential business information in Procedural Order No. 2.⁵⁵ When proposing redactions for its Updated Memorial of 20 October 2025, Claimant made sweeping redactions on all mentions of its damages figures as well as descriptions of the Mine’s internal state. Claimant (eventually) justified each of these as constituting ‘confidential business information.’
38. Nevertheless, the bulk of those proposed redactions correspond to information that is either (i) explicitly not mentioned in the IPO Prospectus (CGI’s claimed damages); or (ii) explicitly contradicted by what is contained in the Prospectus (incursions at the Mine).
39. In the IPO Prospectus, the Buriticá Mine is presented as in prime financial health with good returns, a positive future, and no material losses. The ostensible threat posed by illegal mining is minimized, presented as a hypothetical future possibility, and as having resulted in no material loss of cashflow or to the mining reserves. The same is true of

⁵² **RER-1**, Dentice First Expert Report, ¶¶ 55, 69 (“The Redacted Damages-Related Information is that CGI has suffered losses of mineral reserves and resources each year from 2022 to 2024 (i.e. 1.55 million tons of the Mine’s proven and probable reserves and 4.28 million tons of its mineral resources in 2022 and 2023, and 1.97 million tons of the Mine’s proven and probable reserves and 2.8 million tons of its resources in 2024), and the extent of the areas allegedly permanently lost to illegal mining and continuing incursions are as set out above. This suggests illegal mining presents a serious and continuing risk to the Mine. In contrast, the IPO Prospectus Disclosures merely state that there are illegal mining activities in and around the Mine, without disclosing the scale and extent of the losses to illegal mining in the period immediately preceding the IPO or the fact that the illegal miners “have begun” to infiltrate the Higabrá section of the Mine. The SRK Report further states that risks associated with illegal mining activity can be mitigated. The IPO Prospectus Disclosures therefore present the risks of illegal mining as relatively less serious.”).

⁵³ **RER-1**, Dentice First Expert Report, ¶¶ 57–59; Nor can Claimant hide behind the notion that ZGI did not have to subsequently disclose this information as inside information, *see* **RER-1**, Dentice First Expert Report, ¶¶ 33–34.

⁵⁴ *See* **RL-088**, *Inceysa Vallisoletana, S.A. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, ¶ 242.

⁵⁵ *See* **RER-1**, Dentice First Expert Report, ¶ 60.

ZGI's financial filings since the IPO: neither the Arbitration, nor the losses that Claimant claims in the Arbitration, is raised as presenting any impairment.⁵⁶

40. What is significant in this discussion is that what Claimant asserted to be its reason for requesting its redactions – and thus the standard that the Tribunal adopted in PO6 for whether information could be made public – is whether it would prejudice Claimant, including by “embolden[ing] existing illegal miners in their activities and attract[ing] further illegal miners” and having “negative impact on Claimant’s market value.”⁵⁷
41. Claimant claimed that the disclosure of such information could affect “its value by revealing to competitors, suppliers, and employees the extent of the illegal mining operations and the significant losses incurred at the Mine.”⁵⁸ However, revealing any such information could not result in prejudice as it is already well known to CGI’s local competitors, suppliers, and employees that there is a significant alleged “illegal mining problem” at the Mine.⁵⁹ More important, however, CGI is **no longer a publicly traded company**. As Claimant admits in its Updated Memorial, following its acquisition by Zijin Mining, CGI was “delisted” from the Toronto Stock Exchange.⁶⁰ Claimant’s concern for the impact on its “market value” if certain information becomes public must, therefore, be understood as a concern for the market value of its publicly traded controlling entity: ZGI.
42. Additionally, the case law which Claimant cites remarks specifically on how redactions are warranted in cases wherein “the disclosure of [that information] could result in material financial loss” to a party in the future.⁶¹ Claimant, however, argues that its losses are irreversible and permanent.
43. Seen in that light, Claimant’s actions in seeking redactions from its public Updated Memorial can only be seen as an attempt to avoid contradicting what ZGI has said to the market in Hong Kong about the prospects of the Mine.

⁵⁶ To the contrary, as discussed *infra* ¶ 633, the only entity to have apparently considered registering an impairment for the Buriticá Project was Claimant’s ultimate parent Zijin Mining Group, which conducted an impairment analysis of the Mine in 2024 and determined that no impairment was needed.

⁵⁷ Procedural Order No. 6, ¶ 18. Note that, when requesting redactions to PO6, Claimant also sought to redact most of the cited paragraph.

⁵⁸ Procedural Order No. 6, p. 10.

⁵⁹ See **C-0424**, Juan Forero, *A Drug Gang Stole 3 Tons of Gold in a Scam So Perfect It's Still Going*, Wall Street Journal, 12 November 2024 (“Mine owner Zijin Mining Group, a Chinese state-controlled company, estimated that last year it lost more than 3.2 tons of gold, worth around \$200 million and equal to 38% of the mine's total production. The illegal mining [...] is a war 'we are losing,' a Zijin security official said.”).

⁶⁰ Claimant’s Updated Memorial ¶ 264.

⁶¹ See **RL-140**, *Vito G. Gallo v. Government of Canada*, PCA Case No. 2008-03, Confidentiality Order, 4 June 2008, ¶ 1; see also **RL-141**, *Chemtura Corporation (formerly Crompton Corporation) v. Government of Canada*, PCA Case No. 2008-01, Procedural Order No. 2 (Confidentiality Order), 21 January 2008, ¶ 1.

2. Claimant Has Misrepresented its Ability to Bring its Case

44. Claimant has serially misrepresented to the Tribunal and to Colombia its ability and inability to properly make its submissions.
45. Claimant has, on multiple occasions, complained in the context of the Arbitration that it was unable to present a part of its case or submit documents to the Tribunal because of alleged issues at the Mine that it claimed hampered its access.
46. The following timeline puts these statements in the context of the IPO and Claimant's related requests to prevent the publication of conflicting information:

12 June 2023	CGI, Zijin Mining, Continental Gold Bermuda, and Continental Colombia provided written notice to Colombia of their intent to submit claims to arbitration pursuant to the China-Colombia BIT and the Canada-Colombia FTA claiming "the depletion of the mineral resources" at the Mine over several years. ⁶²
10 April 2024	Continental Colombia submitted its reconciliation statement to the National Mining Agency of Colombia, which states the quantity of gold and silver Continental Colombia alleges was lost to illegal mining. The reconciliation statement covers the period from 31 December 2021 to 31 December 2023. This was the first time Continental Colombia presented its mining losses from illegal mining to the ANM, [REDACTED]. ⁶³
28 June 2024	Claimant presented its Request for Arbitration, [REDACTED] "64 Claimant later sought and was granted the redaction of that figure from the public version of its Request for Arbitration.
16 May 2025	Pursuant to the procedural calendar, Claimant was to file its complete Memorial, including its case on damages, on 30 May 2025. Counsel for Claimant requested an extension from the State of its 30 May deadline due to "unforeseen circumstances [which] have impacted our team, including a recent blockade of the Mine that prevented access to the Mine site for our team and experts." Claimant's Memorial deadline was moved to 10 July 2025. ⁶⁵

⁶² Exhibit C-0033, Claimant's Notice of Intent, 12 June 2023, p. 3.

⁶³ Boyd First Expert Report, Section 1, p. 1–31, ¶ 61, bullet 3; (referring to Exhibit JTB-013, Agencia Nacional de Minería: Formulario de Reconciliación de Recursos Minerales (Period 31 December 2021 to 31 to December 2023), 10 April 2024).

⁶⁴ Request for Arbitration, 28 June 2024, ¶ 50.

⁶⁵ Respondent's Letter in Opposition to Claimant's Request for Bifurcation, 18 July 2025, Annex B.

15-20 May 2025	Over that same time period, SRK Consulting (on the direction of Zijin Mining) conducted an extensive Site Visit to Buriticá, “including the inspections and observations of the locations of exploration and production boreholes, drill cores and underground stopes showing the gold mineralisation, the Buritica [sic] Plant, ore and waste stockpiles, tailings storage facilities, water source and power supply station, the office and living areas, and other associated infrastructure.” ⁶⁶ SRK Consulting ultimately provided a “Competent Person’s Report of the Buriticá Gold-Silver Project in Antioquia, Colombia,” which was attached to the IPO Prospectus and which contained both an updated reserves estimate for the Mine and a Discounted Cash Flow (“ DCF ”) analysis of the value of the Mine. ⁶⁷
24 June 2025	Effective date of the Colombia Entrustment Arrangement, whereby ZGI assumed operational control of CGI and the Buriticá Mine. ⁶⁸
30 June 2025	The valuation date CGI instructed its damages experts from John T. Boyd and Co. to use in their expert report accompanying Claimant’s Updated Memorial. ⁶⁹
9 July 2025	Counsel for Claimant wrote to Colombia’s legal representatives to inform the State that “Claimant’s Memorial will not include Claimant’s submissions on damages” as the Claimant was unable to present a firm quantification of its losses “given the dynamic and evolving security situation at the Mine[.]” ⁷⁰
10 July 2025	Deadline for the submission of Claimant’s Memorial, on which Counsel for Claimant submitted a request for the bifurcation of proceedings to separate the submissions on damages, due to the “dynamic and evolving security situation at the Mine.” Claimant submitted its Memorial without a damages analysis. ⁷¹
18 July 2025	Respondent submits a letter to the Tribunal opposing Claimant’s bifurcation request accompanied by the Declaration of Dr. Daniel Flores, who explained that Claimant’s damages were fully capable of being quantified on the basis of Claimant’s financial records. ⁷²

⁶⁶ **Exhibit R-0001**, IPO Prospectus, p. IIIC-16 (PDF p. 1177).

⁶⁷ **Exhibit R-0001**, IPO Prospectus, p. IIIIC-166-IIIIC-170 (PDF pp. 1327-1331).

⁶⁸ **Exhibit R-0001**, IPO Prospectus, p. 384 (PDF p. 394).

⁶⁹ Boyd First Expert Report, Section 6, p. 6-10, ¶ 32.

⁷⁰ Respondent’s Letter in Opposition to Claimant’s Request for Bifurcation, 18 July 2025, Annex C.

⁷¹ Claimant’s Letter to the Tribunal, 10 July 2025.

⁷² Respondent’s Letter in Opposition to Claimant’s Request for Bifurcation, 18 July 2025, Annex A, ¶¶ 14–15.

25 July 2025	Claimant's Reply to Respondent's Letter of 18 July 2025 opposing bifurcation. Claimant dismisses Respondent's objections as strawmen arguments, restating that "the reason that Claimant is not at this stage in a position to present a firm quantification of its losses is ... because of the dynamic, chaotic and constantly-evolving situation on site as a result of the illegal criminal invasion of the Mine's tunnels that Respondent has tolerated. ... Claimant made every effort to present a damages assessment in its Memorial, but given the dynamic, evolving, and dangerous security situation at the Mine, it was unfortunately not in a position to do so." ⁷³
31 July 2025	The effective date ⁷⁴ of the Competent Person's Report which Zijin commissioned from SRK Consulting, in order to estimate Mineral Resources and Ore Reserves: "Our AISC of Colombia Buriticá Gold Mine substantially increased from US\$802 per ounce in 2024 to US\$1,013 per ounce in the six months ended June 30, 2025, primarily due to the decrease of mill feed grade." ⁷⁵ SRK Consulting's DCF resulted in a valuation of the Mine of USD 2.96 billion at a discount rate of 8%. ⁷⁶
18 August 2025	The Tribunal's Procedural Order No. 5 directed Claimant to submit an updated Memorial which would include its submissions on damages and causation "to the extent presently possible" on 17 October 2025. ⁷⁷
9 September 2025	The "Latest Practicable Date" for purposes of information contained in the IPO Prospectus. ⁷⁸
19 September 2025	ZGI, incorporated in Hong Kong, published its prospectus for Global Offering. ⁷⁹
30 September 2025	Dealings in ZGI's Shares on the Hong Kong Stock Exchange commenced at 9:00am. ⁸⁰
17 October 2025	Counsel for Claimant wrote to Colombia seeking a one-business day extension, to 20 October 2025, to file its Updated Memorial with damages analysis, citing the unavailability of one of its experts (due to an alleged health event) to provide final approval of his report. ⁸¹

⁷³ Claimant's Letter to the Tribunal Requesting Bifurcation of the Damages Phase of the Proceeding, 25 July 2025, p. 2.

⁷⁴ **Exhibit R-0001**, IPO Prospectus, p. IIIC-30 (PDF p. 1991).

⁷⁵ **Exhibit R-0001**, IPO Prospectus, p. 303 (PDF p. 313).

⁷⁶ **Exhibit R-0001**, IPO Prospectus, p. IIIC-170 (PDF p. 1331).

⁷⁷ Procedural Order No. 5, ¶¶ 48, 74(b).

⁷⁸ **Exhibit R-0001**, IPO Prospectus, p. 41 (PDF p. 51).

⁷⁹ **Exhibit R-0001**, IPO Prospectus, "Important," (PDF p. 3).

⁸⁰ **Exhibit R-0167**, Zijin Gold International Press Release, Zijin Gold International Debuts on Hong Kong Stock Exchange in World's Largest Gold Mining IPO, 30 September 2025.

⁸¹ **Exhibit R-0168**, Email from Claimant to Respondent Regarding Extension, 17 October 2025.

17 October 2025	Date upon which ZGI finalized Unaudited Financial Information and Operational Performance of Zijin Gold International for the Nine Months Ended 30 September 2025 on the Hong Kong Stock Exchange. ⁸²
19 October 2025	Date upon which Zijin Mining published its unaudited financial information for Zijin Gold International as of 30 September 2025. That financial information includes no impairment for the losses Claimant alleges were suffered at the Mine. ⁸³
20 October 2025	Claimant presented its Updated Memorial, [REDACTED] ⁸⁴
20 November 2025	Claimant requests redaction of “confidential or protected information” from its Updated Memorial. Requested redactions include: [REDACTED] ⁸⁵ mentions of the portions and reserves of the Mine which Claimant has ostensibly lost (e.g. “[REDACTED]” and “Claimant has lost control over approximately a third of the Mine’s proven and probable reserves.”); ⁸⁶ and statistics regarding how many informal miners work in the tunnels (“[REDACTED]”). ⁸⁷ Many other redactions were attempted by Claimant that Respondent saw as clearly frivolous and indeed would have added to the extent of Claimant’s subterfuge, including an attempt to redact every mention of the word “material” in reference to the losses which Claimant alleged. ⁸⁸

⁸² **Exhibit R-0008**, Inside Information Announcement in relationship to Production and Operation Data for the Nine Months Ended 30 September 2025, Zijin Gold International Company Ltd., 17 October 2025; **Exhibit R-0065**, Unaudited Financial Information and Operational Performance of Zijin Gold International for the Nine Months Ended 30 September 2025.

⁸³ **Exhibit R-0008**, Inside Information Announcement in relationship to Production and Operation Data for the Nine Months Ended 30 September 2025, Zijin Gold International Company Ltd., 17 October 2025. While this document is dated 17 October 2025, the Hong Kong Stock Exchange website indicates that it was released on 19 October 2025.

⁸⁴ Claimant’s Updated Memorial, ¶ 14.

⁸⁵ Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 20 November 2025, ¶ 14.

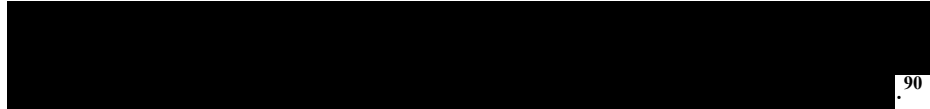
⁸⁶ Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 20 November 2025, ¶¶ 13, 238.

⁸⁷ Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 20 November 2025, ¶ 307.

⁸⁸ Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 20 November 2025, ¶¶ 338-39, 343.

23 December 2025 ZGI announced formation of a brand-new Risk and Internal Control Management Committee.⁸⁹

23 December 2025



23 December 2025 Claimant for the first time submits its reasoning regarding why the information subject of its redactions request should be considered “confidential”. Claimant admits that “the public disclosure of [its damages figure] would be damaging to Claimant and/or could reasonably be expected to prejudice Claimant. ... Relatedly, the disclosure of this non-public information could also prejudice Claimant, including its value by revealing to competitors, suppliers, and employees the extent of the illegal mining operations and the significant losses incurred at the Mine.” Claimant was doubly clear that “[t]his information (and the rest of the information Claimant seeks to redact) is not already publicly available and Claimant has consistently treated damages information as confidential.”⁹¹

30 December 2025 ZGI published an “Announcement on Estimated Increase in Operating Results for the Year Ending 31 December 2025” to the Hong Kong Stock Exchange. It reported “Based on the preliminary estimation of the Company’s finance department, it is estimated that the Group will realise a net profit attributable to owners of the parent of approximately USD1.5-1.6 billion for the Year 2025, which represents an increase of approximately USD1.02-1.12 billion, or an increase of approximately 212%-233% compared with the same period last year (same period last year: approximately USD481 million).”⁹² Among the “main reasons” for the increase, ZGI indicated there was an “[i]ncrease in mine-produced gold output” to 46.5 tonnes. It estimated 2026 output at 57 tonnes. ZGI finally reported that the group “is unaware of any material uncertain factors which may affect the accuracy of the content in this estimated operating results estimate.”⁹³

⁸⁹ **Exhibit R-0038**, Terms of Reference of the Risk and Internal Control Management Committee, Zijin Gold International Company Ltd., 23 December 2025.

⁹⁰ **Exhibit R-0039**, List of Directors and Their Roles and Functions, Zijin Gold International Company Ltd., 23 December 2025.

⁹¹ Claimant’s Comments on Transparency Schedule to Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 23 December 2025, p. 3.

⁹² **Exhibit R-0082**, Announcement on Estimated Increase in Operating Results for the Year Ending 31 December 2025, Zijin Gold International Company Ltd., 30 December 2025, p. 1.

⁹³ **Exhibit R-0082**, Announcement on Estimated Increase in Operating Results for the Year Ending 31 December 2025, Zijin Gold International Company Ltd., 30 December 2025, p. 2.

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|-----------------|---|
| 13 January 2026 | The Parties submit an updated Transparency Schedule, in which Claimant continues to represent that the information subject of the requested redactions is “confidential.” ⁹⁴ |
| 28 January 2026 | The Tribunal issued PO6 with its final decision as to the redactions of Claimant’s Updated Memorial. ⁹⁵ |
| 22 January 2026 | Continental Colombia presented its 2025 Reconciliation Statement to ANM, reporting 0 tons of lost reserve for 2025. ⁹⁶ |
| 22 March 2026 | ZGI posted its year-end results for 2025. ⁹⁷ |
47. As is evident from this timeline, Claimant has on numerous instances misrepresented its circumstances to either gain more time to make its submissions or not make its submissions at all when doing so was convenient for purposes of its controlling entity’s public disclosure obligations in Hong Kong.
48. Thus, on 16 May 2025, Counsel for Claimant requested an extension of the original deadline for its Memorial due to “unforeseen circumstances [which] have impacted our team, including a recent blockade of the Mine that prevented access to the Mine site for our team and experts.” On that same day, however, and in fact over the period from 15-20 May 2025, SRK Consulting was conducting a Site Visit to Buriticá, including inspections of the entire concession site, associated infrastructure, and facilities, in order to complete the Competent Person’s Report attached to the IPO Prospectus.
49. In its 26 March 2026 Letter, Claimant attempts to explain away this startling juxtaposition, stating that its statement about access to the Mine preventing it and its experts’ work on the Memorial from being carried out was “accurate when made on 16 May 2025,”⁹⁸ because there had been a blockade at the Mine in late April 2025. Colombia does not deny this, but Claimant misses the point.⁹⁹ It would have been relevant at the time for Colombia to understand that, in addition to preparing its Memorial submission,

⁹⁴ The Parties’ Joint Transparency Schedule to Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 12 January 2026.

⁹⁵ Procedural Order No. 6, 28 January 2026.

⁹⁶ **Exhibit R-0043**, Resources and Reserves for the Concession Area, Continental Colombia, 22 January 2026.

⁹⁷ **Exhibit R-0061**, Annual Results Announcement for the Year Ended 31 December 2025, Zijin Gold International Company Ltd., 20 March 2026. While this document is dated 20 March 2026, the Hong Kong Stock Exchange website indicates that it was released on 22 March 2026.

⁹⁸ Claimant’s Letter dated 26 March 2026, p. 10.

⁹⁹ Claimant also appears to rely now on a different issue at the Mine than it did then. Claimant submitted with its letter of 26 March 2026 Annexes 3 and 4, which discuss blockages of the Mine in April 2025. In its letter of 25 July 2025 in support of its effort to bifurcate quantum, Claimant alleged that its 16 May request was predicated on the fact that “during part of May 2025, as Claimant previously advised Respondent, Claimant’s counsel and experts were prevented from visiting the Mine as a result of a blockade of its sole access road by illegal miners.” See Letter from Claimant, 25 July 2025, pp. 1–2.

Claimant's parent company was also preparing a prospectus that would place the Buriticá Mine front and center in its fundraising efforts.

50. Likewise, on 9 July 2025, one day prior to its new Memorial submission deadline, Counsel for Claimant alerted Colombia's legal representatives that "Claimant's Memorial will not include Claimant's submissions on damages" as the Claimant was unable to present a firm quantification of its losses "given the dynamic and evolving security situation at the Mine" and that it would submit a bifurcation request on the same basis. This was a few days after 30 June 2025, the effective date of the Competent Person's Report, which had been commissioned by ZGI in order to present an updated and audited analysis of the economic health of the mine, an estimate of the gold and silver resource and reserve, and a valuation of the Mine based on a Discounted Cash Flow analysis.
51. As Colombia explained would be the case in opposing Claimant's last-minute request for bifurcation of quantum on 18 July 2025,¹⁰⁰ Claimant's internal records provided all of the information its experts needed to calculate its damages claim: Claimant's experts from John T. Boyd company relied on a block model compiled by BAW in 2022, along with information provided on CAD files regarding internal blockades erected to seal off portions of the Mine allegedly affected by illegal mining, to construct their model.¹⁰¹ Not once do Boyd discuss having conducted a site visit to Buriticá to construct their model. And furthermore, as is discussed further below, Claimant's internal records contain an accounting of the exact quantity of gold and silver Claimant alleges has been lost to illegal mining in Buriticá. Claimant's continued reliance on the need for "site visits" must therefore, in light of the then-upcoming IPO, be seen for what it was: an excuse to delay the submission of Claimant's case.
52. On 25 July 2025, Claimant nevertheless responded that bifurcation of quantum was appropriate because of the "dynamic, chaotic and constantly-evolving situation on site" in Buriticá.¹⁰² On that basis, Claimant claimed it could not present a "firm quantification of its losses" as scheduled on 10 July 2025.¹⁰³ Notwithstanding that SRK produced a complete DCF of the Mine as of 30 June 2025—which Claimant contends is irrelevant because it "related to an altogether different valuation exercise than the one undertaken by Claimant's experts in this arbitration"¹⁰⁴—the documentary evidence submitted by Claimant both in the Arbitration and in its dealings with Colombia belies this statement **entirely**.
53. In the Arbitration, Claimant's quantum experts exhibit and rely on a form submitted by Continental Colombia to the National Mining Agency ("ANM") of Colombia in 2024, which lays out the quantity of gold and silver Continental Colombia alleges was lost to

¹⁰⁰ See Respondent's Letter in Opposition to Claimant's Request for Bifurcation, 18 July 2025, Annex A, ¶¶ 14–15.

¹⁰¹ See Boyd First Expert Report, Appendix D.

¹⁰² Claimant Letter dated 25 July 2025, p. 2.

¹⁰³ Claimant Letter dated 25 July 2025, p. 2.

¹⁰⁴ Claimant's Letter dated 26 March 2026, p. 10.

illegal mining.¹⁰⁵ In its presentations to the ANM authorities, starting in the first half of 2024 and continuing through the second half of 2025, Continental Colombia presented the exact same figure of mining losses—[REDACTED]—that it relies on here.¹⁰⁶ Over that entire time period that number never changed. And in the form Continental Colombia submitted to ANM reporting on its Resources and Reserves for 2025, it reported 0 tons of lost gold due to illegal mining for the entire year.¹⁰⁷

3. Claimant Artificially Restructured its Investment

54. Claimant has, as is evident from the IPO Prospectus, lost all control over its investment since the commencement of the Arbitration. Its nevertheless remaining a shell corporation in Canada for purposes of attempting to retain its claim in the present Arbitration constitutes a separate fraud on the Tribunal, for which reason its claims should be dismissed.

a. The Ownership Structure of CGI and Buriticá

55. Claimant's pleadings in the Arbitration fail to detail the full extent of its complex ownership structure. Claimant explains briefly—and inadequately—the initial corporate reorganization in June 2015 wherein Continental Gold Limited Bermuda became the wholly-owned subsidiary of Claimant, which was incorporated under the laws of Ontario, Canada.¹⁰⁸ With respect to further corporate restructuring, however, Claimant simply states that Zijin Mining Group Co. subsequently acquired its share capital in December 2019 for approximately US\$ 1 billion.¹⁰⁹
56. Were Claimant's pleadings the only source of information, this would be the understanding with which the Tribunal would be left. Claimant omits, however, the complex web of companies through which Zijin Mining owns it, which the IPO Prospectus reveals to be, for the time period prior to 24 June 2025, the following (the box labeled "Our Company" represents ZGI):¹¹⁰

¹⁰⁵ **Exhibit JTB-013**, Agencia Nacional de Minería: Formulario de Reconciliación de Recursos Minerales (Period 31 December 2021 to 31 to December 2023), 10 April 2024.

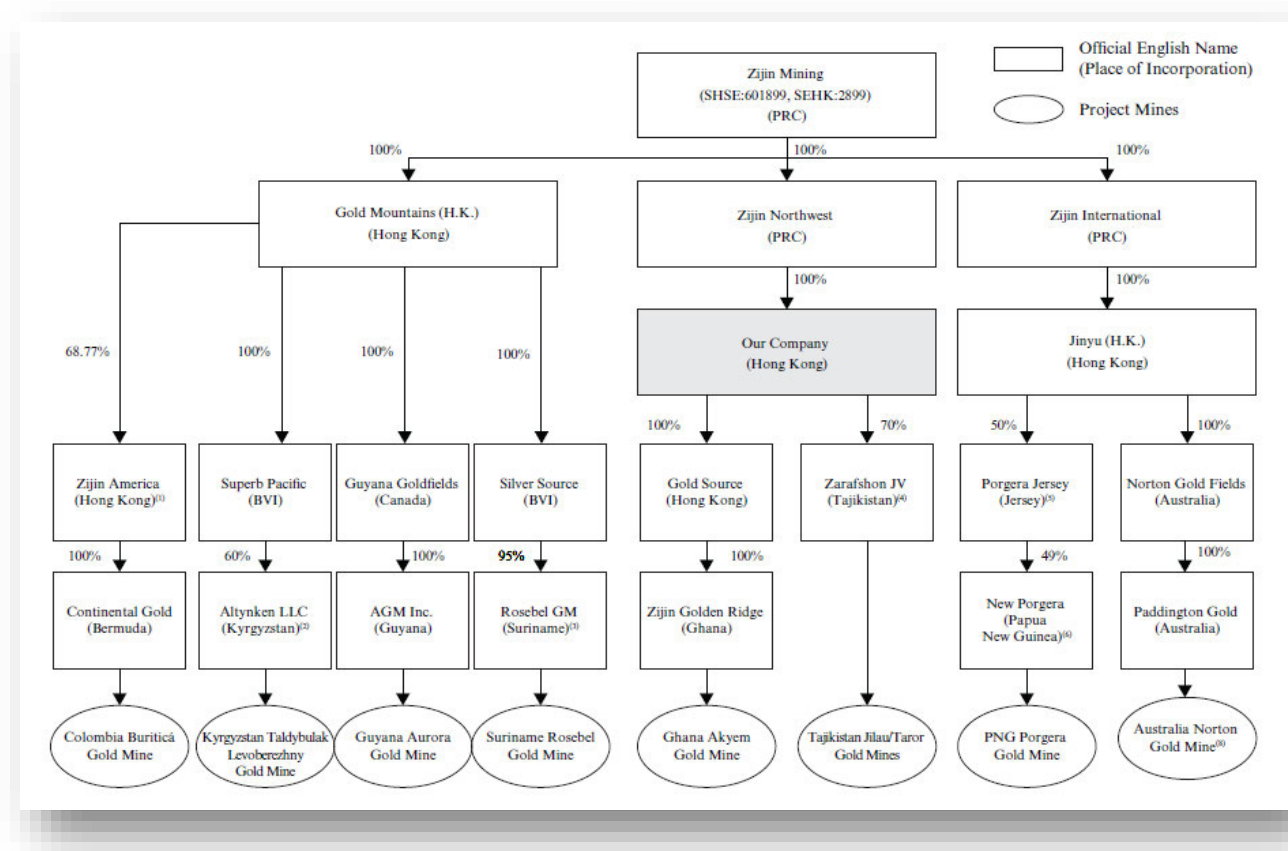
¹⁰⁶ See **Exhibit R-0126**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024; **Exhibit R-0127**, Auto No. VSC-068, Agencia Nacional de Minería, 29 May 2024; **Exhibit R-0128**, Auto No. VSC-165, Agencia Nacional de Minería, 29 November 2024; **Exhibit R-0129**, Comprehensive Audit Visit Report No. 029, Site Visit by Grupo PIN March 2025, 29 April 2025; **Exhibit R-0130**, Auto No. VSC-118, Agencia Nacional de Minería, 12 May 2025; **Exhibit R-0131**, Comprehensive Audit Visit Report No. 090, Site Visit by Grupo PIN October 2025, 13 November 2025; **Exhibit R-0132**, Auto No. VSC-221, Agencia Nacional de Minería, 14 November 2025.

¹⁰⁷ **Exhibit PWG-002**, 2025 Reconciliation format, 22 January 2026.

¹⁰⁸ Claimant's Updated Memorial, ¶¶ 75-76.

¹⁰⁹ Claimant's Updated Memorial, ¶ 100 (citing **Exhibit C-0221**, China's Zijin to Buy Canada's Continental Gold for \$1 billion, Bloomberg News, 2 December 2019).

¹¹⁰ **Exhibit R-0001**, Global Offering (Volumes 1 to 3), Zijin Gold International Company Ltd., 19 September 2025 ("IPO Prospectus"), p. 264 (PDF p. 274).



57. As the above organizational chart—which notably omits Claimant entirely—reveals, CGI is owned by Zijin America (Hong Kong), which is 68.77% owned by Gold Mountains (H.K.) of Hong Kong, which is 100% owned by Zijin Mining of China. The remaining ownership interest in Zijin America (which is also omitted from the ownership chart, but is explained in notes that follow it) is vested in (i) CLAI Gilding (BVI) Investment Limited, which owns 22.74%; (ii) ZLCFL-Cayman International Investment Cooperation Limited, which owns 7.26%; and (iii) Longyan Xinjing Investment Partnership (Limited Partnership), an employee shareholding platform of the Zijin Mining Group, which owns 1.23%.¹¹¹
58. Following the September 2025 IPO, nothing in the formal ownership chain of CGI has changed. This is, notably, not because Zijin Mining did not wish it to be so. In order to facilitate the spin-off and IPO of ZGI, “Zijin Mining has undergone corporate reorganization to consolidate **all its overseas gold mine assets** under [ZGI], positioning [ZGI] as a significant player in the global gold mining industry. Save for the Colombia Buriticá Gold Mine which [ZGI] operate[s] via the Colombia Entrustment Arrangement[.]”¹¹²

¹¹¹ Exhibit R-0001, IPO Prospectus, p. 264 (PDF p. 274).

¹¹² Exhibit R-0001, IPO Prospectus, p. 251 (PDF p. 261) (emphasis added).

59. The terms and substance of the Colombia Entrustment Arrangement will be more thoroughly described in the following section, but it remains noteworthy that the sole rationale expressed in the IPO Prospectus for not placing CGI under the direct ownership of ZGI was this Arbitration. As the IPO Prospectus explains:

A change in the ownership structure of **CGI, which is the sole claimant in the international arbitration proceeding** at this time, may have significant implications for the arbitration proceedings, including, potentially, that it may increase the risk of certain objections by Colombia as to, among other topics, the jurisdiction of the arbitral tribunal constituted to decide the dispute. While **these objections would not be unmeritorious** under the Treaty and applicable law, they would necessarily add to the complexity, risk, and uncertainty of the proceedings.¹¹³

60. Unable to carry out the change in ownership formally, ZGI settled for the next best thing: the total control of ZGI over CGI and the Buriticá Mine – ownership in everything but name.

b. Control of the Buriticá Mine is Asserted by ZGI

61. Following the IPO, ZGI was intended by Zijin Mining as the vessel for all of its overseas mines – of which the Colombia Buriticá Mine is the crown jewel. While during the pendency of this Arbitration a formal transfer of the ownership of CGI would create a “not [...] unmeritorious”¹¹⁴ objection, ZGI nevertheless wanted to “allow our Company and our shareholders to enjoy the economic benefit of the Colombia Buriticá Gold Mine from the completion of the Proposed Spin-off[.]”¹¹⁵ The solution was the Colombia Entrustment Arrangement (the “CEA”), which gives ZGI the economic benefit and total control of the Buriticá Mine. It is noteworthy that all discussion of the CEA is framed in terms of control over the Buriticá Mine or Continental Colombia. Both Continental Gold Bermuda and to an even greater extent CGI are reduced to legal vehicles for holding the real subject of interest: the Mine.

62. Pursuant to the CEA, ZGI

is authorized ... to make normal course of business decision [*sic*] of Zijin America including without limitation, the daily operation, the management of its affiliated companies, the investment and financing decisions, and other activities which

¹¹³ Exhibit R-0001, IPO Prospectus, p. 382 (PDF p. 392).

¹¹⁴ Exhibit R-0001, IPO Prospectus, p. 382 (PDF p. 392).

¹¹⁵ Exhibit R-0001, IPO Prospectus, p. 382 (PDF p. 392).

would significantly impact the operation of Colombia Buriticá Gold Mine and correspondingly the return of Zijin America.¹¹⁶

63. The CEA consists of three separate but complementary formal agreements:
- 63.1 The “Entrusted Operations Agreement,” by which, for an annual management fee of US\$ 150,000, ZGI has the right of **“exclusive management and operation of the Colombia Buriticá Gold Mine during the term of the [agreement],** including without limitation, the exploration, development, extraction, processing, sales, transportation, and environmental restoration” of the Mine.¹¹⁷ ZGI is entitled to “make business decisions and manage operations” of the Mine; the only restriction on its control pertains to disposing of all or part of the assets of the Mine, which it cannot do absent consent of Continental Gold Colombia and the shareholders of ZGI.¹¹⁸
- 63.2 The “Return Swap Agreement.” In exchange for upfront consideration of US\$ 880 million, ZGI is entitled to “all of the amounts received or entitled by gold Mountains (H.K.) ... including without limitation, any dividend, capital arising from capital reduction, and cash return (if any) received or entitled.”¹¹⁹
- 63.3 The “Undertaking.” For its part, Zijin Mining undertook to “at the appropriate time when conditions for a transfer are considered favorable” allow ZGI to acquire Zijin Mining’s interest in Zijin America.¹²⁰ The defined “favorable conditions” include the conclusion of these arbitration proceedings.¹²¹
64. The CEA has been effective since 24 June 2025 and was designed to be a “temporary but necessary arrangement to deal with the uncertainties arising out of the international arbitration without delaying the Spin-off.”¹²² That uncertainty was, as mentioned above, the possibility of jurisdictional issues emerging in this Arbitration.
65. Pursuant to the CEA, ZGI is **“authorized to make business decisions and manage operations,** except for the disposal of all or part of the assets of” the Mine and is “entrusted with the **exclusive management and operation of the Colombia Buriticá Gold Mine** during the term of [the CEA], including without limitation, the **exploration, development, extraction, processing, sales,** transportation, and environmental restoration of” the Mine.¹²³ Furthermore, as discussed in Colombia’s letter of 12 March

¹¹⁶ Exhibit R-0001, IPO Prospectus, p. 387 (PDF p. 397).

¹¹⁷ Exhibit R-0001, IPO Prospectus, p. 383 (PDF p. 393) (emphasis added).

¹¹⁸ Exhibit R-0001, IPO Prospectus, p. 383 (PDF p. 393).

¹¹⁹ Exhibit R-0001, IPO Prospectus, p. 383 (PDF p. 393).

¹²⁰ Exhibit R-0001, IPO Prospectus, p. 384 (PDF p. 394).

¹²¹ Exhibit R-0001, IPO Prospectus, p. 384 (PDF p. 394).

¹²² Exhibit R-0001, IPO Prospectus, p. 384 (PDF p. 394).

¹²³ Exhibit R-0001, IPO Prospectus, p. 383 (PDF p. 393) (emphasis added).

2026, under the CEA ZGI has consolidated the “assets, liabilities, and operation results” of Zijin America, the holding company of CGI, “into the consolidated financial information of” ZGI.¹²⁴

66. Despite Zijin clearly intending that the CEA skirt the issue of any jurisdictional or admissibility objections, the substance of its concern remains unchanged and significant. The CEA has vested day-to-day control, accounting, operational decision-making, and reporting responsibility for the Buriticá Mine with ZGI in Hong Kong.

c. CGI Has Little or No Connection to Canada

67. Zijin Mining agreed to acquire Continental Gold in December 2019, and the acquisition was completed on 4 March 2020.¹²⁵ As part of ZGI’s global spin-off, the CEA was merely the deathblow to any pretense of genuine Canadian connection which CGI could claim.
68. First, following its acquisition by Zijin in 2020, CGI was delisted from the Toronto Stock Exchange.¹²⁶ It thus conducts no fundraising activities in Canada via trade in stock.¹²⁷ To the contrary, as evidenced by the IPO, Zijin conducts fundraising activities in Hong Kong.
69. Since then, CGI does not appear to pay any taxes in Canada. Under Canada’s Extractive Sector Transparency Measures Act (“**ESTMA**”), Canadian entities engaged in the development of minerals in Canada or elsewhere must annually report and publish payments made to specific “payees” that “relat[e] to the commercial development of oil, gas, or minerals,”¹²⁸ if those payments total at least C\$100,000 in at least one of the following categories:

taxes, other than consumption taxes and personal income taxes;

royalties;

fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;

¹²⁴ **Exhibit R-0001**, IPO Prospectus, p. 387 (PDF p. 397).

¹²⁵ See *supra* ¶ 195.

¹²⁶ See Claimant’s Request for Arbitration, n. 22; Claimant’s Updated Memorial, ¶ 264.

¹²⁷ *Cf.* Claimant’s Updated Memorial, Section II(C)(3), titled “In 2015, Claimant became the owner of the Company through a restructuring to attract further Canadian funding.”

¹²⁸ CGI is engaged in the exploration of minerals, which is defined in relevant part to include “(a) the exploration or extraction of oil, gas or minerals; (b) the acquisition or holding of a permit, licence, lease or any other authorization to carry out any of the activities referred to in paragraph (a).” See **RL-006**, Extractive Sector Transparency Measures Act, last amended 1 June 2015 (“**ESTMA**”), Section 2.

production entitlements;

bonuses, including signature, discovery and production bonuses;

dividends other than dividends paid as ordinary shareholders;

infrastructure improvement payments; or

any other prescribed category of payment.¹²⁹

A “Payee” is defined, in relevant part, to include “(a) **any government in Canada** or in a foreign state.”¹³⁰

70. Zijin Mining has filed and published CGI’s ESTMA reports for the years 2020 through 2025 on its website.¹³¹ None of those ESTMA reports, including the report for the year 2025, reports any taxes paid to any Canadian government entity, whether federal or provincial.¹³² Rather, they report taxes paid only in Colombia and Antioquia.
71. Following its acquisition by Zijin Mining and the departure of the previous corporate leadership, CGI has steadily become drained of any real presence in Canada and lacks any real locus of business in the country. According to the exhibits submitted by Claimant at the time of filing the Arbitration, including the Corporation Profile Report issued by the Government of Ontario,¹³³ which was current as of June 2024, CGI has three directors¹³⁴ and “no active Officers.”¹³⁵ According to Claimant’s submitted evidence, CGI’s last annual return was issued in 2023.¹³⁶

¹²⁹ **RL-006**, ESTMA, Section 2 (emphasis added); *see also* **Exhibit R-0011**, About the Extractive Sector Transparency Measures Act (ESTMA), Natural-Resources-Canada.ca, 20 December 2024, pp. 3–5.

¹³⁰ **RL-006**, ESTMA, Section 2 (emphasis added).

¹³¹ *See* **Exhibit R-0002**, Continental Gold Inc. ESTMA Reports, Zijin Mining Website, last accessed 1 April 2026 (including available website downloads **Exhibit R-0002a**, 2020 ESTMA Report, **Exhibit R-0002b**, 2021 ESTMA Report, **Exhibit R-0002c**, 2022 ESTMA Report, **Exhibit R-0002d**, 2023 ESTMA Report, **Exhibit R-0002e**, 2024 ESTMA Report; **Exhibit R-0002f**, 2025 ESTMA Report).

¹³² *See e.g.* **Exhibit R-0002e**, 2024 ESTMA Report (reporting only taxes, royalties, and fees paid to the National Government of Colombia).

¹³³ *See* **Exhibit C-0002**, Corporation Profile Report of Continental Gold Inc. issued by the Ministry of Public and Business Service Delivery of Ontario, 14 May 2024, pp. 2–3.

¹³⁴ Two of the three directors of CGI are also directors of ZGI. [REDACTED] is a Vice President of Zijin Mining and a (therefore) non-Executive Director of ZGI. *See* **Exhibit R-0001**, IPO Prospectus, p. 420 (PDF p. 430). Shen Shaoyang was the Chairman of the Board of ZGI until 30 May 2025. *See* **Exhibit R-0001**, IPO Prospectus, p. 1A–39 (PDF p. 636).

¹³⁵ **Exhibit C-0002**, Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024, pp. 2–3.

¹³⁶ *See* **Exhibit C-0002**, Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024, p. 8.

72. The explanations in the IPO Prospectus regarding the transfer of powers that underlie the CEA reveal that the transformation of CGI's role in the ownership structure of the Mine occurred at some point in time between Zijin Mining's acquisition of Claimant and the conclusion of the CEA. Respondent should not be required to demonstrate the timing of the transformation of CGI's function with more precision at this point in the proceedings: Continental Gold Colombia Branch, CGI, and Zijin America are private companies fully owned by ZGI or Zijin Mining subsidiaries and counsel is not able to locate any public disclosure regarding the division of labor among these entities with regard to the Buriticá Mine, other than the information provided in ZGI's IPO Prospectus.
73. The IPO Prospectus details the material terms of the CEA with regard to the transfer of operations to ZGI, most significant among which is that the CEA was signed by Zijin America and Continental Colombia, without any involvement of CGI.¹³⁷ Furthermore, pursuant to the CEA:
- the relevant activities of Zijin America will be focusing on the directing the operation of Colombia Buriticá Gold Mine to enjoy the relevant economic benefit, while [ZGI] is authorized, to the extent and within the capacity of Gold Mountains (H.K.), to make normal course of business decision of Zijin America including without limitation, the daily operation, the management of its affiliated companies, the investment and financing decisions, and other activities which would significantly impact the operation of Colombia Buriticá Gold Mine and correspondingly the return of Zijin America;. . . [ZGI] has the right to direct the exploration, development, extraction, processing, sales, transportation, and environmental restoration activities with the exclusive management and operation of the Colombia Buriticá Gold Mine, and the management and decision making of the exploration work of other potential projects. [ZGI] can independently make business decisions and manage operations on these relevant activities[.]¹³⁸
74. From the above, it is apparent that (i) under the CEA, ZGI has acquired the right to make decisions regarding the "exploration, development, extraction, processing, sales, transportation, and environmental restoration" of the Buriticá Gold Mine from Continental Gold Colombia Branch, (ii) before transferring these powers to ZGI under the CEA, Continental Gold Colombia Branch was subject to the direct control of Zijin America's shareholders (and **not** CGI) with regard to the making certain operation-related and business decisions concerning the Mine, and (iii) before transferring its management powers to ZGI under the CEA, Zijin America had the power to make "normal course of business decision[s]" regarding "the daily operation, the management of its affiliated

¹³⁷ Exhibit R-0001, IPO Prospectus, p. 383 (PDF p. 393 of 2834).

¹³⁸ Exhibit R-0001, IPO Prospectus, p. 387 (PDF p. 397 of 2834).

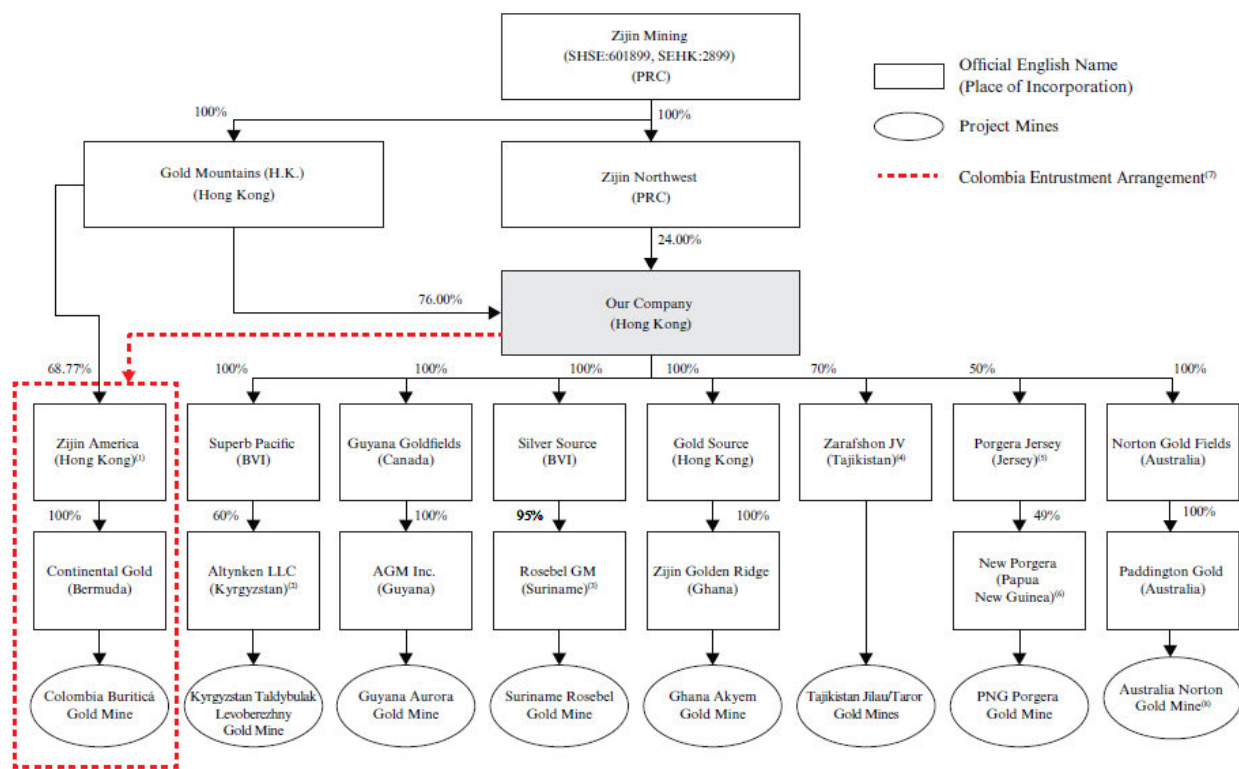
companies, the investment and financing decisions, and other activities which would significantly impact the operation of Colombia Buriticá Gold Mine.”¹³⁹

75. These circumstances indicate that immediately prior to the conclusion of the CEA, CGI had no operational, managerial, and commercial significance in the ownership structure of the Colombia Buriticá Gold Mine other than holding mere legal title—and that only allegedly.¹⁴⁰ It is likely that this state of affairs also existed before the initiation of this Arbitration, given that it would be unlikely in the ordinary course of business that Zijin would reallocate managerial, operational, and commercial responsibilities regarding the Buriticá Gold Mine among its subsidiaries *twice* (i.e. once to divest responsibilities from CGI and then to consolidate them in ZGI) between the initiation of this arbitration on 28 June 2024 and the entry into force of the CEA on 24 June 2025.¹⁴¹
76. Finally, and as is revealed by the terms of the CEA, as of June 2025 Claimant has no decision-making power and therefore makes no corporate decisions in Canada. All of the decisions made for Continental Colombia are made in Hong Kong by ZGI. Indeed, the corporate restructuring detailed in the IPO Prospectus reveals the new corporate structure of the Zijin Group as follows:

¹³⁹ **Exhibit R-0001**, IPO Prospectus, p. 387 (PDF p. 397 of 2834).

¹⁴⁰ *See infra* Section IV.A.1. for the discussion on Claimant’s alleged ownership in Continental Colombia.

¹⁴¹ The CEA “has been effective since 24 June 2025, and will last until the expiry of the mine life of the Colombia Buriticá Gold Mine[.]” **Exhibit R-0001**, IPO Prospectus, p. 384 (PDF p. 394 of 2834).



77. As is clear, CGI is the **only** Canadian entity in the entire ownership structure of Buriticá, which is otherwise domiciled outside of Canada: Zijin in China, Gold Mountains and Zijin Americas in Hong Kong, CLAI Gilding in the British Virgin Islands, ZLCFL-Cayman in the Cayman Islands, and Continental Gold (Bermuda) in Bermuda. Moreover, it is clear from the movement of CGI's corporate leadership that the heart of decision-making is resolutely in Hong Kong rather than Canada. [REDACTED] is, indeed, a non-executive Director of ZGI.¹⁴²

d. Claimant Manufactured Post-Dispute its Corporate Identity in Canada

78. Claimant has manufactured an artificial corporate arrangement solely for the benefit of retaining jurisdiction for its claim under the Treaty and publicly admits as such in its IPO. As noted above, ZGI recognized that a

[C]hange in the ownership structure of CGI...may have significant implications for the arbitration proceedings, including, potentially, that it may increase the risk of certain

¹⁴² **Exhibit R-0001**, IPO Prospectus, p. 390 (PDF p. 400). [REDACTED] is described in paragraph 15 of Claimant's Updated Memorial as a "member of the Claimant's Board of Directors, and former CEO of the Company."

objections by Colombia as to, among other topics, the jurisdiction of the arbitral tribunal constituted to decide the dispute. ... [T]hese objections would not be unmeritorious under the Treaty and applicable law[.]¹⁴³

The Tribunal should see through this sham arrangement and dismiss Claimant's claims.

79. Claimant's adoption of the CEA—the end of which will come immediately after the end of the Arbitration – is not a *bona fide* action of corporate restructuring.¹⁴⁴ Instead, ZGI has preserved the barest link to Canada so as to afford a pre-existing dispute the benefit of Canada's Treaty with Colombia.¹⁴⁵
80. Furthermore, and exacerbating the harm to Colombia, which only learned of the CEA through the IPO Prospectus, the CEA was **explicitly** set up so as not to alert Colombia to Claimant's corporate restructuring. As the IPO notes:

As advised by the Company's legal advisor as to the Colombia law, the entry into the Entrusted Operations Agreement and/or the Return Swap Agreement would not require any notification, filings, authorizations or approvals from the Colombian governmental or regulatory authorities in Colombia, and would not affect the mining rights held by the Colombia Buriticá Gold Mine for its operations[.]”¹⁴⁶

4. Claimant is Incorrect That No Material Non-Disclosure has Been Made

81. Claimant contends in its 26 March 2026 Letter that there has been no material non-disclosure because, by the time of the IPO valuation date in June 2025, the reserves for which Claimant claims in the Arbitration “had already been lost and were thus not part of the IPO valuation of the Buriticá Mine.”¹⁴⁷ Thus, Claimant argues, its claimed damages for the lost reserves could only represent a contingent future gain, and no securities rule requires an issuer to disclose contingent future gains.¹⁴⁸ Claimant is incorrect.

¹⁴³ Exhibit R-0001, IPO Prospectus, p. 382 (PDF p. (392 of 2834).

¹⁴⁴ **RL-092**, *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 335.

¹⁴⁵ **RL-093**, *Mobil Corporation et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, 10 June 2010, ¶ 205; **RL-069**, *Phoenix Action v. Czech Republic*, ICSID Case No. ARB/06/05, Award, 15 April 2005, ¶ 144.

¹⁴⁶ Exhibit R-0001, IPO Prospectus, p. 388 (PDF p. 398 of 2834).

¹⁴⁷ Claimant's Letter dated 26 March 2026, p. 1.

¹⁴⁸ Letter from Claimant, 26 March 2026, p. 1.

82. This contention ought to be met with severe skepticism. References to illegal mining in the IPO Prospectus and SRK Report are minimal, with the most thorough comment remarking that the tunnels above 1,150m ASL in the Yaraguá section had been sealed due to illegal mining.¹⁴⁹ [REDACTED]
83. As Mr. Dentice details, moreover, ZGI’s disclosure obligation in the IPO Prospectus was not confined to accurately disclosing the reserves at the Mine; it also included an obligation under the Hong Kong Main Board Listing Rules to disclose the **risks** associated with its mining projects without the omission of material facts of an unfavorable nature or the misleading presentation of risk factors.¹⁵¹ Despite that obligation and despite Claimant’s contention in this Arbitration that it has suffered permanent deprivations of access to large portions of the Mine in the period immediately preceding the IPO, there is no suggestion in the IPO Prospectus that similar-scale deprivations might be possible in the future. Indeed, losses to mining areas (whether small or large) are presented as only hypothetical: “Any theft or robbery of gold **may reduce** the amount of gold that we are able to recover [...] There can be no assurance that our security measures will effectively prevent illegal activities—which **may** be committed by third parties [...] Illegal mining, gold theft and robbery **could result** in the loss of reserves [...]”¹⁵²
84. Claimant’s 26 March letter misconstrues the fundamental problem the IPO Prospectus presents in this Arbitration: Claimant suggests that Colombia is simultaneously alleging potential securities fraud and relying on an expert (Mr. Dentice) who endorses the rigor of the IPO, and suggests that this presents a “contradiction.”¹⁵³ It does, but not for Colombia. Rather, as regards the relationship between the IPO Prospectus and Claimant’s pleadings, particularly the Redacted Damages-Related Information, there are three possible scenarios:
- 84.1 The IPO Prospectus is accurate, and the Redacted Damages-Related Information is inaccurate. In light of the legislation, rules, and practices which Mr. Dentice refers to in his expert report, it is reasonable to assume that the “various parties involved in the IPO performed their duties properly.”¹⁵⁴ In light of this assumption, the “likely explanation for any failure to disclose the Redacted

¹⁴⁹ **Exhibit R-0001**, IPO Prospectus, pp. IIC-119, IIC-125, IIC-155 (PDF pp. 1280, 1286, 1316).

¹⁵⁰ Claimant’s Updated Memorial, ¶ 340(a); *see also* **RER-1**, Dentice First Expert Report, ¶ 55.3 (“The IPO Prospectus Disclosures therefore present the risks of illegal mining as relatively less serious.”).

¹⁵¹ **RER-1**, Dentice First Expert Report, ¶ 24.1.

¹⁵² **Exhibit R-0001**, IPO Prospectus, p. 72 (PDF p. 82) (emphasis added); *see also* **Exhibit R-0001**, IPO Prospectus, pp. IIC-155, IIC-119 (PDF pp. 1280, 1316).

¹⁵³ Claimant’s Letter dated 26 March 2026, p. 2.

¹⁵⁴ **RER-1**, Dentice First Expert Report, ¶ 59.

Damages-Related Information in the Prospectus [or to disclose as inside information after its publication] **is that it is not credible.**¹⁵⁵ In this case, Claimant has seriously misrepresented its pleadings to the Tribunal.

84.2 The IPO Prospectus is not accurate, and the Redacted Damages-Related Information is accurate. Should it be that the Redacted Damages-Related Information is credible and neither included in the IPO Prospectus nor later divulged publicly upon coming to the attention of a director or officer of ZGI—including Dr. [REDACTED]—then ZGI is currently in breach of several Hong Kong laws and regulations, leaving it and its directors liable to extensive fines and possible prison sentences.¹⁵⁶ In the case of this fraud, the act of redacting the Redacted Damages-Related Information is in furtherance of a fraud, which Claimant has perpetrated and is now using the Tribunal and arbitral process to further.

84.3 The IPO Prospectus is accurate, and the Redacted Damages-Related Information is accurate. This is problematic as CGI has submitted to the Tribunal “that the Redacted Damages-Related Information is not in the public domain and is material to investors (in the sense that were it to become public, it may have an impact on the market value of CGI / ZGI).”¹⁵⁷ In this case, though the initial IPO Prospectus may be accurate, CGI is still in breach of its obligation to make known relevant inside information and is similarly using the Tribunal and the redactions mechanism under Procedural Order No. 2 to further its fraud.

85. None of Claimant’s other arguments in its 26 March letter is availing either.

86. First, Claimant argues that Colombia’s denial of benefits claim is “baseless,” because “nationality requirements need be satisfied only at the time of the loss and the registration of the claim.”¹⁵⁸ This fails for two reasons:

86.1 First, Claimant is correct insofar as Article 25(2)(b) of the ICSID Convention provides that nationality must exist “on the date on which the parties consented to submit such dispute to conciliation or arbitration.”¹⁵⁹ But even as Claimant lays out its argument, “nationality requirements need be satisfied [...] at the time of the loss.”¹⁶⁰ Claimant presents its damages case in the Arbitration as of the date of the award, and asks its experts from J.T. Boyd to assume a Valuation Date of 30 June 2025. The CEA, which gutted CGI, went into effect on 24 June 2025.

¹⁵⁵ RER-1, Dentice First Expert Report, ¶¶ 59-62.

¹⁵⁶ RER-1, Dentice First Expert Report, ¶¶ 39, 59-62.

¹⁵⁷ RER-1, Dentice First Expert Report, ¶ 74.

¹⁵⁸ Claimant’s Letter dated 26 March 2026, pp. 2, 7.

¹⁵⁹ ICSID Convention, Art. 25(2)(b).

¹⁶⁰ Claimant’s Letter dated 26 March 2026, p. 2.

- 86.2 Second, Claimant ignores the fact that jurisdiction in ICSID arbitration is assessed both by reference to the ICSID Convention **and** the applicable treaty.¹⁶¹ Articles 819 and 820 of the FTA, by providing that an investor of a Party may submit to arbitration a claim that the other Party has breached an obligation under the FTA, require that a potential claimant qualify as an investor **at the time of the breach**.¹⁶² Claimant alleges a breach of a continuing nature that—according to Claimant—persists to this day.¹⁶³ Claimant’s nationality thus must likewise be assessed at the time of the breach. The tribunal in *Loewen v. United States* assessed as much with respect to NAFTA Articles 1116 and 1117, which are structured nearly identically to Articles 819 and 820 of the FTA, finding that in such circumstances a finding of “continuous nationality” is required to sustain jurisdiction.¹⁶⁴ To establish jurisdiction, therefore, Claimant must show continuous Canadian nationality—something it cannot do in the face of the clear transfer of control to ZGI through the CEA.
87. Second, Claimant claims that the IPO Prospectus is “entirely consistent” with its claimed damages, because Claimant’s claimed damages are for the “lost reserves [...] concentrated in the upper areas of the Buriticá Mine, which had already been stolen and rendered inaccessible by the end of 2024” and “[f]or purposes of the IPO, ZGI’s ore reserve and mineral resources estimates were prepared by SRK Consulting [...] in accordance with the JORC Code (2012), which defines an Ore Reserve as the ‘economically mineable part’ of a mineral resource, that ‘at the time of reporting, extraction could reasonably be justified.’”¹⁶⁵ This does not hold together either. As Mr. Patrick Gorman, Colombia’s expert on the mining industry, explains, Competent Persons are bound to comply with Article 4 of the JORC Code 2012, which requires the provision of all material information that investors and their professional advisers would require, and reasonably expect to find, in a report.¹⁶⁶ Mr. Gorman opines:

With regards to Transparency, in my opinion, if the Competent Persons were made aware that mineralisation at Buritica had at any time been mined by entities other than the holder of the concession (i.e. Continental Gold), the Competent Persons would have been obliged to provide this information under the requirement to be transparent in an adequate detail.

¹⁶¹ **RL-095**, *Abaclat and Others v. Argentine Republic* (formerly *Giovanna a Beccara and Others v. The Argentine Republic*), ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶ 404.

¹⁶² **RL-001**, FTA, Arts. 819, 820.

¹⁶³ Claimant’s Updated Memorial, ¶¶ 246-56.

¹⁶⁴ **CL-017**, *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award, 26 June 2003, ¶¶ 226, 235.

¹⁶⁵ Claimant’s Letter dated 26 March 2026, p. 8.

¹⁶⁶ **RER-2**, Expert Report of Mr. Patrick Gorman of Negotient dated 8 May 2026 (“**Negotient First Expert Report**”), ¶ 100.

[...]

With regards to materiality, in its CPR report SRK confirmed that it completed a 5-day site visit including inspecting underground stopes, reviewing all available documents including geology and mining and held discussions with management and technical personnel.¹⁶⁴ Despite noting that illegal miners were operating underground and selling ores to others, the SRK CPR 2025 makes no effort to mention any estimate of the amounts of material involved. Since the report is mute on the topic it is not possible to know if the Competent Persons were made aware that various sources including reports to ANM (Reconciliation 2022, 2023 and 2024), BAW 2021, SRK 2021 and Witness Statements such as by [REDACTED] had specifically estimated that between 2 Mt and 7 Mt of material had been extracted by Illegal miners. Presented with any information of this type would have in my view obliged a Competent Person to include it in the CPR.¹⁶⁷

88. Third, Claimant alleges that “Respondent’s allegation that Claimant’s failure to discuss the CEA in its submissions is a violation of good faith entirely ignores arbitral practice” because “each Party has the prerogative to present its case as it chooses.”¹⁶⁸ Claimant's assertion that it has the "prerogative" to present its case as it chooses shows a willful disregard for the duty of good faith and rules of professional conduct that govern parties and counsel in international arbitration proceedings. The parties and counsel, in fact, are prohibited from simply presenting its case as it chooses, particularly when counsel's chosen prosecution of its case involves presenting false or misleading information to the Tribunal. Claimant appears to believe it is exempt from these rules. It is not.
89. It is difficult to reconcile Claimant’s arguments in its 26 March Letter that the alleged mineral losses were taken into account in the SRK Report and that, therefore, there was no need for the losses to be disclosed, with its earlier submissions in relation to the redaction application that the redacted information is non-public and may, accordingly, have a material effect on the market value of Claimant – or rather, ZGI.¹⁶⁹ [REDACTED]

170 [REDACTED]

¹⁶⁷ RER-2, Negotient First Expert Report, ¶¶ 101-102.

¹⁶⁸ Claimant’s Letter dated 26 March 2026, p. 5.

¹⁶⁹ The Parties’ Joint Transparency Schedule to Claimant’s Proposed Redactions to Claimant’s Updated Memorial, transmitted to the Tribunal on 12 January 2026, p. 1 (“Claimant’s damages figure in this case is non-public confidential business information, the public disclosure of which would be damaging to Claimant and/or could reasonably be expected to prejudice Claimant.”).

¹⁷⁰ RER-1, Dentice First Expert Report, ¶¶ 30, 74.

90. Claimant’s 26 March Letter labors under a fundamental misunderstanding of Hong Kong Securities law. In the letter, Claimant describes the non-disclosure of its damages as a contingent future gain, or as a “potential increase in revenue based on the outcome of an uncertain future event [...] and no rule of securities law in Hong Kong requires an issuer to disclose contingent future gains. On the contrary, not including a possible future gain associated with a necessarily uncertain legal claim [...] is precisely what a conservative and prudent issuer would do so as not to mislead the investing public.”¹⁷² ZGI’s disclosure obligation, however, was to disclose all information that may be relevant to investors. With respect to subsequent disclosure of “inside information,” this is defined as specific, non-public information about the issuer that would likely have a material impact on price if known.¹⁷³ A contingent claim for damages for nearly [REDACTED], even if uncertain, would be information material to investors given the scale of the claim relative to ZGI’s overall assets.¹⁷⁴ The question of whether disclosure is required does not turn on conservatism or prudence, but on materiality of the information to investors.¹⁷⁵

C. Claimant’s Claims are Inadmissible for Abuse of Process: Manufactured Access to the Benefits of the Treaty

91. Claimant’s invocation of the dispute resolution provisions of Chapter 8 Section B of the Treaty constitutes an abuse of process. Claimant has manufactured its access to the Treaty’s dispute resolution system by structuring the ownership of Continental Colombia and the Buriticá Gold Mine to take advantage of the Treaty, although it was in a situation to which the Contracting States did not intend to extend access to investment arbitration. The Tribunal should accordingly dismiss Claimant’s claims.

1. An Abuse of Process Consists of Conduct Designed to Gain or Maintain Access to Treaty Protection Where it is not Warranted

92. As a matter of general international law, the principle of abuse of process consists of “a serious divergence between the exercise of a procedural right and the overall objectives of the system of adjudication concerned.”¹⁷⁶
93. Arbitral tribunals have acknowledged that the international law doctrine of abuse of process applies in the context of international investment arbitration, precluding parties

¹⁷¹ RER-1, Dentice First Expert Report, ¶ 33.

¹⁷² Letter from Claimant, 26 March 2026, pp. 1–2.

¹⁷³ RER-1, Dentice First Expert Report, ¶ 30

¹⁷⁴ RER-1, Dentice First Expert Report, ¶ 71.

¹⁷⁵ RER-1, Dentice First Expert Report, ¶ 74.

¹⁷⁶ RL-094, Hervé Ascensio, *Abuse of Process in International Investment Arbitration* in CHINESE JOURNAL OF INTERNATIONAL LAW, VOL. 13, 4 December 2014, p. 765.

from invoking treaty rights in a manner that would be contrary to the object and purpose of the ICSID Convention and the relevant BIT.¹⁷⁷

94. Tribunals in recent cases have found an abuse of process where the investor accesses treaty arbitration through a corporate restructuring and (1) a specific dispute is foreseeable at the time of restructuring and (2) the restructuring is, to some extent, motivated by the prospect of obtaining undeserved treaty protection for that specific dispute.¹⁷⁸ The test is an objective one and does not require a specific showing of bad faith.¹⁷⁹
95. Tribunals have adopted different standards for the level of probability required for a dispute to be considered “foreseeable.” In *Gramercy v. Peru*, for example, citing the decision in *Pac Rim v. El Salvador*, the tribunal ruled that a jurisdiction-creating corporate restructuring would render a claim inadmissible for abuse of process if the investor was aware that the asset was burdened with “an existing dispute” with the host State, or if the investor could have foreseen the specific investment dispute “with very high probability, and not merely as a possible controversy.”¹⁸⁰ In *Philip Morris v. Australia*, the tribunal

¹⁷⁷ **RL-069**, *Phoenix Action Ltd. v. Czech Republic*, ICSID Case No. ARB/06/05, Award, 15 April 2005, ¶ 107 (“[The] principle [of good faith] governs the relations between States, but also the legal rights and duties of those seeking to assert an international claim under a treaty. Nobody shall abuse the rights granted by treaties, and more generally, every rule of law includes an implied clause that it should not be abused”). **RL-095**, *Abaclat et al. v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶ 646 (“The theory of abuse of rights is an expression of the more general principle of good faith. The principle of good faith is a fundamental principle of international law, as well as investment law. As such, the Tribunal holds that the theory of abuse of rights is, in principle, applicable to ICSID proceedings[.]”); **CL-097**, *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, ¶ 357 (“Abuse of rights is a general principle of law recognized by civilized nations under Art. 38.1.c) of the ICJ Statute, which reflects the universally accepted principle of good faith, and its existence has been accepted by numerous investment arbitration tribunals.”).

¹⁷⁸ **RL-096**, Duncan Watson and Tom Brebner, Nationality Planning and Abuse of Process: A Coherent Framework in ICSID Review-Foreign Investment Law Journal, 2018; see e.g. **RL-097**, *BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia*, ICSID Case No. ARB/20/12, Award, 30 January 2023, ¶ 151 (“A finding on whether there was abuse – be it in a restructuring case or in an acquisition case – hinges upon (i) whether the investment claims brought before the tribunal were already crystallized or foreseeable at the time of the restructuring or, in this case, at the time the acquisition took place; and (ii) whether the restructuring or acquisition was made for normal business purposes and had an economic rationale, with the intention of engaging in economic activity in the host State.”)

¹⁷⁹ See **RL-097**, *BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia*, ICSID Case No. ARB/20/12, Award, 30 January 2023, ¶ 199; **RL-119**, *Philip Morris Asia Ltd. v. Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015 (“*Philip Morris v. Australia*”), ¶ 539.

¹⁸⁰ **CL-097**, *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, ¶ 360 (citing **RL-098**, *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, 1 June 2012, ¶ 2.99); **RL-091**, *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award, 9 January 2015, ¶ 185 (“[A] restructuring carried out with the intention to invoke the treaty’s protections at a time when the dispute is foreseeable may constitute an abuse of process depending on

found that “foreseeability rests between the two extremes posited by the tribunal in *Pac Rim v. El Salvador* — ‘a very high probability and not merely a possible controversy’” and accordingly determined that “[a] dispute is foreseeable when there is a reasonable prospect that a measure that may give rise to a treaty claim will materialize.”¹⁸¹

96. Drawing on this, the tribunal in *Cascade Investments v. Turkey* also adopted a less demanding standard than “very high probability,” elaborating that the foreseeability requirement is essentially a reasonability test that takes the degree of probability as one factor of a more holistic approach:

[I]t must be “reasonably foreseeable,” but not necessarily “highly probable”. . . . The doctrine does not turn on the *precise odds* of adverse government action at the time of a decision to acquire a preexisting investment or operation in the host State. It can attach if the evidence shows that a reasonable investor, conducting an appropriate inquiry, should have understood that the investment it was acquiring already faced a *significant risk* of government action that would adversely affect its rights, but nonetheless chose to proceed in the *absence of any real commercial rationale* for doing so. The degree of apparent risk may factor into a holistic evaluation of all the circumstances (as discussed further below), but it is not a rigid requirement of proof in and of itself. . . . In other words, the Tribunal agrees with prior awards that describe foreseeability as a *continuum* between unforeseeable disputes and highly probable disputes, with most cases falling somewhere between the two extremes (and thus, by definition, not precisely at either)”¹⁸²

97. The *Cascade Investments* nuanced approach is most in line with the general purpose of the abuse of process doctrine, which is to give effect to the objects and purposes of the treaties underlying the arbitration.¹⁸³ After all, “[t]he theory of abuse of rights is an expression of the more general principle of good faith [which is] a fundamental principle of international law, as well as investment law.”¹⁸⁴
98. With regard to the necessary degree of motivation to access arbitration in connection with the foreseeable dispute, tribunals have likewise accepted showings of motivation with

the circumstances. In this respect, the Tribunal agrees with the test suggested in *Pac Rim* whereby ‘a specific future dispute’ must be ‘forese[eable] [...] as a very high probability and not merely as a possible controversy.’”)

¹⁸¹ **RL-119**, *Philip Morris v. Australia*, ¶¶ 554, 585.

¹⁸² **RL-092**, *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶¶ 345, 347 (emphasis in original).

¹⁸³ See **RL-093**, *Mobil Corporation et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, 10 June 2010, ¶ 184.

¹⁸⁴ **RL-095**, *Abaclat et al. v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶ 646.

varying degrees as sufficient for the finding of abuse of process. Where evidence shows that the dispute in question was foreseeable at the time of the restructuring, tribunals have placed the burden of demonstrating an alternative business rationale for the restructuring on the claimant.

99. In *Tidewater v. Venezuela*, the tribunal considered it sufficient motivation for a finding of “abuse of treaty” that “one of the two reasons” for the reorganization that led to the incorporation of the claimant in Barbados was to obtain access to investor-state arbitration under the Barbados-Venezuela BIT in anticipation of adverse action by Venezuela, the other reason being put forward by the claimant being tax advantages.¹⁸⁵
100. In *Pac Rim v. El Salvador*, the tribunal considered that a finding that access to treaty protection was a “principal” or “dominant” purpose of the reorganization is sufficient for the determination of requisite motivation, and while doing so also put the onus of showing an alternative purpose on the claimant:

The Tribunal finds as a relevant fact, based on the Claimant’s own evidential materials, that one of the principal purposes of the change in the Claimant’s nationality was the access thereby gained to the protection of investment rights under CAFTA and its procedure for international arbitration available against the Respondent. Although the Tribunal accepts that another purpose was to save unnecessary expenses for the Pacific Rim group of companies, the Tribunal finds, as a fact, again based on the Claimant’s own evidential materials, that such a purpose was not the dominant, still less the only, motive for the change. As rightly emphasized by the Respondent, “...Claimant presents no evidence that the costs of maintaining a limited liability company in Nevada are significantly cheaper than being incorporated in the Cayman Islands.”¹⁸⁶

101. Finally, the tribunal in *Philip Morris v. Australia*, while noting that “it would not normally be an abuse of right to bring a BIT claim in the wake of a corporate restructuring, if the restructuring was justified independently of the possibility of bringing such a claim,” put the burden of proving that other business reasons were in fact “determinative factors for the Claimant’s restructuring,” which had conceded that “the restructuring was done partly in order to obtain protection under the BIT.” Finding that claimant was unable to prove otherwise, the tribunal concluded that “the main and determinative, if not sole, reason for

¹⁸⁵ **RL-099**, *Tidewater Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013, ¶ 183. The tribunal nevertheless found no abuse because it determined the expropriation alleged by the claimant was not yet reasonably foreseeable at the time of its reorganization. **RL-099**, *Tidewater Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013, ¶ 194.

¹⁸⁶ **RL-098**, *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent’s Jurisdictional Objections, 1 June 2012, ¶ 2.41.

the [investor's] restructuring was the intention to bring a claim under the Treaty" in a foreseeable dispute, which rendered the initiation of the arbitration an abuse of process.¹⁸⁷

102. While the relevant investment treaty case law on abuse of process mainly focuses on corporate restructurings where arbitral jurisdiction is created by the insertion of a new entity with the requisite nationality (whether existent or freshly established) in the ownership structure of the investment,¹⁸⁸ other duplicitous corporate structuring schemes may also be a basis for a finding of abuse if they are motivated by the purpose of securing access to arbitration in a foreseeable dispute by an otherwise ineligible investor. As the tribunal in *Cascade Investments v. Turkey* explained,

True enough, prior abuse of process cases have arisen in the restructuring context, and the decisions in such cases therefore address the issue of restructuring ownership interests within a corporate (or real) family. **But the fact that a concern generally arises in a particular context does not mean, as a matter of either logic or law, that comparable concerns never could arise in a different context, which might justify application of the same core principles.** The *Orascom* tribunal made such an observation when it concluded that the "general principle" of prohibiting abuse "may equally apply in contexts other than the one" in which it "[s]o far ... has found application in investment jurisprudence."¹⁸⁹

103. This also follows from the fact that "[t]he theory of abuse of rights is an expression of the more general principle of good faith."¹⁹⁰ The gist of the doctrine of abuse of process is that an investor acts abusively if it invokes the right to initiate or maintain an arbitration where the treaty under which the arbitration is initiated does not have as its purpose the extension of that right to such an investor.

2. Claimant has Committed Abuse of Process

104. In the present case, Claimant's corporate restructuring—the CEA and its inevitable end—constitute an abuse of process of the second sort: Claimant has artificially preserved its

¹⁸⁷ **RL-119**, *Philip Morris v. Australia*, ¶¶ 570, 582–584.

¹⁸⁸ See **RL-100**, Emmanuel Galliard, Abuse of Process in International Arbitration in ICSID REVIEW, VOL. 32, ISS. 1, 24 December 2016; **RL-101**, Hanno Wehland, The Application of the Prohibition of Abuse of Process Principle in the Context of Corporate Restructurings Aimed at Obtaining Protection under Investment Treaties: A Critical Review, in JOURNAL OF INTERNATIONAL ARBITRATION, VOL 42, ISS. 4, August 2025.

¹⁸⁹ **RL-092**, *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 353 (emphasis added); **RL-069**, *Phoenix Action v. Czech Republic*, ICSID Case No. ARB/06/05, Award, 15 April 2009, ¶ 107 (citing **RL-102**, Hersch Lauterpacht, *The Development of International Law by the International Court*, London, 1958, p. 164) ("There is no right, however well established, which could not, in some circumstances, be refused recognition on the ground that it has been abused.").

¹⁹⁰ **RL-095**, *Abaclat et al. v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶ 646.

Canadian nationality to maintain its treaty protection. Its conduct, however, is no less abusive as a result. Rather, ZGI's gutting of the role of CGI, coupled with the emergence of the CEA, calls into question which entity is even continuing the Arbitration with Colombia. Claimant's abuse of the arbitral system cannot be taken lightly and must lead to the dismissal of the Arbitration.

a. The manipulation of the corporate structure of ZGI constitutes an abuse of process

105. Zijin Mining has retained Claimant in its corporate structure as a shell entity with the dominant purpose of accessing investment arbitration in connection with the present dispute, which was foreseeable on the date of Zijin Mining's acquisition of Claimant in late 2019-early 2020, if not earlier.
106. Although the CEA was enacted as of 24 June 2025, the record in the IPO Prospectus suggests that CGI was gutted long before that, and there is thus no basis to assume that the hollowing out of CGI occurred only *after* the initiation of this arbitration on 28 June 2024 or that CGI's function in the corporate structure was much different at the start of these proceedings than it was immediately before the conclusion of the CEA. Accordingly, absent proof from Claimant that would refute CGI's apparent lack of operational, managerial, and commercial significance in the ownership structure of the investment at the time of the initiation of this arbitration, this Tribunal should consider that a suspect restructuring had taken place before the commencement of this arbitration, and consider whether this dispute was foreseeable to the requisite degree at the time of the restructuring to render the initiation of this arbitration abusive.
107. This dispute was reasonably foreseeable to Zijin Mining and to Claimant (if it still had a separate consciousness) at least since 2016 by Claimant's own admission.¹⁹¹ Claimant's allegations suggest that Claimant was by then suffering losses in the form of depleted mineral reserves due to informal mining activities which by then was already at a high volume,¹⁹² and Claimant, again by its own admission, was relying on ad hoc security cooperation agreements with Colombia's security forces and the entirely voluntary

¹⁹¹ Claimant's Updated Memorial, ¶¶ 87 *et seq.* Claimant likely could reasonably foresee the dispute even before 2016, even as early as 2012, as explained below in the section on the untimeliness of Claimant's claims, *see infra* Section IV.B.; *see also* **RL-092**, *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 345 (explaining the abuse of process doctrine "can attach if the evidence shows that a reasonable investor, conducting an appropriate inquiry, should have understood that the investment it was acquiring already faced a significant risk of government action that would adversely affect its rights, but nonetheless chose to proceed in the absence of any real commercial rationale for doing so").

¹⁹² *See e.g.* Claimant's Updated Memorial, ¶ 88 ("[T]he Company alerted the Colombian authorities to the presence of numerous illegal miners in the underground workings of the Mine whose activities threatened to collapse part of the tunnels in the Rampa Sur area. The Company sought the eviction of around 800 illegal miners who had created a network of tunnels that interconnected with the tunnels of the Mine. The Company also denounced the uncontrolled use of powerful and improvised explosive devices near the Project's site, which endangered lives and damaged mining infrastructure, amongst other detrimental impacts.")

undertaking of large-scale enforcement operations by the Colombian armed forces for the mitigation of the alleged losses.¹⁹³

108. In possession of this actual or constructive knowledge of what it later alleged to be a breach of the Treaty's substantive protections, Zijin Mining proceeded to transform CGI's function in the Buriticá Mine's ownership structure and hollow CGI out, and Claimant cannot show "any real commercial rationale" for why this was done.¹⁹⁴
109. Claimant's failure to make any showing regarding its control of the investment and, furthermore, its apparent lack of significant activities in Canada lay bare the only rational explanation of why CGI was retained in the corporate structure with all its functions regarding the Mine were stripped to retain access to arbitration under the FTA for this very dispute, which was already reasonably foreseeable at the time Zijin Mining acquired Claimant. For this reason, Claimant's initiation of this arbitration constitutes an abuse of process, and the Tribunal should dismiss Claimant's claims.

b. Extending Treaty Protection only to Investments of True Canadian Investors is Consistent with the Object and Purpose of the Treaty

110. An abuse of process is "a serious divergence between the exercise of a procedural right and the overall objectives of the system of adjudication concerned."¹⁹⁵ In the context of adjudicative systems established by international treaties such as the ICSID Convention and the FTA, the "overall objectives" of the system corresponds to the object and purpose of a treaty in the light of which a treaty's terms must be interpreted under Article 31 of the 1969 Vienna Convention on the Law of Treaties.¹⁹⁶

¹⁹³ See Claimant's Updated Memorial, ¶¶ 84, 92, and 120.

¹⁹⁴ **RL-092**, *Cascade Investments NV v. Republic of Turkey*, ICSID Case No. ARB/18/4, Award, 20 September 2021, ¶ 345 (The doctrine of abuse of process "can attach if the evidence shows that a reasonable investor, conducting an appropriate inquiry, should have understood that the investment it was acquiring already faced a significant risk of government action that would adversely affect its rights, but nonetheless chose to proceed in the absence of any real commercial rationale for doing so").

¹⁹⁵ **RL-094**, Hervé Ascensio, *Abuse of Process in International Investment Arbitration* in CHINESE JOURNAL OF INTERNATIONAL LAW, VOL. 13, 4 December 2014. See also **RL-103**, Robert Kolb, *General Principles of Procedural Law* in THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY 831 (Zimmermann, Tomuschat, & Oellers-Frahm eds. 2006) ("Abuse of procedure is a special application of the prohibition of abuse of rights, which is a general principle applicable in international law as well as in municipal law. It consists of the use of procedural instruments or rights by one or more parties for purposes that are alien to those for which the procedural rights were established, especially for a fraudulent, procrastinatory or frivolous purpose, for the purpose of causing harm or obtaining an illegitimate advantage, for the purpose of reducing or removing the effectiveness of some other available process or for purposes of pure propaganda").

¹⁹⁶ **RL-004**, Vienna Convention on the Law of Treaties, United Nations, 23 May 1969, Art. 31 provides "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The rules of the VCLT on treaty interpretation are binding on this Tribunal as customary international law. See **RL-104**, Rudolf Dolzer et al., PRINCIPLES OF INTERNATIONAL INVESTMENT LAW, THIRD EDITION, VOL. 36, 2022; **RL-105**, Oliver Dörr and Kirsten Schmalenbach, *Commentary to Article 31 General Rule of Interpretation* in VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY, 2018, ¶ 6 ("The view of the ICJ that the Vienna rules of interpretation are without any distinction universally binding as customary international law is widely shared by other

111. The object and purpose of the FTA must be determined by reference to the type of the treaty, and the title and preamble of the treaty, read in light of its substantive provisions.¹⁹⁷
112. The FTA is a fully fledged free trade agreement that includes the protection of investments as a constituent part, rather than a regular bilateral investment treaty. Free trade agreements, as a category, seek integration between the economies of the Contracting State parties by establishing free trade areas that liberalize trade between the constituent States to the necessary exclusion (though not detriment) of the economies of other States from the trade-facilitating advantages of the agreement.¹⁹⁸
113. Because of this, provisions of an FTA regarding preferential dispute resolution must be interpreted with regard to this particular object and purpose, which is distinct from that of a regular BIT whose purpose is generally limited to facilitating investments originating from the party States without necessarily seeking further economic integration.¹⁹⁹ In the present case, it is especially necessary that the Tribunal interpret the ISDS provisions in light of the FTA's objective of exclusive economic integration, because the text of the

international courts, such as ITLOS, the ECtHR, the ECJ and the dispute settlement bodies of the WTO, as well as many arbitral institutions and some national courts.”) (emphasis in original); **RL-106**, Martins Paparinskis, *The Interpretation of Treaties and Investment Arbitration: Introductory Reflections in THE VIENNA CONVENTION ON THE LAW OF TREATIES IN INVESTOR-STATE DISPUTES: HISTORY, EVOLUTION AND FUTURE*, 9 September 2022, pp. 25–26 (“The first point I want to make is that there is only one ‘game in town’ for treaty interpretation – ‘the rules of treaty interpretation enshrined in Articles 31 and 32 of the Vienna Convention on the law of Treaties . . . reflect rules of customary international law.’ That is not controversial in 2022, even for States that are not Parties to the Vienna Convention on the Law of Treaties[.]”).

¹⁹⁷ **RL-105**, Oliver Dörr and Kirsten Schmalenbach, *Commentary to Article 31 General Rule of Interpretation in VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY*, 2018, ¶ 55 (Art. 31 para. 1 uses the singular form “object and purpose”. . . thus the general rule of interpretation clearly means to refer as a single overarching notion to the telos of the treaty as a whole. . . . There are various ways of determining the object and purpose of a treaty. . . . recourse to the title of the treaty may be helpful. Moreover, the preamble of a treaty is regularly a place where the parties list the purposes they want to pursue through their agreement. In other cases the type of treaty may itself attract an assumption of a particular object and purpose. . . . Generally, however, a reading of the whole treaty, i.e. of all its substantive provisions, will be required to establish the object and purpose with some certainty.); **RL-107**, Isabella Buffard and Karl Zemanek, *The ‘Object and Purpose’ of a Treaty: An Enigma?*, 3 AUST. REV. INT’L & EUR. L. 311, 333 (1998) (In a first stage, a prima facie assumption of the object and purpose of a treaty must be formed by having recourse to the title, preamble and, if available, programmatic articles of the treaty. This assumption must then be tested in a second stage against the text of the treaty and all other available material and, if necessary, adjusted in the light of that test.).

¹⁹⁸ See, e.g., **RL-109**, World Trade Organization, General Agreement on Tariffs and Trade (GATT), 1947, Art. XXIV (“The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements . . . [T]he purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.”); Art. V (“This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement . . . shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade[.]”)

¹⁹⁹ See, e.g., **RL-110**, *Ethyl Corporation v. Government of Canada*, UNCITRAL, Award on Jurisdiction, 24 June 1998, ¶¶ 56–57 (interpreting NAFTA’s Chapter 11 ISDS mechanism not autonomously but with reference to NAFTA’s general object and purpose as stated in NAFTA Article 102).

Treaty expressly subordinates the investment provisions to the other provisions of the FTA related to trade liberalization.²⁰⁰

114. The recitals included in the preamble shed light on the exclusionary object and purpose of the FTA, with which the Claimant's actions are in conflict. The most explicit recitals in this regard are reproduced below.

CANADA and THE REPUBLIC OF COLOMBIA
("Colombia"), hereinafter referred to as "the Parties", resolved
to:

STRENGTHEN the special bonds of friendship and cooperation
among their peoples;

...

PROMOTE hemispheric economic integration;

CREATE an expanded and secure market for the goods and
services produced in their territories, as well as new employment
opportunities and improved working conditions and living
standards in their respective territories[.]²⁰¹

115. Accordingly, making available the benefits of the ISDS provisions of the Canada-Colombia FTA to Chinese investors with no economic ties to Canada is, at best, *prima facie* inconsistent with the FTA's economic and political objective of achieving "hemispheric integration," which is a term used in the international trade literature and treaty practice to refer almost exclusively to the economic integration of the *Americas*, of which neither China nor Hong Kong is a part.²⁰²
116. The fact that Chapter Eight of the Treaty governing investments and ISDS incorporates a denial of benefits provision granting a Contracting State the right to exclude from the protection of the FTA entities that have no economic ties and no national affiliation to the other Contracting State supports an interpretation that acknowledges the exclusionary object and purpose of the FTA.²⁰³

²⁰⁰ **RL-001**, FTA, Art. 802.

²⁰¹ **RL-001**, FTA, Preamble.

²⁰² See, e.g., **RL-111**, Hemispheric integration, ENCYCLOPEDIA BRITANNICA, last accessed 1 May 2026. Recitals referring to contribution to or promotion of "hemispheric integration" appear in various (but not all) free trade agreements made among the United States, Canada, and Latin American countries, see, e.g., **RL-112a**, Canada-Chile Free Trade Agreement, Preamble, 5 December 1996, **RL-112b**, Canada-Panama Free Trade Agreement, Preamble, 14 May 2010, **RL-112c**, Dominican Republic-Central America Free Trade Agreement, Preamble, 5 August 2004, **RL-112d**, U.S.-Panama Trade Promotion Agreement, Preamble, 28 June 2007, **RL-112e**, U.S.-Chile Free Trade Agreement, Preamble, 6 June 2003.

²⁰³ **RL-001**, FTA, Art. 814.

117. Furthermore, in its non-disputing party submission in the *Aris Mining v. Colombia* arbitration, the Canadian Government acknowledged that the objectives of the FTA are “set out in the Treaty’s preamble,” including in the recitals regarding “the stimulation of mutually beneficial business activity and the strengthening of friendly relations between the Contracting Parties,” and that the preamble reflects the intention of the Contracting Parties to provide mutual and exclusive protection to persons that have “real economic link or ties with the country in which they are constituted or organized.”²⁰⁴ The Tribunal may and should consider Canada’s position as a supplementary means of interpretation under article 32 of the VCLT, confirming its interpretation made in accordance with the general rule of article 31 of the VCLT.²⁰⁵
118. In light of the foregoing, it is evident that Claimant is not an entity intended to be a beneficiary of the FTA’s investment provisions, including the Contracting States’ offer to arbitrate investment disputes. While CGI might have been a legitimate beneficiary of the Treaty’s investment-related protections before its acquisition by Zijin, after the acquisition, as is explained above, Zijin fundamentally transformed Claimant by stripping it of all its managerial, operational, commercial, and financial functions, effectively transforming it into a shell company.
119. As a result, there is no semblance between pre- and post-acquisition CGI with regard to its function in the Buriticá Gold Mine’s ownership structure or with regard to CGI’s other prior operations in Canada and Colombia. CGI’s management team that created the Buriticá Gold Mine project and developed it into a viable mining operation from scratch left the company after its acquisition by Zijin Mining. This team appears to have started another junior mining company focused on developing mines in Colombia by raising funds in Canada.²⁰⁶ This new company, called Collective Mining, is founded and led by Continental Gold’s former CEO, Ari Sussman. Collective Mining even uses the same

²⁰⁴ **RL-005**, *Aris Mining Corporation (formerly known as Gran Colombia Gold Corp. or GCM Mining Corp.) v. Republic of Colombia*, ICSID Case No. ARB/18/23, Decision on the Bifurcated Jurisdictional Issue, 23 November 2020 (“*Aris Mining*”), ¶ 120 (“Canada states that Article 814 of the Treaty must be understood by reference to the Contracting Parties’ objectives set out in the Treaty’s preamble (including the stimulation of mutually beneficial business activity and the strengthening of friendly relations between the Contracting Parties). The denial of benefits provision allows a Contracting Party to deny the benefits of the FTA if the objectives of the Treaty would not be advanced, such as where investors are enterprises with no real economic link or ties with the country in which they are constituted or organized. This prevents enterprises of non-Parties or of the denying Party from gaining access to treaty protection simply through incorporation in the jurisdiction of a Contracting Party.”) Canada’s comment was made in the context of the interpretation of the FTA’s denial of benefits provision, whose inclusion in the FTA further indicates the Contracting Parties’ objective to provide exclusive protection. **RL-005**, *Aris Mining*, ¶ 120.

²⁰⁵ See **RL-120**, Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, 2008, p. 445, ¶¶ 2–5

²⁰⁶ See **Exhibit R-0024**, *Collective Mining Commences Trading on the TSX Venture Exchange*, Globe Newswire, 28 May 2021 (“‘The management team and I are very excited to return to Colombia, a country with untapped mineral potential and backed by supportive governments and communities,’ commented Ari Sussman, Executive Chairman of Collective. ‘Upon completing the sale of Continental Gold to Zijin Mining, our team was eager to re-apply our skillsets towards discovering another world-class deposit and advancing it to production.’”).

ticker symbol (“CGL”) in the Toronto Stock Exchange that Continental Gold used prior to its delisting from that exchange as part of Zijin’s acquisition process.²⁰⁷

120. Furthermore, there is no indication that Continental Gold continued substantially any of its previous activity in Canada after its acquisition by Zijin. Claimant has proffered no evidence whatsoever related to Continental Gold’s activities in Canada post-acquisition, other than a few conclusory and unsupported remarks in the witness statement of Dr. [REDACTED].²⁰⁸
121. For the foregoing reasons, Claimant is now outside of the ambit of the FTA’s investment protections, and its invocation of the FTA’s arbitration provisions is therefore an abuse of process. The Tribunal should dismiss Claimant’s claims.

D. Claimant’s Claims are Inadmissible for Abuse of Process: Abuse of the Arbitral Procedure

122. Parties to an arbitration have an obligation to conduct themselves in good faith throughout the arbitral proceedings.²⁰⁹ This includes a duty not to affect the integrity of the arbitration²¹⁰ and to cooperate with the tribunal and the production of evidence.²¹¹
123. Fraud can be raised as a defense by respondents in an investment arbitration where the claimant knowingly misleads the tribunal.²¹² A bad faith claimant may exploit arbitral proceedings by taking advantage of arbitrators’ limited powers of investigation.²¹³ It therefore frequently falls to the other party, such as Colombia here, to discover and elucidate such abuses of the system.
124. In the present case, Claimant has failed to show the necessary candor toward the Tribunal regarding the completeness of its submissions and the appropriateness of its proposed redactions. It is reasonable to assume that the timing of the IPO appears to have created

²⁰⁷ See **Exhibit R-0024**, Collective Mining Commences Trading on the TSX Venture Exchange, Globe Newswire, 28 May 2021.

²⁰⁸ Witness Statement of [REDACTED], 10 July 2025 (“[REDACTED] First Witness Statement”), ¶ 16; see also *supra* Section II.C on Respondent’s denial of benefits claim.

²⁰⁹ See **RL-103**, Robert Kolb, General Principles of Procedural Law, in *THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY*, p. 830 (“The most fundamental principle of substantive law applicable to judicial proceedings in general is the proposition that, by engaging in proceedings before an international tribunal, the parties enter into a legal relationship characterized by mutual trust and confidence. Thus, the parties are bound by a general commitment of loyalty among themselves and towards the Court.”)

²¹⁰ See **CL-068**, Quiborax S.A. and Non Metallic Minerals S.A. v. Plurinational State of Bolivia, ICSID Case No. ARB/06/2, Award, 16 September 2015, ¶ 593.

²¹¹ See **RL-114**, *Lao Holdings N.V. v. Lao People’s Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Award, 6 August 2019, ¶ 280.

²¹² See **RL-115**, Utku Cosar, *Fraudulent Evidence: Investment Arbitration* in *MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PROCEDURAL LAW*, June 2020, ¶ 1.

²¹³ **RL-116**, Steven Perian, *Tackling Fraud and Corruption in International Arbitration* in *THE LAW REVIEW*, 2005, p. 167.

a disincentive to be completely frank with the Tribunal regarding the valuation of the Claimant's alleged injury.

125. The ZGI IPO took place in Hong Kong on 30 September 2025. Since ZGI holds financial rights to the proceeds of the Buriticá Gold Mine, the IPO necessitated a valuation of it.²¹⁴ For that reason, ZGI commissioned the SRK Competent Person's Report, which was appended to the Prospectus and was issued on 31 July 2025.²¹⁵
126. The temporal coincidence of the Claimant's alleged inability to present a quantification of its alleged losses in the first version of its Memorial and the disclosure made by ZGI in the context of the IPO in the Hong Kong stock exchange is suspect. The coincidence of timing of Claimant's various applications for extensions and to bifurcate the proceedings with the SRK site visit, the issuance of the SRK report, and the timing of the IPO warrants close scrutiny.
127. In addition to the discussion *supra* of Claimant's misrepresentations before the Tribunal, it is also worth noting that Claimant's 26 March 2026 letter responding to Colombia's request to make the present submission, in an apparent attempt to argue that Claimant never intended to misrepresent anything, puts its misrepresentations front and center: Claimant, which repeatedly claimed it could not present its losses due to their changing nature, claims the premise of the present application is "wrong," because "[t]he damages claimed in this arbitration to date relate entirely to the period from 7 August 2022 through 31 December 2024."²¹⁶ Why, then, were site visits and further development of Claimant's case necessary (and alleged to be impossible) in May and July 2025?
128. In addition, the scope of SRK's investigation in May 2025 calls into question Claimant's case on the dynamic situation of the Mine. The report's findings were at least partially based on SRK's site visit, in which "SRK observed and inspected the locations of exploration and production boreholes, drill cores and underground stopes showing the gold mineralisation, the Buriticá Plant, ore and waste stockpiles, tailings storage facilities [], water source and power supply station, the office and living areas, and other associated infrastructure."²¹⁷
129. Moreover, in the preparation of the report, SRK did the following to gather information:
- review of data and Mineral Resource models provided by CGL
Colombia and Zijin Gold International, and the preparation of a

²¹⁴ See **Exhibit R-0001**, IPO Prospectus, p. 387 (PDF p. 397 of 2834) ("[ZGI] has the right to direct the exploration, development, extraction, processing, sales, transportation, and environmental restoration activities with the exclusive management and operation of the Colombia Buriticá Gold Mine[.]").

²¹⁵ **Exhibit R-0001**, IPO Prospectus, Appendix IIIC: Competent Person's Report of the Buriticá Gold-Silver Project in Antioquia, Colombia, p. IIIC-1 (PDF p. 1162 of 2834).

²¹⁶ Letter from Claimant, 26 March 2026, p. 11.

²¹⁷ **Exhibit R-0001**, IPO Prospectus, Appendix IIIC: Competent Person's Report of the Buriticá Gold-Silver Project in Antioquia, Colombia, p. IIIC-31 (PDF p. 1192 of 2834).

data verification plan which will be conducted during site inspection.

[...]

review of all available documents, including operating licences and permits, geology reports and environmental impact assessment (“EIA”) reports, mineral processing technology and mining methodologies, capital expenditures (“Capex”) and operating costs (“Opex”), etc.

discussion with CGL Colombia and Zijin Gold International management and technical personnel, as well as the professionals of Zijin (Xiamen) Engineering Co., Ltd (“Zijin Xiamen”), who conducted either the geology and exploration or the feasibility study (“FS”) on the Buritica [sic] Project.²¹⁸

130. The SRK Report includes a discounted cash flow analysis estimating the net present value (“NPV”) of the Buritica Gold Mine and which concludes that “SRK estimated the NPV in a range of USD2.67 billion (at 10% discount rate) to USD3.32 billion (at 6% discount rate), with a base case of USD2.96 billion using a discount rate of 8%.”²¹⁹
131. Given that ZGI was in a position to quantify and disclose the value of the Buritica Gold Mine for the IPO in a manner that is sufficient to satisfy Hong Kong securities law and the rules of the Hong Kong Stock Exchange by way of a final report dated 30 June 2025, it is remarkable that the Claimant was unable to present even a preliminary case on damages on 10 July 2025.
132. This suggests, therefore, that the Claimant has taken advantage of the good faith of the Respondent and the Tribunal to attempt to skirt its own good faith obligation to present its case and to not aggravate the dispute.
133. Another juxtaposition between the IPO Prospectus and the Claimant’s claims is equally telling: Claimant alleged in its Transparency Schedule for its Updated Memorial that “Claimant’s damages figure in this case is non-public confidential business information, the public disclosure of which would be damaging to Claimant and/or could reasonably be expected to prejudice Claimant.” But as Mr. Dentice explains, that information—if it rises to the level alleged by CGI—should have been directly or indirectly disclosed to the investing public in the Zijin Gold International IPO.²²⁰

²¹⁸ Exhibit R-0001, IPO Prospectus, Appendix IIIC: Competent Person’s Report of the Buritica Gold-Silver Project in Antioquia, Colombia, p. IIIC-31 (PDF p. 1192 of 2834).

²¹⁹ Exhibit R-0001, IPO Prospectus, Appendix IIIC: Competent Person’s Report of the Buritica Gold-Silver Project in Antioquia, Colombia, p. IIIC-170 (PDF p. 1331 of 2834).

²²⁰ See Final Transparency Schedule with Parties’ Joint Comments, submitted 12 January 2026, Respondent’s comments to Request 1. Indeed, the Tribunal in P.O. 6 noted that “due to the **substantial difference between the initially claimed amount and the updated damages figure**, the Tribunal is satisfied that the disclosure

134. In *Merrill & Ring v. Canada*, the tribunal stated that, in the case of documents which a party may seek to withhold based on the existence of confidential business information, those documents “can be protected on the public record by the filing of appropriately redacted documents [...] The Tribunal accordingly will order the production of such documents but requests the parties to introduce the appropriate redaction in case this is judged, **in good faith, to be essential for the protection sought.**”²²¹
135. Contrary to this principle of good faith submission, Claimant has lied to the Tribunal about information which legally ought to be public and exploited the redactions system permitted by PO2, thereby affecting the integrity of this Arbitration. “[C]onduct that involves fraud and an abuse of process deserves condemnation,”²²² but necessarily, there also must be legal consequences. The tribunal in *Churchill Mining v. Indonesia*, which surveyed the arbitral jurisprudence on this issue in its award, concluded the following regarding the determination of the legal consequences of fraudulent behavior by the parties:
- The legal consequences of fraudulent conduct depend to a large extent on the circumstances of each case, which may include the applicable treaty, the seriousness of the fraud, the role of the disputing parties or third parties in relation to the fraud, the nexus between the fraud and the claims, and the time when the fraud was committed. A review of international cases shows that fraudulent conduct can affect the jurisdiction of the tribunal, or the admissibility of (all or some) claims, or the merits of a dispute.²²³
136. In this case, Claimant’s misrepresentations concerned evidence in support of its damages case, which is directly relevant to the jurisdiction of this Tribunal.²²⁴ This point is acknowledged by the Tribunal in PO5, wherein the Tribunal observed that the text of Articles 819 and 820 “suggest that all three elements – breach, harm, and the causal link between the two – are constituent elements of establishing a tribunal’s jurisdiction under the widely accepted prima facie test.”²²⁵ The misrepresentations have prejudiced

of the latter could cause the Claimant financial harm by **negatively impacting the market value of Claimant** and Continental Gold Limited Sucursal Colombia (the “Company”) and prejudicing Claimant’s competitive position.” Procedural Order No. 6, 28 January 2026, ¶ 32 (emphasis added). One would presume that any information or expectations regarding the impact the dispute would have on the Claimant’s market value were made public in the IPO materials, especially given that the initial claim was made before the IPO and the update claim after the IPO.

²²¹ **RL-121**, *Merrill & Ring Forestry L.P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Decision of the Tribunal on Production of Documents, 18 July 2008, ¶ 32 (emphasis added).

²²² **RL-118**, *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009, ¶ 180.

²²³ **RL-089**, *Churchill Mining PLC and Planet Mining Pty. Ltd. v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, 6 December 2016, ¶ 494.

²²⁴ See Letter from Respondent, 18 July 2025 and Letter from Respondent, 1 August 2025; see *infra* Section VI.

²²⁵ Procedural Order No. 5, ¶ 42.

Colombia by interfering with its right to respond to Claimant’s allegations in due procedural course. Perhaps more important, the misrepresentations have tainted the credibility of Claimant’s damages case. According to the relevant arbitral case law, “[i]n cases where the fraudulent evidence is submitted by a claimant to support its assertion of jurisdiction, the result of a finding of fraud will likely be dismissal of the claim for lack of jurisdiction.”²²⁶ The Tribunal should accordingly not credit Claimant’s damages case that is tainted by its fraudulent behavior and should dismiss the claims for failure to establish jurisdiction under the FTA.

III. FACTUAL BACKGROUND OF THE DISPUTE

137. Buriticá is a municipality within the Antioquia Department in the northwestern part of Colombia. Buriticá has its origins as a rural agricultural community. In 2009, the discovery of one of the largest gold deposits on the South American continent radically transformed this small agriculture village into a gold rush town.²²⁷ Migrants seeking fortunes in gold rushed in. Parasitic criminal organizations extorting their cut of others’ gold followed. Crime and illicit activity grew.²²⁸ This is a familiar pattern—one that had been repeated over the ages wherever rich gold deposits are discovered. Legal mining, illegal mining, criminal organizations, crime. This is the world that Continental Colombia knowingly stepped into in 2011, when entering into the concession agreement with Colombia to develop the Buriticá Mine.
138. Thereafter, Continental Colombia, in cooperation with Colombia, worked to prevent and address illegal mining. Colombia offered military and specialized police platoons (the first of their kind in the world) to prevent and push back illegal mining, recover mining tunnels that illegal miners had blocked, and protect Continental Colombia miners from potential attacks from illegal miners. Despite the constant presence and intervention of the Colombian military and specialized police forces and private security forces supplied by Continental Colombia’s new parent company, Continental Gold, Inc., administrative actions—*amparos*—to remove illegal miners and their settlements, and a years-long targeted campaign to combat illegal mining known as *Operación Creta*, illegal mining in Buriticá persisted.²²⁹ Continental Gold acknowledged the sustained problem of illegal mining in Buriticá. In 2016, CGI’s Chairman of the Board announced, “Illegal mining is endemic to areas with high-grade gold deposits in Colombia, as it has been throughout history elsewhere in the world. The Colombian government has declared ‘war on criminal mining’ and is deploying its resources to control the activity in various parts of

²²⁶ **RL-115**, Utku Cosar, *Fraudulent Evidence: Investment Arbitration* in MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PROCEDURAL LAW, June 2020, ¶¶ 46 et seq. (citing **RL-118**, *Europe Cement Investment and Trade S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/07/2, Award, 13 August 2009; **RL-122**, *Vito G. Gallo v. Government of Canada*, PCA Case No. 2008-03, Award, 15 September 2011).

²²⁷ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 12.

²²⁸ **Exhibit R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019, pp. 4–6; **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 8–13.

²²⁹ See **Exhibit C-0433**, Chart of Detonations, Improvised Explosive Devices, and Shootings (2020–2024), 2025 (indicating increasing illegal mining detonations after the conclusion of Operation Creta).

the country.”²³⁰ CGI continued expressing concerns about illegal mining in its annual reports from 2016,²³¹ 2017,²³² and 2018.²³³

139. This was the world that Zijin Mining knowingly stepped into in late 2019, when it acquired Continental Gold Inc. and the Buriticá Mine.
140. With the change in ownership of the Buriticá Mine, Zijin Mining cut or deprioritized community and social license programs, and illegal mining found a resurgence. Through the COVID-19 Pandemic and after, Colombian military forces, specialized police units, the municipality of Buriticá, the Department of Antioquia, and countless Colombian agencies and institutions provided constant and continual assistance in combating illegal mining in the Buriticá Mine. Further, from 2021 through 2025, Colombia launched multiple additional targeted campaigns against illegal mining – three of them known as *Operación Hades*, *Operación Hefesto*, and *Operación Esperanza*. Despite these extraordinary efforts, illegal mining persists to this day in Buriticá, much as it did in 2011 and 2019.

A. The History of Illegal Mining in Colombia and its Ties to Organized Crime

1. The Development of National Policies to Combat Illegal Mining

141. Over the last two decades, Colombia has designed and implemented a comprehensive policy framework to combat illegal mining and its connections to organized crime. Successive administrations have recognized that weak institutions and the infiltration of criminal networks into mining activities pose serious threats to public order, environmental integrity, and the rule of law. In response, Colombia has undertaken a far-reaching process of institutional and policy reform to create a coherent, rights-based and enforcement-capable architecture. These measures demonstrate a consistent, good-faith effort by the Colombian State to combat illegal mining, including where it intersects with criminal groups like Clan del Golfo.
142. During the first administration of Juan Manuel Santos, from 2010 to 2014, the State focused on developing specialized institutions to effectively regulate mining and limit opportunities for illegality in the sector.²³⁴ To achieve that goal, the State created two separate agencies under the auspices of the Ministry of Mining and Energy (“**MinMinas**”): the Colombian Geological Survey (known by its Spanish acronym

²³⁰ **Exhibit C-0177**, Continental Gold Announces Government Measures for Eviction of Illegal Informal Mines in Buriticá, Continental Gold Inc., 18 January 2016.

²³¹ **Exhibit R-0012**, Annual Information Form, Continental Gold Inc., 9 March 2017, pp. 15-16.

²³² **Exhibit R-0015**, Management’s Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., 11 May 2017, p. 2 (noting the risk with “the presence of artisanal/illegal miners”).

²³³ **Exhibit R-0016**, Management’s Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., 8 August 2018, p. 2 (noting the risk with “the presence of artisanal/illegal miners”).

²³⁴ **Exhibit R-0092**, Plan Nacional de Desarrollo 2010–2014: Resumen ejecutivo, 2011, pp. 17–18

“SGC”), responsible for the scientific research and regulation of nuclear and radioactive materials²³⁵ and the *Agencia Nacional de Minerales*, today known as the National Mining Agency (known by its Spanish acronym “ANM”), an autonomous mining authority responsible for titling, inspection, and promotion.²³⁶ This institutional overhaul strengthened the State’s capacity to detect irregularities, supervise operations, and deny legal cover to illegal or criminally linked activities.

143. ANM was created by Decree No. 4134 of 2011 as a special national agency attached to the MinMinas but with legal personality, its own assets, and with administrative, technical and financial autonomy.²³⁷ ANM is entrusted with the administration of mineral resources owned by the State and with the exercise of the functions as mining authority or conceding authority in Colombia. Its responsibilities include granting, administering, and monitoring mining concession contracts and other mining titles throughout the country.²³⁸
144. In 2014, the Santos administration adopted the National Policy for Mining Formalization, recognizing that many small-scale and subsistence miners operate in conditions of vulnerability and legal uncertainty, making them susceptible to exploitation by organized crime or illegal armed groups.²³⁹ Rather than conflating all small-scale activity with criminality, the policy created a path for legalization for small-scale, artisanal and subsistence miners. In so doing, Colombia systematically worked to undermine the work force relied upon by armed criminal organizations engaged in illegal mining activities.²⁴⁰
145. From 2014 to 2018, the second Santos administration continued this strategy by implementing a National Program for Integral Mining Formalization, through which the State created mechanisms for the formalization of small-scale miners.²⁴¹ These actions increase traceability, improved environmental performance, and allowed the State to identify, isolate, and sanction operations linked to criminal groups.²⁴²
146. During Iván Duque’s administration, from 2018 to 2022, Colombia worked to simultaneously support large-scale operators while also providing recognition and support to subsistence and small-scale miners, who had historically operated on the margins of the law and were vulnerable to criminal control. To achieve its goals, the

²³⁵ **Exhibit R-0085**, Decree No. 4131, 3 November 2011.

²³⁶ **Exhibit R-0092**, Plan Nacional de Desarrollo 2010–2014: Resumen ejecutivo, 2011, p. 18

²³⁷ **Exhibit C-0112**, Decree No. 4134 of 2011, 3 November 2011, Art. 3.

²³⁸ **Exhibit C-0112**, Decree No. 4134 of 2011, 3 November 2011, Art. 4.

²³⁹ **Exhibit R-0094**, Evaluación a la Dirección de Formalización Minera con Corte a 25 de Julio de 2014, Ministry of Mines and Energy, July 2014; **Exhibit R-0095**, Resolution No. 90719 of 2014, Ministry of Mines and Energy, 8 June 2014.

²⁴⁰ See **Exhibit R-0095**, Resolution No. 90719 of 2014, Ministry of Mines and Energy, 8 June 2014.

²⁴¹ **Exhibit R-0096**, Plan Nacional de Desarrollo 2014–2018, Departamento Nacional de Planeación, 2015, pp. 239-240, 248.

²⁴² **Exhibit R-0096**, Plan Nacional de Desarrollo 2014–2018, Departamento Nacional de Planeación, 2015, p. 241.

State modernized the ANM by strengthening the Agency’s inspection and monitoring capabilities, including through the use of instruments like “Atlas Minero” (a database of mining sites).²⁴³ In parallel, it formulated and adopted the first dedicated Public Policy for Subsistence Mining, providing education and organizational support for small-scale miners and identifying specific geographic areas where small-scale mining could legally occur.²⁴⁴

147. President Gustavo Petro has continued to place the fight against illegal and environmentally destructive mining at the center of his administration’s policy goals since coming to office in 2022. The State’s current strategy prioritizes environmental protection, water-centered land-use planning, and social participation.²⁴⁵ The State has launched and begun implementing the National Plan for Geoscientific Knowledge of the Subsoil, enabling more precise identification and control of mining activities, including those that may be illegal.²⁴⁶ Inter-institutional coordination has been strengthened to ensure that licensing, titling, and monitoring decisions are coherent.²⁴⁷
148. The Petro Administration’s *Plan de Desarrollo* identifies a substantial risk of deforestation in communities impacted by illegal mining as a result of the use of mercury in the refining process by illegal miners. As a result, his proposed mining reforms sought to work with communities to provide economic and social opportunities in order to create a productive economy and guarantee rights.²⁴⁸ The *Plan de Desarrollo* provides:

Reforms to mining regulations will be put forward with the aim of establishing mechanisms for managing mine closure and remediating environmental effects resulting from these activities, principally the adverse impacts on water resources caused by the use of mercury in gold extraction. The formalization and promotion of small-scale mining will incorporate safety standards focused on innovation in areas such as the control of hazardous atmospheric conditions, geomechanical studies, and the stability of mining labor. With the objective of fostering productive diversification, socio-environmental planning, and institutional coordination, particularly regarding the resolution of

²⁴³ **Exhibit R-0146**, La Transición Energética de Colombia: Memorials al Congreso, Ministerio de Minas y Energía, June 2020, p. 64.

²⁴⁴ **Exhibit R-0147**, Política Pública para la Minería de Subsistencia en Colombia, Ministerio de Minas y Energía, May 2022, pp. 83-85.

²⁴⁵ **Exhibit R-0101**, Plan Nacional de Desarrollo 2022–2026, Departamento Nacional de Planeación, May 2023, pp. 52, 57, 179.

²⁴⁶ **Exhibit R-0102**, Colombia avanza en su apuesta por la investigación y el conocimiento geocientífico del subsuelo. En 2035 se tendrá 100% de cartografía geológica, Ministry of Mines and Energy, 1 April 2022.

²⁴⁷ **Exhibit R-0101**, Plan Nacional de Desarrollo 2022–2026, Departamento Nacional de Planeación, May 2023, pp. 187–88, 621.

²⁴⁸ **Exhibit R-0101**, Plan Nacional de Desarrollo 2022–2026, Departamento Nacional de Planeación, May 2023, p. 318.

mining-related conflicts and the long-term sustainability of regions where mining operations are undertaken, special mining districts will be delineated and established. Furthermore, an agenda for digital transformation within the mining and energy sector will be laid out. Additionally, value-added mineral supply chains will be developed to incentivize the production of coke, gem cutting, metal refining, and inputs for construction materials, among other activities.²⁴⁹

2. The Origins of the Clan del Golfo

149. Clan del Golfo²⁵⁰ is one of the largest and most violent criminal organizations in Colombia. It is a paramilitary group that engages primarily in drug trafficking of cocaine and extortion. It emerged in the mid-2000s in the context of the peace negotiations with and subsequent formal demobilization of the *Autodefensas Unidas de Colombia* (“AUC”), the largest and most significant paramilitary umbrella organization dating from the mid-1990s.²⁵¹ Following the demobilization of AUC, Daniel Rendón Herrera, a former commander within the AUC known as “Don Mario,” regrouped approximately 150 men in Urabá to retain control over narco-trafficking routes, initially under the name *Héroes de Castaño*, which later consolidated into what is now known as Clan del Golfo.²⁵² Subsequent leadership passed to the Úsuga brothers, Dairo Antonio “Otoniel” Úsuga and Juan de Dios Úsuga. The Úsuga brothers expanded the organization’s territorial footprint and alliances, transforming it into one of the most significant narco-paramilitary structures in Colombia.²⁵³
150. Clan del Golfo operates as a hybrid between a hierarchical Organized Armed Group (known by its Spanish acronym “GAO”) and a decentralized criminal network. It maintains a central high command traditionally based in Urabá, a municipality in Antioquia, which provides strategic direction. Regional blocks and fronts exercise substantial financial and operational autonomy while contributing resources to an elite

²⁴⁹ **Exhibit R-0101**, Plan Nacional de Desarrollo 2022–2026, Departamento Nacional de Planeación, May 2023, p. 188.

²⁵⁰ In the process of its ongoing attempts to engage with Clan del Golfo, the State has officially begun to refer to the group as “Ejército Gaitanista de Colombia” (or “EGC”), which is how the group self-designates itself. See **Exhibit R-0148**, Resolution 294 of 2005, Presidencia de la República, 5 September 2025. However, for purposes of this arbitration, and to avoid any confusion, the State will refer to this group as “Clan del Golfo.”

²⁵¹ **Exhibit R-0133**, Grupos Armados Posdesmovilización (2006–2015), Centro Nacional de Memoria Histórica, December 2016, citing **Exhibit R-0107**, Natalia Alexandra Chaparro Betancourt, *El Crimen en la globalización contemporánea: el caso del “Clan del Golfo” en Colombia*, 27 May 2021, pp. 5, 21–23, Capítulo II, “Origen y Características Operacionales”; **Exhibit R-0108**, Steffy Pineda, *Crimen Organizado y Economía Criminal en Colombia: el caso de las Autodefensas Gaitanistas de Colombia en el sur de Córdoba* in REVISTA INTERNACIONAL DE COOPERACIÓN Y DESARROLLO, VOL. 5, NO. 2, 27 June 2018, pp. 246–252.

²⁵² **Exhibit R-0109**, La compleja estructura detrás del ‘Clan del Golfo,’ *El Tiempo*, 14 July 2018.

²⁵³ **Exhibit C-0289**, Clan del Golfo: The Fall of ‘Otoniel,’ Global Initiative, 4 April 2022.

armed component tasked with securing strategic territories, leadership cadres, and key illicit economies.²⁵⁴

151. Clan del Golfo also relies extensively on subcontracted gangs and so-called “franchise” groups for criminal activities, territorial enforcement, and specialized services such as contract killings and debt collection.²⁵⁵ This configuration, based on replaceable local nodes connected to a resilient core, has produced what analysts describe as the *cockroach effect*; when State operations or rival actors exert pressure in a given locality, the group’s personnel and activities can rapidly displace to other areas, thereby preserving the organization’s overall operational capacity.²⁵⁶ This structure makes dismantling the group particularly challenging from a public-security perspective.
152. Beyond cocaine, Clan del Golfo engages in other high-value illicit economies that both generate revenue and entrench territorial control. These include illegal gold mining in the Departments of Antioquia and Chocó, in municipalities such as Buriticá, Segovia, and Remedios, as well as timber extraction in forested areas under its influence.²⁵⁷ In addition, Clan del Golfo derives significant income from extortion payments in connection with these industries, commonly known as “*vacunas*.” These are effectively illegal taxes imposed on miners, ranchers, transporters, merchants, and public-works contractors.
153. Clan del Golfo also participates in an informal usury scheme known as *gota a gota*, which is a predatory informal lending scheme in which money is lent at exorbitant interest rates to individuals who lack access to formal banking or credit. This allows Clan del Golfo to extend its influence into local commercial and household economies.²⁵⁸
154. The persistence and expansion of Clan del Golfo imposes substantial burdens on Colombia’s security, institutional capacity, and public finances. As a result, the State has had to maintain a nationwide deployment of army and police units, effectively sustaining multiple non-international armed conflicts in parallel with peace negotiations with insurgent groups like Clan del Golfo. This reality comes at the cost of other security priorities and complicates the balance of internal security and public order.²⁵⁹

²⁵⁴ See **Exhibit R-0110**, Dinámicas del conflicto armado en el Bajo Cauca Antioqueño y su impacto humanitario, Fundación Ideas para la Paz, 3 February 2014.

²⁵⁵ **Exhibit R-0107**, Natalia Alexandra Chaparro Betancourt, El Crimen en la globalización contemporánea: el caso del “Clan del Golfo” en Colombia, 27 May 2021, p. 27.

²⁵⁶ **Exhibit R-0107**, Natalia Alexandra Chaparro Betancourt, El Crimen en la globalización contemporánea: el caso del “Clan del Golfo” en Colombia, 27 May 2021, pp. 39–40, desarrollo del concepto de “efecto cucaracha”.

²⁵⁷ **Exhibit R-0112**, La madera, otro negocio de grupos armados ilegales, Verdad Abierta, 19 September 2011; **Exhibit R-0113**, El Clan del Golfo va ganando la guerra subterránea del oro en Buriticá, La Silla Vacía, 10 March 2024.

²⁵⁸ **Exhibit R-0114**, General Country of Origin Information Report on Colombia, June 2024, Version 1.1, Ministry of Foreign Affairs of the Netherlands, subsections 3.9 (Extortion) and 3.8 (*gota a gota*), pp. 87–88.

²⁵⁹ See **Exhibit R-0114**, General Country of Origin Information Report on Colombia, June 2024, Version 1.1, subsection 1.5.6 (Impact of territorial control by armed groups on civilians), pp. 30–33.

155. Clan del Golfo’s control of major cocaine routes, illegal mining districts, and extortion networks erodes the legal tax base, distorts local labor markets, and necessitates the diversion of significant law-enforcement, judicial, and correctional resources to Colombia’s efforts to combat Clan del Golfo.²⁶⁰
156. Accordingly, the Colombian Government’s long-term strategy to eliminate criminal activity by Clan del Golfo is aimed at strengthening the presence of State institutions necessary to combat its presence, regulating land and resource use, improving infrastructure and service delivery, and addressing the structural problems that render communities vulnerable to Clan del Golfo’s coercive and economic power. These measures are ongoing and reflect Colombia’s continuous and good-faith efforts to reassert legitimate authority and protect civilians and legitimate enterprises in affected territories, including the municipality of Buriticá where the Mine is located.²⁶¹

B. The Origins of Mining in Antioquia

157. The discovery of gold and, by extension, the influx of miners into the Buriticá municipality brought with it both the traditional structures surrounding mining (such as legal and artisanal mining) and illegal mining, which was driven in part by the presence of the Clan del Golfo in the region.

1. Best Practices for Community Engagement and Combatting Illegal Mining

158. Artisanal and small-scale mining (“ASM”) is not unique to Colombia. ASM is present in over 80 countries and is often conducted informally or illegally.²⁶² Various guidelines have been developed on how large-scale mining (“LSM”) operators can best engage with local communities to combat illegal mining. Mr. Patrick Gorman, Colombia’s expert on the mining industry, with more than 50 years of experience on such projects explains in his expert report, that international best practice standards emphasize that the most effective means of preventing and combatting illegal mining is through early, sustained, and meaningful community engagement by LSM operators, such as Claimant.²⁶³
159. Mr. Gorman opines that “the best international practice of dealing with incursions by illegal miners is to first resolve their legal status and protect human rights.”²⁶⁴ Combatting illegal mining requires a multi-faceted approach that extends beyond community engagement to encompass the formalization of ASM activities and the creation of structured cooperation between LSM and ASM operations. The Voluntary

²⁶⁰ **Exhibit R-0114**, General Country of Origin Information Report on Colombia, June 2024, Version 1.1, subsections 1.5.5 (Criminal activities of illegal armed groups) and 1.7 (Humanitarian situation), pp. 30, 40–42.

²⁶¹ Section III.E.1.b (discussing the State’s Paz Total policy).

²⁶² **Exhibit R-0075**, 2020 State of the Artisanal and Small-Scale Mining Sector, The World Bank Group, 2020, p. 1.

²⁶³ **RER-2**, Expert Report of Patrick W. Gorman of Negotient (“**Negotient First Expert Report**”), ¶¶ 116, 119.

²⁶⁴ **RER-2**, Negotient First Expert Report, ¶ 105.

Principles on Security and Human Rights provide one of the most effective partnership models, under which LSM operators may cede land, licenses, and geological data to ASM miners, provide technical support for safer and more environmentally sound mining practices, and enter into financial partnerships such as equipment loans and offtake agreements.²⁶⁵

160. One successful case study applying this approach is the Porgera Joint Venture in Papua New Guinea, which involved coordinated action among the government, the mining operator, and local communities with the sanction of the National Court. Mr. Gorman describes the impact on Porgera as follows:

At the Porgera Joint Venture (“**PJV**”), Papua New Guinea illegal ASM activity occurred from the start of the operation and initially, the presence of police and security guards acted as an effective deterrent but over time there was an escalation in violence, with ASM workers entering PJV property bearing arms. The ASM workers were mostly young men from outside the area working as individual or groups often unsafely and without processing. By 2006, faced with up-to 2,000 incursions onto the concession per week, an illegal mining action plan was drawn up.

(a) The approach included studies, risk assessment, issue awareness, stakeholder buy-in, increased community engagement processes and changes to mining and security operations. The PNG National Court sanctioned the process, and the tripartite approach (government, community and PJV) helped implementation.

(b) A tripartite approach also involved government and international human rights organizations to ensure there was respectful standards of engagement embedded into PJV standard operating procedures. Police operations focused on enhancing general community security as well as targeting illegal miners and associated crime. Attention was focused on preventing entry to the active mine areas through more effective engagement with local leaders, education of young people about the safety risks involved and improved co-ordination between mine security staff and public authorities. As a result, significant reductions in illegal entries were achieved.²⁶⁶

²⁶⁵ RER-2, Negotient First Expert Report, ¶ 106.2.

²⁶⁶ RER-2, Negotient First Expert Report, ¶ 114.

161. Zijin Mining has, since 2015, been a 50% owner in the Porgera Joint Venture²⁶⁷ and is presumably aware of how implementation of best practices at a gold mine in Papua New Guinea has significantly reduced the rate of illegal mining incursions.
162. In the case of the Buriticá Mine, Mr. Gorman opines on what meaningful engagement with ASM miners could look like. Claimant could “provide the training, equipment, basic services, plans and supervision to guide the artisanal and small-scale miners to mine efficiently and safely. In exchange, the ASM miners cannot compromise the sectors or services by the LSM.”²⁶⁸ Mr. Gorman further suggests that “some ASM operators with the appropriate support could be paid to assist the Claimant to investigate exploration targets including Laurel, Perseus and Orion that have been identified in return for future participation in production.”²⁶⁹
163. Best practices also emphasize the importance of community engagement more generally, not only with ASM operators. Recognized frameworks, such as the Initiative for Responsible Mining Assurance (“IRMA”) and the Consolidated Mining Standard Initiative (“CMSI”), identify several core principles that mining operators should embed in their operations to effectively engage the community around a mine. These include proactive information sharing with affected communities, enabling communities to access independent experts to understand technical mining data, fostering genuine two-way dialogue that addresses community needs and concerns, ensuring the inclusion of minority and vulnerable stakeholders (including women, youth, elderly, and marginalized groups), establishing culturally appropriate engagement procedures, creating transparent grievance mechanisms, and maintaining continuous feedback loops so that communities understand how their input has been taken into account.²⁷⁰
164. As Mr. Gorman explains, Anglo American’s Unki mine in Zimbabwe implemented the IRMA standards and an IRMA audit in 2021 found a significant shift in community attitudes towards the mine. There was an increase in community confidence in the mine operator, the resolution of longstanding misperceptions, and a shift from what communities had previously viewed as a “ticking-the-box” approach to genuine, substantive engagement.²⁷¹
165. Mr. Gorman concludes, based on best practices and numerous case studies, that Claimant would have been better placed had it adopted and continued to implement best practice community engagement standards similar to IRMA at the Buriticá Mine.²⁷² Successful and especially early community engagement, ideally commencing before mining operations begin, pre-empts the occurrence of illegal mining by maintaining continuous

²⁶⁷ Exhibit R-0076, 2024 Annual Report, Zijin Mining Group Company Ltd., 31 December 2024, p. 362.

²⁶⁸ RER-2, Negotient First Expert Report, ¶ 105.

²⁶⁹ RER-2, Negotient First Expert Report, ¶ 105.

²⁷⁰ RER-2, Negotient First Expert Report, ¶ 116.

²⁷¹ RER-2, Negotient First Expert Report, ¶¶ 117–118.

²⁷² RER-2, Negotient First Expert Report, ¶ 119.

dialogue between the mining operator and the surrounding communities, making communities aware of the benefits that legitimate mining operations can provide, and enabling the establishment of a collaborative framework between LSM and ASM from the outset.²⁷³ Where operators fail to prioritize such engagement, a multi-faceted remedial approach, relying in large part on enhanced physical security, becomes necessary.

2. Continental Colombia Enters into the Concession Agreement, Leading to an Increase in Migration of Workers to Antioquia

166. The Department of Antioquia has a long tradition of artisanal and small-scale mining, which is an important economic activity in the region and has existed since pre-colonial times.²⁷⁴ The small-scale mining in the region focuses primarily on gold extraction in areas such as Bajo Cauca, Norwest (Segovia-Remedios), and Frontino.²⁷⁵
167. In the wake the 2009 discovery of significant gold deposits in Buriticá, migrants from other parts of Antioquia, other regions in Colombia, and foreign nationals – including many artisanal and small-scale miners – descended upon Buriticá.²⁷⁶ Buriticá’s small population of 6,000 quickly exploded to triple in size.²⁷⁷
168. This modern day “gold rush” into Buriticá coincided with Colombia’s struggle with armed criminal organizations. Starting in 2007, criminal organizations that had evolved from Colombia’s decades of violent conflict coopted towns in municipalities like Buriticá, incorporating illegal mining into their operations to finance and launder the proceeds of their illicit activities. As Colombia’s Attorney General explains: “Through various mechanisms of violence, [armed groups] succeeded not only in subjugating the civilian population but also in establishing their own dynamics to launder money associated with diverse criminal activities—in this case, mining.”²⁷⁸ In addition to the *Clan del Golfo*, Buriticá is host to another criminal organization that fuels illegal mining called *La Oficina de Envigado*.²⁷⁹ Neither typically engages in the arduous and dangerous labor of extracting gold; their contribution to illegal mining is exploitative, in the form of

²⁷³ **RER-2**, Negotient First Expert Report, ¶ 119.

²⁷⁴ **Exhibit R-0003**, Formalization of Artisanal and Small-Scale Gold Mining in Colombia: A Proposal for Improving Environmental, Social, and Economic Performance in a Post-Conflict Scenario, Gregory Minnick et al. (Chemonics Inc.), 16–20 March 2020, p. 1.

²⁷⁵ **Exhibit R-0005**, La toma de Buriticá por parte de la Continental Gold: historia de despojo y acumulación de tierras, Agencia De Prensa IPC, 31 July 2014.

²⁷⁶ **Exhibit R-0007**, Letter from O.J. Zapata Quijano, Government of Antioquia, to I. Velásquez Gómez, Ministry of National Defense, et al., 12 July 2023, p. 2; **Exhibit R-0009**, Tras fiebre del oro, municipio de Colombia paga el precio del auge de minería ilegal, InSight Crime, 22 June 2017.

²⁷⁷ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 12.

²⁷⁸ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 12.

²⁷⁹ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 12.

extorting the “*diezmo*” from illegal miners—or 10 percent of any given miner’s production—in exchange for “protection.”²⁸⁰

169. The rapid increase of illegal mining and the concomitant increase in the population of Buriticá have been particularly pronounced in several rural areas of the municipality, including Los Asientos.²⁸¹ This demographic and socio-economic shift has led to a depletion of natural resources in the area, environmental damage and pollution, biodiversity loss, damage to surface and subsurface soils with an increased risk of landslides, and human exploitation.²⁸² Buriticá has also seen an increase in health hazards stemming from inadequate sanitary conditions and a rise in violence from organized crime groups, like Clan del Golfo.²⁸³
170. This is the world into which Continental Colombia was introduced when it entered into the Concession Agreement on 14 September 2011, with the Secretary of Mines of the Department of Antioquia to develop Project Buriticá, one of the largest gold mines in Colombia.²⁸⁴
171. The Agreement included an initial 3-year term for exploration in addition to a 30-year term beginning from its registration in the National Mining Registry (“NMR”), which occurred on 20 March 2013.²⁸⁵
172. And Continental Colombia and its parent companies acknowledged this. CGI, when it was listed on the Canadian Stock Exchange, regularly referred to the problem of illegal mining in its annual reports. For example, CGI included the following paragraph in its annual reports from 2015:

The Company’s mining concessions are held in remote areas of Colombia that have historically been mined by illegal miners. As the Company further explores and advances mining projects

²⁸⁰ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 17; *see also* **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 216, 255, 269, 495, 531, 533, 536, 582, 603, 661, 674, 736, 759, 763, 766, 770.

²⁸¹ **Exhibit R-0007**, Letter from O.J. Zapata Quijano, Gobernación de Antioqui, to I. Velásquez Gómez, Ministry of National Defense, et al., 12 July 2023, p. 2; **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 791; *see also* **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 154, 156, 157, 324, 514, 539, 651, 745, 749, 756, 772, 788.

²⁸² **Exhibit R-0010**, Informe Final Extracción Ilicita de Yacimientos Mineros, Government of Antioquia, 9 November 2019, pp. 2–7; **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 4, 8, 12–13, 18, 90.

²⁸³ **Exhibit R-0007**, Letter from O.J. Zapata Quijano, Gobernación de Antioqui, to I. Velásquez Gómez, Ministry of National Defense, et al., 12 July 2023, p. 2; **Exhibit R-0010**, Informe Final Extracción Ilicita de Yacimientos Mineros, Government of Antioquia, 9 November 2019, p. 4.

²⁸⁴ **Exhibit C-0019**, Concession Agreement No. 7495 between Continental Colombia and the Secretary of Mines of the Department of Antioquia, 14 September 2011. The Agreement was the result of combining 12 mining titles that were granted to Continental Colombia by the National Mining Agency (Agencia Nacional de Minería or “ANM”).

²⁸⁵ Claimant’s Updated Memorial, ¶ 64; **Exhibit C-0020**, Certificate of Mining Registry No. 7495, 30 March 2022.

towards production, it must evict or negotiate with illegal miners operating on the Company's mining concessions illegally. There is a risk that such illegal miners may oppose the Company's operations and efforts to evict them from the Company's mining concessions may result in violence, the destruction of the Company's property, the physical occupation of the Company's current mine or a disruption to the planned development and/or to mining and processing operations; all of which could have a material adverse effect on the Company.²⁸⁶

173. CGI continued to include concerns about illegal mining in its annual reports from 2016,²⁸⁷ 2017,²⁸⁸ and 2018.²⁸⁹
174. At the same time, however, CGI acknowledged its role in addressing the roots of the problem and treated the problem as one that could be addressed through community engagement. In its 2015 annual report, for example, CGI reported that in 2014, it had "signed formalized sub-contract agreements with several small-scale mining associations, paving the way for the implementation of legal and responsible small-scale mining operations at the Buriticá Project."²⁹⁰ In that same year, CGI reported that the "Company's Corporate Social Responsibility ('CSR') model is aligned with international performance standards, aiming to protect the environment, deliver effective and sustainable community development, and improve the quality of life for its employees and contractors, their families, and the immediate community."²⁹¹ Pursuant to its CSR model, CGI, in fiscal year 2015:²⁹²

²⁸⁶ **Exhibit R-0013**, Management's Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., 9 March 2016, p. 24; **Exhibit R-0014**, Annual Information Form, Continental Gold Inc., 29 March 2016, p. 12.

²⁸⁷ **Exhibit R-0012**, Annual Information Form, Continental Gold Inc., 9 March 2017, pp. 15-16.

²⁸⁸ **Exhibit R-0015**, Management's Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., 11 May 2017, p. 2 (noting the risk with "the presence of artisanal/illegal miners").

²⁸⁹ **Exhibit R-0016**, Management's Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., 8 August 2018, p. 2 (noting the risk with "the presence of artisanal/illegal miners").

²⁹⁰ **Exhibit R-0013**, Management's Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., March 2016, p. 25.

²⁹¹ **Exhibit R-0013**, Management's Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., March 2016, p. 9.

²⁹² **Exhibit R-0013**, Management's Discussion and Analysis of Consolidated Financial Position and Consolidated Results of Operations, Continental Gold Inc., March 2016, pp. 9-10.

- Implemented a formal grievance system;
- Continued to promote education by sponsoring courses for adult basic training for various community members, including employees of the Company;
- Awarded post-secondary scholarships;
- Partnered with the Ministry of Labour to promote international standards against child labour;
- Improved infrastructure at local schools, hospitals, sports recreation centres and public areas, including:
 - Continued funding and support of the construction of auxiliary facilities, such as playgrounds, at the new “Hogar Juvenil de Tabacal” school;
 - Improved access between the Higabra and Mogotes communities by constructing a new alternative path;
 - Constructed a new playground in the town of Buriticá;
 - Provided personnel to support the paving of a main road leading to the town of Tabacal; and
 - Donated funds to the local hospital to purchase back-up generators;
- Engaged local communities in helping to determine infrastructure improvement priorities;
- Partnered with Conservation International to promote conservation and environmental governance in the municipality of Buriticá. The agreement calls for the development of environmental programs important to the biodiversity of the region and for the sustainable development and subsistence of the community;
- Continued support of the small-scale mining formalization process by helping to establish various procedures and controls with a focus on health and safety, environmental compliance and mine planning;
- Supported local businesses and farmers through partnerships, awarding contracts, donations and co-hosting events;
- Established a corporate volunteer and employee donation plan that helps support local projects and raises money to sponsor children attending the Tabacal rural youth home; and
- Communicated with local communities through formal meetings regarding the formalization process, reconnaissance exploration and various other projects underway in the local communities.

175. In 2016, CGI launched Plan Buriticá, a multi-stakeholder dialogue with the goal of improving the security situation in Buriticá.²⁹³ Through Plan Buriticá, a public-private initiative, CGI worked closely with local government and developed trust within the community.²⁹⁴

176. Despite these programs, however, the reality of illegal mining persisted. In this context, the 2016 Feasibility Study carried out for the Buriticá Project by JDS Energy & Mining

²⁹³ **Exhibit R-0117**, *El Buritiqueño (20th Edition)*, Continental Gold Inc., December 2016, p. 2.

²⁹⁴ **Exhibit R-0117**, *El Buritiqueño (20th Edition)*, Continental Gold Inc., December 2016, p. 2.

Inc. acknowledged that “[a] significant number of illegal miners are working on the property and may not leave voluntarily. They have the potential to disrupt and delay construction activities.”²⁹⁵

3. The Government of Antioquia is Entrusted with Administration of the Buriticá Project

177. Article 211 of the Colombian Constitution allows administrative authorities to delegate their authorities to other entities, “whose decisions or resolutions the delegating authority may always amend or revoke, thereby assuming the resulting liability.”²⁹⁶ In accordance with Article 9 of Law No. 489 of 1998, which established regulations for the organization and operation of national entities, administrative authorities may, through an act of delegation, transfer the exercise of their functions to other authorities with related and complementary functions.²⁹⁷
178. As explained above, ANM is charged with the administration of mineral resources, which, pursuant to Colombian law, belong to the State.²⁹⁸ Via Resolution No. 271 of 18 April 2013, ANM delegated the exercise of certain functions related to the processing and execution of mining concession contracts, as well as monitoring and control functions, to the Government of Antioquia.²⁹⁹ This delegation was subsequently extended by Resolutions 210 of 15 April 2015, 229 of 14 April 2016, 22 of 20 January 2017, 660 of 2 November 2017, 237 of 30 April 2019, 833 of 25 December 2019, 113 of 30 March 2020 and 624 of 29 December 2020, until 31 December 2021.³⁰⁰
179. Pursuant to Law No. 2056 of 2020, which governs the distribution of royalties from non-renewable natural resource exploitation, ANM was also charged with exercising “oversight functions regarding the exploration and exploitation of mineral resources, which includes activities related to the closure and abandonment of mining sites and infrastructure.”³⁰¹ On 29 December 2020, ANM resolved to delegate its authority under the terms of Law No. 2056 to the Governor’s Office of Antioquia related to the “function of supervising mining titles, exploration, and exploitation activities carried out through private property surveys, temporary authorizations, applications for mining legalization and formalization, and work mechanisms under the protection of a mining title,”³⁰² That

²⁹⁵ **Exhibit C-0186**, Buriticá Project Feasibility Study, JDS Energy & Mining Inc., 20 May 2016, p. 1-27.

²⁹⁶ **Exhibit C-0053**, Political Constitution of the Republic of Colombia, 6 July 1991, Art. 211.

²⁹⁷ **Exhibit R-0140**, Law No. 489 of 1998, “Whereby regulations are established regarding the organization and operation of national entities; provisions, principles, and general rules are set forth for the exercise of the powers provided for in paragraphs 15 and 16 of Article 189 of the Constitution; and other provisions are established,” Article 12.

²⁹⁸ See **Exhibit R-0063**, Law No. 685 of 2001, 15 August 2001, Arts. 14-15.

²⁹⁹ **Exhibit R-0141**, Resolution No. 271 of 2013, Agencia Nacional de Minería, 18 April 2013, Article 1.

³⁰⁰ **Exhibit C-0327**, Resolution No. 104 of 2023, Agencia Nacional de Minería, 13 January 2023.

³⁰¹ **Exhibit R-0149**, Law No. 2056 of 2020, 30 September 2020, Art. 7(B)(3).

³⁰² **Exhibit R-0150**, ANM Press Release, ANM reasume función de fiscalización, seguimiento y control de los Proyectos de Interés Nacional y Proyectos de Interés Nacional y Estratégicos (PINE) en Antioquia.

delegation was subsequently extended via Resolution No. 810 of 28 December 2021 through 31 December 2023.³⁰³

180. Throughout this period, Antioquia acted strictly as a delegate of the ANM, and any acts taken by the Government of Antioquia in this regard were taken in execution of powers conferred and governed by national law. What this meant for first CGI and then Zijin-Continental Gold was that the Government of Antioquia was authorized to act and to oversee certain of its requests and permitting applications on a local level, including oversight of mining formalization, property surveying, and work monitoring and control. As will be explained below, that led to the direct involvement of the Government of Antioquia in operations to control illegal mining at Buriticá.

C. The Colombian Government Successfully Takes Steps to Curb Informal Mining in the Lead up to CGI's Acquisition by Zijin

181. Shortly after Continental Colombia secured the mining concession on 14 September 2011, Colombia undertook to put in place a multifaceted security infrastructure to ensure protection of the Mine long before the Mine even became operational in 2020.
182. This included the provision of military and police troops, through (i) the execution of multiple security agreements, to safeguard the tunnels, facilities, and workers at the Mine, (ii) the establishment of a specialized branch of the National Police (UNIMIL) to combat illegal mining, and (iii) the launch of Operation Creta, an inter-institutional effort against illegal mining in the region. At the same time Colombia was building up protection and deploying armed forces to combat illegal mining, a senior executive at Continental Colombia was passing information to armed groups to facilitate illegal mining activities at the Mine. Despite these illegal actions by one of Continental Colombia's own employees, the State's multifaceted approach to securing the Mine's tunnels and facilities was successful at reducing the incidence of illegal mining before Zijin Mining took control of the Mine, as Claimant concedes.³⁰⁴

1. The Ministry of Defense Entered Into a Series of Security Agreement with Continental Colombia and its Parent

183. In the face of the illegal mining present and growing in Buriticá, the Colombian Government stepped in to assist. In furtherance of that effort, the Ministry of Defense has entered into a series of security agreements with Continental Colombia.

a. Through a series of security agreements, the Ministry of Defense has provided continuous daily protection to the mine

184. In order to protect and secure the Mine against armed groups and illegal miners, the first of these security agreements was executed in [REDACTED], between the Ministry of Defense,

³⁰³ **Exhibit R-0151**, ANM Press Release, ANM proroga por dos años convenio de delegación al Departamento de Antioquia.

³⁰⁴ See Claimant's Updated Memorial, Section II.E.



188. In addition to the Security Agreements with the Ministry of Defense, Continental Colombia also entered into Collaboration Agreements with the National Police (“**Police Collaboration Agreements**”). This first of these agreements was executed on [REDACTED]).³¹³ The purpose of the Police Collaboration Agreements is to provide support to the highly specialized police operations required to combat illegal mining in Buriticá through the provision of resources, equipment, and training.³¹⁴ The Police Collaboration Agreements do not obligate the National Police to maintain a specific presence at the Mine, but rather acknowledge that the National Police forces are engaged in efforts to combat illegal mining operations “[i]n accordance with the laws and regulations regarding police activities.”³¹⁵ Decisions on deployment, rotation, and staffing levels remain entirely within the sovereign discretion of the Colombian authorities and are conditioned by operational needs and the availability of personnel.³¹⁶
189. While Police Collaboration Agreements do not expressly require police presence at the Mine, Lieutenant Colonel Gallego explains that UNIMIL units of the National Police are permanently stationed at the Mine. As he explains: “In my experience, the armed forces never withdrew from the area or failed to perform security functions with respect to the Mine.”³¹⁷
190. The police units are generally divided into two groups:

(i) a team with a presence inside the Mine, in charge of surveillance, accompaniment and immediate response to

³¹¹ **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED], Art. 15.

³¹² **Exhibit R-0019**, Security Agreement [REDACTED] between Continental Colombia and the Ministry of Defense, [REDACTED], Art. 10.

³¹³ **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], p. 1.

³¹⁴ *See, e.g.,* **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], Art. 1.

³¹⁵ **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], ¶ 7.

³¹⁶ **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], Annex 1.

³¹⁷ Gallego First Witness Statement, ¶ 45.

incidents in the tunnels; and (ii) an external component, aimed at protecting access, controlling the area and preventing the entry of illegal actors.³¹⁸

191. As with the Security Agreements' [REDACTED], the Police Collaboration Agreement has a [REDACTED]

192. To date, at least [REDACTED] Security Agreements have been executed with Continental Gold Limited Sucursal Colombia that have covered the period from [REDACTED] [REDACTED].³²¹ Despite the fact that there has not been a formal Security Agreement in place since [REDACTED], the National Army and National Police continue offering tailored and constant protection services at the Mine. As Lieutenant Colonel Gallego notes, the State has an obligation to protect that originates outside of any specific agreement:

[I]t is important to specify that the security services provided by the National Police do not originate from or are limited to the provisions of these agreements. The function of guaranteeing security and public order in the national territory is a constitutional obligation of the Colombian State, which is exercised in a general manner with respect to all the inhabitants

³¹⁸ Gallego First Witness Statement, ¶ 28.

³¹⁹ **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], Cl. 7.

³²⁰ **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], Cl. 7, ¶ 1.

³²¹ **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED]; **Exhibit R-0019**, Security Agreement [REDACTED] between Continental Colombia and the Ministry of Defense, [REDACTED]; **Exhibit C-0148**, Security Agreement [REDACTED] between Continental Colombia and the Ministry of Defense, [REDACTED]; **Exhibit R-0021**, Security Agreement [REDACTED] between Continental Colombia and the Ministry of Defense, [REDACTED]; **Exhibit C-0199**, Security Agreement [REDACTED] between Continental Colombia and the Ministry of Defense, [REDACTED]; **Exhibit C-0223**, Security Agreement [REDACTED] between Continental Colombia and the Ministry of Defense, [REDACTED]; **Exhibit C-0254**, Security Agreement No. 21-007 between Continental Colombia and the Ministry of Defense, [REDACTED]; **Exhibit C-0385**, Amendment No. 1 to Agreement [REDACTED] between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Colombia, [REDACTED].

of the country, regardless of the existence of cooperation agreements with individuals.

In this sense, the security agreements do not imply the delegation or privatization of the functions of the armed forces, nor do they constitute a guarantee of the total elimination of illegal activities in a given area. Their purpose is to complement and strengthen the operational capacity of the State in specific contexts, such as that of the Buriticá Mine, where particular risk factors associated with illegal mining concur.³²²

193. Because of this, the State's presence and security operations at the Mine have been continuous, "regardless of the processes of negotiation, renewal or modification of safety agreements."³²³ While "the existence of these agreements facilitated operations and logistical coordination [they] did not determine the continuity or intensity of the actions of the armed forces in the area."³²⁴ Lieutenant Colonel Gallego notes that, based on his experience, the Buriticá Mine has been one of the projects that has received amongst the greatest levels of support from the State, "which reflects the priority assigned by the Colombian State to addressing the security situation in that area."³²⁵

b. The actions of the State under the Security Agreements are limited by its obligations under Colombian law

194. The Security and Collaboration Agreements were not intended to turn Colombia's National Armed forces into Continental Colombia's private security force. Under Colombian law, there are limitations to what Colombia's Armed Forces can do in carrying out their duties, particularly where their actions might impact Colombian citizens and residents. In particular, the Colombian Constitution provides that the principles of necessity, proportionality, distinction, and respect for human life must bind all public authorities.³²⁶ As Lieutenant Gallego explains, "[t]hese conditions impose inherent limitations on the actions of the armed forces, particularly in contexts in which the civilian population, workers and illegal actors converge."³²⁷
195. Furthermore, Article 218 of the Colombian Constitution establishes the National Police as a permanent armed body of a civilian nature, under the responsibility of the Nation, whose primary purpose is to maintain the conditions necessary for the exercise of public

³²² Gallego First Witness Statement, ¶¶ 22-23.

³²³ Gallego First Witness Statement, ¶ 24; *see also* ¶ 45 ("In my experience, the armed forces never withdrew from the area or failed to perform security functions with respect to the mine.").

³²⁴ Gallego First Witness Statement, ¶ 24.

³²⁵ Gallego First Witness Statement, ¶ 19.

³²⁶ **Exhibit C-0053**, Political Constitution of the Republic of Colombia, 6 July 1991, Art. 11 ("El derecho a la vida es inviolable.").

³²⁷ Gallego First Witness Statement, ¶ 39.

rights and freedoms and to ensure that inhabitants of Colombia live together in peace.³²⁸ These same limitations apply in the context of the Security and Police Collaboration Agreements, which make clear that all protection and security activities must be conducted in strict compliance with the Colombian Constitution and the international human rights and humanitarian law instruments binding on the State.³²⁹

196. The Security and Police Collaboration Agreements explicitly recognize the need to protect human life and avoid actions that could negatively impact the region's inhabitants or the environment.³³⁰ Under the Security Agreements, the [REDACTED] are specifically tasked with ensuring that any actions taken under the agreements do not negatively impact the local community or the parties' relationship with the local community.³³¹
197. The State's commitment to safeguarding human rights and ensuring protection of the environment is further underscored by a requirement under the Security Agreements to allocate resources contributed to the State towards training, publications, and institutional strengthening initiatives related to human rights, international humanitarian law, and environmental protection. Importantly, the Security Agreements make clear that resources contributed to the State under the Agreements may not be used towards lethal weaponry.³³²
198. The State's actions to protect the Mine must be consistent with its obligations under International and Colombian law and cannot be dictated by Claimant's economic interests or demands to take action.³³³ The State must continually evaluate its actions through the lens of its obligations under Colombian and international law, and to ensure that any enforcement measures are lawful, targeted, and respectful of the communities that have long depended on, and affected by, mining.

³²⁸ **Exhibit C-0053**, Political Constitution of the Republic of Colombia, 6 July 1991, Art. 218.

³²⁹ See, e.g., **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED], ¶¶ G, K, Annex 2; **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], ¶ 6.

³³⁰ **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED], ¶ G, Annex 2; *see also*, **Exhibit C-0210**, Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Colombia, [REDACTED], ¶ 6.

³³¹ **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED], Annex 3, ¶ 4.

³³² **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED], Annex 2.

³³³ **Exhibit R-0113**, El Clan del Golfo va ganando la guerra subterránea del oro en Buriticá, La Silla Vacía, 10 March 2024.

2. Colombia Established a Specialized Police Unit to Combat Illicit Exploitation of Mining Deposits

199. In February 2014, the Colombian National Police created the National Unit Against Illegal Mining and Antiterrorism (Unidad Nacional contra la Minería Ilegal y Antiterrorismo, (“UNIMIL”) through Resolution 0492.³³⁴ UNIMIL falls under the Directorate of Carabineers and Environmental Protection (“**Dirección de Carabineros**”), which is a police unit responsible for the prevention and control of crimes against the environment. Within the Directorate of Carabineers is the Environmental Police and Natural Resources Unit, of which UNIMIL is a part.³³⁵ UNIMIL is a specialized unit focused on the fight against the illegal exploitation of mining rights.³³⁶
200. Officers assigned to UNIMIL undergo highly specialized training in rural operations, explosives handling, combat and underground operations.³³⁷ This training in underground operations in particular was designed in response to the operational conditions of the Buriticá Mine, to prepare UNIMIL officers for unique underground operations and subterranean tunnel combat.³³⁸
201. Since its creation, UNIMIL police forces have had a constant presence at the Buriticá Mine, including at least one unit of approximately 25 officers at all times and, during intensive security operations, even more units are deployed.³³⁹ The security presence at the Mine focuses on three main types of activities:
- [P]revention work, aimed at preventing the entry of illegal miners into the tunnels; (ii) accompanying the company’s personnel during the development of their activities, in order to guarantee their safety and; (iii) Operations to react to security incidents, including the recovery of areas that have been occupied or blocked by illegal actors.³⁴⁰
202. While the National Army focuses on securing external areas surrounding the tunnels, because of UNIMIL’s specialized training, UNIMIL officers are tasked with protecting and recovering underground tunnels. The tunnel recovery operations are one of the most complex and risky activities carried out by the armed forces at the Buriticá Mine.³⁴¹ As Lieutenant Gallego explains: “The execution of these operations required detailed planning, as well as the involvement of highly trained personnel in underground

³³⁴ R-0170, Letter from the ANM regarding a request for information, 12 March 2018, p. 3.

³³⁵ Gallego First Witness Statement, ¶ 26.

³³⁶ See Gallego First Witness Statement, ¶ 11.

³³⁷ Gallego First Witness Statement, ¶ 12.

³³⁸ Gallego First Witness Statement, ¶ 12.

³³⁹ Gallego First Witness Statement, ¶ 13.

³⁴⁰ Gallego First Witness Statement, ¶ 15.

³⁴¹ Gallego First Witness Statement, ¶ 35.

operations.”³⁴² Also, due to the complexity, tunnel recovery operations can extend over days or even weeks, requiring the rotation of teams to ensure the operations continues.³⁴³ The operations often result in clashes with illegal miners and injury or even death of members of the National Police.³⁴⁴

203. Lieutenant Gallego explains that almost daily operational planning meetings were held between the armed forces and Continental Colombia’s private security in order to identify risks, define priorities and establish the actions to be executed.³⁴⁵ These regular meetings ensure that UNIMIL and the National Army are in constant communication with Claimant’s security, are made aware of any concerns in real time, and are able to react immediately in response to security incidents that arise.
204. Lieutenant Colonel Gallego recalls that, based on his experience “the operations deployed by the armed forces in the Buriticá Mine allowed, repeatedly, to recover areas affected by illegal mining, restore security conditions and facilitate the continuity of the company’s activities.”³⁴⁶ He observes that the nature of illegal mining is such that the presence of illegal mining “cannot be interpreted, by itself, as an absence of state action, but rather as a reflection of the structural complexity of the phenomenon and the need for continuous interventions by the authorities.”³⁴⁷

3. Operation Creta Successfully Curbs Illegal Mining Despite the Actions of Continental Colombia’s Vice President

205. In April 2016, in response to the deterioration of the safety of the residents and environmental conditions of Buriticá, the Antioquia Governor’s Office launched Operation Creta.³⁴⁸ Operation Creta involved coordination amongst several government agencies and their local offices, including the Institute of Family Welfare, the Ministry of Defense, the National Police, the Secretariat of Mines of the Department of Antioquia, the National Army, and the National Mining Agency.³⁴⁹
206. The then-Governor of Antioquia, together with the municipal administration in Buriticá, structured Operation Creta as an integrated program with a focus on underlying social

³⁴² Gallego First Witness Statement, ¶ 37.

³⁴³ Gallego First Witness Statement, ¶ 37.

³⁴⁴ Gallego First Witness Statement, ¶ 38.

³⁴⁵ Gallego First Witness Statement, ¶¶ 16, 31, 52.

³⁴⁶ Gallego First Witness Statement, ¶ 41.

³⁴⁷ Gallego First Witness Statement, ¶ 42.

³⁴⁸ **Exhibit R-0010**, Informe Final Extracción Ilicita de Yacimientos Mineros, Government of Antioquia, 9 November 2019.

³⁴⁹ **Exhibit R-0010**, Informe Final Extracción Ilicita de Yacimientos Mineros, Government of Antioquia, 9 November 2019.

conditions of illegal mining communities rather than as a purely military action.³⁵⁰ One of the primary goals of Operation Creta was the voluntary relocation of illegal miners outside of the municipality, with support from the local government. That support came in the form of providing them with food, habitat kits, sleeping mats and blankets, and organized transportation to other municipalities for families who decided to leave the municipality of Buriticá.³⁵¹

207. In order to implement Operation Creta, a Unified Command Post (called “PMU”, by its Spanish acronym) was established. A PMU is a temporary, multi-agency unified command unit convened by the competent civil authority (typically a Governor or Mayor) to coordinate complex operations such as Operation Creta, through a single operational and decision-making center. Buriticá’s PMU brought together agencies from the national, departmental and municipal levels of governments, including the Armed Forces, mining and environmental agencies, prosecutorial and justice agencies, and relevant social entities (including, for example, health care agencies and the fire brigade) to plan and implement measures to improve the security condition in Buriticá. The PMU included representatives from Continental Colombia in the planning and implementation of these measures, which included mine closures, demolitions of mining entrances, the provision of humanitarian support to illegal mining communities, and the prevention and mitigation of environmental harm to the surrounding community.³⁵²
208. In May 2016, one month after Operation Creta was launched, Colombian authorities arrested Eduardo Otoyá Rojas (“Otoyá”), Continental Colombia’s Vice President. Otoyá, known as “El Doctor,” had been providing armed groups with confidential information, including maps and plans of the Mine’s tunnels, in order to facilitate illegal mining. He actively directed illegal miners and advised them on where to access the tunnels.³⁵³
209. Otoyá was identified by the National Police as a leader of a criminal organization at the service of the *Clan Úsuga* and the *Oficina de Envigado*, both criminal organizations related to Clan del Golfo. Exploiting his role as Continental Colombia’s Vice President, he appropriated detailed plans identifying the richest gold veins in the Buriticá concession, including the *El Hebrón* and *La Equidad* mines. Otoyá used that information to orchestrate large-scale illegal extraction that generated an estimated 7 billion pesos per month for the armed groups. Otoyá faced charges for financing terrorism and organized

³⁵⁰ **Exhibit R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019, pp. 5, 48, 64, 99.

³⁵¹ **Exhibit R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019, pp. 52, 95.

³⁵² **Exhibit R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019.

³⁵³ **Exhibit R-0026**, Masiva captura en Antioquia por minería ilegal aliada con bacrim, *El Colombiano*, 9 March 2016, pp. 1–2; **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 239–240, 319, 474.

crime, trafficking of weapons and munitions, illegal exploitation of mining deposits, environmental contamination, and damage to natural resources.³⁵⁴

210. Despite the sabotage waged by one of Continental Colombia's own executive, the results of Operation Creta were a relative success. Between 2016 and 2020, more than 200 illegal mine entrances within Continental Colombia's concession area were permanently sealed, 197 illegal processing plants were dismantled, and some 40 informal gold-buying establishments and a dozen brothels were closed down.³⁵⁵ Authorities seized substantial quantities of machinery, explosives, mercury, cyanide and illegally extracted ore, and disrupted the financing and territorial control exercised by Clan del Golfo.³⁵⁶ Thousands of illegal miners voluntarily left the municipality, and the local government took steps towards the formalization of small-scale subsistence mining, creating a path for subsistence miners to earn a living legally.³⁵⁷ Buriticá transitioned from an ungovernable municipality into a model of "legal and ethical gold," with nine formalized small-scale mining units and substantial new responsible investment.³⁵⁸
211. While Operation Creta was successful in curbing illegal mining in Buriticá in the short-term, it did not eliminate the problem.³⁵⁹ As Zijin Mining itself conceded: "With collaborative efforts from local police, security personnel, and project employees, the security situation of the mine, despite being impacted by illegal activities, remains controllable and its gold production has continued to rise."³⁶⁰
212. Furthermore, the short-term success of Operation Creta, which targeted illegal mining on the surface by eliminating mine entrances and sweeping mining camps, led to complex, longer-term challenges. Many illegal miners, rather than leave Buriticá, moved underground. They established communities within the Mine's underground tunnels, creating homes – with kitchens and sleeping spaces – within the Mine's tunnel systems, and living underground for over a month at a time.³⁶¹ The presence of illegal miners inside the tunnels poses heightened risks to safety, the environment, and lawful mining

³⁵⁴ **Exhibit R-0049**, Ex directivo de la Continental Gold entre detenidos por minería ilegal en Buriticá, Carocol, 9 March 2016.

³⁵⁵ **Exhibit R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019, pp. 4, 30, 32, 41.

³⁵⁶ **Exhibit R-0010**, Informe Final Extracción Ilicita de Yacimientos Mineros, Government of Antioquia, 9 November 2019, pp. 15–20.

³⁵⁷ **Exhibit R-0010**, Informe Final Extracción Ilicita de Yacimientos Mineros, Government of Antioquia, 9 November 2019, pp. 15, 67.

³⁵⁸ **Exhibit R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019, p. 59.

³⁵⁹ **Exhibit R-0009**, After the Gold Rush: Colombian town counts cost of illegal mining boom, InSight Crime, 22 June 2017, pp. 3–4; **Exhibit C-0433**, Chart of Detonations, Improvised Explosive Devices, and Shootings (2020–2024), 2025.

³⁶⁰ **Exhibit R-0072**, Chinese mining group Zijin says loss suffered from theft at Colombian mine yet to be verified; gold output continues to rise, Global Times, 14 November 2024.

³⁶¹ **Exhibit R-0105**, La guerra por el oro que se libra en los túneles de Buriticá, El Colombiano, 25 June 2023.

operations.³⁶² By forcing illegal miners to vacate their settlements, Operation Creta inadvertently pushed a significant population of illegal miners into the depths of the Mine itself, creating a situation that complicates the State’s ability to effectively curb illegal mining operations today.³⁶³

D. The Rise in Illegal Mining Activity Followed Zijin Mining Group’s Purchase of Continental Gold

1. The Change in Management and Resultant Change in Policies Increased Tensions with the Community in Buriticá

213. Before the launching of Operation Creta, CGI had undertaken significant work starting in 2014 to formalize miners and engage the Buriticá community through its CSR program and Plan Buriticá.³⁶⁴ Although illegal mining accidents and the danger presented by criminal activity remained of real concern in the Mine by 2019, CGI and the third parties that assessed it were able to conclude that illegal mining presented no material threat to the Mine’s operations.
214. The 18 March 2019 Technical Report prepared by Ivor Jones Pty Ltd (the “**2019 Ivor Jones Report**”) notes that illegal mining presents “[a] concern for residents[]” in Buriticá, as a result “environmental and social concerns and unease due to criminal activity and challenges to the respect for the rule-of-law” and a “noticeable increase in illegal mining accidents.”³⁶⁵ The Report also, however, points to the government’s efforts to actively address the problem of illegal mining³⁶⁶ and concludes that there are no issues – socio-economic or otherwise – “that could materially affect the Mineral Resource” of the Mine.³⁶⁷
215. In December 2019, Zijin Mining purchased 100% of the shares in CGI (Colombia refers to the resultant entity as “**Zijin-Continental Gold**”). The acquisition was completed on 4 March 2020.³⁶⁸ During the acquisition process, Claimant specifically referred to the incidence and ongoing challenge of illegal mining. Claimant’s 2018 Sustainability Report lists “[t]he presence of illegal miners and criminal groups in our titles” as one of the main risks at the end of 2018. While it acknowledges a drop in illegal mining

³⁶² **Exhibit R-0105**, La guerra por el oro que se libra en los túneles de Buriticá, El Colombiano, 25 June 2023.

³⁶³ See **Exhibit R-0105**, La guerra por el oro que se libra en los túneles de Buriticá, El Colombiano, 25 June 2023.

³⁶⁴ See *supra* Section III.B.2.

³⁶⁵ **Exhibit JTB-008**, NI 43-101 Buriticá Mineral Resource 2019-01, Ivor Jones Pty Ltd, 18 March 2019, p. 205.

³⁶⁶ **Exhibit JTB-008**, NI 43-101 Buriticá Mineral Resource 2019-01, Ivor Jones Pty Ltd, 18 March 2019, p. 205.

³⁶⁷ **Exhibit JTB-008**, NI 43-101 Buriticá Mineral Resource 2019-01, Ivor Jones Pty Ltd, 18 March 2019, p. 100.

³⁶⁸ Claimant’s Updated Memorial, ¶¶ 100, 264.

activities, the Report notes that Claimant “remains vigilant, as there are still criminal organizations with an interest in gold in the region.”³⁶⁹

216. The 2019 change in CGI’s ownership led to an immediate change in the Mine’s management. Zijin-Continental Gold immediately shut down several community-facing projects, including Plan Buriticá. Zijin-Continental Gold also eliminated and demoted, respectively, the positions of the Vice President of Sustainability and the General Manager of International Standards, roles responsible for ensuring the Mine was operating in accordance with domestic and international standards and maintaining constructive dialogue with the community.³⁷⁰
217. These management changes evolved into a departure from the community-centered approach that had defined CGI’s operations in Buriticá. Zijin-Continental Gold’s deprioritization of community and social license programs also marked a departure from international best standards. As Mr. Gorman explains, “[e]arly community engagement [...] pre-empts the occurrence of illegal mining as communities are in a continuous dialogue with the mining operator and are made aware of the benefits that the mining operation can have for them.”³⁷¹ It is thus telling that on the heels of Operation Creta, after Zijin took the reins of the Mine, illegal mining revived in Buriticá. International mining best practices predict this result: “It is not enough to just crack down on the illegal activity [...] If you wipe out a criminal gang, it may only be a matter of time before another entity moves into its place. Instead, [...] world governments and industry need to ensure smaller-scale miners a safe and responsible route for their gold to get into legitimate markets.”³⁷²
218. It was against this backdrop of deteriorating community relations and diminished oversight that illegal mining activity in and around the Mine began to escalate. The dismantling of the security and stakeholder frameworks that Continental Gold had built left the Mine increasingly vulnerable to illegal miners. The data shows as much; after Operation Creta concluded, informal detonations by illegal miners continued through 2020, [REDACTED]
[REDACTED]³⁷³ In 2021, the situation continued, with more frequent blasts, such as a [REDACTED]
[REDACTED]³⁷⁴

³⁶⁹ Exhibit R-0077, 2018 Sustainability Report, Continental Gold, 2018, p. 21.

³⁷⁰ See Exhibit R-0080, Management, Continental Gold, 26 February 2016, p. 34; Exhibit R-0081, Community and Government Relations Committee Mandate, Continental Gold, 23 November 2016, pp. 2–4

³⁷¹ RER-2, Negotient First Expert Report, ¶ 119.

³⁷² Exhibit R-0027, Illegal mining rises globally along with gold price, S&P Global, 30 June 2025.

³⁷³ [REDACTED]

³⁷⁴ [REDACTED]

2. Shortly After Zijin Mining Purchased the Mine, Security Incidents Again Begin to Increase

219. Only a few months after Zijin Mining's acquisition of CGI, and the conclusion of Operation Creta, the global COVID-19 pandemic hit and the Colombian government issued Decree No. 417 of 17 March 2020, declaring a State of Economic, Social, and Ecological Emergency.³⁷⁵ The exceptional restrictions on the State were officially lifted on 30 June 2022 when President Iván Duque announced the end of 840 days of exceptional restrictions, based on the progress of vaccination and the decrease in epidemiological cases.³⁷⁶
220. Thus, in early 2020, Zijin Mining found itself in possession of a mining operation that, despite the successes of Operation Creta, still faced an illegal mining problem and, in tandem, the local and global shocks of the COVID-19 pandemic. In this context, Zijin-Continental Gold, instead of fortifying its community and social license programs, cut and deprioritized them. This confluence of factors created a new opportunity for armed groups like Clan del Golfo to exploit the local community and illegal mining to evolve and grow.

a. The COVID-19 pandemic and Zijin Mining's relationship with the community of Buriticá

221. Prior to Zijin Mining's acquisition of CGI, CGI had cultivated a relationship of proximity and continuity with the Buriticá community, well before the Mine reached its construction and production phases. Under Canadian ownership and management, CGI maintained permanent, face-to-face channels of communication and dialogue with the community, including the *El Buritiqueño* community newspaper, a weekly radio program (*Crece con Voz*) on the municipal station, and recurring *Diálogos con Continental Gold* in both urban and rural areas.³⁷⁷ Through these mechanisms, the company systematically socialized project decisions (such as environmental license modifications), received and addressed community concerns, and integrated local voices into the project's evolution.
222. This closeness was coupled with a demonstrated willingness to respect the community's social fabric, governance structures, and territorial priorities. CGI helped create and sustain multi-actor spaces such as the Mesa de Concertación Minera, where municipal authorities, mining associations, social leaders and the company jointly addressed the challenges of illegal mining and monitored environmental and social indicators.³⁷⁸

³⁷⁵ Exhibit R-0028, Decree No. 417 of 2020, 17 March 2020.

³⁷⁶ Exhibit R-0029, Resolution No. 666 of 2022, Ministerio de Salud y Protección Social, 28 April 2022.

³⁷⁷ See Exhibit R-0032, *El Buritiqueño* (25th Edition), Continental Gold Inc., May 2017, p. 2, 6-7; Exhibit R-0030, *El Buritiqueño* (15th Edition), Continental Gold Inc., March–April 2016, p. 2.

³⁷⁸ Exhibit R-0030, *El Buritiqueño* (15th Edition), Continental Gold Inc., March–April 2016, p. 11.

223. CGI invested in programs that reinforced local institutions through initiatives that brought stake holders together,³⁷⁹ preserved cultural identity (*Semana de la Cultura* a cultural-heritage program),³⁸⁰ and protected the surrounding ecosystems via voluntary conservation agreements and environmental education.³⁸¹ In doing so, CGI signaled that the Buriticá Project would be developed not against, but with, the community – seeking to generate formal employment, strengthen local productive chains, and reduce informality in a manner consistent with the community’s own aspirations and the State’s public-policy objectives.
224. Before Zijin-Continental Gold took over, CGI designed its programs from the ground up in Buriticá, relying heavily on municipal and community structures (including local schools, farmer associations and youth collectives), and focused on issues that directly reflected the municipality’s immediate concerns: formalization of local miners, strengthening of rural livelihoods through Siembra Futuro (an agricultural development program),³⁸² youth protection and leadership, and participatory spaces such as Diálogos con Continental Gold. The longevity and expansion of these initiatives, and the absence of evidence of generalized protest during this phase, demonstrate that CGI’s approach had secured a significant degree of local legitimacy.
225. CGI also invested in educational and cultural initiatives and in facilities that functioned as community “houses of well-being.” Through its education programs *Formación Básica*, *Formación para el Empleo*, and *Educación + Superior*, Continental Gold financed adult basic education, technical training in mining and related fields, and full scholarships (including living stipends) for municipal residents to pursue post-secondary technical, technological, and university studies, with at least sixteen active scholarship recipients reported in 2015.³⁸³ Additionally, the company helped maintain and equip the municipal Casa de la Cultura and supported cultural programming such environmental heritage projects, which were featured repeatedly in *El Buritiqueño* as emblematic community projects.³⁸⁴
226. CGI’s community programs evidenced a commitment not only to working for and supporting the community, but also to actively involving community members in the

³⁷⁹ **Exhibit R-0117**, *El Buritiqueño* (20th Edition), Continental Gold Inc., December 2016, p. 2.

³⁸⁰ **Exhibit R-0117**, *El Buritiqueño* (20th Edition), Continental Gold Inc., December 2016, p. 9.

³⁸¹ **Exhibit R-0117**, *El Buritiqueño* (20th Edition), Continental Gold Inc., December 2016, p. 9.

³⁸² **Exhibit R-0074**, *El Buritiqueño* (40th Edition), Continental Gold Inc., August 2018, p. 2 (discussing the Siembra Futuro agricultural community program); **Exhibit R-0074**, *El Buritiqueño* (40th Edition), Continental Gold Inc., August 2018, p. (explaining that the Siembra Futuro agricultural-development program began on 12 August 2017 and expanded from seven to fifteen productive projects within a year, and supported some 300 families through livestock and crop projects and a dedicated Agricultural Fund).

³⁸³ **Exhibit R-0115**, *El Buritiqueño* (12th Edition), Continental Gold Inc., September–October 2015, p. 11.

³⁸⁴ See e.g., **Exhibit R-0117**, *El Buritiqueño* (20th Edition), Continental Gold Inc., December 2016, p. 9.

Mine's decision-making processes.³⁸⁵ All of these initiatives are consistent with international best practices, as described by Mr. Gorman.³⁸⁶

227. When Zijin-Continental Gold took control of the project in late 2019, the nature of the relationship with the community changed materially, and it did so against the backdrop of the COVID-19 pandemic.
228. The transition period from the conclusion of Operation Creta in 2020 until the end of the pandemic in 2022 posed significant challenges to the whole of Colombia, and Buriticá was no exception. The emergency measures ordered by the National Government under the State of Economic, Social, and Ecological Emergency entailed a comprehensive reorganization of the State to address the public health crisis. Thus, in accordance with World Health Organization (“WHO”) guidelines, President Duque mandated compulsory preventive isolation for all people within the national territory. The Military Forces and the National Police were exempt from this requirement only to ensure compliance with the emergency pandemic measures and the continued delivery of essential services to the Colombian population.³⁸⁷ Despite this challenging new landscape, Colombia's Armed Forces continued to provide persistent protection services to the Buriticá Mine, including in July 2021, the execution of the armed forces component of Operation Hades, an additional targeted campaign to combat illegal mining.
229. Although Zijin Mining inherited CGI's social programming architecture, one of its first decisions was to cut and demote community programming executives and personnel, signaling a decisive break from CGI's prior, more community-focused governance model. These changes coincided with a reconfiguration of Zijin-Continental Gold's governance structure in which community and social programming functions were folded into broader ESG or operational portfolios, while decision-making authority was concentrated in production- and finance-oriented executives.³⁸⁸ Compared with CGI's earlier framework, Zijin Mining's post-acquisition structure for Buriticá emphasized mine output, cost control, and capital allocation, with community initiatives relegated to generic ESG or risk headings³⁸⁹ and largely absent from the company's core management and board roles.³⁹⁰ In practice, this shifted the center of gravity inside the organization away from proactive community engagement and toward purely operational priorities, sidelining local stakeholders and pushing their interests to the background of corporate decision-making.
230. Although the changes executed by Zijin-Continental Gold in social programs increased the number and thematic range of programs, they also diluted the centrality of Buriticá

³⁸⁵ **Exhibit R-0032**, *El Buritiqueño* (25th Edition), Continental Gold Inc., May 2017, p. 2.

³⁸⁶ *See supra* III.B.1.

³⁸⁷ **Exhibit R-0028**, Decree No. 417 of 2020, 17 March 2020.

³⁸⁸ **Exhibit R-0077**, 2018 Sustainability Report, Continental Gold, August 2018, pp. 17–18, 23.

³⁸⁹ **Exhibit R-0076**, 2024 Annual Report, Zijin Mining Group Company Ltd., 31 December 2024, pp. 77–79.

³⁹⁰ **Exhibit R-0076**, 2024 Annual Report, Zijin Mining Group Company Ltd., 31 December 2024, pp. 44–46.

itself and the community's partnership in the Mine. For example, prior to 2020, each issue of *El Buritiqueno* included a calendar of "actions of Continental Gold in the community" over the past month.³⁹¹ The caption to the calendar states "Continental Gold continues to maintain a presence in Buriticá and within the area of influence of its mining project. We present here a selection of the activities carried out last month in collaboration with local communities."³⁹² After Zijin Mining takes control of the Mine, the monthly calendar of activities in *El Buritiqueno* disappears.³⁹³

231. In late 2020, the Mine began commercial operations.³⁹⁴ In that same month, less than a year after Zijin took control of the Mine, Zijin-Continental Gold "chose to carry out a series of defensive and protective operations aimed at safeguarding human resources [...] as well as the Company's assets."³⁹⁵ This involved the building of "barricades and trenches."³⁹⁶
232. Zijin Mining's decision to distance the company from the community led to tensions with residents of the municipality. This decision generated discontent amongst the residents who were frustrated by Zijin Mining's decision to discontinue certain community engagements, sparking protests against the Mine social and environmental policies.³⁹⁷
233. For a community that had been a key partner in CGI's project, its abrupt displacement to the background by Zijin-Continental Gold marked a stark rupture. In March 2020, only a few months after Zijin Mining's acquisition of CGI, residents of Buriticá staged a protest during which they blocked access routes to the Mine.³⁹⁸ The actions taken by the

³⁹¹ See e.g., **R-0031**, *El Buritiqueno* (23rd Edition), Continental Gold Inc., March 2017, Exhibit R-0032, p. 8, **R-0032**, *El Buritiqueno* (25th Edition), Continental Gold Inc., May 2017, p. 8, **R-0033**, *El Buritiqueno* (30th Edition), Continental Gold Inc., October 2017, p. 8; and **R-0074** *El Buritiqueno* (40th Edition), Continental Gold Inc., August 2018, p. 8.

³⁹² See e.g., **Exhibit R-0032**, *El Buritiqueno* (25th Edition), Continental Gold Inc., May 2017, p. 8.

³⁹³ **Exhibit R-0162**, *El Buri* (61st Edition), Zijin-Continental Gold, June 2020, p. 8.

³⁹⁴ **Exhibit C-0255**, Technical Description of the Buriticá Project, ANM and Continental Colombia, 13 April 2021.

³⁹⁵ [REDACTED] First Witness Statement, 10 July 2025, ¶ 12.

³⁹⁶ [REDACTED] First Witness Statement, 10 July 2025, ¶ 12.

³⁹⁷ **Exhibit R-0135**, Colombia: Zijin's Buriticá gold mine sparks ongoing tensions over security, environmental impacts and community relations, Business and Human Rights Centre, 13 November 2024.

³⁹⁸ **Exhibit R-0034**, Colombia's Relationship with the PRC, Center for Strategic and International Studies (CSIS), November 2022 ("Since it took over the mine, Zijin has had multiple difficulties with the labor force and surrounding community. These include protests in March 2020 over whether the company's operations during the Covid-19 pandemic were consistent with national regulations and put workers at risk. Another round of protests in October 2021 became violent, forcing Colombian authorities to deploy the national riot police (ESMAD). Further protests occurred in February 2022 over the mine's impact on the local water supply and in August and September 2022 over the disappearance of two informal miners."); **Exhibit R-0035**, Colombia: China's Zijin Mining faces strikes over Covid and employment guarantees; incl. company response, Center for Human Rights and Business, 23 May 2022 ("[S]ince Zijin's management began, three strikes have taken place in the municipality. The first was in March 2020, a few days after Covid-19 lockdowns began in Colombia. The second was in October 2021, which ended with the intervention of Esmad, the anti-riot squad. February's was the third.")

community against the Mine are the best evidence of Zijin-Continental Gold's mismanagement of expectations and misalignment between its reconfigured social strategy and local priorities.³⁹⁹

234. Once Zijin-Continental Gold assumed control, it was its own choices – about how to redesign, where to direct, how to communicate and how in practice to carry out its community programs, particularly the shift of benefits to a wider region, the manner in which it formalized previously informal activities, and its concrete practices on hiring, procurement and everyday interaction with Buriticá's residents – that progressively dismantled the confidence and expectations built prior to Zijin's acquisition, and in the end, led the community to express its discontent through protest.⁴⁰⁰
235. Zijin-Continental Gold's decision to dismantle community engagement ran contrary to the conclusions of the Technical Reports commissioned to update the Mine's Resource and Reserve estimates. The May 2021 Independent Technical Report prepared by SRK Consulting ("**2021 SRK Report**") identifies a "moderate/ tolerable risk" of "social concerns," which included concerns from "the local people" regarding "environmental protection measures to be implemented, as well as more employment opportunities from the Buritica Project, criminal activity associated with artisanal miners, and safety issue caused by the local rebel army nearby."⁴⁰¹ The 2021 SRK Report, in classifying these as "moderate" risks, concludes that they could be "generally managed if the Company put efforts to solve the issues."⁴⁰²
236. The June 2022 Independent Technical Report prepared by BAW Mining Inc. (the "**2022 BAW Report**") likewise concludes that the "environmental and social risks for the Buriticá Project are considered controllable within reasonable efforts."⁴⁰³

b. Government measures vs. Claimant's conduct in response to community discontent in Buriticá

237. On 10 August 2022, the Director of Mines of Buriticá received a report that illegal miners were trapped underground after Claimant backfilled a tunnel and requested urgent assistance. The Director of Mines promptly contacted Zijin-Continental Gold to verify the situation and seek cooperation in securing the release of the trapped miners. Instead of acknowledging the backfilling activities and activating emergency protocols, Zijin-Continental Gold denied that any such backfilling had taken place and took no concrete

³⁹⁹ **Exhibit R-0135**, Colombia: Zijin's Buriticá gold mine sparks ongoing tensions over security, environmental impacts and community relations, Business and Human Rights Centre, 13 November 2024.

⁴⁰⁰ **Exhibit R-0135**, Colombia: Zijin's Buriticá gold mine sparks ongoing tensions over security, environmental impacts and community relations, Business and Human Rights Centre, 13 November 2024.

⁴⁰¹ **Exhibit JTB 009**, Independent Technical Report on the Buriticá Gold-Silver Project, SRK Consulting (China) Ltd., 8 May 2021, pp. 110–111.

⁴⁰² **Exhibit JTB 009**, Independent Technical Report on the Buriticá Gold-Silver Project, SRK Consulting (China) Ltd., 8 May 2021, p. 111; p. 130.

⁴⁰³ **Exhibit JTB-006**, NI 43-101 Independent Technical Report of Buritica Project, Colombia, BAW Mining Inc., 30 June 2022, p. 28.

steps to assist the miners.⁴⁰⁴ This was the catalyst that unleashed social unrest within the community, as Zijin Mining’s disregard for the lives of Buriticá’s residents was evident.⁴⁰⁵ Ultimately, two of the trapped miners died before rescue operations could reach them.⁴⁰⁶

238. Notwithstanding these facts, Claimant has attempted to recast the August 2022 events as a mere “blockade” allegedly “organized to protest the disappearance and death of two illegal miners” but supposedly “staged by the Clan del Golfo.”⁴⁰⁷ However, meetings held between Claimant’s representatives and multiple local and departmental authorities show officials focused on the urgent need to clarify the fate of the trapped miners, restore public order and reopen access roads. While Colombia does not deny the broader security challenges in the region, due to the presence of illegal armed groups such as Clan del Golfo, the evidence indicates that these protests arose from concrete grievances caused by Zijin-Continental Gold’s own conduct, and that the residents’ actions cannot fairly be reduced to an instrument of organized crime, as Claimant now suggests.⁴⁰⁸
239. Equally misplaced is Claimant’s allegation that Colombia failed to protect its investment in the face of the August 2022 protest, allegedly because the events occurred shortly after the inauguration of President Petro.⁴⁰⁹ On 12 August 2022, the Mayor of Buriticá, accompanied by other municipal and departmental officials, met directly with the protestors at the Mine access points to seek a negotiated resolution addressing both the Mine’s operational continuity and the community’s concerns arising from the reported trapping of informal miners. That same day, the Mayor formally requested support from ESMAD, the national anti-riot squad, to ensure that any restoration of order would be carried out by trained public forces rather than by ad hoc or private security deployments.⁴¹⁰
240. Moreover, at the national level, the MinMinas also intervened to address the community’s discontent and prevent an escalation of tensions. In August 2022, the Minister of Mines travelled to Buriticá and met with protest leaders and local representatives to hear their grievances and explore options for an amicable solution that would restore social peace while ensuring that mining activities complied with Colombian law and respected community rights.⁴¹¹ Colombia’s response demonstrated not only Colombia’s commitment to Zijin-Continental Gold’s investment and concern for security in the

⁴⁰⁴ See **Exhibit R-0036**, Minute No. 1, Consejo de Seguridad, Alcaldía de Buriticá, 12 August 2022.

⁴⁰⁵ **Exhibit R-0036**, Minute No. 1, Consejo de Seguridad, Alcaldía de Buriticá, 12 August 2022.

⁴⁰⁶ **Exhibit R-0161**, Acta de Atención Emergencia Minera No. 202209E, Agencia Nacional de Minería, 29 August 2022, p. 14.

⁴⁰⁷ Claimant’s Updated Memorial, ¶ 137.

⁴⁰⁸ Claimant’s Updated Memorial, ¶ 137.

⁴⁰⁹ Claimant’s Updated Memorial, ¶¶ 137–141.

⁴¹⁰ See **Exhibit R-0037**, Acta de Conversación y Seguimiento a Manifestaciones, Alcaldía de Buriticá, 12 August 2022, p. 4.

⁴¹¹ **Exhibit R-0142**, Caos y zozobra en 5 días de paro minero en Buriticá, El Colombiano, 17 August 2022.

municipality, but also that the change of administration did not affect Colombia's response to the situations that affected Buriticá.

241. Colombia's commitment to the safety of the Mine was further evidenced when, on 29 August 2022, the National Mining Agency issued Emergency Resolution No. 202209E in response to the August 2022 incident. In order to protect the life and physical integrity of the mine workers, Resolution No. 202209E ordered both the immediate suspension of all hydraulic fill activities by Continental Colombia and ordered the cessation of all illegal mining activity within the concession area.⁴¹² Claimant calls Resolution No. 202209E "a dead letter,"⁴¹³ and conveniently ignores the aspect of Resolution No. 202209E ordering the *suspension of Continental Colombia's backfilling operations*.⁴¹⁴
242. Two days after Resolution 202209E was issued, the Secretary of Mining of Antioquia issued a resolution suspending, with immediate effect, all hydraulic fill activities conducted in the concession area pending a government investigation.⁴¹⁵ On 2 September 2022, the Secretary of Mining formally opened an investigation into the incident.⁴¹⁶ The Secretary of Mining subsequently conducted several site inspections and gradually lifted the suspension on backfilling activities as he deemed it safe to resume.⁴¹⁷
243. On 30 September 2022, the Government of Antioquia carried out comprehensive technical inspections of the concession area, verifying compliance with obligations on production, mine safety, environmental management, ventilation, ground support, use of explosives, and emergency preparedness following the August 2022 incident.⁴¹⁸
244. The States's concerns regarding Continental Colombia's backfilling activities were well-founded. In February 2023 Zijin-Continental Gold again conducted backfilling operations in the Mine, this time reportedly trapping approximately fifty informal miners underground and triggering a new wave of community protest. Once more, municipal and departmental authorities stepped in to mediate between the Mine and the affected residents and, to preserve public order and coordinate any rescue or security measures, activated the Unified Command Post as a formal inter-institutional mechanism.⁴¹⁹ Claimant's Updated Memorial makes no mention of this serious incident, or of the State's response, thereby omitting a critical episode that confirms both the human risks created

⁴¹² **Exhibit R-0161**, Acta de Atención Emergencia Minera No. 202209E, Agencia Nacional de Minería, 29 August 2022, p. 16.

⁴¹³ Claimant's Updated Memorial, ¶ 145.

⁴¹⁴ **Exhibit R-0161**, Acta de Atención Emergencia Minera No. 202209E, Agencia Nacional de Minería, 29 August 2022, p. 16.

⁴¹⁵ **Exhibit R-0087**, Resolution, Department of Antioquia, Ministry of Mines, 16 September 2022, p. 3.

⁴¹⁶ **Exhibit R-0087**, Resolution, Department of Antioquia, Ministry of Mines, 16 September 2022, pp. 3, 9.

⁴¹⁷ **Exhibit R-0087**, Resolution, Department of Antioquia, Ministry of Mines, 16 September 2022, pp. 7–11.

⁴¹⁸ See **Exhibit R-0088**, Inspection Report Titles in Underground Mining Operations, Department of Antioquia, 30 September 2022, pp. 2–3.

⁴¹⁹ See **Exhibit R-0073**, Intervención para el restablecimiento del orden público en Buriticá, Antioquia, 15 February 2023.

by Claimant's operational decisions and the Colombian authorities' efforts to manage those risks, protect lives, and restore order.

245. The events surrounding the August 2022 and February 2023 protests at the Buriticá Mine reveal a pattern of conduct by Claimant that is incompatible with respect for the local community and inconsistent with Claimant's attempts to portray itself as a victim of State inaction. Claimant's preferred response to the community's discontent was not to promote negotiation or dialogue but to bring in heavily armed personnel. As highlighted by Mr. Gorman, experience across the world shows mining operators that choose not to prioritize community engagement often have to rely on remedial approaches that involve enhanced physical security.⁴²⁰

E. The State Has Continued to Take Every Effort to Maintain Security at the Mine

1. The State Has Persistently Continued to Take Every Effort to Maintain Security at the Mine

246. Claimant attempts to manufacture a distinction between the State's behavior before and after President Petro was inaugurated on 7 August 2022. In reality, the State's efforts to maintain peace and security at the Mine and in Buriticá more generally have not changed. The State has consistently responded to security incidents, both before and after the change in administration. As described above, the State's response to the August 2022 and February 2023 protests was immediate and appropriate to the risks posed. Since then, there have been several security incidents to which the State has responded immediately and in a manner that ensured the best outcome for both the Mine and the community. Because of the constant and permanent presence of the National Army and UNIMIL at the Mine, the State can act swiftly to address the security incidents at the Mine and has consistently done so, including after the new administration took office in August 2022.

a. The State continues to respond to security incidents at the Buriticá Mine

247. There are numerous examples of the State's response to security incidents at the Mine after the August 2022 and February 2023 incidents discussed above. In an attack on 17 May 2023, an explosive device was detonated in the Higabra tunnel of the Mine, killing two workers and injuring fourteen additional people, among them four people from the Carabineros group, who were carrying out patrol duties in the area.⁴²¹ This tragedy prompted various actions by the State. Agencies from the local and central government, including the Ministry of Mines and Energy, the National Police, and the Army convened and participated in a preliminary visit to the Mine to assess the security situation on the ground, identify the operational needs of law enforcement, and define tailored action

⁴²⁰ See *supra* III.B.1.

⁴²¹ **Exhibit R-0143**, Dos muertos y 14 heridos tras explosión de mina en Antioquia: responsabilizan al Clan del Golfo, Infobae, 17 May 2023.

plans for Buriticá considering the ongoing illegal mining and public order challenges.⁴²² In parallel, the departmental authorities publicly offered a reward of up to COP\$ 50 million for information leading to the identification and capture of those responsible for the attack. In the meantime, UNIMIL officers present at the Mine took steps to investigate the attack.⁴²³

248. On 1 October 2023, the Mine was attacked with improvised explosive devices. Two security guards and a Zijin Continental Gold employee were injured.⁴²⁴ In response to the incident, Attorney General's Office requested local and national entities to address the security situation and convened an Extraordinary Security Council. In addition, the National Police committed to strengthening control over explosives used in mining.⁴²⁵

[REDACTED] ⁴²⁶

249. Following a May 2024 shooting of two Zijin-Continental Gold employees by illegal miners, Colombian military forces were deployed to secure access routes and manage civil unrest, an intervention aimed at restoring operational security and protecting human life within the Mine concession area.⁴²⁷ Simultaneously, the National Mining Agency exercised its emergency powers to issue a resolution suspending all unauthorized underground activities, a measure consistent with previous administrative actions intended to mitigate the acute safety risks and environmental hazards generated by illicit mining operations.⁴²⁸

250. On 18 May 2024, in the context of ongoing security and operational tensions around the Buriticá Mine, associations of informal miners publicly alleged that Zijin-Continental Gold had discharged toxic mud into tunnels, reportedly trapping informal miners within the tunnels. The National Police attempted to access the tunnels to confirm whether any miners were trapped and to conduct a rescue, but the tunnels had collapsed such that the rescue team could not access the area.⁴²⁹ Zijin-Continental Gold released a statement

⁴²² **Exhibit C-0339**, Press Release by the Ministry of Mines and Energy, 18 May 2023.

⁴²³ **Exhibit R-0152**, Recompensa de hasta \$50 millones por información del atentado en mina de Buriticá, El Nuevo Siglo, 18 May 2023

⁴²⁴ **Exhibit R-0153**, Por ataque a la mina de la Zijin Continental Gold, Procuraduría pidió al Gobierno poner freno a la minería ilegal, Infobae, 7 October 2023.

⁴²⁵ **Exhibit R-0153**, Por ataque a la mina de la Zijin Continental Gold, Procuraduría pidió al Gobierno poner freno a la minería ilegal, Infobae, 7 October 2023.

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⁴²⁷ **Exhibit R-0040**, Letter to D. Gómez Rivas, Defensa Jurídica del Estado to L. Li, Zijin-Continental Gold, 23 August 2024.

⁴²⁸ **Exhibit C-0411**, Resolution No. 279, President of the Republic of Colombia, 22 July 2024.

⁴²⁹ **Exhibit R-0091**, Acta de Atención Emergencia Minera No. 007-E, Agencia Nacional de Minería, 31 May 2024, p. 27.

claiming that there was no evidence that any illegal miners had been trapped in the tunnels and that the backfilling activities were done in compliance with mining regulations.⁴³⁰

251. Shortly after this incident, the ANM issued Resolution No. 007-E ordering the suspension of all illegal mining activities within the concession area.⁴³¹ Claimant alleges that Resolution No. 007-E was never enforced.⁴³² To the contrary, in June 2024, the ANM's Mine Safety and Rescue Group (*Grupo de Seguridad y Salvamento*) issued an Executive Report which provides recommendations to ensure safety of the Mine. The Report also identifies Continental Colombia's backfilling activities as the cause of the safety incident. While Continental Colombia's backfilling operations were done legally, the Report recommends that Continental Colombia conduct future backfilling with heightened safety awareness. In particular, the report recommends continuous monitoring of the Mine's atmosphere for any drop in oxygen levels or increase in carbon monoxide or hydrogen sulfide levels. It also recommends the monitoring of water inflow to the Mine tunnels and the maintenance of an evacuation plan and properly made escape routes.⁴³³
252. While Colombia worked to combat illegal mining through coordinated inter-institutional efforts, continued targeted campaigns to neutralize illegal mining operations, and the constant presence and interventions of the armed forces stationed at the mine, the State's concern in issuing Resolution No. 007-E and the subsequent Executive Report was also the safety of miners and residents in Buriticá. The issue of illegal mining is complex and requires a multi-agency approach. The Vice Minister of the Interior, Diego Cansino, acknowledged this during a meeting held on 26 May 2024:

Diego Cansino, Vice Minister of the Interior, states that they acknowledge the issue and that it is important to coordinate actions among the national, departmental, and municipal governments—as well as other entities and international cooperation partners—in order to discern a stratagem that benefits the country and facilitates the recovery of the mine without resulting in human rights violations; this constitutes a complex challenge; while establishing a dialogue with these people is not an unreasonable idea but the specific nature of the local contexts precludes the implementation of immediate measures; consequently, meetings will be scheduled with the aim of initiating a dialogue involving representatives from the Office of the High Commissioner for Peace and representatives of the national government. The President has been clear regarding territories experiencing violent conflict: the deployment of public

⁴³⁰ **Exhibit R-0089**, Zijin-Continental Gold Press Release: Situación en Buriticá tras nuevo ataque de mineros criminales, 20 May 2024.

⁴³¹ **Exhibit R-0091**, Acta de Atención Emergencia Minera No. 007-E, Agencia Nacional de Minería, 31 May 2024.

⁴³² Claimant's Updated Memorial, ¶ 397.

⁴³³ **Exhibit R-0090**, Technical Report on Emergency Response, Amaga Mine Safety and Rescue Group, Agencia Nacional de Minería, June 2024.

peacekeeping forces is fundamental to the enforcement of the law and it is a priority to accompany such operations with a territorial consolidation strategy which employs measures designed not to endanger human life; additionally, the Municipal Spokeswoman reports that, at the surface level, the group of unauthorized miners refused to grant access to their mining operations, according to communications that have been received.⁴³⁴

253. As Vice Minister Cancino notes, resolving illegal mining requires coordination amongst national, departmental, and municipal governments and any efforts must be done without violating the State's obligations to uphold human rights. He acknowledges the importance of maintaining public armed forces in the area while also noting that the process will take time. Claimant's assertions that the State has failed to enforce this, and other, orders assumes that effective enforcement must mean the immediate elimination of illegal mining in the concession area. This ignores the complexity of the illegal mining problem throughout the country, and the need for holistic, long-term solutions aligned with international best practices, rather than sole dependence on armed forces responses to individual incidents.
254. In response to the security challenges at the Buriticá Mine during 2025, the Colombian State activated the PMU to coordinate high-level interventions between departmental authorities, the armed forces, and the Attorney General's Office.⁴³⁵ These state-led operations focused on dismantling the illicit infrastructure supporting illegal mining, while responding decisively to sophisticated armed attacks.
255. For example, on 22 April 2025, Colombian authorities conducted a joint operation by National Police, the Army, and the Attorney General's Office resulting in the seizure of materials used for illicit mineral extraction and processing linked to Clan del Golfo. The operation involved the seizure of hydrocarbon mixtures, mercury, gold, and a weapon with ammunition; authorities also destroyed 150 granulators and 16 motors used in illegal mining activity.⁴³⁶
256. In addition, Colombia has adopted several programs that support its security efforts in Buriticá. For example, the State engages in *Plan Buen Vecino*, a military community-engagement program with the dual purpose of community-relationship building with the Colombian armed forces and intelligence gathering.⁴³⁷ The plan involves direct soldier-to-civilian interactions in residential areas of Buriticá, including the distribution of humanitarian aid to generate good will and gather tactical intelligence from the local

⁴³⁴ **Exhibit R-0091**, Acta de Atención Emergencia Minera No. 007-E, Agencia Nacional de Minería, 31 May 2024, p. 16.

⁴³⁵ **Exhibit R-0144**, Gobernación de Antioquia instaló PMU por ataques con explosivos en mina de oro en Buriticá, Alerta Paisa, 19 January 2025.

⁴³⁶ **Exhibit-0166**, Autoridades incautaron material destinado a explotación minera ilícita en Buriticá, Antioquia, Caracol Radio, 22 April 2025.

⁴³⁷ See **Exhibit R-0040**, Letter to D. Gómez Rivas, Defensa Jurídica del Estado to L. Li, Zijin-Continental Gold, 23 August 2024, pp. 10, 22.

population.⁴³⁸ The State has also put in place robust regulatory and operational measures to control explosives that could otherwise be diverted to support Clan del Golfo and illegal mining within and around Buriticá. The Department of Arms and Explosives Commerce Control has prohibited third-party intermediaries in the procurement of explosives.⁴³⁹ In addition, INDUMIL, a state owned entity responsible for the production of weapons, has modified the marking of explosive materials to make them more traceable. INDUMIL also provides training to military personnel in enhanced explosives-control practices, to ensure that explosives authorized for legitimate mining operations cannot be readily leaked to, or exploited by, illegal miners or organized criminal structures.⁴⁴⁰

257. Colombia's response to the security situation at the Buriticá Mine rests on sustained, structural measures, not simply its responses to isolated reactions. Specialized UNIMIL units of the National Police have maintained a permanent presence in Buriticá to support underground security at the Mine, complemented by the National Army, the armed forces deter illegal incursions, protect logistics and personnel, and enable rapid reactions to violent events.⁴⁴¹ These deployments are reinforced by regular joint operations—described in greater detail in Section III.E.2 below—in which the highly trained armed forces enter underground tunnels, seize illegal equipment and explosives, recover unlawfully extracted minerals, secure Continental Gold's critical infrastructure, and arrest illegal miners—measures that directly contradict Claimant's narrative of State inaction. Claimant's insistence that the State must do more suggests that it may only be satisfied if the State chooses “to undertake an operation waged in blood and fire.”⁴⁴²
258. Colombia has continued to provide security to the Buriticá Mine, often at great cost. As noted above, UNIMIL officers have been killed, and are regularly injured while acting to secure the Buriticá region, including Claimant's concession area.⁴⁴³ By continuing to maintain a permanent presence, to enter dangerous underground workings, and to expose themselves to attack in order to deter illegal invasions and protect Zijin-Continental Gold's facilities and workers, the National Police and the Army demonstrate a sustained, good-faith commitment to restoring public order and securing the Mine. These facts are wholly incompatible with Claimant's portrayal of a passive State.

⁴³⁸ See **Exhibit R-0040**, Letter to D. Gómez Rivas, Defensa Jurídica del Estado to L. Li, Zijin-Continental Gold, 23 August 2024, pp. 10, 22.

⁴³⁹ **Exhibit R-0040**, Letter to D. Gómez Rivas, Defensa Jurídica del Estado to L. Li, Zijin-Continental Gold, 23 August 2024, p. 1.

⁴⁴⁰ **Exhibit R-0040**, Letter to D. Gómez Rivas, Defensa Jurídica del Estado to L. Li, Zijin-Continental Gold, 23 August 2024, p. 1.

⁴⁴¹ Gallego First Witness Statement, ¶¶ 13, 15, 30.

⁴⁴² **Exhibit C-0394**, Santiago Rodríguez Álvarez and Manuela Galvis, The Clan del Golfo is winning the underground gold war in Buriticá, La Silla Vacía, 10 March 2024, p. 13.

⁴⁴³ See e.g., **Exhibit R-0143**, Dos muertos y 14 heridos tras explosión de mina en Antioquia: responsabilizan al Clan del Golfo, Infobae, 17 May 2023 (regarding the May 2023 attack during which 4 UNIMIL officers were killed).

b. The State's policies regarding small-scale mining and Paz Total did not signal a shift toward an anti-large mining agenda

259. Claimant contends that, on 17 January 2023, President Petro fulfilled his campaign pledge against large-scale mining by announcing reforms to the mining code to prioritize small-scale mining.⁴⁴⁴ Claimant grossly mischaracterizes the new administration's policy as "anti-large-scale mining" when, in fact, it can be better described as pro-small-scale miners. The proposed mining code reform aimed to create a path for legalization of small-scale miners,⁴⁴⁵ a move that has been viewed by global experts in the mining industry as a crucial step in curbing illegal mining and an essential part of international best practices.⁴⁴⁶ Nevertheless, despite the presentation of two draft bills to the Congress, the proposed mining reforms did not pass.⁴⁴⁷
260. Similarly, Claimant's characterization of the Petro Government's *Paz Total* policy as a ceasefire with Clan del Golfo that allowed criminals to return to the Mine mischaracterizes the State's efforts to approach the complex situation of armed groups holistically. Colombia's *Paz Total* policy, codified as a binding State Policy under Law No. 2272 of 4 November 2022, represented a comprehensive, multi-dimensional strategy to address the persistence of armed groups across the country.⁴⁴⁸ The policy was expressly designed to be priority-driven, cross-cutting, participatory, broad, inclusive, and holistic, encompassing not only the implementation of existing peace agreements but also ongoing negotiation processes, the submission of armed actors to justice, and the dismantlement of organized criminal structures of high impact.⁴⁴⁹
261. Critically, Law No. 2272 did not pursue a one-size-fits-all approach. It established two distinct tracks, calibrated to the nature of the armed actors involved.⁴⁵⁰ The first track provided for political negotiations with organized armed groups operating outside the law, aimed at reaching comprehensive peace accords. The second provided for socio-judicial processes with organized criminal groups with the purpose of dismantling their operations through incentives.⁴⁵¹ Under this second track, Law No. 2272 imposed concrete criminal enforcement conditions: armed groups seeking any political, legal, or socioeconomic benefits were required, at a minimum, to disarm, demobilize, cooperate with judicial authorities, and demonstrate genuine intent to reincorporate into civilian

⁴⁴⁴ Claimant's Updated Memorial ¶ 149.

⁴⁴⁵ **Exhibit R-0041**, Gobierno colombiano revela los cinco ejes de la nueva ley minera que presentará al Congreso, *América Economía*, 15 September 2023.

⁴⁴⁶ See e.g., **Exhibit R-0027**, Illegal mining rises globally along with gold price, S&P Global, 30 June 2025.

⁴⁴⁷ **Exhibit R-0042**, Draft Bill No. 076/2023C, House of Representatives, Congress of The Republic of Colombia, last accessed on 24 April 2026; **Exhibit R-0062**, Draft Bill No. 405/2023, House of Representatives, Congress of The Republic of Colombia, last accessed on 27 April 2026.

⁴⁴⁸ **Exhibit R-0068**, Law No. 2272 of 2022, 4 November 2022.

⁴⁴⁹ **Exhibit R-0068**, Law No. 2272 of 2022, 4 November 2022, Art. 1(b).

⁴⁵⁰ **Exhibit R-0068**, Law No. 2272 of 2022, 4 November 2022, Ch. 1(c).

⁴⁵¹ **Exhibit R-0068**, Law No. 2272 of 2022, 4 November 2022, Ch. 1(c).

life.⁴⁵² For high-impact criminal structures specifically, the law went further, requiring that they provide sufficient information to enable the dismantling of their illicit economic networks.⁴⁵³ *Paz Total* thus did not represent an amnesty or an abdication of law enforcement; it conditioned all benefits on verifiable commitments to justice and the destruction of criminal infrastructure.

262. The policy’s holistic character extended beyond the negotiating table. Law No. 2272 mandated the creation of designated “Regions of Peace” in areas most affected by conflict, incorporating local participation through Peace Councils, transitional justice committees, victim advocacy bodies, and civil society organizations.⁴⁵⁴ In sum, *Paz Total* was designed as a binding, whole-of-state framework in which criminal enforcement mechanisms functioned as integral components of a broader strategy to end the prevalence of organized armed violence in Colombia.
263. Claimant’s narrative also overlooks the substantial continuity between *Paz Total* and the prior peace architecture inaugurated by the 2016 Final Agreement between the Government of Colombia and the FARC-EP under President Santos. That agreement, which led to the demobilization of the country’s largest insurgent group and earned international recognition, was itself premised on a comprehensive understanding of peace: it combined political reforms, rural development, substitution of illicit crops, victims’ rights, and demobilization and reincorporation of combatants. Law No. 2272 expressly situates itself as building upon the 2016 FARC-EP accord. There is therefore a clear line of institutional continuity – *Paz Total* consolidates, rather than supplants, the gains of the 2016 peace process and extends the same holistic logic to other armed and criminal actors.
264. Claimant’s unfounded argument that the Petro Administration’s policies have led to an increase in illegal mining is of a piece with the leitmotif that can be found distributed throughout its Memorial: That the Petro Administration lacks the political will to combat illegal mining. Central to Claimant’s argument is a 27 December 2024 meeting between representatives of Zijin-Continental Gold and Officers of the National Police. Claimant attributes to Brigadier General José Roa the statement that Colombia “lacked the political will to protect the Mine.”⁴⁵⁵ This attribution is false. As Brigadier General Roa explains, the 27 December 2024 meeting was scheduled to discuss the challenges the National Police faced as a result of providing specialized UNIMIL protection services to combat illegal mining in Buriticá for three and a half years, [REDACTED].⁴⁵⁶ During the meeting, the representatives of Zijin-Continental Gold expressed their concern regarding illegal miners invading certain critical tunnels within the Mine and their use of electric transformers to generate electricity and oxygen

⁴⁵² Exhibit R-0068, Law No. 2272 of 2022, 4 November 2022, Art. 8, ¶ 9.

⁴⁵³ Exhibit R-0068, Law No. 2272 of 2022, 4 November 2022, Art. 8, ¶ 9.

⁴⁵⁴ Exhibit R-0068, Law No. 2272 of 2022, 4 November 2022, Art. 8b.

⁴⁵⁵ Claimant’s Memorial, ¶ 212.

⁴⁵⁶ RWS-2, Witness Statement of Brigadier General José James Roa Castañeda, 22 April 2026 (“**Roa First Witness Statement**”), ¶¶ 5–9.

underground.⁴⁵⁷ As Brigadier General Roa explains, he made clear that the National Police were committed to continuing to provide the protective services that they had been providing to combat illegal mining, and Zijin-Continental Gold needed to understand the importance of formalizing a new Cooperation Agreement that would allow for the [REDACTED]:

During the meeting, I demonstrated my institutional and personal willingness to support actions against illegal mining and criminal groups that commit crimes in the area, which has always been the disposition of the National Police. I explained that the National Police, through the Carabineros and specialized units such as UNIMIL, had already been supporting the company with personnel and resources, including approximately thirty men for a period of about three and a half years.

However, I also made it clear that, in order to continue and strengthen that support, it was necessary to establish or renew a formal agreement that would guarantee the [REDACTED].⁴⁵⁸

265. Contrary to Claimant's assertion, nothing that Brigadier General Roa said during the 27 December 2024 meeting expressed that there was a lack of political will on the part of the Colombian government to protect the Mine against illegal mining. In response to Zijin-Continental Gold's concerns regarding illegal mining, Brigadier General Roa conveyed that the company needed to ensure that it was clearly articulating its concerns with the relevant local and national entities in charge of mining sector regulation:

I wish to make it emphatically clear that my position and my words cannot be interpreted as an accusation of a lack of political will on the part of the government of Colombia. [...]

Specifically, I stated that it was necessary to hold formal communications with the mayor's office of the municipality of Buriticá and the Government of Antioquia, and to carry out conversations with the mayor and the governor in order to carry out the pertinent articulations with the national environmental authority, in order to regulate and control the conditions in which illegal mining was being developed. I emphasized that the company should present the problem in a clear and documented manner to the competent authorities and formulate the corresponding requirements to the national government so that it

⁴⁵⁷ Roa First Witness Statement, ¶ 11.

⁴⁵⁸ Roa First Witness Statement, ¶ 12–3.

could adopt the pertinent decisions and measures within its competence.⁴⁵⁹

266. Two months after the 27 December 2024 meeting, in response to the concerns raised by Zijin-Continental Gold, the National Police, with specialized UNIMIL and intelligence operatives, Judicial Police, mobile squadrons of Carabineros, the National Army and staff from the Governorship of Antioquia executed targeted operations to dismantle the infrastructure used by illegal miners, including the confiscation of their electrical transformers and mining materials, and the elimination of illegally excavated tunnels. Brigadier General Roa's testimony clarifies that Colombia has consistently and continually demonstrated its commitment to protecting and supporting the mining companies to combat illegal mining:

I would like to place on record that, according to my knowledge and experience, with or without the formal existence of an agreement in force, police units had always been offering protection, intervention, and support services to mining companies and the community, within the framework of their legal competencies. During the period in which I was in charge of the Directorate of Carabineros, the National Police continued to combat illegal mining and the criminal organizations associated with it, unblocking the tunnels of the Mine in which illegal miners had infiltrated, and destroying their machines, generators and illicit infrastructure.⁴⁶⁰

267. Claimant's account of the 27 December 2024 meeting and its import are belied by the facts and Colombia's actions. Colombia has consistently demonstrated its commitment to fighting illegal mining in Buriticá. Claimant's theme that Colombia lacked the political will to help Claimant combat illegal mining is untenable.

2. The State Has Been Responsive to Claimant's Legal Complaints

a. *Administrative Amparos*

268. Under the Mining Code, a concessionaire is entitled to submit a request for an administrative *amparo* to the appropriate mayor's office of Buriticá or ANM requesting the immediate suspension of an occupation or other disruption of their mining title by an unauthorized person or persons.⁴⁶¹ *Amparos* do not in themselves create an automatic compensatory or indemnifying remedy; rather, it is an administrative proceeding through

⁴⁵⁹ Roa First Witness Statement, ¶¶ 15–16.

⁴⁶⁰ Roa First Witness Statement, ¶ 22.

⁴⁶¹ **Exhibit R-0063**, Law No. 685 of 2001, 15 August 2001 ("**Mining Code**") Art. 306.

which the competent authorities, namely the mayoralty or ANM, adopt corrective measures.⁴⁶²

269. In *amparo* proceedings, the complaint made by the title holder or concessionaire must identify the alleged intruders (or state that they are unknown), describe in general terms the offensive acts, indicate their time and location, and annex a copy of the registration certificate for the mining title.⁴⁶³ Upon receipt, the competent authority is required to schedule a site inspection and to conduct that inspection within twenty days.⁴⁶⁴ A notice of the *amparo* request must be posted at the work site and the mayor's office and, if possible, the individual against whom the *amparo* was filed must be notified by personal service.⁴⁶⁵ If during the site visit, the competent authority finds illegal mining, it then issues an order for the suspension of operations, eviction of the premises, seizure of equipment, delivery of extracted minerals to the concessionaire, and referral of the matter to the criminal authorities for possible charges of unlawful exploitation.⁴⁶⁶ Once the order is issued, it can be executed by the National Police, as with any other order issued by a competent authority. An *amparo* order can be appealed⁴⁶⁷ and, under Article 87 of Law No. 1437 of 2011, an administrative order only becomes final – and therefore enforceable – once the appeals period has expired.⁴⁶⁸
270. An order issued in response to an *amparo* request is limited in scope to the eviction of illegal miners from the *specific location* identified by the concessionaire in the *amparo* request and that location must be within the concession area. The order is not a general eviction order for the entire Mine, nor is it an order for the arrest of the individuals identified in the request. If the competent authority performs a site inspection of the specified location and finds no occupation or disturbance, no action can be taken under the order. The order does not authorize the National Police, for example, to search for the occupiers in other locations of the Mine.
271. Claimant alleges that the State's response to Continental Colombia's administrative complaints has been "ineffective" but appears to base that on a misunderstanding of the nature of an *amparo* action and the relief that can be provided in response. Continental Colombia has filed numerous *amparo* requests to the Mayoralty of Buriticá and the State has consistently responded by taking all the steps required under the Mining Code.
272. For example, on 17 March 2023, Continental Colombia filed an *amparo* request in case no. 0442. Claimant specifically points to this *amparo* request in claiming that the State's response has been "ineffective." To the contrary, the State responding by taking every

⁴⁶² Exhibit R-0063, Mining Code, Art. 308.

⁴⁶³ Exhibit R-0063, Mining Code, Art. 308 and 309.

⁴⁶⁴ Exhibit R-0063, Mining Code, Art. 309.

⁴⁶⁵ Exhibit R-0063, Mining Code, Art. 310.

⁴⁶⁶ Exhibit R-0063, Mining Code, Art. 309.

⁴⁶⁷ Exhibit R-0063, Mining Code, Art. 313.

⁴⁶⁸ Exhibit R-0118, Law No. 1437 of 2011, 18 January 2011, Art. 87(3).

step required under the Mining Code. On 29 March 2023, the competent authority – in this case, the Mayor of Buriticá – issued Auto No. 001, admitting the *amparo* request and scheduling a site inspection.⁴⁶⁹ On 10 April 2023, the Mayor convened a meeting to plan a field operation to the site and requested a security escort from the National Army and UNIMIL.⁴⁷⁰ The site inspection took place over 3 days, from 11 to 13 April, during which officials inspected a total of 32 mine entrances that had been listed on the request. Of those, officials found that only 14 were active mine entrances, 13 of which were located on Continental Colombia’s concession area.⁴⁷¹ Claimant conveniently fails to note that, before the Mayor’s office could issue an order for those 13 mining locations, two intervening events occurred that prevented the *amparo* process from proceeding.

273. First, on 24 May 2023, a judge in the Santa Fe de Antioquia circuit court issued an interim measure (*medidas cautelares*) in an action filed by Mineros Ancestrales de Buriticá against Continental Gold. In that action, the petitioners alleged violations of the right to free economic competition, seeking an order stating that they had the right to Mine in the concession area. The court’s interim measure ordered the suspension of all eviction orders against traditional miners in the plaintiff group for a period of four months and for Continental Colombia to allow mining exploration by the petitioners.⁴⁷²
274. Second, on 1 June 2023, Mayor Luis Hernando Graciano Zapata of Buriticá issued a resolution seeking to recuse himself from the *amparo* proceedings due to a conflict of interest as he was a co-owner of two of the properties on which several of the illegal mining entrances fell.⁴⁷³ On 20 June 2023, the recusal was accepted, and the portions of the request related to the conflicted properties were transferred to the Mayoralty of Giraldo for final determination.⁴⁷⁴
275. On 28 June 2023, the day before his recusal was accepted, the Mayor of Buriticá issued Resolution No. 179 granting the *amparo* with respect to the mine entrances not subject to the conflict of interest and ordering the eviction of those mine entrances, seizure of all equipment used by illegal miners, and delivery to Continental Gold of the mineral extracted.⁴⁷⁵ However, in light of the interim measure ordered by the Court of Santa Fe,

⁴⁶⁹ **Exhibit R-0044**, Resolution No. 179, Alcaldía de Buriticá, 28 June 2023, ¶ 3.

⁴⁷⁰ **Exhibit R-0045**, Letter No. 2023030511338 from D.M. Villegas Davila, Secretaría de Seguridad y Justicia, Government of Antioquia to A.F. Devia Gutiérrez, Zijin-Continental Colombia, 25 October 2023; **Exhibit R-0046**, Letter No. DM-048 from L.F. Cano Cardona, Municipality of Buriticá to J.A. Bustos Rivera, BIPEB, 10 April 2023; **Exhibit R-0047**, Letter No. DM-047 from L.F. Cano Cardona, Municipality of Buriticá to J.L. Cardenas Arias, UNIMIL, 10 April 2023.

⁴⁷¹ **Exhibit R-0044**, Resolution No. 179, Alcaldía de Buriticá, 28 June 2023, p. 7.

⁴⁷² **Exhibit R-0044**, Resolution No. 179, Alcaldía de Buriticá, 28 June 2023, pp. 21–22.

⁴⁷³ **Exhibit R-0045**, Letter No. 2023030511338 from D.M. Villegas Davila, Secretaría de Seguridad y Justicia, Government of Antioquia to A.F. Devia Gutiérrez, Zijin-Continental Colombia, 25 October 2023.

⁴⁷⁴ **Exhibit R-0045**, Letter No. 2023030511338 from D.M. Villegas Davila, Secretaría de Seguridad y Justicia, Government of Antioquia to A.F. Devia Gutiérrez, Zijin-Continental Colombia, 25 October 2023.

⁴⁷⁵ **Exhibit R-0044**, Resolution No. 179, Alcaldía de Buriticá, 28 June 2023.

any evictions ordered by Resolution No. 179 have been stayed pending a final decision by the Santa Fe court on the merits of the dispute before the Antioquia circuit court.

276. The Santa Fe court order, coupled with the transfer of the case to the Mayor of Giraldo, has led to a delay in the finalization of Resolution No. 179 under Article 87 of Law No. 1437 of 2011, which requires that a decision be made with respect to all the properties in the *amparo* request – including the conflicted properties referred to the Mayorality of Giraldo.⁴⁷⁶ Once the Resolution is appropriately finalized under Colombian law, officials will execute Resolution 179 consistent with the Antioquia circuit court’s decision.
277. Following Continental Colombia’s 17 March 2023 request, it has submitted several *amparo* requests to the Mayorality of Buriticá. In response to each of these requests, the Mayorality has taken steps to investigate the claim and ensure justice is done.
278. In some instances, the location cited in the *amparo* request was no longer occupied, thereby making the request moot. For example, on 27 November 2023, Continental Gold Colombia filed an *amparo* request in case no. 1928 alleging that 15–20 people per day were conducting unauthorized mining activity in Continental Colombia’s concession area.⁴⁷⁷ Two days later, On 29 November 2023, the Mayorality of Buriticá issued Auto No. 004, formally admitting the request and scheduling a technical visit.⁴⁷⁸ A public notice, or edict, was posted in a visible location at the Mayor’s office for two days – from December 9 to 11, 2023 – and on 11 December 2023, the notice was emailed to relevant government agencies, including UNIMIL and the National Army, and posted at the Mine.⁴⁷⁹ On 13 December 2023, officials from multiple agencies conducted a site visit to the location Continental Colombia claimed had been occupied by informal miners. The officials found no informal miners at the site and were told by community members that the informal miners had left after learning of the *amparo* application.⁴⁸⁰ Despite the fact that no informal miners were found at the site, the Mayor’s office re-opened the *amparo* request in early 2024 after a new municipal administration was elected. On 13 August 2024, the new Mayor issued a resolution granting the *amparo* in favor of Continental Colombia.⁴⁸¹ However, given that no informal miners were found at the site, no further steps were needed to enforce the order.
279. In other *amparo* requests made by Continental Colombia, illegal or subsistence miners impacted by the requests challenged the *amparo* order – as occurred with the 17 March 2023 request – forcing the State to resolve the dispute before taking any enforcement action. For example, on 1 March 2024, during a site visit in response to an *amparo*

⁴⁷⁶ **Exhibit R-0044**, Resolution No. 179, Alcaldía de Buriticá, 28 June 2023.

⁴⁷⁷ **Exhibit R-0050**, Case File for Continental Colombia *Amparo* Request, 27 November 2023, PDF p. 3.

⁴⁷⁸ **Exhibit R-0050**, Case File for Continental Colombia *Amparo* Request, 27 November 2023, PDF pp. 29, 32, and 40.

⁴⁷⁹ **Exhibit R-0050**, Case File for Continental Colombia *Amparo* Request, 27 November 2023, PDF pp. 35, 37, and 42.

⁴⁸⁰ **Exhibit R-0050**, Case File for Continental Colombia *Amparo* Request, 27 November 2023, PDF p. 51–54.

⁴⁸¹ **Exhibit R-0050**, Case File for Continental Colombia *Amparo* Request, 27 November 2023, PDF p. 80.

request officials observed that there was an ongoing conflict between subsistence miners (“*mineros de subsistencia*”), Zijin-Continental Gold employees, and owners of properties adjacent to the Mine. The dispute was over the rights to a stream located at the property. Earlier that year, in January 2024, two subsistence miners – Jesús Tabares and Danny Landario had filed a petition with the Directorate of Mines asking it to verify whether that same stream was within a streambed, which would make it public property and therefore available for subsistence mining without a mining title.⁴⁸² The matter was referred to the Corantioquia Environmental Authority, which determined that the stream was located within a setback zone (“*franjas de retiro*”) and, therefore, any mining activity there required approval from the environmental authorities. On 29 April 2024, the Mayor’s office wrote to Zijin-Continental Gold in response to its 1 March 2024 *amparo* request asking for documentation showing that the environmental authority had authorized Continental Colombia to occupy the stream before making a determination on the *amparo* request.⁴⁸³ Until such documentation is produced, the authorities cannot proceed with a decision on *amparo* request.

280. Similarly, on 7 November 2024, Continental Colombia filed an *amparo* request related to the Los Gómez area and alleging that 23 new mining entrances had been opened by illegal miners (Case no. 2342).⁴⁸⁴ On 19 November 2024, the Mayor issued Auto No. 004 to admit the *amparo* request and schedule the site visit.⁴⁸⁵ The same day, an edict was posted notifying the public of the *amparo*.⁴⁸⁶ The Mayor sent requests for military and police accompaniment for a site visit that took place on 28 November 2024.⁴⁸⁷ During an initial site visit, officials did not observe any disturbances and requested that Continental Colombia provide further information.⁴⁸⁸ A subsequent visit did reveal occupation at the Mine and therefore, on 23 December 2024, the Mayor granted the *amparo* in Resolution 305.⁴⁸⁹ The informal miners who were impacted by Resolution 305 challenged the order through a motion for reconsideration (“*recurso de reposición*”) and appeal (“*subsidiario recurso de apelación*”).⁴⁹⁰ The informal miners also filed a procedural challenge asserting that the Municipality’s actions were legally void and a constitutional action (“*acción de tutela*”) for the protection of fundamental rights.⁴⁹¹ All of these challenges failed and on 14 March 2025, the Mayor issued Resolution 67 ordering the closure of all the illegal mine openings. Resolution 67 acknowledges the

⁴⁸² **Exhibit R-0051**, Case File for Continental Colombia *Amparo* Request, 8 May 2023, PDF p. 27.

⁴⁸³ **Exhibit R-0051**, Case File for Continental Colombia *Amparo* Request, 8 May 2023, PDF p. 78.

⁴⁸⁴ **Exhibit R-0052**, Continental Colombia *Amparo* Request, 7 November 2024.

⁴⁸⁵ **Exhibit R-0053**, Auto No. 004, Alcaldía de Buriticá, 19 November 2024.

⁴⁸⁶ **Exhibit R-0054**, Edict No. 004, Alcaldía de Buriticá, 19 November 2024.

⁴⁸⁷ **Exhibit R-0054**, Edict No. 004, Alcaldía de Buriticá, 19 November 2024.

⁴⁸⁸ **Exhibit R-0055**, Letter No. 1574 from Y. David Toro, Alcaldía de Buriticá to A.F. Devia Gutiérrez, Continental Colombia, 19 November 2025.

⁴⁸⁹ **Exhibit R-0048**, Resolution No. 67, Alcaldía de Buriticá, 14 March 2025.

⁴⁹⁰ **Exhibit R-0048**, Resolution No. 67, Alcaldía de Buriticá, 14 March 2025.

⁴⁹¹ **Exhibit R-0048**, Resolution No. 67, Alcaldía de Buriticá, 14 March 2025.

limitations of the Municipality and places the responsibility of executing the mine closures on Zijin-Continental Gold.⁴⁹²

281. In yet another instance, the *amparo* request listed a location outside of the concession area and could not, therefore, be granted. On 8 May 2024, Continental Colombia filed an *amparo* request (case no. 0321) alleging illegal mining activity by two named and several unidentified individuals in the El Hebrón and Gualandy sectors of the Mine. The Mayor's office issued Auto No. 001 on 28 May 2024 and the edict was publicly posted on 29 May 2024.⁴⁹³ While Continental Colombia claimed that occupation had occurred in two sectors of the Mine, the *amparo* application contained coordinates for only one sector. On 27 August 2024, the Directorate of Mines conducted an evaluation of the *amparo* application and determined that the coordinates provided fell outside of the concession title area.⁴⁹⁴ The *amparo* application was denied on that basis.
282. On 1 August 2024, Continental Colombia filed another *amparo* request related to the 8 May 2024 request, this time identifying 4 specific illegal mine entrances within the concession (case no. 1586). The Directorate of Mines performed a second graphic evaluation and found that all 4 entrances were located within the concession area.⁴⁹⁵ The Direction of Mines subsequently made multiple requests to the National Army and UNIMIL for assistance in August and September 2024 to address the illegal mining at the entrances identified in the *amparo*.⁴⁹⁶
283. Claimant appears to believe that an *amparo* request entitles it to an immediate eviction order and fails to appreciate the steps that must be taken to ensure that the *amparo* request is appropriately investigated and that notice is given to the accused individuals so that they can vacate the premises voluntarily. The State has consistently responded to Continental Colombia's *amparo* requests in a manner that takes into account these interests to ensure a fair and just process.

b. Criminal Investigations and Prosecutions

284. Claimant contends that the State has failed to protect its investment because criminal complaints made by Continental Colombia to Office of the Attorney General (*Fiscalía General de la Nación*) have not resulted in conviction. Claimant's position assumes that the State's various agencies act in isolation and that the State's efforts can be assessed by looking at one isolated instance of a conviction or lack thereof. The reality is that—both

⁴⁹² **Exhibit R-0048**, Resolution No. 67, Alcaldía de Buriticá, 14 March 2025.

⁴⁹³ **Exhibit R-0051**, Case File for Continental Colombia *Amparo* Request, 8 May 2023, PDF p. 79.

⁴⁹⁴ **Exhibit R-0056**, Evaluation Grafica Solicitud de *Amparo* Administrativo, Alcaldía de Buriticá, 27 August 2024.

⁴⁹⁵ **Exhibit R-0051**, Case File for Continental Colombia *Amparo* Request, 8 May 2023, PDF p. 98.

⁴⁹⁶ **Exhibit R-0057**, Letter from Y. David Toro, Alcaldía de Buriticá to H.R. Montealegre, Infantería Pedro Justo Berrio, 24 August 2024; **Exhibit R-0058**, Letter from Y. David Toro, Alcaldía de Buriticá to J.E. Agudelo Salazar, EMCAR UNIMIL, 24 August 2024; **Exhibit R-0059**, Letter from Y. David Toro, Alcaldía de Buriticá to R. Montealegre Castillo, Infantería Pedro Justo Berrio, 3 September 2024; **Exhibit R-0060**, Letter from Y. David Toro, Alcaldía de Buriticá to J.E. Agudelo Salazar, EMCAR UNIMIL, 3 September 2024.

before and after President Petro’s inauguration—the State has been engaged in highly-coordinated, multi-year operations to strategically gut Clan del Golfo’s operations in Buriticá. These operations begin with thorough investigations—often lasting years—led by the Attorney General’s Office in coordination with the National Police. Once sufficient intelligence and evidence has been collected, the National Police executes asset seizures and arrests that go to the heart of Clan del Golfo’s operations in what is a complex environment involving an intricate criminal network that involves both individuals and companies. Despite these challenges, the State has successfully initiated multiple investigations, leading to arrests and convictions. In 2023, the Attorney General’s Office launched a specialized prosecution unit that has actively been working in coordination with the National Police to launch several operations leading to the successful prosecution of several members of Clan del Golfo involved in the illegal mining operations in Buriticá. Lieutenant Colonel Gallego makes clear that “[I]t is not correct to state that, after August 2022, the National Police and UNIMIL had ceased their protection and control activities at the Buriticá mine.”⁴⁹⁷ Rather, “the National Police continued to develop actions aimed at protecting the mine and controlling illegal mining activities in its surroundings.”⁴⁹⁸

285. These operations begin with thorough investigations—often lasting years—led by the Attorney General’s Office in coordination with the National Police. Once sufficient intelligence and evidence have been collected, the National Police executes asset seizures and arrests that go to the heart of Clan del Golfo’s operations in what is a complex environment involving an intricate criminal network that involves both individuals and companies. Despite these challenges, the State has successfully initiated multiple investigations, leading to arrests and convictions. In 2023, the Attorney General’s Office launched a specialized prosecution unit that has actively been working in coordination with the National Police in several operations leading to the successful prosecution of members of Clan del Golfo involved in the illegal mining operations in Buriticá.

(i) Operation Hades

286. Operation Hades was a coordinated multi-agency effort to dismantle Clan del Golfo’s operations in Buriticá.⁴⁹⁹ The armed forces element of Operation Hades commenced on 18 June 2021 with the execution of seven arrest warrants by the National Police, in coordination with the Attorney General’s Office.
287. While the capture and arrest of members of Clan del Golfo occurred in 2021, the investigative process began years before in response to years of criminal activity by Clan del Golfo in the region and specifically, the group’s illegal mining activity targeting the Buriticá Mine.⁵⁰⁰ The criminal conduct under investigation included not only the illegal

⁴⁹⁷ Gallego First Witness Statement, ¶ 45.

⁴⁹⁸ Gallego First Witness Statement, ¶ 45.

⁴⁹⁹ **Exhibit C-0269**, Siete capturados en el marco de la Operación Hades en Buriticá, National Police of Colombia, 20 July 2021.

⁵⁰⁰ **Exhibit R-0067**, Indictment Form, Attorney General’s Office, 23 October 2021, pp. 3–4 (noting that the Attorney General’s Office “has been carrying out investigations aimed at the identification, prosecution and

mining in multiple locations throughout Buriticá, but also the use of mercury and other toxic substances for gold processing causing severe environmental contamination, and the illegal possession and trafficking of industrial explosives used in the mining activity. The investigation revealed that Clan del Golfo operated a mine entrance from the basement of a building known as “*Billares San Antonio*,” which connected via an underground tunnel directly into Continental Colombia’s legitimate mining concessions.⁵⁰¹

288. Multiple state agencies coordinated to build an evidentiary case against individual members of Clan del Golfo. This included a field investigation, conducted by the National Police, which issued a field report dated 28 May 2021 documenting the existence, structure, and criminal objectives of Clan del Golfo’s operations in Buriticá, including individual profiles and evidentiary summaries for each suspect.⁵⁰² The Attorney General’s Office obtained judicial authorization to intercept multiple telephone lines associated with members of Clan del Golfo, which provided direct evidence of the individuals’ coordination of illegal mining activities, their roles within the operation, and their use of mercury in gold processing.⁵⁰³ The list of evidence presented in the Indictment for 3 of the defendants lists evidence dating back to 2019 and witness testimony from National Police officers and representatives of the Mayor of Buriticá’s offices, demonstrating the coordination that occurred across years to target key players within Clan del Golfo’s organization and disrupt the group’s operations.⁵⁰⁴
289. On 20 June 2021 and 23 October 2023, the Attorney General’s Office formally presented charges against the defendants for the offenses of aggravated conspiracy to commit crimes, environmental contamination from illicit mining, illicit exploitation of mining deposits, and the illegal possession of explosives.⁵⁰⁵
290. One of the defendants was a former supervisor at Continental Gold who used that knowledge to direct illegal miners into the company’s tunnels.⁵⁰⁶ Another one of the defendants was Gloria Eugenia Restrepo Ospina, nicknamed “La Bruja” or “La Negra” and known as “the terror of illegal miners in Buriticá.”⁵⁰⁷ Restrepo was a trusted confidante for the top leadership of Clan del Golfo and there were allegations – though

location of members of . . . Clan del Golfo” and specifically charging one defendant with disrupting “the tunnels connecting to the mining concessions of the company Continental Gold.”).

⁵⁰¹ **Exhibit R-0064**, Criminal Judgment of the Court of First Instance No. 022, Judicial Branch of the Government, General Court of the Santa Fe de Antioquia Circuit, 18 April 2022, pp. 2–3.

⁵⁰² **Exhibit R-0067**, Indictment Form, Attorney General’s Office, 23 October 2021, p. 7.

⁵⁰³ **Exhibit R-0067**, Indictment Form, Attorney General’s Office, 23 October 2021, p. 8.

⁵⁰⁴ **Exhibit R-0067**, Indictment Form, Attorney General’s Office, 23 October 2021, pp. 8–10.

⁵⁰⁵ **Exhibit R-0067**, Indictment Form, Attorney General’s Office, 23 October 2021, p. 1.

⁵⁰⁶ **Exhibit R-0066**, Acta de Preacuerdo, Attorney General’s Office, 11 January 2022, p. 3.

⁵⁰⁷ **Exhibit R-0020**, La historia de La Bruja, la poderosa mujer del Clan a la que le robaron el oro que causó masacres en Santa Fe de Antioquia” El Colombiano, 11 December 2023; **Exhibit R-0104**, Plea Agreement for Gloria Eugenia Restrepo, 18 April 2022, p. 2.

no charges – that she had murdered her former partner.⁵⁰⁸ She was responsible for the acquisition, storage, and distribution of explosive materials used in the illegal mining activity as well as the toxic and contaminating substances such as mercury used to process the material.⁵⁰⁹

(ii) Operation Hefesto and more recent operations

291. The Attorney General’s Office again initiated a coordinated operation involving multiple agencies over several years targeting assets derived from, used in, or connected to the illegal mining operations in Buriticá that came to be known as “*Operation Hefesto*.”⁵¹⁰ The purpose of Operation Hefesto is to disrupt Clan del Golfo’s operations through strategic targeting of the group’s main assets linked to illegal mining in the region. An armed forces intervention of Operation Hefesto was executed on 6 December 2021, with a Resolution of Precautionary Measures ordering the sequestration of more than 100 real properties and 37 vehicles as well as of 10 companies.⁵¹¹ The National Police executed the sequestration and were authorized to extend the measures to any additional movable assets, improvements, cash, weapons, machinery, or equipment discovered on the affected properties.⁵¹²
292. Before the National Police could act to seize Clan del Golfo’s assets, the Attorney General’s Office spent several years pursuing multiple avenues to collect evidence connected with Clan del Golfo and the illegal mining operations in Buriticá, including, amongst other things:
- 292.1 Collecting testimony from multiple confidential sources on the structure and operations of the illegal mining network, identifying key individuals, payment flows to the Clan del Golfo, corruption amongst municipal officials, and the methods used to launder proceeds;⁵¹³
 - 292.2 Conducting a major search-and-seizure operation at the Los Gómez property resulting in the arrest of 15 persons engaged in illegal mining and the seizure of assets, including explosives;⁵¹⁴

⁵⁰⁸ **Exhibit R-0020**, La historia de La Bruja, la poderosa mujer del Clan a la que le robaron el oro que causó masacres en Santa Fe de Antioquia” El Colombiano, 11 December 2023.

⁵⁰⁹ **Exhibit R-0104**, Plea Agreement for Gloria Eugenia Restrepo, 18 April 2022, p. 2.

⁵¹⁰ **Exhibit C-0501**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 20.

⁵¹¹ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 720, 822–824.

⁵¹² **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, p. 825.

⁵¹³ See, e.g., **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 249, 302, and 491.

⁵¹⁴ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 249, 302, and 491, 686–687, 693–694 (explaining that the operation took place at the Renacer mine, with [REDACTED])

- 292.3 Tracing the network of companies used to launder illegal mining proceeds, including gold commercialization firms and the examination of bank records, vehicle registries, real estate records, and commercial registries;⁵¹⁵
- 292.4 Collecting wiretap evidence that captured conversations between members of the criminal network discussing payments, gold processing logistics, and coordination of illegal operations.⁵¹⁶
293. The National Police, working together with the Attorney General’s Office, continues to dismantle illegal mining units throughout Antioquia under Operation Hefesto, the most recent efforts taking place in May 2026.⁵¹⁷
294. Throughout 2025, Colombia has continued to launch special operations focused on dismantling Clan del Golfo’s operations and illegal mining. As Claimant’s witness attests, in response to an attack in the tunnels of the Higabrá section of the Mine, on 18 January 2025, the National Mining Agency “announced the installation of a Unified Command Post made up of Colombia’s State forces to restore public order at the Mine” and on 17 January 2025 an inter-agency coordination meeting was held “to ensure the safe execution of intervention activities in the affected area of the Project.”⁵¹⁸ Shortly thereafter, on 23 January 2025, the Mayor of Buriticá issued a decree ordering the suspension of illegal mining activities in the municipality.⁵¹⁹
295. In early 2025, the National Police, in coordination with the National Army and the Attorney General’s Office carried out Operation Huron, dealing a strategic blow to Clan del Golfo’s operations in Antioquia.⁵²⁰ The Police and Army raided Clan del Golfo’s operations, seizing 317 and destroying 150 granulators and seizing significant amounts of explosives used in illegal mining activities.⁵²¹ Around September 2025, the State led Operation Occidente Dorado II, seizing COP 9 billion in assets linked to Clan del Golfo and its members, significantly weakening the illegal gold mining operations in

location as what is referred to as the “Los Gómez” property, *see* **Exhibit R-0053**, Auto No. 004, Alcaldía de Buriticá, 19 November 2024, ¶ 2 (referring to Juan Carlos Gómez, ID number, 653.883, owner of the “Los Gómez mine”, located at coordinates 6° 42'16.79" N – 75° 54'12.95" W).

⁵¹⁵ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 345–348, 438, and 475.

⁵¹⁶ **Exhibit R-0111**, Asset Forfeiture Proceeding, Interim Measures Decision, 6 December 2021, pp. 292–300.

⁵¹⁷ **Exhibit R-0145**, Desmantelan unidades de minería ilegal en el oriente de Antioquia avaluadas en más de mil millones, Caracol Radio, 3 May 2026.

⁵¹⁸ [REDACTED] First Witness Statement, 10 July 2025, ¶ 85-86.

⁵¹⁹ [REDACTED] First Witness Statement, 10 July 2025, ¶ 87.

⁵²⁰ **Exhibit R-0119**, Operación ‘Hurón’: La Policía Nacional fortalece la lucha contra la minería ilegal en Antioquia, Colombian National Police Press Release, 1 May 2025.

⁵²¹ **Exhibit R-0119**, Operación ‘Hurón’: La Policía Nacional fortalece la lucha contra la minería ilegal en Antioquia, Colombian National Police Press Release, 1 May 2025.

Antioquia.⁵²² The police offensive, led by the Directorate of Carabineros and the Environment (*Dirección de Carabineros y Medio Ambiente*), seized 31 assets including an eco-hotel, luxury country houses, apartments, rural properties, businesses, and high-end vehicles.⁵²³ In the same month, the National Police carried out a joint operation with the United States Department of Homeland Security, called Operation Explosive Gold, to dismantle a trafficking network bringing explosives from Peru, Bolivia and Ecuador to Colombia for use by Clan del Golfo in its illegal mining activities in Antioquia.⁵²⁴ The operation resulted in the capture and arrest of 5 individuals and the seizure of significant quantities of explosives.⁵²⁵

296. Each of these operations were conducted with the aim of enabling the Mine to operate safely and, as Lieutenant Colonel Gallego notes: “Each operation responded to specific needs of the moment [and was] aimed at containing and reducing the impact of illegal mining on the mining operation.”⁵²⁶

(iii) DEMA’s enforcement operations

297. Responding to the scale and complexity of the criminal activity in the Buriticá region, in 2021, Colombia’s Office of the Attorney General (*Fiscalía General de la Nación*) created the Specialized Prosecutor’s Office for Crimes Against Natural Resources and the Environment (*Dirección Especializada para los Delitos contra los Recursos Naturales y el Medio Ambiente*) (“**DEMA**”), a specialized directorate charged with investigating and prosecuting environmental and natural resource crimes.⁵²⁷ DEMA was subsequently operationalized in 2023.⁵²⁸
298. Since becoming operational, DEMA has initiated a series of enforcement operations in connection with the illegal mining activity in Buriticá. These enforcement actions have been carried out by UNIMIL, the National Police’s Directorate of Carabineros and the Environment (*Dirección de Carabineros y Medio Ambiente*) (“**DICAR**”), and the National Police Special Operations Group (*Grupo de Operaciones Especiales*) (“**GOES**”).⁵²⁹ These operations represent a coordinated, multi-agency effort directly targeting armed organizations profiting from illegal mining in Buriticá.

⁵²² **Exhibit R-0136**, Policía Nacional asesta golpe de \$9.000 millones a estructuras multicrimen y protege el capital natural en Antioquia, Colombian National Police Press Release, 16 September 2025.

⁵²³ **Exhibit R-0136**, Policía Nacional asesta golpe de \$9.000 millones a estructuras multicrimen y protege el capital natural en Antioquia, Colombian National Police Press Release, 16 September 2025.

⁵²⁴ **Exhibit R-0137**, Cae red que traficaba explosivos desde Perú, Bolivia y Ecuador para minería ilegal en Antioquia, Caracol, 17 September 2025.

⁵²⁵ **Exhibit R-0137**, Cae red que traficaba explosivos desde Perú, Bolivia y Ecuador para minería ilegal en Antioquia, Caracol, 17 September 2025.

⁵²⁶ Gallego First Witness Statement, ¶ 46.

⁵²⁷ **Exhibit R-0138**, Law No. 2111 of 2021, 29 July 2021, Tit. 9.

⁵²⁸ **Exhibit R-0139**, Resolution No. 677 of 2023, Fiscalía General de la Nación, 6 December 2023.

⁵²⁹ **Exhibit R-0069**, 4th Specialized Prosecutor’s Office’s Report, Attorney General’s Office, 11 September 2025.

- 298.1 On 29 November 2023, 5 arrest warrants issued by DEMA were executed by DICAR, with the support of GOES and UNIMIL, against members of an organized armed group known as “Los de Cero.” This group operated illegal mining fronts and the investigation established that the Edwin Román Velázquez sub-group of Clan del Golfo was profiting from this criminal mining activity.⁵³⁰ The National Police seized COP 80 million in cash, 1,800 grams of gold, 1.5 pounds of mercury; and one revolver.⁵³¹ Five individuals were arrested and criminally charged. Of those, 3 have been convicted, 1 has accepted the charges, and 1 has been indicted and his hearing pending.⁵³²
- 298.2 On 4 March 2025, DEMA issued eighteen search and seizure warrants that were executed on 6 March 2025 by DICAR, again supported by GOES and UNIMIL. The warrants were for the collection of physical evidence and material proof in connection with an investigation into Clan del Golfo’s Edwin Román Velázquez Valle sub-group. The operation resulted in the seizure of significant assets: 183 granulators; 16 motors; 1 water pump and 1 drill; 1 pistol, 1 magazine, and 6 cartridges; 300 grams of Ammonium Nitrate/Fuel Oil (“ANFO”) explosive; 500 grams of Indugel explosive; 1,732.2 grams of mercury; and 8 grams of gold. The following image shows assets that were seized during the operation:

⁵³⁰ **Exhibit R-0069**, 4th Specialized Prosecutor’s Office’s Report, Attorney General’s Office, 11 September 2025, p. 2.

⁵³¹ **Exhibit R-0069**, 4th Specialized Prosecutor’s Office’s Report, Attorney General’s Office, 11 September 2025, p. 2.

⁵³² **Exhibit R-0069**, 4th Specialized Prosecutor’s Office’s Report, Attorney General’s Office, 11 September 2025, pp. 2–3. The charges against these five individuals were: aggravated illicit exploitation of mineral deposits and other materials (Article 332 of the Colombian Penal Code); possession, manufacture, and trafficking of dangerous substances or objects (Article 358 of the Colombian Penal Code); and manufacture, trafficking, and carrying of firearms or ammunition (Article 365 of the Colombian Penal Code).



298.3 On 10 June 2025, DEMA issued a search and seizure warrant in an effort known as “Operation Esperanza”. The following morning, at approximately 1:40 a.m., DICAR, with the support of GOES and UNIMIL, raided Clan del Golfo’s operations with more than twenty law enforcement officers. Operation Esperanza produced the most substantial seizure to date, confiscating the following items:⁵³³

- 776 bars of Indugel explosive;
- 300 meters of detonating cord;
- 600 detonators;
- 102 bars of ANFO explosive;
- 1 Motorola radio communication device;
- 7 cellular telephones (various brands and models);
- 500 grams of marijuana, dosed and packaged for distribution;

⁵³³ **Exhibit R-0069**, 4th Specialized Prosecutor’s Office’s Report, Attorney General’s Office, 11 September 2025, pp. 3–4.

- 1,000 grams of mercury;
- 1 Smith & Wesson revolver;
- 1 Córdoba Especial pistol, with two magazines containing 92 rounds of 9mm ammunition each; and
- 1 Ruger .38 Special revolver, with caliber 18 ammunition.

298.4 In addition, the operation resulted in [REDACTED].⁵³⁴ The DEMA investigation established that [REDACTED], causing significant environmental damage. Four individuals were arrested during the operation. All four individuals were responsible for security at the site. One was an administrator at the Mine and three had been hired as armed security for the Mine by Zijin-Continental Gold.⁵³⁵ A judge ordered that all four individuals placed in detention pending trial.⁵³⁶ The following image shows assets that were seized during the operation:



⁵³⁴ See **Exhibit R-0069**, 4th Specialized Prosecutor's Office's Report, Attorney General's Office, 11 September 2025, p. 5; **Exhibit C-0488**, National Police Press Statement, 11 June 2025. [REDACTED]

⁵³⁵ **Exhibit R-0069**, 4th Specialized Prosecutor's Office's Report, Attorney General's Office, 11 September 2025, p. 4.

⁵³⁶ **Exhibit R-0069**, 4th Specialized Prosecutor's Office's Report, Attorney General's Office, 11 September 2025, p. 5.

- 298.5 On 7 September 2025, DICAR, with the support of GOES conducted a search and seizure operation related to the same investigation as the 4 March 2025 operation. Law enforcement officers were unable to gain access to the interior of the mine shaft because it was extremely narrow, with irregular walls of earth and rock that prevented human passage, and flooded. While this operation did not yield seizures or arrests, it demonstrates the State's continued and persistent commitment to enforcement activity, even in the face of the extreme physical challenges and dangers posed by the mining infrastructure.⁵³⁷
299. By the end of 2023, DEMA's efforts to secure the Mine were significant enough to warrant praise from Zijin-Continental Gold's CEO, Leizhong Li. In a letter to the Attorney General's Office dated 15 December 2023, he wrote:
- On my own behalf and on behalf of the mining company Zijin-Continental Gold, I wish to express my most sincere gratitude for the actions taken by the Attorney General's Office regarding the municipality of Buriticá and western Antioquia.
- I would also like to take this opportunity to acknowledge the commitment demonstrated in the investigation and prosecution, from May 2023 to the present, of the criminal activities that have taken place in western Antioquia, particularly in the municipality of Buriticá. In this regard, I would like to express my respectful appreciation to Gladis Adiana Alvarado, the Specialized Prosecutor for [DEMA]. Her dedication, commitment, and implementation of strategies have yielded the first positive results in the region.⁵³⁸
300. Notably, despite Claimant's allegations of significant financial loss due to illegal mining activity, it has not only remained in operation, but it has also continued to expand the Mine's assets and production. Claimant itself has emphasized that, notwithstanding security incidents attributed to illegal groups, gold output at Buriticá has continued to rise and the financial impact of such incidents on the overall performance of the operation remains limited.⁵³⁹

3. The State Has a Comprehensive Regulatory Framework for Oversight and Monitoring of the Mine

301. As explained above, in 2013 the ANM delegated its authority over the Buriticá project to the Government of Antioquia. On 13 January 2023, pursuant to Article 12 of Law No.

⁵³⁷ **Exhibit R-0069**, 4th Specialized Prosecutor's Office's Report, Attorney General's Office, 11 September 2025, p. 5.

⁵³⁸ **Exhibit R-0070**, Letter from L. Li, Zijin-Continental Gold to F. Barbosa Delgado and M. Janeth Mancera, Attorney General's Office, 15 December 2023.

⁵³⁹ See **Exhibit R-0072**, Chinese mining group Zijin says loss suffered from theft at Colombian mine yet to be verified; gold output continues to rise, Global Times, 14 November 2024.

489 of 1998,⁵⁴⁰ the President of ANM passed Resolution 104 of 13 January 2023 (“**Resolution 104**”), by which the ANM resumed the “oversight, monitoring, and control” of mining projects previously designated as Projects of National Interest (“**PIN**”) and Projects of National and Strategic Interest (“**PINE**”).⁵⁴¹ Resolution 104 noted that the Buriticá Project was designated a PINE project, and declared that the ANM had decided to “partially reassume the oversight function previously delegated to the Government of Antioquia, with the aim of unifying guidelines, criteria, and policies for the oversight, monitoring, and control of [...] Projects of National and Strategic Interest” located in the Department of Antioquia.⁵⁴²

302. Accordingly, ANM assigned oversight of PINE mining projects, including Buriticá, to the Group on Projects of National Interest of the Vice Presidency for Monitoring, Oversight, and Mining Safety of the ANM.⁵⁴³ The Group on Projects of National Interest (“**Grupo PIN**”) is charged with, *inter alia*:

- a) Evaluating and approving technical, financial, economic, and mining planning reports in accordance with the regulations applicable to each mining title, for which purpose Grupo PIN is entitled to request any supplementary information it considers necessary;⁵⁴⁴
- b) Issuing opinions on the evaluation of technical studies submitted for its consideration;⁵⁴⁵
- c) Collecting and analyzing information on the status of mineral deposits and mining projects, including geological, mining, environmental, and economic data;⁵⁴⁶
- d) Coordinating with the Colombian Geological Service regarding the provision and delivery of mining geological information generated by mining titleholders;⁵⁴⁷

⁵⁴⁰ **Exhibit RL-140**, Law No. 489 of 1998, 29 December 1998, “Whereby regulations are established regarding the organization and operation of national entities; provisions, principles, and general rules are set forth for the exercise of the powers provided for in paragraphs 15 and 16 of Article 189 of the Constitution; and other provisions are established”, Article 12 (allowing a delegating authority to, at any time, reassume the powers subject to delegation).

⁵⁴¹ See **Exhibit C-0327**, Resolution No. 104 of 2023, Agencia Nacional de Minería, 13 January 2023.

⁵⁴² **Exhibit C-0327**, Resolution No. 104 of 2023, Agencia Nacional de Minería, 13 January 2023, p. 3.

⁵⁴³ **Exhibit C-0327**, Resolution No. 104 of 2023, Agencia Nacional de Minería, 13 January 2023, p. 4, Art. 2; **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 1.

⁵⁴⁴ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(1).

⁵⁴⁵ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(3).

⁵⁴⁶ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(4).

⁵⁴⁷ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(5).

- e) Conducting technical and legal evaluations to monitor and ensure compliance with the contractual obligations of mining titleholders for projects designated PINE and issuing necessary requirements;⁵⁴⁸
- f) Imposing necessary measures for mining safety in accordance with current and applicable regulations;⁵⁴⁹
- g) Collecting, evaluating, analyzing, and recording the technical and economic information provided by mining rights holders in the Basic Mining Forms in accordance with relevant regulations;⁵⁵⁰
- h) Maintaining a current list of mining titleholders designated PINE currently in the exploitation phase that hold the requisite environmental authorizations and licenses and information on agents authorized to commercialize minerals;⁵⁵¹ and
- i) Preparing opinions and administrative acts regarding the extension of mining titles for PINE projects.⁵⁵²

303. On 30 March 2023, the Vice Presidency of Monitoring, Oversight, and Mining Safety of the ANM declared the Buriticá Project, among others, a Project of National Interest subject to the oversight of Grupo PIN.⁵⁵³ To be clear, this did not transfer all oversight of mining projects from the Government of Antioquia. As the President of ANM announced at the time:

We will continue to work with the Antioquia Governor’s Office and the ANM Regional Service Center in Medellín, seeking to ensure that mining operations are conducted in accordance with the highest environmental and social standards, safeguarding the rights of ancestral mining, protecting small- and medium-scale mining, and realigning the industry with government programs such as the energy transition, the country’s industrialization, food security, and the construction of public infrastructure.⁵⁵⁴

⁵⁴⁸ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(8).

⁵⁴⁹ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(9).

⁵⁵⁰ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(15),

⁵⁵¹ **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(17).

⁵⁵² **Exhibit R-0120**, Resolution No. 206 of 2013, Agencia Nacional de Minería, 22 March 2013, Art. 16(18).

⁵⁵³ **Exhibit R-0122**, Auto No. VSC-089, Agencia Nacional de Minería, 24 May 2023 (noting “By Resolution VSC-000092 dated March 30, 2023, the Vice Presidency for Monitoring, Control, and Mining Safety of the National Mining Agency declared, among other things, that mining concession contract P7495011—held by CONTINENTAL GOLD LIMITED SUCURSAL COLOMBIA S.A.S.—is a Project of National Interest.”).

⁵⁵⁴ **Exhibit R-0121**, ANM Resumes Oversight, Monitoring, and Control of Projects of National Interest and Projects of National and Strategic Interest (PINE) in Antioquia, ANM Press Release, 14 January 2023.

304. In exercising its oversight role, Grupo PIN has undertaken bi-annual inspections of the Buriticá Mine beginning in April 2023 through to the present. Each site visit results in a Technical Report compiled by Grupo PIN and a separate Order, by which the Technical Report is conveyed to the Titleholder (Continental Colombia). It should be noted that these site visits were a continuation of ongoing work by ANM, which had been regularly visiting the Buriticá site, most recently prior to April 2023 in December of 2022.⁵⁵⁵
305. Grupo PIN conducted its first site visit to Buriticá between 17 and 21 April 2023.⁵⁵⁶ The goal of the site visit was to “report on the conditions of the technical, geological, mining safety and social activities carried out in accordance with the current stage of operations within the area covered by [the Buriticá Mine], as well as to document the verification of procedures, control, and recording of production volumes, if applicable, and finally to issue conclusions, recommendations, and measures to be implemented.”⁵⁵⁷ The visit began with a meeting at the mine facilities on 17 April 2023, which included a presentation by Continental Colombia.⁵⁵⁸ The visit also included a field inspection conducted by Grupo PIN engineers who reviewed the mineralization and drilling and sampling in the Mine,⁵⁵⁹ as well as a regulatory inspection, which reviewed the Project’s environmental and permitting compliance.⁵⁶⁰
306. The April 2023 site visit did not record any non-compliances on the part of Continental Colombia. Grupo PIN verified that, in accordance with an October 2022 order suspending hydraulic filling activities in the Yaraguá Mine, Continental Colombia had complied with the suspension and ordered that the suspension be maintained.⁵⁶¹ Grupo PIN noted a previously-issued ANM recommendation that Continental Colombia “mark inactive work fronts associated with the presence of unauthorized (illegal) mining.”⁵⁶² It found that the company appeared to be doing so.

⁵⁵⁵ See **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, pp. 8–9 (reporting on the recommendations and measures to be implemented following ANM’s audit of the Mine site between 13 and 14 December 2022).

⁵⁵⁶ See **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 2 (Inspection Date: April 17, 2023 to April 21, 2023).

⁵⁵⁷ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 2 (Objective).

⁵⁵⁸ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 10 (Informational Meeting).

⁵⁵⁹ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, pp. 22–26 (Results of the Geological Component Visit).

⁵⁶⁰ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, pp. 39–40.

⁵⁶¹ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 55 (Management of Measures for Mining Emergencies or Previous Audit Visits Resulting in Partial or Total Closure Order).

⁵⁶² **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 9.

307. In addition, Grupo PIN took the opportunity of the April 2023 site visit and its resulting Report to follow up on its investigation into a fatal accident that had occurred at the Mine on 27 December 2022 and the resulting partial suspension of mining activities in that area of the Mine. Grupo PIN relayed a request that Continental Colombia “report on the procedures to be employed and activities to be carried out in order to rectify the issues and attach evidence regarding the aspects noted” to ensure the safety and stability of that zone of the Mine, noting that the site visit had identified a “support failure” in the roof section of the Higabra vein where the accident occurred.⁵⁶³ Noting that the mesh supporting the roof section had been replaced, new lighting was installed, and the road maintenance plan updated to ensure the elimination of flooding, ANM determined that the information was “accepted, but not without first recommending that these maintenance tasks inside the mine continue to be performed periodically and that emphasis be placed on the importance of support activities and water management and control inside the mine, in order to guarantee and safeguard the safety of the personnel.”⁵⁶⁴ Grupo PIN therefore recommended that the suspension of activities be lifted.⁵⁶⁵
308. In the Order attaching the Technical Report to Continental Colombia, Grupo PIN conveyed these recommendations, including the recommendation that the suspension be lifted to allow activities to resume.⁵⁶⁶
309. Grupo PIN conducted its second site visit of the Buriticá Mine between 2 and 7 October 2023.⁵⁶⁷ As with the April 2023 site visit, Grupo PIN’s objective was to report on the technical, environmental, and safety work carried out by Continental Colombia,⁵⁶⁸ and the site visit once again began with a technical presentation by Continental Colombia.⁵⁶⁹ The site visit also included a regulatory inspection, which included a visit to the

⁵⁶³ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, pp. 55–61.

⁵⁶⁴ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 61.

⁵⁶⁵ **Exhibit R-0163**, Comprehensive Audit Visit Report No. VSC-045 of Contract No. P7495011, C. Naranjo Ruiz and Moreno Pardo, 19 May 2023, p. 65.

⁵⁶⁶ **Exhibit R-0122**, Auto No. VSC-089, Agencia Nacional de Minería, 24 May 2023.

⁵⁶⁷ **Exhibit R-0164**, Comprehensive Audit Visit Report No. Consecutive VSC-093 of Contract No. P7495011, C. Naranjo Ruiz et al., 9 November 2023, p. 2 (Inspection Date: October 2-7, 2023).

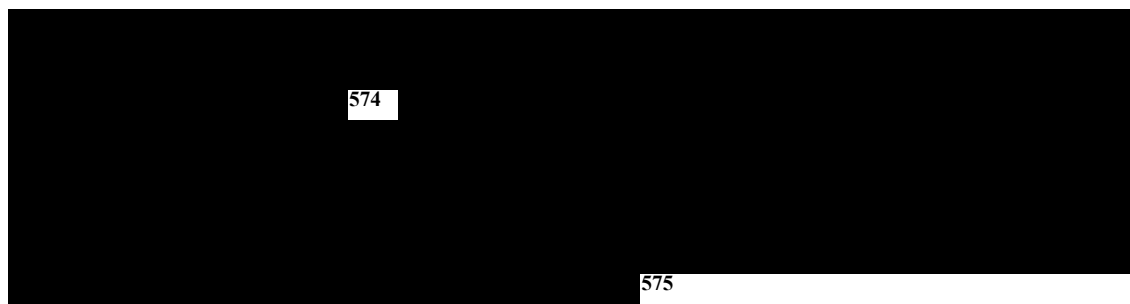
⁵⁶⁸ **Exhibit R-0164**, Comprehensive Audit Visit Report No. Consecutive VSC-093 of Contract No. P7495011, C. Naranjo Ruiz et al., 9 November 2023, p. 2 (Objective).

⁵⁶⁹ **Exhibit R-0164**, Comprehensive Audit Visit Report No. Consecutive VSC-093 of Contract No. P7495011, C. Naranjo Ruiz et al., 9 November 2023, p. 10 (Informational Meeting).

infrastructure located outside the concession area,⁵⁷⁰ as well as a tour of the underground mine facilities.⁵⁷¹

310. In the Order attaching the Technical Report to Continental Colombia, Grupo PIN ordered Continental Colombia to clarify the quantities of its drilling operations, given inconsistencies in the numbers presented for the first half of 2023 and the second half of 2023.⁵⁷² Grupo PIN also noted that Continental Colombia had indicated plans to modify the ventilation systems in the Mine, which it ordered the company to submit necessary explanations for given that doing so would modify the approved Operational Work Plan (the “PTO” by its Spanish acronym)..⁵⁷³

311.



F. Claimant’s Documentary Case Regarding the Incursion of Illegal Miners in the Mine Originates with the Arbitration

312. It is thus evident that illegal mining in Buriticá has been—and has remained—an ongoing problem to be confronted by both Claimant and Colombia. In addition to the inconsistencies listed above with respect to Claimant’s case in the present Arbitration and what ZGI has presented to the market in Hong Kong, however, it is worth noting the timeline of the development of Claimant’s claim regarding its losses and damages due to illegal mining as that case has been alleged before the authorities in Colombia.

1. Zijin Mining Group’s Public Filings Evolved

313. Zijin Mining Group, like ZGI, is a publicly traded company on the Hong Kong Stock Exchange. There is a marked difference in its public reporting on illegal mining at Buriticá between 2020, when it first reported results from the Mine, and the present

⁵⁷⁰ **Exhibit R-0164**, Comprehensive Audit Visit Report No. Consecutive VSC-093 of Contract No. P7495011, C. Naranjo Ruiz et al., 9 November 2023, p. 26 (Buriticá Mining Project).

⁵⁷¹ **Exhibit R-0164**, Comprehensive Audit Visit Report No. Consecutive VSC-093 of Contract No. P7495011, C. Naranjo Ruiz et al., 9 November 2023, p. 32 (Geotechnics).

⁵⁷² **Exhibit R-0126**, Auto No. VSC-188, Agencia Nacional de Minería, 20 November 2023, pp. 7–8.

⁵⁷³ **Exhibit R-0126**, Auto No. VSC-188, Agencia Nacional de Minería, 20 November 2023, p. 8.

⁵⁷⁴ **Exhibit R-0165**, Comprehensive Audit Visit Report No. Consecutive 051 of Contract No. P7495011, Naranjo Ruiz et al., 21 May 2024, p. 51 (Technical Proposal to Recover the Volume of Air Lost Due to the Impacts of Unauthorized Mining).

⁵⁷⁵ **Exhibit JTB-017**, Answer to Request No 2021080001142 concerning PTO Modification, pp. 12-18.

(although, like ZGI, its current reports do not suggest the level of incursion alleged in the Arbitration).

314. The 2020 Annual Report describes the Buriticá Mine as “a world-class ultra-high-grade large gold mine” that “will become a new growth engine for the company’s gold segment.”⁵⁷⁶ It identifies only generic mining-sector risks, with no specific references to illegal mining, criminal activity, or armed groups.
315. The 2021 Annual Report is similarly silent on illegal mining, despite covering a year in which – according to Claimant – illegal miners had gained access to sections of the Yaraguá tunnel and Operation Hades was underway.⁵⁷⁷ The Report instead highlights that the Mine had reached full production capacity and that annual gold production would increase to 9.1 tons.⁵⁷⁸
316. The 2022 Annual Report covers the year in which President Petro assumed office which, according to Claimant’s submissions in the Arbitration, led to “unprecedented levels of violence.”⁵⁷⁹ Also, according to Claimant, by the end of 2022, “illegal miners [had] intimidated and expelled the Company’s personnel from the underground tunnels of the Mine... [T]he situation at the Mine had deteriorated during the second half of 2022 with more than 700 illegal miners working daily in the Yaraguá and Rampa Sur tunnels and extracting their mineral resources.”⁵⁸⁰ Despite this “unprecedented” violence, Zijin’s Annual Report covering that same period says **nothing** about illegal mining, criminal activity, or armed groups and their impact on the Buriticá Mine. The Report instead highlights that the Buriticá Mine was Zijin’s top gold-producing mine in 2022, producing 7,679 kg of gold.⁵⁸¹
317. Claimant served its Notice of Intent on 14 June 2023.⁵⁸² In its Notice of Intent, Claimant alleged:
- a) “In recent years, despite multiple requests for assistance, Colombia has failed to prevent unauthorized third parties, including illegal miners and armed criminal groups, from forcibly taking over a substantial portion of [the] underground areas [of the Mine] and illegally exploiting the mineral reserves[.]”⁵⁸³

⁵⁷⁶ **Exhibit R-0123**, 2020 Annual Report, Zijin Mining Group, p. 13.

⁵⁷⁷ Claimant’s Updated Memorial, ¶ 120.

⁵⁷⁸ **Exhibit R-0124**, 2021 Annual Report, Zijin Mining Group, 28 April 2022, p. 10.

⁵⁷⁹ Claimant’s Updated Memorial, ¶ 166.

⁵⁸⁰ Claimant’s Updated Memorial, ¶ 167.

⁵⁸¹ **Exhibit R-0125**, 2022 Annual Report, Zijin Mining Group, 30 March 2023, PDF p. 31.

⁵⁸² **Exhibit C-0033**, Notice of Intent to Submit Claim to Arbitration, dated 12 June 2023 and delivered to Colombia on 14 June 2023.

⁵⁸³ **Exhibit C-0033**, Notice of Intent to Submit Claim to Arbitration, dated 12 June 2023 and delivered to Colombia on 14 June 2023, ¶ 10.

- b) “The situation has materially deteriorated under the current administration in Colombia, including rhetorical and political posturing and changes in policymaking and enforcement. [REDACTED]

p.584

- c) “On 26 January 2023, Continental Gold Limited Sucursal Colombia wrote to the Office of the President to detail yet again the issues faced at the Mine, request the President's assistance to address the security situation and solicit a meeting. No assistance was offered. Instead, Colombia continued to take no meaningful action to respond or address the situation at the Mine.”⁵⁸⁵

318. The 2023 Annual Report is the first one in which Zijin discloses the presence of illegal mining at the Buriticá Mine, but the situation is described as under control, with the mine having overcome “the adverse impact posed by the illegal mining organizations” with production capacity continuing to increase and achieving 8.3 tons of gold.⁵⁸⁶
319. This language was repeated in the 2024 Annual Report, filed after Claimant presented its Request for Arbitration, which for the first time reported that Zijin Mining had undertaken a potential impairment analysis to determine whether illegal mining would impact its financials, but in addition to finding no impairment again stated that the mine “overcame the adverse impacts posed by illegal mining activities” to achieve a stable production of 10 tons of mine-produced gold.⁵⁸⁷

⁵⁸⁴ **Exhibit C-0033**, Notice of Intent to Submit Claim to Arbitration, dated 12 June 2023 and delivered to Colombia on 14 June 2023, ¶ 11.

⁵⁸⁵ **Exhibit C-0033**, Notice of Intent to Submit Claim to Arbitration, dated 12 June 2023 and delivered to Colombia on 14 June 2023, ¶ 13.

⁵⁸⁶ See **Exhibit C-0401**, Annual Report 2023, Zijin Mining Group Co. Ltd., 30 April 2024, p. 41.

⁵⁸⁷ **Exhibit R-0076**, 2024 Annual Report, Zijin Mining Group, p. 37; *see also infra* ¶ 633 **Error! Reference source not found.** (discussing the 2024 Report’s impairment analysis for the Mine, which deemed the Mine’s future recovery greater than any potential loss, therefore recording no impairment due to illegal mining).

2. The State Has Never Been Able to Verify Claimant's Claimed Losses Due to Illegal Mining

320. Continental Colombia is authorized to carry out its activities at the Mine pursuant to its PTO, which was amended with and approved by ANM in 2021.⁵⁸⁸ As explained above, the Colombian State owns all subsoil and in situ minerals pursuant to Colombian law, and ANM is therefore required to stay apprised of the status of recovery of in situ minerals from mining concessions.⁵⁸⁹ In order to stay apprised of Continental Colombia's progress in the Mine (and in all mines in Colombia for which it has supervisory responsibility), ANM thus requires Continental Colombia, as the mining title holder, to file a yearly reconciliation format that reports updates to the Buriticá reserve.⁵⁹⁰ Since 2020, Continental Colombia has submitted five sets of reconciliation reporting to ANM.⁵⁹¹
321. In addition to receiving the concessionaire's reported resources and reserves reconciliation, ANM is charged with accepting the figures as accurate pursuant to its assessment responsibility.⁵⁹²
322. As Claimant's damages experts admit, the first time Continental Colombia reported data for reserves allegedly lost due to illegal mining in its reconciliation filings was 10 April 2024.⁵⁹³ That reconciliation report was, according to Claimant's damages experts, an update for the period 2021-2023. Two months later, in June 2024, Claimant presented its

⁵⁸⁸ See **Exhibit JTB-001**, Work and Construction Program: Mining Concession Agreement No. P7495, Zijin-Continental Gold, January 2021; **Exhibit JTB-017**, Email from Secretary of Mines, Government of Antioquia re Answer to Request No. 2021080001142 concerning PTO Modification, 25 May 2021.

⁵⁸⁹ See **Exhibit C-0112**, Decree No. 4134 of 2011, Art. 4(7) (providing that one of ANM's functions will be to keep information related to mining activity up to date).

⁵⁹⁰ See **Exhibit JTB-018**, Resolution No. 100, Agencia Nacional de Minería, 17 March 2020 (Article 3 requires concessionaires to submit a yearly update of mineral reserves and resources); **Exhibit JTB-019**, Resolution No. 514, Agencia Nacional de Minería, 31 May 2023 (updating the format for submission of yearly reconciliation data and changing the due date for such submissions to February of the year following the reported year).

⁵⁹¹ Four of these were assessed by Claimant's Damages experts from John T. Boyd. See **Exhibit JTB-020**, Agencia Nacional de Minería: Formato de Reconciliación de Recursos Minerales (Periodo: entre 2020-2021), 2022; **Exhibit JTB-021**, Agencia Nacional de Minería: Formato de Reconciliación Reservas Minerales (Periodo: entre 2020-2021), 2023; **Exhibit JTB-013**, Agencia Nacional de Minería: Formulario de Reconciliación de Recursos Minerales (Period 31 December 2021 to 31 to December 2023), 10 April 2024; **Exhibit JTB-046**, Mineral Reserves Reconciliation Form (Period: from 2023–2024), Agencia Nacional de Minería, 7 February 2025. The fifth reconciliation format was filed by Continental Colombia on 22 January 2026; **Exhibit PWG-002**, ANM: "Mineral Reserves Reconciliation Form (Period: 31 December 2024 to 31 December 2025)", 2025.

⁵⁹² See *supra* Section III.E.3.

⁵⁹³ See **Exhibit JTB-013**, Agencia Nacional de Minería: Formulario de Reconciliación de Recursos Minerales (Period 31 December 2021 to 31 to December 2023), 10 April 2024; see also Boyd First Expert Report, Section 1, p. 1–31, ¶ 61, bullet 3.

Request for Arbitration, claiming [REDACTED] and up to [REDACTED]

⁵⁹⁴

323. That coincides with the first time that Continental Colombia reported any data on the extent of illegal mining to Grupo PIN during its site visit in the first half of 2024.
324. That site visit took place from 8-13 April 2024, and for the first time included submissions from Continental Colombia on the alleged extent of illegal mining in Buriticá.⁵⁹⁵ In its presentation, Continental Colombia reported to Grupo PIN personnel that “[REDACTED]”⁵⁹⁶
- [REDACTED]
- [REDACTED]
325. During its inspection, Grupo PIN targeted the infrastructure that Continental Colombia was using to “identify areas that have not been exploited by illegal mining and to develop models for their extraction, thereby preventing the depletion of the resource.”⁵⁹⁸ As a result, Grupo PIN visited the “drilling site currently in operation inside the mine” to observe how the company was identifying areas it could exploit.⁵⁹⁹
326. In order to verify the quantities of drilling operations, as well as the resources and reserves reported by Continental Colombia, Grupo PIN’s Order included the following:

WE HEREBY REQUEST ONCE AGAIN that the mining concession holder, in accordance with the principle of TRANSPARENCY and the terms set forth in the Colombian Standard for Resources and Reserves, submit to this mining authority **ACCURATE AND RELIABLE** information, submitting a database containing THE TOTAL NUMBER OF DRILLINGS that have been carried out within the area of the **granted concession**, which database must contain at a minimum: Identifier (ID), coordinates (in geographic coordinates or CTM12), azimuth, inclination, depth, start date, and end date, location (surface or inside the mine), purpose (exploration,

⁵⁹⁴ RFA, ¶ 50.

⁵⁹⁵ See **Exhibit R-0165**, Comprehensive Audit Visit Report No. Consecutive 051 of Contract No. P7495011, Naranjo Ruiz et al., 21 May 2024, p. 9 (Visit Results); pp. 22-23 (Reconciliation of Resources and Reserves).

⁵⁹⁶ **Exhibit R-0165**, Comprehensive Audit Visit Report No. Consecutive 051 of Contract No. P7495011, Naranjo Ruiz et al., 21 May 2024, p. 23 (Reconciliation of Resources and Reserves).

⁵⁹⁷ **Exhibit R-0165**, Comprehensive Audit Visit Report No. Consecutive 051 of Contract No. P7495011, Naranjo Ruiz et al., 21 May 2024, p. 23 (Reconciliation of Resources and Reserves).

⁵⁹⁸ **Exhibit R-0165**, Comprehensive Audit Visit Report No. Consecutive 051 of Contract No. P7495011, Naranjo Ruiz et al., 21 May 2024, p. 28 (Drilling).

⁵⁹⁹ **Exhibit R-0165**, Comprehensive Audit Visit Report No. Consecutive 051 of Contract No. P7495011, Naranjo Ruiz et al., 21 May 2024, p. 28 (Drilling).

delineation, ore control, definition, etc.), and any other attribute that, in the holder’s judgment, is important to this entity. The database must be accompanied by a digital file in Shapefile or DWG/DXF format showing the location of all drilling carried out within the granted concession area. The foregoing is strictly in accordance with the provisions of Visit Report No. VSC-051 dated 21 May 2024.⁶⁰⁰

327. In addition, Grupo PIN required that Continental Colombia submit (i) a digital file containing an update of the underground mining operations, (ii) a digital file containing an update of the open-pit mining operations, (iii) the files reflecting the daily reports for the last quarter of 2023 and the first quarter of 2024 showing “ore tracking”, (iv) monthly production data for the last quarter of 2023 and total underground material production for the year 2023, (v) monthly production data for the first quarter of 2024, and (vi) reconciliation data for the last quarter of 2023 and the first quarter of 2024.⁶⁰¹
328. Between Grupo PIN’s site visits, ANM continued to exchange correspondence with Continental Colombia regarding the reconciliation format and the information ANM needed to verify that. On 30 April 2024, ANM issued Technical Opinion VSC-059, requiring further information.⁶⁰² Following Continental Colombia’s response, ANM issued Technical Opinion VSC-108 on 28 June 2024.⁶⁰³ Following further response from Continental Colombia, ANM issued technical opinion VSC-229 dated 20 December 2024.⁶⁰⁴ The theme of ANM’s requests to Continental Colombia in each technical opinion is clear: the reconciliation forms submitted by Continental Colombia reported impacts on resources by illegal mining in the Mine’s measured and indicated resources, and losses due to illegal mining in the Mine’s proven reserves, as well as losses in the Mine’s probable reserves due to both illegal mining and block model updates. In each subsequent request to Continental Colombia, ANM reiterated that the information the company provided did not allow ANM to validate that the quantities reported as losses were correct, and that it was impossible for ANM to know what part of the deposit was affected and to what extent underground operations were impacted.
329. During Grupo PIN’s site visit in October 2024, which took place on 21 October 2024,⁶⁰⁵ Continental Colombia submitted “the same information submitted to the entity in February 2024” regarding reconciliation of resources and reserves, including data on

⁶⁰⁰ **Exhibit R-0127**, Auto No. VSC-068, Agencia Nacional de Minería, 29 May 2024, p. 10, Requirement 2.1 (emphasis in original).

⁶⁰¹ **Exhibit R-0127**, Auto No. VSC-068, Agencia Nacional de Minería, 29 May 2024, p. 9, Requirements 2.7–2.12.

⁶⁰² **Exhibit R-0154**, Technical Opinion VSC-059, Agencia Nacional de Minería, 30 April 2024.

⁶⁰³ **Exhibit R-0155**, Technical Opinion VSC-108, Agencia Nacional de Minería, 28 June 2024.

⁶⁰⁴ **Exhibit R-0156**, Technical Opinion VSC-229, Agencia Nacional de Minería, 20 December 2024.

⁶⁰⁵ **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 2.

resources and reserves allegedly lost to illegal mining.⁶⁰⁶ In its inspection, Grupo PIN visited the Arus vein zone “where mining is proceeding to prevent resource loss due to illegal mining,”⁶⁰⁷ and inspected operating contract areas within the Rampa Sur-Yaragua sector that “involve the development exploitation of thin quartz and sulfide structures,” which Grupo PIN noted Continental Colombia was developing “with the aim of reaching thin structures in the upper levels that have not been affected by illegal mining.”⁶⁰⁸ Grupo PIN imposed a safety protocol with Continental Colombia that required drilling boreholes to ensure that any blasting in those zones encountered only hard rock (and thus ensuring that illegal miners would not be affected by blasting).⁶⁰⁹

330. Thus, Grupo PIN’s October 2024 site visit identified numerous areas in the Yaragua and Rampa Sur deposits where Continental Colombia was identifying resources and reserves that had not been exploited by illegal miners and that could be considered accessible and mineable by the company or by operations contracts (*i.e.* miners working under formalization contracts).⁶¹⁰
331. As part of the Grupo PIN site visit, Continental Colombia also gave a presentation reporting on the status of its formalization contracts that identified the specific work zone in which each formalized group was operating. Those included:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁰⁶ **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 17 (Reconciliation of Resources and Reserves); *see also* **R-0157**, Presentation “Exploration” by Continental Colombia to Representatives of Grupo PIN, 21 October 2024, Slides 16-18.

⁶⁰⁷ **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 23 (Mineralization).

⁶⁰⁸ **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 24 (Operating Contracts).

⁶⁰⁹ **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 24 (Operating Contracts).

⁶¹⁰ *See* **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, pp. 24-27 (Operating Contracts).

332. More critically, however, Grupo PIN observed that the areas of formalization coincided with those allegedly occupied, and the presence of those operations workers in the Yaraguá and Rampa Sur areas caused Grupo PIN to issue the following note in its Report:

It has been mentioned that [REDACTED]; however, during the inspection, groups of personnel from the operating contracts were observed working in the Yaragua sector and on the levels mentioned as lost, which is why an explanation, documentation, and supporting evidence **are required** regarding how the mineral loss presented at the meeting (slides 16, 17, 18 of presentation 30092024_PPT_ZIJINCNL_EXPLORACION) was estimated, and how the resources and reserves being extracted by the operating contracts are being added to the aforementioned scenario.⁶¹²

That requirement was repeated verbatim in the Order issued to Continental Colombia on 29 November 2024.⁶¹³

333. Continental Colombia submitted a “partial response” to that request on 14 January 2025. On 24 February 2025, however, ANM issued Technical Opinion VSC-036, which concluded:

This entity requests that “an explanation, documentation, and supporting evidence be provided regarding how the mineral loss shown in the meeting (slides 16, 17, and 18 of the presentation 30092024_PPT_ZIJINCNL_EXPLORACION) was estimated and how the resources and reserves being extracted under the operating contracts are being added,” in the attached response (Annex 2_Request 2.3.zip) there is no explanation, documentation, or supporting evidence regarding the estimation of the mineral loss or regarding how the resources and reserves extracted under the operating contracts are being added, therefore, **the request to explain, document, and provide supporting evidence regarding how the mineral loss shown in the meeting (slides 16, 17, and 18 of presentation**

⁶¹¹ R-0158, Presentation “Formalization” by Continental Colombia to Representatives of Grupo PIN, 21 October 2024.

⁶¹² Exhibit R-0106, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 60 (Conclusions) (emphasis added).

⁶¹³ Exhibit R-0128, Vicepresidencia de Seguimiento, Control y Seguridad Minera, Grupo de Proyectos de Interés Nacional, AUTO No. VSC – 165, 29 November 2024, p. 8, Requirement 2.3.

30092024_PPT_ZIJINCNL_EXPLORACION) was estimated and how the resources and reserves being extracted under the operating contracts are being added is REITERATED.⁶¹⁴

334. During the Grupo PIN site visit conducted 17-21 March 2025,⁶¹⁵ the situation did not appear to have changed. Continental Colombia reported the same figures with respect to lost reserves and occupied areas of the Yaraguá and Rampa Sur tunnels, and Grupo PIN inspected the work of operations contractors working in the upper levels not affected by illegal mining.⁶¹⁶ The same were again reported during the Grupo PIN site visit over 14-18 October 2025.⁶¹⁷
335. As is evident from the reconciliation formats themselves, ANM has not accepted the data Continental Colombia has submitted reconciling resource and reserves for Buriticá since 26 October 2023.⁶¹⁸ Continental Colombia recorded as much in its reconciliation format filed in 2025 for the period 2023-2024.⁶¹⁹

Fecha aprobación ultima reconciliación

10/26/2023

336. Any data reporting the quantity of the allegedly lost reserve is, therefore, entirely internal data kept by Claimant. Claimant's Damages experts confirm this, noting that the reconciliation forms "were based on updates on resources and reserves prepared internally by Continental Gold."⁶²⁰
337. Most recently, on 17 April 2026, Zijin-Continental Gold sent a letter to ANM in which, in response to information requests related to Continental Colombia's 2024 reconciliation report, Zijin-Continental Gold states that "the Company has fully complied with its obligations to report information on existing resources and reserves in the concession

⁶¹⁴ **Exhibit R-0159**, Technical Report VSC-036, Agencia Nacional de Minería, 24 February 2025.

⁶¹⁵ **Exhibit R-0129**, Comprehensive Audit Visit Report, Site Visit by Grupo PIN March 2025, 29 April 2025, p. 8 (Results of the Inspection).

⁶¹⁶ See **Exhibit R-0129**, Comprehensive Audit Visit Report, Site Visit by Grupo PIN March 2025, 29 April 2025, pp. 21–22 (Mining Development), pp. 24–25 (Operating Contracts); **Exhibit R-0130**, Auto No. VSC-118, Agencia Nacional de Minería, 12 May 2025.

⁶¹⁷ **Exhibit R-0131**, Comprehensive Audit Visit Report, Site Visti by Grupo PIN October 2025, Report, 13 November 2025, pp. 38–39 (Mining Development); p. 40 (Operating Contracts); **Exhibit R-0132**, Auto No. VSC-221, Agencia Nacional de Minería, 14 November 2025.

⁶¹⁸ See **Exhibit JTB-022**, Technical Concept VSC 175, Agencia Nacional de Minería, 26 October 2023.

⁶¹⁹ See **Exhibit JTB-046**, Mineral Reserves Reconciliation Form (Period: from 2023–2024), Agencia Nacional de Minería, 7 February 2025.

⁶²⁰ Boyd First Expert Report, Section 1, p. 1–31, ¶ 61, bullet 5

area” and alleges that the ANM’s request to provide information in a 3D model for verification purposes “lacks legal basis, since, although such a model exists, its sole purpose is to serve as additional technical support for the company.”⁶²¹ Zijin-Continental Gold further alleges that “we find it surprising that on this occasion this authority is requiring a 3D model, which is additional and lacks legal enforceability, and is further making the submission of this data contingent upon the approval of the respective Mineral Resources and Reserves (R&R) report, considering the former to be indispensable, once again without any justification.”⁶²² Zijin-Continental Gold takes the position that it could never supply its 3D model for verification:

Furthermore, we consider it important to clarify to the mining authority that the company’s decision not to provide the requested 3D model is based on the company’s right to maintain the confidentiality of its information. The requested 3D information is part of the company’s proprietary documents, industrial secrets, and know-how; it is highly confidential and of the utmost importance to us, which is why it is meticulously safeguarded due to its immense technical and legal value, and even within the company, access to it is restricted.⁶²³

338. It would therefore seem that ANM may never be able to verify the extent of Continental Colombia’s claimed losses.

IV. THE TRIBUNAL LACKS JURISDICTION AND CLAIMANT CANNOT CLAIM THE BENEFITS OF THE TREATY

A. Colombia is Entitled to Deny Benefits under the Treaty to Claimant

339. Even before the IPO Prospectus revealed the full extent of ZGI’s day-to-day control over Continental Colombia and Claimant’s operations in Colombia, Claimant had failed to bear its burden to show it maintains operations in Canada sufficient to hold Canadian nationality for purposes of the FTA. Now, however, with the revelation of the CEA from the IPO Prospectus, Claimant’s lack of any real connection to Canada is stark. Claimant’s Canadian incorporation is a thinly veiled legal disguise for its Chinese and Hong Kong parents, and it cannot benefit from the Treaty.

⁶²¹ **Exhibit R-160**, Letter from A.F. Devia Gutiérrez, Zijin-Continental Gold to J.A. Sánchez Correa, Agencia Nacional de Minería, 17 April 2026, pp. 10, 12.

⁶²² **Exhibit R-160**, Letter from A.F. Devia Gutiérrez, Zijin-Continental Gold to J.A. Sánchez Correa, Agencia Nacional de Minería, 17 April 2026, p. 12.

⁶²³ **Exhibit R-160**, Letter from A.F. Devia Gutiérrez, Zijin-Continental Gold to J.A. Sánchez Correa, Agencia Nacional de Minería, 17 April 2026, p. 13.

340. Pursuant to Article 814(2) of the FTA, Colombia is entitled to deny benefits to an investor of Canada and to that investor's investments:

if investors of a non-Party or of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.⁶²⁴

341. The tribunal in *Aris Mining*—constituted under the same Treaty—found that denial of benefits is proper when the two cumulative requirements of Article 814(2) are met: (1) that the “enterprise is not owned or controlled by nationals of its home State, and” (2) “it has no substantial business activities in its home State.”⁶²⁵ Both conditions are met in the presentation Arbitration.

1. Claimant is Owned and Controlled by a Non-Party Entity

342. There is not—nor could there be—any dispute that CGI is wholly owned by investors of a non-Party; Claimant admits as much.⁶²⁶ According to Claimant's Request for Arbitration, it was wholly acquired by Zijin Mining Group Co., Ltd., a Chinese mining conglomerate, in 2020 for approximately 1.4 billion Canadian Dollars, at which point CGI was delisted from the Toronto Stock Exchange.

343. In its submissions, Claimant does not discuss the full extent of its ownership structure, except to note its acquisition by Zijin Mining. As the IPO Prospectus reveals, however, Continental Colombia—the company operating the Mine—is the last in a complicated ownership chain leading from China to Colombia.⁶²⁷ And, as discussed above, the evidence is clear from the IPO Prospectus: CGI has not had control over the Mine since its acquisition by Zijin Mining.⁶²⁸

344. Suffice it to note that CGI is the **only** Canadian entity in the entire ownership structure of Buriticá, which is otherwise domiciled outside of Canada: Zijin Mining in China, Gold Mountains and Zijin Americas in Hong Kong, CLAI Gilding in the British Virgin Islands, ZLCFL-Cayman in the Cayman Islands, and Continental Gold (Bermuda) in Bermuda. Coupled with CGI's complete lack of control over the investment, this is fatal to Claimant's claim of Canadian nationality.

345. Following the IPO, Claimant is now directly controlled by ZGI Mining, a different Hong Kong-registered subsidiary of Zijin Mining. As the IPO Prospectus details, Claimant is

⁶²⁴ **RL-001**, FTA, Art. 814(2). The Treaty contains no other requirements regarding any of (i) the timing of the State's invocation of the right to deny benefits, (ii) the need for prior notification of consultation, or (iii) mutual consent of Colombia and Canada, such as those found in other BITs, in order for Colombia to deny benefits to a Canadian investor.

⁶²⁵ **RL-005**, *Aris Mining*, ¶ 133.

⁶²⁶ See RFA, ¶ 24, n. 22; see also [REDACTED] First Witness Statement, ¶ 16.

⁶²⁷ See *supra* Section II.B.3.

⁶²⁸ See *supra* Section II.B.3 **Error! Reference source not found.**

currently placed within the CEA by which ZGI “and [its] shareholders [] enjoy the economic benefit of the Colombia Buriticá Gold Mine.”⁶²⁹

346. By design, ZGI and Zijin Mining usurped CGI’s autonomy to manage and direct its investment in Colombia, instead controlling that investment from Hong Kong. In a bid to maintain this arbitration, ZGI has left Claimant standing as the barest shell of a corporation.
347. As must be clear, the fact that CGI is wholly owned by companies outside of Canada and the day-to-day control of the “normal course” of business of the Buriticá Mine is vested in Hong Kong is ruinous for CGI’s claim to Canadian nationality for purposes of the Treaty. As set out in the next section, that CGI also lacks substantial business activities in Canada means that denial of benefits is warranted.

2. Claimant Has No Substantial Business Activities in Canada

348. Claimant fails to carry its burden to show that it has substantial business activities in Canada. First, that requirement has an autonomous meaning under the Treaty, as the Contracting States have interpreted it. Second, Claimant’s activities do not suffice.

a. “Substantial business activities” has an autonomous meaning under the FTA

349. Canada addressed the FTA’s denial of benefits provision in its non-disputing party submissions in *Aris Mining* and *Montauk Metals*. In both submissions, Canada contended that shell or sham companies may be denied treaty protection, and the determination of “substantial business activities” under the relevant provision of the FTA should be made through a facts-based inquiry on a case-by-case basis, with the ultimate deciding factor being the materiality of the claimant’s economic link to the country in which it is incorporated.
350. In *Aris Mining*, the tribunal summarized Canada’s submission on the issue as follows:

[C]oncerning the existence of substantial business activities under Article 814(2) of the FTA, Canada argues that such determination requires a fact-based analysis, as it will depend on the circumstances of the case and a number of factors. It adds that the materiality of the business activity is the key question to establish whether the enterprise has real business operations creating an economic link to the other Party in which it is incorporated.⁶³⁰

⁶²⁹ Exhibit R-0001, IPO Prospectus, p. 382 (PDF p. 392 of 2834).

⁶³⁰ RL-005, *Aris Mining*, ¶ 125 (discussing Canada’s non-disputing party submission in the same case).

351. Four years later, Canada took the same position. As the tribunal in *Montauk Metals* summarized it:

Canada contends that Article 814(2) [...] ensures that enterprises with *a real economic link to the Party in which they are constituted or organized* are granted treaty protection while preventing enterprises of investors of non-Parties or of the denying Party from accessing the benefits of the Agreement merely through incorporation in the territory of a Party to the Agreement.

[...]

[I]n connection with the [denial of benefits] provision, Canada sustains that if an investor has substantial business activities in the territory of the other Party, it will be considered to have sufficient economic links with the other Party and it will be entitled to the benefits of the Agreement, but that *shell or sham companies may be denied treaty protection*, adding that the *existence of substantial business activities is a fact-based analysis* that involves factors that may include: the nature of the activities of that enterprise in the home State; whether it is the location of the enterprise's principal place of business, central administration or of its decision-making; the existence of the enterprise and of its business activities in the home State over a continued period of time; and if it pays taxes, has permanent employees and bank accounts in the home State.⁶³¹

352. Another indication of Canada's consistent position that the "substantial business activity" determination under Article 814(2) of the FTA should be a facts-based inquiry is reflected in Canada's new 2021 Model BIT. Canada's previous 2004 Model BIT included a substantially identical denial of benefits provision to that in Article 814 of the FTA.⁶³² The new 2021 Model BIT achieves the purpose of the FTA's denial of benefits provision by instead incorporating into the definition of the term "investor of a Party" effectively the same rule:

"investor of a Party" means a Party, or a national or an enterprise of a Party, that seeks to make, is making or has made an investment. For the purpose of this definition, "enterprise of a Party" means:

⁶³¹ CL-103, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶¶ 495, 500 (discussing Canada's non-disputing party submission in the same case) (emphasis added).

⁶³² RL-002, Canada 2004 Foreign Investment Promotion and Protection Agreement (FIPA) Model, Art. 18.

(a) an enterprise that is constituted or organized under the law of that Party and that has substantial business activities in the territory of that Party. A determination of whether an enterprise has substantial business activities in the territory of a Party requires a *case-by-case, fact-based inquiry*; [...] ⁶³³

353. The consistency in Canada’s position across multiple investment treaty arbitrations arising under the FTA and in its own treaty practice is significant for the Tribunal’s interpretation of the FTA. Pursuant to Article 31 of the VCLT, a treaty must be interpreted “in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”⁶³⁴ The meaning of the term “substantial” is unambiguous: a company cannot gain the benefits of a treaty if it has merely passing activities in its home State. The object and purpose of the FTA is similarly clear: pursuant to its preamble, it is intended to, *inter alia* “[e]nsure a predictable commercial framework for business planning and investment.”⁶³⁵ As the tribunal in *Aris Mining* noted with respect to Canada’s submissions in that case, the object and purpose of the FTA includes “the stimulation of mutually beneficial business activity and the strengthening of friendly relations between the Contracting Parties.”⁶³⁶ Likewise, pursuant to Article 31(4) of the VCLT, “[a] special meaning shall be given to a term if it is established that the parties so intended.”⁶³⁷

b. Claimant’s operations in Canada are insufficient to constitute “Substantial Business Activities”

354. In the present case, CGI has not made, and cannot make, any showing of substantial business activities in Canada.

355. As described at length, *supra* in section II.B.3, CGI lacks now, and lacked at the time it submitted its claim to Arbitration, any substantial business activities in Canada.

356. First, CGI has no locus of business in Canada. According to the exhibits submitted by Claimant, including the Corporation Profile Report issued by the Government of

⁶³³ **RL-003**, Canada 2021 Foreign Investment Promotion and Protection Agreement (FIPA) Model, Art. 1 (emphasis added).

⁶³⁴ **RL-004**, Vienna Convention on the Law of Treaties, United Nations, 23 May 1969, Art. 31(1).

⁶³⁵ **RL-001**, FTA, Preamble.

⁶³⁶ **RL-005**, *Aris Mining*, ¶ 120.

⁶³⁷ **RL-004**, Vienna Convention on the Law of Treaties, United Nations, 23 May 1969, Art. 31(4).

Ontario,⁶³⁸ CGI has three directors – two of whom are also directors of ZGI⁶³⁹ and “no active Officers.”⁶⁴⁰

357. Second, after CGI’s acquisition by Zijin Mining in 2020, it was delisted from the Toronto Stock Exchange.⁶⁴¹ It thus conducts no fundraising activities in Canada via trade in stock.⁶⁴² To the contrary, as evidenced by the IPO, Zijin Mining conducts fundraising activities in Hong Kong.
358. Third, CGI does not appear to pay any taxes in Canada. Zijin Mining has filed and published CGI’s ESTMA reports for the years 2020 through 2025 on its website.⁶⁴³ None of the ESTMA reports, including the report for the year 2025, report any taxes paid to any Canadian government, federal or provincial.⁶⁴⁴ Rather, they report taxes paid only in Colombia and Antioquia.
359. Fourth, CGI conducts no decision-making activity in Canada. As is discussed at length above in Section II, all of the current decisions made for Continental Colombia are made in Hong Kong by ZGI, and the evidence in the IPO suggests that historical decisions were made by Zijin Americas, and not CGI, even prior to the CEA.
360. CGI’s circumstances are thus entirely distinguishable from those which the *Aris Mining* and *Montauk Metals* tribunals found to constitute substantial business activities undeserving of denial of benefits.
361. In *Aris Mining*, the tribunal found that the claimant Gran Colombia Gold (“GCG”)—a junior mining company that was listed on the Toronto Stock Exchange at the time of the arbitration and whose successor company was still actively traded in that exchange—was engaging in substantial business activities in Canada in consideration of the following facts:

⁶³⁸ See **Exhibit C-0002**, Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024, pp. 2–3.

⁶³⁹ [REDACTED] is a Vice President of Zijin Mining and a non-Executive Director of ZGI. See **Exhibit R-0001**, IPO Prospectus, Volume 1, p. 420 (PDF p. 430 of 2834). Shaoyang Shen was the Chairman of the Board of ZGI until 30 May 2025. See **Exhibit R-0001**, IPO Prospectus, Volume 1, Appendix IA, p. IA–39 (PDF p. 636 of 2834).

⁶⁴⁰ **Exhibit C-0002**, Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024, pp. 2–3.

⁶⁴¹ See RFA, ¶ 24, n. 22; Claimant’s Updated Memorial, ¶ 264.

⁶⁴² Cf. Claimant’s Updated Memorial, Section II(C)(3) (titled “In 2015, Claimant became the owner of the Company through a restructuring to attract further Canadian funding.”)

⁶⁴³ See **Exhibit R-0002**, Continental Gold Inc. ESTMA Reports, Zijin Mining Website, last accessed 1 April 2026 (including available website downloads **Exhibit R-0002a**, 2020 ESTMA Report, **Exhibit R-0002b**, 2021 ESTMA Report, **Exhibit R-0002c**, 2022 ESTMA Report, **Exhibit R-0002d**, 2023 ESTMA Report, **Exhibit R-0002e**, 2024 ESTMA Report, **Exhibit R-0002f**, 2025 ESTMA Report).

⁶⁴⁴ See, e.g., **Exhibit R-0002e**, 2024 ESTMA Report (reporting only taxes, royalties, and fees paid to the National Government of Colombia).

[F]or th[e] entire period [between 25 May 2018 (the date it filed the Request for Arbitration), 31 May 2018 (the date Colombia invoked Article 814(2) to deny FTA benefits), or 2 July 2018 (the date ICSID registered the case)], the record reflects, *inter alia*, the following activities by GCG in Canada:

Core corporate functions in Toronto: corporate finance, fundraising, accounting, shareholder relations, legal, administration and IT support;

Office space: spending over US\$100,000 on rent, utilities and related expenses in 2018;

Eight full-time employees in Toronto: In 2018, GCG spent over CAD\$1.2 million in Canada on compensation and benefits.

Several bank accounts in Canada: Six bank accounts through which GCG actively conducts its business; in or about May 2018, those six accounts contained more than US\$25 million;

Annual purchases of goods and services in Canada: GCG has spent hundreds of thousands of dollars related to accounting and advisory services, legal services, and shareholder and investor related activities, as well as miscellaneous services such as IT, liability policies and a listing fee for the Toronto Stock Exchange; and

Financing activities: GCG has raised more than US\$500 million over the last 10 years, in transactions on the Canadian debt and equity markets, in order to support its operations.⁶⁴⁵

362. The claimant in *Aris Mining* explained the nature of its financing activities as follows:

The Claimant notes that it raises the financial resources for GCG's global operations on the Canadian capital markets and lists some of its most significant fundraising and investment transactions in Canada. It further notes that these transactions entailed millions spent on professional services from Canadian advisors and bankers, and that all securities issued by GCG trade on the Toronto Stock Exchange. Moreover, the Claimant stresses that GCG's shareholder and investor relations activities are performed in Canada, including the organization of the annual general and special meetings of GCG's shareholders in Toronto,

⁶⁴⁵ **RL-005**, *Aris Mining*, ¶ 139 (emphasis in original).

the publication of official documents, press releases, social media communications, among other activities.⁶⁴⁶

363. CGI can point to no such activity since its acquisition by Zijin Mining and de-listing from the Toronto Stock Exchange. This is a crucial difference that fundamentally distinguishes *Aris Mining*: financing activities taking place in Canada generally constitutes the *raison d'être* of a “Canadian” junior mining company. Providing treaty protection to an investor that raises Canadian capital for the investment in Colombia through selling equity and debt in Canada would comport with the object and purpose of the FTA as understood by reference to its preamble. But it would be at odds with the object and purpose of the FTA to provide the same protection to a Chinese-owned and Hong Kong operated private company that performs none of these activities, but which continues its existence as only a remnant holding entity following its acquisition.

364. In *Montauk Metals*, the tribunal found that the claimant (which was traded on the Toronto Stock Exchange at the initiation of the arbitration until its shares were suspended due to the company’s failure to file its audited financials in early 2025)⁶⁴⁷ had substantial business activities in Canada on the basis of the following:

First, because Claimant's core corporate functions took place in Canada. Claimant was incorporated and operates under the laws of Canada; is regulated by the Ontario's Securities Commission; paid corporate income taxes in Canada; and held bank accounts in the BRC Royal Bank and RBC Dominion Securities.

Second, because Claimant had offices in Canada. As declared by [its CEO] in his sworn statement, Claimant has always had its head office in Toronto, currently at 82 Richmond St. East, which required expenditures of approximately USD 65,500 per year between 2011 and 2020.

Third, because Claimant's key directors and officer were Canadian or resided in Canada, including senior mining executive Mr. Larry Strauss, exploration geologist Mr. Michael Sutton and the company's CFO, Mr. Robert Suttie.

Fourth, because Claimant engaged various employees and consultants in Canada to carry its business activities. Namely, its corporate legal counsel Peterson McVicar LLP and Ogletree, Deakins, Nash, Smoak & Stewart, P.C.’s offices in Toronto and Montreal, its financial advisors from National Bank Financial, its auditor Clearhouse LLP, and its technical consultants, such as

⁶⁴⁶ RL-005, *Aris Mining*, ¶ 113.

⁶⁴⁷ See **Exhibit R-0004**, *Montauk Metals collapses into bankruptcy after protracted Colombian expropriation battle*, *Insolvency Insider*, 30 November 2025, p. 1.

Roscoe Postle Associates Inc., who authored the [report identifying mineral resource estimates].⁶⁴⁸

Again, the claimant in *Montauk Metals* was fundamentally different from CGI. CGI's lack of tax payments in Canada, failure to maintain officers in Canada, and lack of proven business activities in Canada are a stark contrast to Montauk Metals' activities prior to its bankruptcy.

365. Similarly, in *Red Eagle Exploration v. Colombia*, where the tribunal denied Colombia's effort to deny benefits, the tribunal found that the claimant was engaged in substantial business activities based on the following:

(i) Claimant's head office is located in Vancouver, Canada; (ii) Claimant is incorporated/registered in Canada; (iii) ***Claimant's directors and officers were Canadian nationals or residents as of March 21, 2018***; (iv) Claimant's board/corporate meetings take place in Canada; (v) ***Claimant is listed on the Toronto Stock Exchange***; (vi) Claimant rents office space in Vancouver, Canada; (vii) ***Claimant engages in various professional services in Canada (including accounting and advisory services, legal services, and shareholder and investor activities, such as the listing fee for the Toronto Stock Exchange)***; (viii) ***Claimant files taxes in Canada***; (ix) Claimant has bank accounts in a Canadian Bank; (x) Claimant has insurance in Canada, and (xi) ***Claimant is subject to the British Columbia Securities Commission ("BCSC")***.⁶⁴⁹

366. By contrast, it is not apparent from anything Claimant has submitted in the present Arbitration that it conducts activities at all in Canada, let alone substantial activity. According to Claimant:

Claimant employs ten full-time employees with expertise in finance, legal, corporate development, geology and engineering functions, in addition to the thousands employed indirectly in Colombia through Continental Colombia. The Canadian team supports both the financial management of the Colombian operations and the Zijin Mining group's corporate development globally and in Canada, a core market for the group given its position as the primary base for most of the world's junior mining companies. As part of this role, Claimant identifies, evaluates, and monitors Canadian mining companies, Canadian projects,

⁶⁴⁸ CL-103, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶¶ 517–520.

⁶⁴⁹ RL-007, *Red Eagle Exploration Ltd. v. Republic of Colombia*, ICSID Case No. ARB/18/12, Award, 28 February 2024 ("**Red Eagle**"), ¶¶ 160, 164 (emphasis added).

and pursues investment and acquisition opportunities in Canada for the Zijin Mining group.⁶⁵⁰

367. Claimant submits no exhibits in support of these alleged business activities. And as tribunals have recognized, analyzing different investment treaties, “the inquiry into which operations are relevant must be based on the nature of that entity’s business.”⁶⁵¹ CGI holds itself out as the owner of the Buriticá Mine, “[t]hrough its Colombian branch” and, along with “its affiliates,” an investor of “in excess of US\$ 1 billion to develop the Mine.”⁶⁵² It alleges “Claimant continues to invest heavily [...] to operate, develop and expand the Mine and further increase its production and operating life.”⁶⁵³ CGI’s Its claims of providing support to the Zijin Mining group, are activities that have nothing to do with the Buriticá Mine, and are therefore irrelevant. And its claims to “financial management” of the Mine are now false; those functions have transferred to ZGI.⁶⁵⁴ CGI is thus holding itself out as essentially an investment promoter for Zijin Mining in Canada, an activity that hardly comports with its alleged business in directly operating a mine in Colombia.
368. Claimant is a shell company, fully owned and controlled by a non-Party entity, and which does not control its investment, and which has not proven its alleged business activities in Canada. That non-Party entity has expressly stated in its IPO Prospectus that the sole reason for clinging to CGI’s Canadian nationality is to preserve jurisdiction in this arbitration proceeding. Further, Claimant has failed to demonstrate that it conducts any activities in Canada, much less substantial ones. And even the activities that Claimant purports to conduct out of Canada, are unrelated to Buriticá.
369. For these reasons, Colombia is entitled to, and hereby does, deny benefits to CGI under the FTA.

B. The Tribunal Lacks Jurisdiction *Ratione Temporis*: Claimant’s Claims Fall Outside the Prescription Period of the Treaty

370. Articles 821(2)(e)(i) and 821(2)(f)(i) contain the Treaty’s prescription period. Both articles provide that claims under Article 819 (brought by an investor on its own behalf) or Article 820 (brought by an investor on behalf of an enterprise) may only be submitted to Arbitration if “not more than 39 months have elapsed from the date on which the disputing investor [or enterprise] *first acquired, or should have first acquired,*

⁶⁵⁰ Claimant’s Updated Memorial, ¶ 264.

⁶⁵¹ **RL-008**, *IC Power Ltd. and Kenon Holdings Ltd. v. Republic of Peru*, ICSID Case No. ARB/19/19, Award, 3 October 2023, ¶ 225. The parties in that case diverged on what business activities for a holding company would be considered “substantive,” but the tribunal agreed with the claimant that “to determine whether business operations are ‘substantive’ one must assess the nature of the company’s business activities by reference to the company’s business purpose.” **RL-008**, *IC Power*, ¶¶ 221, 225

⁶⁵² RFA, ¶ 5.

⁶⁵³ RFA, ¶ 24.

⁶⁵⁴ Claimant’s Updated Memorial, ¶ 264; █████ First Witness Statement, ¶ 16.

knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby.”⁶⁵⁵ Pursuant to Article 823(1) of the FTA, Claimant’s failure to meet this requirement—to bring claims within 39 months of first having learned of Colombia’s purported breach—nullifies any consent to arbitrate on the part of Colombia and vacates the Tribunal’s jurisdiction *ratione temporis*.

1. The Treaty’s Limitations Clause is a Clear and Rigid Requirement that Cannot be Circumvented by Allegations of Continuing Conduct

371. Tribunals treat limitations clauses as imposing a clear and rigid limitation on jurisdiction, such that investors may only bring claims for breaches clearly occurring after the critical date. Indeed, the NAFTA contained a similar provision allowing an investor to submit a claim but not “if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and [of the] incurred loss or damage.”⁶⁵⁶ NAFTA tribunals—and more recent tribunals constituted under the subsequent USMCA—have treated that provision as “introduc[ing] a clear and rigid limitation defense which, as such, is not subject to any suspension[,] prolongation or other qualification.”⁶⁵⁷
372. And even if the prescription period were not so rigid, it could not be tolled by either an argument that the investor had been unable to quantify the loss or damage required to submit the claim to arbitration or by an argument that the breach was a continuing one, unless there were a distinct and actionable breach that arose after the critical date.
373. In *Mondev*, the claimant claimed that certain actions of the United States courts had “perfected” the United States’ breaches of the NAFTA, which were until then “wrongful, in terms of the international minimum standard or of Massachusetts law or both, and this created a continuing situation which, under Article 1105, the United States had an obligation to remedy,” such that its claims fell within the NAFTA prescription period.⁶⁵⁸ The significance of that alleged “perfection” was that “until the decisions of the United States courts which finally failed to give it any redress [...] Mondev was not in a position

⁶⁵⁵ **RL-001**, FTA, Arts. 821(2)(e)(i) and (2)(f)(i) (emphasis added).

⁶⁵⁶ See **RL-108**, *Westmoreland Coal Company v. Government of Canada*, ICSID Case No. UNCT/23/2, Award, 17 December 2024, ¶ 96 (citation modified).

⁶⁵⁷ **RL-108**, *Westmoreland Coal Company v. Government of Canada*, ICSID Case No. UNCT/23/2, Award, 17 December 2024, ¶ 114 (citing **RL-134**, *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, ¶ 63; **RL-135**, *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 29; **RL-040**, *Apotex, Inc. v. United States of America*, ICSID Case No. UNCT/10/2, Award on Jurisdiction and Admissibility, 14 June 2013, ¶ 300–302; **RL-136**, *Mobil Investments Canada Inc. v. Government of Canada*, ICSID Case No. ARB/15/6, Decision on Jurisdiction and Admissibility, 13 July 2018, ¶¶ 146–147.).

⁶⁵⁸ **RL-137**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 48.

to be sure whether it had suffered loss.”⁶⁵⁹ The tribunal found it lacked jurisdiction over Mondev’s claims other than those arising out of the court decisions because the NAFTA was not yet in force when they arose, but the tribunal nevertheless noted that “[i]f it had mattered, [...] the Tribunal would not have accepted Mondev’s argument that it could not have had ‘knowledge of loss or damage’ arising from” the actions of the United States prior to the court decisions.⁶⁶⁰ It continued: “A claimant may know that it has suffered loss or damage even if the extent or quantification of the loss or damage is still unclear.”⁶⁶¹

374. Subsequent tribunals have seized on this language from *Mondev* to find that the moment when an investor becomes aware that it has incurred loss does not correspond to when that loss is capable of being quantified. In *Grand River v. USA*, the claimant alleged it could only have incurred loss after enforcement action was taken to impose penalties against it.⁶⁶² The tribunal, however, focused on the use of the verb “incur” in the treaty, which it noted “is often used to describe situations where there is no immediate outlay of funds by the affected party,” and noted that “[j]udicial dicta likewise suggest that one incurs a loss when liability accrues,” so “damage or injury may be incurred even though the amount or extent may not become known until some future time.”⁶⁶³ Observing that its views thus “parallel those of the NAFTA Tribunal in *Mondev*,”⁶⁶⁴ the tribunal held that the claimants’ claims regarding enforcement actions were partially time barred.⁶⁶⁵ The *Spence International* tribunal extended the reasoning also to DR-CAFTA.⁶⁶⁶
375. With respect to allegations of continuing breach, tribunals interpreting similar provisions in NAFTA and DR-CAFTA have determined that the focus of the enquiry is when the investor first acquired knowledge of the circumstances giving rise to the breach and the harm that results. In *Spence International v. Costa Rica*, for example, the tribunal found

⁶⁵⁹ **RL-137**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 52.

⁶⁶⁰ **RL-137**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 87.

⁶⁶¹ **RL-137**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, 11 October 2002, ¶ 87.

⁶⁶² **RL-135**, *Grand River Enterprises Six Nations Ltd. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶¶ 74–77.

⁶⁶³ **RL-135**, *Grand River Enterprises Six Nations Ltd. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 77.

⁶⁶⁴ **RL-135**, *Grand River Enterprises Six Nations Ltd. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 78.

⁶⁶⁵ **RL-135**, *Grand River Enterprises Six Nations Ltd. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 83. The tribunal’s decision was partial insofar as it pertained to off-reservation sales; the tribunal found for other reasons that it did not pertain to on-reservation sales.

⁶⁶⁶ **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶ 213 (“On the issue of whether loss or damage must be crystallised, and whether the claimant must have a concrete appreciation of the quantum of that loss or damage, the Tribunal agrees with the approach adopted in *Mondev*, *Grand River*, *Clayton* and *Corona Materials* that the limitation clause does not require full or precise knowledge of the loss or damage.”).

that “[w]hile it may be that a continuing course of conduct constitutes a continuing breach, [...] such conduct cannot without more renew the limitation period as this would effectively denude the limitation clause of its essential purpose, namely, to draw a line under the prosecution of historic claims.”⁶⁶⁷ Likewise, in *Grand River*, the tribunal noted that the claimants had shifted their argument at the hearing from claiming a single limitations period to many on the theory that each contested measure was its own breach, but (despite finding that that was not how the claimants had pleaded their case) it found that argument unconvincing:

this analysis seems to render the limitations provisions ineffective in any situation involving a series of similar and related actions by a respondent state, since a claimant would be free to base its claim on the most recent transgression, even if it had knowledge of earlier breaches and injuries.⁶⁶⁸

376. Thus, the *Spence International* tribunal found that, in the case of a continuing breach, “for a ‘component’ of a dispute to be justiciable in the face of a time-bar limitation clause, that component must be **separately** actionable, i.e., it must constitute a cause of action, a claim, in its own right.”⁶⁶⁹ The claimants in that case claimed expropriation of their properties, which hinged on direct expropriatory conduct, all of which preceded the critical date, and indirect expropriatory conduct in the form of omissions and failure to act, which came after the critical date. The tribunal analyzed the record and found that “Claimants have failed to show, *manifestly* – in respect of allegations of indirect expropriation, denial of fair expropriation process, failure to pay compensation promptly, and failure to pay adequate compensation – that they first acquired, or must be deemed to have first acquired, knowledge of the breaches and losses that they now allege only after” the critical date.⁶⁷⁰ In that vein, the tribunal found that “[t]he appreciations that lie at the core of every allegation that the Claimants advance can be traced back to” pre-critical date conduct, and “[t]he claims thus fall at the first acquisition of knowledge requirement” of CAFTA-DR.⁶⁷¹ The tribunal also found that the claimants had failed to show that “the breaches that they allege are independently actionable breaches, **separable**

⁶⁶⁷ **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶ 208. The tribunal continued: “Such an approach would also encourage attempts at the endless parsing up of a claim into ever finer sub-components of breach over time in an attempt to come within the limitation period. This does not comport with the policy choice of the parties to the treaty.”

⁶⁶⁸ **RL-135**, *Grand River Enterprises Six Nations Ltd. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006, ¶ 81.

⁶⁶⁹ **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶ 210 (emphasis added).

⁶⁷⁰ **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶¶ 241–245 (emphasis in original).

⁶⁷¹ **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶ 245.

from the pre-entry into force conduct in which they are deeply rooted.”⁶⁷² This was all the more so because, “even were the Tribunal to accept the existence of an actionable breach” post-critical date, the tribunal did not see “that that breach could properly be evaluated on the merits without requiring a finding going to the lawfulness of” pre-critical date conduct.⁶⁷³

377. This is the approach the Contracting Parties intended in the present Treaty. In *Red Eagle*, Canada submitted a Non-Disputing Party Submission in which it explained that Canada interprets Article 821(2)(e)(i) as follows: “when a dispute arises out of a series of related measures, some of them occurring prior to the limitation period and some after, a tribunal only has jurisdiction over the measures that fall within the time period if [those measures] constitute[] a distinct or separate actionable breach.”⁶⁷⁴ Colombia argued the same: “Article 821(2)(e)(i) is a ‘clear and rigid’ requirement which cannot be extended or circumvented because a course of conduct is continuing.”⁶⁷⁵ And in its comments on Canada’s Non-Disputing Party Submission, Colombia noted that Canada had confirmed its position that “in the case [of] a measure with a ‘continued effect on an investor’, the limitation period ‘begins to run once a claimant has first acquired either actual knowledge or constructive knowledge of the alleged breach and loss.’”⁶⁷⁶

2. Claimant’s Allegations Hinge on Conduct Prior to the Critical Date

378. Claimant filed its Request for Arbitration on 28 June 2024.⁶⁷⁷ The critical date for the Tribunal’s jurisdiction is, therefore, 39 months prior to that date, or 28 March 2021. By that point, Claimant had acquired, or should have acquired, knowledge of the alleged breaches and of its alleged loss.
379. Furthermore, in addition to the prescription period in Article 821(2) of the Treaty, Articles 819 and 820 allow a claimant to submit to arbitration, on behalf of itself or an enterprise, a claim that the other party has breached the Treaty “and that the investor [or enterprise] **has incurred loss or damage by reason of, or arising out of, that breach.**”⁶⁷⁸ Pursuant to Article 821(2)(c)(iv) of the Treaty, Claimant is also required to indicate “the relief

⁶⁷² **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶ 246 (emphasis added).

⁶⁷³ **RL-138**, *Spence International Investments, LLC et al. v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017, ¶ 246.

⁶⁷⁴ **RL-007**, *Red Eagle*, ¶ 109.

⁶⁷⁵ **RL-007**, *Red Eagle*, ¶ 108 (quoting Respondent’s Reply).

⁶⁷⁶ **RL-007**, *Red Eagle*, ¶ 109 (quoting Respondent’s Comments on the Non-Disputing Party Submission of Canada).

⁶⁷⁷ See generally RFA; **RL-001**, FTA, Art. 822(4)(a) (providing that “[a] claim is submitted to arbitration under this Section when [...] the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General”).

⁶⁷⁸ See **RL-001**, FTA, Arts. 819, 820 (emphasis added); see generally Respondent’s Letter Opposing Claimant’s Request to Bifurcate Quantum, 18 July 2025.

sought and the approximate amount of damages claimed” in order to submit the claim to arbitration.⁶⁷⁹

380. The combined effect of that pleading standard and the limitations period of Article 821(2) is that, to establish the jurisdiction of the Tribunal, Claimant must claim that a distinct breach occurred within the limitation period, which caused a distinct loss that occurred within the limitation period.
381. Put differently, Claimant has the burden to show that Colombia’s allegedly wrongful actions and omissions that occurred on or after 28 March 2021 have, on the balance of probabilities, and taking the facts as pleaded by Claimant with the assumption that no factual allegations were advanced against its jurisdictional case, (1) **caused** (2) **a novel loss** that occurred on or after 28 March 2021 (3) **independently** from State action that took place before 28 March 2021.⁶⁸⁰ Point (1) is required by the pleading standards of Articles 819 and 820, while points (2) and (3) are required by the limitation period. This analysis is echoed by the Government of Canada’s Non-Disputing Party Submission in *Red Eagle* that a tribunal will only have jurisdiction over a “distinct or separable actionable breach.”⁶⁸¹
382. To get around this obstacle to its claims, Claimant attempts to anchor its claims to the 7 August 2022 inauguration of President Gustavo Petro, which Claimant claims represented a “dramatic reversal” in Colombia’s stance against illegal mining and support for large-scale mining.⁶⁸² In reality, however, Claimant can point to no shift in either policy or reality on or about that date that can save its claims *ratione temporis*. Claimant’s own witness acknowledges that “illegal mining activities intensified at the Project, **even before President Petro’s inauguration on 7 August 2022.**”⁶⁸³ He explains that “in 2021, [Continental Colombia] recorded increases in detonations, gunfire, and improvised explosive devices related to illegal mining activities at the [Mine].”⁶⁸⁴
383. As of 28 March 2021, at a minimum, there can be no doubt that Claimant was aware of the illegal mining taking place in Buriticá and its alleged losses ensuing therefrom. This is evidenced by at least the following:

383.1 Continental Colombia and Continental Gold Ltd entered into security agreements with the Ministry of Defense as early as [REDACTED].⁶⁸⁵ The

⁶⁷⁹ **RL-001**, FTA, Arts. 821(2)(c)(iv).

⁶⁸⁰ This assumes that a sophisticated claimant such as Claimant had or should have had knowledge of losses and State actions and omissions that took place before 28 March 2021, as would be the case on the balance of probabilities, and given that Claimant does not allege lack of knowledge.

⁶⁸¹ **RL-007**, *Red Eagle*, ¶ 109.

⁶⁸² See generally Claimant’s Updated Memorial, § II(F).

⁶⁸³ [REDACTED] First Witness Statement, ¶ 43.

⁶⁸⁴ [REDACTED] First Witness Statement, 10 July 2025, ¶ 26.

⁶⁸⁵ **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED]; see *supra* Section III.C.1.a.

stated purpose of the [REDACTED] agreement was to protect the Mine from “armed illegal groups.”⁶⁸⁶

- 383.2 On 29 July 2015, a formal investigation was launched after a Continental Gold representative filed a criminal complaint regarding an illegal miner that caused an explosion resulting in structural damage.⁶⁸⁷
- 383.3 Operation Creta was initiated in April 2016 as an effort to reduce the influence of armed groups and the informal mining operations in the region.⁶⁸⁸ Operation Creta was launched in response to the complex public order situation in Buriticá and was acknowledged by Claimant in contemporaneous press releases.⁶⁸⁹
- 383.4 Both Operations Hefesto and Hades were initiated prior to 2021, and have involved multi-year investigative and armed forces operations to collect evidence in order to apprehend and criminally charge members of Clan del Golfo engaged in illegal mining in Buriticá.⁶⁹⁰
- 383.5 Claimant’s 2019 Sustainability Report acknowledges the security risks caused by illegal mining and notes various efforts being made by CGI, in collaboration with the State, to mitigate those risks.⁶⁹¹
- 383.6 Claimant’s records show that more than a thousand informal detonations (blasts used by illegal miners) were recorded every month beginning in January 2020.⁶⁹² The records also report frequent encounters between security units and informal miners where the hurling of improvised explosives was involved, with occasional instances in which firearms were discharged.⁶⁹³
- 383.7 Claimant’s own witness explains that Continental Colombia maintains a Control Center which operates 24 hours a day to monitor security incidents at the Mine and that, beginning in October 2020, Continental Colombia “chose to carry out a series of defensive and protective operations aimed at safeguarding human

⁶⁸⁶ **Exhibit R-0017**, Security Agreement [REDACTED] between Continental Colombia and Continental Gold Ltd. Bermuda and the Ministry of Defense, [REDACTED]; *see supra* Section III.C.1.a.

⁶⁸⁷ **Exhibit R-0071**, Summary of Complaints from the Attorney General’s Office, 10 July 2025.

⁶⁸⁸ *See supra* Section III.C.3.

⁶⁸⁹ **Exhibit C-0184**, Continental Gold Announces a Colombian Government-Initiated Operation to Permanently Close All Illegal Mines in Buriticá, Continental Gold Inc., 25 April 2016; **Exhibit C-0188**, Continental Gold Entrega una Actualización Sobre la Operación del Gobierno Colombiano para Cerrar de Manera Permanente Todas las Minas Ilegales en Buriticá, Continental Gold Inc., 26 May 2016.

⁶⁹⁰ *See supra* Section III.E.2.

⁶⁹¹ **Exhibit C-0225**, 2019 Sustainability Report: Relationships that Add Up, Zijin-Continental Gold, 31 December 2019, p. 76.

⁶⁹² **Exhibit C-0433**, Chart of Detonations, Improvised Explosive Devices, and Shootings (2020–2024), 2025.

⁶⁹³ **Exhibit C-0433**, Chart of Detonations, Improvised Explosive Devices, and Shootings (2020–2024), 2025.

resources [...] as well as [Continental Colombia's] assets.”⁶⁹⁴ These operations included the building of “barricades and trenches, intended to contain this invasion and prevent miners engaged in illegal activities from connecting with the [...] tunnels.”⁶⁹⁵ Claimant was not only aware of, but was taking active steps to towards preventing, illegal mining at the Mine.

383.8 Claimant's own witness explains that he repeatedly met with Colombian government officials regarding the security situation at the Mine “both before and after the Mine's inauguration in 2020,” including two meetings with President Duque in 2020.⁶⁹⁶ The fact that Claimant was actively seeking an audience with high-level members of the government suggests that it was well aware of the security situation at the Mine.

383.9 The 2020 Sustainability Report (published in March 2021) documents the security conditions at the Mine, noting that “control, mitigation and blocking of activities related to illicit extraction of minerals with the Company's titles, are essential to guarantee the continuity of the operation and the safe performance of the activities.”⁶⁹⁷

383.10 The technical report prepared for Zijin Mining in May 2021 states that “[t]he level 1555 in Rampa Sur and levels 1465 and 1445 in Yaragua [sic] are not mineable due to illegal mining activities in history.”⁶⁹⁸ And as Claimant itself admits, Operation Hades, which was launched prior to 2021 and led to armed forces interventions in April and July of 2021, was intended “to reclaim the Yaraguá tunnels.”⁶⁹⁹

384. Thus, it is clear that Claimant knew or should have known (and cannot claim in good faith that it did not know), of the informal mining activities in the region, aided by armed groups, and of the alleged losses of its reserves associated with those activities by the critical date of 28 March 2021.

385. Illegal miners were present in the Mine, with the support of Clan del Golfo, well before 7 August 2022 and continued to be present in the Mine thereafter. [REDACTED]

⁶⁹⁴ [REDACTED] First Witness Statement, ¶ 12.

⁶⁹⁵ [REDACTED] First Witness Statement, ¶ 12.

⁶⁹⁶ Claimant's Updated Memorial, ¶ 108; [REDACTED] First Witness Statement, ¶¶ 24-25.

⁶⁹⁷ **Exhibit C-0253**, Buriticá Mine, Modern Mining from Colombia to the World: Sustainability Report 2020, Zijin-Continental Gold, 1 March 2021, p. 47.

⁶⁹⁸ **Exhibit C-0258**, Independent Technical Report on the Buriticá Gold-Silver Project, Antioquia, Colombia, SRK Consulting (China) Ltd., 8 May 2021, p. 83.

⁶⁹⁹ Claimant's Updated Memorial, ¶ 120.

700 Moreover, pursuant to Claimant's evidence, security incidents had entered a worsening trend by early 2020 at the latest.⁷⁰¹

386. Claimant's reasoning hinges entirely on artificial distinctions, which have no support in law or fact. The Tribunal should disregard these false distinctions and should dismiss Claimant's claims that are based on facts that were known or should have been known to Claimant by the critical date of 29 March 2021.

a. Claimant draws a false distinction between state conduct (legal cause) before and after the critical date

387. Claimant does not and cannot show how Colombia's treatment of the Mine has changed post-August 2022, in a way that would render its treatment by President Petro's administration violative of the FTA, while its treatment by previous administrations did not. In other words, Claimant fails to explain how any of Colombia's conduct after August 2022, which was the same to its conduct prior to August 2022, breached its substantive obligations under the FTA when it had not constituted a breach before.

388. As Colombia explains below with respect to the merits of Claimant's claims, Colombia's actions in responding to and providing security services for the Mine have remained consistent. Claimant's allegations amount to a selective reading of certain policies and statements contained in President Petro's strategic plan and which arose during his campaign.

389. Claimant bears the burden to show facts sufficient to establish the Tribunal's jurisdiction, and it must do so on the balance of probabilities.⁷⁰² Claimant's claims fall far short of meeting that burden. In its attempt to allege a discontinuity between Colombia's treatment of the investment before August 2022 and its treatment of the Mine after August 2022, Claimant effectively admits that the various legal, regulatory, and administrative instruments enacted by prior administrations – despite the fact that they did not succeed in eliminating illegal mining – complied with Colombia's substantive obligations under the Treaty.⁷⁰³

390. Claimant does not allege that these legal mechanisms and policies were in any way rescinded, or that their enforcement had changed, let alone that they had been terminated, during the Petro presidency. Claimant only alleges changes in the implementation of

⁷⁰⁰ Claimant's Updated Memorial, ¶ 166.

⁷⁰¹ See **Exhibit C-0433**, Chart of Detonations, Improvised Explosive Devices, and Shootings (2020–2024), 2025.

⁷⁰² **RL-139**, *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Decision on Jurisdiction, 14 April 1988, ¶ 63 (“Thus, jurisdictional instruments are to be interpreted neither restrictively nor expansively, but rather objectively and in good faith, and jurisdiction will be found to exist if - but only if - the force of the arguments militating in favor of it is preponderant.”).

⁷⁰³ See Claimant's Updated Memorial, Section II.D (titled “As Claimant raised and invested hundreds of millions of dollars to turn the Project into an operating mine, Colombia took forceful actions to provide security to Claimant's investment”) and Section II.E (titled “In 2020, the Mine started commercial operations and continued to receive security assistance and protection from Colombia in the following years”).

discrete security measures, including reduced efforts by security forces to control the Mine's surface area and changes in the operation of a security checkpoint on the road connecting the Mine to the main highway.⁷⁰⁴

391. By failing to allege **how** those measures could constitute a breach by Colombia, when Colombia's prior policies and their implementation did not, Claimant fails to meet its burden to show a breach within the Treaty's prescription period. While this is fatal for Claimant on the merits, it is also fatal for its jurisdictional case because Claimant knew or should have known the facts underlying the distinct or separable actionable breach it alleges long before 28 March 2021.

b. Claimant draws a false distinction between the nature of the security situation at the mine (instrumental cause) before and after the critical date

392. Claimant essentially argues that the legal cause of its alleged losses is Colombia's wrongful failure to take necessary actions to protect the Mine from illegal mining activities. Notwithstanding Claimant's mistaken attribution of the alleged actions of informal miners and members of the Clan del Golfo to Colombia,⁷⁰⁵ Claimant must show that the alleged instrumental cause was not in motion before 28 March 2021 in order not to be barred by the limitation period. Claimant fails to do so.
393. As explained above, illegal mining activity and violence were present in Buriticá as early as 2016, according to Claimant's own records.⁷⁰⁶ Claimant asserts that the alleged change in the volume and severity of the activity between the first half and second half of 2022 indicates that the inauguration of President Petro caused a change,⁷⁰⁷ but it offers no evidence connecting the two. To put it simply, even if there were a change, which Claimant fails to demonstrate on the evidence, correlation is not causation, and Claimant proffers no evidence of why the trend it allegedly observed was different from the illegal mining activity that had been ongoing since well before 28 March 2021.
394. The mere allegation that the increase in illegal mining activity was not linear is insufficient to demonstrate, on the balance of probabilities, that the increase was caused by State conduct rather than as a matter of course. Having knowledge of the nature and extent of the informal mining activity before 28 March 2021 and not having established with the requisite standard of proof that State conduct on or after 28 March 2021 constituted the cause-in-fact for the alleged losses, Claimant's allegations must be barred by the 39-month limitation period of Article 821(2) of the Treaty.

⁷⁰⁴ See Claimant's Updated Memorial, ¶¶ 126, 201; [REDACTED] First Witness Statement, ¶¶ 49, 50, 53, 55.

⁷⁰⁵ See **CL-110**, ARSIWA, Ch. 11, comment 2.

⁷⁰⁶ Claimant's Updated Memorial, ¶ 44; *see also supra* Section III.A.2 (explaining that Clan del Golfo, in particular, has been active since the mid-2000s).

⁷⁰⁷ Claimant's Updated Memorial, ¶¶ 165–166.

C. The Tribunal Lacks Jurisdiction *Ratione Materiae*: Claimant has Not Proven its Ownership of its Investment

395. The relevant substantive protections and dispute resolution provisions of the FTA apply only to “covered investments.”⁷⁰⁸ Article 838 of the Treaty defines a “covered investment” as “an investment in [the State’s] territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;” and defines “investment of an investor of a Party” as “an investment owned or controlled directly or indirectly by an investor of such Party.”⁷⁰⁹ To prove the existence of a covered investment, therefore, Claimant must prove that it owns or controls that investment directly or indirectly.

396. Claimant alleges that its investments consist of:

a) Continental Colombia, which qualifies as an investment insofar as it constitutes an enterprise under item (a) of the definition of “investment” in Article 838.

b) an indirect interest in Continental Colombia that entitles Claimant to a share in the company’s income or profits, as well as a share in the company’s assets on dissolution, which qualifies as an investment under items (e) and (f) of the definition of “investment” in Article 838. Claimant holds that interest through Continental Bermuda.

c) the Concession Agreement, including Continental Colombia’s exclusive right to explore, develop, and exploit the mineral resources within the area under the Concession Agreement; the associated mining titles registered with the National Mining Registry, and interests arising from the commitment of capital and other resources in connection with the Concession Agreement, which qualify as an investment under items (g) and (i) of the definition of “investment” in Article 838. Claimant indirectly owns and controls the Concession Agreement through Continental Colombia, the concessionaire.

d) the facilities and equipment of the Mine (including real estate and land), which qualify as an investment under item (i) of the definition of “investment” in Article 838. Claimant indirectly owns and controls these assets through Continental Colombia, which owns them directly.⁷¹⁰

⁷⁰⁸ See **RL-001**, FTA, Arts. 805 and 811.

⁷⁰⁹ **RL-001**, FTA, Art. 838.

⁷¹⁰ Claimant’s Updated Memorial, ¶ 268.

397. Because Claimant claims to hold its investments via Continental Bermuda and Continental Colombia, it has to submit evidence to prove its ownership and affiliation with both entities. It is “undisputed that the Claimants bear the burden of proving all the facts necessary to establish the Tribunal's jurisdiction.”⁷¹¹
398. According to Claimant, it became the 100% indirect owner of Continental Colombia, through Continental Gold Limited (a Bermudan entity with Canadian tax residency status), of which Continental Colombia is a branch, in 2015.⁷¹² However, Claimant has provided no documentation showing its ownership of Continental Gold Limited Bermuda, nor of Continental Gold Limited Bermuda’s relationship with Continental Colombia.
399. The only documents Claimant provides in support of its purported ownership are the following:
- a) Claimant’s Certificate of Incorporation;⁷¹³
 - b) A Corporation Profile Report issued by the Government of Ontario;⁷¹⁴ and
 - c) A press release issued by Claimant announcing that Continental Gold Limited Bermuda has become the wholly-owned subsidiary of Claimant.⁷¹⁵
400. The above documents are not evidence of Claimant’s ownership in Continental Colombia or Continental Bermuda and cannot satisfy Claimant’s burden of proof.
401. Further, the evidence shows that Claimant does not “control” Continental Colombia or Continental Bermuda. For the reasons described in the Denial of Benefits section above, management and directorship of both Claimant and Continental Colombia are, and were at the time of the initiation of this arbitration, entirely under the control of Zijin Mining. Claimant is effectively a shell company.
402. The ZGI IPO Prospectus provides details on the powers transferred to ZGI by the CEA. As explained above,⁷¹⁶ the narrative in the Prospectus suggests that all powers rested in Continental Colombia and Zijin America before the CEA was concluded. Since the CEA was entered into, however, all powers are concentrated in ZGI. Furthermore, the IPO

⁷¹¹ **RL-011**, *Zaur Leshkasheli and Rosserlane Consultants Ltd. v. Republic of Azerbaijan*, ICSID Case No. ARB/20/20, Award, 21 March 2025, ¶ 320.

⁷¹² Claimant’s Updated Memorial, ¶ 76.

⁷¹³ **Exhibit C-0001**, Continental Gold’s Certificate of Incorporation, 27 April 2015.

⁷¹⁴ **Exhibit C-0002**, Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024.

⁷¹⁵ **Exhibit C-0160**, Continental Gold Limited and Continental Gold Inc. Complete Scheme of Arrangement, Continental Gold Ltd., 10 June 2015.

⁷¹⁶ *See supra* Section II.B.3.

Prospectus also clearly states that Claimant only continues to exist for purposes of this arbitration.⁷¹⁷ It otherwise has no substantive function.

403. Accordingly, Claimant has failed to make the necessary showing that a dispute exists in relation to a covered investment under Article 819(a) of the FTA. The Tribunal should therefore dismiss Claimant's claims for lack of jurisdiction *ratione materiae*.

V. COLOMBIA HAS COMPLIED WITH ITS OBLIGATIONS UNDER THE TREATY

A. Colombia Has Fulfilled its Obligation to Provide Full Protection and Security to Claimant's Investment

404. Colombia, from 2012 to present day, has devoted extraordinary and resources to combatting illegal mining at the Buriticá Mine and the Buriticá region. Claimant's allegation that the Colombian state either neglected or abandoned its actions to combat illegal mining in Buriticá is disingenuous and baseless. It is within this context that Claimant's full protection and security ("FPS") claim must be evaluated.
405. The Tribunal should note the extreme nature of Claimant's FPS claim. At its heart, Claimant's FPS claim demands that Colombia's Armed Forces, in addition to all municipal, department, and State Ministries and institutions, exist at Claimant's beck and call in order to guarantee a particular result: the eradication of the illegal mining problem that has afflicted Buriticá since the first discovery of its rich gold deposits.
406. Claimant made its investment in the Buriticá Mine fully aware of the difficult illegal mining problem that existed, not simply in Buriticá, but across Colombia. Claimant accepted the risks associated with this recalcitrant issue. And yet, Claimant's FPS claim demands that State resources, particularly those of the Armed Forces, be singularly focused on guaranteeing the elimination of illegal mining at the Buriticá Mine. No State can guarantee the complete elimination of any particular incidence of illegal activity, whether it impacts the general populace as a whole, or particular investments. No State in the world would consent to such a standard. The contention that States should be held responsible for the failure to eliminate the problem of illegal mining defies reality and is not in accord with customary international law.
407. With this framing, Colombia presents its legal analysis of Claimant's Full Protection and Security claim.

⁷¹⁷ See *supra* Section II.B.3.

1. Full Protection and Security under the FTA is Limited to the Minimum Standard of Treatment of Customary International Law

408. Article 805 of the Treaty provides for the obligation to provide full protection and security, but only to the limit of the minimum standard of treatment (“MST”):

Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including...full protection and security. The concept[] of... “full protection and security” do[es] *not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.*⁷¹⁸

The Treaty clarifies: “It is understood that the term ‘customary international law’ refers to international custom, as evidence of a general practice accepted as law, in accordance with paragraph 1(b) of Article 38 of the Statute of the International Court of Justice.”⁷¹⁹

409. While Claimant acknowledges the above passage of the treaty regarding the meaning and import of “customary international law” in its argument on fair and equitable treatment, it does not do so for its FPS claim.⁷²⁰ This is a telling omission.
410. It is also telling that Claimant fails to mention the specific Treaty requirement that all elements of its FPS claim must be supported by existing rules of customary international law. Claimant does acknowledge Decision No. 6 of the Joint Commission between Canada and Colombia, determining that FPS claims are limited to those “relating to the physical security of investors and covered investments.”⁷²¹ Claimant’s discussion of Decision No. 6, however, ends there.⁷²²
411. What Claimant fails to mention or address is that Decision No. 6 requires an investor alleging a breach of Article 805 of the Treaty to have “the burden of proving all elements of its claim, consistent with general principles of international law applicable to

⁷¹⁸ **RL-001**, FTA, Art. 805 (emphasis added).

⁷¹⁹ **RL-001**, FTA, Art. 805, n. 2.; **RL-117**, Statute of the International Court of Justice, Charter of the United Nations, 26 June 1945, Art. 38 (“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”).

⁷²⁰ Compare Claimant’s Updated Memorial ¶ 347, n. 645 with Claimant’s Updated Memorial ¶ 290, n. 506.

⁷²¹ See Claimant’s Updated Memorial, ¶ 291.

⁷²² See Claimant’s Updated Memorial, ¶ 291 (citing **CL-079**, Decision No. 6 Interpretation of Certain Chapter Eight Provisions, Joint Commission of the Free Trade Agreement between the Republic of Colombia and Canada, 24 October 2017).

international arbitration.”⁷²³ In particular, the Joint Commission determined, that obligation “includes *the burden to prove a rule of customary international law invoked under Article 805, through evidence of the elements of customary international law referred to in footnote 2 of Chapter Eight*.”⁷²⁴ Claimant thus, bears the burden to prove, *through evidence*, that all elements of its FPS claim are supported by a rule of customary international law. Furthermore, the required proof of existence of a rule of customary international law is twofold: (i) consistent state practice and (ii) an understanding that such practice is required by law (*opinio juris*).⁷²⁵ Claimant’s strategic avoidance of the MST standard—and its corresponding circumvention of its burden to prove the existence of rules of customary international law supporting its FPS claim—does not abrogate these binding Treaty requirements. Claimant’s FPS argument is devoid of proof, much less evidence, of the existence of the rules of customary international law that could support Claimant’s extreme FPS claim.⁷²⁶ Claimant thus fails to carry its burden.

412. The International Court of Justice has explained, “[T]he Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other party.”⁷²⁷ The tribunal in *Cargill v. United Mexican States* further explained,

The burden of establishing any new elements of this custom is on Claimant. The Tribunal acknowledges that the proof of change in a custom is not an easy matter to establish. However, the

⁷²³ **CL-079**, *Decision of the Colombia-Canada Joint Commission Interpretation of Certain Chapter Eight Provisions*, Joint Commission of the Free Trade Agreement between the Republic of Colombia and Canada, Decision No. 6, 24 October 2017.

⁷²⁴ **CL-079**, *Decision of the Colombia-Canada Joint Commission Interpretation of Certain Chapter Eight Provisions*, Joint Commission of the Free Trade Agreement between the Republic of Colombia and Canada, Decision No. 6, 24 October 2017 (emphasis added).

⁷²⁵ See **RL-037**, *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Award, 27 September 2016, ¶ 350 (“The Tribunal agrees that it is in the first place for the party asserting that a particular rule of customary international law exists to prove the existence of the rule”); **RL-038**, *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009 (“*Cargill*”), ¶ 273 (“The Tribunal acknowledges that the proof of change in a custom is not an easy matter to establish. However, the burden of doing so falls clearly on Claimant.”); **RL-039**, *Rights of Asylum*, ICJ, Judgment, 20 November 1950, p. 276 (“The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party.”).

⁷²⁶ See Claimant’s Updated Memorial ¶¶ 290–313 (reflecting Claimant’s Full Protection and Security argument in which “customary international law” only appears when Claimant quotes Article 805(1) of the Treaty. Notably, Claimant’s invocations of proof of “customary international law” abound in the sections of its Updated Memorial dedicated to its claims regarding indirect expropriation, fair and equitable treatment, and damages. Compare Claimant’s Updated Memorial, ¶¶ 290–313 (Full Protection and Security) with Claimant’s Updated Memorial ¶¶ 314–346 (Indirect Expropriation), ¶¶ 347–398 (Fair and Equitable Treatment), and ¶¶ 399–432 (Damages).

⁷²⁷ **RL-046**, *Case Concerning Rights of Nationals of the United States of America in Morocco*, ICJ, Judgment, 27 August 1952, p. 200 (quoting **RL-039**, *Rights of Asylum*, ICJ, Judgment, 20 November 1950, p. 276); see also **RL-123**, Nguyen, Quoc Dinh et al., *DROIT INTERNATIONAL PUBLIC*, 8TH EDITION, 12 July 2022, p. 365 (“In contentious proceedings, the burden of proof rests with the claimant—at least when invoking a regional or local customary rule.”).

burden of doing so falls clearly on Claimant. If Claimant does not provide the Tribunal with the proof of such evolution, it is not the place of the Tribunal to assume this task. Rather the Tribunal, in such an instance, should hold that Claimant fails to establish the particular standard asserted.⁷²⁸

2. Claimant's FPS Claim Must be Rejected for Failure to Prove the Existence of Applicable Customary International Law Rules that Apply

413. Instead of providing proof of the customary international rules that apply to its FPS claim through state practice and *opinio juris*, Claimant rests its FPS claim on references to numerous investment treaty arbitration awards to support its expansive FPS claim. In this fashion, while acknowledging that “[i]t is well established that the FPS obligation is an obligation of means and not result,” and that “[t]he host State is not held to strict liability for the sole reason that damage occurs through unlawful acts of third parties,”⁷²⁹ Claimant also maintains:

- a) “The obligation to provide FPS requires a State to exercise due diligence or vigilance, meaning that a State must take all necessary measures to protect investments and investors from harm caused by the State itself or third parties.”⁷³⁰
- b) “The due diligence standard requires the State to take ‘active measures’ and ‘concrete steps’ to protect investments and investors, which involves a duty to ‘prevent wrongful injuries’ as well as a duty to punish wrongdoers.”⁷³¹
- c) “[A] violation of the standard of full protection and security could arise in case of failure of the State to prevent the damage, to restore the previous situation or to punish the author of the injury.”⁷³² “[I]t is not necessary to establish if these

⁷²⁸ **RL-038**, *Cargill*, ¶ 273.

⁷²⁹ Claimant's Updated Memorial ¶ 296.

⁷³⁰ Claimant's Updated Memorial ¶ 293 (citing **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶ 84; **CL-011**, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, ¶ 6.05; **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 171; **CL-028**, *Saluka Investments BV v. Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, ¶ 483; **CL-104**, *Smurfit Holdings B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶ 548).

⁷³¹ Claimant's Updated Memorial ¶ 294 (citing **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 261; **CL-077**, *Ampal-American Israel Corp. et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶ 290; **CL-069**, *Oxus Gold v. Republic of Uzbekistan*, UNCITRAL, Final Award, 17 December 2015, ¶ 834; **CL-037**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶ 725; **CL-050**, *Sergei Paushok et al. v. Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶¶ 324–325).

⁷³² Claimant's Updated Memorial ¶ 295 (citing **CL-035**, *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶ 355; **CL-009**, *Asian Agricultural Products Ltd. v.*

measures could have avoided all damage. It is sufficient to observe that the police did not make the efforts required by their duty to protect.”⁷³³

- d) “States violate[] their FPS obligation where they fail[] to protect an investment from attacks by third parties.”⁷³⁴

414. Claimant cites no less than 17 investment arbitration awards to argue that Colombia breached its obligation to provide full protection and security to Claimant’s investment. Not one of these awards involves the determination of the rules of customary international law applicable to the obligation of full protection and security.⁷³⁵ Claimant’s baseless

Republic of Sri Lanka, ICSID Case No. ARB/87/3, Final Award, 27 June 1990, ¶ 77; **CL-054**, *Ulysseas, Inc. v. Republic of Ecuador*, PCA Case No. 2009-19, Final Award, 12 June 2012, ¶ 272).

⁷³³ Claimant’s Updated Memorial ¶ 296 (citing **CL-089**, (DS)2, *S.A. et al. v. Republic of Madagascar*, ICSID Case No. ARB/17/18, Award, 17 April 2020, ¶ 301).

⁷³⁴ See Claimant’s Updated Memorial ¶¶ 298–304 (citing **RL-009**, *Energía y Renovación Holding, S.A. v. Republic of Guatemala*, ICSID Case No. ARB/21/56, Award, 31 March 2025 (“**Energía y Renovación**”), ¶ 315, 320, 331, 333, 340, 347; **CL-089**, (DS)2, *S.A. et al. v. Republic of Madagascar*, ICSID Case No. ARB/17/18, Award, 17 April 2020, ¶¶ 337–341, 364; **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶¶ 171, 175, 117; **CL-077**, *Ampal-American Israel Corp. et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶¶ 286–290; **CL-066**, *Border Timbers Ltd. et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015, ¶¶ 110, 112, 113, 597–598, 641–642; **CL-011**, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, ¶¶ 3.03–3.04, 6.05, 6.08–6.09).

⁷³⁵ See Claimant’s Updated Memorial ¶¶ 293–304, citing

CL-013, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000 (Award includes no analysis of the customary international law rules applicable to the FPS claim);

CL-011, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997 (Award includes no analysis of the customary international law rules applicable to the protection and security claim);

CL-070, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016 (full unofficial translation of Award) (Award includes no analysis of the customary international law rules applicable to the constant security and protection claim);

CL-028, *Saluka Investments v. Czech Republic* (Express finding that customary international law does not apply to the FPS obligation in the treaty);

CL-104, *Smurfit Holdings v. Venezuela* (Award includes no analysis of the customary international law rules applicable to the FPS claim);

CL-048, *Frontier Petroleum Services v. Czech Republic* (Express finding that customary international law does not apply to the FPS obligation in the treaty);

CL-077, *Ampal-American v. Egypt* (Award includes no analysis of the customary international law rules applicable to the FPS claim);

CL-069, *Oxus Gold v. Uzbekistan* (Award includes no analysis of the customary international law rules applicable to the FPS claim);

CL-037, *Biwater Gauff v. Tanzania* (Award includes no analysis of the customary international law rules applicable to the FPS claim);

CL-050, *Paushok, v. Mongolia* (Award includes no analysis of the customary international law rules applicable to the FPS claim);

attempt to define the rules of customary international law applicable to Colombia's FPS obligation must be rejected.

415. Even if Claimant were able to reference relevant awards applying customary international law to the FPS obligation, such an exercise could not prove the existence of – or much less create – a rule of customary international law. Both Parties to the Treaty are in clear accord in this regard.⁷³⁶ Canada, quoting Lauterpacht, succinctly explained: “Decisions of international courts are not a source of international law...[t]hey are not direct evidence of the practice of States or of what States conceive to be the law.”⁷³⁷
416. It is Claimant's burden to prove, with evidence of state practice and *opinio juris*, the existence of a rule of customary international law establishing a standard for providing full protection and security, and that Colombia violated that rule.⁷³⁸ The burden resting on Claimant is formidable, one that it has wholly failed to meet. Claimant's failure must lead to the dismissal of its FPS claim.

CL-035, *Parkerings-Compagniet v. Lithuania*, ¶¶ 354–361 (Award includes no analysis of the customary international law rules applicable to the protection claim);

CL-009, *AAPL v. Sri Lanka*, ¶ 24 (Award contemplates general international law principles but does not analyze or determine the customary international law rules applicable to the FPS claim. The tribunal's ultimate analysis is couched within a different provision of the treaty, establishing State obligations when State forces cause unjustifiable destruction to investor property in the context of combat actions. With regard to the applicable law, the award states, “[T]he Tribunal is of the opinion that the “false problem” related to the preliminary determination in principle of the applicable law has no relevance within the context of the present arbitration, since both Parties agreed during their respective pleading to invoke primarily the Sri Lanka/U.K. Bilateral Investment Treaty as *lex specialis*, and to apply, within the limits required, the international or domestic legal relevant rules referred to as a supplementary source by virtue of Articles 3 and 4 of the Treaty itself.”);

CL-054, *Ulysseas v. Ecuador*, ¶¶ 271–274 (Award includes no analysis of the customary international law rules applicable to the protection claim);

CL-108, *Energía y Renovación*; **RL-009-SPA**, *Energía y Renovación* (Original Award in Spanish) ¶¶ 295–302; **RL-009-ENG**, *Energía y Renovación* (full unofficial translation of Award in English) (Express finding that customary international law does not apply to the FPS obligation of the treaty);

CL-089, *(DS)2 v. Madagascar (II)*, ¶¶ 297–314 (Award includes no analysis of the customary international law rules applicable to the protection claim);

CL-071, *Copper Mesa v. Ecuador* ¶ 6.83 (Award includes no analysis of the customary international law rules applicable to the protection claim);

CL-066, *Border Timbers v. Zimbabwe* ¶¶ 593–599 (Award includes no analysis of the customary international law rules applicable to the protection claim).

⁷³⁶ See **CL-103**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶¶ 901–906.

⁷³⁷ **RL-047**, *Mercer International Inc. v. Government of Canada*, ICSID Case No. ARB(AF)/12/(3), Government of Canada Counter-Memorial, 22 August 2014, ¶ 465 (citing **RL-102**, Hersch Lauterpacht, *The Development of International Law by the International Court*, 1958, pp. 20–21).

⁷³⁸ **CL-103**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶¶ 901–903.

3. Claimant Mischaracterizes the FPS Obligation Outside of the Customary International Law Context

417. Even if a non-customary international law standard were to apply to Colombia's FPS obligation (*quod non*), Claimant's warped characterization of that standard is belied by the very awards it cites.
418. International tribunals that have analyzed the FPS standard outside of the customary international law context agree that the FPS obligation does not impose strict liability on States. Therefore, FPS is not an absolute guarantee against any loss or damage to foreign investments.⁷³⁹ As the tribunal in *AAPL v. Sri Lanka* explained:

The arbitral Tribunal is not aware of any case in which the obligation assumed by the host State to provide the nationals of the other Contracting State with 'full protection and security' was construed as absolute obligation which guarantees that no damages will be suffered, in the sense that any violation thereof creates automatically a "strict liability" on behalf of the host State."⁷⁴⁰

419. The FPS standard is not a warranty against all harm or economic loss. Rather, it obligates the host State to undertake *reasonable* efforts to protect the covered investment; it does not guarantee perfect outcomes or the complete elimination of all risk, nor does it require results-oriented State action or punishment of third-party wrongdoers devoid of due process.⁷⁴¹

⁷³⁹ See, e.g., **RL-124**, *Naturgy Energy Group, S.A. and Naturgy Electricidad Colombia S.L. v. Republic of Colombia*, ICSID Case No. UNCT/18/1, 12 March 2021, ¶562 ("[T]here is a common recognition across international tribunals that the FPS standard is one of due diligence. This means that FPS is not an absolute liability under which responsibility is automatically implicated."); **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016 ¶ 6.81 ("Under the FPS standard, the obligation of the host State does not attract strict liability but imposes a lesser duty more akin to the exercise of due diligence."); **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 269 ("There is broad agreement that the obligation to provide protection and security does not create an obligation of result or absolute liability."); *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶¶ 356–357; **RL-048**, *Ronald Lauder v. Czech Republic*, UNCITRAL, Final Award, 3 September 2001 ("**Lauder**"), ¶ 308; **CL-009**, *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990, ¶ 48.

⁷⁴⁰ **CL-009**, *AAPL v. Sri Lanka*, ¶ 48.

⁷⁴¹ See, e.g., **RL-124**, *Naturgy Energy Group, S.A. and Naturgy Electricidad Colombia S.L. v. Republic of Colombia*, ICSID Case No. UNCT/18/1, 12 March 2021, ¶562; **RL-018**, *Carlos Ríos and Francisco Javier Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award, 11 January 2021 ("**Carlos Ríos**"), ¶ 411; **RL-009**, *Energía y Renovación*, ¶ 298; **CL-085**, *Cengiz İnşaat Sanayi ve Ticaret A.S. v. State of Libya*, ICC Case No. 21537/ZF/AYZ, Final Award, 7 November 2018, ¶ 406; **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016 ¶ 6.81 ("Under the FPS standard, the obligation of the host State does not attract strict liability but imposes a lesser duty more akin to the exercise of due diligence."); **CL-050**, *Sergei Paushok et al. v. Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶ 325; **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 269 ("There is broad agreement that the obligation to provide protection

420. As mentioned above, Claimant ostensibly concedes these principles, stating that “[i]t is well established that the FPS obligation is an obligation of means and not result,” and “[t]he host State is not held to strict liability for the sole reason that damage occurs through unlawful acts of third parties.”⁷⁴² And yet, when explaining its FPS claim, Claimant conveniently excises these principles, to wit:

The obligation to provide FPS requires a State to exercise due diligence or vigilance, meaning that *a State must take all necessary measures to protect investments and investors* from harm caused by the State itself or third parties.⁷⁴³

The due diligence standard *requires the State to take “active measures” and “concrete steps” to protect investments and investors, which involves a duty to “prevent wrongful injuries” as well as a duty to punish wrongdoers.*⁷⁴⁴

[A] violation of the standard of full protection and security could arise in case of *failure of the State to prevent the damage, to restore the previous situation or to punish the author of the injury.*⁷⁴⁵

*States violate[] their FPS obligation where they fail[] to protect an investment from attacks by third parties.*⁷⁴⁶

421. The absence from this litany of the principles of “obligation of means not result” and “no strict liability” is striking – as is the absence of any concept of reasonability. Claimant’s interpretation effectively elevates the FPS obligation to one of strict liability, a standard that has no place in international law, be it customary international law or otherwise.
422. The strict liability nature of Claimant’s proposed FPS obligation shows in its selective application of the investment arbitration awards on which it focuses. While paying lip service to the principles of “reasonability,” “obligation of means not result” and “no strict liability,” Claimant fabricates an FPS obligation emptied of its original purpose and intent. For instance, Claimant cites to *Sergei Paushok v. Mongolia* for the proposition

and security does not create an obligation of result or absolute liability.”); *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶¶ 356–357; **CL-029**, *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶ 408; **CL-023**, *Eureko B.V. v. Republic of Poland*, UNCITRAL, Partial Award, 19 August 2005, ¶ 236; **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶ 84; **CL-009**, *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990, ¶ 48; **RL-034**, *Case Concerning Elettronica Sicula S.p.A., ICJ, Judgment*, 20 July 1989, (“*ELSI*”) ¶ 108.

⁷⁴² Claimant’s Updated Memorial, ¶ 296.

⁷⁴³ Claimant’s Updated Memorial, ¶ 293 (emphasis added).

⁷⁴⁴ Claimant’s Updated Memorial, ¶ 294 (emphasis added).

⁷⁴⁵ Claimant’s Updated Memorial, ¶ 295 (emphasis added).

⁷⁴⁶ Claimant’s Updated Memorial, ¶ 298 (emphasis added).

that a State is obligated to prevent and punish wrongful injuries, and that the State may violate its FPS obligation “both through actions and failure to act.”⁷⁴⁷ This characterization omits the entirety of the award paragraph that it cites, one that makes clear that the State’s obligation is limited to what is *reasonable* and contingent upon the specific circumstances present:

If a State fails to use due diligence to prevent or punish such injuries, it is responsible for this omission and is liable for the ensuing damage. *It should be emphasized that the obligation to show “due diligence” does not mean that the State has to prevent any injury whatsoever.* Rather, the obligation is generally understood as requiring that the State take *reasonable actions within its power to avoid injury* when it is, or should be, aware that there is a risk of injury. *The precise degree of care, of what is “reasonable” or “due”, depends in part on the circumstances.*⁷⁴⁸

423. Similarly, Claimant reduces the Award in *Parkerings-Compagniet v. Lithuania* to an FPS standard that requires the State “to prevent the damage to restore the previous situation or to punish the author of the injury.”⁷⁴⁹ Claimant omits mention of the ultimate holding in that case, in which the Tribunal expressly held that the State’s failure to prevent the alleged damage and punish the perpetrator was *not* a breach of the FPS obligation because the FPS guarantee is neither absolute nor a strict liability standard:

The Claimant alleges damages to its materials due to vandalism. However, the *Claimant does not show that such vandalism would have been prevented if the authorities had acted differently. The Claimant only contends that the police did not find the authors of this offence.* Both parties agree that Lithuanian authorities started an investigation to find the authors of the vandalism. *The Arbitral Tribunal finds that the record does not show in which way the process of investigation amounted to a violation of the Treaty. In Tecmed, the Tribunal underlined that “the guarantee of full protection and security is not absolute and does not impose strict liability upon the State that grants it.”*⁷⁵⁰

⁷⁴⁷ Claimant’s Updated Memorial, ¶ 294.

⁷⁴⁸ **CL-050**, *Sergei Paushok et al. v. Mongolia*, UNCITRAL, Award on Jurisdiction and Liability, 28 April 2011, ¶ 325 (emphasis added).

⁷⁴⁹ Claimant’s Updated Memorial, ¶ 295.

⁷⁵⁰ **CL-035**, *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶¶ 356–357 (emphasis added).

424. Claimant's selective paraphrasing of the *AAPL v. Sri Lanka* Award suggests that the FPS standard "requires" a State to take reasonable preventative actions.⁷⁵¹ Claimant's "edit" to the text of the Award ignores the tribunal's categorical determination to the contrary:

The arbitral Tribunal is not aware of any case in which the obligation assumed by the host State to provide the nationals of the other Contracting State with "full protection and security" was construed as absolute obligation which guarantees that no damages will be suffered, in the sense that any violation thereof creates automatically a 'strict liability' on behalf of the host State. . . . The rule remains that: "The State into which an alien has entered ... is not an insurer or a guarantor of his security... It does not, and could hardly be asked to, accept an absolute responsibility for all injuries to foreigners."⁷⁵²

425. With regard to *Energía y Renovación v. Guatemala*, Claimant calls out the parts of the Award which read like a strict liability standard,⁷⁵³ but omits reference to the Tribunal's finding regarding the applicable FPS standard outside of the customary international law context: a standard that in no way imposes an absolute obligation on the States to take any and all measures to satisfy the FPS obligation. The tribunal concluded:

[I]t is evident that no obligation, national or international, is of an absolute nature. Consequently, this Tribunal considers that the full protection and security clause does not impose upon the State the duty to take any and all measures to meet the obligation. Of course, the State is obliged to comport itself legally, whether from the perspective of municipal or international law. In the same manner, there ought to exist a certain degree of reasonableness in the measures implemented to fulfil the obligation of full protection and security.⁷⁵⁴

426. Claimant cites the *Frontier Petroleum v. Czech Republic* for the proposition that the FPS obligation of due diligence "requires the State to take 'active measures' . . . to protect investments and investors."⁷⁵⁵ The full text of the paragraph from which Claimant extracts this so-called "requirement," shows that Claimant's characterization of the import of the Award is, at best, mistaken. The tribunal makes clear that no such requirement exists:

The wording of these full protection and security clauses suggests that the host state is under an obligation to take active

⁷⁵¹ Claimant's Updated Memorial, ¶ 297.

⁷⁵² CL-009, *AAPL v. Sri Lanka*, ¶¶ 48–49.

⁷⁵³ Claimant's Updated Memorial, ¶¶ 299–300.

⁷⁵⁴ RL-009, *Energía y Renovación*, ¶ 298.

⁷⁵⁵ Claimant's Updated Memorial, ¶ 294.

measures to protect the investment from adverse effects that stem from private parties or from the host state and its organs. The mere fact, *however, that the investor lost its investment is insufficient to demonstrate a breach of full protection and security*.⁷⁵⁶

The *Frontier Petroleum* tribunal continues:

There is broad agreement that *the obligation to provide protection and security does not create an obligation of result or absolute liability* Rather, . . . the standard is one of “due diligence” *[N]ot every failure to obtain redress is a violation of the principle of full protection and security. Even a decision that in the eyes of an outside observer, such as an international tribunal, is “wrong” would not automatically lead to state responsibility* as long as the courts have acted in good faith and have reached decisions that are reasonably tenable. *In particular, the fact that protection could have been more effective, procedurally or substantively, does not automatically mean that the full protection and security standard has been violated*.⁷⁵⁷

427. Contrary to Claimant’s misplaced interpretation of the FPS obligation, the State’s duty of due diligence “does not oblige the Parties to protect foreign investment against any possible loss of value caused by persons whose acts could not be attributed to the State.”⁷⁵⁸ There is no obligation to prevent every possible harm, nor is the state obligated to identify, apprehend, or punish every actor who may have caused an alleged injury.⁷⁵⁹ The FPS obligation is satisfied by reasonable due diligence and the protective measures that result therefrom, even where those measures do not fully prevent harm to the investment, and even where an outside observer might conclude that the measures taken were mistaken or insufficiently effective.⁷⁶⁰ As the tribunal in *Rios v. Chile* explained:

⁷⁵⁶ **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 261.

⁷⁵⁷ **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶¶ 269–270, 273.

⁷⁵⁸ **RL-048**, *Ronald Lauder v. Czech Republic*, UNCITRAL, Final Award, 3 September 2001 (“**Lauder**”), ¶ 308.

⁷⁵⁹ See, e.g., **RL-049**, *Noble Ventures, Inc. v. Romania*, ICSID Case No. ARB/01/11, Award, 12 October 2005 (“**Nobel Ventures**”), ¶¶ 164–166, (citing **CL-009**, *Asian Agricultural Products Ltd. v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, 27 June 1990); **CL-045**, *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010, ¶ 162 (“Traditionally, courts and tribunals have interpreted the content of this standard of treatment as imposing a positive obligation upon a host State to exercise due diligence to protect the investor and his property from physical threats and injuries, not as imposing an obligation to protect covered investments and investors from all injuries from whatever sources”); **CL-028**, *Saluka Investments BV v. Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, ¶ 484.

⁷⁶⁰ See, e.g., **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶¶ 269–270, 273; **RL-009**, *Energía y Renovación*, ¶ 298; **CL-009**, *AAPL v. Sri Lanka*, ¶¶

The FPS guarantee is an obligation of due diligence, the standard of which is violated if the State does not take reasonable efforts under the circumstances to protect investments before damaging acts of third parties. As the Parties recognize, it is an obligations of means and not results. The Tribunal considers that, by their nature, obligations concerning the maintenance of public order under Chilean law ought to be interpreted in the same manner. The State cannot be expected to maintain an absolute guarantee of the maintenance of public order nor the total eradication of vandalism. In order to determine if the State has violated its obligations as to the maintenance of public order, the Tribunal will analyze if the State undertook reasonable efforts to prevent and punish the vandalism that were reasonable under the circumstances.⁷⁶¹

428. Claimant also fails to acknowledge the contextual and deferential nature of the FPS obligation in its application. The resources available to the host State, the context for the situation giving rise to the FPS claim, and the State's policy considerations are all relevant considerations in assessing what constitutes reasonable protective conduct under the circumstances. As the tribunal in *Copper Mesa Mining v. Ecuador* explained:

Neither [the FET or FPS] standard as expressed in the Treaty imposes an absolute obligation on the host State. Under this FET standard, *there is a balancing exercise permitted to the host State, weighing the legitimate interests of the foreign investor with the legitimate interests of the host State and others, including (especially) its own citizens and local residents.* Under the FPS standard, the obligation of the host State does not attract strict liability but imposes a lesser duty more akin to the exercise of due diligence.⁷⁶²

429. The tribunal in *Cengiz v. Libya* also clarified:

Reasonableness must be measured taking into consideration the State's means and resources and the general situation of the country. This obligation of vigilance does not grant an insurance against damage or a warranty that the property shall

48–49; **CL-035**, *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶¶ 356–357.

⁷⁶¹ **RL-018**, *Carlos Rios*, ¶ 411.

⁷⁶² **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶ 6.81 (citing **CL-028**, *Saluka Investments BV v. Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, ¶¶ 304–308, **CL-009**, *AAPL v. Sri Lanka*; **CL-011**, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997; **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000).

never be occupied or disturbed – it simply requires that the State apply reasonable means to protect foreign property.⁷⁶³

430. Whether a State’s conduct satisfies the reasonableness requirement must be evaluated on a case-by-case basis within a specific factual framework. As the tribunal in *Tecmed v. Mexico* confirmed, a state must act reasonably “in accordance with the parameters inherent in a democratic state.”⁷⁶⁴ An investor cannot demand measures from the host State that fall outside of what would be reasonable action within *the parameters of democratic governance*.
431. The evidentiary hurdle an investor must clear to establish a violation of the FPS, even outside the customary international law context, is high. As the tribunal in *Smurfit Holdings v. Venezuela* explained, “[T]he fact that [FPS] is not a strict liability obligation but one of due diligence, of reasonable measures, indicates that **there is a high threshold that must be met**. Not every impairment, not every disturbance to the property will rise to the level of an FPS breach”⁷⁶⁵ The tribunal in *Noble Ventures v. Romania*, relying on the International Court of Justice’s (ICJ) opinion in *Elettronica Sicula S.p.A. v. Italy* (“*ELSI*”), also concluded that “violations of protection standards are not easily to be established.”⁷⁶⁶
432. It is also relevant to consider a claimant’s own contribution to the alleged injuries it has suffered. In *ELSI*, the ICJ determined there was no breach of the FPS obligation, finding that the State’s response to the unlawful occupation of the claimant’s factory was reasonable under the circumstances.⁷⁶⁷ Although the claimant argued that Italian authorities’ actions to end the occupation of its premises were insufficient, the Court noted that the State was able to protect the plant enough to allow for some production to continue.⁷⁶⁸ The Court further concluded that “[t]he dismissal of some 800 workers could not reasonably be expected to pass without some protest. Indeed, the management of *ELSI* seems to have been very much aware that the closure of the plant and dismissal of the workforce could not be expected to pass without disturbance.”⁷⁶⁹ Similarly, the tribunal in *Noble Ventures* found no breach of the FPS obligation where the claimant’s

⁷⁶³ CL-085, *Cengiz İnşaat Sanayi ve Ticaret A.S. v. State of Libya*, ICC Case No. 21537/ZF/AYZ, Final Award, 7 November 2018, ¶ 406.

⁷⁶⁴ CL-016, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 177.

⁷⁶⁵ CL-104, *Smurfit Holdings B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶ 549 (emphasis added).

⁷⁶⁶ RL-049, *Noble Ventures*, ¶ 165.

⁷⁶⁷ RL-034, *ELSI*, p. 65.

⁷⁶⁸ RL-034, *ELSI*, p. 65.

⁷⁶⁹ RL-034, *ELSI*, p. 65.

employees staged demonstrations and occupied its premises as a result of the claimant's failure to pay their wages.⁷⁷⁰

433. Also instructive here is the tribunal's consideration of the claimant's contribution to its own injuries in *Copper Mesa v. Ecuador*. The tribunal found a breach of the FPS obligation for a particular, deliberate State action that solidified the claimant's injury. The tribunal did not, however, find a violation for the State's allegedly insufficient actions in responding to the violent clashes between pro-mining and anti-mining factions in the mining concession community. The Tribunal's finding gave marked importance to the fact that claimant itself had contributed to the loss of its social license, having played a role in the creation and exacerbation of the volatile community crisis. The Tribunal noted:

[T]he Tribunal cannot fault the Ministry or, more broadly, the Respondent, for the Claimant's increasing difficulties up to March 2007, including the Claimant's physical access to the Junín concessions. These difficulties did not constitute by themselves violations of the Treaty. Moreover, they were caused by third persons (whose conduct is not attributable to the Respondent) and, particularly from the summer of 2006 onwards, many were materially self-inflicted by the Claimant itself.⁷⁷¹

434. The facts in *Convial v. Peru* are particularly instructive here. In *Convial*, the claimant operated a toll road under a concession contract. Violent demonstrations broke out against toll collection and the claimant alleged that these protests were instigated by Peruvian public officials who made public declarations criticizing the toll, which the claimant argued amounted to a popular call for demonstrations. The claimant made requests for police protection and alleged that the security provided was insufficient.⁷⁷²

435. The tribunal rejected the claimant's allegation that Peru had instigated the protests. In particular, the tribunal found that public declarations of certain public officials are not sufficient evidence to conclude that Peru had incited the protests:

[T]he Tribunal considers that there is insufficient evidence in order to conclude that the State has instigated and facilitated the violent movements against the payment of tolls, as the Claimants contend. The Tribunal concurs with the Respondent, and considers that the public declarations of certain public officials, which the Claimants make reference to, are not sufficient proof to conclude that the State has incited those movements which were noted in December 2007. In those declarations, the Tribunal

⁷⁷⁰ **RL-049**, *Noble Ventures*, ¶¶ 160–161, 166.

⁷⁷¹ **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶ 6.76.

⁷⁷² **RL-010**, *Convial Callao S.A. and CCI v. Republic of Peru*, ICSID Case No. ARB/10/2, Final Award, 21 May 2013 ("*Convial Callao*"), ¶ 648, 657.

does not find that the State had launched a rallying cry for those manifestations to occur. There is no sufficient evidence to establish some degree of explicit or implied incitement which the State communicated for the general population to attack the investment of the Claimants.⁷⁷³

436. The tribunal further found that the claimant's demand for permanent police protection to allow the claimant to continue collecting the toll exceeded the reasonable limits of due diligence under the FPS standard, and accordingly rejected claimant's FPS claim:

What the Claimants appear, in reality, to be seeking is permanent police protection that would have allowed them to continue collecting tolls until the declaration of lapse, consequently, for which the police protection afforded was not sufficient. Such continuous protection exceeds the reasonable bounds of "due diligence" under the Treaty's standard of full protection and security.⁷⁷⁴

4. The Cases on Which Claimant Relies are Inapposite in the Current Arbitration and Do Not Support an Expansive Interpretation of the FPS Standard

437. Having failed to prove the existence of any rule of customary international law that supports its FPS claim, and misrepresenting the standard applicable to the FPS obligation outside of the rigors of customary international law, Claimant turns to eight arbitral Awards – none of which applies customary international law – and asserts that those "decisions illustrate that Colombia violates its FPS obligation where it fails to protect an investor and its investment from attacks and occupation" to substantiate its expansive interpretation of the FPS obligation.⁷⁷⁵
438. Nothing could be farther from the truth, in fact or in law.
439. First, contrary to Claimant's assertion, four of the eight Awards Claimant highlights found breaches of the FPS standard – *not* as a consequence of State inaction – but instead, as a result of the State actually perpetrating the claimed injury. The determinations of breach in these four awards are summarized below.
- a) In *Wena Hotels v. Egypt*, the tribunal found that Egypt had violated its FPS obligation because a State-owned entity – the Egyptian Hotels Company ("EHC") – forcibly seized two hotels that the claimant operated under a lease agreement. The seizure was carried out by EHC personnel who arrived at the Nile Hotel in buses bearing EHC's insignia, forced their way into the premises,

⁷⁷³ **RL-010**, *Convial Callao*, ¶¶ 649–50.

⁷⁷⁴ **RL-010**, *Convial Callao*, ¶ 659.

⁷⁷⁵ See Claimant's Updated Memorial, ¶ 305.

physically ejected Wena’s staff, and took possession of the hotel’s operations.⁷⁷⁶ The tribunal found that Egypt was aware of EHC’s intentions well in advance of the seizure,⁷⁷⁷ and after the police commenced their investigation, State authorities took no steps to remove EHC and actively frustrated restoring the hotel to Wena’s control.⁷⁷⁸ The Tribunal found that the State inaction suggested that the State was a willing participant in the scheme to seize the claimant’s property.⁷⁷⁹

- b) In *Border Timbers v. Zimbabwe*, the tribunal found that Zimbabwe had violated its FPS obligation in the context of the country’s land reform program. The critical finding was that the farm invasions were not merely tolerated by the State but were actively directed, financed, and facilitated by government officials at the highest levels.⁷⁸⁰
- c) In *Houben v. Burundi*, the tribunal found that Burundi had violated its FPS obligation in connection with the usurpation of a real estate development plot. The tribunal found that the municipal administrator was “not only aware of the acts of usurpation, but also encouraged them, and even participated in them, directly and through its commissioners,” including by issuing “certificates” to the usurpers.⁷⁸¹ The tribunal found that the Burundian authorities were aware of the attacks on the claimant’s investment and “not only failed to take the minimum measures necessary to protect that investment, but also directly contributed to it.”⁷⁸²
- d) In *Copper Mesa v. Ecuador*, as explained above, because the claimant materially contributed to the loss of its social license, the Tribunal did not find a breach of the FPS obligation for the State’s allegedly ineffective action in response to significantly disruptive actions of anti-mining factions in the community. The Tribunal did, however, find a violation of the FPS obligation for deliberate state action that led to the claimant’s injury:

[T]he risk from anti-miners in the Junín area was both real, long standing and well-known even before the Claimant’s Junín

⁷⁷⁶ CL-013, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶¶ 17, 33, 40, 47–48.

⁷⁷⁷ CL-013, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶¶ 85–88.

⁷⁷⁸ CL-013, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶ 89–91.

⁷⁷⁹ CL-013, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶ 94.

⁷⁸⁰ CL-066, *Border Timbers Ltd. et al. v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award, 28 July 2015, ¶¶ 113, 597.

⁷⁸¹ CL-070, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 173.

⁷⁸² CL-070, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 175.

concessions; and that the State's presence in the Junín area, including its police, was invariably weak, intermittent and ineffective. . . . It is of course difficult to say now what it should have done to resolve all the Claimant's [sic] difficulties and, still more so, whether what anything it could have done would have changed the Claimant's position for the better. Plainly, the Government in Quito could hardly have declared war on its own people. Yet, in the Tribunal's view, it could not do nothing. *[W]hat it could not do under the Treaty, so the Tribunal decides, was to make the situation even worse, by making it legally impossible, under threat of criminal penalties, for the Claimant to complete its EIS as the concessionaire.* Yet that is what the Respondent did. . . . In the Tribunal's view, in the circumstances, the Respondent's conduct was arbitrary, in the sense that it was unreasonable and disproportionate at that time to side so completely with the anti-miners as to make it impossible, both legally and physically, for the Claimant to complete its EIS, with inevitable consequences.⁷⁸³

440. As each of the above awards concerns the opposite of what Claimant is asserting against Colombia in this arbitration namely, that Colombia failed—not through deliberate action, but through inaction— to protect Claimant's investment from illegal mining, they are fundamentally inapplicable to Claimant's FPS claim.
441. The remaining four awards that Claimant identifies are equally inapplicable to Claimant's FPS claim, not so much in kind, but in material degree. These four awards found FPS violations in the context of complete inaction on the part of State authorities.
- a) In *Ampal-American Israel Corp. v. Egypt*, the tribunal found that Egypt had breached its FPS obligation in connection with the security of a gas pipeline running through the North Sinai Peninsula. Following the January 2011 revolution that toppled the Mubarak regime, the police fled from the Sinai, and the pipeline's security "literally disappeared overnight."⁷⁸⁴ The tribunal found a violation of FPS where the Egyptian authorities failed "to take any concrete steps to protect the Claimant's investment from damage."⁷⁸⁵
 - b) In *(DS)2 v. Madagascar*, the tribunal found a breach of the FPS standard based on the passivity of the Malagasy police during the looting and destruction of a factory. After a crowd of people attacked the factory compound, the tribunal found that "the manifest inaction of the police forces once they had arrived on

⁷⁸³ CL-071, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶¶ 6.83–6.84.

⁷⁸⁴ CL-077, *Ampal-American Israel Corp. et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, p. 63 (PDF p. 67 of 98).

⁷⁸⁵ CL-077, *Ampal-American Israel Corp. et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶ 290.

site [was] striking” in that the first contingent of police “did not seek to contain the rioters.”⁷⁸⁶ The tribunal further noted that “[w]hat is even more striking than the late arrival and inaction of the security forces is their premature departure” to go to dinner, while the factory was being looted and the store was on fire.⁷⁸⁷

- c) In *Energía y Renovación*, the tribunal found that Guatemala had virtually lost all meaningful control over the territory in which the investment was located.⁷⁸⁸ The minimal police presence the State managed to sustain at the site was entirely ineffectual; officers did nothing more than observe events as they unfolded due to lack of instruction from senior police leadership.⁷⁸⁹
- d) *AMT v. Zaire* involved Zaire’s complete inaction in response to the looting and destruction of the claimant’s industrial and commercial complexes. The tribunal concluded: “It would not appear useful for the Tribunal to enter into the debate whether in the case on hand Zaire is bound by an obligation of result or simply an obligation of conduct. The Tribunal deems it sufficient to ascertain, as it has done, that Zaire has breached its obligation by taking no measure whatever that would serve to ensure the protection and security of the investment in question.”⁷⁹⁰

442. Even taking only Claimant’s partial factual narrative as true, Claimant cannot plausibly assert that Colombia has done nothing to combat illegal mining in Buriticá. Claimant concedes that Colombia, since 2016 to the present day, has devoted not only a permanent presence of specialized armed forces to combat illegal mining in Buriticá, but also has executed significant targeted campaigns – Operations Creta, Hades, Hefesto, and Esperanza – to counter illegal mining in Buriticá. These facts alone extinguish Claimant’s FPS claim. These objectively verifiable facts that Claimant omits from its account, expose the frivolous nature of Claimant’s FPS claim.

5. Colombia Has Dedicated, and Continues to Dedicate, Resources to Protect the Mine

443. Contrary to Claimant’s central narrative, Colombia did not “abandon” its security vigilance at the mining site following President Petro’s inauguration on 7 August 2022, whether as a result of a directive from President Petro or for any other reason. The factual record does not support this baseless allegation.

⁷⁸⁶ **CL-089**, (DS)2, *S.A. et al. v. Republic of Madagascar*, ICSID Case No. ARB/17/18, Award, 17 April 2020, (“(DS)2 v. Madagascar (II)”), ¶ 339.

⁷⁸⁷ **CL-089**, (DS)2, *S.A. et al. v. Republic of Madagascar*, ICSID Case No. ARB/17/18, Award, 17 April 2020, ¶ 340.

⁷⁸⁸ **RL-009**, *Energía y Renovación*, ¶ 324.

⁷⁸⁹ **RL-009**, *Energía y Renovación*, ¶ 271.

⁷⁹⁰ **CL-011**, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997, ¶ 6.08.

444. The factual record demonstrates that Colombia has undertaken a sustained, multi-layered effort to secure the Buriticá Mine against illegal mining and armed group incursions. Beginning in [REDACTED], the Ministry of Defense entered into a series of Security and Police Collaboration Agreements with Continental Colombia under which Colombian Armed Forces were deployed to protect the Mine’s physical infrastructure, tunnels, and surrounding areas. Under these agreements, platoons of Army soldiers and sections of specialized UNIMIL police forces were assigned to the Mine on a permanent basis to establish a security perimeter at the Mine’s principal access routes and provide support for specialized operations to surveil, prevent, and control illegal mining Buriticá. Those armed forces remain at the Mine today where they conduct daily operations to secure the Mine from armed groups and illegal miners.⁷⁹¹
445. In February 2014, the Colombian National Police created UNIMIL—the first specialized armed force unit of its kind in the world, specially trained to conduct underground operations and subterranean tunnel combat. Since its creation, UNIMIL has maintained a constant presence at the Buriticá Mine—before and after August 2022, when the current administration entered office—working alongside the permanent National Army platoons and National Police units to escort workers, protect tunnels, and conduct complex recovery operations to retake mining areas occupied by illegal miners.⁷⁹²
446. Beginning in 2016, the State launched a series of inter-institutional operations to address the root cause of illegal mining in Buriticá. Each of these operations has required significant undertakings by numerous State authorities, including the following:
- a) Mayor’s Office of Buriticá;
 - b) National Mining Agency (ANM);
 - c) Regional Autonomous Corporation of Antioquia (Corantioquia), Hevexicos Territorial Office;
 - d) National Police – Division of Carabineers and Rural Security – UNIMIL (National Unit Against Illegal Mining and Terrorism);
 - e) National Army;
 - f) Air Combat Command No. 5 (CACOM 5);
 - g) Prosecutor General’s Office;
 - h) Attorney General’s Office;
 - i) Municipality Attorney’s Office of Buriticá;

⁷⁹¹ See *supra* Section III.C.1.

⁷⁹² See *supra* Section III.C.1.

- j) Ombudsman’s Office;
 - k) Colombian Family Welfare Institute (ICBF); and
 - l) Empresas Públicas de Medellín (EPM, group of state-owned utility companies).⁷⁹³
447. The first of these inter-institutional operations, Operation Creta, was widely seen as a success – including by Claimant.⁷⁹⁴ By the time Operation Creta concluded in 2020, more than 200 illegal mine entrances had been permanently sealed, 197 illegal mining processing plants dismantled, and some 40 informal gold-buying establishments closed, while thousands of illegal miners voluntarily left the municipality, and the government facilitated the formalization of nine legal small-scale mining units.⁷⁹⁵
448. Following Operation Creta, the State launched several more multi-year operations (including Operations Hades, Hefesto, and Esperanza), involving a high level of coordination between the Attorney General’s Office, the National Army, and the National Police, aimed at combating illegal mining and dismantling the operations of Clan del Golfo and other criminal organizations through the systematic seizure of key assets and arrests of high-ranking members, including the notorious La Bruja known as “the terror of illegal miners in Buriticá.” Operation Esperanza was initiated as recently as June 2025 and has been followed by several shorter-term operations in 2025 to further undermine illegal mining operations and Clan del Golfo’s influence by targeting the seizure of key assets and arresting individuals who provide explosives to illegal miners and Clan del Golfo.⁷⁹⁶
449. In addition to the considerable protection services provided by the State, as explained in Section III.E.2 above, the State has for over a decade processed, investigated, and addressed countless *amparo* requests leading to the eviction of illegal miners from Claimant’s concession area.⁷⁹⁷ Claimant’s assertion that the State’s response has been ineffective grossly mischaracterizes Colombia’s demonstrated commitment to these specialized administrative *amparo* proceedings. Claimant also ignores the legitimate reasons certain *amparos* have not been granted, namely, in some cases, the location cited on the *amparo* request was not within Claimant’s concession area or no longer occupied by illegal miners, or the *amparo* request was subject to an appeal by the impacted informal miners.⁷⁹⁸ The State cannot be expected to ignore the procedural and due process requirements of Colombian law to accommodate Claimant’s requests.

⁷⁹³ **R-0134**, Buriticá: Legalidad y Oro Ético, Government of Antioquia, 31 October 2019, p. 2.

⁷⁹⁴ Claimant’s Updated Memorial, ¶ 89–95.

⁷⁹⁵ See *supra* Section III.C.3.

⁷⁹⁶ See *supra* Section III.E.2.b.

⁷⁹⁷ See *supra* Section III.E.2.a.

⁷⁹⁸ See *supra* ¶ Section III.E.2.a.

450. Supplementary to the permanent protection of the Armed Forces in Buriticá, the State has also continually and consistently responded to the numerous security incidents at the Mine before and after the new administration took office in August 2022:⁷⁹⁹
- a) In August 2022, the State responded to a backfilling incident at the Mine that led to community protests by engaging with the protestors to end the protests, calling on the anti-riot police to maintain peace in the area, and issuing a Resolution to order the closure of illegal mining in the concession area and the suspension of backfilling activities to ensure the safety and integrity of the Mine;
 - b) In February 2023, the State responded to yet another backfilling incident by activating a Unified Command Post to allow for efficient inter-institutional coordination to restore order to the area and ensure the safety of the Mine;
 - c) In May 2023, the State responded to an explosion in the Higabra tunnel by assembling representatives from the municipality of Buriticá and the Department of Antioquia; to develop a plan of action and security forces were deployed to investigate the attack;
 - d) In October 2023 and December 2023, the State responded to incidents involving explosives and firearms at the Mine by deploying Armed Forces to secure the Mine and deter illegal armed groups from entering or operating inside the area of the attacks;
 - e) In May 2024, the State responded to the shooting of two of Claimant's employees by deploying Armed Forces to secure the area, manage civil unrest, and restore operations at the Mine and by issuing a Resolution ordering that illegal mining operations in the area cease. That same month, the State responded to a backfilling incident at the Mine by attempting a rescue of miners trapped in the tunnels.
451. In addition, in 2023, the Attorney General's Office created the Specialized Prosecutor's Office for Crimes Against Natural Resources and the Environment, or DEMA, which has conducted a series of coordinated enforcement actions carried out by UNIMIL, the National Police Directorate of Carabineros and the Environment (DICAR), and the National Police Special Operations Group (GOES), including the arrest of individuals associated with Clan del Golfo in November 2023, the execution of eighteen search and seizure warrants in March 2025 targeting a Clan del Golfo sub-group, and a major June 2025 operation that produced the most substantial seizure to date—hundreds of bars of explosives, firearms, mercury, and communications equipment—and the recovery of the Yaraguá level of the Mine from the control of illegal miners.⁸⁰⁰
452. In light of the evidence that the Colombian Government has provided both permanent and responsive protection and security support for combatting illegal mining in Buriticá,

⁷⁹⁹ See *supra* Section III.E.1.

⁸⁰⁰ See *supra* Section III.E.2.b.

Claimant's own contributions to the problem of illegal mining merit examination. Claimant's own evidence demonstrates that it was Zijin Mining's takeover of the Mine that coincided with the increase of illegal mining in Buriticá. Standing in stark contrast to Colombia's significant and continuous protections to combat illegal mining is Zijin Mining's deprioritization of the community programs essential to constraining illegal mining. As mining operations expert, Patrick Gorman, explains, successful and especially early community engagement, ideally commencing before mining operations begin, pre-empts the occurrence of illegal mining.⁸⁰¹ International best mining practices dictate that it is insufficient to crack down on illegal activity, there must also be a route for smaller-scale miners to get their gold into legitimate markets.⁸⁰² Nevertheless, when Zijin took control of the Buriticá Mine in 2020, it cut and deprioritized the social license programs that are essential to effective management of illegal mining. Furthermore, a DEMA investigation in 2025 has also revealed that Claimant's own employees were often complicit in the illegal mining operations at the Mine.⁸⁰³

453. Colombia's protective operations continue to this day and have never once ceased. Yet, Claimant decries Colombia's efforts as insufficient, tantamount to doing nothing to protect its investment. This is where Claimant's fabricated and results-oriented, strict liability FPS standard is revealed: Unless and until Colombia delivers the result that Claimant desires – the complete and permanent elimination of illegal mining in the Buriticá Mine—Colombia's efforts will be deemed as failing to protect Claimant's investment.
454. This is not the standard under the autonomous FET framework, even if it were applicable, and it certainly is not the applicable standard of customary international law invoked by the Treaty. As the tribunal in *Convial* found, "What the Claimants appear to claim, in reality, is a permanent protection [...] Such continuous protection exceeds the reasonable bounds of 'due diligence' under the Treaty's standard of full protection and security."⁸⁰⁴ Colombia has been providing Claimant with protection that goes well beyond the reasonable due diligence standard since 2012. Even in the context of an autonomous FET standard the lack of merit to Claimant's FPS claim is manifest.
455. The warning issued by the Copper Mesa tribunal bears repeating: "[T]here is a balancing exercise permitted to the host State, weighing the legitimate interests of the foreign investor with the legitimate interests of the host State and others, including (especially) its own citizens and local residents."⁸⁰⁵

⁸⁰¹ **RER-2**, Negotient First Expert Report, ¶ 119.

⁸⁰² **Exhibit R-0027**, Illegal mining rises globally along with gold price, S&P Global, 30 June 2025.

⁸⁰³ *See supra* Section III.D.

⁸⁰⁴ **RL-010**, *Convial Callao*, ¶ 659.

⁸⁰⁵ **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶ 6.81 (citing **CL-028**, *Saluka Investments BV v. Czech Republic*, PCA Case No. 2001-04, Partial Award, 17 March 2006, ¶¶ 304-308, **CL-009**, *AAPL v. Sri Lanka*; **CL-011**, *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997; **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000); *see also*, **CL-085**, *Cengiz İnşaat*

456. The deference to State decision-making under the customary international law standard is straightforward. As the tribunal in *SD Myers v. Canada* warned:

When interpreting and applying the 'minimum standard', [a] tribunal does not have an open-ended mandate to second-guess government decision-making. Governments have to make many potentially controversial choices. In doing so, they may appear to have made mistakes, to have misjudged the facts, proceeded on the basis of a misguided economic or sociological theory, placed too much emphasis on some social values over others and adopted solutions that are ultimately ineffective or counterproductive. The ordinary remedy, if there were one, for errors in modern governments is through internal political and legal processes, including elections.⁸⁰⁶

457. Claimant wholly fails to explain why the State's substantial and sustained measures could possibly be seen as insufficient under customary international law, particularly given the complex social, political, and financial realities that characterize Colombia and the Department of Antioquia. The burden of proving that these measures were insufficient falls squarely on Claimant. Claimant has made no serious attempt to discharge that burden, and the customary international law standard does not abide Claimant's self-serving criticism of the significant and permanent protection Colombia has provided Claimant's investment.
458. Claimant's FPS claim is meritless, removed from the applicable law and demonstrated facts. It is discordant with and incognizable under the Treaty. Claimant's FPS claim should be dismissed in its entirety.

B. Colombia Has Not Expropriated Claimant's Investment

459. Claimant claims that "by surrendering the Mine to illegal miners and the Clan del Golfo, Colombia has indirectly expropriated a substantial part of Claimant's investment."⁸⁰⁷ That claim fails as both a matter of law and a matter of fact.

Sanayi ve Ticaret A.S. v. State of Libya, ICC Case No. 21537/ZF/AYZ, Final Award, 7 November 2018, ¶ 406 (Reasonableness must be measured taking into consideration the State's means and resources and the general situation of the country.").

⁸⁰⁶ **RL-132**, *SD Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000, ¶ 261; see also **CL-016**, *Tecnicas Medioambientales Tecmed v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 177 ("[T]he guarantee of full protection and security is not absolute and does not impose strict liability upon the State that grants it. At any rate, the Arbitral Tribunal holds that there is not sufficient evidence supporting the allegation that the Mexican authorities, whether municipal, state, or federal, have not reacted reasonably, in accordance with the parameters inherent in a democratic state [...]").

⁸⁰⁷ Claimant's Updated Memorial, ¶ 316.

1. Claimant's Claim of a Partial Indirect Expropriation Fails as a Matter of Law

460. Claimant presents an incorrect standard for indirect expropriation which is incongruent with the plain language of the Treaty. In so doing, Claimant fails to acknowledge that indirect expropriation must be tantamount to direct expropriation and that omissions can constitute indirect expropriations only in rare cases. Furthermore, Claimant bears the burden of proof in showing that Colombia has indirectly expropriated its investment. Finally, Claimant is unable to refute that Colombia's taking measures to protect the public welfare do not constitute indirect expropriation.

a. The treaty standard for indirect expropriation is narrow and specific

461. Annex 811 of the FTA specifically extends its protections to the situation of an indirect expropriation, "which results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure."⁸⁰⁸ As the FTA also specifies, however, whether a series of measures amounts to an indirect expropriation "requires a case-by-case, fact-based inquiry that considers" several factors.⁸⁰⁹ Those factors include:

(i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or series of measures.⁸¹⁰

462. Claimant is correct in noting that those factors are non-exhaustive.⁸¹¹ But Claimant fails to account for the full scope of each of those factors. Mere interference with an investment does not suffice to constitute indirect expropriation: the investor must have been substantially deprived of its investment, and the investor must show that that deprivation was caused by the State.

⁸⁰⁸ **RL-001**, FTA, Annex 811(2).

⁸⁰⁹ **RL-001**, FTA, Annex 811(2)(a).

⁸¹⁰ **RL-001**, FTA, Annex 811(2)(a).

⁸¹¹ Claimant's Updated Memorial, ¶ 341.

(i) Indirect Expropriation requires a showing that the investment was radically affected or effectively destroyed

463.

[REDACTED], a fact it claims is attributable to the State's alleged inactions.⁸¹² While certain tribunals have recognized that the entirety of an investment need not have been deprived in order to constitute indirect expropriation, a partial expropriation must nevertheless be sufficiently grave so as to have the "effect of expropriation" that affects "the totality or a substantial part of the investment."⁸¹³ Such partial expropriations must also constitute a "permanent and irreversible deprivation" of the investment.⁸¹⁴

464.

Claimant cites to the awards in *GAMI v. Mexico* and *Ampal-American v. Egypt* to support the proposition that the tribunal should look only to the affected portion of an investment to gauge its expropriative effect, leaving aside the whole investment.⁸¹⁵ Neither case is availing to Claimant. First, the language Claimant relies on from *GAMI* was a hypothetical posed by that tribunal; it was not the tribunal's holding. Second, the present case is substantively different both from the hypothetical in *GAMI* and the situation in *Ampal-American*. As Claimant points out, the *Ampal-American* tribunal agreed with claimants in that case that their tax license "was an investment in its own right[.]"⁸¹⁶ That is, in *Ampal-American* the State's actions as to the tax license could be analyzed by the tribunal as distinct from the larger investment. This logic does not follow to the present case where Claimant is arguing about property and rights inextricably tied up with a larger investment rather than the separate and "discrete" license issue in *Ampal-American* which, while it affected the entire investment, was distinguishable from it.⁸¹⁷

465.

Nor is Claimant availed by the reasoning of the hypothetical in *GAMI*, which similarly weighed discrete investments—five separate sugar mills—rather than a single one which has been lost in part.⁸¹⁸ The *GAMI* tribunal's interpretation of *Pope & Talbot* is similarly

⁸¹² Claimant's Updated Memorial, ¶¶ 13, 196, 307, 340, 400.

⁸¹³ **RL-012**, *Iurri Bogdanov et al. v. Republic of Moldova*, SCC Case No. 093/2004, Award, 22 September 2005, ¶ 86 ("[T]he concept of indirect expropriation applies only to measures having the effect of expropriation that affect the totality or a substantial part of the investment.") (emphasis added).

⁸¹⁴ **RL-013**, *I.P. Busta and J.P. Busta v. Czech Republic*, SCC Case No. 2015/014, Final Award, 10 May 2017, ¶ 389 ("The Tribunal further notes that, for an expropriation to occur, in the form of direct or creeping expropriation, there must be a permanent and irreversible deprivation."); see also **CL-031**, *LG&E Energy Corp. et al. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 193.

⁸¹⁵ Claimant's Updated Memorial, ¶¶ 327–328.

⁸¹⁶ **CL-077**, *Ampal-American Israel Corp. et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶ 179.

⁸¹⁷ **CL-077**, *Ampal-American Israel Corp. et al. v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, 21 February 2017, ¶ 179.

⁸¹⁸ **CL-022**, *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award, 15 November 2004, ¶¶ 127–128.

unavailing. The tribunal first posed the question “*what property?*”⁸¹⁹ And then, having defined the investment, the tribunal posited that “[t]he taking of 50 acres of a farm is equally expropriatory whether that is the whole farm or just a fraction. The notion must be understood as this: the affected property must be impaired to such an extent that it must be seen as taken.”⁸²⁰ What, then, is the property being examined in the present case? Unlike farmland, mining tunnels are not themselves the object of the investment; rather, the tunnels are merely infrastructure to provide access to the object of the investment the ore which Claimant extracts and subsequently processes. The ore body, however, remains fully accessible to Claimant by its own admission;⁸²¹ and Claimant has not demonstrated any effect on its processing capabilities as a result of the alleged Measures.

466. In order for partial, indirect expropriation to meet the standard of being a substantial deprivation of the investment, it must have the effect of depriving the investor of its control and enjoyment of its entire property. This was the understanding of the tribunal in *ADM v. Mexico*, which found that while loss of control of the investment through the loss of ownership or management rights is an indicative step, the requisite threshold for an indirect expropriation is whether the measures frustrate the complete operation of the investor’s activities in the host State.⁸²² While factors in determining substantial deprivation include the intensity and duration of the economic deprivation suffered by the investor, the simple fact that an investor has lost management rights over only some of its investment and in a manner which it does not know is permanent does not necessarily reach the threshold of deprivation of control and enjoyment of the property.⁸²³
467. Though there is no specific test or mechanical way of determining the threshold of total deprivation,⁸²⁴ it is nevertheless high. In *Tecmed v. Mexico*, the tribunal described the threshold as being that the investment must seem to have “ceased to exist.”⁸²⁵ The *CMS v. Argentina* tribunal similarly described the threshold as being “whether the enjoyment of the property has been effectively neutralized.”⁸²⁶ The *LG&E v. Argentina* tribunal

⁸¹⁹ **CL-022**, *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award, 15 November 2004, ¶ 126 (emphasis in the original).

⁸²⁰ **CL-022**, *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award, 15 November 2004, ¶ 126.

⁸²¹ **Exhibit R-0001**, IPO Prospectus, p. 276.

⁸²² **RL-014**, *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, ¶ 244-47; See also **CL-139**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 113.

⁸²³ See **RL-015**, *Philip Morris Brands Sàrl et al. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award, 8 July 2016 (“**Philip Morris v. Uruguay**”), ¶ 192.

⁸²⁴ See **CL-029**, *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶ 313; see also **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.29.

⁸²⁵ **CL-016**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 115.

⁸²⁶ **RL-016**, *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005, ¶ 262.

used language only moderately more lax when it held that the factors determining expropriation must amount to “almost complete deprivation.”⁸²⁷

468. Claimant relies on *Houben v. Burundi* for its finding that an expropriation had occurred in the context of a roughly 50% occupation of the investor’s land by squatters.⁸²⁸ In its Updated Memorial, Claimant omits, however, that the *Houben* tribunal hewed to the same standard as *Tecmed* and *Roussalis v. Romania*: that partial expropriation, in order to be expropriatory, must have the effect of the investment effectively ceasing to exist.⁸²⁹ This is borne out in the tribunal’s reasoning that, although only 50% of the actual territory of the land owned in *Houben* was occupied by the squatters, the pattern of the squatters’ settlements was such that the delimitation of development plots throughout the whole of the property was unmanageable, rendering the entirety of the investment unusable and effectively causing it to cease to exist.⁸³⁰
469. The difficulty of meeting this threshold is squarely the responsibility of Claimant and demands a high level of both proof and reasoning. As the tribunal found in *Generation Ukraine v. Ukraine*:

A plea of creeping expropriation must proceed on the basis that the investment existed at a particular point in time and that subsequent acts attributable to the State have eroded the investor’s rights to its investment to an extent that is violative of the relevant international standard of protection against expropriation. It is conceptually possible to envisage a case of creeping expropriation where the investor’s interests in its investment develop in parallel with the commission of the acts complained of. But such a plea, in order to be successful, would demand a high level of analytical rigorousness and precision.⁸³¹

On the facts before that tribunal, it reasoned that such precision was “absent from the submissions” of the claimant;⁸³² the tribunal found the claimant had failed to provide a “coherent analysis of the timing and the nature of its investments [...] and how the acts and omissions of the [State] have affected the Claimant’s investment in the form it existed at the time of those acts and omissions.”⁸³³

⁸²⁷ **CL-031**, *LG&E Energy Corp. et al. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶ 200.

⁸²⁸ Claimant’s Updated Memorial, ¶ 325; **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 213.

⁸²⁹ **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 200; **CL-052**, *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011, ¶ 328.

⁸³⁰ **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 213.

⁸³¹ **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.26.

⁸³² **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.26.

⁸³³ **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.26.

470. In *Generation Ukraine*, the tribunal first found that the State’s omission “did not have the express intention of depriving the Claimant of the legal basis of this right to proceed to construction”⁸³⁴ and that the claimant was unable to provide an analysis of facts attributable to the State which constituted cumulative interference.⁸³⁵ Indeed, the tribunal recalled that “investment always entails risk” and that it is not “sufficient for the disappointed investor to point to some government initiative, or inaction, which might have contributed to his ill fortune.”⁸³⁶
471. This is the case whether the allegedly expropriated investment is tangible or intangible.⁸³⁷ Interference with an investor’s intangible rights must still rise to the point of total deprivation to constitute an expropriation.⁸³⁸ The tribunal’s decision in *Eco Oro v. Colombia*, brought under the Canada-Colombia FTA, supports this proposition.⁸³⁹ In *Eco Oro*, the claimant complained of a series of ecological measures over a páramo (a special Andean type of ecosystem subject to unique environmental regulations in Colombia) which it alleged had deprived Eco Oro of its mining rights, and which it claimed “destroyed the economic viability of the Project.”⁸⁴⁰ The tribunal upheld the principle of substantial interference and effective destruction, finding that Eco Oro suffered “the complete deprivation of a potential right to exploit” as a result of which “there was no possibility of exploiting the Angustura Deposit such that the Concession became valueless.”⁸⁴¹

(ii) Indirect Expropriation requires interference with reasonable and objective investment-backed expectations

472. The text of the Treaty is clear: a finding of indirect expropriation requires consideration of how the Measures identified by Claimant interfere with its “distinct, reasonable, investment-backed expectations.”⁸⁴² Demonstrating this requires first showing that the

⁸³⁴ **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.28.

⁸³⁵ **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.31.

⁸³⁶ **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.30.

⁸³⁷ See Claimant’s Updated Memorial, ¶ 330–332.

⁸³⁸ **RL-017**, *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012, ¶ 6.62 (“the Tribunal considers that the accumulated mass of international legal materials, comprising both arbitral decisions and doctrinal writings, describe for both direct and indirect expropriation, consistently albeit in different terms, the requirement under international law for the investor to establish the substantial, radical, severe, devastating or fundamental deprivation of its rights or the virtual annihilation, effective neutralisation or factual destruction of its investment, its value or enjoyment.”); see also **RL-036**, *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Award, 23 December 2025 (“**Kappas**”), ¶¶ 1143, 1202.

⁸³⁹ See Claimant’s Updated Memorial, ¶ 332.

⁸⁴⁰ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 526.

⁸⁴¹ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 634.

⁸⁴² **RL-001**, FTA, Annex 811(2)(a)(ii).

State has made specific representations to the investor and second that those representations created reasonable expectations on the part of the investor that its investment would be free from interference.

473. As to the first requirement, to be capable of being sufficiently interfered with to constitute an expropriation, expectations must be based on specific assurances.⁸⁴³ Investors do not have the right to an unchanging regulatory world. Thus, any assurances cited by Claimant must be specifically given, considering the State's general regulatory power. As the *Eco Oro* tribunal stated, "investors must be taken to understand that States retain the power to regulate in the public interest."⁸⁴⁴ In relation to power, the *Eco Oro* tribunal adopted the test from *Methanex* and *Oxus*: "did the State give specific commitments that it would refrain from the acts complained of"?⁸⁴⁵
474. The requirement that the State give the investor specific and targeted commitments was discussed at length in *Grand River*. In *Grand River*, the claimant 'relied' on its general understanding of the legal system, namely U.S. federal Indian law and the Jay Treaty which gave "rise to reasonable expectations of immunity from [1998 Master Settlement Agreement] measures [which settled litigation by US states against major cigarette manufacturers.]"⁸⁴⁶ The tribunal in that case found the parties' submissions about the contours of U.S. Indian law ultimately irrelevant as investment-backed expectations cannot be based upon an investor's understanding as to a contested legal proposition within a State's domestic law.⁸⁴⁷ Legal paradigms, the tribunal set out, are liable to change and are *per se* capable of shifting.⁸⁴⁸ In a similar vein, it would be unreasonable for a prudent investor to believe that a change in national government could not also result in a substantively different prioritization of security policy away from confrontation to nonviolent negotiation.

⁸⁴³ See **RL-018**, *Carlos Ríos*, ¶¶ 254–256.

⁸⁴⁴ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 629.

⁸⁴⁵ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 681.

⁸⁴⁶ **RL-019**, *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, Award, 12 January 2011, ¶ 141.

⁸⁴⁷ **RL-019**, *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, Award, 12 January 2011, ¶ 140.

⁸⁴⁸ See **RL-019**, *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, Award, 12 January 2011, ¶ 142 ("As to U.S. domestic law, given its unsettled nature in relevant respects, it is implausible to find that Mr. Montour could have reasonably expected, and reasonably relied on such an expectation as a prudent investor, that states would refrain from applying the MSA measures to him as they have done. As demonstrated by Professor Goldberg's expert report, U.S. states had at least a colorable argument under domestic law for valid application of the MSA measures to his activities. By this observation the Tribunal is not expressing agreement with the argument in favor of state regulation. The point is that the relative strength of this argument and the range of relevant domestic judicial precedents were such that Mr. Montour was not in a position to reasonably harbor an expectation, upon which he would be entitled to rely under NAFTA, that he would be free from application of the MSA measures.").

475. Specific commitments to support a project cannot be borne out from general designations, conversations of support, or other similar broad statements. In *Eco Oro*, the claimant submitted evidence of meetings with and encouragement of its investment by MinAmbiente, MinMinas, the ANM, and the Attorney General, as well as a meeting with then-President Santos. While the tribunal found it:

concerning that Eco Oro received such support from parts of the government of Colombia at a time when Colombia was both well aware of the presence of the páramo within the concession area and was fully conversant with its obligations to protect the páramo given its commitment to protect the páramo [...] the Tribunal does not find these representations constitute specific commitments not to impose a mining exclusion zone in the area of Concession 3452; rather, they comprised nothing more than general expressions of support for the project.⁸⁴⁹

476. Nor can an investor rely on a flawed understanding of the legal environment to allege specific representations. In *Azurix v. Argentina*, the claimant claimed expectations regarding the tariff regime applicable to its investment based on contractual promises in its concession agreement. The tribunal found that the claimant's expectations could not be founded upon an erroneous understanding of the terms of the law and its concession agreement.⁸⁵⁰ Although the tribunal found that the claimant's management was impacted by the State's decision-making on the tariff regime that would apply to its investment, the tribunal determined that its expectations were not encapsulated by any contractual promise made to the claimant – and that even so, its investment was not sufficiently affected by those upset expectations.⁸⁵¹
477. Second, even if the investor receives specific assurances, any expectations developed therefrom must be reasonable in light of known risks. In *Fireman's Fund v. United Mexican States*, the tribunal accepted that the claimant had “clearly demonstrated injury – indeed loss of its investment” and yet “undertook an investment that was risky both in terms of the economic conditions in Mexico at that time, and in terms of the specific financial institution that issued the Dollar Debentures that FFIC purchased.”⁸⁵² It therefore found that no indirect expropriation had occurred and that investors, even those who were “subject to discriminatory and perhaps inequitable treatment by officials of the host state[,]” cannot rely on free trade treaties to “provide insurance against the kinds of risks that [the investor] assumed.”⁸⁵³

⁸⁴⁹ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 694.

⁸⁵⁰ **CL-029**, *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶¶ 319–321.

⁸⁵¹ **CL-029**, *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶¶ 320–322.

⁸⁵² **RL-020**, *Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/1, Award, 17 July 2006 (“*Fireman's Fund*”), ¶ 218.

⁸⁵³ **RL-020**, *Fireman's Fund*, ¶ 218.

478. In *Methanex v. USA*, the tribunal similarly found that Methanex entered a “political economy in which it was widely known, if not notorious,” that the governmental environmental and health agencies continuously and assiduously monitored the use of chemical compounds and commonly prohibited or restricted their use.⁸⁵⁴ Investors cannot make inherently risky investments and then rely on an investment treaty to “provide insurance against the kinds of risks that” the investor knowingly assumed.⁸⁵⁵ In *Methanex*, the tribunal determined that, unless a State were to positively induce the investor with representations about its investment, no such expectation can be sustained.⁸⁵⁶
479. The *Eco Oro* tribunal specifically imposed a duty of investigation: “there must be an obligation on an investor claiming that its reasonable investment-backed expectation[] has been breached, to have undertaken its own due diligence before relying on any encouragement or support given by the Government in making its investment.”⁸⁵⁷ Following its determination that the statements *Eco Oro* had relied on from various members of the Colombian government did not amount to specific commitments by the government, the tribunal held that
- Given Eco Oro’s apparent failure to undertake any due diligence before relying on such representations as were made to it by Colombia, the Tribunal does not find Eco Oro had any distinct reasonable investment backed expectations that exploitation would be permitted in the entirety of the concession area. The Tribunal appreciates that Eco Oro’s failure to undertake due diligence would not have enabled it to predict Colombia’s breach of its own, constitutionally mandated obligations to protect the páramos, but this per se is not relevant to whether Colombia made a specific commitment to Eco Oro that it would not subsequently prevent mining in any part of the concession.⁸⁵⁸
480. Whether an investor’s expectations are reasonable is a factual and objective determination. In *Carlos Ríos v. Chile*, the tribunal held that reasonableness cannot be founded in any subjective interpretation but must be established through a concrete obligation, declaration, or promise made by the State to the investor.⁸⁵⁹ Similarly, the

⁸⁵⁴ **CL-140**, *Methanex Corp. v. United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 2005, Part IV, Ch. D, ¶ 9.

⁸⁵⁵ **RL-020**, *Fireman’s Fund*, ¶ 218.

⁸⁵⁶ **CL-140**, *Methanex Corp. v. United States of America*, UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 2005, Part IV, Ch. D, ¶ 10.

⁸⁵⁷ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 681.

⁸⁵⁸ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 694.

⁸⁵⁹ **RL-018**, *Carlos Ríos*, ¶ 255 (“Expectations should also be reasonable. Given the terms of the Treaty (which includes the expectations of the investment), this reasonableness ought to be objective; the subjective expectations of the investors are insufficient. The reasonableness of an expectation is a factual question which

tribunal in *Lee Chin v. Dominican Republic* held that an investor's expectations, so as to be considered reasonable, "cannot be a mere possibility" and must be "based on a certain right, the exercise of which is somehow guaranteed by the State and seems very likely to be realized."⁸⁶⁰

481. Furthermore, the investor's expectations must be assessed at the time of the making of the investment. This was the case in *Eco Oro* where the tribunal accepted that the appropriate time for assessment of Eco Oro's reasonable investment-backed expectations was at the moment it entered into the concession agreement and obtained the requisite permits.⁸⁶¹

(iii) Indirect Expropriation requires measures undertaken in bad faith, discriminatory fashion, and not in pursuit of the public welfare

482. Indirect expropriation requires that the measures complained of have been enacted in a bad faith or discriminatory manner rather than in the pursuit of the public welfare. In *Methanex v. USA*, the tribunal found that a "key requirement" for establishing an expropriation is an intentionally discriminatory regulation against a foreign investor. By contrast, a "non-discriminatory regulation for a public purpose, which is enacted in accordance with due process and, which affects, inter alios, a foreign investor or investment" is not deemed to be expropriatory unless the State gave "specific commitments" to the investor that it would refrain from the regulations which affected them.

(iv) Indirect Expropriation requires a showing that the State's action or inaction caused the alleged damage

483. Indirect expropriation requires action by or on behalf of the State which directly causes the alleged damage. This is determinative in finding for or against expropriation.⁸⁶² In *AWG v. Argentina*, the claimants alleged that the State's refusal to revise an emergency tariff which diminished the value of their investment constituted an indirect

should be determined on a case-by-case basis in view of the obligation, commitment, or declaration that engendered it and the relevant facts surrounding it.").

⁸⁶⁰ **RL-121**, *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, 6 October 2023, ¶ 355.

⁸⁶¹ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶¶ 682–685; *see also* **CL-055**, *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, 29 June 2012, ¶¶ 122–123, wherein the tribunal evaluated the claimant's legitimate expectations at the moment of its investment, namely at the time when it secured its investment through a competitive and public bidding process; **CL-035**, *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, ¶¶ 343–345.

⁸⁶² *See* **RL-022**, *Vincent J. Ryan et al. v. Republic of Poland*, ICSID Case No. ARB(AF)/11/3, Award, 24 November 2015, ¶ 413.

expropriation.⁸⁶³ The *AWG* tribunal stated that an expropriative measure is meant as “an action taken to achieve a particular purpose” wherein the State’s clearly articulated and “formally communicated” decision not to revise the tariff constituted an actual measure.⁸⁶⁴

484. It is well established that the actions of formal organs of the State, legal decisions, and administrative measures constitute State action.⁸⁶⁵ Similarly, entities which have been given the authority to exercise powers normally held by the State may also may act in a way attributable to the State.⁸⁶⁶ It is clear, however, that under international law only conduct by agents of the State is attributable to it; thus, the acts of private persons—even those who aspire to and stand for public office—cannot incur the responsibility of the State.⁸⁶⁷

b. To constitute an expropriation, the effect of an indirect expropriation must be equivalent to a direct expropriation

485. Annex 811(2) of the Treaty defines an indirect expropriation as resulting “from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure.”⁸⁶⁸ Claimant must be able to demonstrate, therefore, that the alleged expropriative effect has effectively deprived it of its investment. In analyzing similar language under the DR-CAFTA, the *Kappes v. Guatemala* tribunal found it to mean a “complete dispossession of the property right or interest.”⁸⁶⁹
486. Claimant cites *Generation Ukraine v. Ukraine* which described a creeping expropriation as a “form of indirect expropriation with a distinctive temporal quality [where] a series of acts attributable to the State over a period of time culminate in [an] expropriatory taking.”⁸⁷⁰ Such a creeping expropriation, as the *Siemens* tribunal recognized, therefore

⁸⁶³ **RL-024**, *AWG Group v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 (“*AWG*”), ¶¶ 136-141.

⁸⁶⁴ **RL-024**, *AWG*, ¶ 141.

⁸⁶⁵ **RL-025**, *Case Concerning Certain German Interests in Polish Upper Silesia (The Merits)*, Judgment No. 7, PCIJ Case, 25 May 1926, p. 19 (“From the standpoint of International Law and of the Court which is its organ, municipal laws [...] express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures.”).

⁸⁶⁶ See **CL-128**, *Flemingo DutyFree Shop Private Ltd. v. Republic of Poland*, UNCITRAL, Award, 12 August 2016, ¶¶ 439–441.

⁸⁶⁷ **CL-110**, *ARSIWA*, Ch. II, ¶¶ 2–3.

⁸⁶⁸ **RL-001**, *FTA*, Annex 811(2).

⁸⁶⁹ **RL-036**, *Kappes*, ¶ 1143; Claimant’s Updated Memorial, ¶ 318.

⁸⁷⁰ **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.22; Claimant’s Updated Memorial, ¶ 318.

definitionally “refers to a process,” which, if it “stops before it reaches [the point of effect of an expropriation], then expropriation would not occur.”⁸⁷¹

487. In that case, the tribunal determined that it was not that no adverse effects had occurred, but merely that the adverse effects had not yet included “the straw that breaks the camel’s back.”⁸⁷² As other tribunals have recognized, that straw must be identifiable – the *Ríos v. Chile* tribunal, in the context of finding whether the claim of expropriation was excluded by falling outside of the time limit required by the treaty, found that the claimant must be able to point to the critical state measure which constitutes the consummating moment of expropriation.⁸⁷³

c. Omissions can constitute indirect expropriation only in rare circumstances

488. Claimant does not complain of action on the part of the State, but inaction. Omissions rarely constitute indirect expropriation. As stated in *Olguín v. Paraguay*, “Expropriation [] requires a teleologically driven action for it to occur; omissions, however egregious they may be, are not sufficient for it to take place.”⁸⁷⁴ In *Sea-Land Service v. Iran*, the claimant asked the tribunal to determine if the Iranian Port and Shipping Organization (“PSO”) expropriated its rights of operation of the port container terminal at Bandar Abbas after the PSO permitted the deterioration—or in the claimant’s words “refusal to manage the port”—the administrative and supervisory functions of the port, which did not allow the claimant to clear or onboard cargo at its facility.⁸⁷⁵ The tribunal, which attributed the port’s dysfunction with the “general picture of disruption which characterised Iran in the months leading up to the success of the Revolution[,]” did not find that expropriation had occurred as such a finding would “require, at the very least, that the Tribunal be satisfied that there was deliberate governmental interference with the conduct of Sea-Land’s operation, the effect of which was to deprive Sea-Land of the use and benefit of its investment.”⁸⁷⁶
489. The ILC Commentary notes that “no difference in principle exists between” the responsibility of a State for positive acts and omissions,⁸⁷⁷ but this does not mean they look the same in practice. In *Wena Hotels*, the tribunal found that omissions must involve the State consciously ignoring a risk or danger in order to violate the relevant standard.⁸⁷⁸

⁸⁷¹ **CL-033**, *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶ 263.

⁸⁷² **CL-033**, *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶ 263.

⁸⁷³ **RL-018**, *Carlos Ríos*, ¶¶ 192–194.

⁸⁷⁴ **RL-023**, *Olguín*, ¶ 84.

⁸⁷⁵ **RL-026**, *Sea-Land Service, Inc. v. Government of the Islamic Republic of Iran*, IUSCT Case No. 33, Award No. 135-33-1, 22 June 1984 (“*Sea-Land Service*”), p. 24.

⁸⁷⁶ **RL-026**, *Sea-Land Service*, p. 22.

⁸⁷⁷ **CL-110**, ARSIWA, Ch. 1, Commentary to Art. II, ¶ 4.

⁸⁷⁸ **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶¶ 84, 99.

That tribunal did not contemplate violation of the standard by means of the ‘pure’ omission whereby the State has no prior knowledge of impending danger or risk. This is supported by the understanding of an omission as an intentional act in the *Corfu Channel* case, where the ICJ held that it was sufficient basis for Albanian responsibility that it knew or must have known and failed to warn third States of the presence of mines in its territorial waters.⁸⁷⁹

d. Measures undertaken to protect legitimate public welfare objectives do not constitute indirect expropriation

490. The Treaty expressly shields measures aimed at health, safety, and security from constituting indirect expropriation except in “*rare circumstances*,” which are absent here. Annex 811(2)(b) of the Treaty clarifies:

Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted in good faith, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, for example health, safety and the protection of the environment, do not constitute indirect expropriation.⁸⁸⁰

491. This provision was discussed at length in both *Montauk Metals v. Colombia* and *Eco Oro v. Colombia*, both of which confirmed that the environmental and security measures encapsulated by Annex 811(2)(b) do not constitute indirect expropriation.⁸⁸¹ The *Eco Oro* tribunal agreed with the Canadian non-disputing party submission in that case that Annex 811 expressly respects the police powers of the State as expressed in customary international law.⁸⁸² The *Eco Oro* tribunal went on to find that the Annex 811 police powers of the Treaty are tantamount to those of customary international law.⁸⁸³ Canada’s Non-Disputing Party submission in *Eco Oro* further stated, with reference to the *Methanex* and *SD Myers* decisions, that a “host State is not required to compensate an investment for any loss sustained by the imposition of a non-discriminatory, regulatory measure designed and applied to protect legitimate public welfare objectives.”⁸⁸⁴ Though

⁸⁷⁹ **RL-027**, *The Corfu Channel Case (Mertis)*, ICJ, Judgment, 9 April 1949 (“*Corfu Channel*”), pp. 22–23.

⁸⁸⁰ **RL-001**, FTA, Annex 811(2)(b).

⁸⁸¹ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 699; **CL-103**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶ 826.

⁸⁸² **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶¶ 625–626.

⁸⁸³ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶¶ 625–626; see also **RL-015**, *Philip Morris v. Uruguay*, ¶¶ 300–301.

⁸⁸⁴ **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Non-Disputing Party Submission of Canada, 27 February 2020, ¶ 8.

the impact of a measure may be so severe that it cannot be reasonably viewed as a valid exercise of police powers, Canada noted that the standard for that is high and that there ought to be a “high degree of deference [to] States’ regulatory choices” afforded to States, “even if they are based on precaution.”⁸⁸⁵

492. Pursuant to that standard, what constitutes a valid exercise of the State’s police power is ultimately to be judged by the State. In *Copper Mesa*, the tribunal weighed whether the termination of the claimant’s Junín Concessions for lack of consultation of the local population under Ecuador’s Mining Mandate were an appropriate exercise of Ecuador’s legitimate regulatory authority and police powers.⁸⁸⁶ While that tribunal ultimately found that the State accomplished its expropriation in an arbitrary manner, therefore finding that the investment had been expropriated, the tribunal understood that its function under the relevant treaty was not to decide for itself what was or was not in the national interests of the State and that it ought to defer to the State’s determination of such questions.⁸⁸⁷
493. In *Riverside Coffee v. Nicaragua*, in the context of widespread civil strife in Nicaragua, former members of the *Contras* invaded and forcibly occupied the Hacienda Santa Fé.⁸⁸⁸ The claimant suggested that the invaders were acting on instructions of the Nicaraguan government, which denied allowing the former *Contras* to occupy the hacienda and explained that it worked diligently to dislodge the hacienda’s occupation in a nonviolent manner.⁸⁸⁹
494. In that case, the tribunal examined the State’s measures in accordance with Article 21.2 of the Dominican Republic-Central America FTA and considered whether Nicaragua was excused on the basis of “applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.”⁸⁹⁰ Faced with an armed invasion led by former *Contras* who expressed a willingness to fight against national police forces, Nicaragua made the “decision not to remove forcibly the invaders and to negotiate their peaceful resettlement.”⁸⁹¹ The tribunal rejected the claimant’s suggestion that the invasion was a routine criminal situation and concluded that the State response to the hacienda’s occupation was part of a nation-wide strategy.⁸⁹² As such, the tribunal

⁸⁸⁵ **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Non-Disputing Party Submission of Canada, 27 February 2020, ¶ 11.

⁸⁸⁶ **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶ 6.11.

⁸⁸⁷ **CL-071**, *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award, 15 March 2016, ¶¶ 6.63-6.65; see also **RL-028**, *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award, 17 October 2025 (“*Riverside Coffee*”), ¶259.

⁸⁸⁸ **RL-028**, *Riverside Coffee*, ¶¶ 92–96.

⁸⁸⁹ **RL-028**, *Riverside Coffee*, ¶ 96.

⁸⁹⁰ **RL-029**, Dominican Republic-Central America Free Trade Agreement, 16 April 1998, Art. 21.2(b).

⁸⁹¹ **RL-028**, *Riverside Coffee*, ¶ 273.

⁸⁹² **RL-028**, *Riverside Coffee*, ¶¶ 276–277.

rejected the claimant's expropriation arguments insofar as they arose from the alleged failure of "the Respondent's insufficient law enforcement efforts" during the relevant period.⁸⁹³

495. In its Updated Memorial, Claimant argues that even if Colombia's security measures were in accordance with legitimate public welfare objectives, they still may not be excused to the extent they are disproportionate to the cited purpose and impose an "excessive burden" on the investor.⁸⁹⁴ Claimant relies on the *Tecmed* tribunal's citation of the European Court of Human Rights in the *Case of James and Others v. the UK*.⁸⁹⁵ The *Tecmed* tribunal found that the requisite balance between the means employed and the aim sought to be realized will not be found if the person concerned has borne "an individual and excessive burden."⁸⁹⁶ In *Tecmed*, although Mexico presented its concern as protection of the environment and public health, the tribunal found that its true public policy rationale amounted to little more than community pressure and did not rise to a level nearly high enough to justify the individualized administrative decisions directed at the landfill site at issue.⁸⁹⁷
496. Other tribunals weighing the same proportionality test as in *Tecmed* state have clarified the necessary balancing as follows: the "measure ... [ought to] be suitable to achieve a legitimate policy objective, necessary for that objective, and not excessive considering the relative weight of each interest involved."⁸⁹⁸ An alleged failure to act should be judged by the same standard.

e. Claimant bears the burden of proof to show expropriation of its investment

497. Claimant bears the burden to prove that the State caused the alleged damage to its investment. Under the well-established principle of *onus probandi actori incumbit*, the burden of proving that the State's supposed inactions are expropriatory is the Claimant's.⁸⁹⁹ Specifically, the Claimant has the burden of showing that it has (i) suffered an economic loss as consequence of State actions; (ii) that this economic loss is so grave

⁸⁹³ **RL-028**, *Riverside Coffee*, ¶ 445.

⁸⁹⁴ Claimant's Updated Memorial, ¶ 321.

⁸⁹⁵ Claimant's Updated Memorial, ¶ 321, n. 586.

⁸⁹⁶ **CL-016**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 122.

⁸⁹⁷ **CL-016**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶¶ 123–132.

⁸⁹⁸ **RL-126**, *Electrabel S.A. v. Hungary*, ICSID Case No. ARB/07/19, Award, 25 November 2015, ¶ 179; *see also* **RL-127**, *Hydro Energy I S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, ICSID Case No. ARB/15/42, Decision on Jurisdiction, Liability and Directions on Quantum, 9 March 2020, ¶ 574.

⁸⁹⁹ *See* **RL-030**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Award, 26 July 2007, ¶ 121.

as to constitute an expropriation or ‘taking’ under international law; and (iii) that the action was discriminatory or arbitrary.⁹⁰⁰

498. All of the alleged damage cited by Claimant, including the loss of sections of the Mine or stolen gold ore and damaged equipment, has been caused by the independent actions of informal miners, ostensibly supported by the Clan del Golfo.⁹⁰¹ The State’s actions have served to limit and to prevent such damage and have even confiscated stolen material from the informal miners.⁹⁰² Claimant, which bears the burden in this matter, fails to show how the Government’s actions or inactions have directly caused or resulted in this harm.⁹⁰³
499. Claimant instead tries to turn the burden on its head: Claimant contends, relying on *Tecmed v. Mexico*, that the “State party invoking Article 811(2)(b) bears the burden of proving its applicability to disputed State measures, including that the measures were designed and applied to protect legitimate public welfare objectives,” and that even if the burden is discharged, the State “may not be absolved from responsibility for expropriatory measures.”⁹⁰⁴ Not so. Firstly, Claimant’s *Tecmed* analysis contains no mention of which party formally bears the burden of proof in substantiating the measures. Even so, Claimant’s citation to *Tecmed* demonstrates that that tribunal’s reasoning departs from a position of “due deference owing to the State when defining the issues that affect its public policy or the interests of society as a whole.”⁹⁰⁵ Even if the Claimant has proven that expropriation has occurred, *quod non*, it must also prove that the State action is discriminatory or arbitrary—which entails the *Tecmed* proportionality test—and thus that the State is not exempt from its international responsibility by virtue of its right to act in the safeguard of the public interest.⁹⁰⁶

⁹⁰⁰ See **RL-031**, *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Award, 7 July 2011, ¶ 151 (“The Claimant, of course, bears the burden of proving its allegations. Even where the Claimant may have suffered economic harm as a consequence of the Respondent’s actions, such harm must be sufficiently severe to constitute an expropriation under international law. If there is no evidence of a taking, appropriation, or destruction of value of the property, the claim must be dismissed. Even if an impairment sufficient to constitute an expropriation is evidenced, the Tribunal must determine whether the Respondent is exempt from international responsibility by virtue of the public interest in the exercise of a State’s power to levy taxes. To that end, it should be evaluated whether such conduct was discriminatory or arbitrary.”).

⁹⁰¹ See Claimant’s Updated Memorial, ¶ 313.

⁹⁰² See *supra* Section III.E.

⁹⁰³ See **RL-032**, *Link-Trading Joint Stock Company v. Department for Customs Control of the Republic of Moldova*, UNCITRAL, Final Award, 18 April 2002, ¶ 87; **CL-037**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶¶ 786–787; **RL-033**, *Tradex Hellas S.A. v. Republic of Albania*, ICSID Case No. ARB/94/2, Award, 29 April 1999, ¶¶ 177, 200; See also **RL-034**, *ELSI*, ¶¶ 98, 101.

⁹⁰⁴ Claimant’s Updated Memorial, ¶ 321 (citing **CL-016**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 122).

⁹⁰⁵ **CL-016**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶ 122.

⁹⁰⁶ See **RL-031**, *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Award, 7 July 2011, ¶ 151.

500. Claimant is attempting to prove a negative, specifically that the State’s particular exercise of its police power vis-à-vis the illegal miners in the Mine was insufficient and that the actions of its law enforcement, military, and local government agencies have violated the FTA. The State action, however, has been done in pursuit of an overarching goal, namely, to end the violence writ large in Colombia, and thereby is benefitting Claimant. The State, in its pursuit of peace negotiations and nonviolent confrontation with illegal miners and the criminal syndicates which exploit them, is afforded the benefit of the doubt that it is pursuing proper legal action absent evidence to the contrary, which has not been provided by Claimant.⁹⁰⁷

2. Claimant’s Claim of a Partial Indirect Expropriation Fails as a Matter of Fact

501. Claimant’s claim also fails as a matter of fact. Claimant has failed to establish either that its investment was effectively destroyed or that its alleged expectations were reasonable. Furthermore, Colombia’s actions in furtherance of the public welfare and in a legitimate and good faith exercise of its police powers do not amount to an indirect expropriation.

a. Claimant has failed to prove that the value of its investment was radically affected or effectively destroyed

502. Annex 811 of the Treaty requires that indirect expropriation have “an effect equivalent to direct expropriation without formal transfer of title or outright seizure.”⁹⁰⁸ Claimant must thus show a substantial deprivation of the value of its investment which has effectively destroyed the value of the investment.⁹⁰⁹ This was the standard touted by Canada in its Non-Disputing Party submission in *Eco Oro*, wherein it stated that in order for an expropriation to occur, fundamental ownership rights must be taken; mere restrictions on property rights or interference with an investor’s use of enjoyment of the benefits associated with that property is insufficient to constitute a taking to the level of substantial deprivation.⁹¹⁰
503. Claimant has not met this burden, and subsequent discoveries stemming from the IPO Prospectus further suggest that Claimant has obscured facts that would highlight the failure. Claimant’s indirect partial expropriation claim rests on the speculative and logically flawed Boyd Report which assumes permanent and irretrievable loss of large sections of the Mine and the mineral reserves in those sections. Much of this report is itself predicated on the unsubstantiated words of [REDACTED]

⁹⁰⁷ See **RL-035**, *Seventhsun Holding Ltd. et al. v. Republic of Poland*, SCC Case No. V2012/138, Partial Award, 13 October 2015, ¶ 194–197.

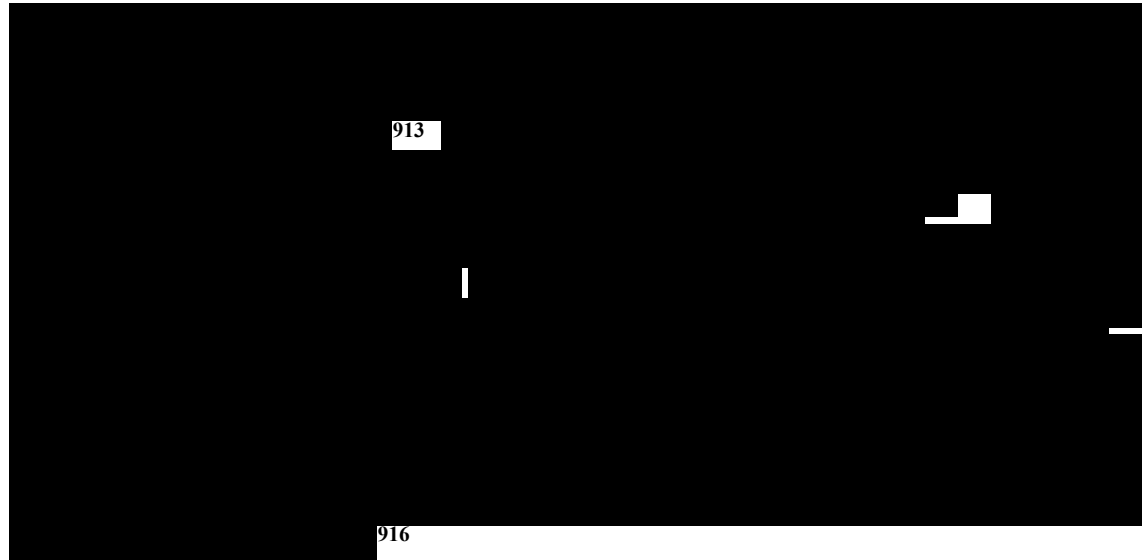
⁹⁰⁸ **RL-001**, FTA, Annex 811(2).

⁹⁰⁹ See **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 200; **CL-052**, *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award, 7 December 2011, ¶ 328.

⁹¹⁰ **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Non-Disputing Party Submission of Canada, 27 February 2020, ¶¶ 7–8.

[REDACTED].⁹¹¹ The evidence gleaned from Claimant's controlling entity, ZGI, and its IPO Prospectus and accompanying SRK Competent Person's Report shows rather that the Mine remains an active, expanding, and increasingly profitable operation whose fundamental value has not been significantly impaired.⁹¹²

504.



505. Furthermore, the SRK Competent Person's Report included within the IPO Prospectus demonstrates that, even in those areas ostensibly sealed off because of illegal mining, Claimant retains a degree of operational access to productive reserves. SRK records that new declines have been made to access mining areas in the Yaraguá and Veta Sur mining systems at lower elevations than the sealed points connected to the Higabra adit, enabling access to producing stopes.⁹¹⁷ Stated otherwise, Claimant has responded to the security and technical issues at the mine by creating new routes to productive areas of the Mine and thus retaining the option of extracting value rather than abandoning or conceding the permanent loss of those areas.

506. Independently of the contradictions between the Claimant's presented claim and the statements in the IPO Prospectus, Claimant still fails to demonstrate an actual loss.

⁹¹¹ [REDACTED] First Witness Statement, ¶ 51.

⁹¹² This is contrary to the very caselaw which Claimant seeks to cite in its support, *see CL-070, Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 213. In *Houben*, the squatters occupy roughly 50% of the investor's property, yet the pattern of their settlement is such that it totally disrupts the land area and renders it unsuitable for the demarcation of the land plots which the claimant in *Houben* was intending as its investment. Thus, the entirety of the investment is destroyed.

⁹¹³ *See supra* Section II.B.1.b.

⁹¹⁴ *See supra* Section II.B.1.b.

⁹¹⁵ **Exhibit R-0001**, IPO Prospectus, p. 276.

⁹¹⁶ **Exhibit R-0001**, IPO Prospectus, p. 303.

⁹¹⁷ **Exhibit R-0001**, IPO Prospectus, p. IIIC-119 SRK Report; *see infra* Section VI.D.2.a.

Claimant's damages methodology assumes a but-for scenario which posits, without evidentiary foundation, that all of the ore in the 'lost' areas would be mined between August 2022 and December 2029 and that none of that production could be replaced through the alternative development of existing or new mining areas. That assumption must be treated with skepticism in light of its inconsistencies with the IPO Prospectus, which envisages continued production from the main ore body as well as the identification and exploitation of new reserves.⁹¹⁸ Continental Colombia has in fact continued to mine in other parts of the Mine and to maintain its production schedule.⁹¹⁹

b. Claimant's apparent expectation of a mining project immune from inherent challenges is untenable

507. The Treaty refers to the existence of "distinct, reasonable investment-backed expectations," the interference with which may constitute an indirect expropriation.⁹²⁰ Claimant must therefore identify, for each act or omission it declares constitutes part of the indirect or creeping expropriation it claims, how that alleged measure interferes with an expectation that is (i) distinct, (ii) reasonable, and (iii) founded in its alleged investment.⁹²¹ Claimant fails to meet this burden, alleging instead in a single sentence in its Updated Memorial that Colombia's measures interfered with two broad buckets of expectations: (i) "Colombia's awarding to the Company the exclusive rights to minerals located at the Project pursuant to the Concession Agreement" and (ii) Colombia's "specific commitment to protect the Project, including pursuant to the Joint Security Agreements between the Armed Forces and the Company."⁹²²
508. The Buriticá Mine was always a project beset with challenges stemming from informal and illegal mining, and Claimant has both known and acknowledged this from the outset of the Project. Buriticá's sudden transformation from a small agricultural community to a modern gold rush town brought with it a host of migrant workers who were afflicted by parasitic and extortionate gangs.⁹²³ At the very inception of the project in 2011, Continental Gold cooperated with the State to prevent and address illegal mining through a combination of security programs and community engagement.⁹²⁴ Thus, illegal mining has been an issue in the region and with the Project since before Zijin Mining purchased Continental Gold in 2020. As Claimant states in its Updated Memorial, it was aware that

⁹¹⁸ Cf. **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, ¶ 526 (Finding that the ecological measures which Colombia undertook rendered the project as a whole economically unviable).

⁹¹⁹ See *infra* Section VI.C.

⁹²⁰ **RL-001**, FTA, Annex 811(2)(a)(ii).

⁹²¹ See **RL-018**, *Carlos Ríos*, ¶¶ 254–256.

⁹²² Claimant's Updated Memorial, ¶ 341.

⁹²³ See *supra* Section II.B.1.b.

⁹²⁴ See *supra* Section II.B.1.b.

illegal mining in Colombia had a “link to large, organized criminal organizations and narco-trafficking gangs[.]”⁹²⁵

509. Claimant attempts to manufacture specific promises where there were none. Designations such as the Mine’s PINE status and Colombia’s statements regarding the economic future of the Buriticá Project constituted general statements of support and a commitment to expedited permitting approval.⁹²⁶ Colombia never specifically asserted to Claimant that it would or could promise or ensure a Mine free of illegal mining or criminal activity.⁹²⁷ Even so, Colombia has acted diligently from the project’s inception through the present day to provide security at Buriticá as part of its efforts to stymie the ambitions (and cut off the funding) of criminal groups like Clan del Golfo across the entirety of Colombia, not as a specific promise or obligation to Claimant or Continental Colombia but rather as part of its goal to secure the internal security of the State as a whole. Its efforts have included Operations Creta, Hades, Esperanza, and Hefesto.
510. Claimant’s own actions have exacerbated its problems. When Zijin Mining acquired CGI and the Buriticá Project, it reversed the progress that Continental Gold had achieved in community-level sustainability programs and engendering a positive local dialogue through Plan Buriticá. The resulting local discontent and tensions are attributable to Claimant’s own missteps, which it now cites as evidence of State failure.
511. The August 2022 and February 2023 incidents involving backfilling of tunnels and the trapping of informal miners, which triggered significant community unrest, further illustrate that Claimant’s operational decisions contributed to the security situation at the Mine. Claimant’s attempt to depict these protests as purely the product of State inaction, or as orchestrated solely by criminal groups, elides the role of its own policies and conduct and the reasonable grievances of community members against both.

c. Colombia’s actions in pursuit of public welfare are not an indirect expropriation

512. Colombia has acted and expended human and material resources to defend and safeguard the investments of investors such as Continental Gold, Aris Mining, and others. Colombia’s conduct is within the scope of non-discriminatory measures designed and applied to protect legitimate public welfare objectives, expressly preserved by Annex 811(2)(b).⁹²⁸

⁹²⁵ Claimant’s Updated Memorial, ¶ 43.

⁹²⁶ Claimant’s Updated Memorial, ¶ 68–71; compare **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, ¶ 694.

⁹²⁷ See **RL-121**, *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Final Award, 6 October 2023, ¶ 355.

⁹²⁸ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 698–699; **CL-103**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶ 826.

513. Colombia has continuously and diligently strengthened its security presence in and around the Mine. It has done so both in the context of security accords with the Claimant but also as a matter of course.⁹²⁹ Such police and military measures have occurred across presidential administrations and there has been relatively little variation between those operations enacted during the presidencies of Gustavo Petro and his predecessors. Following the incidents in May 2023 that killed two miners and injured several UNIMIL officers, the State deployed additional military forces to secure the Mine and also acted to confiscate illegal equipment. The Petro administration has seen a high degree of coordination between State security forces and CGI's security personnel, with regular meetings aimed at coordination.⁹³⁰
514. Additionally, both UNIMIL and the military have established a permanent presence to protect the Mine and from which specialized operative forces work to clear tunnels of illegal miners and restore the Mine for Claimant to reassert normal operations.⁹³¹ Continuous operations have been carried out in order to hinder illegal mining operations through the seizure of generators, mercury, engines, and stolen ore.⁹³² These operations are well documented and are well known to Claimant. For Claimant to suggest that Colombia is responsible for its losses is to ignore the resources which Colombia has dedicated at minimal cost to the Claimant and at significant risk to the wellbeing and lives of Colombian security personnel.
515. Colombia's policy against illegal mining and cartel activity is done in pursuit of stability and security but not at the unnecessary expense of human life. The measures it has adopted were designed to combat illegal mining in a sustainable manner and within the boundaries of Colombia's constitutional and international obligations, including the illegal miners' right to life and safety. Colombian authorities cannot lawfully treat illegal miners as enemy combatants, nor can Colombia be expected to wage a campaign of "blood and fire" as Zijin appears to wish it to do. This exercise of restraint is not dissimilar to the precautionary regulations which Colombia exercised in *Eco Oro*, precautionary measures which Canada agreed—if executed in good faith—would not require compensation even if they affected the value or viability of an investment.⁹³³ The Tribunal ought to be wary of any argument which would, in effect, render a State's legitimate decision to calibrate the use of its police powers in a manner consistent with human rights into an internationally wrongful act.⁹³⁴

⁹²⁹ Gallego First Witness Statement, ¶¶ 22-22; *see also* Roa First Witness Statement, ¶ 22.

⁹³⁰ Gallego First Witness Statement, ¶¶ 16, 31, 52; *see also* Roa First Witness Statement, ¶¶ 18-21.

⁹³¹ Gallego First Witness Statement, ¶¶ 33-37; *see also* Roa First Witness Statement, ¶¶ 6, 12, 20, 22.

⁹³² *See* Roa First Witness Statement, ¶¶ 12, 19-20, 22; *see also* **RER-2**, Negotient First Expert Report, ¶ 45.

⁹³³ **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Non-Disputing Party Submission of Canada, 27 February 2020, ¶ 11.

⁹³⁴ *See* **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Non-Disputing Party Submission of Canada, 27 February 2020, ¶ 23 ("The Parties' intention was never to limit the scope of legitimate policy objectives that States can pursue and that would not breach the investment obligations in the first place.").

516. Applying the *Tecmed* balancing test the Claimant is complaining about what it contends to be an omission to act in protection of its investment.
517. Colombia's public policy actions, like those of Nicaragua in *Riverside Coffee*, take place within a larger context of a conflict against the Clan del Golfo and other similar criminal groups which use illegal mining to fund their activities across Colombia and pose a security concern which has spanned several presidential administrations.⁹³⁵ The resources of the security forces such as UNIMIL have to be deployed in a strategic manner in which the Buriticá Mine is simply one consideration among many, albeit an important one as evidenced by the significant allocation of State resources to it.
518. Claimant fails to acknowledge that the State is expending significant resources both in Buriticá and across Colombia in order to lessen the threat posed by paramilitary gangs like the Clan del Golfo. Like the claimant in *Riverside Coffee*, the Claimant is dissatisfied that Colombia's response is not a heavy-handed military one which rains down "blood and fire" upon illegal miners. But those miners are Colombian citizens for whose safety the State is as responsible as it is for the safeguard of Claimant's investment.⁹³⁶ Claimant complains that anything less than a forceful military response serves to tacitly support the continued occupation of the Mine.⁹³⁷ This is not dissimilar to the situation in *Riverside Coffee* when the claimant accused Nicaragua of assisting the invaders of the Hacienda Santa Fé when it disarmed the hacienda's security guards, which the State presented as a mitigation of risk against further violent escalation.⁹³⁸
519. But it is such a forceful military response which would, rather, be likely to constitute a disproportionate response when Claimant has cut and deprioritized best international practices for community engagement, while enjoying continued access to the main ore body, and suffering little to no deleterious effect on its processing capacity, while continuing to maintain a profitable and viable investment. Colombia concurs with Nicaragua's argument in *Riverside Coffee* that States cannot be expected to be "obliged to deploy military scale force against its own citizens ... just to clear the land faster, where more peaceful options were available[.]"⁹³⁹

⁹³⁵ **RL-028**, *Riverside Coffee*, ¶¶ 276–277.

⁹³⁶ **Exhibit C-0394**, El Clan del Golfo va ganando la guerra subterránea del oro en Buriticá, La Silla Vacía, 10 March 2024, p. 13 ("We have greatly augmented our operational capacity in response to the problem which we have and Zijin's judicial harassment. We have undertaken significant due diligence, the problem is that that does not meet the expectations of the company: which is to undertake an operation waged in blood and fire.").

⁹³⁷ See e.g., Claimant's Updated Memorial, Section II.F ("Following the inauguration of President Gustavo Petro in August 2022, Colombia stopped providing meaningful assistance and protection to the Mine") and Section II.J ("The criminal occupation of the Mine that Colombia has tolerated has created an environmental emergency and caused Claimant considerable losses.").

⁹³⁸ **RL-028**, *Riverside Coffee*, ¶ 97.

⁹³⁹ **RL-028**, *Riverside Coffee*, ¶ 320.

d. Colombia did not expropriate Claimant's investment

520. Colombia has not expropriated, in whole or in part, Claimant's investment. Claimant retains full legal title to its concession rights, continues, as evident from ZGI's public statements, to operate the Mine profitably, and enjoys the economic benefits of its gold and silver production including through a streaming agreement.⁹⁴⁰ Colombia has not purported to cancel, nationalize, seize or otherwise assume control over Buriticá; nor can Claimant point to any indirect act commensurate to such a direct expropriation.⁹⁴¹ The best which Claimant can point to is a statement made by Gustavo Petro when he was standing for election where he proposed transferring mining titles to ASM miners.⁹⁴² This is paltry stuff – as this ostensible 'targeting' which Claimant holds up has (1) not come to any practical fruition and (2), in any case, was the statement of a then-private citizen and is not attributable to the State.⁹⁴³ Claimant retains the essential attributes of ownership⁹⁴⁴ and cannot point to any measure by which the ostensibly creeping expropriation of the Mine has been consummated.⁹⁴⁵

520.1 What sections of the Mine are inaccessible to Continental Gold are not the fault of the State but of other private actors. The illegal miners and the Clan del Golfo are private entities with no ties to the State and therefore their actions are not attributable to Colombia. Indeed, Colombia has consistently sought to minimize their control of portions of the Mine by persistent law enforcement presence via UNIMIL, through targeted security operations including Operations Hefesto and Esperanza, and general negotiations to peacefully and definitively resolve Clan del Golfo's negative influence on the Colombian body politic.

520.2 Moreover, Colombia has never offered or suggested, in such a manner as to create an investor expectation, any particular security status for the Mine. Claimant made its investment with full awareness of the presence of illegal miners in Buriticá as well as their connections to the Clan del Golfo and other criminal syndicates. Colombia has not promised or guaranteed any notion of absolute or ironclad protection.

⁹⁴⁰ See **CL-018**, *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, 16 September 2003, ¶ 20.22

⁹⁴¹ See **RL-036**, *Kappes*, ¶ 1143.

⁹⁴² Claimant's Updated Memorial, ¶ 129.

⁹⁴³ **CL-110**, ARSIWA, Ch. II, ¶¶ 2–3. Nor does it appear from what candidate Petro said that he intended to expropriate mining concessions. To the contrary, he suggested that "the state buy back the mining titles and hand them over to small and medium-sized miners from Antioquia." See Claimant's Updated Memorial, ¶ 129 (citing **Exhibit C-277**, Gustavo Petro's post on X, 6 November 2021).

⁹⁴⁴ See **RL-014**, *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, 21 November 2007, ¶ 244–247; See also **CL-139**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶ 113.

⁹⁴⁵ See **CL-033**, *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007, ¶ 263.

- 520.3 Colombia has consistently shown a commitment to deploy its national security forces both before and after the inauguration of President Petro in the safeguard of the Mine against third-party interference.
521. Claimant relies on *Wena Hotels v. Egypt*, *Houben v. Burundi*, and *Eureko v. Poland* as proof that failure to protect an investment from third parties can constitute an indirect expropriation.⁹⁴⁶ These cases differ significantly from the present arbitration. In *Wena Hotels*, the expropriative act was itself done by the Egyptian Hotels Company, a state-owned entity with the foreknowledge and tacit acknowledgement of actual government officials.⁹⁴⁷ It was in the context of “Egyptian officials ... [being] aware of EHC’s intentions to seize the hotels and [taking] no actions to prevent EHC from doing so[.]” that the tribunal attributed fault to the State.⁹⁴⁸ In the sense of *Corfu Channel*, it was easy there for the claimant to demonstrate that the State knew or must have known of a threat and failed to warn or prevent harm.⁹⁴⁹
522. Neither *Eureko* nor *Houben* helps Claimant’s case either. Claimant mischaracterizes the State actions in *Eureko v. Poland* and *Houben v. Burundi* as omissions. The State’s ‘omission’ in *Eureko v. Poland* is rather an affirmative action wherein the Minister of the State Treasury refused to abide by the State’s contractual commitment to the privatization process of PZU, Poland’s State-owned insurance company, by refusing to sign the approved IPO Permission.⁹⁵⁰ Similarly, in *Houben v. Burundi*, officials of the local municipality encouraged and participated in the actions of the third-party squatters which interfered with the investment through the affirmative issuance of certificates of permission.⁹⁵¹ This support on the municipal level, the tribunal found, was also acknowledged and supported at the ministerial level.⁹⁵² While Claimant might feel that Colombia’s actions in protecting the Mine have been inadequate, it would be disingenuous and inaccurate to suggest that an equivalent active refusal to protect the Mine, as in *Eureko*, or the complicity described in *Houben*, has occurred.

3. It Follows that Colombia’s Actions do not Constitute an Unlawful Indirect Expropriation

523. Claimant has failed to establish any of the cumulative requirements of Article 811 of the Treaty. It has not been able to show that Colombia has adopted any affirmative measure which has substantially deprived the Claimant of the value, use, or enjoyment of its

⁹⁴⁶ Claimant’s Updated Memorial, ¶¶ 322–326.

⁹⁴⁷ **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶¶ 34–36, 84.

⁹⁴⁸ **CL-013**, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶ 84.

⁹⁴⁹ **RL-027**, *Corfu Channel*, pp. 22–23.

⁹⁵⁰ **CL-023**, *Eureko B.V. v. Republic of Poland*, UNCITRAL, Partial Award, 19 August 2005, ¶¶ 152–157, 209.

⁹⁵¹ **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 173.

⁹⁵² **CL-070**, *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award, 12 January 2016, ¶ 174.

investment. Nor has Claimant been able legitimately to claim any reasonable investment-backed expectations stemming from an affirmative and specific representation made by the State. And it has not been able to prove that Colombia's legitimate and restrained use of its police powers was other than done in a non-discriminatory and good faith manner to safeguard a public interest.

524. Claimant has attempted to fashion an expropriation claim out of what is fundamentally a complaint about the sufficiency of Colombia's security effort. Accordingly, there is no expropriation, and the requirements of Article 811 are irrelevant.
525. Claimant argues that Colombia's actions were discriminatory, in that they were "based on actions that treat two similarly situated parties differently[.]" regardless of the State's intent.⁹⁵³ However, Claimant points to no allegedly different treatment of any other investor in Colombia that would contrast to the State's treatment of Buriticá. This is understandable as Claimant must know that any comparison to a similarly situated investor will show that Claimant's investment has benefitted from a comparatively high proportion of the State's efforts at curbing illegal mining. Indeed, Buriticá has received more attention than any mining project in Colombia in this regard.⁹⁵⁴
526. With respect to the requirement for due process, Claimant relies on *ADC v. Hungary* to establish that due process entails accordance with domestic and international law, and requires the existence of an actual and substantive legal mechanism for an investor to raise its claims.⁹⁵⁵ But *ADC v. Hungary* involved an expropriative piece of legislation which had the effect of depriving the claimant of its investment in an airport without any recourse to legal procedure.⁹⁵⁶ The measures present here entail no such expropriatory action by the State. Indeed, all affirmative actions of the State—including Operations Hades, Esperanza, and Hefesto—have been to protect Claimant's investment.⁹⁵⁷ The expropriative act which Claimant argues for is an inadequacy which it perceives in the State's security efforts. Claimant makes no showing as to how due process can be invoked over an alleged omission. The *amparo* proceedings, as examined *supra*,⁹⁵⁸ examine discrete instances of trespass within the mining title rather than triggering a 'right of review' over the adequacy of the security protection which is afforded to the Mine as a matter of constitutional and legal public service.

⁹⁵³ Claimant's Updated Memorial, ¶ 336.

⁹⁵⁴ Gallego First Witness Statement, ¶ 19, 25.

⁹⁵⁵ Claimant's Updated Memorial, ¶ 337 (citing **CL-030**, *ADC Affiliate Ltd. and ADC & ADMC Management Ltd. v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶ 432).

⁹⁵⁶ **CL-030**, *ADC Affiliate Ltd. and ADC & ADMC Management Ltd. v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶¶ 434–440.

⁹⁵⁷ See Section III.E.2.b.

⁹⁵⁸ See Section III.E.2.a.

C. Claimant's Fair and Equitable Treatment Claims Lack Merit

527. Claimant acknowledges in its Memorial that, under the Treaty's obligation of the Contracting States to provide Fair and Equitable Treatment ("FET") to investments and investors is limited to the Minimum Standard of Treatment ("MST") as defined by customary international law.⁹⁵⁹ Rather than attempt to elucidate this standard or its meaning, however, Claimant argues in a single paragraph that MST and the modern FET standard are indistinguishable.⁹⁶⁰ This interpretation, which fails entirely to give effect to the careful drafting of the Treaty by its Contracting States, fails on its face. Nevertheless, relying on it, Claimant argues that Colombia has violated its FET obligations by (1) frustrating Claimant's legitimate expectations, (2) treating Claimant arbitrarily and inconsistently, and (3) failing to enforce its own administrative and judicial decisions, amounting to a denial of justice. Each of these arguments also independently fails, as addressed below.

1. The Treaty Requires Colombia to Provide Fair and Equitable Treatment only to the Level of the Minimum Standard of Treatment Prescribed by Customary International Law

528. Article 805 of the Treaty contains a qualified FET provision, which provides as follows:

Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment [...] The concept[] of "fair and equitable treatment" [...] do[es] not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.⁹⁶¹

Footnote 2 of the first sentence of Article 805 applies equally to fair and equitable treatment as it does to full protection and security.⁹⁶²

529. As with its FPS claim, Claimant bears the burden to prove the development of customary international law via its assertion of *opinio juris* in support of its FET claim.⁹⁶³ Far from meeting this burden, however, Claimant relies on a handful of cases that arose under different treaties for their holdings on an alleged equivalency between the MST standard

⁹⁵⁹ See Claimant's Updated Memorial, ¶ 347. Compare with Claimant's approach to its FPS claim, in which Claimant fails to engage or acknowledge the applicable minimum standard of treatment under customary international law. Claimant's Updated Memorial, ¶¶ 290–305.

⁹⁶⁰ Claimant's Updated Memorial, ¶ 349.

⁹⁶¹ **RL-001**, FTA, Art. 805.

⁹⁶² See *supra* Section V.A.1. It is understood that the term "customary international law" refers to international custom, as evidence of a general practice accepted as law, in accordance with subparagraph 1(b) of Article 38 of the Statute of the International Court of Justice.

⁹⁶³ See *supra* Section V.A.1.

and “the FET standard.”⁹⁶⁴ Arbitral awards, however, do not constitute State practice and cannot create or prove customary international law.⁹⁶⁵

530. To be clear, Colombia does not submit that MST with respect to treatment of investors was frozen as it stood in 1927 when the International Court of Justice decided the *Neer* case, nor that it is static as of the signing of the Treaty. Due consideration must be given, however, in line with the language of the Treaty and the principles of treaty interpretation enshrined in the VCLT, to the Contracting Parties’ agreement to accord “minimum” protection. In that sense, there can be no question that the *Neer* case embodied the original formulation of MST: “the treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency.”⁹⁶⁶
531. As the tribunal recognized in *Cargill*, “[k]ey” to the adaptation of “the principle underlying the holding of the *Neer* arbitration to the more complicated and varied economic positions held by foreign nationals today...is that, even as more situations are addressed, the required severity of the conduct as held in *Neer* is maintained.”⁹⁶⁷ Further, the tribunal in *Lupaka Gold v. Peru* clarified, “For *Neer* and like cases, a significant factor in assessing potential international liability under customary international law is the gravity or seriousness of the alleged actions or failure to act.”⁹⁶⁸
532. Claimant asserts that the standard first articulated by the tribunal in *Waste Management II* with regard to Article 1105 of the NAFTA accurately identifies the high threshold of severity that has to be met for a breach of the FET obligation in the FTA.⁹⁶⁹ According to the *Waste Management II* standard, to violate the MST under customary international law, the offending State conduct must rise to the level of “conduct [that] is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety[.]”⁹⁷⁰ This standard was adopted by numerous other non-NAFTA tribunals analyzing FET clauses tethered to the MST under customary international law in different investment treaties whose drafting was influenced by the

⁹⁶⁴ Claimant’s Updated Memorial, ¶ 349, n. 647.

⁹⁶⁵ **RL-007**, *Red Eagle*, ¶ 292 (“Previous decisions by international courts and tribunals may, in some instances, provide helpful guidance in assessing the possible existence of a customary rule, but such decisions cannot themselves be determinative.”); **RL-051**, Robert Cryer, *Of Custom, Treaties, Scholars, and the Gavel: The Influence of the International Criminal Tribunals on the ICRC Customary Law Study* in JOURNAL OF CONFLICT AND SECURITY LAW, VOL. 11, NO. 2, 12 July 2006, p. 252.

⁹⁶⁶ **RL-052**, *Neer and Neer v. United Mexican States*, General Claims Commission US-Mexico, Decision, 15 October 1926, ¶ 4.

⁹⁶⁷ **RL-038**, *Cargill*, ¶ 284.

⁹⁶⁸ **CL-138**, *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award, 30 June 2025, ¶ 302.

⁹⁶⁹ Claimant’s Updated Memorial, ¶ 375.

⁹⁷⁰ **CL-020**, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 98.

arbitral jurisprudence on that same NAFTA provision.⁹⁷¹ The Canada – Colombia FTA is one such treaty⁹⁷² and tribunals interpreting the FTA have also cited the standard favorably.⁹⁷³

533. However, while *Waste Management II*'s widely adopted formulation of the MST standard may be indicative of the positive content of MST under customary international law,⁹⁷⁴ invoking this jurisprudence as authority is not sufficient for the Claimant's discharge of its burden to prove, using state practice and *opinio juris*, that the treatment it complains of falls below the treatment required by customary international law.⁹⁷⁵
534. Furthermore, Claimant's assertion that there is no substantive difference in the level of protection afforded by the MST standard and the 'unqualified' or 'stand-alone' FET standard is not supported by international investment law jurisprudence. To begin with, none of the awards that Claimant cites in support of its assertion—except for one NAFTA award,⁹⁷⁶ which is an outlier in NAFTA jurisprudence—was issued under an investment

⁹⁷¹ **RL-053**, Patrick Dumberby, NAFTA's FET Clause Is (Practically) Dead! Long Live Its Legacy!: An Empirical Survey of How Tribunals Have Interpreted FET Clauses Linked to the Minimum Standard of Treatment in EUROPEAN INVESTMENT LAW AND ARBITRATION REVIEW, VOL. 9, ISS. 2, November 2024, p. 306 ("[A]wards examining FET clauses expressly linked to MST have closely followed the NAFTA case law."); see e.g. **RL-054**, Antonio del Valle Ruiz et al. v. Kingdom of Spain, PCA Case No. 2019-17, Final Award, 13 March 2023, ¶ 517 (Mexico – Spain BIT (2006)); **RL-055**, Rand Investments Ltd. et al. v. Republic of Serbia, ICSID Case No. ARB/18/8, Award, 29 June 2023, ¶ 601 (Canada – Serbia BIT 2014)); **RL-056**, PACC Offshore Services Holdings Ltd. v. United Mexican States, ICSID Case No. UNCT/18/5, Award, 11 January 2022, ¶ 255 (Mexico – Singapore BIT (2009)).

⁹⁷² **RL-057**, Céline Lévesque, Influences on the Canadian FIPA model and the US Model BIT: NAFTA Chapter 11 and Beyond in THE CANADIAN YEARBOOK OF INTERNATIONAL LAW, 2006.

⁹⁷³ **RL-007**, *Red Eagle*, ¶ 287; **CL-103**, Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶ 918; **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, ¶ 707.

⁹⁷⁴ **RL-007**, *Red Eagle*, ¶ 292; **RL-038**, *Cargill*, ¶ 277 ("[T]he writings of scholars and the decisions of tribunals may serve as evidence of custom. It is important to emphasize, however, as Mexico does in this instance, that the awards of international tribunals do not create customary international law but rather, at most, reflect customary international law. Moreover, in both the case of scholarly writings and arbitral decisions, the evidentiary weight to be afforded such sources is greater if the conclusions therein are supported by evidence and analysis of custom.")

⁹⁷⁵ See **RL-058**, *Mesa Power Group LLC v. Government of Canada*, PCA Case No. 2012-17, Government of Canada Observations on the Award on Jurisdiction and Merits in William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada, ¶ 17.

⁹⁷⁶ While the body text of NAFTA Art. 1105 does not refer to MST under customary international law, Contracting Parties to the NAFTA have clarified that "Article 1105(1) prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party" in **CL-014**, North American Free Trade Agreement: Notes of Interpretation of Certain Chapter 11 Provisions, NAFTA Free Trade Commission, 31 July 2001, which is binding on NAFTA tribunals.

treaty that incorporated an FET clause tethered to the MST under customary international law such as the FET clause here.⁹⁷⁷

535. In the abovementioned exception—the award in *Bilcon v. Canada*—the tribunal interpreted Article 1105 of the NAFTA to include a MST standard with broader content than any other NAFTA tribunal had ever recognized, and in doing so it improperly relied solely on decisions of investment tribunals rather than on evidence of state practice and *opinio juris* to conclude that the “international minimum standard has evolved over the years towards greater protection for investors.”⁹⁷⁸ The reasoning of the *Bilcon* tribunal was severely criticized by all Contracting Parties of the NAFTA in a subsequent arbitration.⁹⁷⁹ But even the tribunal in *Bilcon* agreed that a high threshold of gravity must be met for a violation of Article 1105 to occur.
536. In addition, Claimant’s assertion of a ‘convergence’ between the MST and FET standards is contradicted by recent research into investment tribunals’ interpretation of the FET provisions in investment treaties. In a comprehensive survey of all publicly available awards and decisions dealing with FET provisions issued by investment tribunals roughly between 1997 and 2023 (*i.e.* 279 awards) published in 2024, Prof. Patrick Dumberry of the University of Ottawa found that

empirical analysis of awards does not support the ‘convergence’ theory whereby the standard of protection under an FET treaty clause is said to be the same as under the MST. In fact, the way tribunals have generally assessed the content of the FET standard

⁹⁷⁷ See Claimant’s Updated Memorial, ¶ 349 n.647 (citing **CL-075**, *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (Canada – Venezuela BIT 1996); **CL-029**, *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006 (US – Argentina BIT 1991); **CL-039**, *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 (US – Ecuador BIT 1993); **CL-037**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (UK – Tanzania BIT 1994); **CL-038**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 (Turkey – Kazakhstan BIT 1992); **CL-078**, *Valores Mundiales, S.L. and Consorcio Andino, S.L. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/13/11, Award, 25 July 2017 (Spain – Venezuela BIT 1995)). Note that all of the cited awards were issued under earlier generation investment treaties concluded in the 1990s.

⁹⁷⁸ **CL-064**, *William Ralph Clayton et al. v. Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, ¶ 435. But note that even the tribunal in *Bilcon* agreed that a high threshold of gravity must be met for a violation of Article 1105 to occur. See **CL-064**, *William Ralph Clayton et al. v. Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, ¶ 441.

⁹⁷⁹ **RL-058**, *Mesa Power Group LLC v. Government of Canada*, PCA Case No. 2012-17, Government of Canada Observations on the Award on Jurisdiction and Merits in William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada, 14 May 2015, ¶ 17; **RL-060a**, *Mesa Power Group LLC v. Government of Canada*, PCA Case No. 2012-17, Second Submission of the United States of America, 12 June 2015, ¶¶ 8 *et seq.*; **RL-060b**, *Mesa Power Group LLC v. Government of Canada*, PCA Case No. 2012-17, Second Submission of Mexico to NAFTA Article 1128, 25 July 2014, ¶¶ 9–11.

(broad or narrow) and matters of liability very much depends on the specific type of FET clause they had to interpret.⁹⁸⁰

537. In a presentation Prof. Dumberry made at a meeting under Track 2 of the work programme on the *Future of Investment Treaties* hosted by the OECD Investment Committee in which he reported on the findings of the same research, Prof. Dumberry summarized his conclusions on the interpretation by tribunals of FET clauses linked to the MST or customary international law⁹⁸¹ as follows:

All tribunals examining FET clauses expressly linked to the MST (or custom) have followed the intention of the contracting parties and have applied a strict standard. I have found no award interpreting this type of clause as a stand-alone “autonomous” FET clause.

Interpreting the clause in accordance with the MST leads tribunals to define the content of the FET standard narrowly. For instance, the vast majority have not considered legitimate expectations to be a stand-alone element, but rather as a factor to be taken into account when assessing other elements. They have also systematically applied a high threshold of severity to find a breach.

[...]

At the end of the day, an explicit reference to the MST (or custom) in an FET clause offers much better protection [for States] compared to other types of clauses examined [in the survey.] A tribunal interpreting this type of clause is significantly less likely to adopt a broad interpretation and to find liability.⁹⁸²

⁹⁸⁰ **RL-059**, Patrick Dumberry, *An Empirical Study of the Fair and Equitable Treatment Standard Clause: How Tribunals Have Examined its Relationship with the Minimum Standard*, 2024, pp. 169– 72.

⁹⁸¹ In his research, Dumberry examines FET clauses in investment treaties by classifying them into three categories: (1) “Clauses containing an unqualified formulation of the FET obligation, i.e., a stand-alone obligation to provide FET without any reference to international law or any other standards;” (2) “[c]lauses containing an explicit reference to the standard existing under ‘international law’” which includes two types, viz. (a) “those providing for treatment ‘in accordance with international law’” and (b) those “indicating that the treatment should be ‘no less than that required under international law’”; and (3) “clauses where the FET obligation is expressly linked to the MST under custom.” Article 805 of the FTA falls under the third category. **RL-059**, Patrick Dumberry, *AN EMPIRICAL STUDY OF THE FAIR AND EQUITABLE TREATMENT STANDARD CLAUSE: HOW TRIBUNALS HAVE EXAMINED ITS RELATIONSHIP WITH THE MINIMUM STANDARD*, 2024, p. 2. Dumberry found 42 awards in which the tribunal analyzed FET clauses of the third category. **RL-059**, Patrick Dumberry, *AN EMPIRICAL STUDY OF THE FAIR AND EQUITABLE TREATMENT STANDARD CLAUSE: HOW TRIBUNALS HAVE EXAMINED ITS RELATIONSHIP WITH THE MINIMUM STANDARD*, 2024, p. 124.

⁹⁸² **RL-061**, Patrick Dumberry, *The cost of inaction: arbitral practice in respect of earlier generation FET clauses and current approaches to FET clauses*, *The Future of Investment Treaties* (Track 2), 7 November 2023, pp. 19– 20.

538. Accordingly, Claimant must demonstrate, by evidence of state practice and *opinio juris*, and not by solely relying on arbitral case law, that its claimed interests with regard to the frustration of legitimate expectations, arbitrary treatment, and denial of justice are in fact protected under the MST as it exists in customary international law, and that Colombia’s alleged failure to protect those interests are deficient to the level required under customary international law so as to constitute a violation of the MST.
539. If Claimant asserts, as it does, that the content of MST under customary international law has evolved since *Neer*, Claimant must demonstrate *how* it has evolved. If Claimant contends, as it does, that it has evolved towards recognizing greater protection to investors in the form of protecting a wider range of interests such as the legitimate expectations of the investor as a stand-alone component of the MST, Claimant must provide sufficient evidence of state practice and *opinio juris* to support that conclusion. But as the tribunal in *Cargill* acknowledged in the context of Article 1105 of the NAFTA,

[T]he proof of change in a custom is not an easy matter to establish. However, the burden of doing so falls clearly on Claimant. If Claimant does not provide the Tribunal with the proof of such evolution, it is not the place of the Tribunal to assume this task. Rather the Tribunal, in such an instance, should hold that Claimant fails to establish the particular standard asserted.⁹⁸³

2. Claimant Has Failed to Establish a Composite Act

540. Unable to identify a singular event that could constitute a breach of the MST, Claimant attempts to aggregate sufficient supposedly harmful acts that, as a composite act, would constitute a breach of the standard. Claimant fails to establish this.
541. Claimant cites Article 15 of the ILC Articles on State Responsibility (“**ARSIWA**”) and a number of investment tribunal awards in support of its proposition that the FET obligation of Article 805 of the Treaty may be breached by the cumulative effect of a series of State actions or omissions that may not be wrongful separately. Claimant uses the term “composite act” to define this notion. Claimant’s argument is deficient in two respects.
542. First, the application of Article 15 of the ARSIWA to an FET obligation linked to the MST under customary international law is questionable at best. It is widely recognized that Article 15 was drafted with “composite obligations” as its subject matter.⁹⁸⁴

⁹⁸³ **RL-038**, *Cargill*, ¶ 273.

⁹⁸⁴ See **RL-128**, James Crawford, THE INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES, 2003, Commentary to Article 15, Section 2, p. 141 (“Composite acts covered by article 15 are limited to breaches of obligations which concern some aggregate of conduct and not individual acts as such”); Cf. **CL-101**, *Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania*, ICSID Case No. ARB/15/31, Award, 8 March 2024, ¶ 825 (“While it is true that Article 15 cites specific, non-exhaustive examples such as genocide, apartheid, or crimes against humanity, and therefore should not be considered limited to these types of cases, it should be noted that certain principles derived from

Claimant does not allege that FET under Article 805 of the FTA constitutes a “composite obligation” in the sense related to Article 15.

543. Second, none of the cases that Claimant cites in support of its assertion that Article 805 of the FTA may be violated by the cumulative effect of discrete State actions or omissions that are not wrongful under the FTA individually—was decided under an investment treaty that incorporates an FET clause that is linked to the MST under customary international law.⁹⁸⁵ As explained above, the burden is on Claimant to prove the content of the MST under customary international law by demonstrating relevant state practice and *opinio juris*.
544. Nevertheless, *assuming* Article 15 of the ILC Articles were relevant, under that rule “the number of actions or omissions which must occur to constitute a breach of the obligation, is ... determined by the formulation and purpose of the primary rule.”⁹⁸⁶ Claimant then would have the burden to demonstrate the formulation and purpose of the primary rule (i.e. the MST under customary international law) with evidence of state practice and *opinio juris* to establish that the FET obligation in Article 805 of the FTA can be breached through an aggregation of constituent acts and omissions that are not individually wrongful.
545. Accordingly, Claimant has the burden of showing both (i) whether the MST can be violated by a series of State actions or omissions and (ii), if so, what the critical level of injury is that would make an accumulation of State acts or omissions tip into the territory of an internationally wrongful act under that standard. Claimant makes no such showing.
546. Tribunals that have found that an FET obligation may be breached by the cumulative effect of an aggregation of State actions or omissions have also recognized that not just any collection of individual acts or omissions may be aggregated in this way: there must be some level of relevance and interconnection between those actions for them to be treated as an internationally wrongful composite act.
547. In a recent and reasoned attempt to formulate the necessary interconnection, the tribunal in *Gabriel Resources v. Romania*, following the approaches taken by the tribunals in *Tatneft v. Ukraine* and *Rompetrol v. Romania* arbitrations,⁹⁸⁷ determined that, in order to be treated as a composite act constituting an internationally wrongful act,

this provision apply specifically to these examples, which are referred to as ‘composite obligations.[’] For example, genocide is a composite obligation that requires a systemic policy or practice, with the first act as such being unlawful or illegal, thus justifying the backdating of the violation to the first unlawful act. The situation in the investor-State context is certainly different. FET is not a composite obligation”).

⁹⁸⁵ See Claimant’s Updated Memorial, ¶¶ 352–353 and n. 652.

⁹⁸⁶ **RL-128**, James Crawford, The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries, 2003, Commentary to Article 15, Section 8, p. 143.

⁹⁸⁷ **CL-101**, *Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania*, ICSID Case No. ARB/15/31, Award, 8 March 2024, ¶ 827 (citing **RL-129**, *OAO “Tatneft” v. Ukraine (I)*, PCA Case No. 2008-8, Award on

[the series of acts or omissions complained of must be] clearly related, connected by an underlying pattern or purpose such that they are collectively characterized as wrongful. While pattern or purpose does not necessarily require that the conduct at issue be "*carried out in an organized and deliberate way*" or with malicious intent, some sort of proof of motive or purpose is called for.⁹⁸⁸

548. Claimant makes no serious effort to prove the existence of a “pattern or purpose” that would provide the interconnection between the individual acts and omissions that it alleges constitute a composite act. On the contrary, Claimant generally alleges that what connects the acts is a general desire of the current administration to deprive Claimant’s investment of protection, fueled by an ideologically driven animosity toward large scale mining by foreign mining corporations.
549. However, as is shown *supra*, there is no evidence that the State’s treatment of Claimant has changed between previous presidential administrations and the Petro administration, which renders Claimant’s alleged “pattern or purpose” not credible. Without such a connecting factor, Colombia’s acts or omissions that do not rise to the level of an international wrong by themselves cannot be aggregated to an internationally wrongful composite act under the FTA.
550. Accordingly, Claimant’s assertion that the FET obligation incorporated in Article 805 of the FTA was breached by a composite act should be dismissed for lack of the necessary evidentiary basis.

3. Colombia Has Not Frustrated Claimant’s Legitimate Expectations

551. Claimant’s legitimate expectations argument attempts to hold Colombia to a measure of protection not provided by the Treaty. That notwithstanding, even if the autonomous FET concept of legitimate expectations did apply, Claimant has not proven that it had any legitimate expectations of guarantees or assurances regarding its investment or that Colombia’s actions aimed at protection of peace and security were unreasonable.

the Merits, 29 July 2014, ¶ 330 and **CL-059**, *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013, ¶ 271).

⁹⁸⁸ **CL-101**, *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania*, ICSID Case No. ARB/15/31, Award, 8 March 2024, ¶ 828 (citing **CL-059**, *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013, ¶ 273) (emphasis added). The phrase “*carried out in an organized and deliberate way*” is from James Crawford’s commentary to Article 40 of the ILC Articles, defining the term “systematic” used in that Article.

a. The minimum standard of treatment does not include protection of an investor's legitimate expectations

552. Claimant once again fails to acknowledge its burden to prove the content of the Treaty's qualified FET provision,⁹⁸⁹ instead cursorily asserting that "[t]he MST and FET standard protect an investor from State measures that frustrate legitimate expectations on which the investor relied when making, expanding, or developing its investment."⁹⁹⁰ In support of this assertion, Claimant predominantly relies on arbitral awards under different treaties containing non-qualified FET provisions for their treatment of the legitimate expectations standard.⁹⁹¹ For all of the reasons explained above, these cannot constitute *opinio juris* and are irrelevant to the development of what the customary international law standard of fair and equitable treatment would encompass.⁹⁹²
553. The only cases on which Claimant relies that could help advance its theory, then, are those that arose under the NAFTA and the present Treaty, each of which contains a qualified FET provision. In *Thunderbird v. Mexico*, the tribunal did observe that in the context of the minimum standard of treatment as prescribed by NAFTA, "the concept of 'legitimate expectations' relates...to a situation where a Contracting Party's conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by the NAFTA Party to honour those expectations could cause the investor (or investment) to suffer damages."⁹⁹³ That tribunal declined, however, to articulate the threshold for what conduct by the State could create such expectations, because the tribunal found that the facts before it—which involved assurances made to the claimant in a formal response by Mexico's Ministry of the Interior

⁹⁸⁹ See *supra* Sections V.A.1 and V.A.2.

⁹⁹⁰ Claimant's Updated Memorial, ¶ 354.

⁹⁹¹ See Claimant's Updated Memorial, ¶ 354 (citing **CL-016**, *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶¶ 154–155 (note that the tribunal in that case specifically explained that it was engaging in an autonomous interpretation of the FET provision of the Spain-Mexico BIT); **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 287); ¶ 356 (citing **CL-049**, *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010, ¶ 117 and **CL-088**, *Etrak İnşaat Taahut ve Ticaret Anonim Şirketi v. State of Libya*, ICC Case No. 22236/ZF/AYZ, Final Award, 22 July 2019, ¶ 334); ¶ 357 (relying on **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 285; **CL-045**, *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010, ¶ 222; **CL-074**, *Murphy Exploration & Production Company-International v. Republic of Ecuador*, PCA Case No. 2012-16, Partial Final Award, 6 May 2016, ¶ 248).

⁹⁹² See *supra* Sections V.A.1 and V.A.2.

⁹⁹³ **CL-026**, *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Award, 26 January 2006, ¶ 147.

that the government could not “prohibit [the] use of” the investor’s gaming machines⁹⁹⁴—did not create any legitimate expectations on which the investor could reasonably rely.⁹⁹⁵

554. The tribunals in *Waste Management II* and *Mobil Investments v. Canada* expanded on this standard. In *Waste Management II*, building on the earlier decisions in *SD Myers*, *Mondev*, *ADF*, and *Loewen*, the tribunal found that MST could be infringed by “conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety [I]n applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.”⁹⁹⁶ Far from declaring the investor’s expectations an autonomous breach of the MST, the *Waste Management II* tribunal considered expectations relevant in the assessment of the traditional MST standard of whether the State’s conduct is arbitrary or offends judicial propriety.

555. In *Mobil Investments*, the tribunal clarified how such expectations are relevant to the interpretation of whether the State’s conduct has breached the MST:

(1) the minimum standard of treatment guaranteed by Article 1105 is that which is reflected in customary international law on the treatment of aliens;

(2) the fair and equitable treatment standard in customary international law will be infringed by conduct attributable to a NAFTA Party and harmful to a claimant that is arbitrary, grossly unfair, unjust or idiosyncratic, or is discriminatory and exposes a claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety.

(3) in determining whether that standard has been violated it will be a relevant factor if the treatment is made against the background of

(i) clear and explicit representations made by or attributable to the NAFTA host State in order to induce the investment, and

(ii) were, by reference to an objective standard, reasonably relied on by the investor; and

⁹⁹⁴ See **CL-026**, *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Award, 26 January 2006, ¶ 55.

⁹⁹⁵ **CL-026**, *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Award, 26 January 2006, ¶ 148.

⁹⁹⁶ **CL-020**, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 98.

(iii) were subsequently repudiated by the NAFTA host State.⁹⁹⁷

The tribunal went on: “This applicable standard does not require a State to maintain a stable legal and business environment for investments. [...] In a complex international and domestic environment, there is nothing in Article 1105 to prevent a public authority from changing the regulatory environment to take account of new policies and needs, even if some of those changes may have far-reaching consequences and effects, and even if they impose significant additional burdens on an investor.”⁹⁹⁸

556. What thus emerges from the NAFTA context regarding the scope of the MST is that “the host State’s failure to respect an investor’s legitimate expectations does *not* itself constitute a breach of the FET standard under Article 1105, but is rather a ‘factor’ to be taken into account when assessing whether or not *other well-established* elements of the standard have been breached.”⁹⁹⁹
557. In an attempt to get around this, Claimant relies on the award in *Eco Oro* for its finding, by majority, that Article 805 of the Colombia-Canada FTA “protects an investor’s legitimate expectations.” On the basis, the majority in *Eco Oro* found that Colombia’s (i) refusal to allow mining exploitation activities to take place in the claimant’s concession area, (ii) its inconsistent approach to the delimitation of the páramo, and (iii) its ultimate failure to delimit the páramo all frustrated *Eco Oro*’s legitimate expectations.¹⁰⁰⁰ It is curious—but no surprise—that Claimant focuses its enquiry on only *Eco Oro* and its majority finding to attempt to suggest a sort of *jurisprudence constante* under the Treaty.
558. But the award in *Eco Oro* is an outlier. The majority’s apparent characterization of the protection of legitimate expectations as a stand-alone obligation under the MST is not shared by the overwhelming majority of NAFTA and non-NAFTA tribunals that have interpreted FET clauses linked to the MST under customary international law,¹⁰⁰¹ or, as

⁹⁹⁷ **CL-053**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, ¶ 152.

⁹⁹⁸ **CL-053**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, ¶ 153 (emphasis added).

⁹⁹⁹ **RL-062**, Patrick Dumberry, The Emergence of a Consistent Case Law: How NAFTA Tribunals Have Interpreted the Fair and Equitable Treatment Standard, Kluwer Arbitration Blog, 30 October 2013 (emphasis in original).

¹⁰⁰⁰ See Claimant’s Updated Memorial, ¶ 355.

¹⁰⁰¹ See **RL-059**, Patrick Dumberry, An Empirical Study of the Fair and Equitable Treatment Standard Clause: How Tribunals Have Examined Its Relationship with the Minimum Standard, 2024, pp. 153–154 (“[I]nterpreting the clause in accordance with the MST leads tribunals to define the content of the FET standard narrowly. For instance, the vast majority of tribunals have not considered legitimate expectations to be a stand-alone element, but rather as a factor to be taken into account when assessing other elements. I have only found three exceptions outside NAFTA [the awards for **RL-067**, *The Lopez-Goyne Family Trust et al. v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Separate Concurring Opinion, 22 February 2023; **RL-008**, *IC Power Ltd. and Kenon Holdings Ltd. v. Republic of Peru*, ICSID Case No. ARB/19/19, Award, 3 October 2023; and **CL-125**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Award on Damages,

discussed further below, by the other two tribunals constituted under the present Treaty that rendered awards on the scope of its FET provision. The dissenting arbitrator in *Eco Oro*, Prof. Philippe Sands, pointed out that

[legitimate expectations’] role in the context of an MST inquiry is not yet established ... First, as acknowledged by the Majority, in the context of the MST the failure to observe a claimant’s legitimate expectations is just one factor a tribunal may take into account in determining whether there has been a breach of the MST.¹⁰⁰²

Citing the awards in *Glamis Gold*,¹⁰⁰³ *Cargill*,¹⁰⁰⁴ and *Mobil*,¹⁰⁰⁵ Prof. Sands noted that, to the extent that legitimate expectations had any place in the determination of a MST violation,

the limited jurisprudence that exists (in the NAFTA context) indicates inter alia that a claimant must be able to establish a “quasi-contractual” relationship or expectation, in the sense that the state must have made “explicit” or “specific” encouragements or representations on which the investor has placed reliance.¹⁰⁰⁶

559. Prof. Sands argued that the majority in *Eco Oro* found that the claimant had legitimate expectations protected by the MST without duly analyzing the elements mentioned above, and thereby had “in effect conflated the FET and MST.”¹⁰⁰⁷
560. And, in *Eco Oro*, even the majority did not divorce the supposed obligation to protect legitimate expectations from the high level of severity required for a violation of the MST under customary international law. Echoing the standard enunciated in *Waste Management II*, the majority in *Eco Oro* acknowledged that the frustration of legitimate expectations

must engender a sense of outrage or shock, amount to gross unfairness or manifest arbitrariness falling below acceptable

15 July 2024]. In any event, almost all tribunals have systematically followed NAFTA case law and have applied a high threshold of severity to find a breach.”).

¹⁰⁰² **RL-064b**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Partial Dissent of Professor Philippe Sands QC, 9 September 2021, ¶¶ 12–13.

¹⁰⁰³ **RL-065**, *Glamis Gold Ltd. v. United States of America*, UNCITRAL, Award, 8 June 2009, ¶ 766.

¹⁰⁰⁴ **RL-038**, *Cargill*, ¶ 290.

¹⁰⁰⁵ **CL-053**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, ¶ 152.

¹⁰⁰⁶ **RL-064b**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Partial Dissent of Professor Philippe Sands QC, 9 September 2021, ¶ 14.

¹⁰⁰⁷ **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Partial Dissent of Professor Philippe Sands QC, 9 September 2021, ¶¶ 14–18.

standards, or there must have been a lack of due process which has led to an outcome which offends a sense of judicial propriety. The treatment complained of must therefore be unacceptable from an international perspective whilst set against the high measure of deference that international law extends to States to regulate matters within their own borders.¹⁰⁰⁸

In doing so, even the *Eco Oro* majority anchored the supposed standalone obligation to protect legitimate expectations to the general obligation under the MST not to treat an alien arbitrarily or grossly unfairly.¹⁰⁰⁹ Thus, as echoed by Prof. Sands in his dissent, even if the *Eco Oro* majority view prevailed, the “claimant must still show that the failure to observe its legitimate expectations was, in the circumstances, serious enough to amount to egregious and shocking behaviour.”¹⁰¹⁰

561. And in both subsequent arbitrations under the Treaty that reached awards opining on the scope of its FET provision, the tribunals declined to adopt the approach of the *Eco Oro* majority and refused to recognize a stand-alone obligation to protect legitimate expectations under the MST. The majority of the tribunal in the *Red Eagle* arbitration (including Prof. Sands, this time in the majority) found that “[l]egitimate expectations do not . . . receive any privileged treatment under the MST.”¹⁰¹¹ Thus, while “the MST may be breached where the claimant demonstrates the existence of ‘at least a quasi-contractual relationship between the State and the investor, whereby the State has purposely and specifically induced the investment, [...] the mere existence of such a relationship does not necessarily or as such mean that there has been a breach of the MST.’”¹⁰¹²
562. Likewise, the tribunal in *Montauk Metals* recognized that, to the extent that legitimate expectations are protected under the MST, to find a violation on this basis it must be shown that “(1) clear and explicit representations were made by or attributable to [the State] in order to induce the investment, (2) the representations were reasonably relied upon by the Claimants; and (3) these representations were subsequently repudiated by

¹⁰⁰⁸ **RL-064b**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 755.

¹⁰⁰⁹ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 752 (“Article 805 encapsulates the bona fide obligation upon a State and, as such, constitutes a guarantee to investors that whilst regulatory changes may be made, any such changes will be consistent with the requirements of FET under customary international law and not made in an arbitrary or otherwise egregious fashion. The regulatory changes effected by Colombia will therefore amount to a breach of Article 805 if Colombia has acted in a way which is “arbitrary or grossly unfair or discriminatory, or otherwise inconsistent with the customary international law standard” always bearing in mind how these terms are understood in the context of customary international law.”) (citing **CL-053**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, ¶ 153).

¹⁰¹⁰ **RL-064b**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Partial Dissent of Professor Philippe Sands QC, 9 September 2021, ¶ 13.

¹⁰¹¹ **RL-007**, *Red Eagle*, ¶ 293 (citing **RL-065**, *Glamis Gold Ltd. v. United States of America*, UNCITRAL, Award, 8 June 2009, ¶ 766)

¹⁰¹² **RL-007**, *Red Eagle*, ¶ 294.

[the State].”¹⁰¹³ The tribunal noted that Canada contended in its non-disputing party submission that “there is no general obligation under the customary international law minimum standard of treatment, and therefore under Article 805 of the FTA, to protect an investor’s legitimate expectations.”¹⁰¹⁴

563. Notably, none of the tribunals in *Eco Oro*, *Red Eagle*, or *Montauk Metals* found that the qualified FET provision of the Treaty required a State to maintain a stable legal framework, as Claimant suggests.¹⁰¹⁵ To the contrary, even the majority in *Eco Oro* explicitly found that Colombia was not “under an obligation to guarantee that the domestic regulatory environment would remain stable. The Tribunal [...] accepts that a State cannot be rigidly bound to those rules and regulations in force at the time the investment is made.”¹⁰¹⁶ In *Red Eagle*, the tribunal likewise explicitly found that the MST did not include “general expectations of stability and consistency which are not supported by any specific representation or promise on the part of the Respondent.”¹⁰¹⁷ Nor is Claimant saved by its reliance on the Treaty’s preamble;¹⁰¹⁸ as Prof. Sands explained, “[i]t is [...] widely recognized that a preambular aspiration cannot give rise to a hard edged or actionable obligation.”¹⁰¹⁹
564. Accordingly, Claimant has failed to meet its burden of proving that the protection of legitimate expectations is a standalone part of the MST standard under customary international law.

b. Claimant points to no security guarantees or assurances regarding its investment that Colombia repudiated

565. Claimant has no legal basis to assert that Colombia owed a duty under the MST to maintain a stable legal and business environment or uphold any supposed expectations held by Claimant except to the extent those were clear and explicit representations that

¹⁰¹³ **CL-103**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶ 924.

¹⁰¹⁴ **CL-103**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024, ¶ 925.

¹⁰¹⁵ See Claimant’s Updated Memorial, ¶ 359 (citing **CL-049**, *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010, ¶ 333; **CL-048**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶ 285). Both of those cases arose under treaties containing non-qualified FET provisions and have no bearing on the content of customary international law.

¹⁰¹⁶ **RL-064a**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, ¶ 749.

¹⁰¹⁷ **RL-007**, *Red Eagle*, ¶¶ 295–296 (noting that the claimant had relied heavily on *Tecmed* and its statement that a State’s failure to fulfil expectations of legal stability and consistency would amount to a breach of the customary MST (i) “is now rarely (if ever) followed by tribunals”, (ii) “has been strongly criticized in explicit terms by the annulment committee in *MTD v. Chile*”, and (iii) “is not one on which reliance may be placed.”).

¹⁰¹⁸ See Claimant’s Updated Memorial, ¶ 360.

¹⁰¹⁹ **RL-064c**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Partial Dissent of Professor Philippe Sands QC, 9 September 2021, ¶ 20.

specifically induced Claimant to invest. This necessarily means that Claimant can only rely on such representations as were made at the time that it made its investment, and only insofar as those were specifically relied on by the investor and were subsequently repudiated by Colombia, such that Claimant's expectations have not been upheld. Claimant fails to identify any such representations or promises.

566. Claimant's Updated Memorial broadly claims reliance on two major categories of commitments: (i) "exclusive rights" and "specific[] commit[ments] to support the Buriticá Project, including with respect to security measures;"¹⁰²⁰ and (ii) "Colombia's public efforts and promises to promote investments in its mining sector through combatting organized crime and illegal miners."¹⁰²¹ It bears repeating: legitimate expectations pursuant to the MST must be examined at the time the investment is made.¹⁰²² Although Claimant tacitly acknowledges this, arguing that the commitments it claims gave rise to its expectations "induced Claimant's investments in the country's mining sector generally and in the Project specifically,"¹⁰²³ Claimant makes almost no effort to explain how the promises on which it purports to have relied in fact induced it to invest.¹⁰²⁴ Likewise, the MST does not require a State to maintain a "stable" legal environment in the sense that its laws may never change, but instead requires the investor to prove the existence of a quasi-contractual relationship created by a specific promise made by the State. And finally, Claimant must also prove, for each specific quasi-contractual promise on which it purports to have relied, how Colombia has repudiated that promise.

567. With respect to Colombia's alleged promises to exclusivity, support, and protection:

567.1 Claimant first relies on the Concession Agreement itself, which was signed by Claimant's subsidiary in 2011, which Claimant argues gave it the "exclusive rights" to explore and mine the minerals in the concession area.¹⁰²⁵ As is discussed further below, as a matter of Colombian law, minerals *in situ* are the exclusive property of the State, and what the concession grants is an exclusive right to the concessionaire to mine them only for the period of the concession.¹⁰²⁶

¹⁰²⁰ Claimant's Updated Memorial, ¶ 364.

¹⁰²¹ Claimant's Updated Memorial, ¶ 365.

¹⁰²² **CL-042**, *EDF (Services) Ltd. v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 219.

¹⁰²³ Claimant's Updated Memorial, ¶ 363.

¹⁰²⁴ Claimant also fails to specify when it is supposed to have invested in Colombia. On Claimant's own case, Claimant Continental Gold International was formed by Continental Gold Limited Bermuda in June 2015 through a corporate reorganization called a "scheme of arrangement" which "provide[d] access to potential new Canadian investors and indexes." Claimant's Updated Memorial, ¶¶ 75–76; *see also supra* Section II.B.3 **Error! Reference source not found.** The Claimant itself thus appears to have been formed to induce further funds investing into the Project, but Continental Colombia and Continental Gold Bermuda had been operating in Buriticá for years before they formed Claimant.

¹⁰²⁵ Claimant's Updated Memorial, ¶ 364(a).

¹⁰²⁶ *See infra* Section VI.C.2.

Nevertheless, Claimant fails to show how Colombia has repudiated its obligation in the sense of giving rise to outrage or shock.

567.2 Claimant next relies on the Buriticá Project’s designation as a Project of National and Strategic Interest.”¹⁰²⁷ First, designating a project as one of national interest does not create a quasi-contractual relationship such that it could form any foundation for legitimate expectations under the MST standard. Second, Claimant fails to show how any element of that alleged promise has not been fulfilled: as Claimant acknowledges, that designation entailed support in the form of “expedited, centralized permitting and processing.”¹⁰²⁸ The Project is fully permitted; in fact, Claimant’s third category of alleged promises is its approval of all necessary permits and licenses. And as Colombia explained *supra*, Grupo PIN within ANM assumed oversight responsibility for the Project in March 2023, which has led to bi-annual site visits and close cooperation with ANM officials on site.¹⁰²⁹

567.3 Third, Claimant relies on Colombia’s support of the Project via its approval of needed permits and licenses.¹⁰³⁰ Claimant cites no authority for how a permit within a concession could create a legitimate expectation. Further, even to the extent the State’s approval of documents such as the PTO could create a quasi-contractual relationship, the existence of that relationship does not prove the existence of a Treaty breach.¹⁰³¹ Claimant does not allege a single Treaty breach on the part of Colombia arising from its licensing or its PTO, apart from a nebulous allegation that Colombia has “failed in its promise to support the Buriticá Project.”¹⁰³² That allegation does not carry its burden.

567.4 Claimant next relies on the joint Security and Police Collaboration Agreements signed between Continental Colombia, the Colombian Ministry of Defense, and National Police.¹⁰³³ First, to the extent that Claimant relies on any Security or Police Collaboration Agreements signed after 2015 or renewals done after 2015, those agreements and renewals cannot have provided specific commitments that induced Claimant to invest.¹⁰³⁴ Second, while Claimant cites the provisions of those agreements regarding “necessary protection” and cooperation and

¹⁰²⁷ Claimant’s Updated Memorial, ¶ 364(b).

¹⁰²⁸ Claimant’s Updated Memorial, ¶ 364(b).

¹⁰²⁹ *See supra* Section III.E.3.

¹⁰³⁰ Claimant’s Updated Memorial, ¶ 364(c).

¹⁰³¹ *See RL-007, Red Eagle*, ¶ 294 (“the mere existence of such a relationship does not necessarily or as such mean that there has been a breach of the MST.”).

¹⁰³² Claimant’s Updated Memorial, ¶ 374.

¹⁰³³ Claimant’s Updated Memorial, ¶ 364(d).

¹⁰³⁴ Of the security agreements cited by Claimant in footnotes 679–682, c [REDACTED] **Exhibit C-0148**, Agreement [REDACTED] between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Colombia, [REDACTED].

Colombia’s constitutional duty to protect its citizens, Claimant fails to specify how Colombia is meant to have repudiated its obligations under the agreements. And, as explained above, Colombia, through the National Army and the National Police-UNIMIL, has continued to uphold its obligations to provide security and protection in combatting illegal mining in Buriticá, with special attention to the Buriticá Mine, even during the time periods when no formal agreement was in place.¹⁰³⁵

567.5 Fifth, Claimant relies on Operation Creta and the “unwavering commitment” affirmed by the National Police to provide security at the Mine.¹⁰³⁶ On Claimant’s own case, Operation Creta commenced in 2016, after it invested in 2015, and cannot be the basis for any legitimate expectation.

567.6 Finally, Claimant alleges that “[w]ith the conclusion of Operation Creta in 2020, Colombia renewed its commitment to provide ongoing security and protection” to the Mine.¹⁰³⁷ That allegation suffers from the same problem.

568. The second broad category of promises Claimant purports to rely on fall under the category of non-specific representations that cannot constitute a “quasi-contractual relationship” between Claimant and Colombia, for which reason they fail *prima facie* to constitute grounds for Claimant’s alleged legitimate expectations. Nevertheless, with respect to Colombia’s “public efforts and promises to promote efforts in its mining sector”.¹⁰³⁸

568.1 Claimant relies on the Democratic Security Policy, which entailed the deployment of military and police forces across Colombia to enhance security and a 2011 “presentation targeted at foreign mining investors,” in which the then-Ministry of Mines and Energy “boasted that security improvements ‘have been impressive.’”¹⁰³⁹ Notwithstanding that this public statement cannot create a quasi-contractual relationship with Claimant, Claimant also fails to sustain its burden to show a frustration of its legitimate expectations on this basis because the military and police forces of Colombia remain deployed across the country to combat criminal organizations and illegal mining.¹⁰⁴⁰

568.2 Second, Claimant relies on the “new legal framework” created to combat illegal mining in Colombia, including the establishment of the ANM, UNIMIL, and BRCMI.¹⁰⁴¹ Notwithstanding that this is even less a commitment directly to

¹⁰³⁵ See *supra* Section III.C.1.a; Roa First Witness Statement, ¶¶ 5-6, 12, 22.

¹⁰³⁶ Claimant’s Updated Memorial, ¶ 364(e).

¹⁰³⁷ Claimant’s Updated Memorial, ¶ 364(f).

¹⁰³⁸ Claimant’s Updated Memorial, ¶ 365.

¹⁰³⁹ Claimant’s Updated Memorial, ¶ 365(a).

¹⁰⁴⁰ See *supra* Section III.C.1.

¹⁰⁴¹ Claimant’s Updated Memorial, ¶ 365(b).

Claimant, Claimant does not even assert that Colombia has dismantled any of these organizations, nor can it.

568.3 Third, Claimant relies on the “close coordination” between Colombian agencies “responsible for combatting illegal mining.”¹⁰⁴² The *Convenio Administrativo*, *Programa Integral de Control a la ilegalidad* and the National Police joint strategy No. 16 are still less specific commitments to Claimant. Even if they were, however, Claimant does not allege a formal repudiation of either program that would frustrate any legitimate expectations it could have had about them.

568.4 Finally, Claimant points to the commitments that “materialized into actions, and the government actively combatted the scourge of illegal mining for two decades.”¹⁰⁴³ That allegation does not even contain a commitment by Colombia, let alone a quasi-contractual one, but Claimant fails to carry its burden on that allegation too: Claimant does not prove that the Petro administration changed course.¹⁰⁴⁴

569. In addition to these general categories of allegations, Claimant relies on an alleged “major public relations initiative to attract foreign investment”¹⁰⁴⁵ and “a supportive legal framework in which to invest in mining projects.”¹⁰⁴⁶ Neither of those alleged promises or commitments creates anything resembling a “quasi-contractual” relationship between Claimant and Colombia, on which Claimant specifically relied in making its investment and which could therefore constitute the basis for a legitimate expectation under the MST. The MST “does not require a State to maintain a stable legal and business environment for investments.”¹⁰⁴⁷

c. Colombia’s actions were rational and consistent in its security assessment and treatment of the mine

570. Separate and apart from the fact that it has no legal or factual basis, Claimant’s case on legitimate expectations also fails to account for Colombia’s right to act in support of the preservation of peace and security. The fact that Claimant points to Colombia’s *Paz Total* policy as evidence of the State’s unwillingness to protect the Mine from armed groups¹⁰⁴⁸ demonstrates Claimant’s inability to account for Colombia’s right to make policy

¹⁰⁴² Claimant’s Updated Memorial, ¶ 365(c).

¹⁰⁴³ Claimant’s Updated Memorial, ¶ 365(d).

¹⁰⁴⁴ See *supra* Sections **Error! Reference source not found.**III.E.1, and III.E.2.

¹⁰⁴⁵ Claimant’s Updated Memorial, ¶ 366.

¹⁰⁴⁶ Claimant’s Updated Memorial, ¶ 367.

¹⁰⁴⁷ **CL-053**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, ¶ 153 (emphasis added).

¹⁰⁴⁸ Claimant’s Updated Memorial, ¶¶ 156–157.

decisions “in a complex international and domestic environment.”¹⁰⁴⁹ *Paz Total* is intended to curb criminal activity of armed groups throughout the country by, in part, creating incentives for armed groups to dismantle their operations while simultaneously imposing criminal enforcement conditions for those incentives.¹⁰⁵⁰ *Paz Total*, thus, is designed to protect Claimant and all who reside in Colombia from the violence of armed groups. Claimant cannot expect that its disagreement with the *Paz Total* policy would obligate the State to take action against that policy for Claimant’s sole benefit, at the expense of a broader national security need to address the conflicts caused by armed groups across the country.

571. Claimant’s allegations regarding its expectations also fails to account for Colombia’s regulatory rights, obligations and limits under both Colombia and international law. Colombia has consistently responded to the security incidents at the Buriticá Mine taking into account both the interests of the Mine as well as the rights and safety of individuals engaged in illegal mining. For example, in response to the May 2024 security incident during which two illegal miners were trapped in the mine tunnels due to Continental Colombia’s backfilling operations, the ANM issued a Resolution not only ordering the cessation of illegal mining activities in the concession area but also ordering Continental Colombia to suspend all backfilling operations to ensure the safety of all miners operating in the tunnels.¹⁰⁵¹ Claimant cannot expect Colombia to divert from due process in administering *amparo* requests and the rights of all involved in these proceedings.
572. In responding to Continental Colombia’s administrative *amparo* requests, the Mayoralty of Buriticá has similarly taken care to ensure the administrative process is carried out in a manner that is just and that there is an opportunity for challenge or appeal of administrative decisions.¹⁰⁵² Illegal mining communities in Buriticá have utilized the administrative and legal system to assert their rights to mine in Buriticá and have challenged Continental Colombia’s exclusive mining rights over the concession area.¹⁰⁵³ Claimant cannot expect Colombia to divert from due process in administering *amparo* requests and the rights of all involved in these proceedings.
573. Colombia’s actions, and the various factors that played into its decision-making, have also been shaped by a broader national policy to address illegal mining. Consistent with global best practices,¹⁰⁵⁴ Colombia for years, has been developing a balanced national policy to combat illegal mining that moves away from a solely punitive approach and towards formalization of informal miners. This is in recognition of the fact that most

¹⁰⁴⁹ **CL-053**, *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum, 22 May 2012, ¶ 153.

¹⁰⁵⁰ See *supra* Section III.E.1.b.

¹⁰⁵¹ See *supra* Section III.E.2.

¹⁰⁵² See *supra* Section III.E.2.a.

¹⁰⁵³ See *supra* Section III.E.2.

¹⁰⁵⁴ See *supra* Section III.B.1.

illegal miners are subsistence miners who are vulnerable to being exploited by criminal groups because of their lack of legal status.¹⁰⁵⁵

574. Absent an express promise, Claimant cannot labor under the expectation that Colombia will eliminate all security issues at the mine, violating Colombian and international law on the use of force and also undermining the State's broader policy goal of creating paths for formalization of small-scale artisanal and subsistence miners in the country.

4. Colombia Has Not Treated Claimant and its Investment Arbitrarily or Inconsistently

575. As with its legitimate expectations argument, Claimant attempts in alleging standalone arbitrary and inconsistent treatment to hold Colombia to a standard that is not recognized as an independent violation of the customary international law standard of the MST in the Treaty. In any event, as is evident from a review of the conduct alleged by the Claimant to be arbitrary, Claimant has failed to bear its burden of proof to show either the content of the MST or the facts on the basis of which it alleges the MST has been violated, and to the contrary Colombia has acted consistently and purposefully.

a. The minimum standard of treatment does not include arbitrary treatment as a standalone FET violation

576. Arbitrariness in State conduct is not an independent breach of the MST-based FET standard. Rather, the standard is violated only by conduct that is grossly arbitrary or egregious to the point of shocking and blatant unfairness, or that represents a total lack of due process. Minor arbitrariness does not suffice for a breach of the MST standard. That standard remains tied to the foundational *Neer* standard which, in order for a State's actions to be violative, must constitute

an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency. Whether the insufficiency proceeds from deficient execution of an intelligent law or from the fact that the laws of the country do not empower the authorities to measure up to international standards is immaterial.¹⁰⁵⁶

577. While the substance of the *Neer* standard has, of course, shifted with time, the threshold of the standard has remained immutable and demands serious misconduct in order to breach the standard.¹⁰⁵⁷ Claimant relies on *Waste Management II* for its expression of

¹⁰⁵⁵ See *supra* Section III.A.1.

¹⁰⁵⁶ **RL-052**, *Neer and Neer v. United Mexican States*, General Claims Commission US-Mexico, Decision, 15 October 1926, ¶ 4; see also **RL-066**, *British Property in Spanish Morocco*, Ad hoc Arbitration, Award, 1 May 1925, p. 642.

¹⁰⁵⁷ **RL-065**, *Glamis Gold*, Award, 8 June 2009, ¶¶ 614-616 (“As regards the second form of evolution—the proposition that customary international law has moved beyond the minimum standard of treatment of aliens as defined in *Neer*— the Tribunal finds that the evidence provided by Claimant does not establish such

the standard as a function of MST: “conduct [which] is arbitrary, grossly unfair, unjust, or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety.”¹⁰⁵⁸ As the tribunal in *Cargill* clarified, however, with respect to the State’s liability for arbitrary conduct under the MST:

[A]rbitrariness may lead to a violation of a State’s duties under Article 1105, but only when the State’s actions move beyond a merely inconsistent or questionable application of administrative or legal policy or procedure to the point where the action **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.¹⁰⁵⁹

578. Thus, arbitrariness is part of the MST standard only insofar as that arbitrary treatment results in blatant conduct which is “grave enough to shock a sense of judicial propriety and thus give rise to a breach of the minimum standard of treatment.”¹⁰⁶⁰

579. In this regard, it is not enough for Claimant to point to mere deviations from the letter of the law, or even failures to live up to certain legal standards or protections. The tribunal in *GAMI v. Mexico* explains the implications of *Waste Management II* as finding that:

(1) The failure to fulfil the objectives of administrative regulations without more does not necessarily rise to a breach of international law. (2) A failure to satisfy requirements of national law does not necessarily violate international law. (3) Proof of a good faith effort by the Government to achieve the objectives of its laws and regulations may counter-balance instances of disregard of legal or regulatory requirements. (4) The record as a whole - not isolated events - determines whether there has been a breach of international law.¹⁰⁶¹

evolution.”); see also **RL-038**, *Cargill*, ¶ 286; see also **CL-138**, *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award, 30 June 2025, ¶¶ 302–306.

¹⁰⁵⁸ Claimant’s Updated Memorial, ¶ 375 (citing **CL-020**, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 98).

¹⁰⁵⁹ **RL-038**, *Cargill*, ¶ 293.

¹⁰⁶⁰ **CL-026**, *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Award, 26 January 2006, ¶ 200.

¹⁰⁶¹ **CL-022**, *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award, 15 November 2004, ¶ 97

b. Claimant fails to show any arbitrary treatment of its investment by Colombia

580. Claimant does not claim either discriminatory treatment or a lack of due process. Instead, Claimant argues that Colombia has treated its investment in an arbitrary manner, in what is largely an echo of its legitimate expectations claim.
581. First, Claimant claims that Colombia arbitrarily refused to protect Claimant's investment in the mining sector despite having promised to do so.¹⁰⁶² Claimant has dreamt up such promises by willfully misinterpreting the PINES designation of the Buriticá Mine as an explicit security guarantee or promise. The PINES designation does grant certain expedited procedural procedures for operating permits, but there is no suggestion that it includes special treatment as to security. Colombia did not make any such promise regarding a security guarantee through the PINES designation, nor could it under Colombian and international law. Claimant's standard of 'protection' is not only invented, but extreme.
582. In fact, Colombia has provided significant police and military resources in order to protect the concession area. This has included both stationing of permanent detachments of National Police-UNIMIL units and Army soldiers to protect the Mine and processing facilities, and the marshaling of interinstitutional resources for large-scale joint operations in order to protect the concessionary area and its associated infrastructure.¹⁰⁶³ Such undertakings have been made in a proportional manner and in conformity with Colombian and international law.
583. Claimant also accuses Colombia of arbitrarily depriving it of its "exclusive rights to the mineral resources located at the Project[.]" by having "openly permitted and potentially even facilitated the theft of those minerals by the Clan del Golfo and other illegal miners[.]"¹⁰⁶⁴ This accusation is egregious and unfounded. Claimant continues to enjoy, by its own admission in the IPO Prospectus, the management, operation, and profit of the Buriticá Mine.¹⁰⁶⁵ Indeed, Claimant's controlling entity has said that it considers the Mine to have "significant exploration potential" and prospects for expansion.¹⁰⁶⁶
584. While Colombia recognizes the problem posed by illegal mining and its exploitation by criminal groups, Claimant paints informal and illegal miners with the same brush by suggesting that Colombia's stated support for informal artisanal miners is mere obfuscation for supporting illegal mining.¹⁰⁶⁷ Claimant misconstrues Colombia's position in favor of presenting a red herring to the Tribunal. Nevertheless, it is doubtful that a policy—in line with international best practices for curbing illegal mining—

¹⁰⁶² Claimant's Updated Memorial, ¶ 386(a).

¹⁰⁶³ See *supra* Sections III.C, III.E.

¹⁰⁶⁴ Claimant's Updated Memorial, ¶ 386(b).

¹⁰⁶⁵ **Exhibit R-0001**, IPO Prospectus, p. 276.

¹⁰⁶⁶ **Exhibit R-0001**, IPO Prospectus, pp. 284, 286

¹⁰⁶⁷ Claimant's Updated Memorial, ¶ 386(f).

addressing the cause of the country's social and economic problems could be considered inconsistent treatment, if that policy is not implemented by purposeful actions that impact the legally protected interests of Claimant.

585. President Petro, to wit, has not suggested that his championing of traditional artisanal mining is to the exclusion or denigration of mining companies such as Claimant. What Claimant takes such umbrage with is the mere suggestion that “[t]he mining activity in Colombia should not revolve **exclusively** around multinational mining companies[.]”¹⁰⁶⁸ Claimant must prove at least that there has been a *de facto* implementation of such a policy that has had an impact on its interests. Claimant can point to rhetoric but fails to substantiate its claims by pointing to any actually enacted policy or law.¹⁰⁶⁹
586. Claimant next suggests that Colombia has refused to comply with its own domestic law and contractual obligations to protect the Mine.¹⁰⁷⁰ This imputation is baseless on two grounds.
- 586.1 First, Claimant cites Operations Creta and Hades as examples of Colombia acting in response to filed *amparos administrativos* and contrasts this to an alleged lack of response from the Petro administration. As has already been discussed, the Petro administration's actions in providing security to the concession have been to the same standard as past administrations.¹⁰⁷¹ In addition, however, Claimant's argument rests on an erroneous understanding of Colombia's *amparo administrativo* procedure. An *amparo administrativo* under Colombia's Mining Code is a limited administrative remedy by which a concessionaire seeks immediate protection against unauthorized occupation or interference within the titled concession area, prompting the competent authority to investigate and, where illegal mining is confirmed, order corrective measures such as suspension, eviction, seizure of equipment, and related referrals. Crucially, however, the *amparo administrativo* is not a trigger for a comprehensive scouring of the Mine. Colombia has fulfilled its legal obligations in response to Continental Colombia's *amparo* requests by consistently following the statutory process: admitting petitions, posting notice, conducting site inspections within the prescribed framework, coordinating operational support with the Army, Police, and issuing resolutions granting relief where the factual and legal prerequisites were met. Colombia has discharged its duties by investigating each request, providing notice and due process, granting orders when warranted, and respecting the legal limits governing execution. And even if Colombia's response did occasionally fall short in the proper administration and execution of the *amparo* process, *quod*

¹⁰⁶⁸ Claimant's Updated Memorial, ¶ 147 (quoting **Exhibit C-0309**, ‘Busquemos los minerales para fertilizar las tierras’, mensaje de Petro a los mineros, El Universal, 3 September 2022). Emphasis added.

¹⁰⁶⁹ Claimant's Updated Memorial, ¶¶ 152–155.

¹⁰⁷⁰ Claimant's Updated Memorial, ¶ 386(d).

¹⁰⁷¹ See *supra* Section III.E.1 and III.E.2; see also Section V.A.

non, occasional or even flawed conformity with municipal law does not breach the standard of MST arbitrary conduct.¹⁰⁷²

586.2 Second, the Security and Police Collaboration Agreements signed by the Armed Forces and National Police do not contain guarantees any degree of outcome or standard of support.¹⁰⁷³ Rather, these agreements provide an administrative structure by which national security forces can operate in a more cooperative fashion with Claimant. Colombia's security forces would—and have—provide security to the area and aid in the suppression of illegal mining even without the security agreements.¹⁰⁷⁴ The State has provided armed protection to Continental Colombia personnel, removed illegal miners from the mining area and surrounding areas, confiscated illegally mined materials, equipment and materials used by illegal miners such as generators mercury and explosives, and destroyed the infrastructure that served the illegal operations.¹⁰⁷⁵

c. Claimant fails to show an inconsistent pattern of behavior

587. The accusation that Claimant levels against Colombia—that, since the Petro administration, and in contrast to prior administrations, it has allowed and even encouraged illegal miners and the Clan del Golfo to steal from the Mine—is unfounded and myopic.¹⁰⁷⁶ Colombia has, both before and during the Petro administration, expended significant military, police and institutional resources in order to safeguard the concession area, apprehend and remove illegal miners and Clan del Golfo actors, and confiscate illegally mined material and the tools necessary to accomplish it.¹⁰⁷⁷
588. In fact, the Buriticá Mine has received protection in excess of that given to other mining projects, which perhaps explains why Claimant demurs from levelling accusations of discriminatory treatment.¹⁰⁷⁸ The extent of the military and police operations—both the perennial deployments¹⁰⁷⁹ at the Mine as well as the special operations such as Hades, Esperanza, and Hefesto¹⁰⁸⁰—reveals the absurdity of Claimant's suggestion that

¹⁰⁷² See **CL-022**, *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award, 15 November 2004, ¶ 97; see also **CL-044**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, ¶ 385; c.f. **RL-071**, *Inmaris Perestroika Sailing Maritime Services GmbH et al. v. Ukraine*, ICSID Case No. ARB/08/8, Award, 1 March 2012, ¶ 282.

¹⁰⁷³ See *supra* Section III.C.1.

¹⁰⁷⁴ See *supra* Section III.E.1.; Gallego First Witness Statement, ¶ 24.

¹⁰⁷⁵ See *supra* Section III.E.2.b.

¹⁰⁷⁶ Claimant's Updated Memorial, ¶ 386(b).

¹⁰⁷⁷ See *supra* Section III.E.2.b.

¹⁰⁷⁸ Gallego First Witness Statement, ¶¶ 19, 25.

¹⁰⁷⁹ See *supra* Section III.C.1; Gallego First Witness Statement, ¶ 13; Roa First Witness Statement, ¶¶ 12, 22.

¹⁰⁸⁰ See *supra* Section III.E.2.b.

Colombia has “refus[ed] to protect Claimant’s investment” and thereby damaged its value.¹⁰⁸¹

589. Moreover, Claimant’s mischaracterization of the record, particularly its dismissal of the police and military operations undertaken under President Petro as disingenuous and “*de minimus [sic]*”,¹⁰⁸² is done in order to allow it to maintain the suggestion that Colombia has “flipflop[ped] on security policies[,]” rather than maintaining a consistent dedication to peace in the region and a corresponding long-term solution to illegal mining.¹⁰⁸³ What Claimant describes as inconsistent ‘flipflopping’ is, if anything, a legitimate and aspirational social and economic development of policies initiated by previous government. States are not obliged to investors to cease efforts to improve their regulatory efforts.

5. Colombia Has Not Denied Justice to the Claimant and its Investment through its Judicial and Administrative Decisions

590. Finally, Claimant’s denial of justice argument suffers from the same fundamental problem as its other FET arguments: Claimant fails to prove both the scope of the MST denial of justice obligation and how Colombia is meant to have violated it.

a. The minimum standard of treatment for denial of justice requires clear evidence of systemic failures of due process

591. Article 805(2) of the FTA provides that the obligation to provide fair and equitable treatment in Article 805(1) “includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process.”¹⁰⁸⁴ But in couching that obligation in terms of Article 805(1), Article 805(2) does not extend the scope of the obligation not to deny justice beyond the limits placed on the FET obligation in Article 805(1). In other words, like the Treaty’s other qualified FET obligations, denial of justice “do[es] not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.”¹⁰⁸⁵ Therefore, in order to allege a violation of the obligation not to deny justice under the FTA, Claimant bears the burden to prove the MST standard for denial of justice and to prove the facts that support its claim.¹⁰⁸⁶

¹⁰⁸¹ Claimant’s Updated Memorial, ¶ 386(c).

¹⁰⁸² Claimant’s Updated Memorial, ¶ 245.

¹⁰⁸³ Claimant’s Updated Memorial, ¶ 386(c).

¹⁰⁸⁴ **RL-001**, FTA, Art. 805(2).

¹⁰⁸⁵ **RL-001**, FTA, Art. 805(1).

¹⁰⁸⁶ *See supra* Sections V.A.1 and V.C.1.

592. International law generally imposes a high standard for claims of denial of justice.¹⁰⁸⁷ As the tribunal in *Philip Morris v. Uruguay* stated:

For a denial of justice to exist under international law there must be **clear evidence** of . . . an **outrageous** failure of the judicial system or a demonstration of systemic injustice or that the impugned decision was clearly improper and discreditable.¹⁰⁸⁸

593. Even unqualified denial of justice claims, “depend upon the demonstration of a **systemic failure**” of the adjudicatory system in question,¹⁰⁸⁹ because the State’s international law obligation is “to establish and maintain a system which does not deny justice” and provide access to the foreign investor to such system.¹⁰⁹⁰ As the tribunal in *Oostergetel v. Slovak Republic* made clear:

[A] claim for denial of justice under international law is a demanding one. To meet the applicable test, it will not be enough to claim that municipal law has been breached, that the decision of a national court is erroneous, that a judicial procedure was incompetently conducted, or that the actions of the judge in question were probably motivated by corruption. A denial of justice **implies the failure of a national system as a whole to satisfy minimum standards.**¹⁰⁹¹

594. An important implication of this standard is that even unqualified denial of justice can only be assessed against the final product of a State’s judicial system.¹⁰⁹² A claimant

¹⁰⁸⁷ **CL-047**, *RosInvestCo UK Ltd. v. Russian Federation*, SCC Case No. 079/2005, Final Award, 12 September 2010, ¶ 280; **RL-015**, *Philip Morris v. Uruguay*, ¶ 500; **RL-041**, *H&H Enterprises Investments, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/09/15, Award, 6 May 2014, ¶ 400; **RL-042**, *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010, ¶ 274; **RL-043**, *Jan Oostergetel and Theodora Laurentius v. Slovak Republic*, UNCITRAL, Final Award, 23 April 2012 (“*Oostergetel*”), ¶ 291.

¹⁰⁸⁸ **RL-015**, *Philip Morris v. Uruguay*, ¶ 500 (internal quotation marks and citations omitted) (emphasis in original).

¹⁰⁸⁹ **RL-040**, *Apotex Inc. v. United States of America*, ICSID Case No. UNCT/10/2, Award on Jurisdiction and Admissibility, 14 June 2013, ¶ 282.

¹⁰⁹⁰ **CL-025**, Jan Paulsson, *DENIAL OF JUSTICE IN INTERNATIONAL LAW*, 2005, p. 109.

¹⁰⁹¹ **RL-043**, *Oostergetel*, ¶ 273 (emphasis added); see also **RL-015**, *Philip Morris v. Uruguay*, ¶ 500 (“The high standard required for establish this claim [for denial of justice] in international law means that it is not enough to have an erroneous decision or an incompetent judicial procedure, arbitration tribunals not being courts of appeal.”).

¹⁰⁹² **CL-025**, Jan Paulsson, *DENIAL OF JUSTICE IN INTERNATIONAL LAW*, 2005, p. 108 (the “very nature of the delict that a state is judged by the final product – or at least a sufficiently final product – of its administration of justice.”); see also **CL-056**, *Swisslion DOO Skopje v. The Former Yugoslav Republic of Macedonia*, ICSID Case No. ARB/09/16, Award, 6 July 2012, ¶ 264 (“ICSID tribunals are not directly concerned with the question whether national judgments have been rendered in conformity with the applicable domestic law. They only have to consider whether they constitute a violation of international law, and in particular whether they amount to a denial of justice”).

must demonstrate that it has exhausted available domestic remedies because “an international arbitration tribunal is not an appellate body and its function is not to correct errors of domestic procedural or substantive law which may have been committed by the national courts.”¹⁰⁹³ In his work “Denial of Justice”, Jan Paulsson explains the importance of exhaustion of domestic remedies for a denial of justice to be actionable under customary international law:

Perhaps the strongest argument for [requiring the exhaustion of remedies] is that it avoids interference with the fundamental principle that states should to the greatest extent possible be free to organise their national legal systems as they see fit [...] The state can make such compromises because of its confidence in its appellate mechanisms. If aliens are allowed to bypass those mechanisms and bring international claims for denial of justice on the basis of alleged wrongdoing by the justice of the peace of any neighbourhood, international law would find itself intruding intolerably into internal affairs. For a foreigner’s international grievance to proceed as a claim of denial of justice, the national system must have been tested.¹⁰⁹⁴

595. The same applies in the context of administrative proceedings. As the tribunal in *Corona Materials* explained:

[T]he question of whether there has been a denial of justice should be analyzed in each case with regard to the particular remedies available to an injured party. This is an important point because administrative adjudicatory proceedings typically do not take place in a legal vacuum; the acts of such adjudicators are typically reviewable in the local courts. Put another way, administrative decision-making is situated within a broader framework of a State’s legal system.¹⁰⁹⁵

596. There is nothing in investment treaty jurisprudence to support the proposition that discrete instances of a State’s failure to enforce administrative or court orders – as opposed to a systemic failure to enforce – could amount to violation of even a State’s unqualified FET obligations. Indeed, Claimant cannot point to any arbitral case law so holding.

¹⁰⁹³ **RL-042**, *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, 22 June 2010, ¶ 274; see also **CL-047**, *RosInvestCo UK Ltd. v. Russian Federation*, SCC Case No. 079/2005, Final Award, 12 September 2010, ¶ 275 (“The Tribunal emphasises again that an international arbitration tribunal . . . is not an appellate body and its function is not to correct errors of domestic procedural or substantive law which may have been committed by the national courts.”).

¹⁰⁹⁴ **CL-025**, Jan Paulsson, DENIAL OF JUSTICE IN INTERNATIONAL LAW, 2005, p. 108.

¹⁰⁹⁵ **RL-044**, *Corona Materials, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent’s Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA, 31 May 2016, ¶ 253.

597. Claimant's only support for this proposition is an 1855 decision in the Montano Case before the Peruvian Claims Commission, which involved the enforcement of a money judgment in the United States by Montano, a Peruvian national. The Umpire's finding of denial of justice in the Montano Case rested not on an isolated act of enforcement failure, but on the cumulative and systemic refusal of multiple organs of the United States to give effect to a final judgment. The federal marshal failed to discharge his duty by refusing to levy on available property and returning the writ with a *nulla bona* (no goods found) endorsement, neglecting to pursue the statutory sureties that California law required pilots to furnish.¹⁰⁹⁶ When the matter was referred to the Government of California, that government "did nothing to remedy it."¹⁰⁹⁷ The matter was then returned to the federal government, where the Secretary of State and Attorney General refused to take any measures to remove the obstacles to execution, thereby "assum[ing] the responsibility in the name of the United States."¹⁰⁹⁸ It was only this cascading failure that the Umpire characterized as a denial of justice. The decision thus stands for the principle that the obligation not to deny justice requires the state's enforcement machinery, taken as a whole, to function with reasonable diligence; it does not establish that any single act of non-enforcement by a particular officer or organ, absent a broader pattern of systemic failure, gives rise to state responsibility on the international plane.
598. In the absence of jurisprudence supportive of Claimant's proposition that discrete instances of the State's failure to enforce court or administrative orders amount to a denial of justice, Claimant relies on cases finding an independent breach of unqualified FET, based on arbitrary or inconsistent treatment. The cases Claimant relies on are inapposite. In both *Mercuria Energy v. Poland* and *PSEG v. Turkey*, the tribunals found a systemic pattern of arbitrary and inconsistent treatment:
- 598.1 In *Mercuria Energy v. Poland*, the tribunal's finding of a violation of unqualified FET was grounded in the cumulative, systemic character of the administrative authorities' refusal to enforce multiple judicial and administrative orders. The conduct at issue was not a one-off failure to act on a court ruling, but rather a pattern spanning over a decade in which state agencies repeatedly refused to comply with multiple judgments, cycled through three rounds of administrative proceedings without resolution, and persisted in taking positions directly

¹⁰⁹⁶ CL-004, John Bassett Moore, Peruvian Claims Commission: Convention Between the United States and Peru of January 12, 1863, in HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY, 1898, p. 1635; p. 1637 ("The obligation of a stranger to exhaust the remedies which nations have for obtaining justice, before soliciting the protection of his government, ought to be understood in a rational manner, that such obligation does not make delusive the rights of the foreigner.").

¹⁰⁹⁷ CL-004, John Bassett Moore, Peruvian Claims Commission: Convention Between the United States and Peru of January 12, 1863, in HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY, 1898, p. 1636.

¹⁰⁹⁸ CL-004, John Bassett Moore, Peruvian Claims Commission: Convention Between the United States and Peru of January 12, 1863, in HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY, 1898, p. 1637.

contrary to binding judicial assessments.¹⁰⁹⁹ The tribunal characterized this treatment as “non-transparent, inconsistent, and arbitrary.”¹¹⁰⁰ The tribunal’s finding also rested on the parallel finding of the absence of any effective enforcement mechanism within the Polish legal system.¹¹⁰¹

- 598.2 In the other case that Claimant cites for the same proposition, *PSEG v. Turkey*, Turkey failed to implement a judgment by the Constitutional Court. The tribunal did not isolate that single episode of non-enforcement as independently dispositive; rather, it treated the government’s inaction on the Constitutional Court ruling as one element within a far broader pattern of systemic administrative dysfunction, including “the numerous changes in the legislation and inconsistencies in the administration’s practice.”¹¹⁰²
599. Both *Mercuria Energy* and *PSEG* reinforce the principle that a violation of unqualified FET – whether as an independent breach or denial of justice—on the basis of non-enforcement of judicial or administrative orders can only occur if there is evidence of a **systemic pattern** of non-enforcement.
600. The threshold for a denial of justice that violates the MST is still higher. As it was articulated in *Waste Management II*, a State’s conduct in judicial proceedings may breach its MST obligation if it constitutes a “manifest failure of natural justice” and in administrative proceedings “a complete lack of transparency and candour.”¹¹⁰³
601. The tribunal in *Vercara v. Colombia* similarly noted that, for a claim for denial of justice to prevail, “a very high threshold is required,”¹¹⁰⁴ and that “tribunals have assessed whether the host state had acted ‘with a gross or flagrant disregard for the basic principles of fairness, consistency, even-handedness, due process or natural justice expected by and of all States under customary international law.’”¹¹⁰⁵

¹⁰⁹⁹ CL-098, *Mercuria Energy Group Ltd. v. Republic of Poland*, SCC Case No. V 2019/126, Final Award, 29 December 2022, ¶¶ 838–842.

¹¹⁰⁰ CL-098, *Mercuria Energy Group Ltd. v. Republic of Poland*, SCC Case No. V 2019/126, Final Award, 29 December 2022, ¶ 839.

¹¹⁰¹ CL-098, *Mercuria Energy Group Ltd. v. Republic of Poland*, SCC Case No. V 2019/126, Final Award, 29 December 2022, ¶ 817.

¹¹⁰² CL-032, *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Şirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007, ¶ 252.

¹¹⁰³ CL-020, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004, ¶ 98.

¹¹⁰⁴ CL-106, *Neustar, Inc. and Vercara, LLC (formerly Security Services, LLC, d/b/a Neustar Security Services) v. Republic of Colombia*, ICSID Case No. ARB/20/7, Award, 20 September 2024, ¶ 642 (quoting *Staur Eiendom AS et al. v. Republic of Latvia*, ICSID Case No. ARB/16/38, Award, 28 February 2020 ¶ 472).

¹¹⁰⁵ CL-106, *Neustar, Inc. and Vercara, LLC (formerly Security Services, LLC, d/b/a Neustar Security Services) v. Republic of Colombia*, ICSID Case No. ARB/20/7, Award, 20 September 2024, ¶ 642 (quoting *Adel A. Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No. ARB/11/33, Award, 3 November 2015 ¶ 390).

602. The MST is infringed if the State’s behavior is so outrageous so as to “offend[] judicial propriety.”¹¹⁰⁶ In the context of administrative proceedings, the tribunal in *TECO Guatemala Holdings v. Guatemala* explained that the State must have “entirely failed to provide reasons for its decisions or disregard its own rules” for there to be a breach of due process.¹¹⁰⁷ The tribunal went on to explain:

[T]he Arbitral Tribunal considers that a willful disregard of the fundamental principles upon which the regulatory framework is based, a complete lack of candor or good faith on the part of the regulator in its dealings with the investor, as well as a total lack of reasoning, would constitute a breach of the minimum standard.”¹¹⁰⁸

603. Claimant bears the burden of articulating how Colombia’s judicial system has systemically failed Claimant in connection with its *amparo* requests and criminal complaints such that it has offended judicial propriety.¹¹⁰⁹ Claimant has not even articulated a cognizable standard under customary international law let alone attempted to meet its heightened requirements.

b. Colombia has not denied justice to Claimant

604. Colombia has a robust system – the *amparo* process – allowing for the concessionaire of a mining title to submit a request for eviction from the concession area. Claimant concedes that it has utilized the *amparo* process successfully, with Operation Creta being, according to Claimant a prime example of the State’s response to an *amparo* request.¹¹¹⁰

605. Claimant’s complaint that some of its *amparo* requests have not led to the results it seeks utterly fails to meet the applicable test for a denial of justice claim – whether under the MST or otherwise. As an initial matter, to make a claim for unqualified denial of justice “it will not be enough . . . that the decision of a national court is erroneous [or] that a judicial procedure was incompetently conducted.”¹¹¹¹ Rather, denial of justice “implies the failure of a national system as a whole to satisfy minimum standards.”¹¹¹² For denial

¹¹⁰⁶ **CL-061**, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶ 454.

¹¹⁰⁷ **CL-061**, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶ 457.

¹¹⁰⁸ **CL-061**, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶ 458.

¹¹⁰⁹ **RL-045**, *Chevron Corporation and Texaco Petroleum Company v. Republic of Ecuador*, PCA Case No. 2009-23, Second Partial Award on Track II, 30 August 2018, ¶ 8.40.

¹¹¹⁰ Claimant’s Updated Memorial, ¶ 393.

¹¹¹¹ **RL-043**, *Oostergetel*, ¶ 273.

¹¹¹² **RL-043**, *Oostergetel*, ¶ 273.

of justice that violates MST, Claimant must demonstrate “a flagrant disregard for the basic principles of fairness”¹¹¹³ that “offends judicial propriety.”¹¹¹⁴

606. A careful review of Claimant’s *amparo* requests makes clear that the State has not made erroneous decision or conducted a judicial procedure incompetently, let alone acted with a willful disregard for justice. On the contrary, the State has consistently responded to each of Claimant’s *amparo* requests by taking all the steps required under the Mining Code.
607. Claimant appears to misunderstand the nature of the *amparo* process. An *amparo* request is limited in scope to the eviction of illegal miners from a specific location identified by the concessionaire and within the concession area. It is not an arrest warrant and does not authorize the State to detain individuals. Before an order can be issued in response to an *amparo* request, the authorities must investigate the site to determine whether an illegal occupation has occurred. The authorities must also post a notice of the *amparo* request to provide an opportunity for the occupiers to voluntarily leave the concession area. The *amparo* process has an appeals mechanism that allows for challenges to any orders issued in response to an *amparo* request. An *amparo* order cannot be made final, and cannot therefore be enforced, until the time for an appeal has elapsed.¹¹¹⁵
608. Claimant complains that Colombia has failed to enforce an order issued in June 2023 – Resolution 179 – in response to an *amparo* request.¹¹¹⁶ Claimant conveniently omits the fact that Resolution 179 was paused by an interim measure issued by a judge of the Santa Fe de Antioquia circuit court in an action brought against Continental Colombia by a society of miners claiming violations of the right to free economic competition and seeking an order stating that the miners had the right to mine in the concession area.¹¹¹⁷ In addition, the *amparo* request underlying Resolution 179 has been transferred to the Mayor of Giraldo due to a conflict of interest of the Mayor of Buriticá. This transfer, coupled with the Santa Fe order, has created delays to the finalization, and ultimate enforcement, of Resolution 179.¹¹¹⁸
609. Continental Colombia has filed several other *amparo* requests since June 2023 and the Mayor of Buriticá has taken steps to investigate each claim and to act on it where appropriate. In some instances, the location cited in the *amparo* was no longer occupied by the time authorities arrived to inspect the site, thereby making the *amparo* request

¹¹¹³ **CL-106**, Neustar, Inc. and Vercara, LLC (formerly Security Services, LLC, d/b/a Neustar Security Services) v. Republic of Colombia, ICSID Case No. ARB/20/7, Award, 20 September 2024, ¶ 642

¹¹¹⁴ **CL-061**, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶ 454.

¹¹¹⁵ See *supra* Section III.E.2.a.

¹¹¹⁶ Claimant’s Updated Memorial, ¶ 216.

¹¹¹⁷ A detailed account of the proceedings in that case is provided above, Section III.E.2.a.

¹¹¹⁸ See *supra* Section III.E.2.a..

moot.¹¹¹⁹ In another case, the *amparo* listed a location outside of the concession area and, on that basis, could not be granted.¹¹²⁰ In at least two instances, the *amparo* order was challenged by subsistence miners impacted by the order, forcing the State to resolve the dispute before taking any enforcement action.¹¹²¹ In one of those cases, the subsistence miners filed four separate actions challenging the *amparo* order and all four challenges failed. The Mayor then issued a resolution ordering the closure of all illegal mine openings.¹¹²²

610. With respect to Continental Colombia’s criminal complaints, Claimant concedes that it “has obtained favorable decisions in many of these proceedings” but alleges that “Colombia has failed to take effective action to enforce them.”¹¹²³ Claimant’s only support for this statement is the assertion of witness ██████████ z that “[f]rom November 2022 to 2025, there has been no effective action by the State to evict those engaging in criminal activities from these private properties. . . . I am also unaware of any criminal convictions during this time period.”¹¹²⁴ Mr. ██████ is mistaken. In reality, the State has launched several operations that have resulted in numerous investigations, arrests, indictments, criminal trials, and convictions of members of Clan del Golfo involved in illegal mining activity in Buriticá.¹¹²⁵
611. The State has also set up a specialized prosecutor’s office, DEMA, charged with investigating and prosecuting environmental and natural resource crimes, including illegal mining. Since it became operational in December 2023, DEMA has continuously been engaged with the investigation and prosecution of individuals suspected of being involved with armed groups and illegal mining in Buriticá. DEMA has issued numerous arrest and search and seizure warrants that have been executed by the National Police and disrupted the illegal mining operations in Claimant’s concession area.¹¹²⁶
612. Claimant also alleges that the State has not acted to stop the illegal mining activities at the *Los Gómez* property. To the contrary, as attested by Lieutenant Colonel Gallego, “several interventions were carried out related to the problem of illegal mining on that property”¹¹²⁷ including Operation Hefesto targeting illegal mining at *Los Gómez* and which led to precautionary measures against the *Los Gómez* property.¹¹²⁸

¹¹¹⁹ See *supra* Section III.E.2.a.

¹¹²⁰ See *supra* Section III.E.2.a.

¹¹²¹ See *supra* Section III.E.2.a.

¹¹²² See *supra* Section III.E.2.a.

¹¹²³ Claimant’s Updated Memorial, ¶ 394.

¹¹²⁴ ██████ First Witness Statement, 10 July 2025, ¶ 59

¹¹²⁵ See *supra* Section III.E.2.b.

¹¹²⁶ See *supra* Section III.E.2.b(iii).

¹¹²⁷ Gallego First Witness Statement, ¶ 51.

¹¹²⁸ See *supra* Section III.E.2.b.ii.

613. Claimant appears to want the State to act immediately in response to Continental Colombia’s complaints of illegal activity. This ignores the reality of the criminal justice system. It takes time to collect sufficient evidence to bring charges against a suspect. This is particularly the case when dealing with illegal mining, which is transient by nature and takes place underground out of sight of the authorities. Once a suspect has been arrested, the trial can be an extended process. For example, Operation Hades, which Claimant highlights as demonstrating the State’s commitment to enforce legal remedies against illegal mining,¹¹²⁹ involved a multi-year investigation to collect sufficient evidence against 7 suspects.¹¹³⁰
614. Claimant’s reliance on two supposedly unenforced ANM Emergency Resolutions as evidence of the State’s denial of justice demonstrates Claimant’s selective rendering of the facts.¹¹³¹ The August 2022 Emergency Resolution No. 202209E was issued in response to Claimant’s backfilling activities that led to the death of two informal miners trapped in the Mine.¹¹³² The State’s purpose in issuing the Resolution was to ensure the safety of miners and avoid a similar incident in the future. As such, the primary purpose of the order was two-fold: to order the cessation of illegal mining activity in the concession area and to suspend, with immediate effect, all hydraulic fill activities *conducted by Claimant* in the concession area. Claimant conveniently omits this latter aspect of the Resolution, focusing only on the former. However, even the text of the Resolution ordering illegal mining activities to cease is couched in terms of the safety of the Mine: “these operations are being conducted by private individuals employing untechnical and unsafe procedures that endanger the lives of other persons working permanently within the affected area.”¹¹³³ The Secretary of Mining subsequently opened a formal investigation into the incident and conducted site inspections, gradually lifting the suspension on backfilling as it deemed it safe to resume.¹¹³⁴
615. The May 2024 Emergency Resolution No. 007-E was similarly issued in response to Claimant’s backfilling of toxic mud into the tunnels, again risking the death of informal miners trapped within the Mine.¹¹³⁵ As with Resolution No. 202209E, the purpose of Resolution 007-E was to ensure the safety of the Mine. The ANM’s Mine Safety and Rescue Group issued an Executive Report making recommendations to avoid similar safety incidents in future. In particular, the Report recommends that Claimant

¹¹²⁹ Claimant’s Updated Memorial, ¶ 393.

¹¹³⁰ *See supra* Section III.E.2.b.i.

¹¹³¹ Claimant’s Updated Memorial, ¶ 397.

¹¹³² *See supra* Section III.D.2.b.

¹¹³³ **Exhibit R-0161**, Acta de Atención Emergencia Minera No. 202209E, Agencia Nacional de Minería, 29 August 2022, p. 14.

¹¹³⁴ **Exhibit R-0161**, Acta de Atención Emergencia Minera No. 202209E, Agencia Nacional de Minería, 29 August 2022, p. 14.

¹¹³⁵ *See supra* Section III.E.1.a.

continuously monitor the Mine’s atmosphere and water inflow levels and maintain an evacuation plan and escape routes.¹¹³⁶

616. While the State’s concern in issuing Resolutions 202209E and 007-E was directed at combatting illegal mining, ensuring the safety of all miners in the area was paramount. Indeed, the Vice Minister of the Interior acknowledged as much in a meeting held in connection with Resolution No. 007-E, stating that illegal mining is a “complex challenge” that cannot be resolved immediately.¹¹³⁷ Indeed, the State acted, and continues to act, to enforce the dual objectives of both Resolutions—combatting illegal mining and ensuring the safety of the Mine.
617. Far from demonstrating a systemic flaw in Colombia’s judicial system, the facts show a State that is willing and able to address Claimant’s complaints – both administrative and criminal. Colombia’s actions show that it **has** responded to Claimant’s complaints in a manner that is consistent with its obligations under Colombian law and that accounts for the need to protect the safety of all residents and for due process. Claimant fails to meet its burden to provide any “clear evidence of . . . an outrageous failure of the judicial system or a demonstration of systemic injustice”¹¹³⁸ to support an unqualified claim for denial of justice and certainly not the higher standard for a violation of the MST. Likewise, it is Claimant’s burden to show that it has exhausted every reasonable domestic remedy. Besides the fact that Colombian authorities have consistently responded to Claimant’s *amparo* requests by taking the steps required under the Mining Code,¹¹³⁹ Claimant shows no evidence of any effort on its part to seek remedies in the administrative judicial system for the alleged inadequacy of the State’s and local authorities’ responses to its *amparo* requests.

VI. CLAIMANT IS NOT ENTITLED TO DAMAGES

618. Claimant has not established any basis for claiming damages from Colombia. First, Claimant has not proven that Colombia caused its alleged losses, either as a matter of law or as a matter of fact. Second, Claimant’s damages claim is not supported by applicable law. Third, and most crucially, Claimant fails to prove that it has suffered any damages at all, given that its damages claim fails to acknowledge that it has continued to produce and sell gold via the Mine. Fourth, even if Claimant were entitled to damages, the Boyd DCF model used to quantify its claim is flawed and speculative. And finally, Boyd’s

¹¹³⁶ See *supra* Section III.E.1.a.

¹¹³⁷ See *supra* Section III.E.1.a; **Exhibit R-0091**, Acta de Atención Emergencia Minera No. 007-E, Agencia Nacional de Minería, 31 May 2024, p. 15.

¹¹³⁸ **RL-015**, *Philip Morris v. Uruguay*, ¶ 500 (internal quotation marks and citations omitted) (emphasis in original).

¹¹³⁹ See *supra* Section III.E.2.a.

alleged market valuation does not confirm the assumptions of its DCF. Claimant is thus not entitled to damages or costs.

A. Claimant Has Not Proven that Colombia Caused its Alleged Losses

619. Claimant bears the burden to prove both that it suffered losses and that Colombia caused those losses.¹¹⁴⁰ This is required by the Treaty, which allows an investor to submit to arbitration on behalf of itself or an enterprise it owns or controls a claim that the investor has “incurred loss or damages **by reason of, or arising out of**” a breach of the Treaty.¹¹⁴¹ It is also an axiom of international law that reparation is owed only for injury caused by an internationally wrongful act, for which it is necessary to establish a precise and proximate causal link between the injury and the wrongful act.¹¹⁴²
620. Claimant’s burden to prove causation has two elements, one legal and one factual.¹¹⁴³ Legally, Claimant has to prove that the State’s actions were the proximate cause of its losses, such that the harms it alleges it suffered were not remote from the specific actions it complains of on the part of Colombia: proximate cause must be precisely and practically drawn so as not to require reparations for ostensible injuries which are “too indirect, remote, and uncertain to be appraised.”¹¹⁴⁴ Claimant’s factual burden to prove causation consists of its burden to prove, *sine qua non*, that but-for the State’s actions the harm would not have occurred. Claimant’s case fails on both prongs.

1. Claimant Alleges Harm Remote from the Conduct of Colombia

621. The tribunal in *Lemire v. Ukraine* summarized the requirements of establishing causation as “(A) cause, (B) effect, and (C) a logical link between the two [to] be established.”¹¹⁴⁵ In *Lemire*, the claimant—despite attempting for six years to establish a radio station in Ukraine—was stymied from obtaining the requisite licenses required to operate its business. The tribunal found that the proximate link was abundantly clear and direct: (A) Ukraine prevented the claimant from obtaining the license, (B) the claimant had no ability

¹¹⁴⁰ **CL-142**, *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶ 453 (“the Claimant’s hold the burden of proving their loss in accordance with international law principles of causation”); **RL-050**, S. Ripinsky and K. Williams, *DAMAGES IN INTERNATIONAL INVESTMENT LAW*, 2008, p. 162.

¹¹⁴¹ **RL-001**, FTA, Arts. 819, 820.

¹¹⁴² **Exhibit CL-110**, ARSIWA, Art. 31, cmt. 10, pp. 92-93; *see also* **RL-076**, B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1987), p. 253 (“[T]he principle of integral reparation in responsibility has to be understood in conjunction with that of proximate or effective causality which is valid both in municipal and international law.”).

¹¹⁴³ *See* **RL-050**, S. Ripinsky and K. Williams, *Damages In International Investment Law*, 2008, pp. 135-136; **RL-130**, *Hoffland Honey Co. v. National Iranian Oil Co.*, Iran-United States Claims Tribunal Case No. 495, Award, 26 January 1983, pp. 3-4; **RL-034**, *ELSI*, ¶ 101; **RL-048**, *Lauder*, ¶¶ 234-235.

¹¹⁴⁴ **RL-075**, *Trail Smelter Case*, Ad hoc Arbitration, Award, 16 April 1938, p. 1931; *see also* **RL-077**, *SD Myers, Inc. v. Government of Canada*, UNCITRAL, Second Partial Award on Damages, 21 October 2002, ¶¶ 161-162.

¹¹⁴⁵ **CL-136**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, ¶ 157; *see also* **RL-131**, *Pope & Talbot Inc. v. Government of Canada*, Award in Respect of Damages, ¶ 80.

to operate, and (C) the license was clearly required to operate, and no other factors could explain the claimant's losses.¹¹⁴⁶

622. Other sections of this Counter-Memorial have already dealt with why there has been no breach of the Treaty which is attributable to Colombia, thereby failing prong A of the *Lemire* test.¹¹⁴⁷ A State can only be held to be responsible for an omission relating to the misdoings of a third party if the State must have known about the wrongful act. In the *Corfu Channel* case, the International Court of Justice held Albania liable for the Yugoslav mines in the Corfu Channel on the basis that it could not reasonably have been unaware of the presence of the mines and that it failed to warn potential ingressors.¹¹⁴⁸ Here, however, Claimant has failed to establish that Colombia can be held responsible for its alleged omissions.¹¹⁴⁹
623. Claimant equally fails to satisfy prong B of the *Lemire* test. The effect on an investment must be cognizable and clearly defined for it to be deemed a proximate effect **caused** by the State. The tribunal in *SD Myers* refused to award the claimant damages for profits it alleged it would have made but for Canada's breach precisely because those damages were too "speculative and too remote."¹¹⁵⁰ As is examined more fully below, Claimant's entire damages case is just such a speculative house of cards.
624. Even if Claimant were successful in demonstrating that Colombia failed to uphold its obligations under the Minimum Standard of Treatment to accord full protection and security and fair and equitable treatment to Claimant, or in demonstrating that Colombia had committed an indirect expropriation of its investment, *quod non*, Claimant must nevertheless establish a causal link between Colombia's alleged failure and the harm to Claimant. That causal link must be readily apparent as a legal matter: damages "should be the natural consequence of the breach [...] This rule is simply a direct deduction from the principle *pacta sunt servanda*."¹¹⁵¹ In *Biwater Gauff*, the tribunal found that the value of the claimant's investments in Tanzania had, independently of the State's actions, been depleted, thus breaking the chain of causation between the loss of value of the investment and the State's action.¹¹⁵² Relying on the reasoning of the International Court of Justice in the *ELSI* case, which declined to award damages to a claimant that it found had

¹¹⁴⁶ **CL-136**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, ¶¶ 201–261, 243.

¹¹⁴⁷ *See supra* Section V.

¹¹⁴⁸ **RL-027**, *Corfu Channel*, pp. 18, 20,

¹¹⁴⁹ *See supra* Section V.B.

¹¹⁵⁰ **RL-077**, *SD Myers, Inc. v. Government of Canada*, UNCITRAL, Second Partial Award on Damages, 21 October 2002, ¶ 161.

¹¹⁵¹ **CL-144**, *Sapphire International Petroleum Ltd. v. National Iranian Oil Co.*, Ad hoc Arbitration, Arbitral Award, 15 March 1963, Part C, ¶ 11.

¹¹⁵² **CL-037**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶¶ 791, 798, 805.

mismanaged its investment,¹¹⁵³ the *Biwater Gauff* tribunal noted that the claimant had numerous difficulties in management and implementation that made termination of its contract inevitable, even prior to its alleged expropriation by Tanzania.¹¹⁵⁴

625. Such a causal link cannot be clearly defined, let alone established, between Colombia's supposedly wrongful acts and Claimant's losses due to Claimant's own contributions to its alleged damages as well as the third party interventions which shatter the link of causation.

2. Claimant Fails to Account for the Effects of its Own Policies and its Tolerance of Illegal Mining on its Alleged Losses

626. Even in circumstances where a State's actions (or inactions) may be a contributing factor in the harm suffered by an investor, the investor may not turn to the State for compensation if any intervening act on the part of the investor severs the chain of causation between the State's inaction and the claimant's injuries.¹¹⁵⁵ As the tribunal in *Maffezini v. Kingdom of Spain* opined, investment treaties are not "insurance policies against bad business judgements" and "cannot be deemed to relieve investors of the business risks inherent in any investment."¹¹⁵⁶
627. Such a contribution to one's own injury precludes, either in whole or in part, recovery of damages.¹¹⁵⁷ In *MTD v. Chile*, for example, the tribunal found that the claimant had exhibited a lack of due diligence in placing its reliance on an untrustworthy business

¹¹⁵³ See **RL-034**, *ELSI*, ¶¶ 100–101 ("It is important in the consideration of so much detail, not to get the matter out of perspective: There were several causes acting together that led to the disaster to ELSI. No doubt the effects of the requisition might have been one of the factors involved. But the underlying cause was ELSI's headlong course towards insolvency; which state of affairs it seems to have attained even prior to the requisition.").

¹¹⁵⁴ **CL-037**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶¶ 786–791.

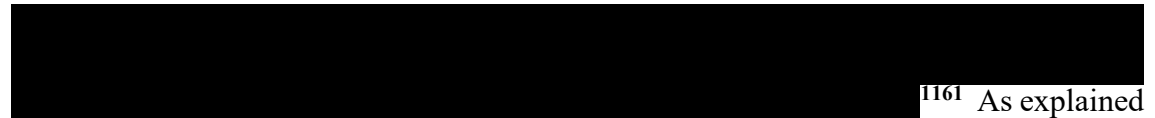
¹¹⁵⁵ **CL-110**, *ARSIWA*, Art. 39 ("In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought."); see also **CL-129**, *Gemplus S.A. et al. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010, ¶¶ 11–12 ("Article 39 of the ILC's Articles on State Responsibility precludes full or any recovery, where, through the wilful or negligent act or omission of the claimant state or person, that state or person has contributed to the injury for which reparation is sought from the respondent state. The ILC's Commentary on Article 39 refers to like concepts in national laws referred to as 'contributory negligence', 'comparative fault', 'faute de la victime' etc. The common feature of all these national legal concepts is, of course, a fault by the claimant which has caused or contributed to the injury which is the subject-matter of the claim; and such a fault is synonymous with a form of culpability and not any act or omission falling short of such culpability.") (emphasis in original).

¹¹⁵⁶ **RL-078**, *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Award, 13 November 2000, ¶ 64.

¹¹⁵⁷ **RL-050**, S. Ripinsky and K. Williams, *Damages in International Investment Law*, 2008, p. 331 ("if the loss of an investment is wholly or partially caused by the claimant's bad business judgement, then the respondent State should not be held liable [for that part].").

partner and accepting an exorbitant land valuation at his suggestion.¹¹⁵⁸ As a result, the *MTD* tribunal—making reference to *Maffezini*—stated that the claimants “should bear the consequences of their own actions as experienced businessmen [...] [and the] risks that the Claimants took irrespective of Chile’s actions.”¹¹⁵⁹ Similarly, in *Yukos Capital v. Russia*, the claimant’s damages were reduced as a result of the tribunal’s determination that it had contributed to the extinguishment of its own investment by misusing the double taxation treaty between Russia and Cyprus.¹¹⁶⁰

628.

¹¹⁶¹ As explained above, that contention is belied by the documentary record produced by Claimant and Zijin Mining. Claimant’s continued assertion of it in the Arbitration without further evidence also runs afoul of the express request of the ANM that Claimant provide evidence of its alleged losses.¹¹⁶² But even if Claimant’s claim to have lost control of the Mine were true, claiming that that loss is the fault of Colombia ignores Claimant’s own significant contribution to the situation at the Mine.

629. As is explained above, upon Zijin Mining’s acquisition of the Mine in 2020, it did away with the extensive social programming previously put in place by CGI, including Plan Buriticá. These social sustainability programs were fundamental to preserving favorable community relations in Antioquia and thus to preventing the informal mining economy from being suborned by criminal elements.¹¹⁶³ It is notable that the value of such programs is not unknown to Zijin Mining. The Porgera Joint Venture Gold Mine, which is also now organized under ZGI,¹¹⁶⁴ faced an escalation in violence concomitant with illegal mining in the early 2000s. In response, the Porgera Joint Venture established community engagement processes, partnerships with human rights organizations, and a prevention-focused cooperation with police, with the effect of significantly reducing illegal entries into the mine.¹¹⁶⁵ The Porgera response was prepared and enacted between 2006 and 2010. Zijin Mining acquired its stake in the Porgera Joint Venture in 2015,¹¹⁶⁶ five years before it purchased Continental Gold. In Colombia, therefore, Zijin Mining saw an already-established social program which it was aware served as a successful

¹¹⁵⁸ **CL-021**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶¶ 168–178.

¹¹⁵⁹ **CL-021**, *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶ 178.

¹¹⁶⁰ **CL-151**, *Yukos Universal Ltd. (Isle of Man) v. Russian Federation*, PCA Case No. AA 227, Final Award, 18 July 2014, ¶¶ 607–648.

¹¹⁶¹ Claimant’s Updated Memorial, ¶¶ 400 and 402.

¹¹⁶² See *supra* § III.F.2.

¹¹⁶³ See *supra* Section III.D.

¹¹⁶⁴ **Exhibit R-0001**, IPO Prospectus, pp. 289, 293, 345–346 (PDF pgs. 299, 303, 355–356).

¹¹⁶⁵ **RER-2**, Negotient First Expert Report, ¶ 114.

¹¹⁶⁶ See **Exhibit R-0023**, Barrick closes \$298m Porgera JV deal with Zijin, Mining Weekly, 31 August 2015.

prophylactic against illegal mining. Instead of preserving it, however, it did away with the program and exposed Buriticá to the very same problems which Porgera had solved a decade prior, effectively discarding a solution which numerous other mining projects have adopted as a best practice to address or prevent similar problems.¹¹⁶⁷

630. Not content with merely abandoning the preventative measures, Claimant has invited the ire of the local community. Many of the protests which have resulted in disruptions to Claimant's operations have been responses to actions of Claimant rather than permitted by the acquiescence of the State. In carrying out the backfilling of tunnels without appropriate safeguards to protect human life, Claimant has trapped informal miners within the bowels of the Mine – provoking community uproar and backlash against the Mine's operators.
631. It is necessary to recall the dicta in *Maffezzini*, that investment treaties “cannot be deemed to relieve investors of the business risks inherent in any investment.”¹¹⁶⁸ Zijin Mining was and remains one of the premier mining companies in the world. It is not a novice when it comes to the proper management of mines in countries which often bear the scars of civil war and internal corruption far worse than Colombia. To excuse Claimant's own failings and grant Claimant compensation for its alleged damages, therefore, would be to reward Claimant for risks it has acknowledged and worsened.
632. It also bears repeating that both CGI and Zijin Mining invested in Colombia, and in the Buriticá Mine in particular, with full knowledge of and acquiescence to the risks of illegal mining. The Feasibility Study prepared for Continental Gold Inc. by JDS Energy & Mining Inc. in 2016 identified illegal mining and its impact on the reserve among potential risks to the Project, but concluded that “Results of this Feasibility Study demonstrate that the Buriticá Project warrants development due to its positive, robust economics.”¹¹⁶⁹ The same is true of all subsequent updates to the resources and reserves at Buriticá, as summarized above.
633. Likewise, Zijin Mining Group's 2024 Annual Report explained, in its Notes to the Consolidated Financial Statements, that:

Based on the public concern about the Colombian project in 2024, the management performed an impairment test on this asset group based on the prudence principle. When the management performed the impairment test on the abovementioned assets, the recoverable amount of the related assets or asset groups was the higher of fair value less costs of disposal and the present value of the expected future cash flows. The recoverable amounts of

¹¹⁶⁷ See **RER-2**, Negotient First Expert Report, ¶ 114.

¹¹⁶⁸ **RL-078**, *Emilio Agustín Maffezzini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Award, 13 November 2000, ¶ 64.

¹¹⁶⁹ **Exhibit C-0186**, Buriticá Project Feasibility Study, JDS Energy & Mining Inc., 20 May 2016, p. 26-1.

Continental Gold asset group were determined based on the present value of the expected future cash flows.

[...]

[Having determined the present value of future cash flows] According to the results of the impairment test, as at 31 December 2024, the recoverable amount of the Continental Gold asset group was higher than its carrying amount, and the Group did not make provision for impairment on the Continental Gold asset group.¹¹⁷⁰

3. Because Claimant Cannot Prove its Losses were Caused by Colombia it is Not Entitled to Damages

634. In addition to the need to establish a causal link between Claimant's sustained damages and the State's ostensible breach of the Treaty, international law requires that Claimant also be able to establish that the State's breach was the *sine qua non* of its losses.¹¹⁷¹ As Claimant has been unable to do so, it is not entitled to recover damages.¹¹⁷²
635. Claimant relies on *CME v. Czech Republic* for the principle that, in the context of an FPS claim, causation "arises if the damage or disadvantage deriving from the deprivation of the legal safety of the investment is foreseeable and occurs in a normal sequence of events."¹¹⁷³ First, the language Claimant quotes is taken out of context, because it comes from the tribunal's discussion of whether the lack of legal protection of an investment can give rise to **breach**, rather than damages.¹¹⁷⁴ Second, although the *CME* tribunal did find that the Czech Republic had caused the claimant's losses, it did so on the principle of joint tortfeasance, based on a theory that the State and a third party had jointly caused the claimant's losses.¹¹⁷⁵ There were no facts in that case that supported an inference that the claimant had contributed to its own losses.
636. Of greater relevance are the holdings in *Lauder v. Czech Republic* and *Victor Pey Casado v. Chile*. In *Lauder*, the tribunal stated that "[e]ven if the breach therefore constitutes one of several '*sine qua non*' acts, this alone is not sufficient. In order to come to a finding of a compensable damage it is also necessary that there existed no intervening cause for the

¹¹⁷⁰ **Exhibit R-0076**, 2024 Annual Report, Zijin Mining Group Company Ltd., 31 December 2024, pp. 279–280.

¹¹⁷¹ **RL-048**, *Lauder*, ¶ 234.

¹¹⁷² **RL-079**, *Impregilo S.p.A. v. Argentine Republic*, ICSID Case No. ARB/07/17, Award, 21 June 2011, ¶¶ 375–380; **RL-080**, *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award in Resubmission Proceeding, 13 September 2016, ¶ 234.

¹¹⁷³ See Claimant's Updated Memorial, ¶ 403; **CL-152**, *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 527.

¹¹⁷⁴ **CL-152**, *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 527 ("The Respondents argument that a **breach** of the Treaty by coercion [...]") (emphasis added).

¹¹⁷⁵ **CL-152**, *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001, ¶ 529.

damage.”¹¹⁷⁶ Similarly, the *Victor Pey Casado* tribunal found that “the Claimants have failed to prove any material injury caused to either of them as the sufficiently direct result of the Respondent’s breach [...] The Tribunal cannot therefore, on principle, make any award of damages.”¹¹⁷⁷

637. As the tribunal recognized in *Kardassopoulos v. Georgia*, the causal link that a claimant has to show is that the State’s actions were the “proverbial deathblow” without which “the Claimants would not have suffered the loss of their rights.”¹¹⁷⁸
638. Claimant is unable to identify such a “deathblow” in the present case. Instead, it seeks to present Colombia’s consistent efforts to defend Claimant’s investment as a dereliction of duty—an insult to the Colombian police and army personnel who have endangered life and limb in the protection of Claimant’s investment—because the State has not abrogated its responsibility to safeguard the health and wellbeing of its citizens to afford Claimant the “operation waged in blood and fire”¹¹⁷⁹ that it demands. Far from its actions constituting any manner of injury or deathblow to Claimant’s investment, Colombia’s consistent military and law enforcement operations have prevented greater losses of the mineral reserves.
639. Absent the requisite showing of (A) cause, (B) effect, and (C) a logical link between the two, Claimant’s case for damages cannot be sustained. Claimant has failed to show that Colombia caused its alleged loss.

B. Claimant Applies the Incorrect International Law Standard in its Damages Calculation

640. Claimant applies the wrong Treaty standard to its claims. First, relying on the principle of full reparation, Claimant alleges that the proper valuation of its damages is the same, regardless of the Treaty standard alleged to be breached. Second, relying on the “logic[]” that “[d]amages for unlawful expropriations [...] must not be lower than the compensation required for lawful expropriations,” Claimant asserts that it is entitled to claim the value of its investment “on the date immediately before the taking or the date of the tribunal’s award, whichever is higher.”¹¹⁸⁰ It is wrong on both counts.

¹¹⁷⁶ **RL-048**, *Lauder*, ¶ 234.

¹¹⁷⁷ **RL-080**, *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award in Resubmission Proceeding, 13 September 2016, ¶ 234.

¹¹⁷⁸ **CL-142**, *Ioannis Kardassopoulos and Ron Fuchs v. Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, 3 March 2010, ¶ 465; *see also* **RL-132**, *SD Myers, Inc. v. Government of Canada*, Partial Award on Merits, 13 November 2000, ¶¶ 315-316; **CL-051**, *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011, ¶ 682.

¹¹⁷⁹ **C-0394**, Santiago Rodríguez Álvarez and Manuela Galvis, *The Clan del Golfo is winning the underground gold war in Buriticá, La Silla Vacía*, 10 March 2024, p. 13.

¹¹⁸⁰ Claimant’s Updated Memorial ¶¶ 417, 419. *See generally* Claimant’s Updated Memorial Section V(B)(1).

641. Colombia does not dispute that the oft-cited principle from the *Factory of Chorzow* regarding the principle of full reparation represents customary international law. Thus:

[R]eparation 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 that act had not been committed.¹¹⁸¹

642. That principle does not apply automatically, however. Claimant attempts to argue around the standard for compensation set in the Treaty by alleging it applies only to the case of a “lawful expropriation[],”¹¹⁸² but this is incorrect. Article 811(1)-(2) of the Treaty reads, in relevant part:

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except: [...]

(c) on prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4;

[...]

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. To determine fair market value a Tribunal shall use appropriate valuation criteria, which may include going concern value, asset value including the declared tax value of tangible property, and other criteria.¹¹⁸³

643. That the Treaty standard refers to both direct and indirect expropriation and “measures having an effect equivalent to nationalization or expropriation,” and that it contemplates a tribunal needing to determine the fair market value of the investment is strong evidence that the Contracting States intended this provision to apply to all situations where expropriation or a measure akin to expropriation is alleged and damages are to be assessed.¹¹⁸⁴ As the tribunal reasoned in *Guaracachi v. Bolivia*, if the treaty “makes no

¹¹⁸¹ **CL-123**, *Case Concerning The Factory at Chorzów (Claim for Indemnity) (Merits)*, PCIJ Series A, No. 17, Judgment No. 13 (Merits), 13 September 1928, p. 47.

¹¹⁸² Claimant’s Updated Memorial, ¶ 406.

¹¹⁸³ **RL-001**, FTA, Art. 811.

¹¹⁸⁴ See **RL-081**, *Tadić*, International Criminal Tribunal for the former Yugoslavia, Case IT-94-1, Transcription of public session (21 April 1999), p. 553 (“‘ubi lex non distinguit, nec nos distinguere debemus,’ wherever the law does not make any distinction, the interpreter is not allowed to make similar distinctions”); see also **RL-082**, *Phillips Petroleum Company Iran v. The Islamic Republic of Iran and The National Iranian Oil Company*, IUSCT Case No. 39, Award No. 425-39-2, 29 June 1989, ¶ 103 (“[T]he applicable law for the

distinction between the compensation to be provided in respect of an unlawful expropriation as opposed to a lawful one,” there is no basis “to believe that the illegality of the expropriation renders what the BIT deems to be ‘just and effective compensation’ suddenly inadequate.”¹¹⁸⁵

644. Numerous investment treaty tribunals have declined to distinguish between the standard of damages to be awarded for lawful and unlawful expropriation where the applicable investment treaty does not call for doing so. In *Sedelmeyer v. Russia*, for example, the tribunal found that Russia breached the applicable expropriation clause by failing to accord due process, failing to explain its public policy objectives, and failing to pay compensation, but still awarded the claimant compensation based on the standard set in the BIT’s expropriation clause.¹¹⁸⁶ Likewise, the tribunal in *Wena Hotels*, relied on by Claimant, applied the applicable treaty’s standard of compensation for expropriation to determine the amount of damages payable for the occupation of the hotels on a date immediately prior to their expropriation.¹¹⁸⁷ The tribunal in *Tecmed v. Mexico* did the same for an expropriation it found to be discriminatory, lacking in public policy justification, and done without compensation.¹¹⁸⁸
645. This same approach has been consistently followed by NAFTA tribunals as well. In *Metalclad v. Mexico*, for example, the tribunal found Mexico’s denial of a construction permit to constitute a breach of the NAFTA expropriation provision for lack of due process and compensation. In assessing damages, the tribunal relied on the standard of compensation in NAFTA Article 1110(2), which requires compensation equivalent to fair market value immediately before the expropriation took place.¹¹⁸⁹
646. Claimant advances an indirect expropriation claim.¹¹⁹⁰ In doing so, it is bound to claim damages equivalent to what it claims has been expropriated, and pursuant to the standard set in the Treaty for doing so. That its expropriation claim may thus be carved out from its other claims and valued on its own is confirmed by Claimant’s own citation to *Murphy*

purpose of determining the compensation owed by the Islamic Republic of Iran for deprivations or takings of property of United States nationals during the years immediately prior to the Algiers Accords is the 1955 Treaty of Amity. [...] Therefore, the Treaty of Amity is the relevant source of law on which the Tribunal is justified in drawing [sic] in reaching its decision.”).

¹¹⁸⁵ **RL-083**, *Guaracachi America, Inc. and Rurelec PLC v. Plurinational State of Bolivia*, PCA Case No. 2011-17, UNCITRAL, Award, 31 January 2014, ¶¶ 612–613.

¹¹⁸⁶ See **RL-084**, *Franz Sedelmeyer v. Russian Federation*, SCC, Award, 7 July 1998, pp. 73, 92.

¹¹⁸⁷ **CL-013**, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶¶ 99–101.

¹¹⁸⁸ **CL-016**, *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶¶ 188–189.

¹¹⁸⁹ **CL-139**, *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000, ¶¶ 104, 188, 120–121. Article 1110(2) of the NAFTA is substantially similar to Article 811(2) of the Colombia-Canada FTA.

¹¹⁹⁰ See Claimant’s Updated Memorial, Section IV.B.

Exploration v. Ecuador: “The Tribunal is satisfied that the above principle of full reparation applies to breaches of investment treaties **unrelated to expropriations**.”¹¹⁹¹

647. Claimant’s claim for damages therefore faces a significant hurdle insofar as it fails to distinguish between Claimant’s damages resulting from Colombia’s alleged violations of its full protection and security, indirect expropriation, and fair and equitable treatment obligations.¹¹⁹²
648. Claimant is also incorrect that it is entitled to claim damages on either the date immediately before the taking or the date of the award, whichever is higher.
649. The principle articulated by the *Yukos* tribunal on which Claimant relies, allowing investors to “enjoy the benefits of unanticipated events that increase the value of an expropriated asset up to the date of the decision,”¹¹⁹³ has not reached the level of customary international law. Claimant submits no *opinio juris* supporting its position.
650. To the contrary, as the tribunal held in *Tenaris II v. Venezuela*:

It is an *indisputable principle of customary international law* that the victim of an unlawful act perpetrated by a State has the right to receive full reparation, as if the wrongful act had not occurred. In cases of expropriation, the full reparation is equivalent to the market value of the expropriated property, understood as the value that the owner could have obtained, if he had disposed of it *on a date immediately prior to that on which the State dispossessed him, or on the date that the will to expropriate became publicly known* (reducing the market value of the property).

Therefore, in practical terms, the regulation of the compensation contained in the BITs leads to the same results as if the general principles of international law were applied.¹¹⁹⁴

¹¹⁹¹ See Claimant’s Updated Memorial, ¶ 411, n. 785 (quoting **CL-074**, *Murphy Exploration & Production Company-International v. Republic of Ecuador*, PCA Case No. 2012-16, Partial Final Award, 6 May 2016, ¶ 425) (emphasis added).

¹¹⁹² Claimant’s case is not saved by its reliance on *Lupaka Gold v. Peru*, which simply applied the applicable treaty’s standard for compensation for expropriation to each of the claimant’s expropriation, FET, and FPS claims. See Claimant’s Updated Memorial, ¶ 416 (citing **CL-138**, *Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award, 30 June 2025, ¶ 589).

¹¹⁹³ See Claimant’s Updated Memorial, ¶ 419 (citing **CL-151**, *Yukos Universal Ltd. v. Russian Federation*, PCA Case No. AA 227, Final Award, 18 July 2014, ¶ 1767).

¹¹⁹⁴ **RL-074**, *Tenaris SA and Talta-Trading E Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela (II)*, ICSID Case No. ARB/12/23, Award, 12 December 2016, ¶¶ 396–397 (emphasis added).

651. This position is in line with the mandate given to the Tribunal by the Permanent Court of International Justice in *Factory at Chorzow*, to “reestablish the situation which would, in all probability, have existed” if the breach had not occurred.¹¹⁹⁵
652. In this respect, it is important to note that Claimant fails to articulate a date of alleged breach for the majority of its claims.¹¹⁹⁶ Rather, it claims a date of initial breach concurrent with the inauguration of President Gustavo Petro—7 August 2022—and claims that all breaches are ongoing. As the tribunal found in *Perenco Ecuador v. Ecuador*, in such a situation, the tribunal should be concerned “about the degree of randomness associated with employing the date of the Award as the valuation date since a single significant event can have dramatic effects on valuation.”¹¹⁹⁷ In that case, of particular concern to the tribunal was the volatility of the oil market, which applied to Perenco Ecuador’s investment; here, the equivalent market is that of gold, which Claimant argues lends “special relevance” to its ability to select the date of the Award as its date of valuation, “because of the very substantial increase in the gold (and silver) prices over the past several years.”¹¹⁹⁸ As in *Perenco*, however, in such a case it would be appropriate to apply Claimant’s expectations *ex ante* given that there is no single date of breach.¹¹⁹⁹
653. Claimant’s claim to an entitlement to the higher of its damages as of the date of the Award based on rising gold and silver prices should be of further concern to the Tribunal, as awarding damages on that basis would represent an impermissible windfall to Claimant. As the tribunal noted in *AES Solar v. Spain*, “a valuation at the time of the breach [...] appears particularly appropriate when the consequences of a later evolution of prices, interest rates, or other inputs are unrelated to the impugned measures and the (higher) harm can thus not be deemed to derive from the measures.”¹²⁰⁰ That tribunal, faced with the choice between valuing the claimant’s loss as of the breach or as of the award, noted that the primary difference between the two valuations was “lower interest rates and the (related) possibility of revision of the returns,” which were “not caused by the Disputed Measures, but [were] mainly due to the evolution of the financial markets and to

¹¹⁹⁵ **CL-123**, Case Concerning The Factory at Chorzów (Claim for Indemnity)(Merits), PCIJ Series A, No. 17, Judgment No. 13 (Merits), 13 September 1928, p. 47; see also **CL-118**, Bernardus Henricus Funnekotter et al. v. Republic of Zimbabwe, ICSID Case No. ARB/05/6, Award, 22 April 2009, ¶ 115 (“the damages [...] must be evaluated at the date of dispossession. This is the rule both under general international law and under Article 6(c) of the BIT.”); **CL-129**, Gemplus S.A. et al. v. United Mexican States, ICSID Case No. ARB(AF)/04/3 & ARB(AF)/04/4, Award, 16 June 2010, ¶ 12–43 (“Both under international law and (directly or by analogy) Article 5 of the two BITs, the relevant date for assessing compensation is 24 June 2001, being the day preceding the unlawful Requisition of 25 June 2001.”).

¹¹⁹⁶ Claimant’s Updated Memorial, ¶ 424(b); compare **CL-110**, ARSIWA, Art. 15.

¹¹⁹⁷ **RL-085**, *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Award, 27 September 2019, ¶ 116.

¹¹⁹⁸ Claimant’s Updated Memorial, ¶ 421.

¹¹⁹⁹ See **RL-085**, *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Award, 27 September 2019, ¶ 117.

¹²⁰⁰ **RL-086**, *AES Solar et al. v. Kingdom of Spain*, PCA Case No. 2012-14, Final Award, 28 February 2020, ¶ 721.

macroeconomic conditions.”¹²⁰¹ Thus, to the extent that its award of damages was meant to “track reasonable profitability,” it opted to award damages as of the date of breach.¹²⁰²

C. Claimant is Not Entitled to Damages for the Independent Reason that it Has Not Demonstrated Any Losses Arising from the Measures

654. Even if Claimant had proven some breach of Colombia’s Treaty obligations, which is denied, and if Claimant had proven that its alleged damages were caused by Colombia, which is also denied, Claimant’s case on damages fails for still another reason: it has not proven that it lost any income as a result of the alleged Measures. In other words, Claimant has not alleged that it suffered any harm as a result of the alleged Measures.

1. Claimant Has Not Demonstrated Losses Resulting from the Measures

655. Claimant’s experts on damages, Ronald Lewis and Catherine Joyner of J.T. Boyd Company (“**Boyd**”) value those sections of the mine Claimant alleges have been lost to informal mining – the “Lost Mineral Areas” – on a discounted cash flow (“**DCF**”) basis. They conclude the DCF value of the lost mineral areas is [REDACTED], for [REDACTED].¹²⁰³

656. As Colombia’s expert on damages, Dr. Daniel Flores of Quadrant Economics, explains, Boyd’s analysis of Claimant’s alleged damages is fundamentally flawed.¹²⁰⁴ What Boyd purports to value is a loss of income from exploitation of the Lost Mineral Areas, but there was no such loss: Continental Colombia shifted production from the allegedly occupied areas of the Mine to other parts of the Mine, so Continental Colombia has never stopped producing over any part of the valuation period from 2022-2027.¹²⁰⁵

657. Dr. Flores describes the correct approach as follows:

Claimant’s economic interest is the right to explore and exploit the mineralized areas within the Concession boundaries, not just the Lost Mineral Areas. As a result, the economic impact of the alleged Measures on Claimant’s interest in the Buriticá Project is the difference between (i) the economic benefit that Claimant has derived and will derive from the exploitation of the entirety of the Mine in the presence of the alleged Measures (the “Actual Scenario”), and (ii) the economic benefit Claimant would have

¹²⁰¹ **RL-086**, *AES Solar et al. v. Kingdom of Spain*, PCA Case No. 2012-14, Final Award, 28 February 2020, ¶ 722.

¹²⁰² **RL-086**, *AES Solar et al. v. Kingdom of Spain*, PCA Case No. 2012-14, Final Award, 28 February 2020, ¶¶ 722-723.

¹²⁰³ See Boyd First Expert Report, Section 5, p. 5-10, ¶ 24, Table 5.3; see also Claimant’s Updated Memorial, ¶ 401, n. 764; ¶¶ 426-428 (claiming same as Boyd’s “Base Case Scenario”).

¹²⁰⁴ See **RER-3**, Expert Report of Dr. Daniel Flores (Quadrant), 8 May 2026 (“**Quadrant First Expert Report**”), ¶ 11.

¹²⁰⁵ See generally **RER-3**, Quadrant First Expert Report, Section IV.

derived from the exploitation of the entirety of the Mine absent the Measures (the “But-For Scenario”).¹²⁰⁶

658. Thus, a proper damages analysis of the impact of Colombia’s alleged tolerance of the illegal mining happening in Buriticá—if Claimant had proven that Colombia had done so (and it has not)—would account for the difference between Claimant’s But-For Scenario profits and Claimant’s Actual Scenario profits. This is not the valuation that Boyd was instructed to compute.
659. Instead, what Claimant presents as its damages in this Arbitration is an alleged valuation of the so-called Lost Mineral Areas, defined as “the areas lost to mining by Continental Gold as a result of illegal mining following the Date of Initial Breach,”¹²⁰⁷ as if **exclusively** those areas had been mined by Continental Colombia over the period 2022-2027.
660. Boyd’s approach ignores reality. As Dr. Flores explains, the limiting factor for mine revenues for a project such as Buriticá is often processing plant capacity, not ore extraction.¹²⁰⁸ This is evidently the case in Buriticá. As ZGI reported in the IPO Prospectus, [REDACTED]
- [REDACTED]¹²⁰⁹ As Dr. Flores notes, “[i]n other words, the processing rate – the constraining factor for production – has not decreased as a result of the Measures.”¹²¹⁰
661. The main issue with the Boyd model is thus that its Actual Scenario rests on an erroneous assumption, that “because Continental Colombia was unable to mine the Lost Mineral Areas, it could not mine any ore at all from the Mine during the Valuation Period [August 2022 and December 2027].”¹²¹¹ Boyd assumes a complete loss of 1.3 million tons of production annually.¹²¹²

¹²⁰⁶ RER-3, Quadrant First Expert Report, ¶ 24.

¹²⁰⁷ Boyd First Expert Report, Section 1, p. 1-2, ¶ 4(b); *see also* Boyd First Expert Report, Section 5, p. 5-1, ¶ 3 (noting that Boyd determined the “Lost Mineral Areas” from “a 3-D CAD file showing the geolocation, erection date and levels of the barricades that the security and protection team of Continental Gold constructed in the Mine to seal off permanently the areas that had been affected by illegal mining.”).

¹²⁰⁸ *See* RER-3, Quadrant First Expert Report, ¶ 22.

¹²⁰⁹ *See* Exhibit R-0001, IPO Prospectus, Table: Gold Production Volume, p. 13 (PDF p. 23); *accord* Boyd First Expert Report, Section 4, p. 4-14, Table 4.1. Likewise, ZGI’s year-end results for 2025, posted to the website of the Hong Kong Stock Exchange on 22 March 2026, reported that the processing plant “continued operation at full load.” *See* Exhibit R-0061, Annual Results Announcement for the Year Ended 31 December 2025, Zijin Gold International Company Ltd., 20 March 2026, p. 16.

¹²¹⁰ RER-3, Quadrant First Expert Report, ¶ 25.

¹²¹¹ RER-3, Quadrant First Expert Report, ¶ 27.

¹²¹² First Boyd Report, Section 3, p. 3-10, ¶ 31; Section 6, pp. 6-26-6-30, Table 6.5.

662. In reality, however, “a correct assessment [...] acknowledges that Continental Colombia was able to process at design capacity in both the But-For and Actual Scenarios.”¹²¹³ As Dr. Flores explains:

The evidence supports the conclusion that Continental Colombia has been able to avert potential impacts to production resulting from the alleged Measures.

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The SRK Competent Person’s Report does not show any decrease in production either, and indeed instead projects an increase in ore production starting in 2027.¹²¹⁵ This is also acknowledged by Boyd in its report, which notes that

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663. As Dr. Flores also explains, it is also erroneous to assume that “any ore quantities not mined from the Lost Mineral Areas as a result of the Measures have been lost and cannot be replaced.”¹²¹⁷
664. As is evident from the abundance of reserve statements commissioned by Claimant, as a mine such as Buriticá enters production, its ore reserve evolves. The mining industry uses two sets of professional standards to govern the estimation and reporting of mineral deposits: (1) the Canadian Institute of Mining (“**CIM**”) Standards of Disclosure for Mineral Projects pursuant to National Instrument 43-101 (“**NI 43-101**”); and (2) the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (“**JORC Code**”). Pursuant to the JORC Code, as explained by Mr. Gorman, Colombia’s expert on the mining industry, a mine may contain (1) resources, which can be classified as indicated, inferred, and measured, and (2) reserves, which are classified

¹²¹³ RER-3, Quadrant First Expert Report, ¶ 29.

¹²¹⁴ RER-3, Quadrant First Expert Report, ¶ 30.

¹²¹⁵ Exhibit R-0001, IPO Prospectus, SRK Competent Person’s Report, IIC-167 (PDF p. 1328).

¹²¹⁶ Boyd First Expert Report, Section 4, p. 4-1, ¶ 3 (emphasis added).

¹²¹⁷ RER-3, Quadrant First Expert Report, ¶ 35.

as probable or proved.¹²¹⁸ The JORC Code 2012 summarizes the relationship between these resource and reserve classifications as follows:¹²¹⁹

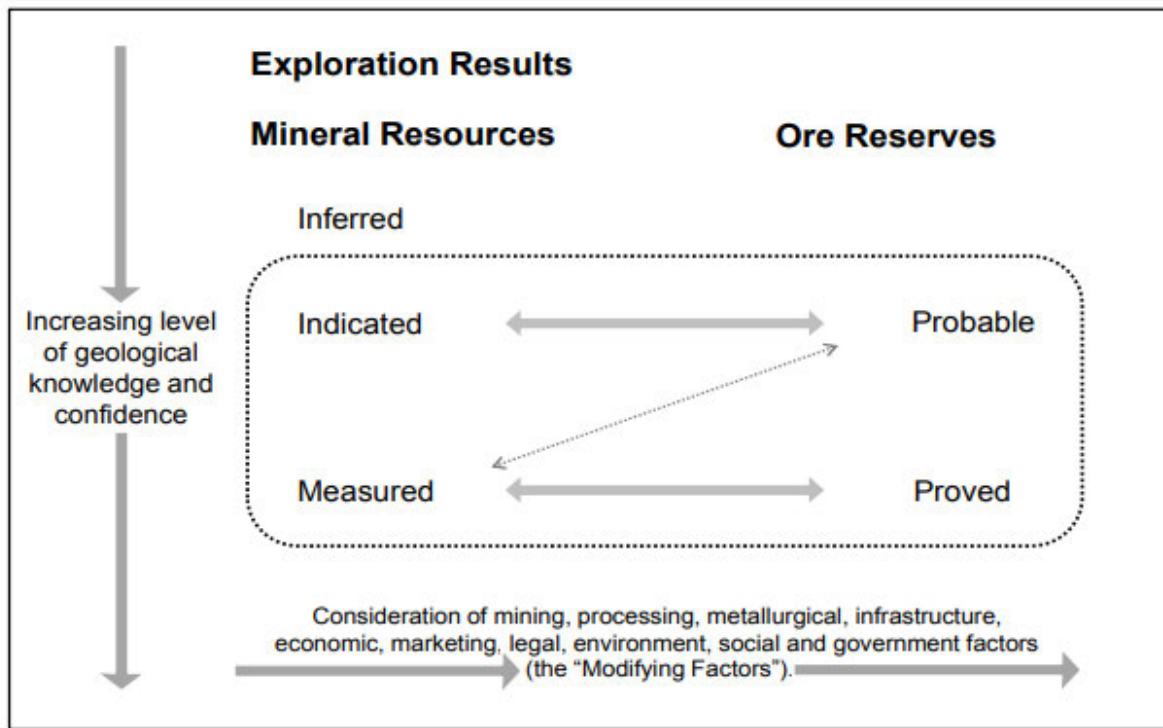


Figure 1 General relationship between Exploration Results, Mineral Resources and Ore Reserves.

665. As Mr. Gorman explains, the Proved Ore Reserve “is the economically mineable part of a Measured Mineral Resource,” while the Probable Ore Reserve is “the economically mineable part of an Indicated, and in some circumstances, a Measured Mineral Resource.”¹²²⁰ Over the life of the mine, the Reserve is mined by the concessionaire, but further exploration and assessment by the concessionaire simultaneously allows it to convert Measured and Indicated (M&I) Mineral Resources to Proven and Probable (or 2P) Reserves. Mr. Gorman assessed all of the NI 43-101 compliant reports compiled for Buriticá since the Feasibility Study done by JDS Engineering in 2016, and explains that “M&I resources and 2P ore reserve tonnages have increased dramatically” since then.¹²²¹

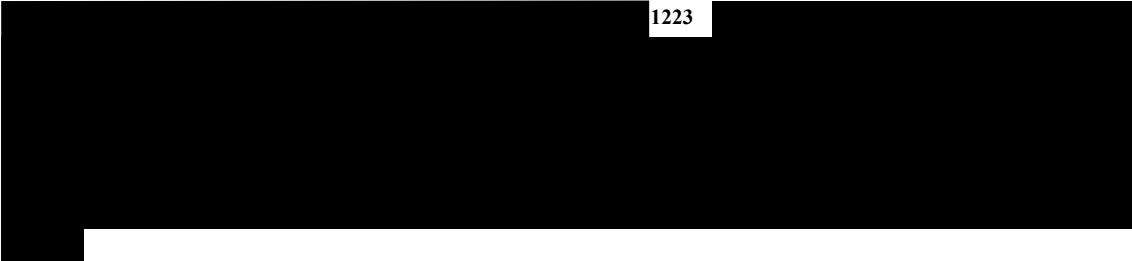
¹²¹⁸ RER-2, Negotient First Expert Report, Definitions.

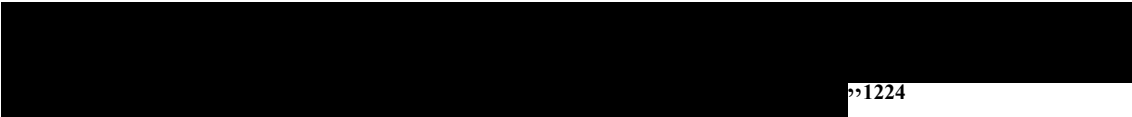
¹²¹⁹ Exhibit PWG-010, “The JORC Code 2012 Edition,” Joint Ore Reserves Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia (JORC), p. 9, Figure 1.

¹²²⁰ RER-2, Negotient First Expert Report, Definitions.

¹²²¹ RER-2, Negotient First Expert Report, ¶ 65.

666. Drawing from this assessment, as well as his detailed review of the SRK 2025 Competent Person’s Report and the reconciliation statements filed with ANM by Continental Gold, Mr. Gorman opines that “there are currently sufficient ore reserves at Buriticá for the Claimant to be confident of sustaining mining between 2026 and either 2035 (ANM data) or 2040 (SRK CPR 2025 data) at 1.65 Mtpa,” *i.e.* the processing rate anticipated by SRK to be used by Continental Colombia starting from 2027, “or between 2025 and either 2036 (ANM data) or 2044 (SRK CPR 2025 data) at 1.32 Mtpa,” *i.e.* the current processing rate of the Higabra processing plant.¹²²²

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2. Claimant is Not Entitled to Damages for Unrealized Losses

669. Claimant cites repeatedly throughout its Updated Memorial to its “exclusive rights” to the Concession.¹²²⁵ As Claimant is forced to acknowledge, however, this is a right granted not pursuant to its Concession Agreement with the State but pursuant to the Mining Code, and it is limited in nature. Articles 14 and 15 of the Mining Code provide:

Article 14

Mining title. As of the effective date of this Code, the right to explore and exploit state-owned mines may be established, declared, and proven only through a mining concession contract that has been duly granted and registered in the National Mining Registry.

¹²²² **RER-2**, Negotient First Expert Report, ¶ 73.

¹²²³ See **Exhibit C-0019**, Concession Agreement No. 7495 between Continental Colombia and the Secretary of Mines of the Department of Antioquia, 14 September 2011, Clause 4 (granting the concession for a period of 30 years from its registration in the National Mining Registry, with a three-year term for the exploration phase). The Concession Agreement was entered in the National Mining Registry on 20 March 2013. See **Exhibit C-0020**, Certificate of Mining Registry of Concession Agreement No. 7495, 30 March 2022. See also **Exhibit R-0001**, IPO Prospectus, p. 331 (PDF p. 341) (Mining Concession Agreements, noting the effective period of the Concession).

¹²²⁴ **RER-2**, Negotient First Expert Report, ¶ 84.

¹²²⁵ See, e.g., Claimant’s Updated Memorial, ¶¶ 256; 268(c); 307.

[...]

Article 15

Nature of the beneficiary's right. The concession contract and the other instruments issued by the State referred to in the preceding article do not grant the beneficiary ownership of the minerals in situ. Instead, they grant the right to establish, within the granted area, and on an exclusive and temporary basis, the existence of minerals in usable quantity and quality, to extract or capture them, and to impose the necessary easements on third-party property for the effective exercise of these activities.¹²²⁶

670. The rights assigned to a concessionaire are thus (i) not property rights, which belong exclusively to the State; (ii) necessarily confined to the concession area; (iii) necessarily time-bound; (iv) exclusive only for the period in which they are valid; (v) confined to minerals of “usable quantity and quality”; and (vi) pertain to establishment, extraction, and capture of the minerals. Clause One of the Concession Agreement confirms this, providing:

THE CONCESSIONAIRE shall have the free availability of the minerals subject to the concession Agreement that are extracted in compliance with the Unified Works and Construction Plan [the Plan de Trabajo y Obras] approved by **THE GRANTOR** [...] The minerals in situ belong to the Colombian State; and once extracted, will become the property of **THE CONCESSIONAIRE**.¹²²⁷

671. And, although Claimant (and indeed, ZGI) has indicated its intention to renew the Concession,¹²²⁸ the Concession Agreement contains no automatic right of renewal. To the contrary, clause four paragraph 2 provides that “[a]t least two (2) years before the expiration of the exploitation period and being in good standing, **THE CONCESSIONAIRE** may request an extension of the contract for up to **twenty (20) years, which will not be automatic.**”¹²²⁹ Instead, to request a renewal, the Concession Agreement requires that the request:

[B]e accompanied by new technical, economic, environmental, and social studies supporting the current status of the resources.

¹²²⁶ **Exhibit R-0063**, Mining Code, Arts. 14-15. *See also* **C-0053**, Political Constitution of the Republic of Colombia, 6 July 1991, Art. 332 (“The State owns the subsoil and non-renewable natural resources, without prejudice to rights acquired and perfected in accordance with pre-existing laws.”).

¹²²⁷ **Exhibit R-0022**, Concession Agreement No. 7495 between Continental Colombia and the Secretary of Mines of the Department of Antioquia, 14 September 2011 (“**Concession Agreement**”), Cl. 1.

¹²²⁸ *See* **Exhibit R-0001**, IPO Prospectus, p. 331 (“We aim to renew the above mining concession agreement before its expiry date.”).

¹²²⁹ **Exhibit R-0022**, Concession Agreement, Cl. 4, ¶ 2 (third emphasis added).

For this purpose, the conditions of the extension must be negotiated in advance, including the possibility of agreeing on considerations other than royalties: in any case, the extension will only be granted if it demonstrates that it is beneficial for the interests of the State. The extension will be formalized by means of a document signed by the parties, which will be registered in the Mining registry.¹²³⁰

672. The combined effect of the concessionaire’s carefully defined rights under the Mining Code, particularly the time-bound nature of its concession and the reality that all minerals in situ are the property of the State until extracted, is that Claimant has no property right in those minerals it could not extract over the life of its 30-year concession. For the Lost Mineral Areas, then, which represent quantities of reserve beyond what Continental Colombia needs to continue to meet its production goals through March of 2043, there can be no loss to Claimant.
673. Even where international tribunals have found liability on the part of a State, they have declined to award damages in situations where the claimant suffered no loss. In *Pawłowsky v. Czech Republic*, for example, the tribunal found that certain actions by the respondent, including “irregular and improper requests” for payment in exchange for the withdrawal of a lawsuit, breached the State’s treaty obligations.¹²³¹ It did not find, however, any evidence that that breach caused harm to the claimants,¹²³² and thus awarded only “satisfaction” to the claimants in the form of a declaration of the State’s breach.¹²³³
674. Likewise, in *Infinito Gold v. Costa Rica*, the tribunal found by majority that the State had breached its FET obligations with respect to the investor’s gold concession by issuing a legislative mining ban and a resolution implementing that ban, as those measures had the effect of preventing the investor from applying for a new exploitation concession.¹²³⁴ The tribunal nevertheless found that the investor had shown no loss resulting from those measures because its operations were unaffected by them: an executive moratorium was already in place that would have had the same effect and would have constituted a breach

¹²³⁰ **Exhibit R-0022**, Concession Agreement, Cl. 4, ¶ 2.

¹²³¹ See **RL-087**, *Pawłowski AG and Projekt Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award, 1 November 2021, ¶¶ 722, 732.

¹²³² **RL-087**, *Pawłowski AG and Projekt Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award, 1 November 2021, ¶¶ 731, 733.

¹²³³ **RL-087**, *Pawłowski AG and Projekt Sever s.r.o. v. Czech Republic*, ICSID Case No. ARB/17/11, Award, 1 November 2021, ¶¶ 738–740; see also **RL-133**, Cesare Tumedei *et al.*, *Arbitral Award in the Martini Case* 25(3) AJIL, July 1937, pp. 584–585 (finding that certain parts of the court’s decision were tainted with “manifest injustice” that impose certain obligations of payment, but finding that “the Arbitral Tribunal considers that there is no ground to allow pecuniary reparation to the Italian Government as a result of the cancellation of the contract of concession. It has not been proven that the Martini Company has suffered other damages as a consequence of the parts of the decision vitiated with manifest injustice.”).

¹²³⁴ **CL-092**, *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, ¶ 581.

but-for the fact that it was outside the treaty’s prescription period.¹²³⁵ In other words, absent those measures, the investor—like Claimant here—would have been in the exact same position it was in anyway.¹²³⁶

D. Claimant’s Valuation of the Alleged Lost Mineral Areas is Flawed and Speculative

675. Even if Claimant were entitled to damages for the Lost Mineral Areas, Claimant bears the burden of proving its damages, its entitlement to which must be established with certainty. Far from proven, however, Claimant’s asserted losses are speculative and rest on flawed assumptions, rendering its DCF model wholly inappropriate.

1. The Standard of Proof of Damages

676. Claimant asserts that it must prove its damages only to the balance of probabilities standard.¹²³⁷ That assertion is missing a necessary nuance. As the tribunal in *Lemire v. Ukraine* explained:

[I]t is a commonly accepted standard for awarding forward looking compensation that damages must not be speculative or uncertain, but proved with reasonable certainty; the level of certainty is unlikely, however, to be the same with respect to the conclusion that damages have been caused, and the precise quantification of such damages. Once causation has been established, and it has been proven that the *in bonis* party has indeed suffered a loss, less certainty is required in proof of the actual amount of damages[.]¹²³⁸

677. Thus, regardless of whether the amount of damages must be proved with certainty, Claimant is still required to prove with certainty that Colombia’s actions caused quantifiable harm to its investment. While “the settling of damages is not an exact science,”¹²³⁹ compensation is only available for “financially assessable damage” insofar

¹²³⁵ **CL-092**, *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award, 3 June 2021, ¶¶ 581–584.

¹²³⁶ See **CL-092**, *Infinito Gold Ltd. v. Republic of Costa Rica*, Award, 3 June 2021, ¶¶ 585–586 (declining to award lost profits under the *Chorzow* standard because claimant had not articulated damages for the measures as standalone breaches, and finding that “Claimant’s harm would essentially consist in the loss of an opportunity or chance to apply for an exploitation concession. Yet, the Claimant has not put forward a quantification for such a loss of opportunity, nor has it provided the Tribunal with any elements to calculate it. If one adds the inherent uncertainty and the regulatory risk involved in any application process, the monetary consequences of this loss of chance appear too speculative to give rise to an award of damages. The Tribunal thus concludes that it cannot award damages for the FET breach.”).

¹²³⁷ See Claimant’s Updated Memorial, ¶¶ 413–414.

¹²³⁸ **CL-136**, *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, ¶ 246.

¹²³⁹ Claimant’s Updated Memorial, ¶ 415 (citing **CL-034**, *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007, ¶ 8.3.16).

“as this [damage] is established in the given case.”¹²⁴⁰ This is codified by the ILC in the ARSIWA: compensation includes “loss of profits **insofar as it is established**.”¹²⁴¹

678. In the case of lost profits, such as those claimed by Claimant in the present case, the risk of claims (and therefore awards) of hypothetical losses is high. As noted in the Commentary to the ARSIWA, “Tribunals have been reluctant to provide compensation for claims with inherently speculative elements. When compared with tangible assets, profits (and intangible assets which are income-based) are relatively vulnerable to commercial and political risks, and increasingly so the further into the future projections are made.”¹²⁴² Thus, what tribunals require is

evidence that establishes with a particular degree of certainty that, on the one hand, the variables on which a calculation is based have a solid foundation and a reasonable probability of occurrence, and, on the other hand, that the combination of such variables yields a high level of probability that the result would actually correspond to the damage suffered by the investor.¹²⁴³

679. Faced with the need to award damages to the claimant for the allowed occupation of its hotel spaces by the Egyptian Government, the tribunal in *Wena Hotels*—relied on by Claimant in support of both its FPS and expropriation claims¹²⁴⁴—determined that the claimant’s proof of its lost profits was “too speculative” and instead awarded the market value of the investment prior to the expropriation as being tied to Wena’s “actual investments in the two hotels.”¹²⁴⁵
680. Claimant’s DCF valuation is similarly riddled with uncertainties and inaccuracies.

2. Boyd’s Valuation is Speculative and Overstated

681. The Boyd DCF valuation is overstated. Dr. Flores gives several reasons why this is so.¹²⁴⁶ Most significant of these are (i) its erroneous assumption that the so-called Lost Mineral Areas are permanently occupied and completely depleted and (ii) its use of an accelerated mining schedule for the Lost Mineral Areas, which ignores the constraints of the Mine’s processing plant and assumes accelerated sales of the ore from the Lost Mineral Areas, resulting in an inflated net present value.

¹²⁴⁰ CL-110, ARSIWA, Art. 36, cmt. 1.

¹²⁴¹ CL-110, ARSIWA, Art. 36(2) (emphasis added).

¹²⁴² CL-110, ARSIWA, Art. 36, cmt. 27.

¹²⁴³ CL-086, *South American Silver Ltd. Bermuda v. Plurinational State of Bolivia*, PCA Case No. 2013-15, Award, 22 November 2018, ¶ 824.

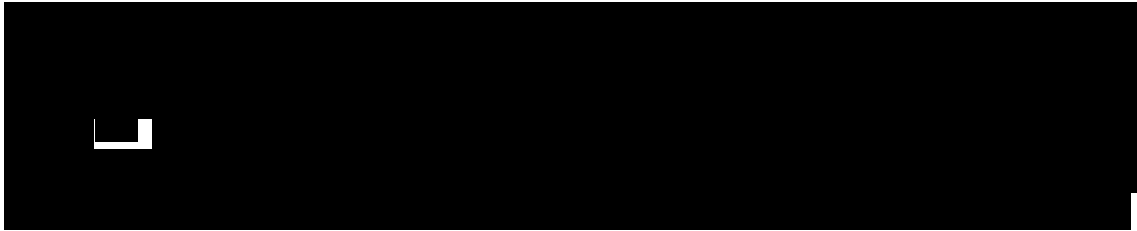
¹²⁴⁴ See Claimant’s Updated Memorial, ¶¶ 293, 304, 324.

¹²⁴⁵ CL-013, *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶¶ 123, 125.

¹²⁴⁶ RER-3, Quadrant First Expert Report, Section V.

a. **Claimant incorrectly treats the lost mineral areas as permanently occupied and depleted**

682.



(i) **Claimant has not proven the permanent loss of the lost mineral areas**

683.

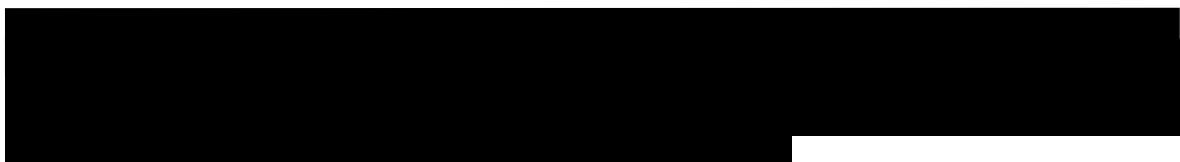


684. To the contrary, the evidence in the record calls into question whether those areas are lost, let alone permanently.

684.1 First, as Continental Gold admits, Operation Hades starting in 2021 (and continuing through the beginning of President Petro’s presidency) was prompted by the occupation of the Yaraguá section of the Mine and the need to “reclaim” that part of the Mine.¹²⁵⁰ And as Colombia explains above, Claimant’s presentation of President Petro’s policy related to illegal mining is wrong: Operations Hefesto and Esperanza have been carried out during his administration to combat illegal mining, including underground in the Yaraguá.¹²⁵¹ As Dr. Flores explains in his Report, Claimant’s instruction to Boyd to model the loss as permanent “assum[es] that the alleged policies of the Petro administration are permanent, and ignores the effect of any shift in policy or change in administration.”¹²⁵² Thus, the assumption that the alleged loss of the Lost Mineral Areas would be permanent is belied by both Claimant’s own experience in the Mine itself and the reality of political change.

¹²⁴⁷ Claimant’s Updated Memorial, ¶ 401.

¹²⁴⁸



¹²⁴⁹ Boyd treats them as such on instruction from Claimant. Boyd First Expert Report Section 1, p. 1-1, ¶ 3.a.

¹²⁵⁰ See Claimant’s Updated Memorial, Section II(E)(4).

¹²⁵¹ See *supra* Section III.E.2.

¹²⁵² RER-3, Quadrant First Expert Report, ¶ 45.

684.2 Second, as explained above, Grupo PIN’s bi-annual site visits to the Mine in 2024 revealed that Operation Contracts (*i.e.* formalized miners) were operating under the supervision of Continental Colombia in the allegedly occupied areas of the Yaraguá and Rampa Sur deposits, as well as in thin quartz and sulfide structures unaffected by illegal mining near the upper levels of both areas.¹²⁵³ For that reason, and having observed workers in the allegedly occupied areas, Grupo PIN required Continental Colombia to submit “explanation, documentation, and supporting evidence” of its assertion that those areas were lost to illegal miners.¹²⁵⁴

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¹²⁵³ See *supra* Section III.F.2 (citing **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 23 (Mineralization), p. 24 (Operating Contracts)).

¹²⁵⁴ **Exhibit R-0106**, Comprehensive Audit Visit Report No. VSC-122, Site Visit by Grupo PIN October 2024, 15 November 2024, p. 60 (Conclusions).

¹²⁵⁵ See Boyd First Expert Report, Section 5, p. 5-2, ¶ 8.

¹²⁵⁶ **Exhibit R-0001**, IPO Prospectus, SRK Competent Person’s Report, Appendix IIIC, p. IIIC-119.

¹²⁵⁷ **Exhibit R-0001**, IPO Prospectus, SRK Competent Person’s Report, Appendix IIIC, p. IIIC-119.

(ii) Claimant has not proven the total depletion of the lost mineral areas

685. Claimant bases its assumption that illegal miners will have “depleted” the reserves in the areas they occupy, such that the reserve there is “definitively lost” on witness evidence:

685.1 Mr. [REDACTED], Continental Colombia’s Head of Protection for the Surface and Underground Structures, testifies that “[i]llegal mining activities at the Project [...] are carried out underground on an industrial scale.”¹²⁵⁸

685.2 Mr. [REDACTED], Continental Colombia’s Technical Services Superintendent, testifies that, “[REDACTED]”¹²⁵⁹

Neither of these assumptions is reasonable either.

686. First, as Mr. Gorman explains, small-scale miners “excavate shafts and tunnels typically with hand tools such as hammers, chisels and spades” and “[i]n all cases the aim of [small-scale] miners is to find enough high-grade ore for processing.”¹²⁶⁰ It is “[t]he nature of the deposits” that “determines if a [small-scale] operator can exploit the deposit for profit,” so small-scale miners are “[u]sually [...] interested in deposits of low tonnage and high grade.”¹²⁶¹ As Mr. Gorman opines, based on his review of the reports of materials confiscated from illegal miners by Claimant and Colombia, compared to the typical small-scale miner, the illegal miners working in Buriticá “are in the category of [small-scale] but have more equipment and resources than might typically be encountered.”¹²⁶² From his review, “the mining equipment that is being utilised is **not ‘industrial scale’**, but it is sufficient to allow modest scales of production to be achieved.”¹²⁶³

687. Nevertheless, and irrespective of their level of sophistication, as Mr. Gorman also explains, the equipment used for transporting and processing ore confiscated from illegal miners in Buriticá is consistent with what is “typically utilised” by small-scale miners.¹²⁶⁴ Taking Mr. [REDACTED]’s statement on the number of illegal miners as correct, Mr. Gorman

¹²⁵⁸ [REDACTED] First Witness Statement, ¶ 8.

¹²⁵⁹ [REDACTED] First Witness Statement, ¶ 9.

¹²⁶⁰ RER-2, Negotient First Expert Report, ¶ 27.

¹²⁶¹ RER-2, Negotient First Expert Report, ¶ 22, Figure 1.

¹²⁶² RER-2, Negotient First Expert Report, ¶ 29.

¹²⁶³ RER-2, Negotient First Expert Report, ¶ 29 (emphasis added).

¹²⁶⁴ RER-2, Negotient First Expert Report, ¶ 30.

opines that that “would suggest that the operation is primarily labour intensive and unlikely to produce significant amounts.”¹²⁶⁵ Mr. Gorman thus opines that the recovery rate of the illegal miners in Buriticá is consistent with the 20-25% recovery rate of gold contained in the ore zones exploited by small-scale miners commonly accepted by industry professionals.¹²⁶⁶

688. Taking these together, Mr. Gorman concludes “there is no possibility that the materials used by illegal miners at [Buriticá] could be expected to recover all the reserves from an occupied area of the mine.”¹²⁶⁷
689. Second, as Mr. Gorman also explains, Mr. [REDACTED] bases his assumption that all occupied areas will have been completely depleted by illegal miners on a visit to “only one location.”¹²⁶⁸ As he opines:

I am of the view that one visit to one location does not validate the assertion that all areas that have had incursions by illegal miners have been completely mined out or are permanently lost to future production. The recommended mining practice in this case is not to assume that all mining areas affected by illegal mining should be abandoned but to be selective which stopes carrying the most productive veins are to be prioritized for re-assessment. Both reasons that were given by [REDACTED] for abandonment can be mitigated by selecting which vein systems are to be prioritized for re-assessment and then providing the appropriate levels of security control to re-gain access. The first objective would then be to address the rock mass stability issues by making the area safe through barring down, installing support and if possible, using remotely operated equipment so that residual reserves can be quantified.¹²⁶⁹

690. Third, as explained above, all data in the record regarding the extent of illegal mining and the resources and reserves lost due to illegal mining is exclusively from the records of Continental Colombia or comes from Boyd, and has not been verified by any source in Colombia.
691. Thus, even if Claimant had successfully proven that Colombia caused its losses, full reparation to the Claimant would not include the full value of the allegedly occupied development areas of the Mine as if the reserve were completely depleted by informal miners.

¹²⁶⁵ RER-2, Negotient First Expert Report, ¶ 30.

¹²⁶⁶ RER-2, Negotient First Expert Report, ¶ 32.

¹²⁶⁷ RER-2, Negotient First Expert Report, ¶ 34.

¹²⁶⁸ RER-2, Negotient First Expert Report, ¶ 50.

¹²⁶⁹ RER-2, Negotient First Expert Report, ¶ 51.

b. Boyd's Accelerated Sales from the Lost Mineral Areas Inflates Value

692. As Dr. Flores explains, Boyd's assumed mining schedule for the Lost Mineral Areas, which ignores the fact that Continental Colombia was simultaneously mining—and therefore processing—ore from other areas of the Mine, “inflates BOYD’s damages conclusion.”¹²⁷⁰ The result of Boyd ignoring production from the other areas of the Mine is that Boyd necessarily assumes that the ore mined in the Lost Mineral Areas would be mined faster in its But-For Scenario than it would be in the Actual Scenario, in which it “would occur over a longer period of time than is assumed in BOYD’s analysis.”¹²⁷¹

693. Dr. Flores concludes:

BOYD’s approach would therefore overstate damages because some of the cash flows from the Lost Mineral Areas would occur later in time and thus be discounted over a longer time period, resulting in a lower Net Present Value.¹²⁷²

3. Boyd's Implementation of its DCF Suffers Additional Flaws

694. Boyd’s DCF valuation is based on a July 2022 NI 43-101-compliant Resource and Reserve Statement compiled for Continental Colombia by BAW Mining Inc.¹²⁷³ Boyd assesses three different potential mining plans, as if Claimant could have either sold the Lost Mineral Areas or exploited them in a separate operation. The first is Mine Plan Case 1, which takes the BAW block model “using all the planned stopes provided by Continental Gold.”¹²⁷⁴ The second is Mine Plan case 2, which uses the BAW block model, but “using a conservative set of stopes.”¹²⁷⁵ The third is derived from the second, but “using the set of stopes that [Boyd] independently produced using the Vulcan stope optimizer.”¹²⁷⁶ Boyd refers to the third scenario as its “Base Case,” and it is this figure—[REDACTED]—that Claimant claims as its damages.¹²⁷⁷

695. As Dr. Flores explains, the cash flow inputs in Boyd’s DCF model suffer additional flaws.

¹²⁷⁰ RER-3, Quadrant First Expert Report, ¶ 50.

¹²⁷¹ RER-3, Quadrant First Expert Report, ¶ 51.

¹²⁷² RER-3, Quadrant First Expert Report, ¶ 51.

¹²⁷³ See **Exhibit JTB-006**, NI 43-101 Independent Technical Report of Buritica Project, Colombia, BAW Mining Inc., 30 June 2022.

¹²⁷⁴ Boyd First Expert Report, Section 5, p. 5–9, ¶ 23.

¹²⁷⁵ Boyd First Expert Report, Section 5, p. 5–9, ¶ 23.

¹²⁷⁶ Boyd First Expert Report, Section 5, p. 5–9, ¶ 23.

¹²⁷⁷ Claimant’s Updated Memorial, ¶¶ 14, 426, 433.

696. First, Boyd does not account for income tax payable to the Colombian Government in its valuation.¹²⁷⁸ As Dr. Flores explains, because the Mine is an income-producing asset, it is inappropriate not to account for taxes, because those are a necessary component of Continental Colombia’s cash flows and “the value of an income-producing asset to an equity holder is determined by the cash flows available to that equity holder **after all costs – including taxes – have been taken into account.**”¹²⁷⁹ Boyd claims that not accounting for taxes in its cash flows avoids the risk of double taxation, but that assumes—without evidence—(i) that any award would be taxed and (ii) that it would be taxed at Continental Colombia’s corporate income tax rate.¹²⁸⁰ Boyd also fails to account for taxes that would be withheld on dividends from Continental Colombia to Claimant.¹²⁸¹
697. Second, Boyd’s DCF model is insufficiently explained to allow a proper analysis.¹²⁸² As Dr. Flores explains, Boyd purports to give the source of its assumed costs and revenues inputs, but the figures in its model are hard-coded and are not cited.¹²⁸³ With what information Dr. Flores was able to review, he offers the following critiques:
- 697.1 Boyd relies on actual prices received by Continental Gold from August 2022 through December 2024 and then projects prices for 2025 onward.¹²⁸⁴ Boyd’s price forecasts for 2025 forward do not account for (i) pricing under long term agreements, including in particular the streaming agreement Continental Gold entered into with Triple Flag, which the ZGI IPO explains was redeemed with respect to the gold delivery obligation but remains in place with respect to the silver delivery obligation;¹²⁸⁵ or (ii) any other needed adjustments to spot prices. In the historic period, Dr. Flores explains that Boyd takes an average historical price for all of 2022 in lieu of isolating the actual prices received over the period August-December 2022.¹²⁸⁶ Furthermore, with respect to gold prices, Dr. Flores explains that Boyd projects real gold prices for the second half of 2025 that are higher than those used by professional forecasters.¹²⁸⁷
- 697.2 With respect to costs, Boyd appears to make use of Continental Gold’s 2024 Rolling Forecast for the period 2024 through 2027, but excludes certain

¹²⁷⁸ See **RER-3**, Quadrant First Expert Report, Section VI(A).

¹²⁷⁹ **RER-3**, Quadrant First Expert Report, ¶ 59 (emphasis added).

¹²⁸⁰ **RER-3**, Quadrant First Expert Report, ¶¶ 62-63.

¹²⁸¹ **RER-3**, Quadrant First Expert Report, ¶ 64.

¹²⁸² See generally **RER-3**, Quadrant First Expert Report, Section VI(B).

¹²⁸³ **RER-3**, Quadrant First Expert Report, ¶¶ 66-68.

¹²⁸⁴ Boyd First Expert Report, Section 6, ¶¶ 18–19.

¹²⁸⁵ See **RER-3**, Quadrant First Expert Report, ¶ 72; **Exhibit R-0001**, IPO Prospectus, p. 491 (PDF p. 501) (confirming the Triple Flag Streaming Agreement as a “Non-Current Liabilit[y]”).

¹²⁸⁶ **RER-3**, Quadrant First Expert Report, ¶ 73.

¹²⁸⁷ **RER-3**, Quadrant First Expert Report, ¶ 75.

categories of costs completely. Dr. Flores notes that Boyd’s Capex assumptions depart from the 2024 Rolling Forecast without explanation.¹²⁸⁸ As Dr. Flores also notes, Boyd excludes formalization costs, which it says have a “rather low impact in the OPEX cost structure.”¹²⁸⁹ This is wrong both methodologically and operationally. First, as Dr. Flores notes, including the costs of formalization for 2024 would increase underground mining costs for 2024 by 15%.¹²⁹⁰ Second, as Mr. Gorman explains, and as is evident from the activities of Operation Contracts in the Mine, “it is important for Claimant to keep up with its commitment on SME formalization as stated in the PTO[]. Failure to follow up on its commitment can lead to a breakdown of trust, deterioration of community relations and potentially worse outcomes affecting the mine operator (the Claimant) and/or informal miners.”¹²⁹¹

697.3 Boyd assumes that historical cash flows are known with certainty and updates these estimated cash flows to its Valuation Date of 30 June 2025 using a cost of debt. This cost of debt is based on a “senior secured debt facility entered into by Americas Gold and Silver Corporation” in June 2025.¹²⁹² As Dr. Flores explains, there are several issues with Boyd’s approach: (i) Boyd fails to account for the inherent risk in its cash flows in the but-for scenario;¹²⁹³ (ii) using a cost of debt rate rather than a risk-free rate is inappropriate for pre-award interest because it “would compensate Claimant for risks to which the amount eventually awarded to Claimant will not have been subject;”¹²⁹⁴ (iii) Boyd does not demonstrate that Continental Colombia needed to borrow capital as a result of the alleged measures;¹²⁹⁵ and (iv) Boyd’s selection of the rate applicable to a single company to update its historic cash flows clashes with the peer-group rate that it purports to apply as its discount rate.¹²⁹⁶

4. Boyd Incorrectly Computes its Discount Rate

698. Boyd applies a discount rate to calculate the Net Present Value of its future cash flow projections of sales from the Lost Mineral Areas to its Valuation Date of 30 June 2025.¹²⁹⁷ As Dr. Flores explains, Boyd’s discount rate is also flawed.

¹²⁸⁸ RER-3, Quadrant First Expert Report, ¶ 79.

¹²⁸⁹ Boyd First Expert Report, Section 4, p. 4-11, n. 145; see RER-3, Quadrant First Expert Report, ¶ 77.

¹²⁹⁰ RER-3, Quadrant First Expert Report, ¶ 77.

¹²⁹¹ RER-2, Negotient First Expert Report, ¶ 110.

¹²⁹² Boyd First Expert Report, Section 4, p. 4-6, ¶ 23.

¹²⁹³ RER-3, Quadrant First Expert Report, ¶ 83.

¹²⁹⁴ RER-3, Quadrant First Expert Report, ¶¶ 84-89.

¹²⁹⁵ RER-3, Quadrant First Expert Report, ¶ 90.

¹²⁹⁶ RER-3, Quadrant First Expert Report, ¶ 91.

¹²⁹⁷ Boyd First Expert Report, Section 6, ¶ 14.

699. First, Boyd applies a post-tax discount rate to pre-tax cash flows. Applying a more comparable pre-tax discount rate “would decrease [Boyd’s] damages conclusion, all else equal.”¹²⁹⁸
700. Second, Boyd computes certain elements of its discount rate, including beta, capital structure, and borrowing spread, based on a peer group of companies it assembled.¹²⁹⁹ It does not, however, name what comparable companies it included in the peer group, except that they are supposedly “publicly traded Canadian mining companies that operate in and/or are in the process of developing gold projects in Colombia.”¹³⁰⁰ Failing to provide the list of companies makes it impossible for Dr. Flores to opine on whether they are comparable or not.¹³⁰¹ Nevertheless, as Boyd is no doubt aware, different risk profiles attach to mining companies in the development stage and those in the production stage, and Claimant is not publicly traded in Canada. These factors alone likely make many of the “peer group” too dissimilar to Claimant to be considered comparable.
701. Third, and independent of those critiques, Boyd’s use of Canadian market data to estimate the parameters of its discount rate is inappropriate for two reasons: (i) it is conducting a valuation in US dollars; and (ii) it is valuing a Mine in Colombia.¹³⁰² Relatedly, Boyd inappropriately uses the 10-year Canadian bond rate as its risk-free rate, rather than the ten-year US\$ rate.¹³⁰³
702. Fourth, Boyd uses the beta for companies in the metal and mining sector, rather than companies in the Precious Metals industry, which is more appropriate for companies that trade predominantly in gold and silver, such as Continental Gold.¹³⁰⁴
703. Fifth, Boyd inappropriately opts not to include a country risk premium for a project in Colombia, based on Claimant’s residence in Canada.¹³⁰⁵ Instead, Boyd purports to use a company-specific risk premium that it says accounts for the location of the asset in Buriticá. As Dr. Flores explains, however, “BOYD provides no analysis to establish that this 3% premium is adequate when combined with the Canadian capital markets data on which it relies.”¹³⁰⁶
704. Finally, Boyd fails to account for widely recognized flaws in the Capital Market Pricing Model (“CAPM”) that lead it to underestimate the discount rate applicable to an investment like the Lost Mineral Areas. Boyd focuses solely on the size of the Mine

¹²⁹⁸ RER-3, Quadrant First Expert Report, ¶ 93.

¹²⁹⁹ Boyd First Expert Report, Section 6, ¶ 25.

¹³⁰⁰ Boyd First Expert Report, Section 6, ¶ 25.

¹³⁰¹ RER-3, Quadrant First Expert Report, ¶ 94.

¹³⁰² RER-3, Quadrant First Expert Report, ¶ 95.

¹³⁰³ RER-3, Quadrant First Expert Report, ¶ 97.

¹³⁰⁴ RER-3, Quadrant First Expert Report, ¶ 96.

¹³⁰⁵ RER-3, Quadrant First Expert Report, ¶ 98.

¹³⁰⁶ RER-3, Quadrant First Expert Report, ¶ 124.

when it argues that there was no need for a premium for company size risk “[s]ince the Buriticá Mine is considered an equity component of the larger parent company.”¹³⁰⁷ However, as Dr. Flores explains, “the cost of capital is based on the investment, not the investor.”¹³⁰⁸ Furthermore, by not accounting for the demonstrated deficiencies of the CAPM and not accounting for the cost of capital, Boyd’s approach underestimates the applicable discount rate, and thus overvalues the Mine.¹³⁰⁹

E. Boyd’s Market Approach Valuation Does Not Confirm its DCF

705. In order to “confirm” the reliability of its DCF, Boyd employs a market approach that relies on the value of the mineral reserve implied by the purchase price Zijin Mining Group paid in 2020 to purchase the shares of Continental Gold Inc.¹³¹⁰ This valuation is also fundamentally flawed.
706. In presenting its market valuation, Boyd claims that its calculations are conservative because it bases its valuation on the March 2021 Price Waterhouse Coopers (PWC) Report prepared “for the purpose of restating Claimant’s accounts” and which was undertaken when the project was in an “initial development stage.”¹³¹¹ First and foremost, the PWC report did not compute the purchase price paid by Zijin Mining; PWC was charged with assigning values to the newly acquired assets and liabilities that Zijin had purchased for US\$ 1 billion “as required for financial reporting purposes” under international accounting standards.¹³¹² In other words, PWC did not value the Mine, but allocated the value of the Mine that Zijin Mining had implied for it across its assets in accordance with international accounting standards. In addition, however, as Mr. Gorman explains, while the Buriticá Project was technically in a JORC development phase at the time of its acquisition by Zijin Mining, it was in fact in a very advanced stage of development.¹³¹³
707. Second, in deriving its market method valuation, Boyd adjusts the unit value of gold and silver derived from the PWC valuation to account for the rise in prices from 2020 through

¹³⁰⁷ Boyd First Expert Report, Section 6, p. 6-9, ¶ 29.

¹³⁰⁸ **RER-3**, Quadrant First Expert Report, ¶ 128.

¹³⁰⁹ **RER-3**, Quadrant First Expert Report, ¶ 128.

¹³¹⁰ Boyd First Expert Report, Section 6, p. 6-12, ¶ 40.

¹³¹¹ Boyd First Expert Report, Section 6, p. 6-12, ¶ 41; Section 2, p. 2-2, ¶ 6.

¹³¹² See **Exhibit C-0521**, Valuation of Certain Assets and Legal Entities of Continental Gold Inc., Estimate Valuation Report As at March 5, 2020, PWC, 5 March 2021, p. 3 (“The Report has been prepared solely for the purpose of assisting you in allocating the purchase price paid for the acquired assets and liabilities, including intangible assets, as required for financial reporting purposes under IFRS 3 and related guidance.”).

¹³¹³ **RER-2**, Negotient First Expert Report, ¶¶ 95–98.

to 2025.¹³¹⁴ As Dr. Flores explains, however, “BOYD incorrectly inflates silver prices and fails to provide the supporting calculations for its price adjustments.”¹³¹⁵

708. Third, as Dr. Flores explains, Boyd's use of the PwC model for its market analysis relies on cost assumptions from 2020 that are materially lower than the costs Boyd applies in their DCF model — costs that reflect data more proximate to the Date of Valuation and that indicate significantly higher operating and capital expenditures than PwC assumed.¹³¹⁶ As Dr. Flores notes, it is odd that Boyd sees a need to update the mineral price figures included in the PwC analysis but not the cost assumptions.¹³¹⁷

709.



710. In sum, Claimant has failed to prove that Colombia's actions or omissions caused any damages to it, let alone what its damages in fact are. The Boyd analysis, which rests on a flawed premise, should be rejected for that reason alone: Claimant has not demonstrated that it has suffered any damages as it has not shown any negative impacts on production at the Mine. And even to the extent that the Boyd Report purports to compute damages to Claimant, it does so on a failed and speculative premise and its market approach fails to confirm its income approach valuation.

F. Claimant's Claim for Costs Reveals its Cash Grab

711. Claimant concludes its Updated Memorial with a section requesting costs that alleges that “Claimant has demonstrated in this Memorial that Colombia has breached its Treaty obligations without paying compensation” and that “[s]uch compensation should have been paid in accordance with Colombia's international obligations, and Claimant should never have had to commence this arbitration.”¹³¹⁹

712. Claimant's primary claim in this Arbitration is for alleged violations of Colombia's obligation to accord Claimant and its investment full protection and security. That claim, whether conceived of in customary international law¹³²⁰ or under the autonomous standard applicable in some BITs, does not typically involve a claim of compensation. By hinging its claim that Colombia owes costs for not complying with its “international obligations” on its lack of compensation to Claimant, Claimant reveals the true motive

¹³¹⁴ Boyd First Expert Report, Section 6, ¶¶ 44–46.

¹³¹⁵ RER-3, Quadrant First Expert Report, ¶ 104.

¹³¹⁶ RER-3, Quadrant First Expert Report, ¶ 105.

¹³¹⁷ RER-3, Quadrant First Expert Report, ¶ 105.

¹³¹⁸ Boyd First Expert Report, Section 6, p. 6-17, ¶ 56.

¹³¹⁹ Claimant's Updated Memorial, ¶ 432.

¹³²⁰ As it is required to be under the FTA, *see supra* Section V.A.1.

for this Arbitration: it is a thinly-veiled attempt to extract cash from Colombia for portions of the resources and reserves in Buriticá that Claimant would never be able to reach under the term of its Concession, under the guise of an investment arbitration claim premised on a security situation that long predates the 39-month prescription period of the Treaty.

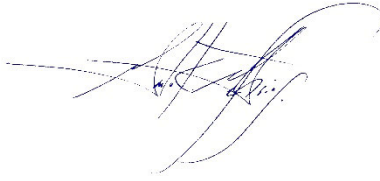
713. That Claimant's motivation is monetary is also evident from its persistent attempts to conceal information that it alleges would hurt its market position. But Claimant is not publicly traded. Its parent company, Zijin Mining Group, and its new controlling company, Zijin Gold International, are. And [REDACTED]—on the back of Claimant's ability to claim a precarious security situation in Colombia that it then keeps quiet from the market.
714. Colombia does not dispute the principle that the "costs follow the event."¹³²¹ But the outcome of the application of that principle should be total recovery to the State of the cost of defending a time-barred abuse of process.

VII. PRAYER FOR RELIEF

715. For the foregoing reasons, the Republic of Colombia respectfully requests that the Tribunal issue an Award:
- 715.1 Declaring the Claimant's claims inadmissible in their entirety for Abuse of Process and Fraud on the Tribunal;
 - 715.2 Recognizing Colombia's right to deny Claimant benefits under the Treaty;
 - 715.3 Dismissing the Claimant's claims for lack of jurisdiction;
 - 715.4 In the event that the Tribunal determines it has jurisdiction, rejecting the Claimant's claims on the merits;
 - 715.5 Denying that Claimant has suffered compensable damages for any act by Colombia that violates its substantive obligations under the Treaty;
 - 715.6 Denying all interest claimed by Claimant both prior to and after the award; and
 - 715.7 Ordering Claimant to pay all costs of this Arbitration, including all expenses and legal fees incurred by Colombia.

¹³²¹ *Accord* Claimant's Updated Memorial, ¶ 431.

Respectfully submitted,



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Annex A

Index of Defined Terms

2019 Ivor Jones Report	The 18 March 2019 Technical Report prepared by Ivor Jones Pty Ltd.
2021 SRK Report	May 2021 Independent Technical Report prepared by SRK Consulting.
2022 BAW Report	June 2022 Independent Technical Report prepared by BAW Mining Inc.
AISC	All-in Sustaining Costs.
Arbitration	The present arbitration ICSID Case No. ARB/24/25.
ANFO	Ammonium Nitrate/Fuel Oil.
ANM	Agencia Nacional de Minerales, also known as National Mining Agency of Colombia.
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts.
ASM	Artisanal and small-scale mining.
AUC	Autodefensas Unidas de Colombia.
BAW	Claimant’s experts from John T. Boyd company relied on a block model compiled by BAW in 2022, along with information provided on CAD files regarding internal blockades erected to seal off portions of the Mine allegedly affected by illegal mining, to construct their model.
BCSC	British Columbia Securities Commission.
Boyd	J.T. Boyd Company.
Boyd Report	Expert Report of John T. Boyd Company.
CAD files	Computer-Aided Design files consisting of models containing geometric data for engineering and design.
CAPM	Capital Asset Pricing Model.

CEA	The Colombia Entrustment Arrangement, whereby ZGI gained the "economic benefit of the Colombia Buriticá Gold Mine" for the time between the IPO and the end of the Arbitration. Consists of the Entrusted Operations Agreement, the Return Swap Agreement, and the Undertaking. The CEA has been effective since 24 June 2025.
CGI or the Claimant	Claimant Continental Gold Inc., a company registered in Canada.
CGL	Ticker symbol in the Toronto Stock Exchange that Continental Gold used prior to its delisting from that exchange as part of Zijin's acquisition process.
CIL	Customary International Law.
CIM	Canadian Institute of Mining.
CMSI	Consolidated Mining Standard Initiative.
Concession Agreement	Concession Agreement No. 7495 between Continental Gold Limited Sucursal Colombia and the Secretary of Mines of the Department of Antioquia, dated 14 September 2011.
Continental Colombia	Continental Gold Limited Sucursal Colombia. Defined by Claimant as the "Company."
Continental Gold Limited Bermuda	Continental Gold Limited Bermuda, the direct owner of Continental Colombia.
Coordination Committee	Coordination Committee established in the Security Agreements.
DCF	Discounted Cash Flow.
DEMA	Specialized Prosecutor's Office for Crimes Against Natural Resources and the Environment (Dirección Especializada para los Delitos contra los Recursos Naturales y el Medio Ambiente).
Dentice First Expert Report	The Expert Report of Mr. Nathan Dentice of MinterEllison LLP on Hong Kong Securities Law dated 8 May 2026.
DICAR	The National Police's Directorate of Carabineros and the Environment (Dirección de Carabineros y Medio Ambiente).
Dirección de Carabineros	Directorate of Carabineers and Environmental Protection.

Don Mario	Daniel Rendón Herrera.
ESTMA	The Extractive Sector Transparency Measures Act of Canada, which governs annual payments of taxes in Canada by entities engaged in the development of minerals in Canada and elsewhere.
FET	Fair and Equitable Treatment.
FPS	Full Protection and Security.
FTA or the Treaty	The Free Trade Agreement between Canada and Colombia.
Gallego First Witness Statement	Witness Statement of Lieutenant Colonel Hugo Nelson Gallego Aguirre dated 7 May 2026.
GAO	Acronym in Spanish for Organized Armed Group.
GOES	The National Police Special Operations Group (Grupo de Operaciones Especiales).
Gold Mountains	Gold Mountains (H.K.) the Zijin subsidiary that formally owns CGI.
GCG	Gran Colombia Gold.
Grupo PIN	Group on Projects of National Interest.
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
IPO	The Initial Public Offering carried out by ZGI in Hong Kong on 30 September 2025.
IPO Prospectus	The Prospectus published by ZGI as part of its IPO as of 19 September 2025.
IRMA	Initiative for Responsible Mining Assurance.
JMC	Junior Mining Company.
JORC Code	Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves.
La Bruja	Gloria Eugenia Restrepo.

LSM	Large-scale mining.
The Mine or Buriticá Mine	The Buriticá Gold Mine.
Mining Code	Law No. 685 of 2001, 15 August 2001.
MinMinas	Ministry of Mining and Energy.
MST	Minimum Standard of Treatment.
Negotient First Expert Report	The Expert Report of Mr. Patrick W. Gorman of Negotient on the Mining Industry, dated 8 May 2026.
NI 43-101	National Instrument 43-101.
NPV	Net Present Value.
NMR	National Mining Registry of Colombia.
Otoya	Eduardo Otoya Rojas.
PIN	Projects of National Interest.
PINE	Projects of National and Strategic Interest.
PJV	Porgera Joint Venture.
PMU	Spanish acronym for Unified Command Post.
Police Collaboration Agreement	Collaboration Agreement between Continental Colombia and the National Police.
PO2	Procedural Order No. 2.
PO5	Procedural Order No. 5.
PO6	Procedural Order No. 6.
PO7	Procedural Order No. 7.
PTO	Programa de trabajo y obras, the work plan submitted by Continental Colombia that was approved by ANM in January 2021.
Quadrant First Report	The Expert Report of Dr. Daniel Flores of Quadrant Economics on Damages, dated 8 May 2026.

Redacted Damages-Related Information	Information which, following the filing of its Updated Memorial, which pursuant to the FTA should be made publicly available, CGI sought and was granted the redaction of information from the public version of the document in PO6. This information included the damages figure CGI claims of [REDACTED]; [REDACTED] [REDACTED].
Resolution 104	Resolution 104 of 13 January 2013.
Respondent or Colombia	Republic of Colombia.
Roa First Witness Statement	Witness Statement of Brigadier General José James Roa Castañeda.
Security Agreements	Security agreement between the Ministry of Defense and Continental Colombia and Continental Gold Limited Bermuda.
SGC	Spanish acronym for the Colombian Geological Survey for the scientific research and regulation of nuclear and radioactive materials.
SRK Report	The Competent Persons Report submitted by SRK Consulting Ltd. in conjunction with the IPO, based on a visit to the Mine from 15-20 May 2025.
UNGR	National Risk Management Unit.
UNIMIL	Unidad Nacional contra la Minería Ilegal.
VCLT	Vienna Convention on the Law of Treaties.
WHO	World Health Organization.
ZGI	Zijin Gold International, the holding company of Zijin Mining Group that held its IPO in September 2025. Pursuant to the Colombia Entrustment Arrangement, ZGI has full operational control of CGI and the Mine.
Zijin Mining	Zijin Mining Group, the ultimate owner of CGI and ZGI.

