

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Glencore International A.G., C.I. Prodeco S.A., Consorcio Minero Unido S.A. &  
Carbones de la Jagua S.A.**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/23/50)**

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**PROCEDURAL ORDER NO. 2**

***Members of the Tribunal***

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal  
Prof. Horacio Grigera Naón, Arbitrator  
Mr. J. Christopher Thomas, KC, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Toubiana

***Assistant to the Tribunal***

Dr. Magnus Jesko Langer

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7 May 2026

## **I. PROCEDURAL BACKGROUND**

1. On 20 March 2026, the Transnational Disputes Clinic of Cornell Law School filed with the ICSID Secretariat a petition to appear as a non-disputing party (the “**Petition**”) on behalf of Dejusticia, a legal research and advocacy center located in Bogotá, Colombia (the “**Petitioner**”).
2. In accordance with the Tribunal’s instructions, the Parties filed their observations on the Petition on 14 April 2026. The Claimants requested that the Tribunal deny the Petition, whereas the Respondent requested that it be granted.<sup>1</sup>
3. This Order addresses the Petition. All of the Parties’ and Dejusticia’s arguments have been considered, even if not all of them are specifically addressed herein.

## **II. THE PETITIONER AND THE PETITION**

4. According to the Petitioner, Dejusticia is a Colombian non-governmental think tank dedicated since 2003 to “environmental justice, climate governance, and corporate accountability in Colombia and across the Global South”.<sup>2</sup> Its stated mission is to defend human rights and contribute to a more inclusive society.<sup>3</sup> It pursues this mission through “field-based research” and “strategic litigation”, which it says have provided it with “deep knowledge of Colombia’s socio-economic dynamics and legal system”.<sup>4</sup>
5. The Petitioner seeks leave to appear as a non-disputing party (“**NDP**”) in order to assist the Tribunal in assessing “the scope and implications of applicable international environmental and human rights obligations binding on Colombia” and how, in the context of the present dispute, these obligations “intersect with the interpretation and application of the relevant investment protections” under the Agreement between the Republic of Colombia and the Swiss Confederation on the Promotion and Reciprocal

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<sup>1</sup> Claimants’ Comments, para. 37; Respondent’s Comments, para. 38.

<sup>2</sup> Petition, paras. 4 and 14. See also Dejusticia, “About Us”, pp. 1-2 pdf (R-270).

<sup>3</sup> Dejusticia, “About Us”, p. 2 pdf (R-270) (“[C]on la misión de defender los derechos humanos y contribuir a la construcción de una ciudadanía más incluyente”).

<sup>4</sup> Petition, para. 11.

Protection of Investments (the “**BIT**”).<sup>5</sup>

6. The Petitioner submits that, through its field-based research, previous strategic litigation and knowledge of Colombia’s socio-economic and legal system, it possesses unique experience distinct from that of the Parties and would provide a perspective that assists the Tribunal in determining how to reconcile Colombia’s environmental and human rights obligations with its duties under the BIT.<sup>6</sup> It further asserts that its *amicus curiae* brief would fall within the scope of the dispute, as it would address the “profound socio-economic and environmental consequences for surrounding communities” of the closure of the Calenturitas and La Jagua mines.<sup>7</sup>
7. Dejusticia also states that it has a significant interest in the outcome of the dispute because the proceedings “bear directly on its mission and ongoing activities” and “may influence how international human rights and environmental norms are interpreted and applied in investment arbitration, including in Colombia”.<sup>8</sup> In addition, allowing it to participate would advance the public interest, since the proceedings raise issues that “extend beyond the immediate interests of the disputing parties”.<sup>9</sup> Finally, Dejusticia states that it is “entirely independent”, that it has “no financial or other affiliations with either Party”, and that its intervention would neither disrupt the proceedings nor unduly burden or prejudice either Party.<sup>10</sup>

### III. PARTIES’ POSITIONS

#### A. The Claimants’ Position

8. The Claimants oppose the Petition. They argue that the Petitioner does not satisfy the “requirements” set out in Rule 67(2) and (4) of the 2022 version of the ICSID Arbitration Rules, since it neither has a significant interest in the proceedings, nor would it bring a perspective, particular knowledge, or insight different from that of the Parties,

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<sup>5</sup> Petition, para. 7.

<sup>6</sup> Petition, paras. 11-12.

<sup>7</sup> Petition, paras. 7-10.

<sup>8</sup> Petition, paras. 13-14.

<sup>9</sup> Petition, para. 16.

<sup>10</sup> Petition, para. 15.

- nor does it identify any factual issues falling within the scope of the dispute.<sup>11</sup>
9. First, the Petitioner has no significant interest in this arbitration, because its stated interest in ensuring that Colombia's international obligations are considered alongside the obligations under the BIT amounts to no more than a general interest. Moreover, the Petitioner fails to explain how it would be impacted by any decision in this case.<sup>12</sup>
10. Second, the Petitioner's submissions would not assist the Tribunal, since the Parties are fully equipped to address "all salient points of law relevant to the dispute", including Colombia's international obligations. Moreover, the Petitioner fails to explain how its field-based research, previous strategic litigation, or knowledge of Colombia's socio-economic and legal system could bring a perspective or knowledge different from that of the Parties.<sup>13</sup>
11. Third, the Petitioner fails to identify any factual issue falling within the scope of the dispute that it would address. Its stated intention is to address the socio-economic and environmental consequences of the closure of the mines. However, neither Party has raised this issue, since the dispute concerns (i) Colombia's delay in liquidating the relevant contracts (the "**Operative Contracts**") and (ii) Judgment T-375 issued by the Colombian Constitutional Court on 25 September 2023 regarding C.I. Prodeco's alleged failure to conduct "retroactive 'prior consultation'" with the Yukpa indigenous community and the duty to provide reparations.<sup>14</sup>
12. Fourth, in the Claimants' view, granting the Petition would disrupt the proceedings, unduly burden, and unfairly prejudice the Claimants, forcing them to expend time and costs responding to duplicative legal arguments and facts outside the scope of the dispute.<sup>15</sup>
13. Finally, if the Tribunal were nevertheless to admit the Petitioner as an NDP, it should deny the Petitioner's requests to access all non-confidential arbitral documents, attend

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<sup>11</sup> Claimants' Comments, paras. 2 and 28.

<sup>12</sup> Claimants' Comments, paras. 6-16.

<sup>13</sup> Claimants' Comments, paras. 17-22.

<sup>14</sup> Claimants' Comments, paras. 23-27.

<sup>15</sup> Claimants' Comments, para. 29.

the hearing, and respond to questions of the Tribunal and/or the Parties. Given the transparency regime governing this arbitration, and in particular the Parties' decision not to publish the written pleadings, expert reports, witness statements, factual exhibits, and legal authorities, the Petitioner should have access only to the documents available on ICSID's website. Similarly, both Parties objected to the attendance of non-parties at the hearing, and the Claimants reiterate their objection, leaving the Tribunal with no discretion in that regard. For the same reasons, the Petitioner should not be afforded the opportunity to respond to any questions.<sup>16</sup>

## **B. The Respondent's Position**

14. Except for the request to attend the hearing, the Republic of Colombia supports the Petition.<sup>17</sup> The Respondent submits that the Petition satisfies the "factors" set forth in Rule 67, since Dejusticia's *amicus curiae* submission would address matters within the scope of the dispute and bring a perspective, particular knowledge and/or insight different from that of the Parties. In addition, Dejusticia has a significant interest in the proceedings, is entirely independent from the Parties, and its intervention would advance the public interest without disrupting the proceedings or giving rise to any burden or prejudice.
15. First, the issue of how Colombia's international environmental and human rights obligations intersect with the investment protections under the BIT "squarely" falls within the scope of the dispute. Colombia has raised it in its counter-memorial, and the Tribunal will therefore need to address it. The duration of the liquidation process hinges on compliance with environmental obligations, and the claims in relation to Judgment T-375 also concern Colombia's environmental and human rights obligations.<sup>18</sup>
16. Second, Dejusticia would assist the Tribunal by contributing knowledge and expertise distinct from that of the Parties. Its field research and expertise as well as prior litigation "likely" go beyond the Parties' submissions. Its "on-the-ground perspective" does not coincide with the Parties' knowledge, since Dejusticia has examined "structural tensions

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<sup>16</sup> Claimants' Comments, paras. 30-36.

<sup>17</sup> Respondent's Comments, paras. 2 and 36-37.

<sup>18</sup> Respondent's Comments, paras. 7-12.

between large-scale mining and Colombia’s constitutional framework”, including “deficits in citizen participation, the role of the *tutela* framework and Constitutional Court in safeguarding fundamental rights”, as well as “shortcomings of environmental licensing” by relevant government bodies. Furthermore, Dejusticia has “frequent[ly]” participated in judicial and quasi-judicial proceedings before the Constitutional Court, acting as citizen intervenor, independent expert, or co-plaintiff in cases at “the intersection of mining, environmental protection, indigenous rights, and prior consultation”. It follows, so says the Respondent, that the Petitioner would offer “an independent, research-based perspective on the normative and factual context of the dispute” that neither Party would provide.<sup>19</sup>

17. Third, the Petitioner has a “concrete and specific interest” in this arbitration, having conducted research addressing the Calenturitas and La Jagua mines, the Colombian environmental licensing framework, and the Constitutional Court’s role in protecting indigenous rights through *tutela* proceedings. In addition, the Tribunal’s determinations regarding the interaction of Colombia’s international environmental and human rights obligations with its investment treaty obligations will “be highly relevant to Dejusticia’s mission”.<sup>20</sup>
18. Fourth, the Petition should be granted because of the public interest involved in the subject-matter of this arbitration, which concerns “complex questions of public and international law with human rights dimensions”, and the need to ensure “the legitimacy of the final award” through increased transparency.<sup>21</sup>
19. Fifth, the Petitioner is “entirely independent” from the Parties, and the Respondent confirms that there is no financial or other affiliation between Dejusticia and the Colombian State.<sup>22</sup>
20. Finally, allowing Dejusticia to file an *amicus curiae* brief, be granted access to documents, and answer questions would neither disrupt the proceedings nor give rise to

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<sup>19</sup> Respondent’s Comments, paras. 13-17.

<sup>20</sup> Respondent’s Comments, paras. 18-21.

<sup>21</sup> Respondent’s Comments, paras. 25-31.

<sup>22</sup> Respondent’s Comments, paras. 22-25.

any burden or prejudice, especially since the Tribunal may impose conditions in terms of format, length, scope, and timing.<sup>23</sup>

#### IV. ANALYSIS

21. The Petitioner seeks leave from the Tribunal to appear as a non-disputing party and file a “public written submission” (A); access non-confidential documents in the record of this arbitration (B); and attend oral hearings and reply to questions of the Tribunal and/or the Parties (C).

##### A. Dejusticia’s Requests to Appear as an NDP and File a Written Submission

22. This arbitration is governed by (i) the ICSID Convention, (ii) the 2022 ICSID Arbitration Rules (the “**Arbitration Rules**”), and (iii) the procedural rules set out in Procedural Order No. 1 (“**PO1**”).
23. The Parties agree on the Tribunal’s discretion to grant leave to an NDP to file a written submission under Rule 67 of the Arbitration Rules. That provision reads in relevant part as follows:

“(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:

- (a) whether the submission would address a matter within the scope of the dispute;
- (b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;
- (c) whether the non-disputing party has a significant interest in the proceeding;
- (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and
- (e) whether any person or entity will provide the non-disputing party with

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<sup>23</sup> Respondent’s Comments, paras. 32-35.

financial or other assistance to file the submission.

[...]

- (4) The Tribunal shall ensure that non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the non-disputing party, including with respect to the format, length, scope or publication of the written submission and the time limit to file the submission”.

24. According to its wording, Rule 67(2) lists non-exhaustive factors that must be considered when deciding on an NDP application, as opposed to conditions that must be fulfilled for the application to succeed.<sup>24</sup> In other words, based on the circumstances of the case, the Tribunal must perform a balancing exercise which may include considering additional factors, such as the public interest involved or the need to promote the legitimacy of investor-State dispute settlement.<sup>25</sup> The Tribunal’s discretion is, however, limited by subparagraph 4 of Rule 67, according to which it has the obligation to ensure that the participation of an NDP does not disrupt the proceedings

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<sup>24</sup> *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21, Procedural Order No. 5, 21 July 2016, para. 45 (RL-212) (in relation to the criteria listed in Article 836(4) of the Canada-Peru FTA, which are materially similar to the first three criteria listed in Rule 67(2), although it adds a public interest criterion); *Angel Samuel Seda and others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Procedural Order No. 7, 1 December 2021, para. 34 (RL-213) (in relation to the criteria listed in Rule 37(2) of the 2006 version of the ICSID Arbitration Rules, which correspond to the first three criteria listed in Rule 67(2)); *Odyssey Marine Exploration, Inc. (USA) v. The United Mexican States*, ICSID Case No. UNCT/20/1, Procedural Order No. 6, 20 December 2021, para. 8 (CL-99) (in relation to the criteria listed in Section B(6) of the Statement of the Free Trade Commission on Non-Disputing Party Participation dated 7 October 2003, which are materially similar to the first three criteria listed in Rule 67(2), but adds a public interest criterion); *Eni International B.V., Eni Oil Holdings B.V. and Nigerian AGIP Exploration Limited v. Federal Republic of Nigeria*, ICSID Case No. ARB/20/41, Procedural Order No. 4, 7 March 2023, para. 49 (RL-208) (in relation to Rule 37(2) of the 2006 Arbitration Rules); *Huawei Technologies Co., Ltd. v. Kingdom of Sweden*, ICSID Case No. ARB/22/2, Procedural Order No. 6, 26 June 2024, para. 8 (in relation to Rule 37(2) of the 2006 Arbitration Rules). That said, as noted in *Klesch v. European Union, Denmark and Germany*, where Rule 67(2) governed the issue at hand, an NDP application will likely be rejected if none of the first three criteria is met. *Klesch Group Holdings Limited & Others v. European Union, Klesch Group Holdings Limited, Klesch Refining Denmark A/S and Kalundborg Refinery A/S v. Kingdom of Denmark*, and *Klesch Group Holdings Limited and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Cases Nos. ARB(AF)/23/1, ARB/23/48 and ARB/23/49, Procedural Order No. 5, 18 December 2025, para. 23 (CL-101).

<sup>25</sup> *Methanex Corporation v. United States of America*, UNCITRAL, Decision on Petitions to Intervene as Amici Curiae, 15 January 2001, paras. 22 and 52 (RL-221); *Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/19, Order in Response to a Petition for Transparency and Participation as Amicus Curiae, 19 May 2005, paras. 19-20 (RL-222); *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 5, 2 February 2007, para. 43 (CL-92).

- or impose an excessive burden or unfair prejudice on the Parties or one of them.
25. Turning to the assessment of the factors contained in Rule 67(2), it is first undisputable that Dejusticia's submission falls within the scope of the dispute. As noted by the Parties, the dispute relates to (i) Colombia's alleged delays in liquidating the Operative Contracts in connection with the closure of the Calenturitas and La Jagua mines, and (ii) Judgment T-375 issued by the Colombian Constitutional Court regarding C.I. Prodeco S.A.'s alleged failure to conduct prior consultations with the Yukpa indigenous community and the related duty to provide reparations.<sup>26</sup>
26. In respect of the closure of the mines, the Petitioner proposes to comment on the socio-economic and environmental consequences for surrounding communities. Although the Tribunal understands that the socio-economic consequences have not been discussed by the Parties, the environmental consequences of the mines' operations fall within the ambit of the dispute, since their assessment is part of the Respondent's justification for the alleged delays in liquidating the Operative Contracts.<sup>27</sup>
27. As for Dejusticia's proposal to discuss the content and implications of international environmental and human rights obligations and their intersection with investment treaty protections, those aspects also fall within the dispute regarding in particular the claims arising out of Judgment T-375 concerning the lack of prior consultations with the Yukpa community.<sup>28</sup>
28. Second, the Tribunal is of the view that Dejusticia's input may assist it in better understanding certain factual and legal issues at stake in this arbitration. This could apply especially to the *tutela* proceedings before the Constitutional Court culminating in Judgment T-375. As noted by the Respondent, Dejusticia has participated in "dozens of *tutela* proceedings before the Constitutional Court concerning environmental and indigenous rights".<sup>29</sup> In this context, it may be noteworthy that Yukpa's *tutela* action was brought not only against C.I. Prodeco S.A., but also against agencies of the Ministry

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<sup>26</sup> Claimants' Comments, para. 26; Respondent's Comments, para. 9.

<sup>27</sup> See, for instance, Counter-Memorial, paras. 233-250.

<sup>28</sup> See, for instance, Counter-Memorial, paras. 513-774.

<sup>29</sup> Respondent's Comments, para. 11. See, for instance, Julián Gutiérrez-Martínez et al., *Landmark judicial cases in Environmental and Climate Change*, Dejusticia, 2025 (R-262).

of Interior.<sup>30</sup>

29. In addition, considering the recent advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, as well as of the advisory opinion of the Inter-American Court of Human Rights on climate emergency and human rights,<sup>31</sup> the Tribunal deems that Dejusticia could possibly provide useful insight, different from that of the Parties, on how to reconcile a State's international environmental and human rights obligations identified in those opinions with investment protections under the BIT.<sup>32</sup>
30. Finally, even though the Petitioner was not directly involved in the mines' operations, it may provide useful factual elements in relation to the environmental impacts, if any, that were under review during the mines' closure.
31. Third, the Petitioner has a sufficiently significant interest in these proceedings. While it is generally accepted that a mere general interest does not justify an appearance as NDP, a petitioner need not always have a concrete interest in the sense of being directly or indirectly affected by the outcome of the case.<sup>33</sup> While Dejusticia did not represent the Yukpa community in domestic proceedings or elsewhere, it is a Colombian non-governmental organization that actively participated in numerous *tutela* proceedings concerning indigenous rights and environmental issues in Colombia and conducted research on the tensions between large-scale mining and fundamental rights. Moreover, its participation in this arbitration falls within its stated aim of "ensuring that Colombia's international obligations are considered coherently alongside its commitments under investment treaties",<sup>34</sup> as well as its mission of defending human rights and contributing

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<sup>30</sup> See Judgment T-375, 25 September 2023, p. 1 pdf (C-89).

<sup>31</sup> ICJ, Advisory Opinion, Obligations of States in Respect of Climate Change, 23 July 2025 (RL-129); IACtHR, Advisory Opinion OC-32/25 on Climate Emergency and Human Rights, 29 May 2025 (RL-132).

<sup>32</sup> The Respondent refers to those opinions in its Counter-Memorial, and the Claimants have announced that they will address them in their forthcoming Reply. Counter-Memorial, paras. 835-838, 847 and 856; Claimants' Comments, paras. 20-22.

<sup>33</sup> *Azienda Elettrica Ticinese v. Federal Republic of Germany*, ICSID Case No. ARB/23/47, Procedural Order No. 4, 17 April 2025, para. 22 (RL-202).

<sup>34</sup> Petition, para. 13. See also, for instance, Julián Gutiérrez-Martínez et al., *Landmark judicial cases in Environmental and Climate Change*, Dejusticia, 2025 (R-262); L.J. Santacoloma Méndez, *When the Essential is Invisible to the State: Fundamental Rights and Large-Scale Mining*, Dejusticia, 2023 (R-263).

to a more inclusive citizenship.<sup>35</sup>

32. Fourth, in its current understanding of the record, the Tribunal considers that this case involves questions of public interest that militate in favor of granting the NDP status to Dejusticia and allowing it to file a submission. Indeed, among other matters, the present dispute touches on the impact that the Calenturitas and La Jagua mines allegedly had on the Yukpa community and on compliance with that community's right to prior consultation.<sup>36</sup> Considering the nature of the matters before the Tribunal, the latter finds that allowing Dejusticia to appear as NDP may also serve to enhance the legitimacy of this arbitration process and its outcome.<sup>37</sup> This approach is consistent with Glencore's vision about the virtues of increased transparency.<sup>38</sup>
33. Fifth, the Parties did not question Dejusticia's assertion of independence and lack of financial affiliation with either Party.<sup>39</sup> In fact, the Claimants do not allege that Dejusticia is directly or indirectly affiliated with the Colombian government, and the Respondent confirms that this is not the case.<sup>40</sup>
34. Sixth and finally, granting Dejusticia the status of NDP and allowing it to file a written submission would not disrupt the proceedings, nor impose an undue burden or unfair

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<sup>35</sup> Dejusticia, "About Us", p. 2 pdf (R-270) ("*[C]on la misión de defender los derechos humanos y contribuir a la construcción de una ciudadanía más incluyente*").

<sup>36</sup> See, for instance, Memorial, paras. 4, 13-20 and 155-297.

<sup>37</sup> For similar views, see, for instance, *Methanex Corporation v. United States of America*, UNCITRAL, Decision on Petitions to Intervene as Amici Curiae, 15 January 2001, para. 49 (RL-221); *Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/19, Order in Response to a Petition for Transparency and Participation as Amicus Curiae, 19 May 2005, para. 22 (RL-222); *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 5, 2 February 2007, para. 50 (CL-92); *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Procedural Order No. 3, 17 February 2015, paras. 26 and 28 (CL-96); *Odyssey Marine Exploration, Inc. (USA) v. The United Mexican States*, ICSID Case No. UNCT/20/1, Procedural Order No. 6, 20 December 2021, Dissenting Opinion of Prof. Philippe Sands, para. 1 (RL-209); *Energía y Renovación Holding, S.A. v. Republic of Guatemala*, ICSID Case No. ARB/21/56, Procedural Order No. 3, 23 March 2023, para. 15.

<sup>38</sup> Glencore, *Our Approach to Transparency*, Statement by Fary Nagle (Glencore's CEO), p. 1 pdf (R-271) ("We are committed to high standards of corporate governance and transparency. [...] We seek to understand and manage our impacts, support the development of and generate sustainable benefits for our host communities, while also promoting diversified and resilient local economies. We believe that our transparency encourages the responsible management of revenues, supports an improved understanding of our activities and contributions and strengthens accountability").

<sup>39</sup> Petition, para. 15.

<sup>40</sup> Respondent's Comments, paras. 22-24.

prejudice on either Party, provided appropriate terms and limitations are put in place. The proceedings are still at a relatively early stage, with the result that there is sufficient time for Dejusticia to file its submission and for the Parties to comment on it before the hearing without disrupting the procedural calendar.

35. In this context of burden and prejudice, the Tribunal notes that the Claimants put in doubt Dejusticia's impartiality because of public comments by its former director, who criticized investment arbitration in general terms.<sup>41</sup> This being so, it can certainly not be said that Dejusticia is predisposed in favor of the Respondent. Indeed, it regularly challenges the actions of the Colombian government in local court proceedings, including in *tutela* proceedings, by arguing that participation rights of affected populations have been infringed or seeking declarations that government measures are unconstitutional.<sup>42</sup>
36. On this basis, the Tribunal holds that in all the circumstances of this case, Dejusticia should be permitted to appear as a NDP and file a written submission. To ensure that Dejusticia's appearance does not disrupt the proceedings or unduly burden or unfairly prejudice either Party, its submission shall comply with the following directions:
- a. Dejusticia shall file its submission by **26 June 2026**.
  - b. In that submission, Dejusticia shall act as a "friend" of the Tribunal, not a party.
  - c. Its submission shall focus on:
    - (i) as concerns factual issues: the socio-economic and environmental impacts in connection with the operation and closure of the Calenturitas and La Jagua mines; and
    - (ii) as regards legal issues:
      - (1) the right to prior consultations of the Yukpa indigenous community;
      - (2) the role of the *tutela* framework in securing the rights of the Yukpa

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<sup>41</sup> Claimants' Comments, paras. 13-14.

<sup>42</sup> See, for instance, Constitutional Court of Colombia, Judgment T-622/16, 10 November 2016, § III.2.1, pp. 27-28 (R-264); Supreme Court of Justice of Colombia, Judgment STC-4360/2018, 5 April 2018 (R-269).

indigenous community;

(3) the approach adopted by the Constitutional Court in Judgment T-375; and

(4) the ways in which Dejusticia proposes to reconcile Colombia's environmental and human rights obligations with its investment obligations under the BIT.

d. The submission shall be limited to 10,000 words, including footnotes.

e. The submission may annex documents.

37. The Claimants shall have an opportunity to present their observations on Dejusticia's submission in their Reply on the Merits (and Counter-Memorial on Jurisdiction), and the Respondent in its Rejoinder on the Merits (and Reply on Jurisdiction).

**B. Dejusticia's Request for Access to the Record**

38. The Petitioner further seeks access to procedural orders and all non-confidential arbitral documents. On that issue, Rule 67(6) provides that an NDP can only receive documents in the record if neither Party objects:

"The Tribunal shall provide the non-disputing party with relevant documents filed in the proceeding, unless either party objects".

39. Since the Claimants object to granting Dejusticia access to non-confidential documents in the record, the request must be denied.

40. That said, section 24 of PO1 sets forth a transparency regime specifying the documents that may be disclosed to the public, namely (i) orders and decisions, with any redactions agreed by the Parties or decided by the Tribunal and (ii) detailed summaries of the Parties' positions with respect to the facts and issues in dispute, as well as their requests for relief. Those documents are available on ICSID's website.

**C. Dejusticia's Request to Attend and Participate in the Hearing**

41. As for the Petitioner's request to attend and participate in the hearing, Rule 65(1) only allows non-parties to "observe" the hearing if neither Party objects. Moreover, paragraph 24.6 of PO1 expressly states that the Parties "do not consent to allowing persons in addition to the Parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings under

Arbitration Rule 65”. Here, the Claimants expressly object to Dejusticia attending the hearing and the Respondent states that it “does not consider it necessary for Dejusticia to attend oral hearings, in person or virtually”.<sup>43</sup> It follows that this request must be denied.

## **V. ORDER**

42. For the above reasons, the Tribunal:

- (i) Admits Dejusticia as an NDP;
- (ii) Allows Dejusticia to file a submission subject to the conditions set forth in paragraph 36 above;
- (iii) Invites the Claimants to submit their comments on Dejusticia’s submission with their Reply and the Respondent to submit its comments with its Rejoinder;
- (iv) Denies Dejusticia’s other requests; and
- (v) Invites ICSID to notify a copy of this Order to Dejusticia.

On behalf of the Tribunal,

[Signed]

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Professor Gabrielle Kaufmann-Kohler  
President of the Tribunal  
Date: 7 May 2026

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<sup>43</sup> Claimants’ Comments, para. 34; Respondent’s Comments, para. 37.