

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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

v.

Republic of Colombia

(ICSID Case No. ARB/23/50)

PROCEDURAL ORDER NO. 3

Respondent's Requests for Document Production

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

26 May 2026

I. PROCEDURAL BACKGROUND

1. Pursuant to Section 16.2 of Procedural Order No. 1 (“**PO1**”), the Respondent sent to the Claimant a letter dated 16 January 2026 containing eight requests to produce documents.
2. The Claimants responded to the Respondent’s letter on 5 February 2026, agreeing to produce certain documents and objecting to other requests. Five days later, the Claimants transmitted to the Respondent the documents they voluntarily agreed to produce.
3. On 20 February 2026, the Respondent sent to the Tribunal a letter requesting that it order the Claimants to produce documents in relation to six document requests. That letter contained a summary of the Claimants’ objections and the Respondent’s replies regarding those document requests. The Claimants opposed that request on 23 February 2026 and the Respondent replied to the Claimants’ letter the following day.
4. On 27 February 2026, the Tribunal decided that the orderly conduct of the proceedings and their efficiency would best be served by inserting a separate document production phase into the procedural calendar to address at the same time document production requests of both Parties, and it invited the Parties to comment on a revised procedural calendar, which the Parties did on 6 March 2026.
5. In accordance with the amended procedural calendar of 6 March 2026, the Parties submitted on 7 April 2026 simultaneous requests to produce documents in the form of a Redfern Schedule. The Claimants’ Redfern Schedule is divided into 8 categories of documents and the Respondent’s Redfern Schedule into 11 categories of documents.
6. On 21 April 2026, the Parties submitted their respective responses to the document production requests.
7. On 5 May 2026, each Party provided the Tribunal with its Redfern Schedule containing the objections raised by the opposing Party and its replies regarding the remaining document requests.
8. This Order addresses the Parties’ respective document production requests. The Tribunal will first determine the applicable standards and then issue its decision on the requests. The reasons for the Tribunal’s decisions are incorporated into the Redfern Schedules, which are annexed to and made an integral part of this Order (Annex A for

the Claimants' requests and Annex B for the Respondent's requests).

II. APPLICABLE STANDARDS

9. 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 PO1.
10. Under the ICSID Convention and the Arbitration Rules, the Parties have ample freedom to determine the applicable procedure, including with respect to the taking of evidence. For instance, pursuant to paragraph 16.1 of PO1, the Parties agreed that the Tribunal shall be guided but not bound by the 2020 IBA Rules on the Taking of Evidence in International Arbitration (the "**IBA Rules**").
11. In addition, Section 16 of PO1, which was discussed with the Parties at the first session, contains certain rules on document production, of which the following are relevant to the present Order:
 - 16.2. The Parties do not contemplate the need for a document production phase. Insofar as a Party wishes to request the production of a limited number of documents or a narrow category of documents from the other Party, it shall do so promptly, setting out the basis for such request in accordance with Article 3 of the IBA Rules and § 16.6 below, and it will send such request directly to the other Party without copying the Tribunal or the Tribunal's Secretary. In making such requests, the Parties shall endeavor not to disrupt the procedural calendar.
 - 16.4. If the requested documents are not voluntarily produced by a Party, the requesting Party may request the Tribunal to promptly decide on the unresolved requests. If it orders the production of documents, it shall set a deadline of no more than 10 calendar days for compliance.
 - 16.6. Each request for production shall:
 - 16.6.1. identify with specificity: (i) the type of documents or narrow category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). The Parties shall not use a generic formulation, such as 'all documents' or 'all records', or use such formulation and then define it to 'include' specific types of documents; (ii) the author, sender, recipient, and/or custodian of the requested

document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be), being specified that a Party asserting that such identification is not possible must adequately substantiate such assertion; and (iii) a date for individual documents or a narrow and proportionate period for a category of documents;

16.6.2. describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;

16.6.3. specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and

16.6.4. explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove.

16.7. The Tribunal recommends that the number of requests per Party not exceed 15, including sub-requests. Specifications of documents within the meaning of § 16.6.1 above shall not be understood as “sub-requests” for the purposes of the present paragraph. A Party wishing to exceed this number shall explain the reasons and need for a number higher than recommended.

12. Where the Parties have not agreed on the applicable procedure, the Tribunal enjoys an equally ample freedom to establish the applicable procedure. Article 43 of the ICSID Convention and Rule 36(3) of the Arbitration Rules grant the Tribunal the power to order the Parties to produce documents in the following terms:

“Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence [...]”.

And:

“The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding”.

13. Rule 37 of the Arbitration Rules further provides that:

“In deciding a dispute arising out of a party’s objection to the other party’s request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection”.

14. Moreover, for the purposes of this Order, the following provisions of the IBA Rules are relevant:

(i) Article 3.3:

“A Request to Produce shall contain:

(a) (i) a description of each requested Document sufficient to identify it, or

(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;

(b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and

(c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and

(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party”.

(ii) Article 3.4:

“Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection”.

(iii) Article 3.5:

“If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Articles 9.2 or 9.3, or a failure to satisfy any of the requirements of Article 3.3. If so directed by the Arbitral Tribunal, and within the time so ordered, the requesting party may respond to the objection”.

(iv) Article 3.7:

“Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in timely fashion, consider the Request to Produce, the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Articles 9.2 and 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it”.

(v) Article 9.2:

“The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable [...];

- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
- (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling”.

(vi) Article 9.3:

“The Arbitral Tribunal may, at the request of a Party or on its own motion, exclude evidence obtained illegally”.

15. Accordingly, the Tribunal will apply the following standards to rule on the requests for production of documents:

- Specificity: The request must identify each document or category of documents with precision.
- Relevance: The request must establish the relevance of each document or category of documents to prove allegations made in the submissions. For purposes of this Order, the term “relevance” encompasses both relevance to the dispute and materiality to its outcome. At this stage of the proceedings, the Tribunal is only in a position to assess the *prima facie* relevance of the documents requested, having regard to the factual allegations made so far. This *prima facie* assessment does not preclude a different assessment at a later point of the arbitration with the benefit of a more developed record.
- Possession, custody or control: The request must show that it is more likely than not that the requested documents exist, that they are not within the possession, custody or control of the requesting Party, and that they are within the possession, custody or control of the other Party.

- Balance of interests: Where appropriate, the Tribunal will balance the legitimate interests of the requesting Party with those of the requested Party, considering all relevant circumstances, including any legal privileges applicable to certain types of communications, the need to safeguard confidentiality, and the proportionality between the convenience of revealing potentially relevant facts and the burden imposed on the requested Party.

16. Finally, where the Tribunal has ordered the production of allegedly privileged or confidential documents, the Party seeking protection from disclosure shall produce the documents with redactions and provide a privilege log using the model form appended hereto as Annex C. The privilege log shall set forth (i) author(s), (ii) recipient(s), (iii) date on which the document was generated and/or communicated, (iv) subject matter of the redacted part of the document, without disclosing the content of the allegedly protected information, and (v) legal basis of the claim of privilege or confidentiality, including the applicable legal provisions, if any.

III. ORDER

17. For the reasons set forth in the Redfern Schedule regarding the Claimants' document production requests attached as Annex A and made an integral part of this Order, the Tribunal:
- (i) Partially grants the Claimants' Requests Nos. 1 to 6.
 - (ii) Grants the Claimants' Request No. 7.
 - (iii) Denies the other requests.
 - (iv) Orders the Respondent to produce the documents responsive to the Requests granted above by **16 June 2026**.

18. For the reasons set forth in the Redfern Schedule regarding the Respondent's document production requests attached as Annex B and made an integral part of this Order, the Tribunal:
- (i) Takes note that no decision is required in respect of Request No. 5.
 - (ii) Partially grants the Respondent's Requests Nos. 1-2, 4, 6-8 and 10.
 - (iii) Grants the Respondent's Request No. 3.
 - (iv) Denies the other requests.
 - (v) Orders the Claimants to produce the documents responsive to the Requests granted above by **16 June 2026**.
19. If a Party considers that the opposing Party has failed to comply with its obligations regarding voluntary or ordered document production within the set time limit, it shall raise its complaints no later than **23 June 2026**. The allegedly non-compliant Party may respond by **30 June 2026**, after which the Tribunal will provide further directions as it deems necessary.

On behalf of the Tribunal,

[Signed]

Professor Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 26 May 2026