

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

CONTINENTAL GOLD INC.

Claimant

v.

THE REPUBLIC OF COLOMBIA

Respondent

ICSID Case No. ARB/24/25

CLAIMANT'S UPDATED MEMORIAL

20 October 2025

WHITE & CASE
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TABLE OF ABBREVIATIONS

Defined Term	Definition
2016 Feasibility Study	Feasibility Study prepared Continental Gold Inc. by JDS Energy & Mining Inc. dated 20 May 2016
ACM	Colombian Mining Association (<i>Asociación Colombiana de Minería</i>)
ANDJE	Agency in charge of the State's legal defense (<i>Agencia Nacional de Defensa Jurídica del Estado</i>)
ANM	National Mining Agency (<i>Agencia Nacional de Minería</i>)
ANLA	National Environmental License Authority (<i>Autoridad Nacional de Licencias Ambientales</i>)
ASM	Artisanal and Small-Scale Mining
Attorney General	Colombia's prosecutorial authority responsible for criminal investigations (<i>Fiscalía General de la Nación</i>)
Buriticá Project (or "Buriticá Mine")	The modern mine developed and operated by Claimant in Buriticá, Colombia
ILC Articles	International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
Company	Continental Gold Limited Sucursal Colombia
Continental Gold	Continental Gold Inc. (Canada)
Continental Colombia	Continental Gold Limited Sucursal Colombia
Continental Gold Limited	Continental Gold Limited (Bermuda)
Concession Agreement	Concession Agreement No. 7495 between Continental Gold Limited Sucursal Colombia and the Secretary of Mines of the Department of Antioquia, dated 14 Sept. 2011

Defined Term	Definition
CONPES	National Council for Economic and Social Policy (<i>Consejo Nacional de Política Económica y Social</i>)
ELN	National Liberation Army (<i>Ejército de Liberación Nacional</i>)
FARC	Revolutionary Armed Forces of Colombia (<i>Fuerzas Armadas Revolucionarias de Colombia</i>)
FTA	The Free Trade Agreement between Canada and the Republic of Colombia
Joint Security Agreements	Security Agreements between the Company and the Ministry of National Defense and other security institutions
Level	Underground elevation at the Mine expressed in meters above sea level
Mine	The Buriticá Mine
Mining Code	Mining code of Colombia
National Army	Colombia's land-based military combat force (<i>Ejército Nacional de Colombia</i>)
National Police	Colombia's civilian force responsible for public security and law enforcement (<i>Policía Nacional de Colombia</i>)
Office of the Ombudsman	Colombia's independent agency responsible for human rights oversight and citizen protection (<i>Defensoría del Pueblo</i>)
Office of the Inspector General	Colombia's independent agency responsible for overseeing public officials' conduct and disciplinary control (<i>Procuraduría General de la Nación</i>)
Operation Creta	Large scale security operation conducted at the Mine between 2016-2020
Operation Hades	Large scale security operation conducted at the Mine starting in July 2021
PINES	Project of National and Strategic Interest (<i>Proyecto de Interés Nacional y Estratégico</i>)
Project	The Buriticá Project

Defined Term	Definition
PTO	Mining Work Plan (<i>Plan de Trabajos y Obras</i>)
Respondent	Republic of Colombia
Treaty	The Free Trade Agreement between Canada and the Republic of Colombia
UNIMIL	National Unit Against Illegal Mining (<i>Unidad Nacional contra Minería Ilegal</i>), which forms part of Colombia’s National Police
Zijin Mining (or “Zijin”)	Zijin Mining Group Co.

CLAIMANT’S UPDATED MEMORIAL

1. Claimant Continental Gold Inc. (“**Continental Gold**” or “**Claimant**”), on its own behalf and on behalf of Continental Gold Limited Sucursal Colombia (“**Continental Colombia**” or the “**Company**”), hereby submits its Updated Memorial pursuant to Procedural Order No. 5 dated 18 August 2025, and Articles 819 and 820 of Chapter Eight of the Free Trade Agreement (the “**FTA**” or the “**Treaty**”) between Canada and the Republic of Colombia (“**Colombia**” or “**Respondent**”) signed on 21 November 2008 and which entered into force on 15 August 2011.¹

I. OVERVIEW

2. Colombia has allowed a criminal gang known as the *Clan del Golfo* and its associates to invade and take over the giant underground gold mine that Claimant has financed, developed, and is currently operating in the Department of Antioquia. Thousands of people are working illegally underground, using heavy equipment and toxic chemicals to harvest the mine’s valuable resources and weapons and explosives to attack its workers. Tragically, many workers have been killed or injured.
3. This shocking situation, which has made headlines in the domestic and international press, did not arise because Colombia lacks the capability or resources to take action. At its origin are governmental decisions, motivated by animus towards large mining companies and a misguided wish to accommodate criminal groups, such as the *Clan del Golfo*.
4. The mine that Continental Gold has built in Colombia is one of the largest underground gold mines in the world. After investments well in excess of a billion dollars, and years of work, it was inaugurated in 2020. It was then (and remains) the first modern metallic mine to be successfully developed and commence production in Colombia in decades. Its operations have created thousands of jobs and resulted in hundreds of millions of dollars

¹ Procedural Order No. 5 dated 18 August 2025, ¶ 74(b). See Canada-Colombia Free Trade Agreement (“FTA” or the “Treaty”) (CL-1). See Circular No. 024 of the Directorate of Foreign Commerce of the Ministry of Commerce concerning the entry into force of the Treaty dated 3 August 2011 (CL-2).

paid to Colombia in taxes and royalties. It has received numerous awards and accolades for its industry-leading social and environmental practices.

5. For years, Colombia welcomed and embraced Claimant's investment. It gave the project the coveted status of "Project of National Strategic Importance," issued all required permits, supported its development and hailed its success. The Colombian president attended the mine's inauguration in 2020. The Minister of Mines used the project to showcase Colombia as a promising mining destination to other international investors.
6. Central to the support that Colombia offered was a promise of protection and security. As Claimant was injecting hundreds of millions of dollars in the Colombian economy, Colombia repeatedly stated its commitment and took actions to combat crime and the illegal exploitation of mineral resources. Its armed forces and police entered into formal agreements to provide protection to the mine. And Colombia delivered on its commitment. As the mine was being built and then entered operation, the Colombian armed forces and police deployed hundreds of troops and conducted multiple law-enforcement actions over several years to repel criminals and illegal miners and secure the mine, in operations that have been hailed as the "benchmark" for the industry.
7. The situation changed with the inauguration of President Gustavo Petro in August 2022. Himself a former guerilla member, President Petro campaigned on a platform of opposition to large-scale mining, support for "informal" miners, and accommodation of armed groups. Upon his taking office, 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*. As Claimant was losing control over increasingly large areas of the mine, Colombia declined to provide assistance and encouraged Claimant to seek an arrangement with the drug cartel instead.
8. Predictably, Colombia's decision to abandon the mine had tragic consequences. It only emboldened the *Clan del Golfo*. In May 2023, armed criminals forced their way into the deepest development area of the Mine. A bomb thrown at the mine's workers killed two and injured over a dozen.

9. In the wake of the attack, and in response to the public outcry, Colombia promised action. The Director of Public Security at the Ministry of Defense, Ms. Daniela Gómez, assured Claimant that a largescale military operation would soon take place to flush the criminals out of the tunnels. That operation never came. In an interview that she gave a few months later, Ms. Gómez, who by then had been elevated to Minister of Defense, made clear why: “I cannot provide private security to a multinational that makes money off Colombia’s gross domestic product.”
10. Ms. Gómez’s comments are especially jarring because Claimant has used all available legal avenues to address the situation. To protect its workers, the Company has hired and deployed hundreds of private security contractors, but by law these contractors are limited to purely defensive operations. They cannot conduct offensive operations to repel trespassers from the tunnels and recover illegally occupied areas; only the Colombian armed forces and police can. The Company has also filed multiple criminal, judicial and administrative complaints and proceedings, but these have gone nowhere for lack of enforcement. And, in response to the emergency situation at the mine, the national mining agency issued two emergency resolutions ordering the immediate closure of all illegal mining activities at the mine, but these have remained dead letters.
11. [REDACTED]
[REDACTED]
[REDACTED]. Yet Colombia has refused to implement even the simplest and most obvious security measures such as installing a permanent police checkpoint to monitor and control the comings and goings in the area.
12. Colombia itself has conceded its shocking dereliction of duty. Multiple officials, including the Inspector General of Colombia, the Ombudsman, the Governor of Antioquia and local legislators, have repeatedly faulted the Colombian government for its inaction and its abandonment of the mine. As recently as December 2024, the Director General of the National Police commented that “the technical difficulty of enforcement actions is not high” and that, “from a capability standpoint, the state is fully able to stop illegal mining.”

13. As a direct result of Colombia's deliberate inaction, [REDACTED]
[REDACTED]
[REDACTED]. The illegal occupation of the Mine also means that Claimant has been deprived of the valuable mineral reserves that had been proven in these underground areas [REDACTED] and to which the Company held exclusive rights under Colombian law.
14. In these circumstances, Claimant, a company incorporated and headquartered in Canada, has no other choice than to bring this arbitration under the Treaty. By tolerating and encouraging the violent and unlawful occupation of the mine, Colombia has violated multiple promises that it made to Canadian investors under the Treaty, including that it would provide them with full protection and security, would not engage in measures tantamount to expropriation, and would treat their investments fairly and equitably. Claimant seeks a declaration that Colombia has violated its obligations under the Treaty and is obligated to compensate Claimant and the Company for their losses valued at [REDACTED].

15. In support of its Updated Memorial, Claimant submits:

- a) [REDACTED]
[REDACTED]
[REDACTED];
- b) [REDACTED]
[REDACTED];
- c) [REDACTED]
[REDACTED]
- d) [REDACTED]
[REDACTED].

- e) The Expert Report of Ronald Lewis and Catherine Joyner of John T. Boyd Company, dated 20 October 2025.
16. Claimant's Memorial is also accompanied by (i) Exhibits C-52 to C-521; and (ii) Legal Authorities CL-04 to CL-152.

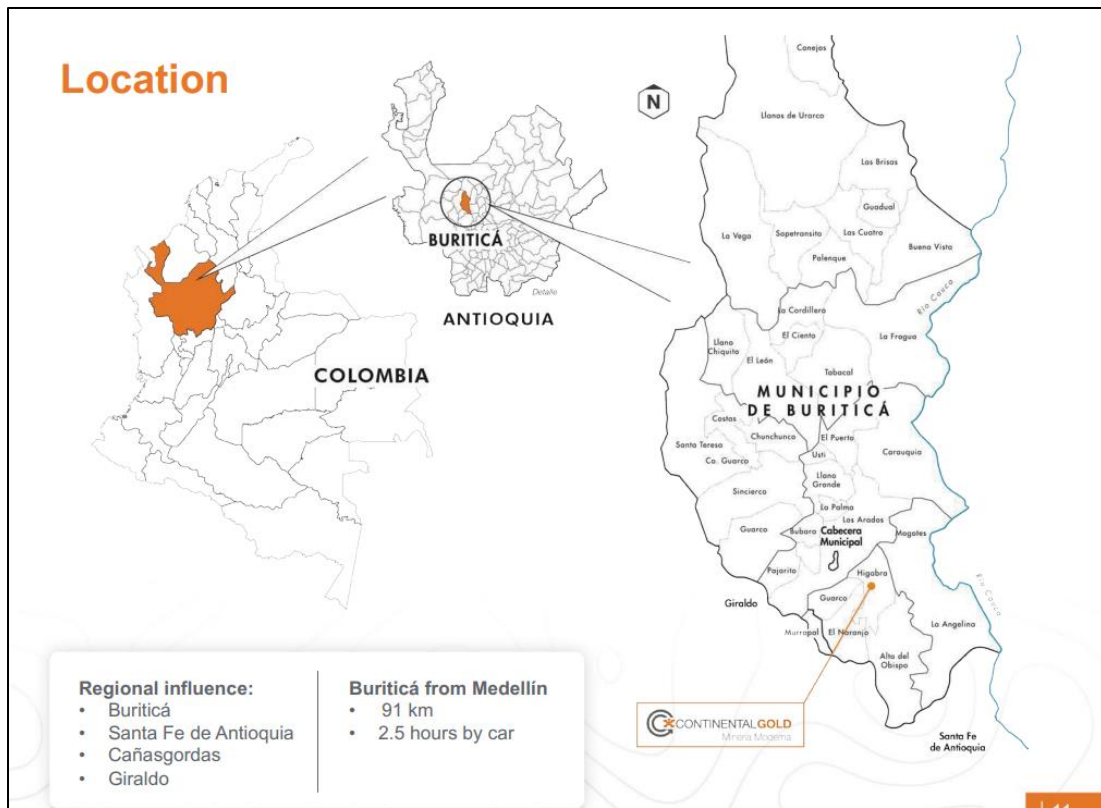
II. FACTS

A. THE BURITICA MINE IS ONE OF THE LARGEST OPERATING UNDERGROUND GOLD MINES IN THE WORLD

17. The Buriticá Mine is a world-class underground gold, copper and silver mine located in the town of Buriticá, in the municipality of Santa Fe in the Colombian Department of Antioquia, approximately 75 kilometers northwest of the city of Medellín (the “**Buriticá Project**,” the “**Buriticá Mine**,” the “**Project**,” or the “**Mine**”).² Its location is depicted in the following image:³

² Buriticá Gold Mine, *Zijin Mining Group Co., Ltd.* (11 May 2025) (C-472).

³ “General Presentation: Buriticá Project,” Continental Colombia Gold (May 2020) (C-234) p. 11.



18. The Project covers an area of approximately 1,920 hectares,⁴ and its underground tunnels run to approximately 140 km.⁵ The Project was the first one in Colombia to use directional drilling to access specific ore zones from underground workings, as explained by the Mine's [REDACTED].⁶ In addition to the underground workings, the Mine includes other modern facilities such as an industrial processing plant, a large-scale tailings storage facility,⁷ and a modern wastewater treatment plant.⁸ The Mine's facilities are depicted in the following images:

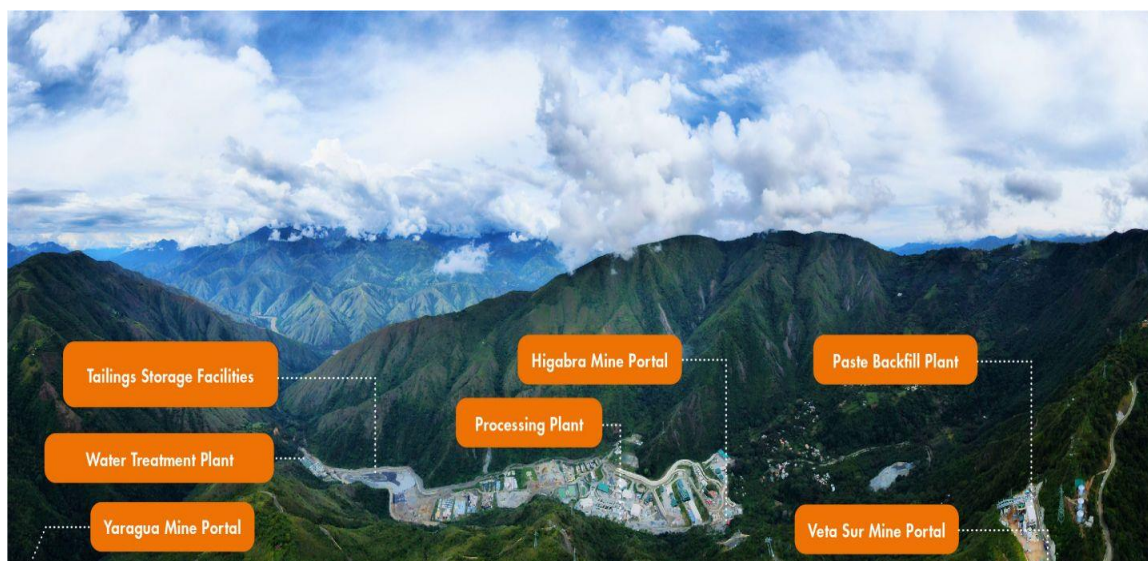
⁴ Certificate of Mining Registry of Concession Contract 7495 (updated version) (C-52).

⁵ Witness Statement of [REDACTED], dated 10 July 2025 ("[REDACTED]") ¶ 7.

⁶ [REDACTED].

⁷ [REDACTED]; ANLA Resolution No. 1443, dated 30 Nov. 2016 (C-194) p. 20.

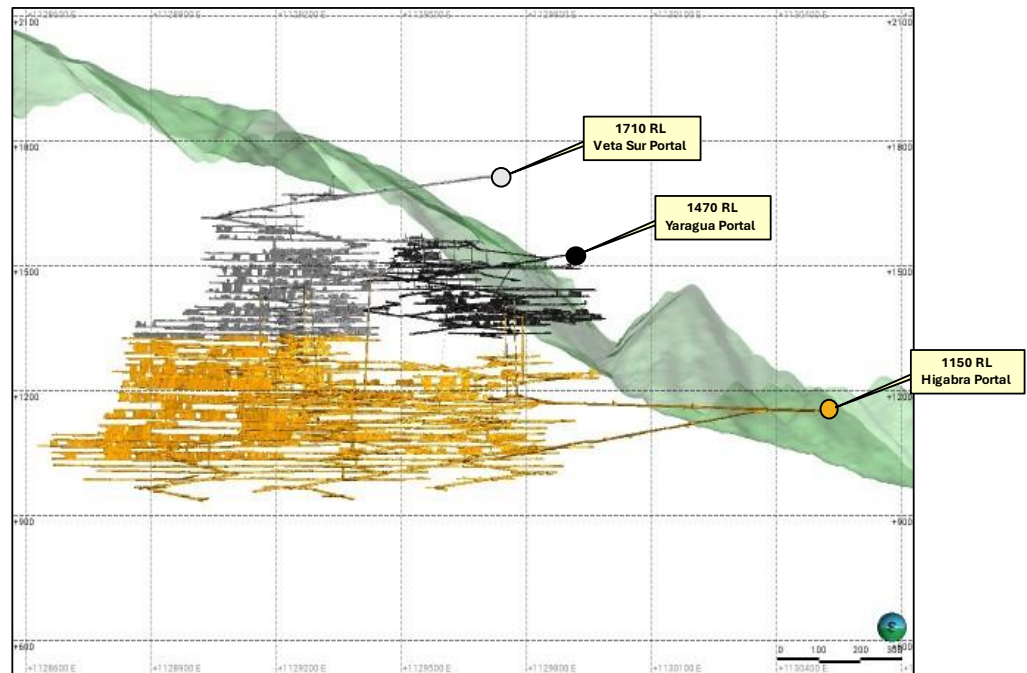
⁸ "Buriticá Gold Mine Commissions the Most Advanced Water Treatment Plant in Colombia," Zijin Mining Group Co., Ltd. (1 Jul. 2021) (C-266); "Independent Technical Report on the Buriticá Gold-Silver Project, Antioquia, Colombia," SRK Consulting China Ltd., dated 8 May 2021 (C-258) pp. 92-102; [REDACTED].



19. Ultra-high grade ore is found and exploited underground in a mountain in two main vein systems (the Yaraguá and Veta Sur veins).⁹ The Mine's reserves of ultra-high grade gold are currently estimated at 1.70 and 13.62 million tons of proven and probable reserves,

⁹ "Independent Technical Report on the Buriticá Gold-Silver Project, Antioquia, Colombia," SRK Consulting China Ltd., dated 8 May 2021 (C-258) p. iv ("So far, two mineralization sections of Yaragua and Veta Sur are defined in Project area for estimates of mineral resource and reserve."); [REDACTED].

Mine can be accessed through entries known as portals (*bocaminas*).¹⁹ Rampa Sur is reachable through the Veta Sur portal and is shown in gray below. Yaraguá is reachable through the Yaraguá portal and is portrayed in black. Higabrá is reachable through the Higabrá portal and is illustrated in orange.



22. Starting in 2007 and continuing to the present date, Claimant and its affiliates have individually and collectively made significant initial and ongoing investments in the Mine, totaling cumulatively well over US\$ 1.2 billion, contributing to Colombia's economy.²⁰
23. This colossal investment in the development of the Buriticá Mine took place against the backdrop of a renewed and sustained focus by Colombia on policies and actions to ensure the safety of foreign investments in the mining sector, as explained below.

¹⁹ [REDACTED]; "Buriticá Project Feasibility Study, Antioquia, Colombia," JDS Energy & Mining Inc., dated 20 May 2016 (C-186) p. 16-42.

²⁰ [REDACTED].

B. STARTING IN EARLY 2000S AND FOR DECADES, COLOMBIA INDUCED AND PROMOTED INVESTMENTS IN ITS MINING SECTOR THROUGH AN INTENSE FOCUS ON SECURITY POLICIES AND ACTIONS

24. In the early 2000s, Colombia emerged from years of narcotrafficking-fueled violence as a promising new frontier for the mining industry. Through the “Democratic Security” policy, Colombia sought to attract foreign investors by promising to safeguard the physical safety of their investments (**Section 1**). On the back of the “Democratic Security” policy, and in a deliberate strategy to boost its economy, Colombia successfully promoted foreign mining investment (**Section 2**). Consistent with its promises to mining investors, for years Colombia took (and publicized) forceful actions to protect mining investments from criminal activities, including the illegal exploitation of mineral resources (**Section 3**).

1. Through the “Democratic Security” policy, Colombia sought to attract investors by promising to safeguard the physical safety of their investments

25. Colombia’s remarkable economic growth in the 2000s was made possible by its forceful policies and actions to promote the physical security of foreign investments.
26. In 2002, newly-elected Colombian President Álvaro Uribe Vélez declared that “the only way to increase foreign investment in Colombia [was] to guarantee the safety of the businesspersons and international companies that seek to establish themselves in Colombia.”²¹ In his inauguration speech on 7 August 2002, President Uribe announced that Colombia would have “zero tolerance against crime,” and promised to have the country’s borders “closed for crime” but open for investment through “more commitment and results.”²²
27. Consistent with these promises, the administration of President Uribe issued in 2002 a National Development Plan (*Plan Nacional de Desarrollo*) that sought to coordinate and

²¹ “Democratic security will allow an increase in foreign investment,” *Legado Uribe* (17 Sept. 2002) (C-60).

²² “Speech by Álvaro Uribe on the day of his inauguration as President of the Republic,” *Legado Uribe* (7 Aug. 2002) (C-59).

direct government actions through four overarching pillars.²³ The Democratic Security (*Seguridad Democrática*) policy was the first pillar of that plan.²⁴ Through that policy, and with a view to promoting foreign direct investment, Colombia proceeded to increase the presence of military and police forces across the country to enhance security and combat criminal organizations, which Colombia rightly viewed as “obstacles to economic growth.”²⁵

28. The Democratic Security policy proved a success. By 2004, President Uribe could declare that all municipalities in Colombia had an effective security force presence, reversing the absence of state control in 168 municipalities.²⁶ By 2005, President Uribe reported to Congress that 74% of the Democratic Security goals had been met, as set out in the 2002 National Development Plan.²⁷ In his speech to Congress, President Uribe highlighted how the Colombian Government had improved its investments in security and brought homicides down to the lowest levels in the previous 18 years.²⁸

²³ “National Development Plan 2002-2006,” National Planning Department (2003) (“**National Development Plan**”) (C-63) p. 19 (“In order to move towards the construction of the Community State, the National Development Plan pursues four fundamental objectives that will guide the Government’s action: to provide democratic security, to promote sustainable economic growth and job creation, to achieve social equity, and to increase the transparency and efficiency of the State.”).

²⁴ National Development Plan (C-63) pp. 19-20 (outlining the four strategic pillars of Uribe’s 2002-2006 National Development Plan: to provide democratic security, to promote sustainable economic growth and job creation, to achieve social equity, and to increase the transparency and efficiency of the State).

²⁵ National Development Plan (C-63) pp. 19, 21, 40-44, 145-146 (“The succession of homicides and kidnappings, the repetition of terrorist acts and the profusion of illicit businesses have become not only an obstacle to economic growth, but also a threat to the viability of the nation. Without security there is no prosperity, no peace of mind and there may be no future.”).

²⁶ “Report to Congress: Álvaro Uribe Vélez,” National Planning Department (20 Jul. 2005) (C-65) p. 15 (“An example of this is that, since the beginning of 2004, all the municipalities in the country have an effective police presence, in contrast to the 168 localities that in August 2002 were outside state control because they had no police authorities.”).

²⁷ “Report to Congress: Álvaro Uribe Vélez,” National Planning Department (20 Jul. 2005) (C-65) p. 14 (“This favorable performance of the current government is the result of a high level of compliance, both physical and financial, with the four objectives. In the first case, compliance with the Plan reaches 74% in democratic security.”).

²⁸ “Report to Congress: Álvaro Uribe Vélez,” National Planning Department (20 Jul. 2005) (C-65) p. 15 (“As a consequence of the above, the homicide rate fell from 6.02 homicides per month in July 2002 to 3.04 in June 2005, which represents a reduction of 49.5% and the lowest figure in the last 18 years. This downward trend is confirmed when comparing the number of homicides in the first half of 2005 with the same period in 2002, during which time the number of homicides fell from almost 15,000 to less than 6,000, which is equivalent to a reduction

29. The Democratic Security policy achieved its goal of promoting economic growth through foreign investment. Between 2002 and 2005, growth nearly doubled from 2.5% to 4.8% annually,²⁹ while foreign direct investment surged from 2.2% to 7% of GDP.³⁰ As President Uribe recognized at the time, “foreign investment arrived because there is more security.”³¹
30. On the back of that impressive record, President Uribe was reelected in a landslide in 2006 with 62% of the vote.³² He acknowledged that “without a doubt” his administration’s success was due to security improvements that allowed the Government to reestablish control in areas of the country that had previously been dominated by illegal groups.³³
31. Throughout that period, the Government remained vigilant, as organized crime remained a threat. During his second term, Colombia kept fighting criminal groups and continued advancing pro-security policies, achieving key security milestones, including:
 - a) Dismantling and reclaiming various strategic areas dominated by the criminal guerilla group the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*) (“**FARC**”) and other dissident groups, including the National Liberation Army (*Ejército de Liberación Nacional*) (“**ELN**”);³⁴

of 40%.”); *see also* Lisandro Abrego and Robert Rennhack, “IMF Survey: Reform, Better Security Help Colombia,” *International Monetary Fund* (29 Jan. 2007) (C-71) (recognizing that, during Uribe’s first years, Colombia experienced an economic recovery and benefited from a marked and improved security situation).

²⁹ “GDP Growth (Annual %) – Colombia (2002-2005),” *The World Bank* (14 May 2025) (C-478).

³⁰ “Foreign direct investment, net inflows (% of GDP) – Colombia (2002-2005),” *The World Bank* (14 May 2025) (C-477).

³¹ “Foreign investment increases because there is more security,” Presidency of the Republic (19 Jul. 2005) (C-64).

³² “Colombia’s Uribe wins second term,” *BBC News* (29 May 2006) (C-69). *See also* “Colombia re-election ban lifted,” *BBC News* (20 Oct. 2005) (C-66).

³³ “Report to Congress: Álvaro Uribe Vélez,” National Planning Department (20 Jul. 2005) (C-65) p. 15 (“Security achievements have clearly driven the results achieved to date. Thanks to the democratic security policy, it was possible to continue strengthening the operational capacity of the Public Forces . . . and re-establish control of areas under the influence of illegal armed groups.”). *See also* “Colombia’s Uribe wins second term,” *BBC News* (29 May 2006) (C-69) (Correspondents say his tough policies against drugs and militants paid off.).

³⁴ Jeremy McDermott, “How President Alvaro Uribe changed Colombia,” *BBC News* (4 Aug. 2010) (C-90) (“In 2002, the Farc numbered up to 20,000 and their cousins in the National Liberation army (ELN) some 3,500. Now the Farc have an estimated 8,000 fighters and the ELN perhaps 1,500.”).

- b) Successfully rescuing 15 hostages (including former Colombian presidential candidate Ingrid Betancourt, who had been kidnapped in 2002) through an “impeccable” military operation, which applauded around the world;³⁵
 - c) Targeting high-ranking members of the FARC, in operations with more than 400 members of the Official Military Defense Institutions (*Fuerzas Militares de Colombia*) (the “**Armed Forces**”) and the public security forces (*Policía Nacional de Colombia*) (the “**National Police**”);³⁶
 - d) Strengthening the military and police forces by 52%, by increasing the defense budget and enhancing compensation benefits, making it the highest security spending in Latin America;³⁷ and
 - e) Lowering homicide rates, attacks on infrastructure, kidnappings, and crime.³⁸
32. In 2010, President Uribe was succeeded by his Minister of Defense, Juan Manuel Santos, who had played a key role in shaping and implementing the successful Democratic Security policy. At his inauguration on 7 August 2010, President Santos promised to continue President Uribe’s “guidelines for investor trust,” and explicitly addressed international

³⁵ Simon Romero, “Colombia Plucks Hostages From Rebels’ Grasp,” *New York Times* (3 Jul. 2008) (C-75).

³⁶ Simon Romero, “Rebels’ Second in Command Has Been Killed, Colombia Says,” *New York Times* (23 Sept. 2010) (C-97).

³⁷ Cristian Andrés Sotomayor Demuth, “Uribe’s legacy in Colombia,” *El Ciudadano* (4 Nov. 2010) (C-100) (“Democratic Pole Senator Gloria Cuartas . . . estimates that ‘more than 60% of the general state budget is directed to military and police forces.’ Not surprisingly, in Colombia, 80 out of 100 public officials are employed in tasks related to defense and security, according to a study by José Isaza, done in 2008.”); “President Uribe explains benefits granted during the current administration to members of the Armed Forces,” Presidency of the Republic (3 Jun. 2010) (C-87)

³⁸ Jeremy McDermott, “How President Alvaro Uribe changed Colombia,” *BBC News* (4 Aug. 2010) (C-90) (“[K]idnappings that once ran at more than eight a day have dropped to under one a day.”); “Report to Congress: Álvaro Uribe Vélez,” National Planning Department (20 Jul. 2005) (C-65) p. 15 (“Without a doubt, the main factor determining the results obtained to date is the achievements in the field of security. Thanks to the Democratic Security policy it was possible to continue strengthening the operational capacity of the Public Forces . . . and re-establish control of areas under the influence of illegal armed groups.”).

investors, stating that “[i]n Colombia, you will always find confidence and a friendly land.”³⁹ He also vowed to continue to fight criminal organizations:⁴⁰

[W]e will continue to fight against illegal organizations without truce or quarter. We will not rest until the Rule of Law prevails entirely in each and every one of the townships of our country. Thanks to the consolidation of democratic security policy, we have made significant progress in this direction like never before, but there is still a long way to go. Reaching this goal will continue to be our priority, and I ask our Armed Forces’ senior-most commanders from this moment to continue giving results and producing compelling advancements.

33. During the initial years of his administration, President Santos continued dismantling the FARC and other criminal organizations in Colombia.⁴¹ Building on the security achievements of the Uribe administration, President Santos announced the beginning of peace talks with the FARC in 2012. In December 2014, the FARC declared a unilateral ceasefire for an indefinite period,⁴² paving the way for the historic 2016 peace agreement.⁴³ In recognition of Colombia’s efforts, President Santos received a Nobel Peace Prize for pursuing a deal to end 52 years of internal conflict.⁴⁴

2. On the back of the Democratic Security policy, Colombia successfully promoted foreign investment in its mining sector

34. One of the sectors that Colombia targeted for foreign investments was mining. In the early 2000s, Colombia sought to turn itself into an attractive mining jurisdiction through deliberate reforms and policies designed to attract investment in the sector.⁴⁵ Colombia

³⁹ “The time for Colombia is now!” Presidency of the Republic (7 Aug. 2010) (C-91).

⁴⁰ “The time for Colombia is now!” Presidency of the Republic (7 Aug. 2010) (C-91) (emphasis added).

⁴¹ See “Intentional homicides (per 100,000 people) – Colombia (2002-2015),” *The World Bank* (11 May 2025) (C-471) (showing that intentional homicide rates dropped by 61% between 2002 and 2015).

⁴² “Colombia Farc rebels declare indefinite unilateral truce,” *BBC News* (17 Dec. 2014) (C-144).

⁴³ Nicholas Casey, “Colombia Signs Peace Agreement With FARC After 5 Decades of War,” *New York Times* (26 Sept. 2016) (C-191).

⁴⁴ Nicholas Casey, “Colombia’s President, Juan Manuel Santos, Is Awarded Nobel Peace Prize,” *New York Times* (C-191).

⁴⁵ See Request for Arbitration, Section III.A; see also Decree No. 2080 of 2000, dated 18 Oct. 2000 (C-56) Chapter II. In 2000, Colombia amended its general regime for foreign investment and created an open market for foreign investors through Decree No. 2080 of 2000 which included a specific chapter for the mining sector and hydrocarbons.

thus reformed its mining code (the “**Mining Code**”) to “promote technical exploration and exploitation of mining resources,” “satisfy the internal and external demand for mining,” and provide “modern legislation” for the sector.⁴⁶ The amended Mining Code explicitly declared the mining industry to be “a matter of public utility and social interest.”⁴⁷

35. The improved security situation in the country and the Government’s robust support in this respect were a major part of Colombia’s pitch to foreign mining investors. For instance:

- a) At a major mining industry fair held in Colombia in 2005, President Uribe explained that Colombia sought to become a country that “greatly attracts investment,” acknowledged that “security” was a “very sensitive topic for the mining sector,” and touted the close working relationship between mining companies and law enforcement.⁴⁸
- b) Colombia’s Minister of Mines also announced to investors in 2009 that Colombia’s Democratic Security policy had significantly boosted mining investment, helping attract nearly US\$ 2 billion in 2009 alone, particularly in gold projects (along with coal and nickel) by improving investor confidence and creating a more secure business environment.⁴⁹
- c) Other officials of the Ministry of Mines highlighted in presentations to investors the Democratic Security policy and Colombia’s “improved security to access

⁴⁶ Juan Guillermo Londoño, “Mining, 30 years behind,” *El Tiempo* (12 Jun. 2000) (C-54).

⁴⁷ Law No. 685 of 2001, dated 15 Aug. 2001 (the “**Mining Code**”) (C-58) Art. 13.

⁴⁸ See “Speech of President Uribe at the International Mining Fair,” Presidency of the Republic (18 Nov. 2005) (C-68) (“We are trying to make Colombia, indefinitely, a country that greatly attracts investment, that it definitely becomes trendy, but not just for a brief moment, but permanently . . . I know that there is a very sensitive topic for the mining sector: security . . . It is very important that when it comes to security, there is a big integration between the Police and investors, between the Police and the citizens. I would say that the demand today when it comes to security is that everyone understands that the issue is linked to working permanently with the Police, the Army, and justice authorities. My practical advice, and my full conviction – beloved miners – is the integration between you and the Police, we need it.”).

⁴⁹ “Mining to receive US\$ 2 billion in 2009,” *El Colombiano* (9 Sept. 2009) (C-68) (“The director of the Asomineros Chamber, a mining industry chamber within Colombia’s national business association, supported the minister’s optimism and noted that the increased security in the sector is attracting new mining investments.”).

exploration and production areas” as top reasons to invest in the country.⁵⁰ They highlighted that “[m]ajor players have already been successful in Colombia”⁵¹ and that the country offers “unparallel opportunities for investment in mining.”⁵²

- d) In 2011, the Ministry of Mines and Energy issued a document in which it stated that it “must inform the global mining community of the country’s competitive conditions, based not only on its enormous geological potential, but also on mining legislation, democratic security policy, strategies to generate greater investor confidence and specific mining policies. Ensuring that investment resources in this area are largely destined for Colombia.”⁵³
- e) In a March 2011 presentation to Canadian developers in Canada, Colombia’s then Minister of Mines highlighted how security improvements in recent years “benefited the mineral sector by reducing attacks on industry infrastructure, attracting greater investments.”⁵⁴

36. In a 2011 presentation targeted at foreign mining investors, the Ministry of Mines and Energy emphasized the increase presence of the armed forces and government in key areas and boasted that security improvements “have been impressive.”⁵⁵ Colombia’s efforts to promote investments in the sector were successful. The country experienced a “mining

⁵⁰ “Ministry of Mines and Energy: 5th International Mining Fair,” Beatriz Duque Montoya, Director of Mines (10 Sept. 2009) (C-79) p. 52.

⁵¹ “Ministry of Mines and Energy: 5th International Mining Fair,” Beatriz Duque Montoya, Director of Mines (10 Sept. 2009) (C-79) p. 52 (“Major global players have already been successful in Colombia: BHP Billiton, Anglo-American, Xtrata, Drummond, Glencore, Vale, Votorantim. Other major players show strong interest in discovering Colombia: Barrick, Mitsui, etc.”).

⁵² “Ministry of Mines and Energy: 5th International Mining Fair,” Beatriz Duque Montoya, Director of Mines (10 Sept. 2009) (C-79) p. 54.

⁵³ “Executive Summary of Project ‘Disclosure and Visualization of Economic and Social Merits of National and International Mining Activity,’” Ministry of Mines and Energy (2011) (C-09).

⁵⁴ “Mining in Colombia: A Good Deal for Investors,” Carlos Rodado Noriega, Minister of Mines and Energy (Mar. 2011) (C-10).

⁵⁵ “Encouraging Private Investment in Colombia,” Ministry of Mines and Energy (11 Jul. 2011) (C-108).

boom”⁵⁶ that attracted “record levels of foreign investment.”⁵⁷ Foreign investment in the mining sector more than quadrupled in Colombia, from US\$ 506 million in 2000 to US\$ 2.15 billion in 2005.⁵⁸ By 2010, Colombia had issued over 7,000 mining titles to private persons or entities.⁵⁹ Mineral exports increased by 44.02%, rising from USD \$2,821 million in 2002 to \$4,063 million in 2009.⁶⁰

37. In 2010, the Bank of the Republic of Colombia estimated that the mining sector was one of the largest contributors to Colombia’s economic growth.⁶¹ In 2018, the Colombian President boasted that mining had become the “locomotive” of Colombian’s economy, with more than US\$ 153 billion had been injected into the country, as part of dividends, taxes, and royalties from mining and energy activities, between 2010 and 2017.⁶²
38. These efforts to promote Colombia as a safe mining destination specifically targeted Canadian investors. In 2011, the Colombian Minister of Mines and Energy attended the annual conference of the Prospectors and Developers Association of Canada (“PDAC”), the largest mining convention in the Americas, held each year in Toronto. In his speech to the assembled convention, the Minister called mining “one of the key driver[s] of economic growth,” and encouraged investments in Colombia. Advertising the Colombian mining sector as “a good deal for investors,” he specifically underscored the country’s improved security as a “significant” reason for investing in Colombia, as shown in the following slide:⁶³

⁵⁶ “Natural Resource Extraction, Economic Development and Social Inclusion,” Astrid Martínez Ortiz, dated 2013 (C-13) p. 4.

⁵⁷ Jeremy McDermott, “How President Alvaro Uribe changed Colombia,” *BBC News* (4 Aug. 2010) (C-14).

⁵⁸ Leonardo Güiza Suárez et al., *Current Issues and Challenges of Colombian Mining Law* (2016) (C-07) p. 13.

⁵⁹ “Uribe granted 7,869 mining titles, almost 984 titles annually,” *Radio Macondo* (2 Apr. 2018) (C-12).

⁶⁰ “Ministry of Mines and Energy: 5th International Mining Fair,” Beatriz Duque Montoya, Director of Mines (10 Sept. 2009) (C-11) slide 6.

⁶¹ “Report from the Board of Directors to Congress,” Central Bank of Colombia, dated Mar. 2011 (C-08) p. 12.

⁶² “For eight years, the mining and energy sector contributed to the country’s economic stability and social progress,” Presidency of the Republic (22 Jun. 2018) (C-15).

⁶³ “Mining in Colombia: a Good Deal for Investors,” Carlos Rodado Noriega, Minister of Mines and Energy (Mar. 2011) (C-10), slide 30. *See also* “Investment in the Colombian mining sector, protagonist in PDAC 2012,” ProColombia (6 Mar. 2012) (C-113).



REPÚBLICA DE COLOMBIA
MINISTERIO DE MINAS Y ENERGÍA

2. Why you should invest in Colombia?
















5. Improved Security

“There are significant reasons to invest in Colombia”



39. In that context, the Canada-Colombia Free Trade Agreement (the “**Treaty**”), entered into force on 15 August 2011.⁶⁴ Colombia was transparent that the Treaty was meant to attract further Canadian investments.⁶⁵ It also highlighted that “in terms of investment, the parties agreed on rules to provide greater certainty and protection for investors.”⁶⁶
40. The Mining Association of Canada hailed the Treaty, stating that it would “translate into jobs and opportunities for Canadian miners and mining service suppliers here in Canada” and “[would] pay dividends to Canadians for years to come.”⁶⁷
41. Colombia’s inducement of Canadian investment in its mining sector was successful. By 2013, there were 42 companies listed on the Toronto Stock Exchange (the “**TSX**”) with

⁶⁴ Circular No. 024 of the Directorate of Foreign Commerce of the Ministry of Commerce concerning the entry into force of the Treaty dated 3 August 2011 (CL-002) p. 1.

⁶⁵ “Uribe pushes for FTA with Canada,” *Semana* (10 Jun. 2009) (C-110).

⁶⁶ Summary of the Trade Agreement with Canada, *Colombian Ministry of Commerce, Industry, and Tourism* (11 May 2025) (C-77).

⁶⁷ “Canada-Colombia Free Trade Agreement Comes into Force,” Government of Canada (15 Aug. 2011) (C-110).

projects in Colombia and investments in the country's mining sector jumped from US\$ 466 million in 2002 to US\$ 2.8 billion in the first nine months of 2013.⁶⁸

3. Consistent with its promises to mining investors, for years Colombia took (and publicized) forceful actions to protect mining investments from criminal activities

42. As part of Colombia's policies to strengthen security and induce investment in the mining sectors, Colombia took actions to combat the illegal exploitation of mineral resources, known as "illegal mining,"⁶⁹ which former President Santos rightly described as a "cancer that [Colombia] must eliminate."⁷⁰
43. While "illegal mining" sometimes refers to the small-scale, artisanal exploitation of mineral resources without authorization (also known as artisanal and small-scale mining or "ASM"), a striking feature of illegal mining in Colombia is its link to large organized criminal organizations and narcotrafficking gangs, which rely on sophisticated industrial methods to appropriate valuable resources and use trade in precious metals for money laundering purposes.⁷¹ Illegal mining represents a major source of funding for criminal groups in Colombia and is also linked, according to the Colombian police, with "the black market for weapons and explosives, small-scale drug trafficking, prostitution, illegal gambling, and other related criminal activities."⁷² The criminals involved in these illegal mining activities are often heavily armed, use industrial explosives and mechanized equipment and, when trespassing on operating mines, set ambushes and booby traps for

⁶⁸ Peter Kennedy, "PDAC: Colombia reaches out to Canada for more mining investment," *Stockhouse* (4 Mar. 2014) (C-126).

⁶⁹ Mining Code (C-58) Art. 159 ("[I]llegal exploration and exploitation of mineral deposits, constituting the crime described in Article 244 of the Criminal Code, occurs when exploration, extraction, or collection of minerals owned by the State or private entities is conducted without the corresponding valid mining title or without the authorization of the property owner.").

⁷⁰ "Mining is 'a cancer that must be removed': Santos," *El Espectador* (23 Feb. 2012) (C-24).

⁷¹ National Police of Colombia, 16 Operational Strategies of the National Police, *Plan Corazón Verde*, (Nov. 2013) (C-123), p. 78; Resolution No. E/RES/2019/23 of the United Nations Economic and Social Council, dated 1 Aug. 2019 (C-211), pp. 1-3 (noting that illegal mining is used as a growing source of profits for transnational organized criminal groups).

⁷² National Police of Colombia, 16 Operational Strategies of the National Police, *Plan Corazón Verde*, (Nov. 2013) (C-123), pp. 78, 81.

employees, and security personnel.⁷³ The Colombian illegal mining issue is thus distinct in nature and scope from ASM, which is a small-scale, labor intensive-activity, conducted by individuals or small groups using simple tools and equipment, primarily due to a lack of capital.⁷⁴

44. Among other things, in early 2000s Colombia adopted a framework to address illegal mining and took steps to crack down on its proceeds. The Mining Code, as amended in 2001, provides a series of legal protections against illegal mining. These include:
- a) Allowing the holders of mining titles to file summary eviction proceedings (*amparos administrativos*) before municipal authorities or the national mining agency against any illegal miners operating without authorization on their titles.⁷⁵
 - b) Granting local mayors the authority (and obligation) to halt the illegal exploitation of minerals within their jurisdiction and impose sanctions.⁷⁶
 - c) Empowering holders of mining titles to request provisional protection from the municipal authorities or the national mining authority to “immediately suspend any occupation, disturbance, or dispossession by third parties occurring within the area covered by their title.”⁷⁷
45. Year after year, Colombia reinforced and publicized its commitment to fighting illegal mining. In binding instruments, Colombia acknowledged its affirmative duty to combat illegal mining. Amongst other policy initiatives, on 13 August 2007 Colombia adopted an inter-institutional agreement (*Convenio Administrativo, Programa Integral de Control a la Ilegalidad*) to coordinate efforts to combat and eradicate illegal mining.⁷⁸ Several

⁷³ Witness Statement of [REDACTED], dated 10 July 2025 [REDACTED].

⁷⁴ Linda Starke, *Artisanal and Small-Scale Mining*, in *BREAKING NEW GROUND: MINING, MINERALS, AND SUSTAINABLE DEVELOPMENT* 314 (2002) (C-61) pp. 314-315.

⁷⁵ Mining Code (C-58) Art. 306.

⁷⁶ Mining Code (C-58) Art. 306.

⁷⁷ Mining Code (C-58) Art. 307.

⁷⁸ “Inter-institutional Agreement 00-027, Comprehensive Programme for the Control of Illegality, signed by the Ministry of Mines And Energy, the Ministry of Environment, Housing and Territorial Development, the Attorney General’s Office, and the Colombian Institute of Geology and Mines Nation” (13 Aug. 2007) (C-73), p. 4.

Colombian institutions signed this agreement to fight against illegal mining, including the Ministry of Mines and Energy, the Ministry of Environment, Colombia's prosecutorial authority responsible for criminal investigations (*Procuraduría General de la República*) (the “**Attorney General**”), and the Colombian Institute of Geology and Mining (*Instituto Nacional de Investigaciones Geológico-Mineras*) (the “**INGEOMINAS**”).⁷⁹

46. In 2010, President Uribe publicly urged the Ministries of Mines and Energy, Defense, Environment, Housing and Territorial Planning to stop illegal mining in the country.⁸⁰ In this context, a few months later, the Minister of Environment, Housing and Territorial Planning reported that 48 illegal mines had been shut down.⁸¹
47. The administration of President Santos continued aggressively to combat illegal mining. In 2011, Colombia released a new National Development Plan for 2010-2014, which explicitly referenced the State's continuing efforts to fight illegal mining.⁸² In particular, Article 106 of Law No. 1150 of 2011 prohibited the use of dredges, mini-dredges, excavators, and other mechanical equipment in mining activities without a mining title registered in the National Mining Registry, subject to strict penalties, including the seizure and forfeiture of the heavy machinery.⁸³
48. In 2011, Colombia also established the National Mining Agency (*Agencia Nacional de Minería*) (the “**ANM**”) as a national decentralized agency and successor to INGEOMINAS, tasked with enhancing mining security nationwide and monitoring mining

⁷⁹ “Inter-institutional Agreement 00-027, Comprehensive Programme for the Control of Illegality, signed by the Ministry of Mines And Energy, the Ministry of Environment, Housing and Territorial Development, the Attorney General's Office, and the Colombian Institute of Geology and Mines Nation” (13 Aug. 2007) (C-73).

⁸⁰ “President Uribe urges actions to stop illegal mining in the south of Bolivar and in other regions of the country,” Presidency of the Republic (26 Jun. 2010) (C-89).

⁸¹ “Government shuts down 48 mines,” *Semana* (23 Oct. 2010) (C-99). See also “The El Dorado of criminal gangs,” *El Colombiano* (2 Oct. 2010) (C-98).

⁸² Law No. 1450 of 2011, dated 16 Jun. 2011 (C-105) Art. 106. While the 2006-2010 National Development Plan did not explicitly mention illegal mining, it underscored that “[t]he National Government will promote a policy aimed at encouraging the efficient exploration and exploitation of mineral resources, guided by a comprehensive concept of sustainable development. As part of this policy, the National Government will implement the necessary reforms.” “National Development Plan 2006-2010,” National Planning Department (2007) (C-70) p. 281.

⁸³ Law No. 1450 of 2011, dated 16 Jun. 2011 (C-105) Art. 106.

titles.⁸⁴ The ANM was (and remains) explicitly tasked with preventing and controlling the illegal exploitation of minerals by supporting the Ministry of Mines and Energy in the formulation and implementation of policies.⁸⁵

49. In 2012, Colombia issued an executive decree that established additional strict measures to combat illegal mining and directed the National Police to destroy heavy machinery used in unauthorized mineral exploration or exploitation, even if privately owned.⁸⁶ That same year, Colombia joined other countries of the Andean Community in establishing a comprehensive framework to combat illegal mining across its member states.⁸⁷
50. In November 2013, the Colombian National Police launched Strategy No. 16, a national comprehensive task force against the illegal exploitation of mineral deposits (*Intervención Integral Contra la Explotación Ilícita de Yacimientos Minerales*).⁸⁸ This strategy called for the elimination of illegal mining in Colombia, the destruction of criminal organizations focused on illegal mining, and the implementation of preventive measures.⁸⁹ Strategy No. 16 also sought to “provide support for the enforcement of measures and sanctions ordered by environmental and administrative authorities,” among other concrete measures outlined by the Colombian Ministry of National Defense.
51. In 2014, Colombia also signed collaboration agreements with Peru, Ecuador, and Brazil as well as memorandums of understanding to combat illegal mining.⁹⁰ Colombia also

⁸⁴ Decree No. 4134 of 2011, dated 3 Nov. 2011 (C-112) Art. 4.15 (“The functions of the National Mining Agency, ANM are the following: . . . 15. Promote mining safety.”).

⁸⁵ Decree No. 4134 of 2011, dated 3 Nov. 2011 (C-112) Art. 4.14 (“The functions of the National Mining Agency, ANM are the following: . . . 14. Support the Ministry of Mines and Energy in the formulation and implementation of the policy to prevent and control illicit mineral exploitation.”).

⁸⁶ Decree No. 2235 of 2012, dated 30 Oct. 2012 (C-116).

⁸⁷ Andean Decision No. 774 of the Andean Council of Foreign Affairs Ministers, dated 3 May 2012 (C-114).

⁸⁸ National Police of Colombia, 16 Operational Strategies of the National Police, *Plan Corazón Verde*, (Nov. 2013) (C-123), section 5.4, ps. 74 – 96.

⁸⁹ National Police of Colombia, 16 Operational Strategies of the National Police, *Plan Corazón Verde*, (Nov. 2013) (C-123), section 5.4, p. 89.

⁹⁰ Memorandum of Understanding between the Government of Colombia and the Government of Peru for Coordination in the Fight against Illegal Mining in the Border Area, dated 11 Feb. 2014 (C-125); Presidential Statement from the Presidential Meeting and Third Ecuador-Colombia Binational Cabinet Meeting, dated 15 Dec. 2014 (C-143). “Memoirs to Congress: 2014-2015,” Ministry of Foreign Affairs (20 Jul. 2015) (C-163)

strengthened regulations to combat illegal mining by controlling the importation, registration, and use of heavy machinery often employed in unauthorized mining activities.⁹¹

52. That same year, 2014, the National Police established a specialized unit to combat illegal mining, the National Unit Against Illegal Mining (*Unidad Nacional contra Minería Ilegal*) (the “UNIMIL”).⁹² UNIMIL was created through joint efforts by the Ministries of Environment, Defense, Mining, Interior, and Energy, which committed to strengthening regulations and combat related crimes.⁹³
53. In 2015, to enhance traceability and crack down on the proceeds of illegal mining, the Ministry of Mines and Energy issued a decree to ensure the legal commercialization of minerals in Colombia, by requiring certificates of origin to verify the legitimacy of mineral extraction and transportation.⁹⁴ That same year, 2015, Colombia also passed a new law that confirmed Article 106 of the 2010-2014 National Development Plan to seize and destroy heavy machinery used in illegal mining operations.⁹⁵
54. These governmental commitments and policies did not remain dead letters. On 15 May 2015, the Ministry of Defense, the Military, and the National Police launched a largescale military operation known as “Operation Anostomus” (*Operación Anostomus*), covering hundreds of kilometers across key Colombian mining regions. The Minister of Defense described it as the “hardest and most important strike in more than a decade – and perhaps one of the largest in history – against illegal mining.”⁹⁶ Security forces deployed 600

pp. 95, 105-109; “Ecuador and Colombia establish plan against illegal mining in border area,” *Las Rutas del Oro* (4 Jun. 2015) (C-158). See also “Colombia and Peru coordinate actions to combat illegal mining,” Colombian Consulate in Miami (11 Sept. 2014) (C-139).

⁹¹ Decree No. 723 of the Ministry of Commerce, Industry, and Tourism, dated 10 Apr. 2014 (C-128) (establishing measures to regulate the import and movement of heavy machinery such as dredges, and excavators commonly used in illegal mining operations).

⁹² UNIMIL was created through Resolution No. 00492, dated 7 Feb. 2014 (not publicly available).

⁹³ “Police creates unit to combat illegal mining,” *El Espectador* (25 Jun. 2014) (C-135).

⁹⁴ Decree No. 276 of 2015, dated 17 Feb. 2015 (C-147).

⁹⁵ Law No. 1753 of 2015, dated 9 Jun. 2015 (C-159); Law No. 1450 of 2011, dated 16 Jun. 2011 (C-105), Art. 106.

⁹⁶ “Operation ‘Astonomus’ is the biggest attack against illegal mining in 10 years,” *Avada* (12 May 2015) (C-157).

military and police troops, 22 aircrafts, and almost a dozen boats to dismantle operations at 63 deposits illegally exploited by the FARC.⁹⁷ Also that month, the Attorney General, the National Police, the Military, and the Air Force joined forces in a significant operation to seize illegal mining equipment.⁹⁸ The Ministry of the Environment announced the successful crackdown and highlighted the interinstitutional cooperation in the fight against illegal mining.⁹⁹

55. Shortly thereafter, Colombia also undertook additional related measures, including the creation of a dedicated Army brigade designed to combat illegal mining as well as tougher measures against criminal miners. Accordingly, on 11 September 2015, and separate from and in addition to UNIMIL, the Ministry of Defense created a security military institution to combat illegal mining, the Brigade Against Illegal Mining (*Brigada Contra la Minería Ilegal*) (the “**BRCMI**”).¹⁰⁰ Shortly after its creation, the BRCMI, in collaboration with the Colombian and Brazilian armed forces and law enforcement authorities, dismantled major illegal mining sites within the Colombian department of Guainía near the Brazilian border, where criminal organizations had been extracting gold resources.¹⁰¹ As part of this operation, known as “*Operación Anostomus II*,” the Government mobilized hundreds of personnel, multiple aircraft, and naval units.¹⁰² The operation successfully resulted in the

⁹⁷ “Operation ‘Astonomus’ is the biggest attack against illegal mining in 10 years,” *Avada* (12 May 2015) (C-157); “Operation against FARC’s illegal mining leaves 59 arrested,” *El Colombiano* (11 May 2015) (C-155). As a result of this operation, 59 suspected illegal miners were arrested, 8 dredges were destroyed, and 50 motors were seized.

⁹⁸ “Ministry of Environment highlights results of ‘illegal mining’ operations in protected zones,” ACM (12 May 2015) (C-156).

⁹⁹ “Ministry of Environment highlights results of ‘illegal mining’ operations in protected zones,” ACM (12 May 2015) (C-156).

¹⁰⁰ The Brigade Against Illegal Mining was created by Resolution No. 0013, dated 11 Sept. 2015 (by the National Commander of the Army and approved by Resolution No. 9925, dated 3 Nov. 2015 of the Ministry of Defense (not publicly available)).

¹⁰¹ “Brigade Against Illegal and Criminal Mining Strike a Blow in Joint Operation with Brazil,” Colombian Navy (7 Dec. 2015) (C-171).

¹⁰² “Brigade Against Illegal and Criminal Mining Strike a Blow in Joint Operation with Brazil,” Colombian Navy (7 Dec. 2015) (C-171).

seizure and closure of numerous illegal mines in a single day and halted the illegal extraction of gold in the area.¹⁰³

56. In 2016, Colombia adopted the National Code of Security and Citizen Coexistence (*Código Nacional de Seguridad y Convivencia Ciudadana*), which gave a legal duty and explicit powers to the police to inspect and monitor illegal mining extraction activities.¹⁰⁴
57. These efforts and commitments to combat illegal mining continued during the administration of President Iván Duque who succeeded President Santos in 2018. The National Development Plan Law adopted by his administration for the period 2018-2022 included as stated objectives both the elimination of illegal mining and the encouragement of legal exploitation.¹⁰⁵
58. In short, through the best part of two decades, Colombia pursued and enforced strong policies to guarantee security against illegal mining activities, which yielded unprecedented economic growth and investments in Colombia's extractive sectors.

C. CONTINENTAL GOLD RESPONDED TO COLOMBIA'S SUSTAINED PROMOTION AND INVESTED SUBSTANTIAL FUNDS, TIME AND EFFORTS TO PROVE THE VIABILITY OF A WORLD-CLASS MINING PROJECT IN BURITICÁ

59. Claimant and its affiliates responded to Colombia's active promotion of its mining sector. Continental Colombia secured titles and a mining concession, and explored those concession areas in Buriticá (**Section 1**). In 2013, Colombia endorsed the Buriticá Project as a "Project of National and Strategic Interest" (**Section 2**). In 2015, Claimant became the owner of Continental Colombia through an ownership restructure to attract further Canadian investors (**Section 3**). In 2016, Claimant completed a Feasibility Study proving

¹⁰³ "Brigade Against Illegal and Criminal Mining Strike a Blow in Joint Operation with Brazil," Colombian Navy (7 Dec. 2015) (**C-171**).

¹⁰⁴ Law No. 1801 of 2016, dated 29 Jul. 2016 (**C-189**) Arts. 96, 97 ("Police authorities, in the exercise of their duties, shall ensure compliance with current mining and environmental regulations and report any violations to the competent authorities so that appropriate measures may be taken. The corrective measures established in this Code for the behaviors outlined in this title shall be applied without prejudice to any preventive actions or administrative sanctions established under environmental and mining regulations."), Art. 105 (outlining illegal mining and various other prohibited related activities under Law No. 1801).

¹⁰⁵ Law No. 1955 of 2019, dated 25 May 2019 (the "**National Development Plan Law**") (**C-209**), p. 2.

the commercial viability of the Project and setting the stage for its development (Section 4).

1. Continental Colombia secured titles and a mining concession in Buriticá and explored the area

60. In 2007 and 2008, the Company, Continental Colombia (formerly “CG DE COLOMBIA”), acquired the mining rights that would form the basis of the Buriticá Project and which were later consolidated into a single unified contractual structure, as explained below.¹⁰⁶ Specifically, as one example, on 30 May 2008, the Company acquired the rights to the Project’s oldest Mining Title, which was numbered No. P7495 for US\$ 1.9 million,¹⁰⁷
61. Continental Colombia (or the Company) is the Colombian branch of Claimant’s affiliate, Continental Gold Limited,¹⁰⁸ a Bermudian corporation incorporated in 2007 (“**Continental Gold Limited**”)¹⁰⁹ which started trading on the TSX in April 2010.¹¹⁰
62. In November 2009, Snowden – an Australian mining consulting group that the Company had engaged to evaluate the Buriticá Project – issued an initial geological and exploration independent technical study, which explained that Continental Gold Limited intended “**to take advantage of the improved political and security situation in Colombia** to develop

¹⁰⁶ The Company’s concession later arose from the integration of 12 mining titles, which include two exploration and exploitation permits (P6573011 and P7495011), one exploration license (L4792005), seven exploitation licenses (T14228011, T14278011, T164005, T165005, T535005, T752005 and T2224005), and two concession contracts (HHNK-06 and H6518005). As explained further below, the 12 mining titles – originally governed by various legal frameworks – were integrated into the mining concession that the Company acquired and consolidated into a single unified contractual structure. See, Concession Agreement No. 7495 between Continental Gold Limited Sucursal Colombia (formerly, CG de Colombia) and the Secretary of Mines of the Department of Antioquia, dated 14 Sept. 2011 (the “**Concession Agreement**”) (C-19).

¹⁰⁷ Contract of Assignment of Rights Agreement Arising from Mining Permit 7495, dated 30 May 2008 (C-074).

¹⁰⁸ Certificate of Continental Gold Limited Sucursal Colombia as Branch of a Foreign Company, dated 10 May 2004 (C-06). On 15 July 2013, “CG de Colombia” changed its name to “Continental Gold Limited Sucursal Colombia” through Public Deed No. 1947, dated 15 Jul. 2013 (C-16); Public Deed No. 1894 (C-072).

¹⁰⁹ Certificate of Incumbency of Continental Gold Limited, dated 1 Apr. 2004 (C-05) (showing Continental Gold Inc. as the sole shareholder); Public Deed No. 1894, incorporating Colombian Branch Continental Gold Ltd., dated 23 May 2007 (“**Public Deed No. 1894**”) (C-072) (showing that Continental Bermuda was constituted on 27 April 2007). On 30 March 2010, Continental Gold Limited, based in Bermuda, and Cronus Resources Limited, a Canadian Company, completed an amalgamation resulting in a Bermuda-based company operating under the name of Continental Gold Bermuda.

¹¹⁰ “Continental Gold Limited to Begin Trading on the Toronto Stock Exchange under the Symbol ‘CNL’ on April 19, 2010,” Continental Gold Limited (19 Apr. 2010) (C-085).

the mineral potential, particularly for gold, of its exploration and exploitation concessions,” and that “[t]he Buriticá project [was] the most advanced of CGL’s Colombian projects.”¹¹¹ That report also stressed that the Buriticá Project “has good exploration potential” and “represents an advanced exploration property as defined by the TSX.”¹¹²

63. In June 2010, the Company filed a request before the Secretary of Mines of the Department of Antioquia to combine the twelve mining titles that it held into a single mining title in the form of a concession agreement.¹¹³ Under Colombian law in force at the time, jurisdiction over mining matters in Antioquia was delegated by the national government to the Department of Antioquia.¹¹⁴ This request was granted in the spring of 2011, when the Department of Antioquia resolved to (i) integrate the Company’s mining rights into a single mining title; and (ii) execute a concession agreement.¹¹⁵
64. On 14 September 2011, the Company and the Secretary of Mines of the Department of Antioquia entered into Concession Agreement No. 7495 (the “**Concession Agreement**”), which granted the Company the exclusive right to explore, develop, and exploit the mineral resources within the concession area.¹¹⁶ The Concession Agreement was granted for 30 years from its registration in the National Mining Registry, with a three-year term for the additional exploration phase, starting from the same date.¹¹⁷ Under the Concession

¹¹¹ “Continental Gold Limited: Buriticá Gold Project – Geological and Exploration Review,” Snowden Mining Industry Consultants, dated Nov. 2009 (C-080) p. 11.

¹¹² “Continental Gold Limited: Buriticá Gold Project – Geological and Exploration Review,” Snowden Mining Industry Consultants, dated Nov. 2009 (C-080) p. 14. *See also* [REDACTED]

¹¹³ Letter from Continental Gold to the Secretary of Mines and the Government of Antioquia re: integration of areas for mining titles in Buriticá, dated 10 Jun. 2010 (C-17).

¹¹⁴ This was the case until January 2024. *See* “The Government of Antioquia reiterates that it has no authority over mining activities,” Government of Antioquia (Mar. 2025) (C-457) (“Since 1 January 2024, the Government of Antioquia does not fulfill the functions of mining authority that it had since 2001, and reminds the public that this responsibility was assumed by the National Mining Agency – ANM.”).

¹¹⁵ Resolution No. 011498 of the Government of Antioquia, dated 7 Apr. 2011 (C-18).

¹¹⁶ Concession Agreement No. 7495 between Continental Gold Limited Sucursal Colombia (formerly, CG de Colombia) and the Secretary of Mines of the Department of Antioquia, dated 14 Sept. 2011 (the “**Concession Agreement**”) (C-19). The Concession Agreement consolidated 12 mining titles (P6573011, P7495011, L4792005, T14228011, T14278011, T164005, T165005, T535005, T752005, T2224005, HHNK-06 and H6518005) into mining title P7495011, the oldest title. Article 15 of the Mining Code confirms that mining rights within concession mining agreements have an exclusive nature. Mining Code (C-058) Art. 15.

¹¹⁷ Concession Agreement (C-19) cl. 4.

Agreement, the Company acquired mining rights over gold, silver, copper, zinc, and other minerals within the consolidated concession area,¹¹⁸ which initially spanned 2,308 hectares.¹¹⁹

65. The Company subsequently registered the Concession Agreement with the National Mining Register (under code FHFB-01) for a 30-year term, which publicly formalized its right to explore and exploit minerals in the designated area.¹²⁰
66. On the basis of the Concession Agreement, in 2012, the Company started developing a network of tunnels at the Veta Sur vein system.¹²¹ The Company also invested in conducting significant exploration activities and purchasing further associated property interests.¹²² These efforts included surface and underground mapping and sampling, geophysical studies (magnetics and IP), radiometric surveys, underground diamond drilling, among various other drilling campaigns,¹²³ and resulted in important high grade discoveries.¹²⁴

¹¹⁸ Concession Agreement (C-19) p. 1.

¹¹⁹ Concession Agreement (C-19) p. 8. On 5 February 2013, the Government of Antioquia and Continental Colombia amended the Mining Concession to adjust the area of the concession. Amendment No. 1 to the Concession Agreement, dated 5 Feb. 2013 (C-119).

¹²⁰ See Certificate of Mining Registry of Concession Agreement No. 7495, dated 20 Mar. 2013 (C-20); Mining Code (C-058) Art. 328 (“The mining registry is a means of authenticity and publicity for public and private acts and contracts whose main purpose is the establishment, preservation, exercise, or encumbrance of rights to explore and exploit minerals, arising from titles granted by the State or from private ownership titles of the subsoil.”).

¹²¹ [REDACTED]

¹²² “Continental Gold Closes Transaction to Acquire Property Interests in Colombia,” *Marketwired* (6 May 2011) (C-104).

¹²³ “Continental Gold Announces an Updated Mineral Resource Estimate for the Buriticá Project, Colombia,” *Marketwired* (1 Oct. 2012) (C-104).

¹²⁴ “Continental Gold’s Soil Geochemical Anomalies Add Significantly to the Exploration Upside of its Buriticá Gold Project, Colombia,” Continental Gold Limited (9 Aug. 2010) (C-092); “Continental Gold Drills 14.3 meters at 446g/t Gold and 166g/t Silver in the Veta Sur System, Buriticá Gold Project, Colombia,” Continental Gold Limited (31 Aug. 2010) (C-93); “Continental Gold Announces an Updated Mineral Resource Estimate for the Buriticá Project, Colombia,” *Marketwired* (1 Oct. 2012) (C-115); “Continental Gold Announces an Updated Mineral Resource Estimate for the Buritica Project, Colombia,” *GlobeNewswire* (13 May 2014) (C-132).

67. Continental Gold Limited financed these efforts through a series of capital raises on the TSX as well as private placements.¹²⁵ By the end of 2013, it reported that it was spending approximately US\$ 4 million per month on the Project.¹²⁶

2. In 2013, Colombia endorsed the Buriticá Project as a “Project of National and Strategic Interest”

68. On 12 November 2013, Colombia granted the Project the status of “Project of National and Strategic Interest” (“*Proyecto de Interés Nacional y Estratégico*” or “**PINES**”).¹²⁷
69. The PINES status is a much coveted designation under Colombian law and, to date, has been granted to only a handful of mining projects.¹²⁸ Under guidelines adopted by the National Council for Economic and Social Policy (*Consejo Nacional de Política Económica y Social*) (the “**CONPES**”), the PINES designation is reserved for projects that are considered by the Colombian Government to be vital to Colombia’s economic and social development.¹²⁹ The resolution establishing the PINES projects explicitly referenced the “Democratic Security” policy, emphasizing the need to set clear guidelines to address the challenges faced by projects with significant economic and social impact on

¹²⁵ “Continental Gold Announces Closing of \$86.3 Million Bought Deal Financing and Over-Allotment Option Exercise,” *Marketwired* (4 Dec. 2012) (C-118); “Continental Gold Announces \$75 Million Bought Deal,” *Marketwired* (12 Nov. 2012) (C-117); “Continental Gold Drills 14.3 meters at 446g/t Gold and 166g/t Silver in the Veta Sur System, Buriticá Gold Project, Colombia,” Continental Gold Limited (31 Aug. 2010) (C-093); “Continental Gold Limited Announces \$57,000,000 Private Placement Financing,” Continental Gold Limited (31 Aug. 2010) (C-094).

¹²⁶ “Continental Gold Provides Development Update for the Buriticá Project,” *Marketwired* (25 Jun. 2013) (C-120).

¹²⁷ Letter from the Ministry of Mines and Energy to Continental Colombia, dated 6 Aug. 2015 (C-497) (“According to the information provided by the Technical Secretariat of the Commission of Intersectoral and Infrastructure Strategic Projects, let me inform you that the mining project in Buritica was declared as a Project of National and Strategic Interest on 12 November 2013.”). See also “PDAC 2015: Mines Minister says Colombia is picking up the pace,” *The Northern Miner* (25 Mar. 2015) (C-152); “Buriticá Project, pure gold for Colombia,” ANM (16 Feb. 2017) (C-196).

¹²⁸ PINES, *Extractive Industries Transparency Initiative (EITI)* (15 May 2025) (C-480).

¹²⁹ To earn such designation, the Government must ensure that the projects, among other things, enhance the national or regional productivity and economic competitiveness; generate significant employment through capital investments; generate a positive investment return and demonstrate sustainability; increase the export capacity of the national economy; contribute significant revenue to the nation and the regions; and support with the objectives within the National Development Plan (Resolution No. CONPES 3762 of the National Council for Economic and Social Policy, dated 20 Aug. 2013 (C-121), p. 1.

the country.¹³⁰ According to CONPES, projects with the PINES status are to be “prioritized,” including by expediting permit approvals and avoiding delays in project execution.¹³¹

70. By granting the PINES status, the Colombian Government thus made a significant endorsement of the Project. In fact, when subsequently attending the PDAC Conference in Toronto in 2015, the Colombian Minister of Mines and Energy reiterated Colombia’s support of the Buriticá Project and specifically referred to its PINES designation as “an example of a success story [...]. We need to make sure these projects happen, because we need royalties for development.”¹³² The Minister explained that PINES projects “**would receive special support from the government** so they can move forward as fast as possible” and stressed that various ministries would work in cooperation for their success.¹³³
71. Benefiting from the PINES status, Continental Gold Limited was able to accelerate the Project’s development. As [REDACTED] explains, the Buriticá Project was the first mine in Colombia to use directional drilling in 2014.¹³⁴ Directional drilling is a specialized technique for drilling underground that can curve and change direction instead of going straight down.¹³⁵ This technique allowed the Company to reach mineralized bodies in remote locations.¹³⁶ In June 2014, Continental Gold Limited announced that this technique

¹³⁰ Resolution No. CONPES 3762 of the National Council for Economic and Social Policy, dated 20 Aug. 2013 (C-121) p. 1.

¹³¹ Resolution No. CONPES 3762 of the National Council for Economic and Social Policy, dated 20 Aug. 2013 (C-121), pp. 11, 20 (stating that the Government seeks to generate mechanisms that facilitate the efficient and convenient management of projects, and will “prioritize” PINES projects and assign responsibility to the administrative authority that can grant approvals most quickly, in order to prevent further delays in their execution).

¹³² “PDAC 2015: Mines Minister says Colombia is picking up the pace,” *The Northern Miner* (25 Mar. 2015) (C-152) (emphasis added).

¹³³ “PDAC 2015: Mines Minister says Colombia is picking up the pace,” *The Northern Miner* (25 Mar. 2015) (C-152).

¹³⁴ [REDACTED]

¹³⁵ [REDACTED]

¹³⁶ [REDACTED]

was “vital” for advancing its goals “both to increase productivity and to reduce the costs of the mineral resource delineation program.”¹³⁷

72. On 17 November 2014 Continental Gold Limited announced the positive results of an independent Preliminary Economic Assessment for the Buriticá Project.¹³⁸ The study confirmed the Project’s strong prospects, projecting an 18-year lifespan with substantial gold and silver production potential, averaging 265,000 ounces of gold per year at low costs.¹³⁹ This study confirmed that the Project had enough economic potential to become an operating mine.¹⁴⁰

3. In 2015, Claimant became the owner of the Company through a restructuring to attract further Canadian funding

73. In 2015, in a further show of support, the Minister of Mines and Energy announced that the Company was expected to soon receive a modified environmental permit to continue developing Buriticá.¹⁴¹ Reacting to the news, the then Chairman and CEO, Canadian investor Ari Sussman, explained to investors that “[t]here’s a very good relationship with regional authority. We’re operating as partners in constant communication.”¹⁴² In February 2015, Mr. Sussman also explained that:¹⁴³

Colombia went through a very difficult period of troubled security problem which inhibited foreign direct investment into natural resources. However, **until former President Uribe and current President Santos there has**

¹³⁷ “La perforación de ampliación de Continental Gold llega a 2.2 metros @ 2,615 g/t de oro y 388 g/t de plata en la Veta Sur, Extendiendo de Manera Importante el Sistema de vetas Laurel en Buriticá,” Colombia, Continental Gold Limited (9 June 2014) (C-134) p. 10.

¹³⁸ “Continental Gold Announces a Positive Preliminary Economic Assessment for the Buriticá Project,” Continental Gold Limited (17 Nov. 2014) (C-142). A preliminary economic assessment (sometimes labelled a “scoping study”) is an initial mining study that includes an economic analysis of the potential viability of a mining project’s mineral resources.

¹³⁹ “Continental Gold Announces a Positive Preliminary Economic Assessment for the Buriticá Project,” Continental Gold Limited (17 Nov. 2014) (C-142)

¹⁴⁰ [REDACTED]

¹⁴¹ “PDAC 2015: Mines Minister says Colombia is picking up the pace,” *The Northern Miner* (25 Mar. 2015) (C-152).

¹⁴² Andrew Willis, “Continental Readies Bogota Stock Debut as Gold Resources Rise,” *Bloomberg News* (12 Mar. 2015) (C-149).

¹⁴³ Scott Armstrong “Final permits loom at one of the world’s richest gold projects,” *MINING.COM* (16 Feb. 2015) (C-106). (emphasis added)

been a drastic improvement and so what do we have in Colombia now? We have a country with as good of a political regime as exists in Latin America for foreign business practices to operate. In fact the Government political alignment has been pro-business oriented for more than 40 years. **Couple this with an ever improving security situation since the turn of the century and you have an excellent opportunity to make resource discoveries.**

74. As part of this broader strategy, Continental Gold Limited reported at the time that the Project's combined measured and indicated gold resource were expected to rise to about 3.5 million gold ounces in a mid-year report, from 2.8 million.¹⁴⁴ In June 2015, the Company further announced that "updated mineral resource estimate[s] reflect higher estimated tonnages and higher grades."¹⁴⁵ The higher grade positioned the Project well to become a large-scale operation with growth potential as drilling activities would increase and inferred zones would be reclassified into higher-confidence categories.¹⁴⁶
75. In that context, in May 2015, Continental Gold Limited announced that it was looking for opportunities to boost liquidity and expand its investor base.¹⁴⁷ Through a corporate reorganization, Continental Gold Limited sought to introduce a Canadian-domiciled entity to the investment structure to provide access to potential new Canadian investors and indexes.¹⁴⁸
76. The internal corporate reorganization took place in June 2015 through a so-called "scheme of arrangement" under Canadian law.¹⁴⁹ Continental Gold Limited (the Bermudan entity with Canadian tax resident status), which was (and remains) the entity of which Continental

¹⁴⁴ Andrew Willis, "Continental Readies Bogota Stock Debut as Gold Resources Rise," *Bloomberg News* (12 Mar. 2015) (C-149).

¹⁴⁵ "Continental Gold Announces an Updated Mineral Resource Estimate for the Buriticá Project", Continental Gold Inc, dated 24 June 2015, (C-161).

¹⁴⁶ [REDACTED]

¹⁴⁷ Andrew Willis, "Continental Readies Bogota Stock Debut as Gold Resources Rise," *Bloomberg News* (12 Mar. 2015) (C-149).

¹⁴⁸ "Continental Gold Limited Clarifies Proposed Internal Reorganization," Continental Gold Limited (12 May 2015) (C-506).

¹⁴⁹ "Continental Gold Limited and Continental Gold Inc. Complete Scheme of Arrangement," Continental Gold Limited (10 Jun. 2015) (C-160); "Notice of Annual General Meeting and Management Information Circular," Continental Gold Limited (30 Apr. 2015) (C-153); "Continental Gold Limited Announces Internal Reorganization," Continental Gold Limited (11 May 2015) (C-154).

Colombia is a branch, became the direct wholly-owned subsidiary of Claimant (a newly established company incorporated in Ontario, Canada).¹⁵⁰ As a result, Claimant became the 100% indirect owner of Continental Colombia (through its 100% direct ownership of Continental Gold Limited reported).¹⁵¹

4. In 2016, Claimant completed a Feasibility Study proving the commercial viability of the Project and setting the stage for its development

77. During the following years, together with Colombia's support, Claimant remained optimistic about the Mine's development. On 24 November 2015, Leon Teicher, then Executive Chairman of Claimant, affirmed that:

The Colombian government has been invariably supportive of the Buriticá project as it is aligned with the government's national strategic objectives and could, once in full production, approximately double the legal production of gold in Colombia. We expect that, through the PINES program (which is designed to efficiently move projects through the Colombian legal process), ANLA will commence a thorough review of the Company's comprehensive EIA amendment application upon submission.¹⁵²

78. In February 2016, Claimant completed a Feasibility Study that demonstrated the commercial viability of the Mine (the "**2016 Feasibility Study**").¹⁵³ The 2016 Feasibility Study, prepared in accordance with the Canadian standards for securities disclosures (National Instrument 43-101), set forth the Project on a path to actual development and eventual production.¹⁵⁴

¹⁵⁰ See Articles of Incorporation of Continental Gold Inc., 27 April 2015, (C-01); Corporation Profile Report issued by the Ministry of Public and Business Service Delivery of Ontario, Canada, 14 May 2024 (C-02).

¹⁵¹ "Continental Gold Limited and Continental Gold Inc. Complete Scheme of Arrangement," Continental Gold Limited (10 Jun. 2015) (C-160).

¹⁵² "Continental Gold Provides Update on Permitting Process – Colombia National Government Publishes Decree Governing PINES Projects," Continental Gold (24 Nov. 2015) (C-170).

¹⁵³ "Buriticá Project Feasibility Study, Antioquia, Colombia," JDS Energy & Mining Inc., dated 20 May 2016 (C-186); "Continental Gold Announces a Positive Feasibility Study for the Buritica Project," Continental Gold Inc. (24 Feb. 2016) (C-180).

¹⁵⁴ "Buriticá Project Feasibility Study, Antioquia, Colombia," JDS Energy & Mining Inc., dated 20 May 2016 (C-186) pp. 1-26 (emphasis added).

79. During that period, the Project continued to benefit from the support of the national and local governments. On 30 November 2016, and as earlier foreshadowed by the Minister of Mines and Energy,¹⁵⁵ the Colombian environmental license authority (*Autoridad Nacional de Licencias Ambientales* or “ANLA”) issued an administrative decision (*Resolución Administrativa No. 1443*) concerning the Company’s environmental license and granting the required environmental permits.¹⁵⁶
80. That same day, 30 November 2016, the Government of Antioquia also approved a modified work plan (*Plan de Trabajos y Obras* or “PTO”) for the Mining Concession, authorizing the Company to proceed with mining activities under updated technical and operational terms.¹⁵⁷

D. 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

81. With a positive 2016 Feasibility Study and all required permits in place, Claimant was ready to proceed with the massive capital investment required to develop the Mine and bring it into production. In parallel, Claimant worked closely with Colombia and received the full support of the national and local governments to ensure the security of its operations.
82. The 2016 Feasibility Study had noted that one of the “acceptable risks” of the Project was that small-scale miners were working on the property illegally and might not leave voluntarily.¹⁵⁸ While recognizing that these illegal miners had the potential to disrupt and delay the Project, the 2016 Feasibility Study also anticipated that “[t]he government of

¹⁵⁵ Andrew Willis, “Continental Readies Bogota Stock Debut as Gold Resources Rise,” *Bloomberg News* (12 Mar. 2015) (C-149) (emphasis added).

¹⁵⁶ Resolution No. 1443 of ANLA, dated 30 Nov. 2016 (C-194).

¹⁵⁷ Resolution No. 2016-060095092 of the Government of Antioquia, dated 30 Nov. 2016 (C-193) (approving the modified PTO for mining concession agreement 7495). *See also* Resolution No. 2019060148779 of the Antioquia Government, dated 14 Aug. 2019 (C-212) (approving the modified PTO for mining concession agreement 7495). In Colombia, concessionaires are typically obliged to carry out the works detailed in the PTO and adhere to certain standards that are deemed necessary for the preservation of human life and the integrity of the people working at the project. Mining Code (C-058), Art. 84.

¹⁵⁸ “Buriticá Project Feasibility Study, Antioquia, Colombia,” JDS Energy & Mining Inc., dated 20 May 2016 (C-186) pp. 1-27.

Colombia may provide resources necessary to negotiate a peaceful settlement or remove illegal miners with security forces if the project is recognized as a significant benefit to the country.”¹⁵⁹

83. As it started to ramp up its investment in the development of the Mine, and as had been anticipated by the 2016 Feasibility Study, Claimant received the full support of Colombia. This support took the form of security agreements entered into with the Colombian armed forces (**Section 1**) and a large-scale military operation known as “Operation Creta” to expel illegal miners from the Mine (**Section 2**). On the back of the back of the positive 2016 Feasibility Study and the multiple demonstrations of Government support, Claimant then raised substantial funds to develop the Mine (**Section 3**).

1. Colombia and the Company entered into several security arrangements to ensure the security of the Mine

84. As work on the 2016 Feasibility Study was progressing, on 2 March 2015 the Company entered into a formal agreement with Colombia to provide security at the site (the “**Joint Security Agreement**”).¹⁶⁰ This agreement was signed under a resolution adopted by the Ministry of National Defense the previous year establishing guidelines for security cooperation agreements between industry participants in the mining sector (amongst other sectors) and the security forces (including the National Police, the Armed Forces, and the Ministry of Defense)¹⁶¹ to “ensure the defense and security of the designated areas, fully aligned with the operational and strategic plans of the Military and Police Forces in the respective regions.”¹⁶²

¹⁵⁹ “Buriticá Project Feasibility Study, Antioquia, Colombia,” JDS Energy & Mining Inc., dated 20 May 2016 (**C-186**) pp. 1-27.

¹⁶⁰ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (**C-148**).

¹⁶¹ Resolution No. 5342 of the Ministry of National Defense, dated 25 Jun. 2014 (the “**2014 Manual Resolution**”) (**C-136**). A manual resolution refers to a practical guide that outlines how parties will implement and manage the terms of their cooperation agreement. This security resolution encompasses a substantial group of 23 public institutions as its recipients (listed under section 1.4), including the General Command of the Military Forces, the Army, the National Navy and of the Air Force, the General Secretariat of the Ministry of National Defense, the Director General of the National Police, and others.

¹⁶² 2014 Manual Resolution (**C-136**).

85. Under the Joint Security Agreement (which was signed by the Ministry of National Defense, the Colombian Armed Forces, and the National Army), Colombia:
- a) Undertook to provide security to the Company in all the areas where the Company carried out its operations and to provide “all necessary protection” to ensure the proper execution of mining activities;¹⁶³
 - b) Acknowledged its commitment to guarantee the security of its citizens (including the Company) under its duty of protection under Colombian law¹⁶⁴ and that attacks against the infrastructure and property of the Company would “constitute . . . a serious violation of International Humanitarian Law . . . whose violation affects both individuals and property protected under it” ¹⁶⁵ and “cause severe and permanent environmental damage, impact citizen coexistence, constitutional stability, state security and the exercise of the population’s rights”;
 - c) Agreed to cooperate with the Company to preserve the security conditions in which the Company operated;¹⁶⁶ and

¹⁶³ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148) § C (“That the activities carried out by the mining, oil, and energy industries in all their branches or phases are classified by the legislator (Article 13 of Law 685 of 2001, Article 4 of Decree 1056 of 1953, and Article 5 of Law 143 of 1994) as being of social interest and public utility. Therefore, the State must provide all necessary protection to ensure their proper execution.”).

¹⁶⁴ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148) § F (“That the protection of citizens is a matter of national security, and it is the duty of the bodies, entities, and individuals responsible for carrying out administrative functions to seek the satisfaction of the general needs of all inhabitants of the national territory. In doing so, they must ensure harmony in the performance of their respective functions with the aim of achieving the purposes and objectives of the state (Articles 4 and 6 of Law 489 of 1998).”).

¹⁶⁵ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148) § B (“That [attacks against the infrastructure and property of Continental Colombia] constitute a serious violation of International Humanitarian Law and, whose violation affects both individuals and property protected under it.”).

¹⁶⁶ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148) § K (“That the parties have agreed to cooperate both in protecting the rights of all individuals and in preserving security conditions in the general area and the area of influence where the COMPANY carries out its operations. This will be achieved through contributions to improve the conditions and operational capacities of the Military Forces engaged in the areas of interest.”).

d) Agreed to provide security to the Mine through a military unit based at the Mine composed primarily of infantry soldiers trained for ground combat operations.¹⁶⁷

86. The Joint Security Agreement was subsequently renewed on five occasions (together the “Security Agreements”).¹⁶⁸ [REDACTED]

[REDACTED]
[REDACTED]¹⁶⁹

2. Starting in early 2016, in close cooperation with Claimant, the Colombian armed forces conducted Operation Creta to expel illegal miners and criminal groups from the Mine

87. Shortly after the publication of the 2016 Feasibility Study, the Colombian Government took sweeping and decisive action in support of the Buriticá Project to guarantee its security and expel illegal miners from the area.

88. In January 2016, via an *amparo administrativo* filed before the Mayor of Buritica (and copied to multiple state security institutions), the 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.¹⁷⁰

¹⁶⁷ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148) Annex 1. The Infantry Battalion No. 32 Gr. Pedro Justo Berrio (*Batallón de Infantería No. 32 Gr. Pedro Justo Berrio*) and the Fourth Brigade of the Colombian National Army provided military protection at the Mine, while the Claimant conducted its exploration and mining activities.

¹⁶⁸ Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148); Agreement No. 17-024 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 2 Oct. 2017 (C-199); Agreement No. 19-012 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia (C-223); Extension to Agreement No. 19-012 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 30 Dec. 2020 (C-249); Agreement No. 21-007 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 7 Apr. 2021 (C-254); Agreement No. 23-022 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 7 Jul. 2023 (C-365); Amendment to Agreement No. 23-022 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 28 Dec. 2023 (C-385).

¹⁶⁹ [REDACTED]

¹⁷⁰ Continental Colombia’s Request for *Amparo Administrativo*, dated 6 Jan. 2016 (C-174); ANM Emergency Report No. 02, dated Jan. 2016 (C-173). On 10 January 2016, an illegal miner was fatally trapped by a rock. Four days

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.¹⁷¹ 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,¹⁷² amongst other detrimental impacts.¹⁷³ On 14 January 2016, the Company further advised the local authorities that an illegal miner had died after falling into an illegal excavation, and requested further State action.¹⁷⁴

89. The Colombian Government's reaction was remarkable in its promptness. The following day, 15 January 2016, the Secretary of Mines of Antioquia visited the Rampa Sur tunnel and recommended the immediate suspension of all illegal mining activities.¹⁷⁵ On 18 January 2016, the Mayor of Buritica, with reference to its duty to enforce *amparo administrativo* actions, issued a decree ordering the immediate suspension all illegal mining activities at the Mine.¹⁷⁶ The national and regional police authorities in Buriticá

later, the Company reported that unauthorized mining personnel had accessed and closed the gallery at Rampa Sur without authorization. This gallery had been affected by the mining accident on 10 January and was near the development tunnel work areas. An inspection of the affected area by the Ministry of Mines, the ANM, the Secretary of Mines, and representatives of the Municipality of Buriticá confirmed that access was completely sealed with sterile material and wooden planks, installed by illegal miners. Illegal mining activities were taking place in the rock formation, compromising the security pillars that supported the tunnels at Rampa Sur. This situation posed an imminent risk of collapse and potential entrapment of miners working in these unstable areas without supervision or technical control, as reported by the ANM.

¹⁷¹ Continental Colombia's Request for *Amparo Administrativo*, dated 6 Jan. 2016 (C-174) ¶ 2.1.4 ("Around eight hundred persons enter these mining sites without a mining title with the aim of carrying out unsafe and uncontrolled mining practices, which create a network of tunnels in different directions, interconnected with each other, increasing each day the likelihood of a large-scale catastrophic event.").

¹⁷² Continental Colombia's Request for *Amparo Administrativo*, dated 6 Jan. 2016 (C-174) p. 5 ("The rehabilitation of this operation shall have a more robust support system, with installation of steel arches, thrown concrete and systematic bolt, constituting an overcost for the company due amounts to S2,385,652,500 corresponding to 135 m of tunnel destroyed.").

¹⁷³ Continental Colombia's Request for *Amparo Administrativo*, dated 6 Jan. 2016 (C-174) § 2.

¹⁷⁴ Continental Colombia's Extension Request for *Amparo Administrativo*, dated 14 Jan. 2016 (C-175) § 2.

¹⁷⁵ Letter from Secretary of Mines to Continental Colombia requesting clarification about structure and security scheme of mining project, dated 16 Jan. 2016 (C-176).

¹⁷⁶ Decree 011 of 2016 of the Municipality of Buriticá, dated 18 Jan. 2016 (C-178).

that same day launched a “significant operation” to evict illegal miners from unsafe areas near the Rampa Sur operations.¹⁷⁷

90. Leon Teicher, then Executive Chairman of Claimant, praised the reaction of the Colombian authorities and the close coordination with the Company to address illegal mining:

The Colombian Government has declared “war on criminal mining” and is deploying its resources to control the activity in various parts of the country. Continental works in very close coordination with the authorities in its area of influence in that regard, as well as protecting our people and assets. Despite the regional emergency of this situation, we think it is a positive sign of the direction of the joint work between the Colombian Government and the legitimate owners of titles, especially where projects of national strategic interest, such as Continental’s Buriticá Project, are being developed and operated.¹⁷⁸

91. The Government’s actions did not stop there. On 20 January 2016, through Resolution No. VSC-000055, the ANM ordered local authorities to formally close down all illegal mining activities at the Mine due to the risk from potential landslides and the collapsing of tunnels, in light of its duty to preserve the physical integrity and lives of individuals (“**ANM Resolution No. 55**”).¹⁷⁹ The ANM thus ordered the National Police to take “immediate action” and close all illegal mining activities conducted by third parties at the Mine¹⁸⁰ ANM Resolution No. 55 also ordered the Municipality of Buriticá, the Department of

¹⁷⁷ “Continental Gold Announces Government Measures for Eviction of Illegal Informal Mines in Buriticá,” Continental Gold Inc. (18 Jan. 2016) (C-177).

¹⁷⁸ “Continental Gold Announces Government Measures for Eviction of Illegal Informal Mines in Buriticá,” Continental Gold Inc. (18 Jan. 2016) (C-177). *See also* Continental Colombia’s Extension Request for *Amparo Administrativo*, dated 14 Jan. 2016 (C-175).

¹⁷⁹ Resolution No. VSC-000055 of the ANM, dated 20 Jan. 2016 (the “**Resolution No. VSC-000055**”) (C-179), Article 1 (ANM Resolution No. 55 combined the administrative injunctions under both Articles 306 and 307 of the Mining Code.); “Continental Gold Announces Government Measures for Eviction of Illegal Informal Mines in Buriticá,” Continental Gold Inc. (18 Jan. 2016) (C-177).

¹⁸⁰ Resolution No. VSC-000055 (C-179) Arts. 1-4; Resolution No. VSC-000135 of the ANM, dated 3 Mar. 2016 (C-181), Article 2; Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 21 (“[Creta, an] operation of big impact, that required the establishment of a security establishment, formed by 1,200 units of the national police, and the formation of a *Puesto de Mando Unificado* (“PMU”) coordinated by all authorities who have competence and standing to rule on mining and environmental manners: The Government of Antioquia, the Secretary of the Government, Human Rights, Administrative Department of Prevention of Risks and Disasters, Autonomous Regional Corporation of Antioquia – Corantioquia – Municipality of Buriticá Secretary of Government, Inspection of the National Police, National Police, National Army, Engineering Battalion, Infantry Battalion No. 32 . . . UNIMIL.”).

Antioquia, the Attorney General’s Office, and the Ombudsman’s Office (*Defensoría del Pueblo*) to provide support to these operations, giving rise to one of the most important military mining operations in Colombian history.¹⁸¹

92. In furtherance of ANM Resolution No. 55, in April 2016, the National Police and the Armed Forces, in coordination with the National Government, the Government of Antioquia, and more than 14 other institutions, launched a large-scale military operation to support Claimant’s activities at the Mine.¹⁸² This operation, known as “Operation Creta,” formally began on 23 April 2016 with the aim of permanently closing illegal mines and processing plants operating within the licenses covering the Buriticá Project.¹⁸³ More than 1,400 police units and hundreds of military units were deployed to the Project’s area to remove illegal miners in an “operation of big impact.”¹⁸⁴ The Secretary of Mines of the Government of Antioquia also offered resources in support of the operations.¹⁸⁵
93. Soldiers and policeman carried their security functions at the Mine between 2016-2020 to neutralize illegal criminal groups engaged in illegal mining activities.¹⁸⁶ The Government closed 62 illegal mines in 2018 and 72 illegal mines in 2019.¹⁸⁷ Ultimately, the security

¹⁸¹ Resolution No. VSC-000055 (C-179) Arts. 1-4; Resolution No. VSC-000135 of the ANM, dated 3 Mar. 2016 (C-181), Art. 4.

¹⁸² “Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia,” General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247); “Buriticá: Legality and Ethical Gold,” Government of Antioquia (2019) (C-216) p. 9.

¹⁸³ “Continental Gold Announces a Colombian Government-Initiated Operation to Permanently Close All Illegal Mines in Buriticá,” Continental Gold Inc. (25 Apr. 2016) (C-184); “Continental Gold Provides Update on the Colombian Government Operation to Permanently Close All Illegal Mines in Buriticá,” Continental Gold Inc. (26 May 2016) (C-188).

¹⁸⁴ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 21 (“All of the actions listed above have in common the suspension of mining activities, the eviction of illegal miners, and the closure of illegal passageways that are not authorized to operate by the concessionaire or by the State. This situation ended with the use of force and the means to enforce what was ordered, as it materialized through operation CRETA. In effect, during 4 years of execution, the technical closure of 269 illegal passageways was achieved, and the intervention of 631 illegal passageways. An operation of big impact, that required the establishment of a security establishment, formed by 1200 units of the national police, and the formation of a *Puesto de Mando Unificado* (“PMU”) coordinated by all authorities that have competency to oversee mining and environmental issues.).

¹⁸⁵ Letter from the Regional Prosecutor of Antioquia to Continental Colombia, dated 13 May 2016 (C-185).

¹⁸⁶ “Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia,” General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247).

¹⁸⁷ “2019 Sustainability Report: Relationships that Add Up,” Continental Gold, dated 2 Jun. 2020 (C-225) p. 76.

forces successfully closed in total more than 250 illegal passageways into the Mine over four years.¹⁸⁸ With Operation Creta, the Government also closed 40 shops related to the sale of illegally mined gold in Buriticá. Today, Creta is hailed as “the benchmark of a peaceful intervention, organized, planned and in team with the Public Forces, state entities and private companies.”¹⁸⁹

94. For its part, the Company supported the joint operation both technically, logistically and financially.
95. Operation Creta, which was one of the largest such operations in Colombian history, was consistent with (and a forceful demonstration of) the Government’s repeated pledge to combat illegal mining. The Colombian authorities were unanimous in this respect:
 - a) In offering swift support, the National Police reaffirmed its “unwavering commitment to the fight against illegal mining and related crimes, and will therefore continue to carry out the necessary operational and investigative actions with the aim of achieving the expected results in all aspects.”¹⁹⁰
 - b) Likewise, the Mayor of Buriticá warned that illegal mining would not be tolerated and that “all illegal mining operations [would] be shut down, and all individuals engaged in illegal activity will be removed, with the support of the national police.”¹⁹¹
 - c) The newly elected Governor of Antioquia, Luis Pérez Gutierrez, who strongly supported Operation Creta and later published a special report to showcase its remarkable success,¹⁹² warned illegal miners that the task force would stay in Buriticá for as long as necessary to ensure that the area became an example of safe

¹⁸⁸ Juan Forero, “A Drug Gang Stole 3 Tons of Gold in a Scam So Perfect It’s Still Going,” *The Wall Street Journal* (12 Nov. 2024) (C-424).

¹⁸⁹ “Buriticá: Legality and Ethical Gold,” Government of Antioquia (2019) (C-216) p. 37.

¹⁹⁰ Letter from the Antioquia Police Department to Continental Colombia, dated 4 Apr. 2016 (C-182) pp. 3-4.

¹⁹¹ Decree No. 64 of 2016 of the Municipality of Buriticá, dated 11 Apr. 2016 (C-184) Art. 2 (emphasis added).

¹⁹² “Buriticá: Legality and Ethical Gold,” Government of Antioquia (2019) (C-216).

mining.¹⁹³ Governor Pérez also mentioned that “security generates wealth” and recognized that the government’s remarkable intervention in Buriticá to transition from a situation with hundreds of illegal miners to a situation with order, safety, and foreign investment, which was expected to turn the Buriticá Mine into “Colombia’s most productive mine for the next twenty years.”¹⁹⁴

- d) The Armed Forces hailed the success of Operation Creta, explaining that “[t]he soldiers and police exercised their security functions for more than 4 years in the region, to neutralize the illicit income of organized and criminal armed groups.”¹⁹⁵

96. By March 2019, Claimant stated in a Mineral Resource update that “[i]llegal mining has ceased almost completely, and there are five small scale mining groups operating under a formalization agreement . . . The 2016 effort of the Regional Government is an on-going process to date, which has contributed to lessening the impact of illegal mining in the region.”¹⁹⁶

97. As a further show of Colombia’s long-term commitment to the security of the Mine, in June 2019 the Company also entered into a separate collaboration agreement with the National Police “for the improvement of the protection and security conditions.”¹⁹⁷ Under that agreement, the National Police undertook to develop and implement actions in

¹⁹³ “Continental Gold Provides Update on the Colombian Government Operation to Permanently Close All Illegal Mines in Buriticá,” Continental Gold Inc. (26 May 2016) (C-188); “Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia,” General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247) (“The operation resulted in 37 arrests and the seizure of 57 illegal mining production units, which were subsequently destroyed in a controlled manner. Additionally, 53 electric plants, 247 engines, 53 industrial drills, and 43 granulators were confiscated from illegal miners by Colombian authorities. Furthermore, illegal explosive materials were also confiscated, including 40 kilograms of black powder, 1,297 kilograms of oxidizer explosives, 1,338 kilograms of ANFO, 8,553 detonators, and 27,962 meters of fuse were seized and destroyed.”).

¹⁹⁴ “‘With gold mining, we have turned from hell to hope’: Luis Pérez, Governor of Antioquia,” *Hablemos de Minería* (22 May 2018) (C-203).

¹⁹⁵ “Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia,” General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247).

¹⁹⁶ “Continental Gold: NI 43-101 Buritica Mineral Resource 2019-01,” Ivor Jones Pty Ltd, dated 18 Mar. 2019 (C-208) pp. 14, 205.

¹⁹⁷ Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Gold Limited Sucursal Colombia, dated 21 Jun. 2019 (C-210). *See also* [REDACTED] (outlining a detailed explanation of the Police structure against illegal mining).

Antioquia for the control and prevention of illegal mining,¹⁹⁸ [REDACTED]

[REDACTED] 2020.²⁰⁰

3. Between 2016 and 2019, on the back of the positive Feasibility Study and multiple demonstrations of Government support, Claimant raised substantial funds to develop the Mine

98. With the public support of the Government for the success of the Buriticá Project, Claimant raised substantial funds for the construction and development of the Mine, including from major companies and mining investors such as U.S.-based Newmont Mining Corporation, Canada-based Triple Flag, and U.K.-based Red Kite Mine Finance, which together made available in excess of US\$ 300 million that Claimant then invested to support the development of the Project.²⁰¹
99. While Operation Creta was ongoing, Claimant progressed the development of the Project and achieved the following milestones:
- a) In 2017, Claimant announced the successful definition of three precious-metal and one copper-gold mineralized systems after a drilling program in 2017 and systematic exploration.²⁰²

¹⁹⁸ Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Gold Limited Sucursal Colombia, dated 21 Jun. 2019 (C-210) Preamble, ¶ 7.

¹⁹⁹ Currency Table: USD – US Dollar on Jun 21, 2019, 16:00 UTC, XE (21 May 2025) (C-485) (1 USD = 3184 COP).

²⁰⁰ Extension of Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Gold Limited Sucursal Colombia, dated 17 Jul. 2020 (C-235). The Company also entered into a new security agreement with Colombia in 2025.

²⁰¹ “Continental Gold Announces Closing of \$28.75 Million Bought Deal, Including Over Allotment Option Exercise,” Continental Gold Inc. (25 May 2016) (C-187); “Continental Gold Announces Strategic Investment by Newmont Mining and Investment by RK Mine Finance,” Continental Gold Inc. (11 May 2017) (C-197) (Claimant issued shares to RK Mine Finance Master Fund I Limited for total aggregate gross proceeds of US\$ 134,000,000); “Continental Gold Announces Fully Subscribed US\$175 Million Financing Package Backed by Newmont Mining and Triple Flag,” Continental Gold Inc. (15 Mar. 2019) (C-207).

²⁰² “Continental Gold Announces Drilling of Greenfield Targets to Start in November,” Continental Gold Inc. (16 Oct. 2017) (C-200).

- b) In January 2018, Claimant announced a further 137,000-metre exploration drill program in Buriticá.²⁰³ The program consisted of core drilling from both surface and underground, mainly involving the use of direction-drilling equipment.²⁰⁴
- c) Claimant commenced construction and, in November 2018, reported that it was advancing ahead of schedule, with 44% of the Mine completed and detail engineering more than 93% advanced.²⁰⁵ The Claimant also introduced a new drilling standard to delineate measured resources more precisely and increase the level of confidence, as [REDACTED] describes.²⁰⁶ During its development, the main infrastructure area looked as follows from the south:²⁰⁷

²⁰³ “Continental Gold Announces 137,000-metre Drill Program for Buriticá in 2018,” Continental Gold Inc. (17 Jan. 2018) (C-201).

²⁰⁴ “Continental Gold Announces 137,000-metre Drill Program for Buriticá in 2018,” Continental Gold Inc. (17 Jan. 2018) (C-201).

²⁰⁵ “Continental Gold Provides Construction Update for the Buriticá Project,” Continental Gold Inc. (27 Nov. 2018) (C-205).

²⁰⁶ [REDACTED].

²⁰⁷ “Continental Gold Provides Construction Update for the Buriticá Project”, Continental Gold Inc., dated 27 November 2018, (C-205).



- d) In March 2019, Ivor Jones Pty Limited, an independent Australian geology firm that the Company had retained, issued a report which updated the Mine’s resources and reserves.²⁰⁸ [REDACTED] explains that this report was particularly important because it provided an update of the available geological information from the 2016 Feasibility Study.²⁰⁹
- e) In August 2019, Claimant announced that “[o]verall construction of the Buriticá project continues to advance on schedule and is entering the home stretch with the 75% completion milestone recently surpassed. Underground development continues to advance rapidly on all headings and is anticipated to average more than 1,000 meters per month until first gold pour is achieved in H1 2019.”²¹⁰ In November 2019, Claimant announced that overall construction was 83% complete,

²⁰⁸ “Continental Gold: NI 43-101 Buritica Mineral Resource 2019-01,” Ivor Jones Pty Ltd, dated 18 March 2019, (C-208).

²⁰⁹ [REDACTED].

²¹⁰ “Continental Gold Provides Buriticá Project Construction Update,” Continental Gold Inc. (7 Aug. 2019) (C-507).

and that the construction of the powerline in connection with the main power grid had also been finalized.²¹¹ Claimant reported that it had completed the ventilation raise in the Veta Sur system and commenced raise excavation for ore and waste passes in the Yaraguá system.²¹²

100. In December 2019, the Project received a further endorsement and funding when Zijin Mining Group Co. (“**Zijin Mining**”), one of the largest diversified mining companies in the world and ranked No. 1 amongst gold mining companies in the Forbes Global 2000 list,²¹³ acquired the share capital of Claimant for approximately US\$ 1 billion.²¹⁴
101. In May 2020, Claimant announced that it would make an additional US\$ 550 million investment towards the development, construction and expansion of the Project, which it expected would result in US\$ 1 billion taxes and royalties for Colombia during 14 years of operation.²¹⁵

E. IN 2020, THE MINE STARTED COMMERCIAL OPERATIONS AND CONTINUED TO RECEIVE SECURITY ASSISTANCE AND PROTECTION FROM COLOMBIA IN THE FOLLOWING YEARS

1. Continental Gold inaugurated the Mine in October 2020 and received assurances of the Government’s continuing support at the highest level

102. After three years of construction, hundreds of millions of dollars of investment, and the completion of the processing facilities to the designed capacity,²¹⁶ the Mine was ready to

²¹¹ “Continental Gold Reports on Third Quarter 2019 Activities,” Continental Gold Inc. (14 Nov. 2019) (C-218).

²¹² “Continental Gold Reports on Third Quarter 2019 Activities,” Continental Gold Inc. (14 Nov. 2019) (C-218).

²¹³ “Zijin Mining Rises to 267th on Forbes 2024 Global 2000 List,” Zijin Mining Group Co., Ltd. (27 Jun. 2024) (C-407).

²¹⁴ Thomas Biesheuvel, “China’s Zijin to Buy Canada’s Continental Gold for \$1 billion,” *Bloomberg News* (2 Dec. 2019) (C-221).

²¹⁵ “General Presentation: Buriticá Project,” Continental Colombia Gold (May 2020) (C-234) p. 10.

²¹⁶ “Buriticá Mine, Modern Mining from Colombia to the World: Sustainability Report 2020,” Continental Colombia Gold, dated Mar. 2021 (C-253) p. 3.

be inaugurated and enter production. [REDACTED] describes, this was “a significant milestone of which we were very proud.”²¹⁷

103. As [REDACTED] further explains, Continental Gold had reached this important milestone thanks, in large part, to the positive collaboration that the Colombian Government provided at that time. As [REDACTED] explains:

When I assumed the role of CEO of Continental Gold Colombia [in March 2020], the Colombian Government was led by President Iván Duque. Under his administration, Colombia provided steady and consistent support to the Mine, including security and protection. The Mine had long been supported by Colombia. [...]

The relationship between Continental Gold and the Colombian Government remained very positive after I became CEO. With the Government’s support, we were able to expedite development and reach the milestone of commercial operations and production.²¹⁸

104. Continental Gold inaugurated the Mine on 25 October 2020. President Duque Márquez attended the Mine’s inauguration and hailed the Project as “one of the most important gold mining investments in the world”:

Today we are in Colombia witnessing **one of the most important gold mining investments in the world**. We are seeing a project that seeks to contribute more than 3.7 million ounces of gold to the industry in a cycle of more than a decade . . . At this point today, more than 3,700 people have been employed in this project, which also allows us to recognize that a process of community development and environmental harmony has taken place.

105. During his speech, President Duque further highlighted that “this [inauguration] is the proof that without demagoguery and populism, opportunities open up in a sector [mining]

²¹⁷ [REDACTED]

²¹⁸ [REDACTED]

that is reinventing itself socially and environmentally for the national benefit.”²¹⁹ The picture below shows President Duque at the Mine’s inauguration.²²⁰



106. During the inauguration, the Governor of Antioquia, Anibal Gaviria, also emphasized the importance of building public trust in the mining sector and highlighted the key nature of such projects in demonstrating to the world that mining, in addition to being socially and environmentally responsible, could generate significant development.²²¹ In this context, Mr. Gaviria described the Project as “the one that opens the door to many other similar projects, not only in Antioquia and Colombia, but throughout Latin America.”²²²
107. As Colombia also recognized at the time, the Company’s management of the Project followed best practices with respect to social and community engagement. On 3 December 2020, the Department of Antioquia thus awarded to Continental Gold the “Social Seal of Mining 2020 Award” for best practices in social management. The Secretary of Mines of

²¹⁹ See “President Duque during the inauguration of the Buriticá Project in Antioquia,” *Presidencia de la República de Colombia* (YouTube) (23 Oct. 2020) (C-244).

²²⁰ See “President Duque attended today the Buriticá Project, a Mine that will increase in 20% the gold production in Colombia,” *La República* (23 Oct. 2020) (C-242).

²²¹ See “‘This is the moment for eco-mining,’ said the Governor of Antioquia while celebrating the inauguration of the Buriticá Mine by Zijin Continental Gold,” Government of Antioquia (23 Oct. 2020) (C-241).

²²² “‘This is the moment for eco-mining,’ said the Governor of Antioquia while celebrating the inauguration of the Buriticá Mine by Zijin Continental Gold,” Government of Antioquia (23 Oct. 2020) (C-241).

Antioquia highlighted that “we want them [Continental Gold] to continue being an example of responsible and well-done mining.”²²³ The ANM also recognized the various accolades for social management that Continental Gold had received.²²⁴ The Mine also received accolades for its social and environmental practices after 2020, as explained by ■■■²²⁵

2. Colombia continued delivering on its commitment to combat illegal mining

108. Throughout that period, the Colombian government also continued to support Claimant’s investment and take steps to ensure the security of the Mine. As summarized by ■■■:

During these years, the Colombian Government was generally attentive and receptive to the needs of the company. In my role as CEO of Continental Colombia, I repeatedly met with various Colombian government officials, who expressed to me the State’s strong interest in the success of the Mine, including, in particular, its benefits for Colombia both before and after the Mine’s inauguration in 2020.

In 2020 alone, I was invited to participate in two meetings with President Duque, both of which were highly positive. During these meetings, we discussed, among other things, the benefits of the Project for Colombia and the State’s willingness to ensure its security.²²⁶

109. A few months before the Mine’s inauguration in 2020, as part of a joint initiative, the Colombian Ministry of Mines and Energy, Ministry of Defense, Ministry of Justice, and Ministry of the Environment and Sustainable Development filed with the Senate a bill seeking to strengthen the existing legal instruments against illegal mining and providing the State with additional criminal, administrative and sanctioning tools to further crack down on the criminal activity.²²⁷

²²³ “Antioquia praised the responsible mining carried out by women and companies in the mining sector,” Government of Antioquia (3 Dec. 2020) (C-248).

²²⁴ Technical Description of the Buriticá Project, ANM and Continental Colombia Gold, dated 13 Apr. 2021 (C-255).

²²⁵ ■■■

²²⁶ ■■■

²²⁷ “The National Government introduced a bill to combat illegal mining,” Ministry of the Environment and Sustainable Development (21 Jul. 2020) (C-236).

110. In September 2020, as the bill was being discussed, the then Minister of Mines and Energy acknowledged that the Buriticá Project (among others) continued to require the State's support: "If projects in Antioquia," where the Project is located, "meet environmental and technical standards, we cannot turn our backs."²²⁸
111. On 30 October 2020, the Colombian National Army advertised the success of Operation Creta, which, as explained above, had been launched in 2016 and implemented comprehensive and forceful measures to secure the Mine.²²⁹ The Colombian authorities reported that the operation, carried out by the National Army in coordination with the National Police, the Government of Antioquia, and local authorities in Buriticá, had successfully neutralized the illegal exploitation of mining deposits and facilitated the legal operation of gold mining in the region.²³⁰ Colombia expressly promised that the area would continue to be protected by the National Army and the National Police: The Project in Buriticá, "which hosts the largest gold mine in the country, will generate resources for the development and progress of the department of Antioquia. **This area, covering approximately 75,000 hectares, will be protected by National Army troops and police officers.**"²³¹

3. In 2021, Continental Gold ramped up production and the Government continued to demonstrate its support

112. After the Mine's inauguration in October 2020, Claimant steadily increased production through 2021. ████████ confirms that "Colombia's support for the Mine continued after the inauguration, and, in this context, Continental Gold continued its investment to further develop and expand the Mine." ████████ further testifies that "Continental Gold conducted additional drilling programs to further develop the Mine's resources and

²²⁸ Diego Mesa's post on Twitter (now X) (22 Sept. 2020) (C-238).

²²⁹ "Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia," General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247).

²³⁰ "Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia," General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247).

²³¹ "Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia," General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247).

deployed additional innovative mining practices to further its goal of becoming a leading modern and environmentally responsible gold mine in Colombia.”²³²

113. Against that background, the Project produced approximately 6.1 tons of gold, and Claimant noted that “[t]he annual gold production of the Buriticá Gold Mine will increase to 9.1 tons from 7.8 tons, after the new 1,000 t/d mining, processing and smelting project is completed” in 2021.²³³ [REDACTED] explains that “[f]ollowing the inauguration of the Mine, Continental Gold significantly accelerated its production throughout 2021,” and that “Continental Gold also continued to invest in new exploration efforts for the Project during that year.”²³⁴
114. In June 2021, as part of its commitment towards protecting the environment and fulfilling its corporate social responsibilities, Claimant commissioned at the Mine a new state-of-the-art industrial wastewater treatment plant, which was and remains unique in Latin America and that would be capable of treating wastewater from the Project’s tunnels.²³⁵
115. The then-Governor of Antioquia, Luis Fernando Suárez, attended the plant’s inauguration on 28 June 2021 (as shown in the picture below) and invited different stakeholders, including the Ministry of Mines and Energy, the Secretary of Mines of Antioquia, the National Police and the National Army, to “join efforts” to combat illegal mining.²³⁶

²³² [REDACTED]

²³³ 2021 Performance, *Zijin Mining Group Co., Ltd.* (26 Mar. 2025) (C-460).

²³⁴ [REDACTED]

²³⁵ Resolution No. 0631 of the Ministry of the Environment and Sustainable Development, dated 17 Mar. 2015 (C-151) (providing for the parameters and maximum values allowed for discharge points into surface water bodies and public sewer systems).

²³⁶ “Antioquia celebrates the establishment of Colombia’s first Green Mine in its territory,” Government of Antioquia (26 Jun. 2021) (C-261).



116. The Minister of Mines, Diego Mesa, also attended the event and noted that the “US\$ 44 million in investments made in building the [wastewater treatment] plant exemplifies Continental Gold’s commitment to fulfilling its social responsibilities.”²³⁷ Moreover, Minister Mesa echoed the Governor’s promise of support to combat illegal mining:

We know that there are important challenges in terms of illegal mining activities. [REDACTED] mentioned it during his speech. But as the Governor [of Antioquia] said, **you can count on all the support from the National Government, as well as the Army and National Police, to combat illegal mining. . . We [the National Government] will be there to support you and provide assistance along with the Government of Antioquia.**²³⁸

117. On 25 October 2021, the President of the Congress of Colombia, Juan Diego Gómez Jiménez visited the Project, which he hailed as Colombia’s most modern large-scale

²³⁷ “Buriticá Gold Mine Commissions the Most Advanced Water Treatment Plant in Colombia,” Zijin Mining Group Co., Ltd. (1 Jul. 2021) (C-266); Diego Mesa’s post on Twitter (now X) (26 Jun. 2021) (C-262).

²³⁸ “Speech by the Minister of Mines and Energy, Diego Mesa Puyo, at the inauguration of the WTP - Buriticá Mine,” *Continental Colombia Gold* (YouTube) (27 Jun. 2021) (C-263).

underground gold mine.²³⁹ After his visit (as shown in the picture below), Congressman Gómez Jiménez congratulated Continental Gold and noted that: “[T]his Mine shows how modern mining can be done responsibly. Very clean underground mining, with environmental and safety standards, as well as international certifications that I believe are beginning to set the bar very high for mining in Colombia.”²⁴⁰



118. Shortly thereafter, the Company made headlines at the Colombia Gold Summit, which was held in Medellin in November 2021, where it announced that it was “fine-tuning plans to boost the capacity of its Buritica gold mine in Antioquia, Colombia, to produce copper and zinc as well as gold and silver.”²⁴¹ This significant investment would allow the Project to

²³⁹ “President of the Colombian Congress visited the Buriticá Mine and highlighted our Modern Mining,” Continental Colombia Gold (29 Oct. 2021) (C-275).

²⁴⁰ “President of the Colombian Congress visited the Buriticá Mine and highlighted our Modern Mining,” Continental Colombia Gold (29 Oct. 2021) (C-275).

²⁴¹ Cecilia Jamasmie, “Zijin Mining to produce copper at Buriticá Gold mine,” *Mining.com* (17 Nov. 2021) (C-278).

become “one of the country’s only five large-scale mines, to produce 240,000 ounces a year of gold, 600 tonnes per year of copper and 5,000 [tonnes per year] of zinc.”²⁴²

4. During 2021 and 2022, the Colombian security forces continued to support the Mine and conducted Operation Hades to clear up and reclaim one of the main tunnels

119. During this period, the National Army and the National Police conducted several security operations (including underground in the Mine’s tunnels) to expel illegal miners and criminals, seize illegal mining equipment, and prevent the spread of illegal mining, allowing Continental Gold to maintain full control of the Mine.
120. During the course of 2021, illegal miners gained access to certain sections of the Yaraguá tunnels, one of the three underground development areas of the Mine. Colombia again reacted promptly. Starting in July 2021, the National Police together with members of the Colombian Armed Forces carried out “Operation Hades” to reclaim the Yaraguá tunnels.²⁴³ In the context of Operation Hades, the National Police undertook “to collaborate closely with the Office of the Attorney General to dismantle the criminal organizations that benefit from the illegal exploitation of minerals, thereby destroying natural resources and affecting the security of Colombia.”²⁴⁴
121. The National Police made several announcements with respect to the results of Operation Hades:
- a) On 20 July 2021, the National Police successfully intervened in an illegal mining operation, resulting in the arrest of seven individuals who were illicitly exploiting mineral deposits.²⁴⁵

²⁴² Cecilia Jamasmie, “Zijin Mining to produce copper at Buriticá Gold mine,” *Mining.com* (17 Nov. 2021) (C-278).

²⁴³ “Security Situation at the Buriticá Mine (2 Nov. 2022) (C-313) p. 12.

²⁴⁴ “Seven captured as part of Operation Hades in Buriticá,” National Police of Colombia (20 Jul. 2021) (C-269).

²⁴⁵ “Seven captured as part of Operation Hades in Buriticá,” National Police of Colombia (20 Jul. 2021) (C-269).

- b) On 8 December 2021, the National Police reported that as part of Operation Hades aimed at controlling illegal mining activities in Buriticá, it had gained access to 10 mine shafts, and seized seven drills, seven engines, as well as five electric plants.²⁴⁶
 - c) On 17 December 2021, the National Police reported that along with the National Army, and as part of Operation Hades, the authorities had gained access to an illegal mine shaft and seized 23 bars of oxidizers, 43 detonating devices, and five kilograms of ammonium nitrate fuel oil explosives (or ANFO).²⁴⁷
 - d) On 11 January 2022, the National Police reported that as part of Operation Hades, through search and seizure efforts against illegal mining, the authorities had successfully seized an electric motor, a drill, and an air generator motor.²⁴⁸
 - e) On 27 January 2022, the Colombian National Police announced positive results after a joint operation with the National Army against illegal miners in Buriticá.²⁴⁹
122. Law enforcement activities in the context of Operation Hades continued through the last weeks of the Duque administration. From 14 July 2022 through 28 July 2022, UNIMIL carried out an operation in the Yaraguá tunnels. UNIMIL deactivated 190 improvised explosive devices, and seized ammunition and explosive equipment used for illegal mining activities.²⁵⁰ The UNIMIL's operation and results were widely covered by Colombian media outlets.²⁵¹

²⁴⁶ Colombian National Police's post on Twitter (now X) (8 Dec. 2021) (C-280).

²⁴⁷ Colombian National Police's post on Twitter (now X) (17 Dec. 2021) (C-281).

²⁴⁸ Colombian National Police's post on Twitter (now X) (11 Jan. 2022) (C-285).

²⁴⁹ "The Clan del Golfo's finances were impacted by more than 200 million pesos," National Police of Colombia (27 Jan. 2022) (C-287).

²⁵⁰ Continental Colombia Internal Report regarding Intervention Activities in Yaraguá Tunnel, dated 28 Jul. 2022 (C-294).

²⁵¹ "Police Operation at 400 Meters depth," *Noticias Caracol* (Facebook) (31 Jul. 2022) (C-295).



123. From its inception in July 2021 through July 2022, Operation Hades achieved significant success. The operation allowed the Company to recover control of effectively the entire Yaraguá area of the Mine.²⁵² In addition to allowing the Company to reclaim control of the Yaraguá tunnels, Operation Hades resulted in 251 military and police interventions; the seizure of more than 58 tons of gold-bearing material and the confiscation of around 78 kilograms of mercury intended to use for illegal mining purposes.²⁵³
124. During 2021, [REDACTED] attended a series of meetings with high-ranking Colombian officials during which the Company was promised that Colombia would continue to support the Mine by protecting it from criminal groups. In his witness statement, [REDACTED] describes one such meeting as follows:

On 23 July 2021, I attended the 2021 Annual Meeting of the Colombian Mining Association (*Asociación Colombiana de Minería*) (the “ACM”). At this meeting, President Duque, together with other high-ranking officials, addressed additional efforts by the Colombian State to control illegal

²⁵² [REDACTED].

²⁵³ Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jul.-Dec.), dated 31 Dec. 2021 (C-283); Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jan.-Jun.), dated 30 Jun. 2022 (C-291); Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jan.-Jun.), dated 30 Jun. 2023 (C-359).

mining. This again reassured me that the Colombian Government would maintain control of the security situation at the Mine.²⁵⁴

125. Similarly, [REDACTED], describes that the security situation in 2021 was under control and allowed for the continued exploration and exploitation of the Mine:

When I joined the Company in September 2021, the area where the Mine is located had enjoyed two decades of significant progress in terms of security and an increased presence of Public Forces, to the point that it attracted foreign investment to carry out the Project . . . In fact, the security situation of the Project in September 2021 allowed for the exploitation of minerals located in the underground area of the Project, in close coordination with Colombian Public Forces, with whom we had continuous contact.²⁵⁵

126. The strong support that the Company had enjoyed for years from the Colombian Government, and which had underpinned its substantial investment in the country, was about to vanish, however. The July 2022 intervention in the Yaraguá tunnels effectively marked the last meaningful action carried out at the Mine in the framework of Operation Hades.²⁵⁶ As [REDACTED] explains, this operation, conducted in the final days of the administration of President Duque, was to be the last military intervention that Colombia would carry out to recover occupied tunnels in the Mine for years.²⁵⁷

254 [REDACTED]

255 [REDACTED]

256 [REDACTED]

257 [REDACTED]

F. FOLLOWING THE INAUGURATION OF PRESIDENT GUSTAVO PETRO IN AUGUST 2022, COLOMBIA STOPPED PROVIDING MEANINGFUL ASSISTANCE AND PROTECTION TO THE MINE

1. As candidate, Gustavo Petro campaigned on a populist platform of opposition to large-scale mining, open support for illegal miners and accommodation of criminal cartels

127. In late 2021, Colombia entered a new presidential election cycle, with an election scheduled for May 2022. Gustavo Petro, a sitting senator representing the left-wing “Humane Colombia” Party in the Colombian Congress, emerged as a leading candidate.²⁵⁸
128. A previous runner up in the 2018 presidential election, Mr. Petro also was a former member of the 19th of April Movement (M-19), a notorious guerrilla group that had carried out one of the deadliest terrorist attacks in contemporary Colombian history: The 1985 siege of the Palace of Justice (the seat of the Colombian Supreme Court). The attack “left the building largely destroyed and resulted in the disappearances of over a dozen civilians and the deaths of nearly one hundred civilians, including eleven Supreme Court justices.”²⁵⁹ In the decades that followed, Mr. Petro did not hide his sympathy for left-wing political regimes in the region. In 2003, a few years after Hugo Chavez’ election in Venezuela, then Congressman Petro claimed to be “one of Chávez’s closest advisors on the new model being implemented in Venezuela.”²⁶⁰
129. During the presidential campaign, Mr. Petro voiced his opposition to the extractive industries, including large-scale mining projects, which had propelled Colombia’s growth over the previous two decades. In November 2021, Mr. Petro specifically targeted Claimant and other large mining companies active in Antioquia, calling them “predatory transnational mining companies” and proposing to transfer their mining titles to “small and medium-sized miners” (i.e., ASM miners):

Duque and Uribe [former Presidents of Colombia] handed over Antioquia’s territory to predatory transnational mining companies. In **Buriticá** and

²⁵⁸ “Gustavo Petro Urrego, President of the Republic of Colombia” (21 May 2025) (C-484).

²⁵⁹ The Palace of Justice Siege: Urán, et al. v. Plaza Vega, *The Center for Justice & Accountability* (11 May 2025) (C-468).

²⁶⁰ “Neo-populism is born,” *Revista Dinero* (27 Jun. 2003) (C-62).

Jerico, I propose that the state buy back the mining titles and hand them over to small and medium-sized miners from Antioquia for mining that prioritizes agriculture and water.²⁶¹

130. These statements about the Buriticá Project tied into Mr. Petro’s broader campaign theme of populist opposition to large-scale mining and embrace of “informal” or “artisanal” miners (who, he argued, had wrongfully been criminalized as illegal miners). During his campaign in 2022, Mr. Petro announced the following proposals relating to the mining sector:

- a) “We will stop murders and aggressions against farmers, afro-descendants and raizal populations. We will not allow their criminalization under the new model aimed at combating illegal mining and deforestation in Colombia;”²⁶²
- b) “We will protect ancestral and artisanal mining, as well as subsistence and small-scale mining, by removing control from mafias and ensuring decent work;”²⁶³
- c) “We will gradually dismantle those tax benefits that, without proper economic and social justification, create several distortions and incentivize mining and energy extraction;”²⁶⁴
- d) “We will intensify environmental, labor, and fiscal controls over ongoing mining operations;”²⁶⁵
- e) “We will not grant new licenses for hydrocarbon exploration, nor will we permit large-scale open-pit mining;”²⁶⁶ and

²⁶¹ Gustavo Petro’s post on Twitter (now X) (6 Nov. 2021) (C-277).

²⁶² “National Development Plan 2022-2026,” National Planning Department (May 2023) (C-337).

²⁶³ “National Development Plan 2022-2026,” National Planning Department (May 2023) (C-337).

²⁶⁴ “National Development Plan 2022-2026,” National Planning Department (May 2023) (C-337).

²⁶⁵ “National Development Plan 2022-2026,” National Planning Department (May 2023) (C-337).

²⁶⁶ “National Development Plan 2022-2026,” National Planning Department (May 2023) (C-337).

- f) “We will introduce a bill to reform the current Mining Code and an institutional adjustment will be promoted.”²⁶⁷
131. Another key component of Mr. Petro’s 2022 presidential campaign platform was his willingness to pursue negotiations without preconditions with armed and criminal groups in Colombia, including in particular the *Clan del Golfo*.²⁶⁸
132. The *Clan del Golfo* (also known as the “*Gaitanistas*”) is the largest armed group and narco-trafficking organization in Colombia and reported to have connections with criminal groups in more than 28 countries to traffic drugs.²⁶⁹ Its origins date back to 2006, when former members of the FARC, ELN and other right-wing paramilitary and terrorist group joined forces in the northwestern region of Colombia, near the Panamanian border, giving rise to the largest criminal and drug trafficking organization in Colombia.²⁷⁰ Over the years, its activities have expanded to illegal mining. As has been reported, “[t]he *Clan del Golfo* now exert control over mines, whether licit or illicit, artisanal or multinational, and they do this through violence, assassinations and the extortion of workers. To top it off, gold is used to launder dirty drug-trafficking money.”²⁷¹
133. Mr. Petro’s willingness to negotiate with the *Clan del Golfo* was denounced by President Duque in the final days of his administration as dangerous and contrary to decades of government policy.²⁷² Yet, as the Crisis Group reported, “[p]ersons close to the Petro campaign (though not officially part of it) had entered Colombian prisons on several occasions and spoken with inmates close to the group. In these conversations, participants

²⁶⁷ “National Development Plan 2022-2026,” National Planning Department (May 2023) (C-337).

²⁶⁸ Gustavo Petro’s post on Twitter (now X) (8 May 2022) (C-290).

²⁶⁹ “Revelations from the ‘Clan del Golfo’ following the capture of alias ‘Otoniel,’” *Canal Institucional TV* (4 Nov. 2021) (C-276).

²⁷⁰ Jack Meegan-Vickers, “Clan del Golfo: The Fall of ‘Otoniel,’” *Global Initiative* (4 Apr. 2022) (C-289).

²⁷¹ Jack Meegan-Vickers, “Clan del Golfo: The Fall of ‘Otoniel,’” *Global Initiative* (4 Apr. 2022) (C-289).

²⁷² “‘There should be no negotiations with the Clan del Golfo:’ Duque on letter from armed group to Petro,” *La Silla Vacía* (21 Jul. 2022) (C-293).

discussed the possibility of the Gaitanistas [*Clan del Golfo*] seeking reduced sentences via the transitional justice system under a new Petro government.”²⁷³

134. Mr. Petro’s accommodative stance towards the *Clan del Golfo* resulted in an escalation of violence even before he was inaugurated in August 2022. As the Crisis Group relates, “[a]fter Petro had secured his win at the polls, armed organizations [including the *Clan del Golfo*] reacted almost immediately to the prospect of dialogue dangled before them. Violence spiked between Petro’s triumph in the runoff [in June 2022] and his inauguration [on 7 August 2022], as groups fought to strengthen their negotiating positions, claim territory and purged alleged enemy collaborators from the civilian population.”²⁷⁴
135. Mr. Petro’s populist rhetoric against large-scale mining and his willingness to accommodate the *Clan del Golfo* became official policy following his inauguration as President of Colombia on 7 August 2022. The situation at the Buriticá Project quickly deteriorated, as newly emboldened criminals invaded the Mine’s tunnels to steal its resources.

2. As the Mine faced a blockade in August 2022, the new Petro Administration sided with the illegal miners and rebuffed Claimant’s pleas for assistance

136. Beginning on 11 August 2022, just four days after President Petro’s inauguration, dozens of illegal miners blockaded the access road to the Municipality of Buriticá and the Mine, forcing the Mine’s operations to shut down.²⁷⁵
137. The blockade was ostensibly organized to protest the disappearance and death of two illegal miners in the underground workings of the Mine, but it quickly emerged that it was being

²⁷³ “The Unsolved Crime in ‘Total Peace’: Dealing with Colombia’s Gaitanistas,” International Crisis Group, dated 19 Mar. 2024 (C-395).

²⁷⁴ “The Unsolved Crime in ‘Total Peace’: Dealing with Colombia’s Gaitanistas,” International Crisis Group, dated 19 Mar. 2024 (C-395). See also [REDACTED] (referring to the progressive and drastic deterioration of the situation at the Mine after the political transition in 2022).

²⁷⁵ “Blockade over missing miners halts production at Zijin’s mine in Colombia,” *Minería en Línea* (16 Aug. 2022) (C-301).

staged by the *Clan del Golfo*, and the Company was later exonerated of any wrongdoing.²⁷⁶ Amongst the protesters blockading the Mine were known members of the *Clan del Golfo*, as the Company documented.²⁷⁷ According to intelligence reports, the *Clan del Golfo* was paying 100,000 COP (25 dollars) per day to each protester to extend the blockade.²⁷⁸

138. Upon the onset of the blockade, Continental Colombia immediately filed a criminal complaint and alerted the authorities, including the Mayor of Buritica and the Attorney General's Office, on 12 August 2022.²⁷⁹ The situation quickly spiraled out of control, however, as summarized by one contemporaneous press report, and illustrated below:

The situation escalated to acts such as the blockade and obstruction of the Pan-American Highway and the access routes to the municipality of Buriticá, the burning of tires, the impact on public transport, food theft, and damage to private property among other incidents. Although the blockade on the Pan-American Highway was lifted, other blockades remained in place, preventing the entry of food and beverages into Buriticá. This situation adversely affects the mining project, as well as the 10,000 residents of the Buriticá Municipality and 700 workers, both nationals and foreigners, who are working on the mining project.²⁸⁰

²⁷⁶ "Blockade over missing miners halts production at Zijin's mine in Colombia," *Minería en Línea* (16 Aug. 2022) (C-301).

²⁷⁷ "Security Situation at the Buriticá Mine," Continental Colombia Gold (2 Nov. 2022) (C-313) p. 15.

²⁷⁸ Santiago Olivares Tobón, "A sponsored blockade? Clan del Golfo allegedly paying to keep protests going in Buriticá," *El Colombiano* (18 Aug. 2022) (C-304).

²⁷⁹ Letter from Continental Colombia to Mayor of Buriticá, dated 12 Aug. 2022 (C-297); Criminal Complaint filed by Continental Colombia with the Office of the Attorney General, dated 12 Aug. 2022 (C-298).

²⁸⁰ "Protests and road blockades persist in Buriticá, Antioquia, alongside ongoing efforts to locate two missing miners," *Análisis Urbano* (17 Aug. 2022) (C-498).

Picture of the blockade²⁸¹



139. On 15 August 2022, the newly-appointed Minister of Mines, Irene Vélez, traveled to Buriticá to meet the leaders of the blockade.²⁸² Her helicopter used the Mine's helipad, but she declined to meet with the Company's representatives, and drove away. As [REDACTED] states:

While she travelled from Bogotá and met with the very people who were illegally exploiting the Mine and blockading its operations, Minister Vélez refused to take a meeting with us. She used the Mine's heliport and immediately drove off to the town of Buriticá. To my knowledge, no senior Cabinet-level official, such as the President or a Minister, has visited the Mine since then, unlike in the past.²⁸³

²⁸¹ Edgar Quintero Herrera, "Ten days of turmoil in Buriticá, the country's largest gold mine," *La Silla Vacía* (30 Aug. 2022) (C-308).

²⁸² Edgar Quintero Herrera, "Ten days of turmoil in Buriticá, the country's largest gold mine," *La Silla Vacía* (30 Aug. 2022) (C-308).

²⁸³ [REDACTED].

140. Minister Vélez had no interest in collaborating with the Company. Instead, as reported by the press, Minister Vélez “issued a series of statements that supported the informal miners’ position and underscored the significant role of the communities and the prevailing mistrust towards the private sector in the new government’s mining agenda.”²⁸⁴
141. As the blockade continued, on 17 August 2022 Continental Colombia wrote to President Petro to express concern about the Minister’s refusal to meet and request urgent assistance from the Colombian Government, “as we have already expressed [our concerns] to the Mayor’s Office, the Government of Antioquia, without having effective solutions on site.”²⁸⁵ As Continental Colombia explained, the blockade was part of a multipronged attack on the Mine, including:
- a) Illegal attempts to break into the Buriticá Project’s premises;
 - b) Robbery of vehicles transporting food for the Company’s contractors;
 - c) Illegal checkpoints to approve or disapprove who could transit through the adjacent area of the Project;
 - d) Seizure and destruction of restaurants, accommodations, and other facilities of Continental Gold’s contractors;
 - e) The destruction of surveillance cameras;
 - f) Constant threats to workers so that they did not attend their shifts; and
 - g) Threatening statements directed at the Company’s executives.²⁸⁶
142. The Company tried again and again to work with local authorities to resolve the matter without avail. In this context and in light of the continuous deterioration of the situation, local officials joined the Company in calling on the federal government to intervene. For

²⁸⁴ Edgar Quintero Herrera, “Ten days of turmoil in Buriticá, the country’s largest gold mine,” *La Silla Vacía* (30 Aug. 2022) (C-308).

²⁸⁵ Letter from Zijin Continental Gold to President Petro, dated 17 Aug. 2022 (C-25).

²⁸⁶ Letter from Zijin Continental Gold to President Petro, dated 17 Aug. 2022 (C-25).

example, on 17 August 2022, the Secretary of Security of Antioquia, Luis Fernando Suárez, stated in a press release that the Department of Antioquia had “exhausted all avenues” and called on the federal government to act:

We have exhausted all avenues, together with the Buriticá’s Mayor, and repeated our position against direct actions measures. We unequivocally reject such measures, including road blockages and the obstruction of citizens’ free movement. Accordingly, **we have requested the Minister of Defense to support the Department of Antioquia** and to assess the possibility of an intervention in the Municipality of Buriticá.²⁸⁷

143. On 19 August 2022, the Company issued a press release noting that its more than 1,000 workers had already been subjected to more than eight days of blockade and that the State had failed to undertake any successful actions to resolve the situation. It further noted that the Mining Rescue Group of the National Mining Agency of Colombia had reviewed the allegations of those leading the blockade and found them to be entirely baseless.²⁸⁸
144. It was only on 21 August 2022, 10 days after it had commenced, that the blockade was finally lifted, and Continental Colombia was able to restart operations at the Mine.²⁸⁹
145. On 29 August 2022, the ANM (which has jurisdiction over mine safety issues) issued a formal mining emergency resolution that confirmed that the Company bore no responsibility for the death of the two illegal miners who had been trapped in illegal workings in the Yaragua area of the Mine.²⁹⁰ The ANM further ordered the competent authorities to proceed with the “total and immediate closure of unauthorized mining activities that disrupt the area of title P749111 [i.e., the Project], conducted by individuals

²⁸⁷ “Government of Antioquia asked the Minister of Defense to consider military intervention in Buriticá,” *el Colombiano* (17 Aug. 2022) (C-303).

²⁸⁸ “There are no reasons for the blockade of the Buriticá Mine,” Continental Gold Inc. (19 Aug. 2019) (C-213).

²⁸⁹ Edgar Quintero Herrera, “Ten days of turmoil in Buriticá, the country’s largest gold mine,” *La Silla Vacía* (30 Aug. 2022) (C-308); “Security Situation at the Buriticá Mine,” Continental Colombia Gold (2 Nov. 2022) (C-313) p. 14 (chronology of the blockade).

²⁹⁰ ANM Emergency Report No. 202209E, dated 29 Aug. 2022 (C-307) pp. 22-23.

using unsafe and non-technical procedures.”²⁹¹ This order of the Colombian mining authority was to remain a dead letter.

146. The August 2022 unjustified blockade impacted operations at the Mine, but the far more significant damage to the Company perhaps came in the form of the message Colombia communicated to the *Clan del Golfo* and illegal miners: that, going forward, the State would now take their side and allow them to engage in criminal activity with respect to Claimant’s investment with impunity.

3. The new Government swiftly took steps to implement its anti-large mining agenda

147. The August 2022 political transition marked the beginning of a dramatic and swift change in the State’s policies towards the Company. It started almost immediately. The blockade of the Mine in August 2022 set the tone, and the new Government’s animus towards large mining companies was confirmed in the following weeks. On 3 September 2022, Mr. Petro repeated his stance against international mining companies such as Claimant:

The mining activity in Colombia should not revolve exclusively around multinational mining companies, we must recover and strengthen Colombia’s traditional miners and traditional mining.²⁹²

148. During November 2022, Minister of Mines Vélez expressed the view that Colombia had for years wrongly criminalized artisanal and small-scale miners as illegal miners.²⁹³
149. On 17 January 2023, President Petro made good on his campaign proposal and announced a reform of the Mining Code that had, as its stated objective, the prioritization of “small-scale traditional mining” over large international mining companies.²⁹⁴ The Colombian Mining Association (which represents industry participants) alerted that the proposed

²⁹¹ ANM Emergency Report No. 202209E, dated 29 Aug. 2022 (C-307) p. 17.

²⁹² “‘Let’s look for minerals to fertilize the land’: Petro’s message to miners,” *El Universal* (3 Sept. 2022) (C-309).

²⁹³ “Minister of Mines and Energy reignited controversy over whether oil exploration will come to an end in Colombia. Here is what she said,” *Semana* (3 Nov. 2022) (C-38) (“The State has been criminalizing artisanal and small-scale miners by categorizing them as illegal, without making any distinction between those who have dedicated themselves to the massive destruction of protected areas and water zones in the country.”).

²⁹⁴ Verónica González Encina, “Gustavo Petro announces reform to Mining Code,” *Reporte Minero* (17 Jan. 2023) (C-36).

legislation would only encourage illegal mining, because small-scale miners would be exempted from requirements such as prior consultation and environmental licensing process, which would create new opportunities for exploitation by criminal organizations.²⁹⁵

150. In May 2023, during the first edition of the Mining Summit in Bogotá, Colombia, Minister of Mines Vélez again expressed the view that the existing legal framework was “obsolete” and that small-scale miners had been wrongly criminalized and “that is a social debt that we must correct.”²⁹⁶
151. In pursuit of its agenda, the Petro Administration also took steps to strip the Department of Antioquia of its authority over mining matters. The Department had long benefited from a delegation of mining functions from the Colombian national government pursuant to Article 317 of the Mining Code.²⁹⁷ The mining delegation to the Government of Antioquia included functions relating to the formalization, monitoring, and oversight of activities in connection with mining titles within the Department. It was on the basis of that delegation, for example, that on 14 September 2011 Continental Colombia entered into the Concession Agreement.²⁹⁸ Previous administration had acknowledged the importance of the delegation to the success of large mining projects in the Department. When renewing that delegation in December 2021, the then Vice Minister of Mines and Energy, Sandra Sandoval, had highlighted the importance of the mining delegation for “the four big and strategic projects [in Antioquia] such as the one[] in Buriticá [the Buriticá Project].”²⁹⁹

²⁹⁵ Letter from ACM to the Minister of Mines and Energy, dated 30 Mar. 2024 (C-398); “The Ministry of Mines and Energy reports that the new mining law drafted by the national government is moving forward and nearing completion of the preliminary consultation process,” Ministry of Mines and Energy (21 Mar. 2025) (C-459). In March 2025 the Ministry of Mines and Energy announced that the bill is still being discussed with communities, and will be submitted to the Congress sometime during 2025.

²⁹⁶ “‘The mining law is obsolete and has led to criminalization,’ says Minister Irene Vélez,” *Valora Analitika* (27 May 2023) (C-343).

²⁹⁷ Mining Code (C-58), Art. 307. “Antioquia is the only department in Colombia with mining delegation,” Government of Antioquia (28 Dec. 2021) (C-282).

²⁹⁸ Concession Agreement (C-19).

²⁹⁹ “Antioquia is the only department in Colombia with mining delegation,” Government of Antioquia (28 Dec. 2021) (C-282).

152. On 13 January 2023, however, the ANM issued Resolution No. 104 reassuming the functions of supervision, monitoring and control of the national mining strategic projects located in Antioquia, including the Buriticá Project.³⁰⁰ And, on 26 December 2023, it announced that the national government would not renew the mining delegation to Antioquia and that the comprehensive management of mineral resources previously entrusted to the Government of Antioquia would revert to the ANM as of 1 January 2024.³⁰¹
153. President Petro made the reasons for that decision clear: “My administration has decided to terminate the delegation of mining matters previously granted to the Department of Antioquia. We are reclaiming our constitutional role and putting it at the service of small-scale miners.”³⁰²
154. During 2024, President Petro continued to show his animus towards the mining sector. He went even further and insulted those who carry out mining operations: “When it comes to extraction, there is not much talk of hard work. To extract what’s already beneath the ground, be it coal, oil, gold, or nickel, no brain is needed.”³⁰³
155. On 1 November 2024, the President of the ACM, Juan Camilo Nariño, expressed concern that “since his presidential campaign, Petro has consistently expressed opposition to extractive activities within the country. This opposition has turned into various initiatives which ... could endanger both existing mining rights and foreign investments.”³⁰⁴

³⁰⁰ Resolution No. 104 of the ANM, dated 13 Jan. 2023 (C-327).

³⁰¹ “National Mining Agency (ANM) reassumes functions delegated to the Governor’s Office of the Department of Antioquia,” ANM (26 Dec. 2023) (C-381).

³⁰² Gustavo Petro’s post on X (26 Dec. 2023) (C-382).

³⁰³ Diego Andrés Vargas Riaño, “Geologists reject statements by Petro, who said that ‘you don’t need a brain’ to extract oil” *El Colombiano* (9 Apr. 2024) (C-399).

³⁰⁴ “Conflicts, criminal groups and lawsuits involving Zijin’s gold mine in Colombia” *Dialogue Earth* (1 Nov. 2024) (C-420).

4. In a dramatic reversal, the new Government declared a unilateral cease fire with the *Clan del Golfo* in December 2022 and effectively terminated Operation Hades, allowing criminals to return in great numbers to the tunnels of the Mine

156. In December 2022, and as part of a new security approach branded “*Paz Total*” (“**Total Peace**”), President Petro issued Decree No. 2658 of 2022, which announced unilateral (and without preconditions) ceasefires with the *Clan del Golfo* and four other armed groups from 1 January 2023 through 30 June 2023.³⁰⁵
157. In early 2023, days after leaving office, former Vice Minister of Mines and Energy, Giovanni Franco, advised the Company that no action would be taken against the *Clan del Golfo* at the time and that instead the company should seek to negotiate an accommodation with the narco-trafficking organization (a suggestion that the Company immediately dismissed).³⁰⁶
158. The decision to announce a unilateral ceasefire with the country’s largest narcotrafficking gang immediately caused outrage. The Attorney General’s Office publicly objected. The Attorney General of Colombia, Francisco Barbosa, noted that “never before has a bilateral ceasefire been conducted with drug trafficking organizations; it is similar to making a bilateral ceasefire with Pablo Escobar or the Cali Cartel.”³⁰⁷
159. Predictably, the move proved an abject failure. In March 2023, the Petro administration cancelled the ceasefire with the *Clan de Golfo*, accusing the organization of having taken advantage of the State’s offer to further their illicit economic activities.³⁰⁸
160. The Government nonetheless persisted in its approach, and in 2024 issued Resolution 279/24 to formalize a “socio-legal dialogue scenario” with the *Clan del Golfo*.³⁰⁹ Six

³⁰⁵ Decree No. 2658 of 2022, dated 31 Dec. 2022 (C-322). See also “President Gustavo Petro signed the Total Peace Act into law,” Ministry of the Interior (4 Nov. 2022) (C-316); Law 2272 of 2022, dated 4 Nov. 2022 (C-315).

³⁰⁶ [REDACTED]

³⁰⁷ “Francisco Barbosa raised concerns from the United States about the bilateral ceasefire decreed by Gustavo Petro,” *Infobae* (25 Jan. 2023) (C-329).

³⁰⁸ Elizabeth Dickinson, “How to Talk to Colombia’s Largest Criminal Group,” *New York Times* (10 Sept. 2024) (C-413).

³⁰⁹ Resolution No. 279, dated 22 Jul. 2024 (C-411).

negotiators were named by the *Clan del Golfo*, with top commander Jobanis de Jesús Ávila (also known as Chiquito Malo and wanted in the U.S. on drug trafficking charges), as a key figure. By the end of 2024, no progress had been made and the talks remained exploratory.

161. The Petro administration's security approach has faced withering criticisms from both inside and outside the Government. Iván Velásquez, who resigned as Minister of Defense in December 2024, expressed concerns about the "*Paz Total*" implementation even while serving as Minister. In a June 2024 press conference, he admitted the obvious: the security situation had deteriorated during the Petro administration mainly because "the armed groups [including *Clan de Golfo*] have taken advantage of the ceasefires agreed upon with the national government."³¹⁰
162. More recently, former President Santos (and Nobel Peace Prize recipient in 2016) judged the security strategy of the Petro administration a "complete failure" that had only allowed the *Clan del Golfo* and other criminal groups to strengthen themselves:

Total Peace, unfortunately, was poorly conceived from the start. As we told President Petro, peace processes require planning, rigor, methods, knowing who you are negotiating with, and negotiating with a carrot on one hand and a stick on the other. And here, there has only been a carrot, no rigor, no method, and the interlocutors [armed groups including *Clan del Golfo*] have taken advantage to strengthen themselves in different regions, which is why the country is seeing an increase in insecurity.³¹¹

163. This view is also shared by international commentators. As *The Economist* reported in December 2024:

Total Peace has had a deeply undesired effect: it has given new impetus to the fight to control Colombia's strategic criminal economies, including coca cultivation. Abandoning these incomes is not a necessary condition to negotiate with the government, and the state cannot use the military against any group with which it has agreed to a ceasefire.... As a result, some of

³¹⁰ Juan Felipe Bedoya Ramirez, "'Illegal armed groups have taken advantage of the ceasefires,' Ministry of Defense acknowledges security crisis" *El Colombiano* (18 Jun. 2024) (C-405).

³¹¹ Andrés Carmona Ospina, "Former President Juan Manuel Santos: 'Total peace has been a total failure'" *Blu Radio* (23 Apr. 2025) (C-463).

these groups have sought to expand their sources of illicit income with other criminal economies such as gold mining, extortion and kidnapping.³¹²

The impact on security has been mixed. The murder rate fell slightly last year, probably in part thanks to the temporary ceasefires. But kidnappings are up, and threats and extortions have soared since Mr. Petro took office. Worse, armed groups seem to have used the ceasefires to expand.³¹³

164. The one consequence of this misguided approach by the Petro administration, however, was that it effectively froze all military operations against the *Clan del Golfo* until only recently, allowing it to prosper and expand its criminal activities. As the Crisis Group reported, conflicting orders and priorities paralyzed the Colombian armed forces:

[The] President's office told it to stand down vis-à-vis the Gaitanistas [the *Clan del Golfo*], but the Office of the Inspector General told it not to cease hostilities with criminal groups on penalty of facing disciplinary hearings for dereliction of duty. The mixed signals essentially froze operations against the Gaitanistas [the *Clan del Golfo*] and other criminal groups except when they were caught committing crimes in flagrante.³¹⁴

165. Claimant experienced this first-hand at the Mine. Whether as a result of the unilateral ceasefire and an executive directive, policy uncertainty or simple animus at the highest levels of Government, Colombian 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.³¹⁵ As a result, the criminal invasion of the Mine quickly resumed and reached unprecedented heights, as explained below.

³¹² Sergio Saffon and Sara Garcia, "GameChangers 2023: Unintended Consequences for Colombia's 'Total Peace,'" *Insight Crime* (29 Dec. 2023) (C-386).

³¹³ "Colombia's president had a bold peace plan. It is not working," *The Economist* (1 Dec. 2024) (C-427).

³¹⁴ "The Unsolved Crime in 'Total Peace': Dealing with Colombia's Gaitanistas," International Crisis Group, dated 19 Mar. 2024 (C-395).

³¹⁵ [REDACTED]

G. WITHOUT MEANINGFUL GOVERNMENTAL ASSISTANCE, THE COMPANY WAS FORCIBLY EXPELLED FROM LARGE PORTIONS OF THE MINE AND LOST ITS VALUABLE RESOURCES

1. By the end of 2022, illegal miners had invaded and violently taken control of the entire Yaraguá and parts of the Rampa Sur sections of the Mine

166. Following the inauguration of President Petro in August 2022, the Mine faced unprecedented levels of violence. The Protection Department of the Mine records every instance of shooting, use of improvised explosive device and illegal detonation that is reported inside the Mine.³¹⁶ A simple comparison of these records for the first half of 2022 and the second half of that year tells the story.³¹⁷

[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

167. Through the indiscriminate use of violence, illegal miners intimidated and expelled the Company's personnel from the underground tunnels of the Mine. 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 [REDACTED] in the Yaraguá and Rampa Sur tunnels and extracting their mineral resources.³¹⁸ The Company also documented their use of heavy machinery and firearms.³¹⁹

168. As the illegal miners dug improvised tunnels from the surface to connect with the Mine's underground development areas, the illegal invasions first escalated in the areas of the

³¹⁶ [REDACTED]

³¹⁷ Records of Detonations, Improvised Explosive Devices, and Shootings (2020-2024) (C-433).

³¹⁸ "Security Situation at the Buriticá Mine" Continental Colombia Gold (2 Nov. 2022) (C-313) p. 6.

³¹⁹ "Security Situation at the Buriticá Mine" Continental Colombia Gold (2 Nov. 2022) (C-313) p. 7.

Mine that were closer to the surface (i.e., the higher “Levels” of the Mine).³²⁰ References to “Levels” within the underground area refer to elevations measured in meters above mean sea level. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³²¹

[REDACTED]

169. By the end of 2022, illegal miners had made their way to Level 1450 of the Rampa Sur section, [REDACTED]

[REDACTED].

170. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [REDACTED] discusses these in detail.³²² It also resulted

³²⁰ [REDACTED].

³²¹ Escalation of Illegal Mining (2020-2025) (C-462).

³²² [REDACTED]

in the loss of considerable mineral reserves that the Company had already identified (and often already prepared for exploitation) and that fell in the hands of illegal miners, as described below.³²³

2. In 2023, the situation continued to deteriorate and culminated in a bombing in the Higabra tunnels that tragically resulted in the death of two contractors and injuries to 14 others

171. The situation at the Buriticá Project continued to deteriorate in 2023, [REDACTED]
[REDACTED]
[REDACTED].³²⁴

[REDACTED]

172. [REDACTED]
[REDACTED]
[REDACTED]

173. On 17 May 2023, illegal miners pressed further into the Higabra tunnels, breaching a protective barrier and disrupting operations. A security team that was sent to investigate

³²³ See section II.J.2. S [REDACTED]; [REDACTED].

³²⁴ Escalation of Illegal Mining (2020-2025) (C-462).

³²⁵ Records of Detonations, Improvised Explosive Devices, and Shootings (2020-2024) (C-433).

the incident was violently attacked with firearms and explosives, resulting in injuries and necessitating tunnel evacuation. As the Company's security personnel was trying to secure the area and construct a new containment wall, the illegal miners detonated a high-powered cylinder bomb, which injured 14 people and caused the deaths of one security guard and one contractor.³²⁶ All operations also had to be suspended, resulting in a significant loss of production.³²⁷

174. The attack caused a public outrage. On 18 May 2023, the Governor of Antioquia, Anibal Gaviria condemned the *Clan del Golfo*'s cylinder bomb attack against the Mine.³²⁸ Mr. Gaviria also sharply criticized the Minister of Mines and Energy, Irene Vélez, for ignoring prior warnings about the risks posed by the *Clan del Golfo* at the Mine, which he had shared with Ms. Vélez the prior year during the August 2022 blockade. The Governor stated that "look at what we have today: a terrorist attack at the Continental Gold's Mine. This was foreseeable."³²⁹
175. The State's response was again insufficient, however, and sometimes misguided. The day after the attack, 18 May 2023, the Ministry of Mines and Energy issued a press release announcing that together with the ANM, it would "implement a series of measures to further the development of an agro-mining district that would allow for diversification of the production chain and provide an alternative means of livelihood for traditional miners and the community."³³⁰
176. Unfortunately, after the tragic events of May 2023, criminal actions against Continental Colombia and its personnel continued unabated. Among other examples:

³²⁶ "Terrorist attack at the Buriticá Mine" Continental Colombia Gold (17 May 2023) (C-21).

³²⁷ Summary of 17 May 2023 Terrorist Attack, dated Dec. 2024 (C-428)

³²⁸ Lina María Vega, "Attack at the Buriticá Mine was inevitable: Anibal Gaviria criticizes the Minister of Mines and Energy," *W Radio* (18 May 2023) (C-340).

³²⁹ Lina María Vega, "Attack at the Buriticá Mine was inevitable: Anibal Gaviria criticizes the Minister of Mines and Energy," *W Radio* (18 May 2023) (C-340).

³³⁰ "Press release" Ministry of Mines and Energy (18 May 2023) (C-339).

- a) On 17 July 2023, two employees of Continental Colombia were injured in an attack with explosives and firearms.³³¹
- b) On 4 August 2023, a security contractor employed by Continental Colombia was injured in an attack with explosives and firearms.³³²
- c) On 1 October 2023, an employee of Continental Colombia and an illegal miner were injured in an attack with explosives and firearms.³³³ As the Company reported, the illegal miner “was assisted by members of the company’s emergency and rescue teams in accordance with Human Rights protocols and transported to a medical facility.”³³⁴
- d) On 9 December 2023, a security contractor employed by Continental Colombia was injured in an attack with explosives and firearms.³³⁵

177. Through 2023, illegal miners continued to progress in the underground tunnels. On 19 September 2023, for example, Continental Gold documented that illegal miners had reached [REDACTED] near the main access ramp to the Higabra tunnels, an especially critical point as, if the Company had lost that area, it would have been entirely locked out of the Mine.³³⁶ As [REDACTED] states:

[REDACTED]

³³¹ Email from Continental Gold to the Office of the Inspector General, dated 27 Jul. 2023 (C-40).

³³² Email from Continental Gold to the Office of the Inspector General, dated 8 Aug. 2023 (C-41).

³³³ Santiago Olivares Tobón, “Clashes inside the Buriticá mines left several injured” *El Colombiano* (2 Oct. 2023) (C-22).

³³⁴ Sebastián Carvajal Bolívar, “Antioquia: Explosive attack at Buriticá mine leaves three people injured” *El Tiempo* (3 Oct. 2023)(C-374).

³³⁵ Criminal Complaint filed by Continental Colombia with the Office of the Attorney General, dated 10 Dec. 2023 (C-42).

³³⁶ Continental Colombia Internal Report re Higabra Mine, dated 19 Sept. 2023 (C-372).

[REDACTED]

178. The ongoing invasion of the Mine through 2023 continued to have serious consequences on the Mine's operations and mineral reserves, as described below.³³⁸

3. Through 2024, illegal miners continued to advance freely in the Rampa Sur and Higabra tunnels

179. Violence continued unabated during 2024, and once again the Company documented what occurred. For example:

- a) On 24 February 2024, three employees of Continental Colombia were injured in an attack with explosives;³³⁹
- b) On 1 April 2024, one security contractor was injured in an attack with explosives and firearms;³⁴⁰

■ [REDACTED]
[REDACTED]¹

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

³³⁷ [REDACTED]

³³⁸ See section II.H.

³³⁹ "Explosive attack at Buriticá mine leaves three employees injured" *El Colombiano* (25 Feb. 2024) (C-23).

³⁴⁰ Criminal Complaint filed by Continental Colombia Gold with the Office of the Attorney General, dated 4 Apr. 2024 (C-43).

³⁴¹ Criminal Complaint filed by Continental Colombia Gold with the Office of the Attorney General, dated 12 Apr. 2024 (C-44).

³⁴² Criminal Complaint filed by Continental Colombia Gold with the Office of the Attorney General, dated 13 Apr. 2024 (C-45).

³⁴³ Criminal Complaint filed by Continental Colombia with the Office of the Attorney General, dated 17 May 2024 (C-46).

■ [REDACTED]
[REDACTED]

- g) On 18 June 2024, two individuals engaged in illegal mining were found dead in one of the Mine’s shafts used by illegal miners,³⁴⁵ and
- h) On 27 October 2024, four other dead bodies were found near the Mine. According to law enforcement authorities, the individuals died from gas inhalation while mining illegally.³⁴⁶

180. In parallel, on 31 May 2024 the ANM issued a second formal Emergency Resolution, ordering the authorities to proceed with the “immediate suspension of all development, preparation, and exploitation activities related to unauthorized mining within the mining title P7495011 [i.e., the Project] in the jurisdiction of the municipality of Buriticá” and noting that these activities “are being conducted without the authorization of the mining titleholder [i.e., the Company].”³⁴⁷ Just like the first Emergency Resolution issued by the ANM in August 2022, this second order of the Colombian mining authority remains unenforced.

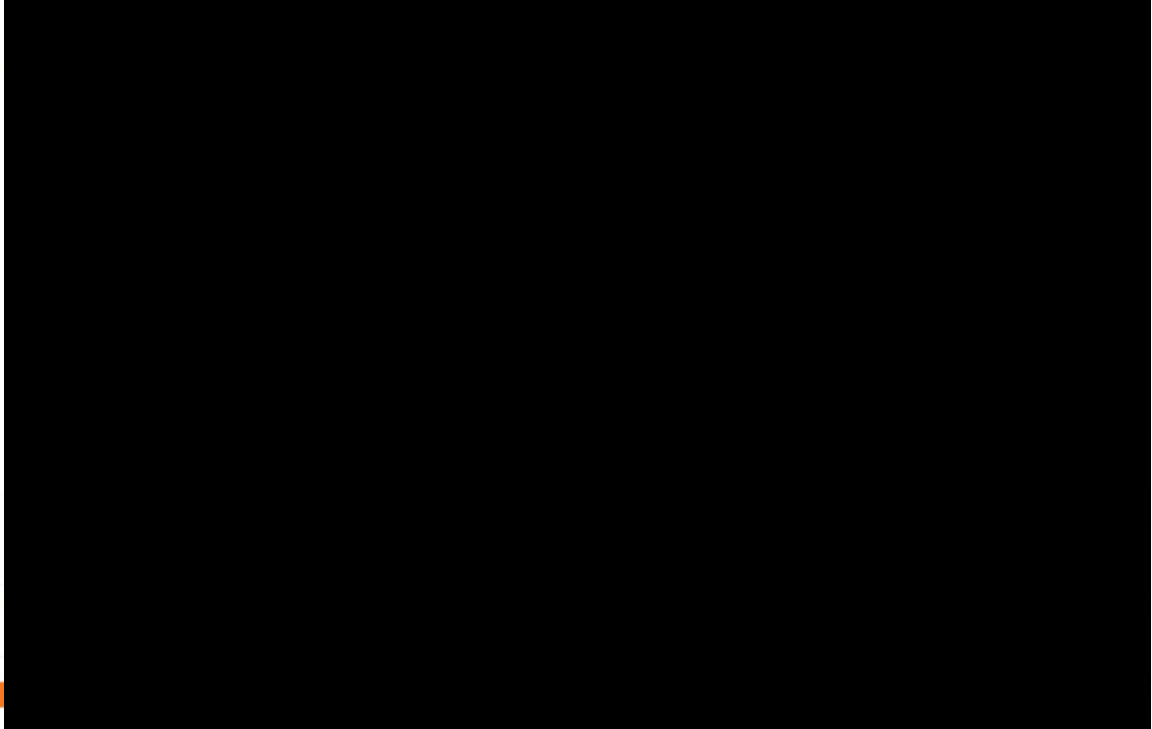
181. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

³⁴⁴ Criminal Complaint filed by Continental Colombia Gold with the Office of the Attorney General, dated 19 May 2024 (C-47).

³⁴⁵ “Bodies of missing miners recovered in Buriticá, Antioquia” *El Colombiano* (18 Jun. 2024) (C-406).

³⁴⁶ Santiago Olivares Tobón, “Authorities found four dead bodies along the highway to Urabá, Antioquia” *El Colombiano* (27 Oct. 2024) (C-419).

³⁴⁷ ANM Emergency Report No. 007-E, dated 31 May 2024 (C-404) p. 30.



182. [REDACTED]
[REDACTED]
[REDACTED]

H. CLAIMANT REPEATEDLY ALERTED COLOMBIA TO THE SITUATION AT THE MINE AND IMPORED IT TO ACT, TO NO AVAIL

1. In late 2022, the Company repeatedly raised concerns about illegal mining with key State security authorities

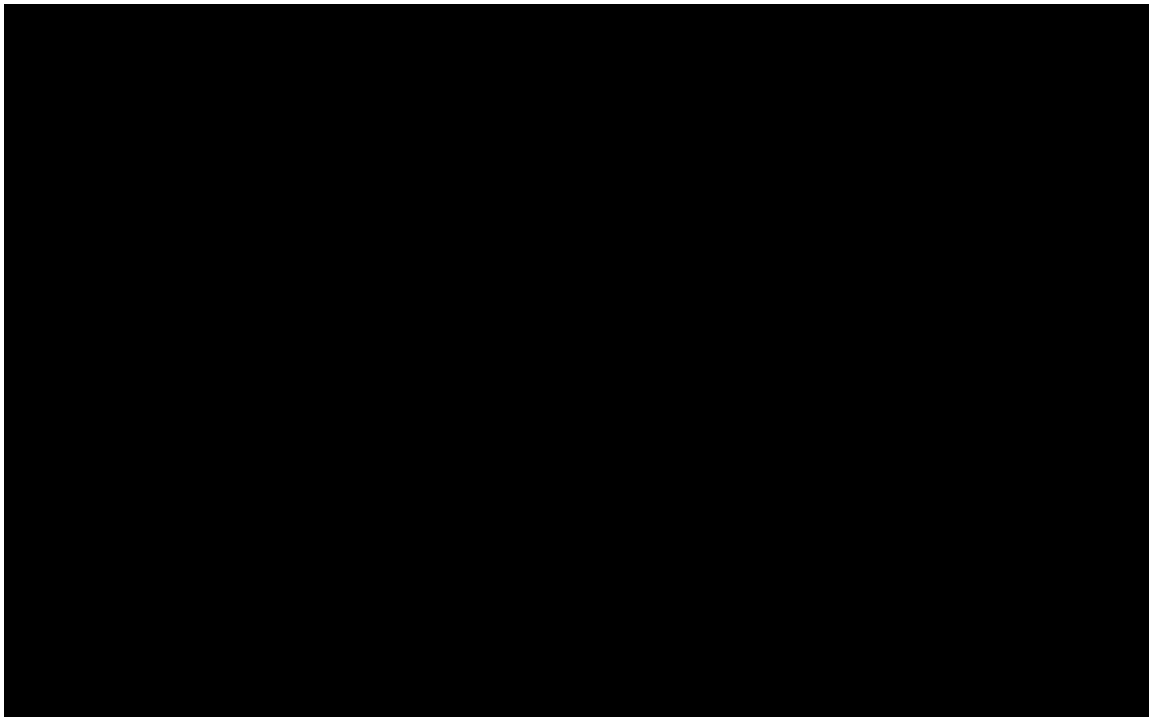
183. As illegal miners resumed their attacks on the Mine in the second half of 2022, Continental Colombia repeatedly raised the issue with relevant State authorities. Among other examples:

- a) Following the Company's repeated requests, on 7 October 2022, Continental Colombia representatives secured a meeting at the Colombian National Police Gendarmerie and Environmental Protection Division. Colonel Willian Castaño Ramos recognized the deteriorating security situation at the Mine and the

³⁴⁸ Records of Detonations, Improvised Explosive Devices, and Shootings (2020-2024) (C-433).

involvement of criminal groups, and the State officials in attendance promised action.³⁴⁹

- b) In response to the Company's continued outreach, on 9 October 2022, Continental Colombia representatives engaged in further separate discussions with General Oscar Leonel Murillo, the General Commander of the Seventh Military Region of Colombia (with jurisdiction over the Mine). During the meeting, General Murillo acknowledged the security issues at the Mine and promised action.³⁵⁰
- c) On 13 November 2022, Continental Colombia attended a meeting with the National Police and shared with them a map showing the private properties that were used as staging grounds by illegal miners to access the Mine's tunnels,³⁵¹ as reproduced below.³⁵² As explained in Section II.J.3 below, many of these same illegal entrances remain active today.



³⁴⁹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 7 Oct. 2022 (C-310).

³⁵⁰ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 9 Oct. 2022 (C-311).

³⁵¹ Minutes of Meeting between Continental Gold and National Police, dated 13 Nov. 2022 (C-317) p. 1; [REDACTED]

³⁵² "Security Situation at the Buriticá Mine," Continental Colombia Gold (2 Nov. 2022) (C-313).

- d) On 1 December 2022, Continental Colombia wrote to the Secretary of Security of Antioquia, advising that two illegal miners had been found seriously injured while handling improvised explosive devices in an illegal connection to the Yaraguá tunnels.³⁵³ The Company reiterated its request for assistance.
- e) On 5 December 2022, the Company held a meeting with members of the Colombia's institution for human rights oversight and citizen protection ((*Defensoría del Pueblo*)), during which the Colombian officials advised that they would further investigate and understand the reasons why the interdepartmental mechanisms and actions for combating illegal mining contemplated by the law had not been implemented.³⁵⁴ These same officials also agreed that illegal mining had infringed the Company's rights.³⁵⁵

2. In early January 2023, the Company sought the direct assistance of President Petro

- 184. On 25 January 2023, Continental Colombia attended a meeting with the Deputy Minister of Defense Alberto Lara, among other State officials. During the meeting, Continental Gold reported on the security situation at the Mine and requested effective support from the Ministry of Defense. The Deputy Minister stated that he would instruct the Ministry of Mines and Energy to take the lead against illegal mining at the Mine, with the Ministry of Defense providing support. The Deputy Minister also acknowledged that the Ministry of Defense had a duty to protect the Company's rights, assets and personnel. He gave his assurances that the on-site military forces would remain in place.³⁵⁶
- 185. On 26 January 2023, Continental Colombia wrote to President Petro with an "Urgent Request for Intervention" at the Mine due to the increase of criminal activities through 2022.³⁵⁷ As Continental Gold explained, "the ongoing illegal mining activities carried out

³⁵³ Letter to from Continental Colombia to the Secretary of Security of Antioquia, dated 1 Dec. 2022 (C-318).

³⁵⁴ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 5 Dec. 2022 (C-320).

³⁵⁵ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 5 Dec. 2022 (C-320).

³⁵⁶ Summary of the Meeting between Zijin Mining and the Vice Minister of the Ministry of the Interior of Colombia, dated 25 Jan. 2022 (C-334).

³⁵⁷ Letter from Zijin Continental Gold to President Petro, dated 26 Jan. 2023 (C-26).

by the *Clan del Golfo* continues to pose significant risks not only to the Company's personnel but also to the lives and safety of individuals involved in these irregular activities" and the situation "has exceeded the capacity of local law enforcement, which has been unable to stop the illegal mining activities impacting the municipality of Buriticá, and therefore the security situation has further deteriorated."³⁵⁸

186. On 11 February 2023, Continental Colombia met again with the Commander of the Colombian Seventh Army Division, General Oscar Murillo. During the meeting, the Company reported on its recent interactions with various government authorities (such as the Ministry of Defense), including meetings, letters sent to the President and other relevant agencies requesting urgent intervention against illegal mining.³⁵⁹ Mr. Murillo asked the Security Secretary of Antioquia and the Director of Antioquia Prosecutor's Office to inquire about the measures being taken against illegal mining and emphasized the need for urgent attention. Following the meeting, there was no effective action by Colombia to improve the security situation at the Mine.
187. As the security situation at the Mine continued to deteriorate, the Chairman of the Zijin Mining Group, Mr. Chen Jinghe, travelled to Colombia in the hope of securing a meeting with President Petro and unlocking the situation. As explained by [REDACTED]:

On 21 February 2023, as the situation at the Mine had grown intolerable, I accompanied Chairman Chen to Colombia. We were hoping to meet with President Petro to discuss the situation but were unsuccessful in arranging a meeting. We instead had two separate meetings. The first meeting was with the Vice Minister of the Interior, Gustavo Garcia. During this meeting, Chairman Chen raised the issue of illegal mining and its impact on the Mine's operations, the safety of the workers, and the environment. He also expressed his hope that the Government would engage in a crackdown on illegal mining to safeguard the operations at the Mine. In response, Vice Minister Garcia acknowledged the severity of the illegal mining issue and promised to coordinate joint actions on behalf of the Government. The Vice Minister also assured us that, if illegal mining

³⁵⁸ Letter from Zijin Continental Gold to President Petro, dated 26 Jan. 2023 (C-26).

³⁵⁹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 11 Feb. 2022 (C-330).

involved violence, the national authorities would intervene according to the law.³⁶⁰

188. With the situation continuing to deteriorate, the Company persisted in seeking assistance from Colombian authorities. On 10 March 2023, the Company's representatives met with the Minister of the Interior, Alfonso Prada, and the Minister of Defense, Ivan Velasquez, among others. During this meeting, Minister Prada shared his comments that illegal mining in Colombia involved a significant interest chain and corruption, which required measures to be taken.³⁶¹ No further assistance from the Colombian State arrived.
189. On 8 May 2023, the Company again wrote to President Petro with an "urgent request for intervention."³⁶² No response was received at the time.

3. Following the lethal bombing on 17 May 2023, the Company continued to request immediate action and participated in a series of inconclusive meetings

190. After the bombing of 17 May 2023, described above, Continental Colombia urgently sought to meet with the State authorities. As described by [REDACTED] and reflected in the contemporaneous documents:

The attack of 17 May 2023 drew headlines, however, and could not be ignored. In the weeks that followed, the company participated in multiple meetings with various departments and agencies of the Colombian Government in which we sought help to protect our investment in the Mine from the *Clan del Golfo* and illegal miners, including those who had perpetrated this attack.³⁶³

191. In particular, on 22 May 2023, Continental Colombia representatives attended a meeting with the Minister of Defense (Iván Velásquez), the Minister of Interior (Luis Fernando Velasco), the Minister of Mines (Irene Vélez), and the President of the ANM (Luis Álvaro Pardo). After the Company reported on the negatives impacts of illegal mining on the

³⁶⁰ [REDACTED]

³⁶¹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 10 Mar. 2023 (C-335).

³⁶² Letter from Zijin Continental Gold to President Petro, dated 28 May 2023 (C-39).

³⁶³ [REDACTED]

Project's operations, the Minister of Defense said that the military and police would immediately formulate an action plan and that he would raise the issue of illegal mining at the ministerial meeting (where President Petro would participate) that would take place on 23 May 2023.³⁶⁴

192. On 25 May 2023, the Company held a further meeting with the Minister of Defense (Iván Velásquez), the Deputy Minister of Interior (Gustavo García), and the General Commander of Colombian Armed Forces (General Luis Ospina). During the meeting, the Ministry of Defense stated that underground action would not be considered at this stage, including because of the presence of the *Clan del Golfo* at the Mine, and that the plan to protect the Mine at that time would be limited to surface control. At the conclusion of the meeting, the Ministry of Defense delegated the General Commander of the Colombian Armed Forces, General Ospina, to lead the development of an action plan against illegal mining activities at the Mine. General Ospina confirmed that he was aware that the Company had identified and shared with the State the locations of the illegal tunnel entrances through which the illegal miners could access the Mine via private land.³⁶⁵
193. In this context, on 28 May 2023, Continental Colombia again wrote to President Petro, reiterating its urgent requests for intervention, and urging the implementation of certain security measures including:
- a) The implementation of a comprehensive humanitarian and environmental intervention strategy in collaboration with governmental authorities and communities;
 - b) The appointment of a specialized prosecutor, along with a delegated investigative task force to address and coordinate criminal complaints in connection with illegal mining activities;

³⁶⁴ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 22 May 2023 (C-341).

³⁶⁵ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 25 May 2023 (C-342).

- c) The enhancements to the capacity of law enforcement agencies to combat illegal mining activities in the underground areas of the Mine;
 - d) The establishment of humanitarian exit corridors through the Company's tunnels, under the supervision of Human Rights guarantors and the Ministry of Interior to allow illegal miners to safely exit the Mine; and
 - e) The implementation of a registry of traditional, small-scale and illegal miners who exit the tunnels under the supervision of ANM and Human Rights guarantors.³⁶⁶
194. On 29 May 2023, the Company attended a meeting at the Attorney General's Office with the Deputy Attorney General, Martha Mancera, among others. During this meeting, the Deputy Attorney General acknowledged the Government's duty to protect Continental Gold's rightful interests in the Mine.³⁶⁷
195. On 31 May 2023, the Company's representatives attended the Buriticá Municipal Council meeting, during which council members recounted that illegal miners had been seen transporting food underground in plain sight of the national police and the military.³⁶⁸
196. On 1 June 2023, during an interview with a radio station, the Company's Director of Public Affairs, Jorge Castaño, [REDACTED] [REDACTED] Mr. Castaño reported that the Company had been asking Colombia for assistance and was "still awaiting a response [from Colombia] to its various alerts and pleas of assistance to the Government to ensure the conditions and rights in the areas where the [the Company] operates."³⁶⁹
197. That same day, the Company's representatives met with the Vice Minister of Defense, Alberto Lara, among others. At this meeting, Vice Minister Lara promised that effective

³⁶⁶ Letter from Zijin Continental Gold to President Petro, dated 28 May 2023 (C-39).

³⁶⁷ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 29 May 2023 (C-344).

³⁶⁸ Minutes of the Buriticá Municipal Council meeting, dated 31 May 2023 (C-346).

³⁶⁹ Cristian Medina, "60% of Zijin Continental Gold's tunnels in Buriticá are under illegal control," *W Radio* (1 Jun 2023) (C-347).

and sustained measures would be taken until the influence of illegal mining was “fully eradicated.”³⁷⁰

198. On 2 June 2023, the Company received a letter from the Ministry of Defense in response to the Company’s letter to President Petro of 8 May 2023 (*i.e.*, from before the bombing of 17 May 2023), which included a list of historical and isolated actions that had previously been taken to protect the Mine.³⁷¹ As [REDACTED] explains, the “public order situation at the Mine progressively and drastically deteriorated,” with illegal mining activities expanding into other areas of the Project, underscoring the Government’s failure to act.³⁷²
199. On 3 June 2023, the Company’s representatives attended a meeting with the Director of Operations of the National Army, General Coy, who promised that an operation (supposedly underway) would involve a surge of security forces aimed at “completely eradicating the threat of illegal mining and restoring public order.”³⁷³
200. On 11 June 2023, the Company again wrote to President Petro advising him of the “[c]onsequences of not having immediate and effective intervention against illegal mining in Buriticá,” demanding meaningful action against the criminal activities taking place at the Mine, and highlighting the urgency of immediate action as [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
201. On 13 June 2023, the Company received another letter from the Ministry of Defense, again listing certain historical and isolated actions that had been implemented to address the situation at the Mine before the May 2023 terrorist attack, including mostly meetings and an alleged strengthening of security checkpoints and the alleged temporary suspension of

³⁷⁰ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated Jun. 1 2023 (C-348).

³⁷¹ Letter from the Ministry of Defense to Continental Colombia Gold, dated 2 Jun. 2023 (C-349).

³⁷² [REDACTED]

³⁷³ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 3 Jun. 2023 (C-350).

³⁷⁴ Letter from Zijin Continental Gold to President Petro, dated 11 Jun. 2023 (C-27).

illegal mining activities.³⁷⁵ As [REDACTED] states, however, the 24/7 checkpoint on the Mine’s access road had been lifted in July 2022 and the illegal mining operations continued to escalate without any “suspension.”³⁷⁶

202. On 13 June 2023 as well, the Company’s representatives attended a meeting with the Ministry of Foreign Affairs, including Deputy Minister Francisco Coy. At the conclusion of the meeting, the officials of the Ministry of Foreign stated that they would promote the formation of an inter-ministerial joint working group to combat illegal mining activities at the Mine.³⁷⁷

4. Following Claimant’s service of its Notice of Intent under the Treaty in June 2023, Colombia finally promised a “mega” military action to recover the tunnels, but ultimately failed to take action

203. On 14 June 2023, Claimant and its affiliates provided written notice under the Treaty and sought formal consultations with Colombia over Colombia’s continuing failure to take action against the criminal activities at and around the Mine.³⁷⁸

204. In parallel, Claimant continued to seek assistance. In particular:

- a) On 19 June 2023, the Company’s representatives held a meeting with representatives of the Seventh Military Region of Colombia, including Commander Oscar Murillo. At this meeting Commander Murillo provided a briefing on recent intelligence findings, which included conclusions that the *Clan del Golfo* controlled the region and illegal mining at the Project and evidence of collusion between local police and the *Clan del Golfo* and other illegal miners.³⁷⁹

³⁷⁵ Letter from the Ministry of Defense to Continental Colombia Gold, dated 13 Jun. 2023 (C-352).

³⁷⁶ [REDACTED]

³⁷⁷ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 13 Jun. 2023 (C-353).

³⁷⁸ Notice of Intent to Submit Claims to Arbitration, dated 12 Jun. 2023 and delivered to Colombia on 14 Jun. 2023 (C-33).

³⁷⁹ [REDACTED]
[REDACTED]
[REDACTED]

- b) On 20 June 2023, the Company’s representatives held another meeting with representatives of the Attorney General’s Office, during which the Attorney General confirmed that an investigation into the 17 May 2023 attack had been launched as well as other investigations related to the Mine. Representatives of Continental Gold stressed the need for a comprehensive crackdown on illegal mining.³⁸⁰
- c) On 21 June 2023, representatives of Continental Gold held a meeting with the Chief of the Antioquia Police Department, Carlos Martinez, during which Chief Martinez asked the Company to trust the police’s strong commitment to safeguarding the peace and protecting the legitimate rights of Continental Gold and the public.³⁸¹
- d) Also on 21 June 2023, representatives of Continental Gold held another meeting with the Governor of Antioquia, Anibal Gaviria, who announced that he would urge the national government to take effective action against illegal mining activities. Mr. Gaviria concluded that the Ministry of Mines and Energy had unfortunately demonstrated a pattern of always siding with small-scale local miners, which it frequently conflated with the type of illegal miners operating at the Mine.³⁸²

[REDACTED]

³⁸⁰ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 20 Jun. 2023 (C-356).

³⁸¹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 21 Jun. 2023 (C-358).

³⁸² Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 21 Jun. 2023 (C-357). *See also* [REDACTED] ¶ 51 (“On 21 June 2023, I attended a meeting with the Governor of Antioquia, Anibal Gaviria, among others. During this meeting, the Governor explained how efforts to combat illegal mining had to be supported by the leadership of the national Government and that, to date, the current administration, including, in particular, the Minister of Mines and Energy, had demonstrated, in his opinion, a clear preference for small-scale miners which, the Governor believed, he had conflated with illegal miners. He concluded that, if the national Government did not change its stance on mining, enforcement actions against the illegal miners would not take place.”).

- e) On 4 July 2023, Continental Gold representatives held a meeting with the Mayor of Buriticá, Luis Hernando, during which Mayor Hernando noted that the attitude of the current administration towards mining and multinational companies, in particular, differed from that of prior administrations.³⁸³
- f) On 5 July 2023, Continental Gold again wrote to President Petro with respect to the “Continued illegal mining activities in Buriticá, Antioquia and repeated request for urgent intervention.”³⁸⁴
205. As [REDACTED] explained, a first consultation meeting under the Treaty took place on 25 July 2023.³⁸⁵ Besides representatives of Claimant and its affiliates, the meeting was attended by a team from the agency in charge of the State’s legal defense, the *Agencia Nacional de Defensa Jurídica del Estado* (“ANDJE”). ANDJE explained that a working group involving various governmental departments was being created, undertook to coordinate the response, and invited Claimant to communicate exclusively with it.³⁸⁶
206. On 13 August 2023, following the meeting with ANDJE, the Company received a letter from Colonel Oscar Ocampo Giraldo, Commander of the Fourth Brigade of the Colombia’s National Army, restating the isolated and ineffective actions taken to protect the Mine and promising that the National Army would continue to protect the Mine.³⁸⁷
207. A second meeting was organized by ANDJE and scheduled for 13 September 2023.³⁸⁸ This meeting was to be attended by representatives of the interdepartmental working group to report on progress. In advance of the meeting, Claimant (through counsel) sent a list of concrete initial actions that it invited Colombia to take, including:

³⁸³ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 4 Jul. 2023 (C-361).

³⁸⁴ Letter from Continental Colombia to President Petro, dated 5 Jul. 2023 (C-49).

³⁸⁵ [REDACTED]

³⁸⁶ [REDACTED]

³⁸⁷ Letter from the Minister of Defense to Continental Colombia Gold, dated 13 Aug. 2023 (C-367).

³⁸⁸ [REDACTED]

- a) Reclaiming, as a first step, the most strategic underground areas of the Mine currently occupied [REDACTED];
- b) Establishing control of the access roads to the Mine and associated facilities and maintaining continuous monitoring;
- c) Establishing control of surface areas that were used as staging ground by illegal miners and maintaining continuous monitoring; and
- d) Identifying and terminating illegal connections to the electricity grid used to support illegal mining activities.³⁸⁹

208. During the meeting, the Director of Public Security at the Ministry of Defense, Ms. Daniela Gómez, explained that Colombia was planning a “mega” military operation to secure the Mine and reclaim the underground tunnels.³⁹⁰ Ms. Gómez mentioned that this large-scale operation would include electricity power cuts to illegal miners in addition to military operations.³⁹¹ When pressed about the timing, she explained that the operation would take place before the end of November 2023.³⁹²

³⁸⁹ Email from Claimant’s Legal Counsel to Colombia, dated 23 Aug. 2023 (C-368); Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 15 Sept. 2023 (C-370).

³⁹⁰ [REDACTED]; *see also* Email from Claimant’s Legal Counsel to Colombia, dated 31 Oct. 2023 (C-375). (“As this process has now been completed, we understand that the Ministry of Defense will now finally undertake the major action (described during our September meeting by Director of Public Security Daniela Gomez Rivas as a ‘mega operation’) that has long been promised to secure the Mine (including termination of atypical electric connections and underground operations to recover tunnels including, for instance, [REDACTED], as a step to resolve the ongoing impacts on the Mine and the investment.”); Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 15 Sept. 2023 (C-370). (“After classification is complete, the government will launch large-scale actions, including full power cuts by EPM on illegal theft and abnormal use, and regional military and police operations. Since classification will be completed in September and local government elections are in October, for election order maintenance and limited military/police capacity, large-scale operations including power cuts are planned to start mid-November.”).

³⁹¹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 15 Sept. 2023 (C-370) (“After classification is complete, the government will launch large-scale actions, including full power cuts by EPM on illegal theft and abnormal use, and regional military and police operations. Since classification will be completed in September and local government elections are in October, for election order maintenance and limited military/police capacity, large-scale operations including power cuts are planned to start mid-November.”).

³⁹² [REDACTED]; *see also* Email from Claimant’s Legal Counsel to Colombia, dated 23 Aug. 2023 (C-368).

209. As the weeks were passing with no sign of the promised operation, on 7 November 2023, Claimant wrote to ANDJE to inquire about the status of the upcoming operation and note its concern as there was “not yet an overall integrated plan to restore and maintain full access and use of the mine in the wake of the upcoming military actions.”³⁹³ On 11 November 2023, the Company received a call from the Director of National Security, Ms. Gómez, advising that the operation would take place in the following weeks.³⁹⁴ ANDJE wrote back on 22 November 2023 that the agency had consulted with the Ministry of Defense and could not share details about the timing of the upcoming military operation, but confirmed that the authorities were working on it and that the Company would be contacted if and whenever the commander in charge saw it as appropriate.³⁹⁵
210. The promised “mega” military operation did not take place in November 2023 (or later). Claimant was never directly provided any explanation for Colombia’s failure to carry out that operation. During a final meeting on 9 January 2024, ANDJE had no explanation and also had nothing to report regarding the various alleged workstream pursued by the interdepartmental working group.³⁹⁶
211. Ms. Daniela Gómez, who as Director of Public Security had advised Claimant that Colombia was preparing the “mega” military operation for November 2023 and had been recently appointed Deputy Minister of Defense, later took to the press, however. In an interview given in March 2024, she revealed the true reason for the Government’s failure to carry out on its promise: “I cannot provide private security to a multinational that makes money off Colombia’s gross domestic product.”³⁹⁷ In that same interview, Ms. Gómez accused the Company of “judicial harassment.”³⁹⁸

³⁹³ Email from Claimant’s Legal Counsel to Colombia, dated 7 Nov. 2023 (C-376).

³⁹⁴ Email from Claimant’s Legal Counsel to Colombia, dated 1 Dec. 2023 (C-378).

³⁹⁵ Email from Colombia to Claimant’s Legal Counsel, dated 22 Nov. 2023 (C-377); *see also* [REDACTED].

³⁹⁶ [REDACTED].

³⁹⁷ Santiago Rodríguez Álvarez and Manuela Galvis, “The Clan del Golfo is winning the underground gold war in Buriticá” *La Silla Vacía* (10 Mar. 2024) (C-394).

³⁹⁸ Santiago Rodríguez Álvarez and Manuela Galvis, “The Clan del Golfo is winning the underground gold war in Buriticá” *La Silla Vacía* (10 Mar. 2024) (C-394). Ms. Gómez later tried to walk back that explanation. In an

212. The lack of political will to protect the Mine has also been re-confirmed time and again in meetings with Colombian officials. For example, on 27 December 2024, representatives of Continental Gold met with the newly appointed Director General of the National Police, José Roa, and the Head of UNIMIL, Javier Cardenas. During this meeting, Director General Roa commented that “the technical difficulty of enforcement actions is not high” and “[t]he police [is] willing to intervene, and from a capability standpoint, the state is fully able to stop illegal mining.”³⁹⁹ However, he noted, that the “key lies in the government’s stance,” suggesting political will was missing.⁴⁰⁰ In this context, he suggested that “the Company should lobby the President and high-level government officials through diplomatic channels.”⁴⁰¹

5. Claimant has also unsuccessfully used all available legal avenues under Colombian law

213. As a matter of Colombian constitutional law and as a legacy of the country’s tragic history with paramilitary groups, Claimant itself is not in a position to use force (for example, through security contractors) to recover the areas of the Mine that are illegally occupied by third parties. Only the National Police and armed forces are constitutionally authorized to do so.⁴⁰²

interview given in November 2024, and notwithstanding that previous administrations had successfully carried out Operation Creta and Operation Hades in the Mine, she claimed that Colombia lacked the resources to “flush out” illegal miners from what she called “a subterranean theater of operations.” Ken Silva, “Report: Colombia Drug Cartel is Now in the Gold Mining Business,” *Money Metal Exchange* (13 Nov. 2024) (C-425).

³⁹⁹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 27 Dec. 2024 (C-431).

⁴⁰⁰ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 27 Dec. 2024 (C-431).

⁴⁰¹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 27 Dec. 2024 (C-431).

⁴⁰² Political Constitution of the Republic of Colombia, dated 20 Jul. 1991 (C-53) Art. 223. (“Only the Government may import and manufacture weapons, war ammunition, and explosives. No one may possess or carry them without authorization from the competent authority.”); Art. 22A (“[T]o ensure non-repetition and to secure the State’s legitimate monopoly over the use of force and weapons, particularly by the Public Forces, across the entire territory, it is strictly prohibited to create, promote, instigate, organize, train, support, tolerate, conceal, favor, finance, or employ—whether officially or privately—organized armed civilian groups for any illegal purpose, including those known as self-defense groups or paramilitaries.”); Decree Law 356 of 1994, dated Feb. 11 1994 (C-509) Art. 22(a); Constitutional Court of Colombia, Judgment No. C-1145 de 2000, dated 30 Aug. 2000 (C-55) (“[T]he modern State has the function of monopolizing the use of force”).

214. Continental Colombia nonetheless used all available legal avenues under Colombian law to obtain relief and expel criminals and illegal miners from the Mine. These included the filing of *amparos administrativos* and criminal complaints.
215. ***Amparos Administrativos.*** The *amparo administrativo* is a legal action of protection established in Chapter VIII of the Mining Code. Under Article 307 of the Mining Code, the concessionaire of a mining title may request provisional protection to immediately suspend any occupation, disturbance, or usurpation by third parties within the area covered by a mining title.⁴⁰³ The concessionaire has discretion to request this protection either from the mayor (of the municipality where the mining title is located) or from the ANM.⁴⁰⁴ Upon receiving an *amparo administrativo*, the mayor or ANM (as applicable) is required by law to conduct a site visit and confirm the presence of illegal mining activities within the concessionaire's mining title.⁴⁰⁵ If the presence of illegal mining activities is confirmed, then the ANM or the mayor, as applicable, is required to issue an order for the eviction of the trespasser, as well as the immediate suspension of their mining activities and operations, the confiscation of all equipment used for exploitation, and the transfer of the extracted minerals to the concessionaire.⁴⁰⁶ Orders to suspend illegal mining activity are to be enforced under Colombian law by the various law-enforcement agencies, including the Municipality and police inspectors.⁴⁰⁷ Further, the ANM or the mayor, as applicable, must notify the competent criminal authority (the Attorney General's Office) of the trespasser's illegal exploitation activities.⁴⁰⁸

⁴⁰³ Mining Code (C-58) Art. 307. *See also* Art. 306 of the Mining Code which aims to immediately suspend any mineral exploitation activity carried out without a registered mining title in the National Mining Registry. *Id.* Art. 306.

⁴⁰⁴ Mining Code (C-58) Art. 307.

⁴⁰⁵ Mining Code (C-58) Art. 309.

⁴⁰⁶ Mining Code (C-58) Art. 309.

⁴⁰⁷ *See* Law 1801 of 2016, National Code of Security and Citizen Coexistence (C-496) Article 206(6) (stating that police inspectors have the authority to apply certain corrective measures, including the "permanent suspension of an activity").

⁴⁰⁸ Mining Code (C-58) Art. 309.

216. Since 2022, Continental Colombia has filed numerous *amparos administrativos* against illegal miners, but the Government's response has been ineffective.⁴⁰⁹ As one example among many, the Mayor granted an *amparo administrativo* in June 2023, ordering the expulsion of illegal miners in part of the Concession area, with the assistance of the police and armed forces.⁴¹⁰ That order has not been enforced. The Mayor in fact acknowledged in his *amparo* decision that the Municipality of Buriticá "does not have the technical or operational capacity to act" against illegal mining,⁴¹¹ and, referring to the *Clan del Golfo*, noted that "public officers feel intimidated and are afraid to act."⁴¹²
217. ***Criminal Complaints.*** Under Colombian law, a criminal complaint (or *denuncia penal*) is a formal declaration through which a person notifies the Attorney General's Office of the occurrence of a criminal offense.⁴¹³
218. From 2020 through June 30, 2025, Continental Colombia has filed more than 30 criminal complaints with the Attorney General's Office notifying the occurrence of criminal

⁴⁰⁹ [REDACTED].

⁴¹⁰ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) p. 26, Art. 2 ("ORDER the eviction and the immediate and definitive suspension of the activities performed by unidentified persons, with the enforcement support of the national police, and the national army, the seizure of the elements installed for the exploitation, and to give to the aggrieved party the extracted minerals in the area of the mining title P7495011.").

⁴¹¹ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 23 ("Despite everything, the municipality takes all actions within its power, although it has manifested in some scenarios with the entities at the departmental level, the Government of Antioquia, and the national level, central government, the Vice-Ministry of Mines, that it does not have the technical and operational capacity to act against the phenomena of illegal and informal mining, since the problem is multidimensional and requires a comprehensive, intersectoral strategy, coordinated with the intervention of the institutions and authorities, which have competences in social matters, security and defense, environmental and mining.").

⁴¹² Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 23 ("Indeed, all the capacity of the State was focused on safeguarding the lives of Colombians [in relation to the pandemic]. However, the illegal mining activities continued, went from carrying out activities of extraction of the gold ore that was then taken to the surface, to perform the entire process of extraction and benefit in the subsoil, that is, the miners entered the underground and stayed there for periods of 20 to 30 days. The organized armed groups -GAO- (GULF CLAN) and -GAD- that are financed from this activity, were strengthened ... altering the public order, in the conditions of security, and peace of the population of Buriticá. Similarly, the guarantees for the exercise of public functions, on the understanding that officials feel intimidated, and are afraid to act").

⁴¹³ Decision No. T-1077/05 of the Constitutional Court, dated 21 Oct. 2005 (C-67).

offenses in connection with illegal mining activities carried out at the Mine.⁴¹⁴ In addition to these, Continental Colombia has filed multiple reports and warned authorities of the attacks, in particular the Fourth Prosecutor Delegate before the Specialized Circuit Criminal Judges, under the Office of the Specialized Director for Crimes Against the Environment and Natural Resources.⁴¹⁵

219. Similar to the situation with the *amparos administrativos*, however, the vast majority of these criminal proceedings and complaints have not resulted in convictions.⁴¹⁶

I. VARIOUS COLOMBIAN OFFICIALS, INCLUDING COLOMBIA’S INSPECTOR GENERAL, HAVE FAULTED THE COLOMBIAN GOVERNMENT FOR ITS INACTION AND ABANDONMENT OF THE MINE

220. Over the years, various Colombian agencies and officials have faulted the Colombian Government for its failure to protect Claimant and its investment. For example, during parliamentary debates in December 2023, Representative Juan Fernando Espinal Rodriguez (elected in the Department of Antioquia) faulted the Colombian Government for its “total abandonment” of the Mine and the “incredible” situation of lawlessness that had been allowed to flourish at the site.⁴¹⁷
221. The most powerful criticisms of the Government’s inaction came from two independent agencies: the Office of the Inspector General of Colombia (*Procuraduría General de la República*) (“**Office of the Inspector General**”), and the Office of the Ombudsman (*Defensoría del Pueblo*) (“**Office of the Ombudsman**”). In addition to executive, legislative and judicial branches, and to guarantee checks and balances, the Colombian Constitution establishes the Office of the Inspector General and the Office of the Ombudsman as autonomous and independent agencies to perform oversight functions, the

⁴¹⁴ See Criminal Complaints (C-103).

⁴¹⁵ These reports were submitted as evidence and formal records of complaint within the national consolidated case created by the Attorney General’s Office to investigate environmental crimes committed within the Company’s mining title area.

⁴¹⁶ [REDACTED].

⁴¹⁷ Minutes of the Plenary Congressional Session, dated 14 Dec. 2023 (C-51) p. 28.

former responsible for overseeing public officials' conduct and disciplinary control and the latter in charge of human rights oversight and citizen protection.⁴¹⁸

222. Following the deadly bombing on 17 May 2023, the Office of the Inspector General took notice of the situation at the Mine. On 19 May 2023, the then-Inspector General, Margarita Cabello, issued a press release in which she publicly acknowledged that the Company had previously and repeatedly reported to the Government the critical situation of public order disturbance at the Mine and the threats to the safety and integrity of its workers, and further announced that her office would launch a formal investigation into possible negligence.⁴¹⁹ In addition, Inspector General Cabello called on the Government, at the National and local levels, to “take all necessary measures to provide guarantees of protection to activities legally granted by the State, such as mining-energy activities, and guaranteeing the life and safety of citizens against criminal actors who act outside the law and institutions, so that events such as those that happened [at the Mine] would not occur again.”⁴²⁰
223. On 29 May 2023, the Company was invited to meet with Inspector General Cabello. During the meeting, [REDACTED] briefed her about the security situation at the Mine and its various detrimental impacts. He requested a “swift investigation and arrest of perpetrators” due to illegal mining incidents, and “stressed the importance of simultaneously advancing surface and underground operations.”⁴²¹ In response, Ms. Cabello explained that her office would continue to “pressure” the different ministries to “initiate actions against illegal mining as soon as possible” and would issue a formal warning about the Government’s lack of action.⁴²² On 9 June 2023, Ms. Cabello again publicly denounced the insecurity at

⁴¹⁸ Political Constitution of the Republic of Colombia, dated 20 Jul. 1991 (C-53) Arts. 275-284.

⁴¹⁹ “Procuraduría investigará si hubo omisión a solicitud de protección de empresa minera en Buriticá,” *Procuraderia General de la Nacion*, dated 19 May 2023 (C-512); Héctor David Santamaría, “Zijin Continental Gold reported risks and an investigation to determine possible negligence will be launched, says inspector general” *Blu Radio* (19 May 2023) (C-30).

⁴²⁰ “Procuraduría investigará si hubo omisión a solicitud de protección de empresa minera en Buriticá,” *Procuraderia General de la Nacion*, dated 19 May 2023 (C-512).

⁴²¹ Minutes of meeting between Continental Gold and high-ranking Colombian officials (II), dated 29 May 2023 (C-344).

⁴²² Summary of the Meeting between Zijin Mining and the Vice Minister of the Ministry of the Interior of Colombia, dated 29 May 2023 (C-345).

the Mine, stressing that “in Buriticá, for many months, there ha[d] been a strong presence of the *Clan del Golfo*, who are leading the mining exploitation, often sidelining legal mining and frequently disguising themselves as ancestral miners,” and again warning about possible negligence by the State institutions.⁴²³

224. On 16 June 2023, at the request of the Office of the Inspector General, the Company welcomed at the Mine a delegation of over 40 representatives from various governmental departments and agencies, including (in addition to the Office of the Inspector General) the Ministry of Interior, the Ministry of Mines, the Attorney General’s Office, the ANM, UNIMIL and the Secretary of Mines of Antioquia. The delegation inspected the Mine and witnessed first-hand the illegal mining activities in the underground areas of the Project, including the use of weapons and explosives by illegal miners. During the visit, Inspector General Cabello voiced her strong dissatisfaction with the fact that the Ministry of Defense had not seen fit to attend and called on all attending institutions to take effective action urgently to address the situation and protect the Mine.⁴²⁴
225. On 5 July 2023, the Inspector General issued a press release in which it vowed a “high-level inter-institutional meeting with representatives of national, departmental and municipal state entities, in order to verify the measures adopted to address the social and environmental crisis that is occurring in Buritica, Antioquia, due to the illegal exploitation

⁴²³ “In Medellín, Inspector General Margarita Cabello reiterated allegations of insecurity in Buriticá,” *Caracol Radio* (9 Jun. 2023) (C-31).

⁴²⁴ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 16 Jun. 2023 (C-354); *see also* [REDACTED]. (“I attended a meeting at the Project site hosted by Continental Gold that included representatives from the Ministry of the Interior, the Ministry of Mines and Energy, ANM, UNIMIL, the Mayor of Buriticá, the National Attorney General’s Office, and State-owned entity that provides electricity *Empresas Públicas de Medellín* (the “EPM”), among others. These Government officials toured the Project site and witnessed firsthand the effects of the violence perpetrated by the illegal miners, including the use of explosives and gunfire. I remember that the Mayor of Buriticá, Luis Hernando Graciano, specifically confirmed again that criminal organizations controlled the illegal mining at the Project site. The representative of the National Attorney General’s Office, Fernando Jiménez, assured us that investigations into illegal mining at the Project were a top priority, including with a focus on illegal mining on private property, the role of organized criminal organizations, controlling key materials (such as mercury and explosives), and tracing and confiscating illegal financial assets, among other things. For his part, the representative of the EPM promised action with respect to the illegal miners’ use of electricity.”).

of gold.”⁴²⁵ The Inspector General further decried that the “[t]he interference of illegal armed groups in the area, to illegally exploit gold, is harming the ancestral miners, who have been used by them to carry out [this] exploitation” and noted how “Continental Gold mining company [is a] permanent victim of [these] attacks and illegal incursions into its facilities.”⁴²⁶

226. That same day, 5 July 2023, the Company hosted a further site visit at the Mine for representatives of the Office of the Inspector General, the Attorney General’s Office, the Ministry of Interior and others. The Company showed to these officials the surface and underground criminal activities as well as the continuous increase in illegal blasting, as recorded in the Company’s meeting notes:

This inspection and meeting enabled the senior levels of the [Office of the Inspector General] and the National Prosecutor’s Office to gain a deeper understanding of the illegal mining activities occurring at the [P]roject, observe firsthand the serious criminal acts behind illegal mining, and the severe security threats caused by large quantities of illegal weapons and explosives.⁴²⁷

227. The representatives of the Office of the Inspector General acknowledged the “serious impacts” of illegal mining on the Project, as well as on the environment, and noted the “extensive and complex” nature of the crimes taking place at the Mine. They concluded that it was “imperative” to take action against illegal mining.⁴²⁸
228. On 6 July 2023, during a joint-ministerial meeting, the Office of the Inspector General acknowledged the dramatic deterioration of the security situation at the Mine, which was considered “the most severe among all projects nationwide”:

⁴²⁵ Boletín 890-2023, Procuraduría sostendrá mesa interinstitucional para verificar medidas adoptadas por el Gobierno frente a la crisis de minería en Buriticá, Antioquia, *Procuraduría General de la Nación*, dated 9 Jul. 2025 (C-492).

⁴²⁶ “The Attorney General’s Office will hold an inter-institutional table to verify measures adopted by the Government in the face of the mining crisis in Buriticá, Antioquia, Attorney General’s Office, dated 5 July 2023 (C-518).

⁴²⁷ Minutes of on-site visit between Continental Gold and high-ranking Colombian officials, dated 5 Jul. 2023 (C-362).

⁴²⁸ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 5 Jul. 2023 (C-362);

According to Gustavo Guerrero’s [representative from the Office of the Inspector General Office] explanation for organizing this meeting, the Buriticá gold mine project is a locally legal and compliant mining project, but the illegal mining damages it suffers are the most severe among all projects nationwide. If not stopped, it will affect the entire country.⁴²⁹

229. Then, in March 2024, the Office of the Inspector General announced that it would commence disciplinary investigations against the former Mayor of Buriticá, Luis Hernando Graciano Zapata, due to his “failure to duly implement effective measures to address the public order situation in the municipality”⁴³⁰ in connection with illegal mining activities.
230. In December 2024, the Office of the Inspector General also launched a national report on illegal mining activities in Colombia and stressed that “in municipalities such as Santa Fe de Antioquia and Buriticá, illegal mining activities have increased in recent years due to the gold boom. Despite the presence of a significant legal mining operation in Buriticá [the Mine], the prevalence of illegal mining in the area remains highly alarming. This concern is heightened by the involvement of armed actors and the resulting severe mercury contamination of water bodies due to the lack of regulatory control.”⁴³¹
231. The Office of the Ombudsman (the other autonomous and independent agency established under the Colombian Constitution⁴³²) echoed these concerns:
- a) In April 2024, the Office of the Ombudsman alerted that illegal mining was the new way through which armed groups, including the *Clan del Golfo*, were expanding their presence in Colombia. Carlos Camargo, then Colombia’s Ombudsman highlighted that “the ceasefire has been the blank check and the main driver for human rights violations against citizens in the past year and a half.”⁴³³

⁴²⁹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 6 Jul. 2023 (C-364).

⁴³⁰ “Attorney General’s Office announces measures against officials in Antioquia for their inaction against illegal mining” *El Colombiano* (20 Mar. 2024) (C-396).

⁴³¹ “National Report: Illegal Mining and Mercury Contamination in Colombia,” *Procuraduría General de la Nación*, dated Dec. 2024 (C-429).

⁴³² Political Constitution of the Republic of Colombia, dated 20 Jul. 1991 (C-53) Arts. 275-284.

⁴³³ Sofía Alexandra Duarte Torres, “The Ombudsman’s Office warns of an increase in illegal mining by armed groups” *Asuntos Legales* (15 Apr. 2024) (C-400).

- b) In February 2025, the newly elected Ombudsperson, Iris Marín Ortiz, alerted that “73% of the municipalities in the country [Colombia] are under the influence of illegal armed groups. In the last five years, these groups have succeeded in expanding and consolidating their operations,”⁴³⁴ and again urged national and local authorities to take immediate actions.

232. Claimant’s plight has also made headlines both in Colombia and internationally. In November 2024, Caracol Television (one of the most watched national television network in Colombia) aired a documentary recorded in the underground development areas of the Mine that vividly depicted the huge environmental and human costs of criminal mining.⁴³⁵ In November 2024 too, in an article entitled “A Drug Gang Stole 3 Tons of Gold in a Scam So Perfect It’s Still Going,” the Wall Street Journal reported about the surreal situation at the Mine.⁴³⁶

J. THE CRIMINAL OCCUPATION OF THE MINE THAT COLOMBIA HAS TOLERATED HAS CREATED AN ENVIRONMENTAL EMERGENCY AND CAUSED CLAIMANT CONSIDERABLE LOSSES

1. The uncontrolled mining of the Project has severe environmental consequences

233. Colombia’s failure to stop illegal mining activities at the Mine is not only affecting ongoing operations, but is also creating critical environmental consequences. Illegal mining destroys forests and creates devastating environmental impacts in the places in which it operates.⁴³⁷ Illegal miners dynamite the land and use heavy machinery to clear forest for strip-mining.⁴³⁸

⁴³⁴ “Humanitarian crisis in Colombia today: Ombudsman’s Office urges protection for communities affected by armed conflict” Ombudsman’s Office (16 Feb. 2025) (C-456).

⁴³⁵ “Los Informantes team caught in the middle of the war for control of the Buriticá mine” *Noticias Caracol* (YouTube) (3 Nov. 2024) (C-421).

⁴³⁶ Juan Forero, “A Drug Gang Stole 3 Tons of Gold in a Scam So Perfect It’s Still Going,” *The Wall Street Journal* (12 Nov. 2024) (C-424).

⁴³⁷ Joshua Collins, “An underground gold war in Colombia is a ‘a ticking ecological time bomb,’” *Mongabay* (31 Dec. 2024) (C-434).

⁴³⁸ Joshua Collins, “An underground gold war in Colombia is a ‘a ticking ecological time bomb,’” *Mongabay* (31 Dec. 2024) (C-434).

234. Most concerning is the use of mercury, a toxic substance that is banned in mining operations in Colombia (and elsewhere). While the Company does not use mercury in its process, the illegal mining activities carried by the *Clan del Golfo* in the underground workings of the Mine make liberal (and uncontrolled) use of mercury to recover gold from the ore as described by [REDACTED],⁴³⁹ resulting in what has been reported as a “ticking ecological time bomb.”⁴⁴⁰ In the past several years, 78 kilograms of mercury were seized in illegal operations at the Mine.⁴⁴¹
235. The Office of the Inspector General shares this concern. In 2023, the Inspector General for Environmental Affairs alerted that, in addition to the critical security situation at the Mine, “there are severe environmental consequences resulting from the use of mercury, which irreparably affect underground water sources. This, combined with geological risks and instability in the massif, is exacerbated by the lack of technical expertise in the use of explosives by illegal groups.”⁴⁴²
236. Beyond the ecological consequences, the uncontrolled underground mining at the Project has given rise to serious concerns of a potentially large-scale collapse of the Mine and landslide, as illegal mining “has expanded in and around the mine, with miners using mercury, explosives and heavy machinery to extract gold, contaminating ecosystems and threatening the geological stability of the area.”⁴⁴³

⁴³⁹ [REDACTED].

⁴⁴⁰ Joshua Collins, “An underground gold war in Colombia is a ‘a ticking ecological time bomb,’” *Mongabay* (31 Dec. 2024) (C-434). See also Shefa Siegel, “Threat of Mercury Poisoning Rises with Gold Mining Boom,” *YaleEnvironment360* (C-514).

⁴⁴¹ Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jul.-Dec.), dated 31 Dec. 2021 (C-283); Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jan.-Jun.), dated 30 Jun. 2022 (C-291); Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jul.-Dec.), dated 31 Dec. 2022 (C-323); Results of Operations Undertaken by Public Forces and Continental Colombia Gold’s Protection Team (Jan.-Jun.), dated 30 Jun. 2023 (C-359).

⁴⁴² “War in the mines: social and environmental crisis caused by illegal mining in Buriticá” Office of the Attorney General (6 Jul. 2023) (C-363).

⁴⁴³ Joshua Collins, “An underground gold war in Colombia is a ‘a ticking ecological time bomb,’” *Mongabay* (31 Dec. 2024) (C-434).

237. While responsible mine operators address the issue of land stability by backfilling tunnels once they have been mined out, the illegal miners operating in the Mine perform no backfilling, threatening the very integrity of the mountain in which the Mine is located.⁴⁴⁴ The issue is of sufficient concern that Claimant commissioned in 2024 a detailed geological study by the *Universidad Nacional de Colombia*. While the final study remains pending, in the first stage of the study already identified illegal mining as the main cause leading to the subsidence (*i.e.*, sinking) of the mountain in Buriticá.⁴⁴⁵

2. Claimant has lost significant parts of its investment, including substantial mineral resources and reserves

238. [REDACTED] also explains that the Company lost control to illegal miners of highly profitable gold veins, like Casandra, due to the lack of security in the Mine.⁴⁴⁶ [REDACTED]
[REDACTED]. In line with ANM's mandate that mining companies in Colombia report estimates of mineral resources and reserves in concession areas,⁴⁴⁷ the Company submitted Mineral Reserves Reconciliation Forms (*Formularios de Reconciliación de Recursos y Reservas Minerales*) to the ANM (the "ANM Forms").⁴⁴⁸ As explained by [REDACTED], in the ANM Forms for the period of 2022-2023 and 2024, the Company informed the ANM that the Company had lost access to several million tons of mineral resources and reserves in areas lost to illegal mining activities.⁴⁴⁹ These amounts were nearly equivalent to the volumes legally

⁴⁴⁴ As [REDACTED] explains, backfilling (*retrolleado*) is the process of refilling excavated areas in a mine with materials – such as waste rock, cemented tailings, or other inert substances – to provide support, prevent ground subsidence, and ensure long-term structural stability. [REDACTED]

⁴⁴⁵ "Assessment of Geomechanical Risk Factors at Zijin Continental Gold" Universidad Nacional de Colombia, Faculty of Mines (2024) (C-436) pp. 35-37 ("Las secuelas por la actividad minera ilegal subterránea pueden ser visibles a largo plazo, produciendo inestabilidades en las zonas donde en el subsuelo donde se realizan labores subterráneas, esto se puede evidenciar en los deslizamientos y hundimientos del terreno en el tiempo [. . .]. A partir de los resultados obtenidos se puede concluir que el porcentaje de extracción de material por parte de la minería informal de la zona, determinan el ángulo de quiebre de la posible subsidencia.").

⁴⁴⁶ [REDACTED]

⁴⁴⁷ Resolution No. 100 of 2020 of the ANM, (C-233).

⁴⁴⁸ [REDACTED]

⁴⁴⁹ [REDACTED].

exploited by the Company during that period, underscoring the illegal miners' significant impact on the Mine.⁴⁵⁰

239. Moreover, the scope of the illegal miners' invasion of the Mine and its unpredictable and chaotic nature has forced the Company to drastically change its operations in an effort to adapt to the constantly evolving situation. The Company has thus been forced to abandon significant infrastructure investments in the Mine, develop entirely new tunnels and new infrastructure significantly deeper into the Mine, and implement backup plans and alternatives to access the Mine's resources, as [REDACTED] explains.⁴⁵¹

240. Respondent's conduct has, in summary, undermined Claimant's investment in Colombia and put the lives and wellbeing of its personnel at risk, leaving the resolution of this matter in the hands of the Tribunal.

3. Colombia's failure to protect the Mine continues

241. Following the Tribunal's constitution on 8 January 2025, and in stark contrast to Colombia's prior passivity, in response to isolated incidents Colombia demonstrated its capacity to expel illegal miners from the underground tunnels when it chooses to. Its overall response remains inadequate, however.

242. Specifically, on 17 January 2025, the Mine suffered another significant attack. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

450 [REDACTED]

451 [REDACTED]

- [REDACTED]
- [REDACTED]
243. The Company immediately informed Colombia and repeated its pleas for assistance.⁴⁵³ This time, State agencies worked to recover the area lost during the attack: the Government of Antioquia ordered the installation of a unified command center to coordinate a response and UNIMIL deployed approximately 15 officers to expel the illegal miners and recover the area.⁴⁵⁴
244. On 10 June 2025, Colombia again demonstrated its capacity to undertake at least some of the actions necessary to protect the Mine by expelling illegal miners and recovering occupied areas. That day, the Colombian security forces launched an offensive operation from a private property located adjacent to [REDACTED],⁴⁵⁵ which belongs to the Rampa Sur development area. This is one of the few occasions during nearly three years of the Petro administration that the State demonstrated a willingness to intervene against illegal mining. The operation resulted in the arrest of four illegal miners, the seizure of explosives and firearms used in illegal mining activities, and the recovery of a small portion of the tunnels.⁴⁵⁶ As [REDACTED] explains, the Company has now surveyed the recovered area and is in the process of walling it off and backfilling it, as no valuable mineral resources remain after years of illegal exploitation.⁴⁵⁷

⁴⁵² “ACM Press Release – Violent Acts in Buriticá” ACM (18 Jan. 2025) (C-446); Letter from Continental Colombia to Colombian Officials, dated 18 Jan. 2025 (C-447); Letter from Continental Colombia to the Governor of Antioquia and the Mayor of Buriticá, dated 17 Jan. 2025 (C-440); “We Condemn Violent Attacks” Continental Colombia Gold (17 Jan. 2025) (C-439); “Four terrorist attacks in one day” Continental Colombia Gold (18 Jan. 2025) (C-449).

⁴⁵³ “We Condemn Violent Attacks” Continental Colombia Gold (17 Jan. 2025) (C-439); Letter from Continental Colombia to the Governor of Antioquia and the Mayor of Buriticá, dated 17 Jan. 2025 (C-440).

⁴⁵⁴ Verónica Gómez Perea, “Unified Command Center is established in response to explosive attacks at gold mine in Buriticá” *RCN Radio* (19 Jan. 2025) (C-451); Continental Colombia Internal Report re Intervention Activities in Higabrá, dated 20 Jan. 2025 (C-452).

⁴⁵⁵ National Police Press Statement, dated 11 June 2025 (C-488).

⁴⁵⁶ National Police Press Statement, dated 11 June 2025 (C-488).

⁴⁵⁷ [REDACTED]

245. President Petro was quick to take credit. Referring to this operation, on 19 June 2025, he erroneously boasted that the Yaraguá tunnels had been recovered after five years of being held by the *Clan del Golfo*.⁴⁵⁸ While it is true that the *Clan del Golfo* has controlled the Yaraguá Tunnel for years (not five, however), it is not true that this operation led to its complete recovery. In fact, the operation led to the recovery of an area representing only about 0.1% of the areas occupied by illegal miners (and was, in any event, in the Rampa Sur development area and not Yaraguá).⁴⁵⁹ Even while touting the State’s *de minimus* and late actions, President Petro again vocalized his preference against large mining companies and in favor of small-scale ASM miners by saying that he will ask the Company to “exploit the tunnel jointly” with small-scale miners.⁴⁶⁰

246. Notwithstanding these recent isolated examples, which appear to be a reaction to the Tribunal’s constitution, Colombia’s protection of the Mine remains severely deficient. Attacks by illegal miners continue. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁵⁸ Mr. Gustavo Petro’s Post on Twitter (now X) (19 June 2025) (C-491).

⁴⁵⁹ [REDACTED].

⁴⁶⁰ Mr. Gustavo Petro’s Post on Twitter (now X) (19 June 2025) (C-491).

⁴⁶¹ Criminal Complaint filed by Continental Colombia with the Office of the Attorney General, dated 18 June 2025 (C-516), p. 1; [REDACTED]

⁴⁶² [REDACTED]

⁴⁶³ First Criminal Complaint filed by Continental Colombia with the Office of the Attorney General, dated 8 July 2025 (C-504); Second Criminal Complaint filed by Continental Colombia with the Office of the Attorney General, dated 8 July 2025 (C-505).

247. In parallel, the State’s inflammatory rhetoric against Claimant and other large-scale mining operations continues. Shortly after the 17 June 2025 attack, President Petro gave a speech in Medellín, Antioquia, blaming the regional conflicts in the zone on “multinationals” (a veiled reference to Claimant).⁴⁶⁴
248. Colombia’s refusal to enforce its own laws to protect Claimant’s investment also persists. The two Emergency Resolutions adopted by the ANM in August 2022 and May 2024 (further to that agency’s duty to prevent and control illicit mineral exploitation⁴⁶⁵), which acknowledged the presence of illegal mining activities within the Company’s concession area and ordered their immediate closure, remain unenforced.⁴⁶⁶
249. Likewise, for years, Continental Colombia has advised Colombian officials of the location of the illegal entrances (often on private properties) through which the illegal miners gain access to the Mine’s tunnels. As explained above, for instance, on 13 November 2022, the Company shared with the National Police the locations of the illegal entrances that were used as staging grounds by illegal miners to access the Mine’s tunnels,⁴⁶⁷ as reproduced below.⁴⁶⁸

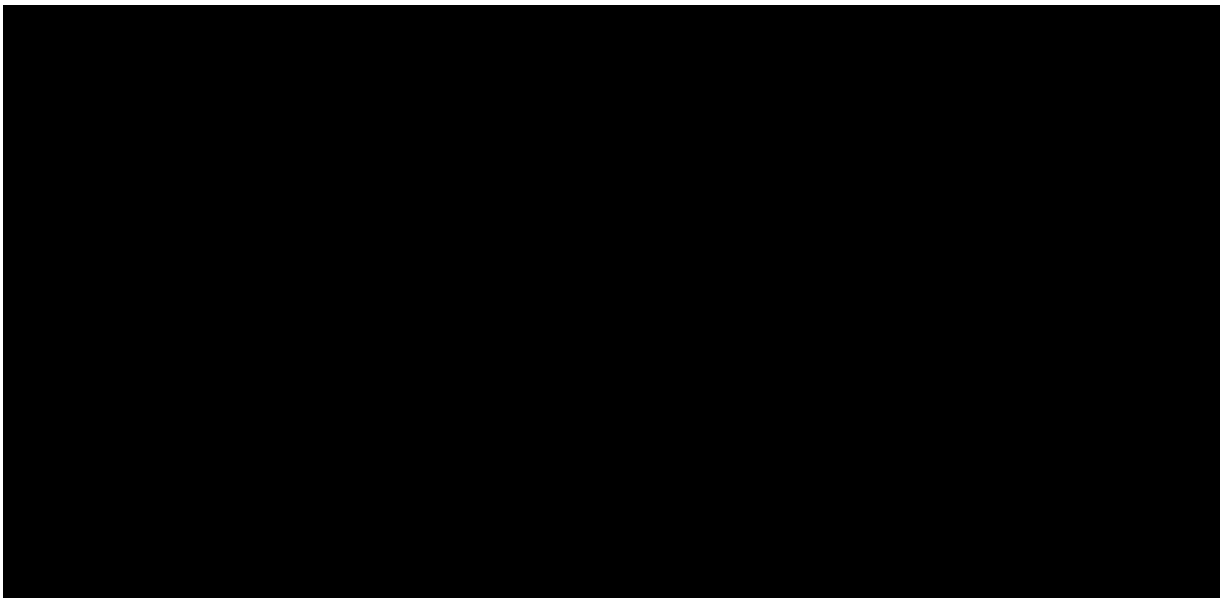
⁴⁶⁴ President Petro, Speech in Medellín, dated 1 July 2025 (C-517).

⁴⁶⁵ Decree No. 4134 of 2011, dated 3 Nov. 2011 (C-112) Arts. 4.14, 4.15.

⁴⁶⁶ ANM Emergency Report No. 202209E, dated 29 Aug. 2022 (C-307) p. 17 (ordering the “total and immediate closure of unauthorized mining activities that disrupt the area of title P749111 [i.e., the Project], conducted by individuals using unsafe and non-technical procedures.”); ANM Emergency Report No. 007-E, dated 31 May 2024 (C-404) p. 30 (ordering the “immediate suspension of all development, preparation, and exploitation activities related to unauthorized mining within the mining title P7495011 [the Project] in the jurisdiction of the municipality of Buriticá” and noting that these activities “are being conducted without the authorization of the mining titleholder [i.e., the Company].”).

⁴⁶⁷ Minutes of Meeting between Continental Gold and National Police, dated 13 Nov. 2022 (C-317) p. 1; [REDACTED]

⁴⁶⁸ See “Security Situation at the Buriticá Mine” Continental Colombia Gold (2 Nov. 2022) (C-313).

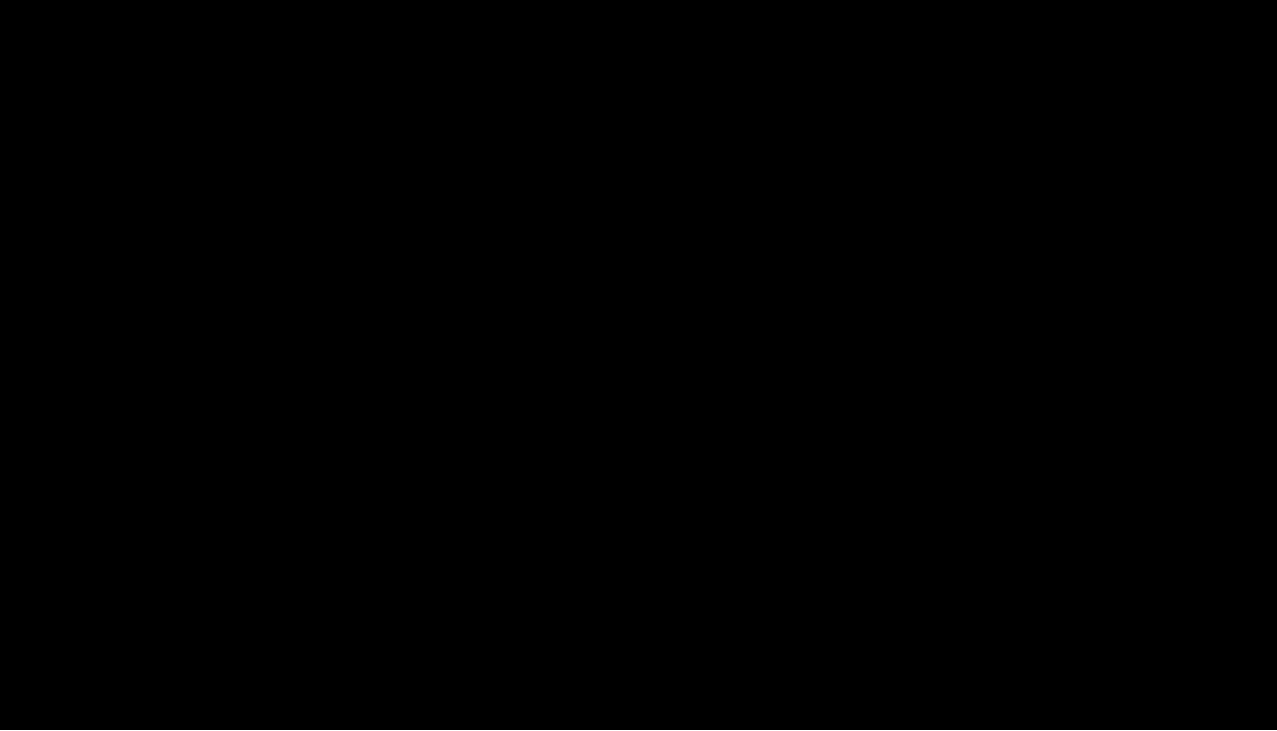


250. On 25 May 2023, General Ospina also acknowledged that the Company had provided the authorities with the locations of these illegal entrances through which the illegal miners could access the Mine via private land.⁴⁶⁹
251. Nevertheless, the State has not taken action to close the illegal entrances. As [REDACTED]
[REDACTED]
[REDACTED], Colombia has done nothing to prevent their continued use by illegal miners. What follows is an updated representation as of March 2025, in which Claimant has identified and documented the properties from which illegal miners are still able to access the Mine.⁴⁷¹

⁴⁶⁹ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 25 May 2023 (C-342).

⁴⁷⁰ [REDACTED].

⁴⁷¹ “Points with access to ZCNL tunnels,” Continental Colombia Gold (Jan. 2025) (C-438).

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252. One example (of many) is particularly telling—the “*Los Gómez*” property. *Los Gómez* (circled in white in the above images) is a property located some 40 meters above the portal to the Yaraguá tunnel, and which has for years served as an open (and publicly known) staging ground and access point for illegal mining activities. Over the years, Continental Colombia has filed several complaints with the Colombian authorities with respect to the illegal mining activities taking place on the *Los Gómez* property.⁴⁷² As part of these complaints, the Company has provided detailed evidence of the criminal activities taking place there. The Company has also submitted numerous requests (*amparo administrativos*) to the Mayor of Buritica to order the eviction of the illegal miners present at the Mine, including at *Los Gómez*.⁴⁷³
253. The Mayor has also recognized the presence of the illegal miners at the Mine and, in one example in 2023, granted an *amparo* in a different lot ordering the expulsion of illegal

⁴⁷² See, e.g., Minutes of Meeting of Continental Gold with the National Police, 13 November 2022 (C-317).

⁴⁷³ See, e.g., Continental Colombia’s Request for *Amparo Administrativo*, dated 7 November 2024 (C-422); [REDACTED]

miners with the assistance of the police and armed forces.⁴⁷⁴ In this order, the Mayor even went so far as to acknowledge that the Municipality of Buriticá “does not have the technical or operational capacity to act” against illegal mining,⁴⁷⁵ and, referring to the *Clan del Golfo*, noted that “public officers feel intimidated and are afraid to act.”⁴⁷⁶

254. In June 2021, in response to criminal complaints filed by the Company, the Attorney General’s Office concluded that the *Los Gómez* property was indeed linked to illegal mining activities and, pursuant to Colombia’s Asset Forfeiture Law,⁴⁷⁷ ordered that the land, equipment and other assets located there be seized and confiscated.⁴⁷⁸
255. No eviction or other enforcement action took place, whether in response to the Company’s complaints and requests or the Attorney General’s Office’s order. [REDACTED] explains that illegal miners continue to use *Los Gómez* as a staging ground for their operations, as depicted in a recent video from May 2025, a screenshot of which is reproduced below.⁴⁷⁹ The video shows an improvised structure at *Los Gómez* with elements clearly indicating

⁴⁷⁴ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) p. 26, Art. 2 (“ORDER the eviction and the immediate and definitive suspension of the activities performed by unidentified persons, with the enforcement support of the national police, and the national army, the seizure of the elements installed for the exploitation, and to give to the aggrieved party the extracted minerals in the area of the mining title P7495011.”).

⁴⁷⁵ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 23 (“Despite everything, the municipality takes all actions within its power, although it has manifested in some scenarios with the entities at the departmental level, the Government of Antioquia, and the national level, central government, the Vice-Ministry of Mines, that it does not have the technical and operational capacity to act against the phenomena of illegal and informal mining, since the problem is multidimensional and requires a comprehensive, intersectoral strategy, coordinated with the intervention of the institutions and authorities, which have competences in social matters, security and defense, environmental and mining.”).

⁴⁷⁶ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 23 (“Indeed, all the capacity of the State was focused on safeguarding the lives of Colombians [in relation to the pandemic]. However, the illegal mining activities continued, went from carrying out activities of extraction of the gold ore that was then taken to the surface, to perform the entire process of extraction and benefit in the subsoil, that is, the miners entered the underground and stayed there for periods of 20 to 30 days. The organized armed groups -GAO- (GULF CLAN) and -GAD- that are financed from this activity, were strengthened ... altering the public order, in the conditions of security, and peace of the population of Buriticá. Similarly, the guarantees for the exercise of public functions, on the understanding that officials feel intimidated, and are afraid to act”).

⁴⁷⁷ Assets Forfeiture Law (Law 1708 of 2014) (C-500). Arts. 1, 16.

⁴⁷⁸ Asset Forfeiture Proceeding, Interim Measures Decision dated 12 June 2021 (C-501).

⁴⁷⁹ [REDACTED] Continental Colombia: Video of the access point of illegal miners to the Yaraguá tunnel (8 May 2025) (C-466).

the presence of illegal mining activities: a makeshift rain cover over a visible excavation pit, and several illegal miners wearing hard hats and occupying the area without authorization.



256. Like many other private properties in the area, the *Los Gómez* property continues to be used, day and night, and in plain sight, by illegal miners as a staging ground for their operations, in open criminal violation of Continental Colombia’s exclusive rights.

III. THE TRIBUNAL HAS JURISDICTION

257. Claimant meets all applicable jurisdictional requirements for bringing its claims to arbitration under the Treaty and the ICSID Convention, and has complied with all applicable notice and timing requirements for the submission of a claim under the Treaty, as shown below.

A. CLAIMANT AND ITS INVESTMENTS ARE PROTECTED UNDER THE TREATY

258. Pursuant to Article 801, Chapter 8 of the Treaty applies to measures adopted or maintained by a Party relating to (a) “investors of the other Party” and (b) “covered investments.” As explained below, Claimant is an “investor” of Canada and its investments in Colombia are “covered investments” for purposes of the Treaty.

1. Claimant is an investor of Canada under the Treaty

259. Article 838 of the Treaty defines an “investor of a Party” as follows:

investor of a Party means a Party or state enterprise thereof, or an enterprise or national of a Party, that seeks to make, is making or has made an investment. A natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship. A natural person who is a citizen of a Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of which he or she is a citizen.⁴⁸⁰

260. In turn, the Treaty defines “enterprise of a Party” as:

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.⁴⁸¹

261. Further, Article 838 of the Treaty defines “enterprise” as:

enterprise means an enterprise as defined in Article 105 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity.⁴⁸²

262. While Article 838 references Article 105, the term “enterprise” is further defined in Article 106, which provides:

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association.⁴⁸³

263. Claimant was incorporated under the laws of the Province of Ontario, Canada, on 27 April 2015.⁴⁸⁴ Claimant is therefore an “enterprise” of Canada and, as Claimant has made

⁴⁸⁰ Treaty (CL-1) Art. 838 (original footnote reference omitted).

⁴⁸¹ Treaty (CL-1) Art. 838.

⁴⁸² Treaty (CL-1) Art. 838.

⁴⁸³ Treaty (CL-1) Art. 106.

⁴⁸⁴ See Certificate of Incorporation of Continental Gold Inc., dated 27 Apr. 2015 (C-01); Corporation Profile Report of Continental Gold Inc. issued by the Ministry of Public and Business Service Delivery of Ontario, dated 14 May 2024 (C-02).

investments in Colombia (as explained in the next section), an “investor of a Party” under Articles 838 and 106 of the Treaty.

264. Claimant was listed on the Toronto Stock Exchange in June 2015 and was delisted in March 2020, when Zijin Mining Group Co., Ltd. acquired 100% of the then outstanding common shares of Claimant for approximately CA\$ 1.4 billion (approximately US\$ 1 billion).⁴⁸⁵ Claimant continues to be headquartered in Toronto.⁴⁸⁶ 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.⁴⁸⁷ 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.⁴⁸⁸ As part of this role, Claimant identifies, evaluates, and monitors Canadian mining companies, Canadian projects, and pursues investment and acquisition opportunities in Canada for the Zijin Mining group.⁴⁸⁹

2. Claimant has made qualifying investments in Colombia

265. Claimant directly or indirectly owns or controls covered investments for purposes the Treaty. Article 838 of the Treaty defines a “covered investment” as follows:

with respect to a Party, an investment in its 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.⁴⁹⁰

⁴⁸⁵ “Continental Gold Limited and Continental Gold Inc. Complete Scheme of Arrangement,” *Continental Gold*, 10 June 2015, (C-160); “Zijin Completes Acquisition of Continental Gold,” *Continental Gold*, 4 March 2020, (C-231).

⁴⁸⁶ Corporation Profile Report of Continental Gold Inc. issued by the Ministry of Public and Business Service Delivery of Ontario, dated 14 May 2024 (C-02).

⁴⁸⁷ [REDACTED].

⁴⁸⁸ [REDACTED].

⁴⁸⁹ [REDACTED].

⁴⁹⁰ Treaty (CL-1) Art. 838.

266. Article 838 of the Treaty in turn defines “investment” as:

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise, but does not include a debt instrument of a state enterprise;
- (d) a loan to an enterprise, but does not include a loan to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;
- (g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under
 - (i) contracts involving the presence of an investor’s property in the territory of the Party, including turnkey or construction contracts, or concessions, or
 - (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- (h) intellectual property rights; and
- (i) any other tangible or intangible property, moveable or immovable property, and related property rights acquired in the expectation or used for the purpose of economic benefit or other business purposes.⁴⁹¹

267. Article 838 also defines “investment of an investor of a Party” as “an investment owned or controlled directly or indirectly by an investor of such Party.”⁴⁹²

268. Since 2007, Claimant has directly and indirectly invested more than US\$ 1 billion to acquire mining rights and develop and operate the Mine. Claimant thus owns or controls directly or indirectly significant investments in the territory of Colombia, including:

⁴⁹¹ Treaty (CL-1) Art. 838.

⁴⁹² Treaty (CL-1), Art. 838 (emphasis added).

- 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;⁴⁹³ 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.

⁴⁹³ Concession Agreement (C-19) pp. 1-2 (“THE CONCESSIONAIRE shall have the free availability of the minerals subject to the [Concession Agreement] that are extracted in compliance with the [PTO] approved by [Colombia]. The minerals *in situ* are from the Colombian State; and once extracted, will form part of the property of THE CONCESSIONAIRE.”). Article 15 of the Mining Code also confirms that mining rights within concession mining agreements have an exclusive nature (“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.”) (emphasis added). Mining Code (C-58) Art. 15.

B. CLAIMANT AND COLOMBIA HAVE CONSENTED TO SUBMIT THIS DISPUTE TO ARBITRATION

269. Pursuant to Article 823 of the Treaty, Colombia “consents to the submission of a claim to arbitration in accordance with the procedure set out in [Section B of Chapter 8 of the Treaty].” This is an unequivocal statement of consent and offer to arbitrate a potential legal dispute with a qualified investor.
270. Pursuant to Articles 819 and 820 of the Treaty, “[a]n investor of a Party” may, on its on behalf of or on behalf of an enterprise that the investor owns or controls directly or indirectly, submit to arbitration under Section B of the Treaty a claim that Colombia has breached certain obligations under the Treaty and that the investor or the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
271. Article 822 of the Treaty provides that Canadian investors may submit legal disputes concerning their investments in the territory of Colombia to ICSID arbitration, in the following terms:
1. Except as provided in Annex 822, a disputing investor who meets the conditions precedent in Article 821 may submit the claim to arbitration under:
 - (a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
 - (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention; or
 - (c) the UNCITRAL Arbitration Rules.⁴⁹⁴
272. As noted above, Claimant qualifies as an investor of Canada. By submitting this Request, Claimant accepts Colombia’s offer to arbitrate in Article 823 and, pursuant to Article 822, elects to submit its claim to arbitration under the ICSID Convention.

⁴⁹⁴ Treaty (CL-1) Art. 822.

273. Continental Colombia is an enterprise of Colombia that is a juridical person (as it is a branch of Continental Bermuda, which is a juridical person) that Claimant controls through its ownership of Continental Bermuda.
274. Claimant is submitting claims both on its own behalf, pursuant to Article 819 of the Treaty, and on behalf of Continental Colombia, pursuant to Article 820 of the Treaty. Claimant and Continental Colombia have both consented in writing to arbitration of this dispute in accordance with the procedures set out in Section B of Chapter Eight of the Treaty.⁴⁹⁵

C. CLAIMANT HAS COMPLIED WITH THE CONDITIONS PRECEDENT UNDER THE TREATY

275. Article 821 of the Treaty contains certain conditions precedent to arbitration:

1. The disputing parties shall hold consultations and negotiations in an attempt to settle a claim amicably before a disputing investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the Notice of Intent to Submit a Claim to Arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. Consultations and negotiations may include the use of non-binding, third-party procedures. The place of consultations shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 819 or Article 820 only if:

(a) the disputing investor and, where a claim is made under Article 820, the enterprise, consent to arbitration in accordance with the procedures set out in this Section;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) the disputing investor has delivered to the disputing Party a written notice of its intent to submit a claim to arbitration (Notice of Intent) at least six months⁸ prior to submitting the claim. The Notice of Intent shall specify: ... ;

(d) the disputing investor has delivered evidence establishing that it is an investor of the other Party with its Notice of Intent;

⁴⁹⁵ Consents and Waivers of Continental Gold Inc. and Continental Gold Limited Sucursal Colombia, dated 29 and 31 May 2024 (C-32).

(e) in the case of a claim submitted under Article 819:

(i) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby, and

(ii) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investors or the enterprise's rights and interests during the pendency of the arbitration; and

(f) in the case of a claim submitted under Article 820:

(i) not more than 39 months have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and

(ii) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration.

3. A consent and waiver required by this Article shall be in the form provided in Annex 821, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. Where a disputing Party has deprived a disputing investor of control of an enterprise, a waiver

from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required.⁴⁹⁶

276. The requirements to submit this dispute to arbitration under the Treaty are met:

- a) Claimant served the Notice of Intent on Colombia on 14 June 2023,⁴⁹⁷ and Claimant and Colombia subsequently held consultations, including meetings in Bogotá, Colombia, through 2023, in an attempt to settle the claims amicably.
- b) Claimant and Continental Colombia have both consented in writing to arbitration of this dispute in accordance with the procedures set out in Section B of Chapter Eight of the Treaty.⁴⁹⁸
- c) At least six months have passed since measures giving rise to the present claim.
- d) More than six months have elapsed since Claimant delivered the Notice of Intent on June 14, 2023.⁴⁹⁹
- e) Claimant delivered evidence establishing that it is a Canadian investor with its Notice of Intent.⁵⁰⁰
- f) The breaches of the Treaty are either of a continuing nature or with respect to standalone measures, for which Claimant seeks damages, and not more than 39 months have elapsed from the date on which Claimant and Continental Colombia, first acquired, or should have first acquired, knowledge of the breaches and of having incurred losses resulting from those breaches.

⁴⁹⁶ Treaty (CL-1) Art. 821 (original footnote reference omitted).

⁴⁹⁷ Notice of Intent to Submit Claims to Arbitration, dated 12 Jun. 2023 and delivered to Colombia on 14 Jun. 2023 (C-33).

⁴⁹⁸ Consents and Waivers of Continental Gold Inc. and Continental Gold Limited Sucursal Colombia, dated 29 and 31 May 2024 (C-32).

⁴⁹⁹ Notice of Intent to Submit Claims to Arbitration, dated 12 Jun. 2023 and delivered to Colombia on 14 Jun. 2023 (C-33).

⁵⁰⁰ Notice of Intent to Submit Claims to Arbitration, dated 12 Jun. 2023 and delivered to Colombia on 14 Jun. 2023 (C-33).

- g) Claimant and Continental Colombia have both waived their rights to initiate or continue administrative or court proceedings under Colombian law in accordance with Article 821 of the Treaty.⁵⁰¹

277. Based on the foregoing, Claimant has met all the conditions precedent to submission of a claim to arbitration under Article 821 of the Treaty.

278. Finally, and for the avoidance of doubt, neither the ICSID Convention nor the Treaty requires exhaustion of domestic administrative or judicial remedies as a condition of consent to arbitration.⁵⁰²

D. THE REQUIREMENTS UNDER THE ICSID CONVENTION HAVE BEEN FULFILLED

279. Article 25(1) of the ICSID Convention sets out certain requirements to access ICSID arbitration:

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

280. The preconditions of Article 25(1) for establishing ICSID jurisdiction are accordingly satisfied if: (i) Claimant and Colombia have a legal dispute; (ii) the dispute arises directly out of an investment; (iii) Claimant is a national of Canada; (iv) Colombia and Canada have ratified the ICSID Convention; and (v) the parties to the dispute have consented in writing to submit their dispute to ICSID. As demonstrated below, all these jurisdictional prerequisites are satisfied.

⁵⁰¹ Consents and Waivers of Continental Gold Inc. and Continental Gold Limited Sucursal Colombia, dated 29 and 31 May 2024 (C-32).

⁵⁰² Treaty (CL-1) Art. 821(2)(c), note 8 provides that, “[w]ith a view to encouraging the review, confirmation or modification of administrative acts prior to such acts becoming final, the Parties recognize that disputing investors should make every effort to exhaust administrative recourse under Colombian law. A disputing investor that fails to exhaust administrative recourse, where applicable, shall submit its Notice of Intent nine months prior to submitting a claim to arbitration.”

1. There is a legal dispute between the Parties

281. The matters at issue here represent a “legal dispute” for the purposes of Article 25(1) of the ICSID Convention, arising from Colombia’s breaches of the Treaty, as set out in Section IV below.

2. The dispute arises directly out of Claimant’s investment

282. The ICSID Convention provides no definition of the term “investment;” however, the term is widely accepted to have a broad meaning. Claimant has invested (directly and through its affiliates) more than US\$ 1 billion in Colombia to develop and operate the Mine, turning the Mine into a major enterprise employing thousands of local workers and contributing to Colombia’s economic development. There can be no doubt that Claimant’s extensive investments in Colombia qualify as “investments” under Article 25 of the ICSID Convention.

283. Further, the dispute between Claimant and Colombia arises directly out of the actions and inactions of Colombia with respect to these investments.

3. The Parties are a Contracting State and a National of another Contracting State

284. Articles 25(1) and (2) of the ICSID Convention provide for the jurisdiction over a dispute “between a Contracting State (or any constituent subdivision or agency of a Contract State designated to the Centre by that State) and a National of another Contracting State.”

285. Both Colombia and Canada are Contracting States to the ICSID Convention. Colombia signed the ICSID Convention on 18 May 1993 and deposited its instrument of ratification on 15 July 1997. The ICSID Convention entered into force as to Colombia on 14 August 1997.⁵⁰³ Canada signed the ICSID Convention on 15 December 2006 and deposited its instrument of ratification on 1 November 2013. The ICSID Convention entered into force as to Canada on 1 December 2013.⁵⁰⁴

⁵⁰³ Database of ICSID Member States, *ICSID* (10 Jun. 2024) (C-34).

⁵⁰⁴ Database of ICSID Member States, *ICSID* (10 Jun. 2024) (C-34).

286. Article 25(2)(b) of the ICSID Convention defines nationals of a Contracting State to include:

any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to . . . arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

287. As noted, Claimant is a company incorporated and constituted under the laws of the Province of Ontario, Canada.⁵⁰⁵

288. Thus, the dispute Claimant hereby submits to ICSID is between a Contracting State (Colombia) and a national of another Contracting State (Canada), in accordance with Article 25(1) of the ICSID Convention.

4. The Parties have consented in writing to submit the dispute to ICSID arbitration

289. As discussed in Section III.B above, Colombia and Claimant have expressed their consent in writing to submit this dispute to ICSID arbitration.

IV. COLOMBIA HAS BREACHED THE TREATY

A. COLOMBIA BREACHED ITS OBLIGATION UNDER ARTICLE 805 OF THE TREATY TO PROVIDE FULL PROTECTION AND SECURITY TO CLAIMANT AND ITS INVESTMENTS

290. Article 805(1) of the Treaty provides:

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.⁵⁰⁶

⁵⁰⁵ Certificate of Incorporation of Continental Gold Inc., dated 27 Apr. 2015 (C-01); Corporation Profile Report of Continental Gold Inc. issued by the Ministry of Public and Business Service Delivery of Ontario, dated 14 May 2024 (C-02).

⁵⁰⁶ Treaty (CL-1) Article 805.1.

291. In 2017, a Joint Commission of Canada and Colombia issued an interpretive decision clarifying that the full protection and security (“FPS”) obligation in Article 805 refers to the obligation of each treaty party relating to the physical security of both investors and covered investments.⁵⁰⁷
292. As demonstrated below, Colombia has breached its obligation to provide full protection and security to Claimant and its investments in the Buriticá Project.

1. Colombia must provide full protection and security to Claimant and its investments

293. 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. The tribunal in *Wena Hotels v. Egypt* thus explained that “the obligation incumbent on [the host State] is an obligation of vigilance, in the sense that [the host State] shall take all measures necessary to ensure the full enjoyment of protection and security of [the investor’s] investments”⁵⁰⁸

⁵⁰⁷ Article 2001 of the Treaty establishes “a Joint Commission, comprising cabinet-level representatives of the Parties,” which may, among other things, “[a]dopt interpretive decisions concerning this Agreement binding on ... Tribunals established under Section B of Chapter Eight (Investment).” Treaty (CL-1) Art. 2001.3.a. In 2017, the Joint Commission issued a decision clarifying that the FPS obligation in Article 805 applies to both investors and covered investments. See Decision No. 6 of the Joint Commission of the Free Trade Agreement between the Republic of Colombia and Canada, dated 24 Oct. 2017 (CL-79) ¶ 3(a) (“The Joint Commission decided that Article[] ... 805 be authoritatively interpreted as follows in order to clarify and reaffirm [its] meaning: ... The concept of ‘full protection and security’ in Article 805 refers to a Party’s obligations relating to the physical security of investors and covered investments.”) (emphasis added). The Joint Commission’s clarification that the FPS standard applies to “physical protection” (as opposed to legal protection) confirms that Claimant’s case, which concerns physical protection, is precisely the type of cases to which the Contracting Parties intended that the FPS standard would apply.

⁵⁰⁸ *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 Dec. 2000) (quoting *American Manufacturing and Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/I, Award (5 Feb. 1997) at 28) (CL-13) ¶ 84 (emphasis added). See also *American Manufacturing v. Zaire* (CL-11) ¶ 6.05 (finding that the FPS standard in the U.S.-Zaire BIT required Zaire to “take all measures necessary to ensure the full enjoyment of protection and security of [a covered] investment,” and that “Zaire must show that it has taken all measure of precaution to protect the investment of AMT on its territory.”); *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award (12 Jan. 2016) (“*Houben v. Burundi*”) (CL-70) ¶ 171 (holding that the action taken by Burundi “is clearly not sufficient to establish that Burundi took all necessary measures to protect Mr. Houben’s investment from physical harm caused by third parties.”); *Saluka Investments B.V. v. The Czech Republic*, PCA Case No. 2001-04, Partial Award (17 Mar. 2006) (CL-28) ¶ 483 (“[The host State] must show that it has taken all measures of precaution to protect the investments of [the investor] in its territory.”) (emphasis added); *Smurfit Holdings B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024 (CL-104) ¶ 548 (“[i]n the most basic formulation, the purpose of the FPS standard is to protect the physical integrity

294. The due diligence standard requires the State to take “active measures”⁵⁰⁹ and “concrete steps”⁵¹⁰ to protect investments and investors, which involves a duty to “prevent wrongful injuries” as well as a duty to punish wrongdoers.⁵¹¹ A host State may violate its duties to prevent and/or punish wrongful injuries both through actions and failures to act. The tribunal in *Sergei Paushok v. Mongolia*, for instance, held that:

A well-established aspect of the international standard of treatment is that States must exercise ‘due diligence’ to prevent wrongful injuries to the person or property of aliens within their territory, and, if they did not succeed, to exercise at least ‘due diligence’ to punish such injuries. 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.⁵¹²

295. The tribunal in *Parkerings v. Lithuania* similarly held that “a violation of the standard of full protection and security could arise in case of failure of the State to prevent the damage,

of an investment against interference by use of force.’ Such obligation has been understood as requiring ‘vigilance and [...] care,’ of ‘due diligence,’ ‘reasonable’ or ‘precautionary’ measures, but not to impose ‘strict liability.’”) (internal citations omitted).

⁵⁰⁹ *Frontier Petroleum Services Ltd. v. The Czech Republic*, PCA Case No. 2008-09, Final Award (12 Nov. 2010) (CL-48) ¶ 261 (“[T]he host state is under an obligation to take active measures to protect the investment from adverse effects that stem from private parties or from the host state and its organs”) (emphasis added).

⁵¹⁰ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss (21 Feb. 2017) (“*Ampal-American v. Egypt*”) (CL-77) ¶ 290 (“[T]he failure by the Egyptian authorities to take any concrete steps to protect the Claimants’ investment from damage in reaction to third party attacks on the upstream pipeline system ... constitutes a breach of the obligation of due diligence that Egypt was required to exercise in ensuring the full protection and security of the Claimants’ investment.”) (emphasis added).

⁵¹¹ *Oxus Gold plc v. Republic of Uzbekistan, the State Committee of Uzbekistan for Geology & Mineral Resources, and Navoi Mining & Metallurgical Kombinat*, UNCITRAL, Final Award (17 Dec. 2015) (CL-69) ¶ 834 (“Under the FPS standard ... the investor has the right to expect that the State takes reasonable measures within its power to prevent wrongful injuries by third parties, and where such injuries have already happened, to punish them.”) (emphasis added). See also *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 Jul. 2008) (CL-37) ¶ 725 (“[The] duty of protection implies a duty of ‘due diligence.’ ... [A] substantive failure to take reasonable, precautionary and preventative action is sufficient to engage the international responsibility of a State for damage to [property].”).

⁵¹² *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL, Award on Jurisdiction and Liability (28 Apr. 2011) (CL-50) ¶¶ 324-325 (emphasis added).

to restore the previous situation or to punish the author of the injury. The injury could be committed either by the host State, or by its agencies or by an individual.”⁵¹³

296. It is well established that the FPS obligation is an obligation of means and not result. The host State is not held to strict liability for the sole reason that damage occurs through unlawful acts of third parties.⁵¹⁴ But it also follows from the nature of the FPS obligation as an obligation of means that the claimant does not bear the burden of proving that state action would necessarily have avoided the damage. As the *DS(2) v Madagascar* tribunal explained, the FPS obligation “being an obligation of means and not results, it is not necessary to establish if these 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.”⁵¹⁵
297. The standard is also an objective standard. In *AAPL v. Sri Lanka*, the tribunal clarified that the FPS standard requires the State to take “the reasonable measures of prevention which a well-administered government could be expected to exercise under similar circumstances.”⁵¹⁶

⁵¹³ *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award (11 Sep. 2007) (CL-35) ¶ 355 (emphasis added, italics omitted). See also *Asian Agricultural Products Ltd. (APPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award (21 Jun. 1990) (CL-9) ¶ 77 (“According to modern doctrine, the violation of international law entailing the State’s responsibility has to be considered constituted by ‘the mere lack or want of diligence’, without any need to establish malice or negligence.”) (emphasis added); *Ulysseas, Inc. v. The Republic of Ecuador*, PCA Case No. 2009-19, Final Award (12 June 2012) (CL-54) ¶ 272 (“[The FPS standard] imposes an obligation of vigilance and care by the State under international law comprising a duty of due diligence for the prevention of wrongful injuries inflicted by third parties to persons or property of aliens in its territory or, if not successful, for the repression and punishment of such injuries.”) (emphasis added).

⁵¹⁴ See, e.g., *(DS)2 v. Madagascar (II)* ¶ 301 (“[The FPS obligation] in article 3(2) of the BIT imposes an obligation on the State to adopt reasonable measures to protect foreign investments taking into account all circumstances. It is an obligation of means, not result.”); *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (3 Jun. 2021) (CL-92) ¶ 627 (“[T]he tribunal [in *AAPL v. Sri Lanka*] clarified that this [FPS] standard requires the State to take ‘the reasonable measures of prevention which a well-administered government could be expected to exercise under similar circumstances.’ Other tribunals have endorsed this position, with the result that the FPS standard is thus an obligation of means, not of result.”).

⁵¹⁵ *(DS)2 v. Madagascar (II)* (CL-89) ¶ 341 (emphasis added).

⁵¹⁶ *Asian Agricultural Products Ltd. (APPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award (21 Jun. 1990) (CL-9) ¶ 77 (“A number of other contemporary international law authorities noticed the ‘sliding scale’, from the old ‘subjective’ criteria that takes into consideration the relatively limited existing possibilities of local authorities in a given context, towards an ‘objective’ standard of vigilance in assessing the required degree of protection and security with regard to what should be legitimately expected to be secured for foreign investors by a reasonably well organized modern State. As expressed by Professor FREEMAN, in his 1957 Lectures at the Hague Academy of International Law: The ‘due diligence is nothing more nor less than the reasonable measures

298. Several investment tribunals have held that States violated their FPS obligation where they failed to protect an investment from attacks by third parties, as shown below.

299. In *Energía y Renovación v. Guatemala*, the tribunal recently held by majority⁵¹⁷ that Guatemala breached its FPS obligation because it failed to protect the investor's hydropower project from attacks and violence by armed groups.⁵¹⁸ The majority held that although Guatemala “did not remain totally inert,” it had not done enough to protect the project:

In this case, although the State has not remained entirely inactive in the face of the systematic and ongoing violation of the physical integrity of the Project and its collaborators, its actions have lacked practical consequences. There is evidence in the record that police measures were taken, legal actions were pursued, and a political solution was attempted in the form of the Agreement for Peace. However, none of these measures had any tangible effect. In other words, none of them proved sufficient or adequate to address the security issues affecting the Project.⁵¹⁹

300. The majority found that there was a “considerable distance between the formal measures adopted and those that were materially implemented to stop the escalation of violence that

of prevention which a well-administered government could be expected to exercise under similar circumstances.”); *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (3 Jun. 2021) (CL-92) ¶ 627 (“[T]he tribunal [in *AAPL v. Sri Lanka*] clarified that this [FPS] standard requires the State to take ‘the reasonable measures of prevention which a well-administered government could be expected to exercise under similar circumstances.’ Other tribunals have endorsed this position, with the result that the FPS standard is thus an obligation of means, not of result.”); *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, 21 February 1997 (CL-11), para. 6.06 (“It is thus an objective obligation which must not be inferior to the minimum standard of vigilance and of care required by international law.”).

⁵¹⁷ The dissenting arbitrator held that the tribunal did not have jurisdiction and therefore did not issue an opinion on the claimed treaty breaches, including FPS. See *Energía y Renovación v. Guatemala*, Dissenting Opinion of Raúl E. Vinuesa (31 Mar. 2025) (CL-109) (“I dissent from the Majority’s decisions on the Respondent’s Objections to the Tribunal’s Jurisdiction concerning the illegality of the investment and the statute of limitations on the Claimant’s action. Given the merit of the Respondent’s objections, I consider that the Tribunal lacks jurisdiction to decide the dispute brought by the Claimant.”).

⁵¹⁸ *Energía y Renovación Holding, S.A. v. Republic of Guatemala*, ICSID Case No. ARB/21/56, Award (31 Mar. 2025) (“*Energía y Renovación v. Guatemala*”) (CL-108) ¶ 315 (“The attacks described by the Claimant during 2018 are better documented. In this regard, between threats and attacks, Energía y Renovación reports violent incidents related to the Project on April 24, July 14 and 16, August 16, as well as ongoing acts throughout September, October, and November 2018.”), ¶ 320 (“With respect to the allegations concerning the violence suffered by the Project throughout 2018, the Tribunal considers all of them to be well substantiated.”). English quotes in this Memorial are free translations of the Spanish original.

⁵¹⁹ *Energía y Renovación v. Guatemala* (CL-108) ¶ 331 (emphasis added).

affected the Project and the surrounding communities.”⁵²⁰ Among other things, “there was a minimum increase in the police presence” in the area, but “it was also clear that this police contingent was not even capable of guaranteeing its own security, much less that of the citizens in the region or that of the Project;”⁵²¹ while “multiple prison sentences were issued, the local police authorities either were completely unaware of their existence or had no willingness to carry them out;”⁵²² and “not even the modest measures provided for in the Agreement for Peace [concluded between Guatemala and the investor] were implemented.”⁵²³

301. In *DS(2) v Madagascar*, Madagascar failed to protect the claimants’ garment factory from protesters who vandalized and destroyed it. The *DS(2)* tribunal held that Madagascar violated its FPS obligation because, among other things, the Madagascan police forces arrived late at the factory although their station was located only a few kilometers away, and “[h]ad they arrived earlier, they likely could have secured the site and prevented the protesters from entering.”⁵²⁴ The tribunal also held that “the manifest inaction of the police forces once they had arrived on site is striking,” in that a first police contingent fired shots in the air and then withdrew behind a warehouse near the factory, and a second contingent joined them there, which “gave a strong signal to the protesters: the coast is clear.”⁵²⁵ The police officers later left the site while the vandalism was ongoing.

⁵²⁰ *Energía y Renovación v. Guatemala* (CL-108) ¶ 340.

⁵²¹ *Energía y Renovación v. Guatemala* (CL-108) ¶ 333.

⁵²² *Energía y Renovación v. Guatemala* (CL-108) ¶ 340; *id.* ¶ 118 (“[I]t was executives of Energía y Renovación — José Guillermo Mata Monteros, Karla Lucrecia Santos Farfán, and Juan Alfonso de León — who, on behalf of EyR, negotiated and signed the Agreement for Peace with the State.”).

⁵²³ *Energía y Renovación v. Guatemala* (CL-108) ¶ 347. The Agreement for Peace “set out a genuine action plan to restore the rule of law in the region,” including the deployment of the national civil police in the municipality to control the illegal or armed actions of violent groups. The majority held that “[g]iven the commitments undertaken by the State, it would be entirely reasonable to assume that certain measures, such as the establishment of a National Civil Police station in the municipal center of San Mateo Ixtatán, would be implemented immediately,” but that Guatemala had actually decreased the police presence in the region of the Project. *Id.* ¶ 352.

⁵²⁴ *(DS)2, S.A., Peter de Sutter and Kristof De Sutter v. Republic of Madagascar (II)*, ICSID Case No. ARB/17/18, Award (17 Apr. 2020) (“*(DS)2 v. Madagascar (II)*”) (CL-89) ¶¶ 337-338. English quotes in this Memorial are free translations of the French original.

⁵²⁵ *(DS)2v. Madagascar (II)*(CL-89) ¶ 339.

302. The (DS)2 tribunal concluded that “it is obvious that the police forces did not comply with their duty of protection.”⁵²⁶ The (DS)2 tribunal dismissed Madagascar’s argument that “its means were limited and that the pillaging and destruction of the factory were unavoidable.”⁵²⁷ The tribunal found that the police “could have blocked the two access points to the site, carried out repeated warning shots, maintained a visible presence to give the impression that they were defending the site, and secured the entrance to the factory.”⁵²⁸
303. In *Copper Mesa v. Ecuador*, the tribunal held that Ecuador breached the FPS standard through its “invariably weak, intermittent and ineffective” response to anti-mining protests and violence at the claimant’s mine, including unlawful roadblocks that prevented access to the mine.⁵²⁹ The tribunal acknowledged that “[i]t is of course difficult to say now what [Ecuador] should have done to resolve all the Claimant’s difficulties and, still more so, whether what anything it could have done would have changed the Claimant’s position for the better,” and that the government “could hardly have declared war on its own people.”⁵³⁰ However, Ecuador “could not do nothing” in the face of threats to the investment.⁵³¹
304. Other investment tribunals have found FPS violations in similar circumstances:
- a) In *Houben v. Burundi*, the tribunal held that Burundi breached its FPS obligation by failing to protect land owned by the claimant, Mr. Houben, against illegal occupation by squatters. The tribunal found that “Burundian authorities were aware of the acts of usurpation committed on Mr. Houben’s property at the latest since December 2007, when Mr. Houben wrote to the attorney general to ask for the intervention of law enforcement,” and that despite his “requests to that effect, no intervention by the law enforcement authorities took place to ensure the protection”

⁵²⁶ (DS)2 v. *Madagascar (II)* (CL-89) ¶ 340. See also *id.* ¶ 364.

⁵²⁷ (DS)2 v. *Madagascar (II)* (CL-89) ¶ 341.

⁵²⁸ (DS)2 v. *Madagascar (II)* (CL-89) ¶ 341.

⁵²⁹ *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA Case No. 2012-2, Award (15 Mar. 2016) (“*Copper Mesa v. Ecuador*”)(CL-71) ¶ 6.83.

⁵³⁰ *Copper Mesa v. Ecuador* (CL-71) ¶ 6.83.

⁵³¹ *Copper Mesa v. Ecuador* (CL-71) ¶ 6.83.

of his land.⁵³² The tribunal also found that Burundi took no meaningful steps beyond sending letters instructing local officials to address the situation, which was “clearly not sufficient to establish that Burundi took all necessary measures to protect Mr. Houben’s investment from physical harm caused by third parties.”⁵³³ The tribunal considered that Burundi, “once it was aware of the imminent risk of damage to Mr. Houben’s property ... was fully capable of adopting more effective measures than merely sending letters to the local administrator.”⁵³⁴ Instead of taking such measures, a local administrator encouraged and backed the illegal occupation by issuing ownership “certificates” to the squatters, such that the “Burundian authorities ... not only failed to take the minimum measures necessary to protect that investment, but also directly contributed to [the illegal occupation].”⁵³⁵

- b) In *Wena Hotels v. Egypt*, Egypt failed to protect the investor’s hotels from being seized by armed private individuals and representatives of the State-owned Egyptian Hotels Company (“EHC”). The tribunal found an FPS violation because “Egypt was aware of EHC’s intentions to seize the hotels and took no action to prevent EHC from doing so,” and that “once the seizure had occurred, the police and the Ministry of Tourism took no immediate action to restore the hotels promptly to Wena’s control.”⁵³⁶ Moreover, “Egypt never imposed substantial sanctions on EHC or its senior officials, suggesting Egypt’s approval of EHC’s actions.”⁵³⁷

⁵³² *Houben v. Burundi* (CL-70) ¶ 171. English quotes in this Memorial are free translations of the French original.

⁵³³ *Houben v. Burundi* (CL-70) ¶ 171 (“The mere fact that the Attorney General sent two letters to the municipal administrator, without following up on them, is clearly not sufficient to establish that Burundi took all necessary measures to protect Mr. Houben’s investment from physical harm caused by third parties.”) (emphasis added).

⁵³⁴ *Houben v. Burundi* (CL-70) ¶ 171.

⁵³⁵ *Houben v. Burundi* (CL-70) ¶ 175. See also ¶ 177 (“The question is not whether Burundi was obligated to expel the usurpers after they had taken possession of the land, nor whether their expulsion, once the dwellings were built, would have been contrary to international human rights law, but rather whether Burundi took the necessary measures to prevent, from the outset, those usurpers from taking possession of the land. The factual circumstances described above demonstrate that this was not the case.”)

⁵³⁶ *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 Dec. 2000) (CL-13) ¶ 84.

⁵³⁷ *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 Dec. 2000) (CL-13) ¶ 84.

- c) In *Ampal-American v. Egypt*, the tribunal found that Egypt violated the FPS standard by failing to take “concrete steps to protect the claimants’ investment” in a gas pipeline from a series of armed attacks.⁵³⁸ In one instance, the claimants contacted an Egyptian army patrol and asked them to stop saboteurs from laying explosives on the claimant’s pipeline, but “the Egyptian security forces refused to mobilize.”⁵³⁹ The explosives detonated, cutting off gas supply for almost three months.⁵⁴⁰ The tribunal held that the first four attacks on the pipeline “should have been seen as a warning to the Egyptian State that further attacks might be carried out if security measures were not taken and implemented,”⁵⁴¹ yet the Egyptian authorities failed to take appropriate steps – “whether preventive or reactive”⁵⁴² – to protect the pipeline from several additional attacks that followed, in breach of Egypt’s FPS obligation.⁵⁴³
- d) In *Border Timbers et al. v. Zimbabwe*, the claimants’ farmland was invaded and occupied by settlers and war veterans, and its representatives were threatened.⁵⁴⁴ The tribunal held that the invasions “were a response to political events” and “were accompanied by a racial rhetoric that was overwhelmingly anti-white.”⁵⁴⁵

⁵³⁸ *Ampal-American v. Egypt* (CL-77) ¶ 290.

⁵³⁹ *Ampal-American v. Egypt* (CL-77) ¶¶ 286-289.

⁵⁴⁰ *Ampal-American v. Egypt* (CL-77) ¶¶ 286-289.

⁵⁴¹ *Ampal-American v. Egypt* (CL-77) ¶ 289.

⁵⁴² *Ampal-American v. Egypt* (CL-77) ¶ 288.

⁵⁴³ *Ampal-American v. Egypt* (CL-77) ¶ 290.

⁵⁴⁴ *Border Timbers Limited, Timber Products International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (28 July 2015) (“*Border Timbers v. Zimbabwe*”) (CL-66) ¶ 110 (“[T]he ‘Invasions’ of predominantly white-owned farms also marked the beginning of the FTLRP [Fast Track Land Reform Programme]”), ¶ 112 (“[T]he Invasions of predominantly white-owned commercial farms began in the Province of Masvingo on 16 February 2000, and quickly spread to other parts of Zimbabwe.”), Glossary of Terms (“Settlers/War Veterans: The persons who settled on privately owned commercial land in Zimbabwe. As used by the Claimants, the term also refers to persons claiming to be ‘War Veterans’ and other persons who had been promised, or expected, the provision of land by the Respondent pursuant to the Land Reform and Resettlement Programme.”).

⁵⁴⁵ *Border Timbers v. Zimbabwe* (CL-66) ¶ 112. See also ¶ 113 (“In February 2000, a referendum was held on a proposed new Constitution for Zimbabwe. The defeat of that proposal was followed ‘within a matter of days by the beginning of a series of land invasions. Although these began as a supposedly peaceful demonstration they quickly gathered such momentum that it became obvious that the exercise was actually being driven by or had been taken over by Government.’”), ¶ 641 (“The Tribunal notes that the Parties are in agreement that the occupation movement was political and racial in nature.”).

Zimbabwe asserted “that it had sent the police force to try and stop the Invasions,” but the tribunal found these assertions “largely unsubstantiated,”⁵⁴⁶ and there even “seemed to be a promotion of such racial and political overtones, instead of an attempt to subdue them.”⁵⁴⁷ The tribunal concluded that “the police took little or no action in respect of the acts of the invaders, despite multiple court orders declaring the Invasions to be unlawful and directing the police to ensure that the invaders vacated the farms.”⁵⁴⁸ Accordingly, the tribunal held that Zimbabwe had breached its FPS obligation through “the failure of the police to protect the Claimant’s properties from occupation or to remove the Settlers/War Veterans” and “the non-responsiveness of police to various violent incidents that occurred.”⁵⁴⁹ The tribunal rejected as “unconvincing” Zimbabwe’s arguments “that the police were overwhelmed, or that intervention would have required disproportional force.”⁵⁵⁰

- e) In *AMT v. Zaire*, the claimant owned a Zairian company, SINZA, that was engaged in the manufacture of certain industrial goods and the import and resale of consumer goods and food products.⁵⁵¹ SINZA’s industrial complex was attacked by members of the Zairian armed forces, who “broke into the commercial complex and the stores, destroyed, damaged and carried away all the finished goods.”⁵⁵² Zaire acknowledged that SINZA was “the object of looting in 1991 as indeed it was the case with [other companies].”⁵⁵³ The tribunal held that the FPS standard in the U.S.-Zaire BIT required Zaire to “take all measures necessary to ensure the full enjoyment of protection and security of [a covered] investment,” and that “Zaire

⁵⁴⁶ *Border Timbers v. Zimbabwe* (CL-66) ¶ 642.

⁵⁴⁷ *Border Timbers v. Zimbabwe* (CL-66) ¶ 641.

⁵⁴⁸ *Border Timbers v. Zimbabwe* (CL-66) ¶ 113.

⁵⁴⁹ *Border Timbers v. Zimbabwe* (CL-66) ¶ 597.

⁵⁵⁰ *Border Timbers v. Zimbabwe* (CL-66) ¶¶ 597-598 (“The Respondent’s further defenses that the police were overwhelmed, or that intervention would have required disproportional force, were also unconvincing.”).

⁵⁵¹ *American Manufacturing & Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award (21 Feb. 1997) (“*American Manufacturing v. Zaire*”) (CL-11) ¶ 3.03.

⁵⁵² *American Manufacturing v. Zaire* (CL-11) ¶ 3.04.

⁵⁵³ *American Manufacturing v. Zaire* (CL-11) ¶ 6.09.

must show that it has taken all measure of precaution to protect the investment of AMT in its territory.”⁵⁵⁴ The tribunal concluded “that Zaire has breached its [FPS] obligation by taking no measure whatever that would serve to ensure the protection and security of the investment in question.”⁵⁵⁵

305. The above decisions illustrate that Colombia violates its FPS obligation where it fails to protect an investor and its investment from attacks and occupation.

2. Colombia failed to provide full protection and security to Claimant and its investments

306. In the context of a political change and animus towards foreign mining companies, Colombia has failed to protect Claimant and its investments in the Buriticá Project from attacks and invasion by armed members of the *Clan del Golfo* and other illegal miners, in violation of Colombia’s FPS obligation under Article 805 of the Treaty.

307. As explained above, Colombia has allowed and tolerated the forceful and unlawful invasion by unauthorized persons of each of the three main sections of the Mine (Yaraguá, Rampa Sur, and Higabra). [REDACTED]

[REDACTED] and carried out repeated attacks using firearms and explosives, seriously injuring – and in some cases even killing – the Company’s employees and contractors, damaging its property and causing other harm to the its operations.⁵⁵⁶ The illegal miners have also robbed Continental Colombia of the minerals to which it holds exclusive rights under the Concession Contract.⁵⁵⁷

308. All of this has happened openly, with the knowledge of Colombian officials at every level of government, and with impunity for the illegal actors:

⁵⁵⁴ *American Manufacturing v. Zaire* (CL-11) ¶ 6.05 (emphasis added).

⁵⁵⁵ *American Manufacturing v. Zaire* (CL-11) ¶ 6.08 (“Zaire is responsible for its inability to prevent the disastrous consequences of these events adversely affecting the investments of AMT which Zaire had the obligation to protect.”).

⁵⁵⁶ *See supra* § II.H.3.

⁵⁵⁷ *See supra* § II.J.3.

- a) Continental Colombia has repeatedly raised the issue in correspondence and meetings with numerous State officials;⁵⁵⁸
- b) Continental Colombia repeatedly filed *amparos* requests and criminal complaints to denounce the criminal activities affecting the Mine, protect its rights and pursue the perpetrators;⁵⁵⁹
- c) the security issue at the Project site has also been covered extensively in both local and international press;⁵⁶⁰
- d) Continental Colombia has submitted technical reports to the Colombian State showing the resources and reserves that have been lost to illegal mining activities;⁵⁶¹ and
- e) Continental Colombia has attended dozens of meetings with various governmental departments and agencies to discuss the untenable security situation at the Mine.⁵⁶²

309. The reason why Colombia is failing in its duty to protect the Mine is not lack of means, but lack of political will. During the 2022 Colombian presidential campaign, President Petro stated his political positions against large mining companies and in favor of “informal” miners on multiple occasions.⁵⁶³ Soon after his inauguration, criminal activities at the Mine spun out of control and culminated in the attack of 17 May 2023, which left two workers dead and 14 injured.⁵⁶⁴ The Governor of Antioquia lamented that the attack “was foreseeable” given the Government’s passivity and accommodation of the *Clan del Golfo*.⁵⁶⁵ In response to the public outcry, the Director of Public Security at the Ministry

⁵⁵⁸ See supra § II.H.

⁵⁵⁹ See supra § II.H.5.

⁵⁶⁰ See supra § II.G.2.

⁵⁶¹ See supra § II.J.2.

⁵⁶² See supra § II.H.2-3.

⁵⁶³ See supra § II.F.1.

⁵⁶⁴ See supra § II.G.2.

⁵⁶⁵ See “The attack at the Buriticá Mine was foreseeable: Anibal Gaviria criticizes the Minister of Mines and Energy,” *W Radio*, 18 May 2023, (C-340).

of Defense, Daniela Gómez, promised on 13 September 2023 that Colombia would undertake a “mega” military operation to secure the Mine and reclaim the underground tunnels.⁵⁶⁶ Colombia not only subsequently failed to carry out the promised operation, but Ms. Gómez (who by then had been named Minister of Defense) then revealed the reason: “I cannot provide private security to a multinational that makes money off Colombia’s gross domestic product.”⁵⁶⁷

310. Colombia has not denied (and cannot deny) the illegal invasion of the Project and its failure to act in this respect. Its own organs, including the independent Office of the Inspector General and Office of the Ombudsman, have admitted the same when they acknowledged the issue, urged the Government to act and subsequently faulted the Government for its failure to act and its abandonment of the Project.⁵⁶⁸ In fact, State agencies that are present at or near the Project site witness the illegal mining activities on a daily basis⁵⁶⁹ – yet they fail to take the steps necessary to put an end to them.
311. The steps that Colombia should have taken (and must now take) to protect the Mine are no mystery. In fact, Colombia has demonstrated the capacity to take these steps in the past. During significant and extended periods under prior administrations, including during Operations Creta and Hades, Colombia undertook measures necessary to protect the Mine. These measures have included the following, among others:
- a) Launching Operation Creta (2016-2020), a large-scale military operation to support Continental Colombia’s activities at the Mine and flush illegal miners out of the tunnels. This operation is today hailed as “the benchmark of a peaceful intervention, organized, planned and in team with the Public Forces, state entities and private companies.”⁵⁷⁰ During Creta, more than 1,400 police units and

⁵⁶⁶ See supra § II.H.4. See, e.g., Email from Claimant’s Legal Counsel to Colombia, dated 31 Oct. 2023 (C-375).

⁵⁶⁷ “The Clan del Golfo is winning the underground gold war in Buriticá,” *La Silla Vacía*, (10 March 2024), (C-394).

⁵⁶⁸ See supra § II.I.

⁵⁶⁹ See supra § II.J.3. See, e.g., [REDACTED].

⁵⁷⁰ See supra § II.D.2.

hundreds of military units were deployed to the Project's area to remove more than 800 illegal miners.⁵⁷¹

- b) Conducting further underground offensive security operations to expel illegal miners from the Mine's underground tunnels during Operation Hades (2021-2022), and successfully securing the removal of hundreds of trespassers, seizing equipment used in illegal mining operations, and recovering key sections of the Mine from illegal miners;⁵⁷²
- c) Controlling the surface area surrounding the Mine, including by limiting and closing the illegal entrances used by illegal miners (in plain sight) to access the underground workings of the Mine and extract stolen minerals as well as maintaining continuous monitoring of the surface areas that are used as staging ground by illegal miners;⁵⁷³
- d) Operating a 24/7 security checkpoint (staffed by guards) in the village of Pinguro, the entrance to the sole access road to the Project and the town of Buriticá to control the flow of illegal miners and their mining equipment, explosives, firearms and stolen minerals;⁵⁷⁴ and
- e) Investigating, arresting, and prosecuting individuals involved in illegal mining at the Project site, including illegal financiers working behind the scenes.⁵⁷⁵

312. Colombia's previous efforts to protect the Buriticá Project demonstrate that Colombia knows what measures it can and must take to put an end to the attacks and operations of illegal miners, and that these measures were effective. Indeed, in December 2024, the Director General of the National Police, José Roa, conceded to the Company that "the technical difficulty of enforcement actions is not high" and "[t]he police [is] willing to

⁵⁷¹ See supra § II.D.2. See, e.g., Decree No. 64 of 2016 of the Municipality of Buriticá, dated 11 Apr. 2016 (C-184).

⁵⁷² See supra § II.E.4.

⁵⁷³ See supra § II.D.2, II.D.4;.

⁵⁷⁴ See supra § II.H.3. See, e.g., [REDACTED]

⁵⁷⁵ See supra § II.E.4.

intervene, and from a capability standpoint, the state is fully able to stop illegal mining.”⁵⁷⁶ A recent episode illustrates that Colombia has the means to protect Claimant’s investments if the political will is there. Shortly after the constitution of this Tribunal, on 17 January 2025, in the middle of the night, a group of illegal miners sought to invade the Higabra section of the Mine with firearms and powerful explosive devices, injuring a security guard, causing serious disruptions and threatening the continuing operation of the Mine. This one time (and for the first time in years), the Colombian police (UNIMIL) took actions to expel the illegal miners from the underground tunnels they had just invaded and restore Claimant’s control over them within a few days.⁵⁷⁷

313. In sum, Colombia has knowingly failed to protect Claimant’s investments for years, which has allowed armed members of the *Clan del Golfo* and other illegal miners to seize and occupy substantial areas of the Mine and steal the valuable minerals over which Continental Colombia has exclusive rights under the Concession Agreement. Colombia’s acts and omissions have also caused an environmental emergency, and considerable losses to Claimant and the community, including destroyed lives, property, and the loss of substantial mineral reserves.⁵⁷⁸ This protracted failure to take concrete steps necessary to protect the Project violates Colombia’s FPS obligation under Article 805(1) of the Treaty.

B. COLOMBIA INDIRECTLY AND UNLAWFULLY EXPROPRIATED A SUBSTANTIAL PART OF CLAIMANT’S INVESTMENT IN VIOLATION OF ARTICLE 811 OF THE TREATY

314. Article 811(1) of the Treaty prohibits the unlawful expropriation of covered investments:

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:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;

⁵⁷⁶ Minutes of meeting between Continental Gold and high-ranking Colombian officials, dated 27 Dec. 2024 (C-431).

⁵⁷⁷ See supra § II.J.3.

⁵⁷⁸ See supra § II.J.1.

(c) on prompt, adequate, and effective compensation ... ; and

(d) in accordance with due process of law.⁵⁷⁹

315. If a Party fails to comply with any of the four conditions in Article 811(1) in expropriating an investment, the expropriation is unlawful.

316. As shown below, by surrendering the Mine to illegal miners and the *Clan del Golfo*, Colombia has indirectly expropriated a substantial part of Claimant's investment without complying with any of the four conditions in Article 811(1), notably payment of prompt, adequate, and effective compensation. The expropriation is therefore unlawful under the Treaty.

1. The Treaty prohibits Colombia from unlawfully depriving investors of their investments

(a) Expropriations can be indirect and creeping

317. Annex 811(2) of the Treaty clarifies that an expropriation may be indirect, consisting of “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.”⁵⁸⁰ The notion of an indirect expropriation is well established in international law. In *Tecmed v. Mexico*, for instance, the tribunal observed that although indirect expropriation does “not have a clear or unequivocal definition, it is generally understood that [it] materializes through actions or conduct, which do not explicitly express the purpose of depriving one of rights or assets, but actually have that effect.”⁵⁸¹

318. Annex 811(2) also clarifies that an indirect expropriation may be the result of a “series of measures” over a period of time, which, taken as a whole, have an effect equivalent to

⁵⁷⁹ Treaty (CL-1) Art. 811.

⁵⁸⁰ Treaty (CL-1) Annex 811.

⁵⁸¹ *Técnicas Medioambientales Tecmed S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (CL-16) ¶ 114.

expropriation. Such expropriations are commonly referred to as “creeping.”⁵⁸² In *Generation Ukraine v. Ukraine*, the tribunal 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.”⁵⁸³ In *Vivendi v. Argentina*, the tribunal held that “even if a single act or omission by a government may not constitute a violation of an international obligation, several acts taken together can warrant finding that such obligation has been breached.”⁵⁸⁴ The question is whether the cumulative effect of the acts and omissions is to “deprive the investor in whole or in material part of the use or economic benefit of its assets.”⁵⁸⁵

319. Annex 811(2)(a) of the Treaty sets out three non-exhaustive factors to be considered on a case-by-case basis when determining if the measures of a Party constitute an indirect expropriation:

The determination of whether a measure or series of measures of a Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- (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.

320. Annex 811(2)(b) adds that:

⁵⁸² August Reinisch and Christoph Schreuer, *Chapter 1: Expropriation, in* INTERNATIONAL PROTECTION OF INVESTMENTS: THE SUBSTANTIVE STANDARDS (2020)(CL-91) ¶ 265 (“The concept of ‘creeping’ or ‘constructive’ expropriation is widely accepted in investment arbitration.”).

⁵⁸³ *Generation Ukraine, Inc v. Ukraine*, ICSID Case No. ARB/00/9, Award (16 Sep. 2003) (CL-18) ¶ 20.22.

⁵⁸⁴ *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. The Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 Aug. 2007) (CL-34) ¶ 7.5.31.

⁵⁸⁵ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 Jul. 2008) (CL-37) ¶ 455.

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.

321. 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. Even where a Party discharges that burden, it may not be absolved from responsibility for expropriatory measures. The *Tecmed* tribunal, for example, held that where a State acts for a legitimate public purpose but does so in a manner that is disproportionate to that purpose or imposes an excessive burden on the investor, the acts will constitute a compensable expropriation.⁵⁸⁶

(b) Expropriatory measures include both acts and omissions, such as a failure to protect an investment from usurpation by third parties

322. Article 811 of the Treaty prohibits the unlawful expropriation of covered investments “through measures having an effect equivalent to nationalization or expropriation.”⁵⁸⁷ It is well established in international law that the term “measures” refers to both State actions and inactions or omissions. As the tribunal in *Gabriel Resources v. Romania* observed, “[i]t is ... generally accepted that the term measure can include both actions and omissions.”⁵⁸⁸ The Commentary on the ILC Articles clarifies that “[a]n internationally wrongful act of a State may consist in one or more actions or omissions or a combination of both,” and that “[c]ases in which the international responsibility of a State has been

⁵⁸⁶ *Técnicas Medioambientales Tecmed S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (CL-16) ¶ 122 (citing the European Court of Human Rights in the *Case of James and Others v. The U.K.*, App. No. 8793/79, Judgment, 8 Eur. Ct. H.R. 123 (21 Feb. 1986)) (“Not only must a measure depriving a person of his property pursue, on the facts as well as in principle, a legitimate aim ‘in the public interest’, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realized The requisite balance will not be found if the person concerned has had to bear ‘an individual and excessive burden’ ... The Tribunal considers that a measure must be both appropriate for achieving its aim and not disproportionate thereto.”).

⁵⁸⁷ Treaty (CL-1) Art. 811 (emphasis added).

⁵⁸⁸ *Gabriel Resources Ltd. and Gabriel Resources (Jersey) v. Romania (I)*, ICSID Case No. ARB/15/31, Award (8 Mar. 2024) ¶ 929. See also, e.g., *Saluka Investments BV v. The Czech Republic*, PCA Case No. 2001-04 (CL-101) ¶ 459 (“The term ‘measures’ covers any action or omission of the Czech Republic.”).

invoked on the basis of an omission are at least as numerous as those based on positive acts, and no difference in principle exists between the two.”⁵⁸⁹

323. With special relevance to the present case, international tribunals have held that States may be responsible for expropriations when tolerating the unlawful occupation of an investment by third parties. The tribunal in the seminal *Amco Asia* case observed that “[e]xpropriation in international law also exists merely by the state withdrawing the protection of its courts from the owner expropriated, and tacitly allowing a *de facto* possessor to remain in possession of the thing seized”⁵⁹⁰

324. In *Wena Hotels v. Egypt*, armed private individuals together with representatives of the State-owned Egyptian Hotels Company (“EHC”) seized two hotels in which the claimant, Wena Hotels, had invested.⁵⁹¹ The tribunal held that Egypt was responsible for the expropriation of the hotels irrespective of whether Egypt had participated in the seizure:

Whether or not it authorized or participated in the actual seizures of the hotels, Egypt deprived Wena of its ‘fundamental rights of ownership’ by allowing EHC forcibly to seize the hotels, to possess them illegally for nearly a year, and to return the hotels stripped of much of their furniture and fixtures.⁵⁹²

325. In *Houben v. Burundi*, the claimant Mr. Houben acquired a plot of land in Burundi.⁵⁹³ Two years after the acquisition, squatters began occupying the land and erected structures on it, with the acquiescence and encouragement of the local administration which issued

⁵⁸⁹ Commentary to ILC Articles (“**ILC Articles**”) (CL-110), Commentaries to Article 1 ¶ 1 and Article 2 ¶ 4.

⁵⁹⁰ *Amco Asia Corporation et al., v. Republic of Indonesia (I)*, ICSID Case No. ARB/81/1, Award (20 Nov. 1984) (CL-8A) ¶ 158 (emphasis added).

⁵⁹¹ *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 Dec. 2000) (CL-13) ¶ 28 (“[EHC’s Board of Directors] decided that EHC would take possession of the Nile Hotel . . . [and] take over the Luxor Hotel and to place it under its own management”); ¶ 35 (summarizing evidence concerning the presence of armed individuals when the hotel was seized).

⁵⁹² *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 Dec. 2000) (CL-13) ¶ 99 (emphasis added).

⁵⁹³ Unbeknownst to Mr. Houben at the time, Burundi’s Attorney-General had issued an order prohibiting transfers of the plot, because the plot was embroiled in a title dispute involving a Burundi’s politician. The *Houben* tribunal found that Mr. Houben was the valid owner of the land at the time of the treaty breaches. See *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award (12 Jan. 2016) (CL-70) ¶ 101.

ownership “certificates” to the squatters.⁵⁹⁴ Mr. Houben repeatedly requested the assistance of Burundian authorities, but the authorities failed to remove the squatters.⁵⁹⁵ The *Houben* tribunal observed that “part of the jurisprudence [of investment tribunals] has considered that an indirect expropriation could be established not only based on positive acts of the State authorities but also based on deliberate omissions of those authorities,” and it endorsed that jurisprudence.⁵⁹⁶ The *Houben* tribunal held that Burundi breached the FPS standard in the Burundi-Belgium BIT “by failing to put in place the due diligence necessary to protect Mr. Houben’s against the acts of usurpation” of his land by the squatters, and that “[t]o establish an indirect expropriation ... as well, such a measure [*i.e.*, the failure to protect] must have an effect equivalent to measures depriving or restricting property rights”⁵⁹⁷ The tribunal held that the “acts and omissions of Burundi in relation to the usurpation [of the land] have had the effect of depriving [Mr. Houben] of a substantial part of rights and benefits associated with his investment,” thus constituting an indirect expropriation.⁵⁹⁸ The squatters erected structures that were scattered over half of Mr. Houben’s land, which made the commercial development of the other half of the land “extremely difficult, if not impossible to realize.”⁵⁹⁹

326. The *Eureko v. Poland* decision further illustrates that a State may expropriate an investors through omissions. In that case, the claimant Eureko acquired a 21% shareholding in PZU, Poland’s State-owned insurance company, which was going through a privatization process. In an addendum to the share purchase agreement with Eureko (referred to as the First Addendum), Poland’s State Treasury committed to offer the remainder of PZU’s shares for sale through an IPO within three months.⁶⁰⁰ The *Eureko* tribunal held “that Eureko, under the terms of the First Addendum, acquired rights in respect of the holding

⁵⁹⁴ *Joseph Houben v. Republic of Burundi*, ICSID Case No. ARB/13/7, Award (12 Jan. 2016) (“*Houben v. Burundi*”) (CL-70) ¶ 173. English quotes in this Memorial are free translations of the French original.

⁵⁹⁵ *Houben v. Burundi* (CL-70) ¶ 171.

⁵⁹⁶ *Houben v. Burundi* (CL-70) ¶ 204.

⁵⁹⁷ *Houben v. Burundi* (CL-70) ¶ 212.

⁵⁹⁸ *Houben v. Burundi* (CL-70) ¶ 213.

⁵⁹⁹ *Houben v. Burundi* (CL-70) ¶ 213.

⁶⁰⁰ *Eureko B.V. v. Republic of Poland*, UNCITRAL, Partial Award (19 Aug. 2005) (“*Eureko v. Poland*”) (CL-23) ¶¶ 152-157.

of the IPO and that these rights are ‘assets’” qualifying for protection under the Netherlands-Poland BIT, separately from Eureko’s 21% shareholding in PZU.⁶⁰¹ The tribunal further held that “[i]t is obvious that the rights of an investor can be violated as much by the failure of a Contracting State to act as by its actions,”⁶⁰² and, on that basis, found that Poland’s failure to conduct the IPO (*i.e.*, an omission) constituted an expropriation to the extent that it had deprived Eureko of its rights in respect of the holding of the IPO, in breach of the BIT.⁶⁰³

(c) Expropriations can be partial, depriving an investor of a material part of its investment

327. An expropriation may be partial, *i.e.*, it may deprive an investor of part of its investment while leaving other parts of the same investment unaffected. As the tribunal in *GAMI v. Mexico* observed, “[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.’”⁶⁰⁴ The claimant, GAMI, owned shares in the Mexican company GAM, which owned five sugar mills that were expropriated by presidential decree.⁶⁰⁵ The *GAMI* tribunal held that “GAM’s own case would thus not have been affected in principle if only one mill had been expropriated. GAM’s property rights in that single mill would have been ‘taken’ because GAM was formally dispossessed of those rights.”⁶⁰⁶
328. In *Ampal-American v. Egypt*, the tribunal cited *GAMI* with approval. The claimants in that case held shares in an Egyptian company, EMG, which exported natural gas from Egypt to

⁶⁰¹ *Eureko v. Poland* (CL-23) ¶ 240.

⁶⁰² *Eureko v. Poland* (CL-23) ¶ 186.

⁶⁰³ *Eureko v. Poland* (CL-23) ¶ 240.

⁶⁰⁴ *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award (15 Nov. 2004) (CL-22) ¶ 126 (*italics in original*). *See also S.D. Myers v. Canada* (“An expropriation usually amounts to a lasting removal of the ability of an owner to make use of its economic rights although it may be that, in some contexts and circumstances, it would be appropriate to view a deprivation as amounting to an expropriation, even if it were partial or temporary.”) (*emphasis added*).

⁶⁰⁵ *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award (15 Nov. 2004) (CL-22) ¶¶ 12, 17.

⁶⁰⁶ *GAMI Investments, Inc. v. United Mexican States*, UNCITRAL, Final Award (15 Nov. 2004) (CL-22) ¶ 127.

Israel through a pipeline.⁶⁰⁷ The *Ampal-American* tribunal found that the cancellation of EMG's license to operate as a "free zone" company with tax-free status constituted an expropriation of an investment independently of EMG's gas export business, which was not destroyed by the license cancellation.⁶⁰⁸

329. In *Eureko v. Poland*, discussed above, the tribunal found that Poland partially expropriated Eureko's investment. The tribunal distinguished between Eureko's 21% shareholding in the Polish insurance firm PZU from the rights that it had subsequently acquired with regard to Poland's commitment to hold an IPO for the remainder of PZU's shares. While Poland had not deprived Eureko of the 21% shareholding "which it continues to hold and on which it receives dividends,"⁶⁰⁹ Poland wrongfully deprived Eureko of its rights concerning the IPO, through various acts and omissions the resulted in the IPO not taking place.⁶¹⁰

(d) Both tangible and intangible property can be the object of an expropriation

330. The Treaty defines the term "investment" expansively, covering "concessions" and "any other tangible or intangible property, moveable or immovable property, and related property rights acquired in the expectation or used for the purpose of economic benefit or other business purposes."⁶¹¹ It follows that an expropriation of intangible property, including rights related to concessions, must comply with the Treaty's expropriation requirements, including payment of compensation.
331. It has long been recognized that intangible property, including rights and interests under licenses or pursuant to law, may be expropriated and that such expropriations occur when

⁶⁰⁷ *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 Feb. 2017) (CL-77) ¶ 25.

⁶⁰⁸ *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 Feb. 2017) (CL-77) ¶¶ 179-180 ("The Claimants acknowledge that the revocation of the license did not, per se, destroy the entire Peace Pipeline Project. However, the Claimants submit that since the license was an investment in its own right, its revocation constituted a direct and total taking of a discrete investment protected by the Treaty. The Tribunal agrees with the Claimants.").

⁶⁰⁹ *Eureko v. Poland* (CL-23) ¶ 239.

⁶¹⁰ *Eureko v. Poland* (CL-23) ¶ 241.

⁶¹¹ Treaty (CL-1) Article 838 (emphasis added).

a State uses its governmental authority to deprive a foreign investor of the use, enjoyment or value of such rights.⁶¹² The modern rules regarding investment protection are aimed not only at the protection of tangible property, but also recognize and protect the value of property that comes from “the capability of a combination of rights in a commercial and corporate setting and under a regulatory regime to earn a commercial rate of return.”⁶¹³

332. Investment tribunals have held that rights granted by law, concession, or license are expropriated where a State deprives a foreign investor of the value or enjoyment of these rights. In *Quiborax v. Bolivia*, for example, the tribunal found that “the Claimants had rights to concessions which could be subject to expropriation,” and that these concession rights had been expropriated.⁶¹⁴ In *Eco Oro v. Colombia*, which arose under the same Treaty as this arbitration, the tribunal held that “Eco Oro’s expectation in entering into [a certain] Concession was to make a profit,” that “[w]ithout a right to exploit . . . the Concession became valueless,” and that “this loss is capable of being considered to be a substantial deprivation, such as to amount to an indirect expropriation.”⁶¹⁵ In the same vein, in *Ampal-American v. Egypt*, discussed above, the tribunal held that a license allowing a local company to operate in a tax “free zone” was a protected investment that was expropriated when Egypt revoked the license through a change in law.⁶¹⁶

(e) Expropriations are unlawful if they fail to comply with any of the four requirements in Article 811

333. Article 811(1) of the Treaty sets out four cumulative conditions for the lawfulness of an expropriation. The expropriation must be “for a public purpose; [carried out] in a non-

⁶¹² See, e.g., GEORGE C. CHRISTIE, *What Constitutes a Taking of Property Under International Law?*, 38 BRIT. Y.B. INT’L L. 307-338 (1962) (CL-6) pp. 318-319 (“[C]ontract and many other so-called intangible rights can, under certain circumstances, be expropriated, even by indirect interference . . .”).

⁶¹³ See, e.g., THOMAS WÄLDE & ABBA KOLO, *Environmental Regulation, Investment Protection and ‘Regulatory Taking’ in International Law*, 50 INT’L AND COMP. L. Q. 811 (2001) (CL-15) p. 835.

⁶¹⁴ *Quiborax S.A., Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award (16 Sep. 2015) (CL-68) ¶ 149.

⁶¹⁵ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 Sep. 2021) (CL-93) ¶ 634.

⁶¹⁶ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss (21 Feb. 2017) (CL-77) ¶ 183.

discriminatory manner; on prompt, adequate, and effective compensation ...; and in accordance with due process of law.”⁶¹⁷ As Professors Dolzer and Schreuer explain in their treatise on international investment law, these requirements reflect customary international law and “must be fulfilled cumulatively.”⁶¹⁸

334. Failure to pay “prompt, adequate, and effective compensation” renders an expropriation unlawful in and of itself, without the need to consider other conditions of lawfulness.⁶¹⁹ In *South American Silver v. Bolivia*, for example, the tribunal found that Bolivia had unlawfully expropriated the claimant’s investment because it had not compensated the claimant, notwithstanding that the expropriation otherwise satisfied the public purpose and due process requirements.⁶²⁰
335. The *BP v. Libya* tribunal found that an expropriation lacks a public purpose if it is “made for purely extraneous political reasons and [is] arbitrary and discriminatory in character.”⁶²¹ A State’s claim that an expropriation is made for the public interest must be substantiated, because, as the tribunal in *ADC v. Hungary* observed, if a “mere reference

⁶¹⁷ Treaty (CL-1) Art. 811.

⁶¹⁸ See RUDOLF DOLZER & CHRISTOPH SCHREUER, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW (2d ed., 2012) (CL-57) at 99. See also *South American Silver Ltd. v. Bolivia*, PCA Case No. 2013-15, Award (22 Nov. 2018) (CL-86) ¶ 546 (applying similar requirements under a different treaty and observing that “[t]hese are cumulative conditions that need to be observed by the State” for an expropriation to be lawful); *Crystallex Int’l Corp. v. Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 Apr. 2016) (CL-72) ¶ 716 (observing that “a treaty cumulatively requires several conditions for a lawful expropriation ... failure of any of those conditions entails a breach of the expropriation provision.”); *Waguih Elie George Siag and Clorinda Vecchi v Egypt*, ICSID Case No. ARB/05/15 Award (1 Jun. 2009) (CL-40) ¶ 428 (“[A]ll conditions must be met lest an expropriation be deemed unlawful”).

⁶¹⁹ See, e.g., *Bernhard von Pezold et al., v. Zimbabwe*, ICSID Case No. ARB/10/15, Award (28 July 2015) (CL-65) ¶ 497 (finding that lack of compensation made the expropriation unlawful, without needing to review whether other conditions for an unlawful expropriation were met); *Burlington Resources Inc. v. Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability (14 Dec. 2012) (CL-111) ¶¶ 543-545 (observing that “[m]any tribunals have held that the lack of payment is sufficient for the expropriation to be deemed unlawful” and ruling that because “Ecuador made no ‘prompt, adequate and effective’ payment to compensate for the expropriation of [claimant’s] investment, . . . the Tribunal cannot but conclude that Ecuador’s expropriation was unlawful”); *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 Dec. 2000) (CL-13) ¶ 101 (“Egypt violated its obligation [not to unlawfully expropriate an investment] by failing to provide Wena with ‘prompt, adequate and effective compensation’ for the losses it suffered as a result of the seizures of the Luxor and Nile Hotel.”).

⁶²⁰ *South American Silver Ltd. v. Bolivia*, PCA Case No. 2013-15, Award (22 Nov. 2018) (CL-86) ¶¶ 169, 610.

⁶²¹ *BP Exploration Co. (Libya) Ltd. v. Libya*, Ad Hoc, Award (10 Oct. 1973) (CL-7) ¶ 111.

to ‘public interest’ can magically put such interest into existence . . . this requirement would be rendered meaningless[.]”⁶²²

336. An expropriation is discriminatory if it is based on actions that treat two similarly situated parties differently. The *Siemens v. Argentina* tribunal observed in this regard that it is well-established that “intent is not decisive or essential for a finding of discrimination;” rather, “the impact of the measure on the investment would be the determining factor to ascertain whether it had resulted in non-discriminatory treatment.”⁶²³ For example, in *Tethyan Copper v. Pakistan*, the tribunal found that the respondent’s decision to deny a mining lease application constituted a discriminatory expropriation as “the denial was not based on justified grounds but rather motivated by the [government’s] desire to implement its own project instead of collaborating with Claimant.”⁶²⁴
337. As for the requirement that an expropriation be carried out in accordance with due process of law, the State must provide due process in accordance with international law and not merely comply with domestic law.⁶²⁵ The *ADC v. Hungary* tribunal observed that this requirement “demands an actual and substantive legal procedure for a foreign investor to raise its claims against the depriving actions already taken or about to be taken against it.”⁶²⁶ The mere existence of a court system available to review expropriatory conduct is not sufficient to satisfy this requirement. As Professor Newcombe and Mr. Paradell have observed, the “better view is that due process is properly viewed as an obligation of

⁶²² *ADC Affiliate Ltd. et al., v. Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) (CL-30) ¶ 432.

⁶²³ *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 Feb. 2007) (CL-33) ¶ 321. See also *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Pakistan*, ICSID Case No. ARB/03/29, Award (27 Aug. 2009) (CL-41) ¶ 390 (noting that the assessment of discriminatory treatment is “objective,” is not based on the State’s intent, but only on the effect of the measure in question, and that a “showing of discrimination of an investor who happens to be a foreigner is sufficient”); *LG&E Energy Corp., LG&E Capital Corp., and LG&E Int’l Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability (3 Oct. 2006) (CL-31) ¶ 146 (observing that “a measure is considered discriminatory if the intent of the measure is to discriminate or if the measure has a discriminatory effect”).

⁶²⁴ *Tethyan Copper Co. Pty Ltd. v. Pakistan*, ICSID Case No. ARB/12/1, Decision on Jurisdiction and Liability (10 Nov. 2017) (CL-80) ¶ 1336.

⁶²⁵ As Professor Dolzer and Stevens observe in their study of investment treaties, “the general lack of references to domestic law reflects the very purpose of [investment treaties], *i.e.*, not to accept standards established under domestic rules as ultimate standards of the legality of an expropriation.” RUDOLF DOLZER AND MARGRETE STEVENS, *BILATERAL INVESTMENT TREATIES*, 1995 (CL-10) at 106.

⁶²⁶ *ADC Affiliate Ltd. et al., v. Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) (CL-30) ¶ 435.

conduct,” which means that “any defect in process, even if reviewable or correctable, amounts to a breach of due process.”⁶²⁷

2. Colombia indirectly and unlawfully expropriated a material part of Claimant’s investments

(a) Colombia indirectly expropriated a material part of Claimant’s investments

338. Following the 2022 presidential campaign and subsequent political transition, Colombia has, through a series of measures having an effect equivalent to expropriation, expropriated a material part of Claimant’s investments in the Buriticá Project. These measures include both acts and omissions that have resulted in Colombia’s tolerating the takeover of a substantial portion of the Mine by armed members of the *Clan del Golfo* and other illegal miners, thereby depriving Claimant and the Company of valuable rights over these areas under the Concession Agreement and Colombian law.

339. Whether because of a policy choice, incompetence or animus towards multinational mining companies, Colombia’s acts and omission have deprived Claimant and the Company of a material part of their investments in the Buriticá Project. These acts and omissions include the following:

- a) Colombia has tolerated the illegal occupation of a large portion of the Mine by unauthorized third parties and their exploitation of the Mine’s mineral resources, in disregard of Claimant and the Company’s rights under Colombian law and the Concession Agreement.⁶²⁸
- b) Colombia has failed to enforce Claimant and the Company’s rights under Colombian law and the Concession Agreement, including arising out of decisions

⁶²⁷ ANDREW NEWCOMBE & LLUÍS PARADELL, LAW AND PRACTICE OF INVESTMENT TREATIES: STANDARDS OF TREATMENT (2009) (CL-43) § 7.34.

⁶²⁸ See supra §§ II.G-J.

rendered in *amparo* proceedings and other judicial and administrative proceedings.⁶²⁹

- c) The Colombian Armed Forces and UNIMIL have failed in their duty to protect the Company and the Mine under the joint security agreements (and numerous renewals thereof) that they signed with the Company.⁶³⁰ Specifically, UNIMIL and the Armed Forces stood by and allowed illegal miners to violently attack the Company's employees and contractors, occupy large parts of the Mine, and rob the Company of the minerals to which it has exclusive rights.⁶³¹

340. As a result of Colombia's acts and omissions, illegal miners have taken over large parts of the concession area and have been stealing the minerals located there, thus depriving the Company of its valuable rights under the Concession Agreement and Colombian law (as well as significant tangible assets, including equipment). In particular:

- [REDACTED]

⁶²⁹ See supra § II.H.5.

⁶³⁰ See supra § II.D.1.

⁶³¹ See supra § II.J.3.

⁶³² [REDACTED]

⁶³³ [REDACTED]

- b) ***Mining Infrastructure and Equipment:*** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁶³⁴
- c) ***Right to Exploit Resources:*** Respondent's decision to allow unauthorized third parties to occupy and exploit the Mine, including through the acts and commissions summarized above in sections II.G-F and elsewhere,⁶³⁵ has deprived the Company of its fundamental right to exploit the valuable mineral resources in the occupied areas. Under the Concession Contract, Colombia granted Continental Colombia exclusive rights to explore, develop and exploit the mineral resources, including gold, silver, copper, zinc, and others, within the concession area for at least 30 years.⁶³⁶
- d) ***Right to Assign and Monetize:*** Colombia's acts and omissions also deprived the Company of its right to assign, and thereby monetize, its exclusive rights over the minerals in the areas illegally occupied by third parties. The Company has a right under the Concession Contract to assign its exclusive rights in whole or in part to a third party, subject only to prior written notice to the Ministry of Mines and Energy,⁶³⁷ but the Company is evidently no longer in a position to exercise that right and sell its rights over the minerals located in the occupied areas.

⁶³⁴ See supra §§ J.2-3; [REDACTED]

⁶³⁵ See supra § II.G-F.

⁶³⁶ In particular, Article 1 of the Concession Contract establishes: "Clause 1 of the Concession Agreement states that "[t]he purpose of this contract is the realization by THE CONCESSIONAIRE of a project of technical exploration and economic exploitation, of a deposit of PRECIOUS METALS, COPPER MINERALS, LEAD MINERALS, ZINC MINERALS And THEIR CONCENTRATES, in the total area [of the concession] [...] The Concessionaire shall have unrestricted disposition of the minerals subject to this concession Agreement that are extracted." See Concession Agreement, Art. 1 (C-19) (free translation).

⁶³⁷ See Concession Agreement, Art. 11 (C-19) ("CLAUSE ELEVEN - Assignment and Encumbrances: Assignment. The assignment of rights arising from this contract shall require prior written notice to THE GRANTOR. The assignment referred to in this clause may not be subject to any term or condition by the parties with respect to the State. a) If the assignment is total, the assignee shall be subrogated in all obligations arising from the contract, including those incurred prior to the assignment and still pending fulfillment. b) The partial assignment of the right arising from this contract may be made in shares or percentages of said right. In such case, the assignor and assignee shall be jointly and severally liable for the obligations incurred. c) Assignment of areas: there may be

341. In sum, Colombia's measures constitute an indirect expropriation considering the non-exhaustive factors set forth in Annex 811(2)(a) of the Treaty. First, Colombia's dereliction of duty has had significant "economic impact" on Claimant's investment, as demonstrated by the Company's loss of access to the valuable mineral reserves and resources in the illegally occupied areas as well as its loss of significant infrastructure developments (tunnels, ramps and ventilation shafts).⁶³⁸ Second, Colombia's measures have "interfere[d] with distinct, reasonable investment-backed expectations," including Colombia's awarding to the Company the exclusive rights to minerals located at the Project pursuant to the Concession Agreement and its specific commitment to protect the Project, including pursuant to the Joint Security Agreements between the Armed Forces and the Company.⁶³⁹ Third, the character of Colombia's measures, which relate to Colombia's tolerating and condoning the unlawful occupation and exploitation by unauthorized third parties of the Mine that the Company developed, underscore that these measures constitute an expropriation.

(b) Colombia's indirect expropriation is unlawful

342. Colombia's indirect expropriation is unlawful because it does not comply with the conditions for lawful expropriations in Article 811(1) of the Treaty.

343. First, Colombia has paid (and offered) no compensation to Claimant (or the Company) for depriving it of a material part of its investments in the Project, as detailed above.

assignment of areas of the rights arising from the concession contract through the physical division of the area requested or covered by the contract. This type of assignment shall give rise to a new contract with the assignee, which shall become effective upon the registration of the assignment document in the National Mining Registry.") (free translation).

⁶³⁸ [REDACTED] Treaty (CL-1) Annex 811(2)(a)(i) ("The determination of whether a measure or series of measures of a Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors. . . 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.").

⁶³⁹ See, e.g., Concession Agreement (C-19); Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148); Treaty (CL-1) Annex 811(2)(a)(i) ("The determination of whether a measure or series of measures of a Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors. . . the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations.").

344. Second, Colombia’s indirect expropriation lacks a legitimate public purpose and is discriminatory. Allowing criminals violently to attack, invade, and steal from a legal investor cannot serve a legitimate public purpose. Nor can it serve a public purpose to allow illegal miners to engage in environmentally destructive and injurious practices, including the use of mercury, among other conduct, that endangers the lives and safety of the Mine’s workers, the surrounding communities, and degrades the natural environment in which the Project is located.⁶⁴⁰
345. Third, Colombia’s indirect expropriation violated due process of law. The series of actions and omissions through which Colombia has facilitated the invasion and occupation of the Mine by illegal miners has been entirely outside the bounds of any legal procedure and in breach of various State duties under Colombian law to protect the Project, as shown above. Moreover, Continental Colombia actively sought on numerous occasions to use the available legal avenues under Colombian law to obtain relief and expel criminals and illegal miners from the Mine, including through the filing of *amparos administrativos* and criminal complaints, but these efforts have been undermined by the State’s lack of good faith participation in the enforcement of those proceedings.⁶⁴¹ Colombia has also left unenforced the two emergency resolutions of the ANM recognizing the presence of illegal mining activities on the Company’s concession area and ordering the immediate cessation of these activities.⁶⁴²
346. Fourth, Colombia’s indirect expropriation was discriminatory, as it is the direct result of Colombia’s decision to favor local illegal miners over foreign legal mining companies. During his 2022 presidential campaign, Mr. Petro specifically targeted Claimant and other large mining companies active in Antioquia, calling them “predatory transnational mining companies” and threatened to transfer their mining titles to “small and medium-sized miners.”⁶⁴³ Following Mr. Petro’s inauguration, this discriminatory intent against multinational mining investors was put into practice, including through the series of acts

⁶⁴⁰ See supra § II.J.1.

⁶⁴¹ See supra § II.H.5.

⁶⁴² See supra ¶ 179. See, ANM Emergency Report No. 007-E, dated 31 May 2024 (C-404) p. 30.

⁶⁴³ See supra § II.F.1.

and omissions detailed above in Sections II.F-G, to favor local miners at the expense of Claimant, resulting in the indirect expropriation of Claimant's investments.⁶⁴⁴

C. COLOMBIA BREACHED ITS OBLIGATION UNDER ARTICLE 805 OF THE TREATY TO PROVIDE FAIR AND EQUITABLE TREATMENT TO CLAIMANT'S INVESTMENTS

347. Article 805(1) of the Treaty provides:

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.⁶⁴⁵

348. As demonstrated below, Colombia has breached its obligation to grant fair and equitable treatment to Claimant's investments in the Buriticá Project by frustrating Claimant's legitimate expectations, subjecting Claimant and its investments to arbitrary and inconsistent treatment, and denying Claimant and its investments justice.

1. Colombia must provide fair and equitable treatment to Claimant and its investments in the Buriticá Project

349. Article 805(1) of the Treaty requires treatment in accordance with the customary international law minimum standard of treatment ("MST"), including fair and equitable treatment ("FET"). The MST has evolved from its well-known formulation in the *Neer* case almost a century ago and converged with the FET standard, as customary international law governing the treatment of foreign investments has been shaped by the protections incorporated in thousands of BITs, including the FET standard.⁶⁴⁶ The tribunal in *Rusoro v. Venezuela* thus observed that the MST "has developed and today is indistinguishable from the FET standard and grants investors an equivalent level of protection as the latter. ... [T]here is no substantive difference in the level of protection afforded by [those]

⁶⁴⁴ See supra § II.F.3.

⁶⁴⁵ Treaty (CL-1) Article 805(1). See also *id.* n. 2 ("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.").

⁶⁴⁶ See generally Stephen Myron Schwebel, "The Influence of Bilateral Investment Treaties on Customary International Law" TDM 5 (2005) (CL-24).

standards.”⁶⁴⁷ In particular, both the MST and the FET standard protect investors from State conduct that frustrates the investor’s legitimate expectations, treats the investor and its investment arbitrarily and inconsistently, or denies the investor justice, as discussed further below.

350. The FET standard is “unrelated to whether the Respondent has had any deliberate intention or bad faith in adopting the measures in question. Of course, such intention and bad faith can aggravate the situation but are not an essential element of the standard.”⁶⁴⁸ Conversely, the fact that State measures may be designed to further a legitimate public policy, such as environmental protection, does not make investment protections inapplicable
351. A series of State measures can collectively amount to a composite act in breach of the FET standard (or in breach of the FPS standard, for that matter). The notion of a composite act is defined in Article 15(1) of the ILC Articles, which provides:

The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the

⁶⁴⁷ *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 Aug. 2016) (CL-75) ¶¶ 520-521 (emphasis added). See also *Azurix Corporation v. The Argentine Republic*, ICSID Case No. ARB/01/12, Award (14 Jul. 2006) (CL-29) ¶ 361 (“[T]he minimum requirement to satisfy [the MST] has evolved, and ... its content is substantially similar [to the FET standard], whether the terms are interpreted in their current meaning, as required by the Vienna Convention or under customary international law.”); *Duke Energy Electroquil Partners & Electroquil S.A. v. The Republic of Ecuador*, ICSID Case No. ARB/04/19, Award (18 Aug. 2008) (CL-39) ¶ 336 (quoting the *Azurix* tribunal’s holding on the evolution of the MST with approval); *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 Jul. 2008) (CL-37) ¶ 592 (“[T]he actual content of the treaty standard of fair and equitable treatment is not materially different from the content of the minimum standard of treatment in customary international law.”); *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award (29 Jul. 2008) (CL-38) ¶ 611 (observing that any difference “is more theoretical than real”); *William Ralph Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 Mar. 2015) (CL-64) ¶ 433 (“NAFTA awards make it clear that the international minimum standard is not limited to conduct by host states that is outrageous. The contemporary minimum international standard involves a more significant measure of protection.”), ¶ 440 (“Many NAFTA tribunals have shared the emerging consensus that the Neer standard of indisputably outrageous misconduct is no longer applicable”); *Valores Mundiales and Consorcio Andino v. Venezuela*, ICSID Case No. ARB/13/11, Award (25 Jul. 2017) (CL-78) ¶ 536 (“[T]he concept of ‘minimum standard of treatment’ has been expanded to such an extent that it now provides protection very similar to that accorded under the standard of fair and equitable treatment.”).

⁶⁴⁸ *Azurix Corporation v. The Argentine Republic*, Award (CL-29) ¶ 372 (citing *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award (12 May 2005) (CL-29) ¶ 284.

action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.⁶⁴⁹

352. That certain measures can cumulatively amount to a breach of the FET standard was a conclusion reached in, for example, *El Paso v. Argentina*. The *El Paso* tribunal held that “in the same way as one can speak of creeping expropriation, there can also be creeping violations of the FET standard.”⁶⁵⁰ Taking an overall view of Argentina’s disputed measures, the tribunal concluded that:

Although [the Argentine measures] may be seen in isolation as reasonable measures to cope with a difficult economic situation, the measures examined can be viewed as cumulative steps which individually do not qualify as violations of FET, as pointed out earlier by the Tribunal, but which amount to a violation if their cumulative effect is considered.⁶⁵¹

353. Thus, in determining whether a series of States measures amount to a breach of the FET (or FPS) standard, investment tribunals do not limit themselves to assessing whether each measure constitutes a breach; instead, they consider the cumulative effect of those measures.⁶⁵²

⁶⁴⁹ ILC Articles (CL-110) Art. 15(1). *See also id.*, p. 63 (Commentary on Art. 15, Item (7)) (“A consequence of the character of a composite act is that the time when the act is accomplished cannot be the time when the first action or omission of the series takes place. It is only subsequently that the first action or omission will appear as having, as it were, inaugurated the series. Only after a series of actions or omissions takes place will the composite act be revealed, not merely as a succession of isolated acts, but as a composite act, i.e. an act defined in aggregate as wrongful.”).

⁶⁵⁰ *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011) (CL-51) ¶ 518.

⁶⁵¹ *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011) (CL-51) ¶ 515.

⁶⁵² *See, e.g., Swisslion DOO Skopje v. The Former Yugoslav Republic of Macedonia*, ICSID Case No. ARB/09/16, Award, (6 Jul. 2012) (CL-56) ¶ 275 (“In the Tribunal’s view, there was a series of measures that collectively amount to a composite act in breach of the fair and equitable treatment standard.”); *The Rompetrol Group N.V. v. The Republic of Romania*, ICSID Case No. ARB/06/3, Award (6 May 2013) (CL-59) ¶ 271 (“[T]he cumulative effect of a succession of impugned actions by the State of the investment can together amount to a failure to accord [FET] even where the individual actions, taken on their own, would not surmount the threshold for a Treaty breach.”); *RosInvestCo UK Limited v. The Russian Federation*, SCC Case No. 079/2005, Award (12 Sep. 2010) (CL-47) ¶¶ 410, 599, 621 (“[T]he totality of Respondent’s measures ... must be seen as elements in the cumulative treatment of [the investor] for what seems to have been the intended purpose. The Tribunal, in reviewing the various alleged breaches of the BIT, even if the justification of a certain individual measure might be arguable as an admissible application of the relevant law, considers that this cumulative effect of those various measures taken by Respondent in respect of [the investor] is relevant to its decision under the BIT.”); *Latin American Regional Aviation Holding S. de R.L. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/19/16, Award (13

2. Colombia has frustrated Claimant's legitimate expectations

(a) The FET standard in Article 805 of the Treaty protects Claimant's legitimate expectations

354. The MST and the FET standard protect an investor from State measures that frustrate legitimate expectations on which the investor relied when making, expanding, or developing its investment. As the tribunal in *Thunderbird v. Mexico* observed, “the concept of ‘legitimate expectations’ relates ... to a situation where a [State] 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 [State] Party to honor those expectations could cause the investor (or investment) to suffer damages.”⁶⁵³ The tribunal in *Frontier Petroleum v. Czech Republic* clarified that “[w]here investments are made through several steps, spread over a period of time, legitimate expectations must be

Feb. 2024) (CL-100) ¶ 850 (“[I]t is perfectly possible that, taken individually, none of the measures violates the treaty while viewed together, they denote an action incompatible with the FET standard.”).

⁶⁵³ *International Thunderbird Gaming Corporation. v. The United Mexican States*, UNCITRAL, Award (26 Jan. 2006) (CL-26) ¶ 147. The *Thunderbird* tribunal was constituted under NAFTA, which included an FET provision materially similar to that in Article 805 in the Treaty. The NAFTA Parties issued a joint interpretative note clarifying that “[t]he concepts of ‘fair and equitable treatment’ and ‘full protection and security’ do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.” See NAFTA Free Trade Commission, Notes of Interpretation of Certain Chapter 11 Provisions, dated 31 July 2001 (CL-14) § B.2. See also *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award (29 May 2003) (CL-16) ¶ 154 (“The Arbitral Tribunal considers that this provision of the Agreement [FET] ... requires the Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment ... The foreign investor also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions ... that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities.”); *Murphy Exploration & Production Company International v. The Republic of Ecuador II*, PCA Case No. 2012-16, Partial Final Award (6 May 2016) (CL-74) ¶¶ 206-207 (“Protecting the stability and predictability of the host State’s legal and business framework, ... [including] the fulfilment of an investor’s legitimate expectations ... underpins the modern customary international law standard.”); *BG Group Plc. v. The Argentine Republic*, UNCITRAL, Final Award (24 Dec. 2007) (CL-36) ¶¶ 294, 298 (concurring with the “unambiguous statement” in *Waste Management II* that “commitments to the investor are relevant to the application of the minimum standard of protection under international law” and that the host State’s obligations accordingly “must be examined in the light of the legal and business framework as represented to the investor at the time it decides to invest”); *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 Feb. 2007) (CL-33) ¶ 299 (“[T]he current [customary international law] standard includes the frustration of expectations that the investor may have legitimately taken into account when it made the investment.”); *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB/19/19, Award (3 Oct. 2023) (CL-99) ¶ 306 (“[T]he obligation to protect an investor’s legitimate expectations stems from the principle of good faith, which is certainly one of the ‘customary international law principles that protect the economic rights and interests of aliens.’”) (emphasis omitted).

examined for each stage at which a decisive step is taken towards the creation, expansion, development, or reorganization of the investment.”⁶⁵⁴

355. *Eco Oro v. Colombia* concerned claims under the same Canada-Colombia Treaty at issue in this arbitration. The *Eco Oro* tribunal held by majority that Article 805 of the Treaty protects an investor’s legitimate expectations, and, on the facts, found that Colombia’s “refus[al] to allow mining exploitation activities to take place in the entire area of [the claimant’s] Concession ... without payment of compensation, its inconsistent approach to the delimitation of the Santurbán paramo [a protected ecosystem that overlapped with the concession area] and its ultimate (and continuing) failure to delimit the Santurban Paramo frustrated Eco Oro’s legitimate expectations,” in breach of Article 805 of the Treaty.⁶⁵⁵
356. An investor’s legitimate expectations may arise from specific commitments made by the State in administrative acts, concessions, and other contracts with the State or State-owned entities.⁶⁵⁶ The tribunal in *Total v. Argentina*, for example, held that “the expectation of the investor is undoubtedly ‘legitimate’, and hence subject to protection under the [FET] clause, if the host State has explicitly assumed a specific legal obligation for the future, such as by contracts, concessions or stabilization clauses on which the investor is therefore entitled to rely as a matter of law.”⁶⁵⁷ In *Etrak v. Libya*, the tribunal held that the claimant

⁶⁵⁴ *Frontier Petroleum Services Limited. v. The Czech Republic*, Final Award (12 Nov. 2010) (CL-48) ¶ 287.

⁶⁵⁵ *Eco Oro Minerals Corporation. v. The Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 Sep. 2021) (CL-93) ¶ 804.

⁶⁵⁶ See, e.g., *Cengiz İnşaat Sanayi ve Ticaret A.Ş. v. The State of Libya*, ICC Case No. 21537/ZF/AYZ, Final Award (7 Nov. 2018) (CL-85) ¶ 547 (“If a host State, through its laws or administrative actions, makes specific representations or commitments, and thus creates certain legitimate expectations, and those expectations lead the investor to invest, it is contrary to good faith (and in breach of the FET standard) for the State to approve laws or take actions that deny or frustrate those expectations.”).

⁶⁵⁷ *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability (27 Dec. 2010) (CL-49) ¶ 117 (emphasis added). See also *Murphy Exploration & Production Company International v. The Republic of Ecuador II*, PCA Case No. 2012-16, Partial Final Award (6 May 2016) (CL-74) ¶ 248 (“An investor’s legitimate expectations are based upon an objective understanding of the legal framework within which the investor has made its investment. The legal framework on which the investor is entitled to rely consists of the host State’s international law obligations, its domestic legislation and regulations, as well as the contractual arrangements concluded between the investor and the State.”) (emphasis added).

legitimately expected that the State would comply with its obligations under a settlement agreement, and that this expectation was frustrated when the State did not comply.⁶⁵⁸

357. Legitimate expectations may also arise from representations and undertakings made by the State to induce investments, including those contained in laws and regulations.⁶⁵⁹ In *Suez and Vivendi v. Argentina*, for example, the tribunal held that legitimate expectations may be the result of “regulations, declared policies and statements” by the State that “influence initial investment decisions and afterwards, the manner in which the investment is to be managed.”⁶⁶⁰ The tribunal in *Murphy v. Ecuador* similarly noted that “[a]n investor may hold legitimate expectations based on an objective assessment of the legal framework absent specific representations or promises made by the State to the investor.”⁶⁶¹

⁶⁵⁸ *Etrak İnşaat Taahut ve Ticaret Anonim Sirketi v. The State of Libya*, ICC Case No. 22236/ZF/AYZ, Award (22 Jul. 2019) (CL-88) ¶ 334 (“It seems to be undisputed that Respondent has not complied with its obligations under the Settlement Agreement. Under Article 3 of the Agreement, Respondent undertook to pay two different specified sums in two different instalments, and under Article 7, both Parties undertook to abandon any litigation relating to the subject matter of the Agreement. No money has been paid to Claimant, and Respondent has pursued court litigation in the Appeal, despite agreeing to abstain from doing so. Respondent has therefore frustrated Claimant’s legitimate expectations that the representations and undertakings included in the Settlement Agreement would be respected.”) (emphasis added).

⁶⁵⁹ *Frontier Petroleum Services Limited. v. The Czech Republic*, UNCITRAL, Final Award (12 Nov. 2010) (CL-48) ¶ 285 (“[I]nvestor may rely on that legal framework as well as on representations and undertakings made by the host state including those in legislation, treaties, decrees, licenses, and contracts. Consequently, an arbitrary reversal of such undertakings will constitute a violation of fair and equitable treatment.”) (emphasis added).

⁶⁶⁰ *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability (30 Jul. 2010) (CL-45) ¶ 222 (“When an investor undertakes an investment, a host government through its laws, regulations, declared policies, and statements creates in the investor certain expectations about the nature of the treatment that it may anticipate from the host State. The resulting reasonable and legitimate expectations are important factors that influence initial investment decisions and afterwards the manner in which the investment is to be managed.”), ¶ 223 (“Where a government through its actions subsequently frustrates or thwarts those legitimate expectations, arbitral tribunals have found that such host government has failed to accord the investments of that investor fair and equitable treatment.”).

⁶⁶¹ *Murphy Exploration & Production Company International v. The Republic of Ecuador II*, PCA Case No. 2012-16, Partial Final Award (6 May 2016) (CL-74) ¶ 248. See also *UAB “Garsu Pasaulis” v. The Kyrgyz Republic*, PCA Case No. 2020-59, Award (8 Apr. 2024) (CL-102) ¶ 248 (“Such [legitimate] expectations can be based on the host State’s legal framework and regulations – and that they are applied in a predictable, consistent and non-discriminatory manner.”); *Antaris Solar GmbH and Dr. Michael Göde v. Czech Republic*, PCA Case No 2014-01, Award (2 May 2018) (CL-81) ¶ 366 (“[P]romises or representations to investors may be inferred from domestic legislation in the context of its background, including official statements. It is not essential that the official statements have legal force.”); *RENERGY s.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/14/18, Award (6 May 2022) (CL-95) ¶ 639 (“[T]here is no *numerus clausus* as to the forms of State actions that can give rise to legitimate expectations. Accordingly, such expectations can be engendered by any (explicit or implicit) statements or conduct.”).

358. Further, a State’s conduct may give rise to legitimate expectations. The tribunal in *Total v. Argentina* thus held that legitimate expectations may arise “when public authorities of the host country have made the private investor believe that such an obligation existed through conduct or by a declaration.”⁶⁶² In *Telefónica v. Colombia*, Colombia’s conduct over a period of several years created legitimate expectations as to how Colombia would enforce a concession contract and legislation in the telecoms sector, as further discussed below.⁶⁶³
359. Finally, investors may legitimately expect that the host State will maintain the stability of the legal and business environment in which the investor invested. As the tribunal in *Total v. Argentina* tribunal observed:

A foreign investor is entitled to expect that a host state will follow those basic principles (which it has freely established by law) in administering a public interest sector that it has opened to long term foreign investments. Expectations based on such principles are reasonable and hence legitimate, even in the absence of specific promises by the government.⁶⁶⁴

⁶⁶² *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability (27 Dec. 2010) (CL-49) ¶ 118 (emphasis added).

⁶⁶³ *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (CL-107) ¶ 442 (“It is worth reiterating that 15 years passed between the entry into force of Law 422 and the full publication of Judgment C-555. During that extended period, the conduct of the authorities led Telefónica to believe that – regardless of the wording of Clause 33 – the clarifying effect of the reversion provisions under Laws 422 and 1341 would apply to it. The Arbitral Tribunal finds that this expectation was legitimate. Thus, by requiring the reversion of all assets, even those not fully amortized, the State frustrated Telefónica’s legitimate expectations of operating within a predictable legal and business environment.”) (emphasis added).

⁶⁶⁴ *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability (27 Dec. 2010) (CL-49) ¶ 333. See also *Frontier Petroleum Services Limited. v. The Czech Republic*, UNCITRAL, Final Award (12 Nov. 2010) (CL-48) ¶ 285 (“The protection of the investor’s legitimate expectations is closely related to the concepts of transparency and stability. Transparency means that the legal framework for the investor’s operations is readily apparent and that any decisions of the host state affecting the investor can be traced to that legal framework. Stability means that the investor’s legitimate expectations based on this legal framework and on any undertakings and representations made explicitly or implicitly by the host state will be protected. The investor may rely on that legal framework as well as on representations and undertakings made by the host state including those in legislation, treaties, decrees, licenses, and contracts.”); *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Award (16 May 2018) (CL-82) ¶ 484 (“[T]he Treaty constitutes a standard the purpose of which is to ensure that an investor may be confident that (i) the legal framework in which the investment has been made will not be subject to unreasonable or unjustified modification; and (ii) the legal framework will not be subject to modification in a manner contrary to specific commitments made to the investor.”); *LG&E Energy Corporation, LG&E Capital Corporation and LG&E International Inc. v. The Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability (3 Oct. 2006) (CL-31) ¶ 131 (finding that the fair and equitable treatment standard “involves the [State’s] obligation to grant and maintain a stable and

360. The Treaty's preamble provides that "[e]nsur[ing] a predictable commercial framework for business planning and investment" is one of the objectives of the Treaty,⁶⁶⁵ which reinforces that an investor's expectation of a predictable and stable business environment is legitimate and enjoys protection under Article 805.
361. The frustration of legitimate expectations is a breach of the MST and FET standards.⁶⁶⁶ In particular, State conduct that undermines or revokes an investor's rights under concession contracts can frustrate legitimate expectations. In *Gold Reserve v. Venezuela*, for example, the investor pursued exploration activities under mining concessions for almost two decades, obtaining multiple governmental approvals and permits in the process, including a construction permit that was subject to Venezuela's signature of a so-called Initiation Act.⁶⁶⁷ The *Gold Reserve* tribunal held that Venezuela's "repeated and consistent

predictable legal framework necessary to fulfil the justified expectations of the foreign investor."); *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. (formerly Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.) v. Kingdom of Spain*, ICSID Case No. ARB/13/31, Award (15 Jun. 2018) (CL-83) ¶ 532 ("[A] regulatory regime specifically created to induce investments in the energy sector cannot be radically altered – i.e., stripped of its key features – as applied to existing investments in ways that affect investors who invested in reliance on those regimes.").

⁶⁶⁵ Treaty (CL-1) Preamble ("Canada and the Republic of Colombia ('Colombia'), hereinafter referred to as 'the Parties', resolved to: ... Ensure a predictable commercial framework for business planning and investment.").

⁶⁶⁶ *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) (CL-53) ¶ 152 ("[I]n determining whether the [FET] 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 (iii) were subsequently repudiated by the NAFTA host State."); *Waste Management Inc. v. The United Mexican States II*, NAFTA, ICSID Case No. ARB/AF/00/03, Award (30 Apr. 2004) (CL-20) ¶ 98 (observing that "[i]n applying th[e] [MST] 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."); *Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. (formerly Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.) v. Kingdom of Spain*, ICSID Case No. ARB/13/31, Award (15 Jun. 2018) (CL-83) ¶ 539 ("[T]he Tribunal will assess the legitimacy of the Claimants' expectations against the existing conditions at the time of the investment, the background of information that the Claimants had or should reasonably have had at the time of the investment and of State's conduct prior to, and at the time of, the investment."); RUDOLPH DOLZER, FAIR AND EQUITABLE TREATMENT: TODAY'S CONTOURS, 12 SANTA CLARA J. OF INT'L LAW 7 dated 17 Jan. 2014 (CL-62) at 20 ("In the light of the arbitral jurisprudence, the details of the current state of the law will be summarized by way of five components, the existence of which determines whether the FET standard will protect the expectations of the investor in a given case: The objective conduct of the host state inducing legitimate expectations on the part of the foreign investor; reliance on that conduct on the part of the foreign investors; frustration of investor's expectation by subsequent conduct of the host state; unilateralism of conduct of the host state, i.e., absence of meaningful communication and/or consent with investors; and - damages for the investor.").

⁶⁶⁷ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶¶ 10-13, 22-23.

certifications of Claimant’s compliance with its obligations under the concessions, the mining rights and the mining contracts, as the case may be, generated an expectation that delays or other failures to fully abide by the applicable rules had been and would continue to be accepted by the Administration,” and that “[b]ecause of Respondent’s consistent attitude, Claimant expected to be permitted to continue working on the project by investing substantial amounts to provide the necessary financing.”⁶⁶⁸ Venezuela violated its FET obligation – including by frustrating the investor’s legitimate expectations – when it subsequently refused to sign the Initiation Act, revoked the construction permit and eventually terminated the concessions on the basis that the investor had failed to commence exploitation within mandatory time limits.⁶⁶⁹ The tribunal found that “[t]he practice that had been so consistently followed regarding the handling of relations with Claimant as holder of mining rights in Venezuela changed when the State’s policy concerning mining activities changed. This fact does not excuse Respondent’s conduct, rather it confirms that such conduct was in breach of the FET standard as it was driven by political reasons.”⁶⁷⁰

362. In *Telefónica v. Colombia*, the claimant’s subsidiary held telecoms concessions which provided that telecoms infrastructure built by the concessionaire would revert to the State upon the expiration of the concessions.⁶⁷¹ Colombia subsequently enacted legislation clarifying that the reversion obligation would only apply to radio spectrum, not infrastructure, and made statements that this new legal regime would apply to existing concession contracts, such as those of the claimant’s subsidiary.⁶⁷² The tribunal found that,

⁶⁶⁸ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶ 605.

⁶⁶⁹ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶¶ 23-28.

⁶⁷⁰ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela (I)*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶ 607.

⁶⁷¹ *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (CL-107) ¶¶ 5, 49.

⁶⁷² *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (CL-107) ¶ 414 (“The Arbitral Tribunal notes that during the preparatory works of Law 422, Dr. Saulo Arboleda Gómez, Minister of Communications, stated that ‘Article 4 is also good because it clarifies something that is already written, namely that when a concession is granted and later ends, what reverts to the State is the frequency, not the equipment.’ The bill’s sponsor, Senator Samuel Moreno Rojas, also emphasized that Article 4 merely provided clarification. It was so clear that Article 4 would apply to existing contracts that its opponents raised concerns about its financial consequences for the State. If such was the prevailing view among members of both the

over the 15-year period that followed, Colombia never contradicted that position and, thus, created legitimate expectations that the infrastructure built by the claimant's subsidiary would not revert to the State.⁶⁷³ Colombia frustrated those expectations, in breach of its FET obligation, when its Constitutional Court decided that the new legal regime only applied to concessions entered into after the enactment of that regime, and Colombia enforced the reversion of the investor's telecoms infrastructure to the State.⁶⁷⁴

(b) Colombia created Claimant's legitimate expectations, including through specific promises concerning the Buriticá Project

363. Colombia induced Claimant's investments in the country's mining sector generally and in the Project specifically. Colombia made a series of specific commitments, undertakings and representations, and promised a stable legal and business environment in which to invest, all of which form the basis of Claimant's legitimate expectations.

364. First, Colombia granted Continental Colombia exclusive rights and specifically committed to support the Buriticá Project, including with respect to security matters. In particular:

a) **Colombia promised Continental Colombia exclusive rights over the minerals located at the Project.** Through the Concession Agreement executed by the Secretary of Mines of the Department of Antioquia, Colombia promised that the Company would have the exclusive rights to explore, develop, and exploit the

Executive and Legislative branches, it was legitimate for Telefónica to expect that the reversion was limited to the radio spectrum.") (emphasis added)

⁶⁷³ *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (CL-107) ¶¶ 435, 442, 447, 448, 452 (finding that the State's conduct created Telefónica's legitimate expectations by issuing statements clarifying the limited scope of the reversion clause as applying only to radio spectrum, enacting a law confirming that position, and not taking any action contrary to that position over a 15-year period).

⁶⁷⁴ *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (CL-107) ¶ 441 ("For all these reasons, the Arbitral Tribunal concludes that Telefónica had solid grounds to believe that the reversion would be limited to the radio spectrum and, therefore, that Judgment C-555 brought about a drastic change to the regulatory framework that could reasonably have been understood to apply. As this was not the case, Telefónica had its expectations – which the Arbitral Tribunal considers reasonable, justified, and legitimate under the FET standard provided for in the Treaty – frustrated.").

minerals (including, gold, silver, copper, zinc, and others) within the Concession Area.⁶⁷⁵

- b) **Colombia promised that the Buriticá Project would be treated as a “Project of National and Strategic Interest.”** Colombia signaled its strong support for the Project by designating it as a Project of National and Strategic Interest (*Proyecto de Interés Nacional y Estratégico* or “PINES”), a coveted designation under Colombian law which, to date, has been granted to only a handful of mining projects.⁶⁷⁶ Colombia promised special support to PINES projects, including through expedited, centralized permitting and processing. When subsequently attending the PDAC Conference in Toronto in 2015, the Colombian Minister of Mines and Energy reiterated Colombia’s support of the Buriticá Project and specifically referred to its PINES designation as “an example of a success story [...]. We need to make sure these projects happen, because we need royalties for development.” The Minister further explained that PINES projects would “receive special support from the government so they can move forward as fast as possible.”⁶⁷⁷
- c) **Colombia supported and encouraged the development of the Project by approving all necessary permits and licenses.** Colombia continued to support the Project’s development, including through its approvals of all relevant licenses and permits necessary for its development. This included, among other permits and authorizations, the State’s approval of consolidation of the Mining Titles into the Concession Agreement, the State’s registration of the Concession Agreement, the

⁶⁷⁵ See *supra* § II.C.1; Concession Agreement (C-19).

⁶⁷⁶ See *supra* § II.C.2; Letter from the Ministry of Mines and Energy to Continental Colombia, dated 6 Aug. 2015 (C-497).

⁶⁷⁷ See *supra* § II.C.2; “PDAC 2015: Mines Minister says Colombia is picking up the pace,” *The Northern Miner* (25 Mar. 2015) (C-152).

environmental license, and the State's approval of the PTO (and its amendments).⁶⁷⁸

- d) **Colombia specifically undertook to provide security and protection to the Project, including through joint security agreements signed by its Armed Forces and UNIMIL.** In March 2015, the Ministry of National Defense, the Colombian Armed Forces, and the National Army entered into a formal agreement with the Company (the Joint Security Agreement) to provide security at the Project.⁶⁷⁹ Under the Joint Security Agreement, Colombia, among other things, (i) undertook to provide security to the Company in all the areas where the Company carried out its operations and to provide “all necessary protection” to ensure the proper execution of mining activities; (ii) committed to cooperate with the Company to preserve the security conditions at the site; (iii) acknowledged that Colombia had a constitutional duty to protect all residents of Colombia in their lives, property, and physical integrity, and that attacks against the infrastructure and property of the Company constituted a violation of international law.⁶⁸⁰ The Armed Forces agreed to renew the Joint Security Agreement on several occasions.⁶⁸¹ The

⁶⁷⁸ See *supra* §§ II.C.1, II.C.4. See, e.g., Resolution No. 1443 of ANLA, dated 30 Nov. 2016 (C-194); Resolution No. 2016-060095092 of the Government of Antioquia, dated 30 Nov. 2016 (C-193) (approving the modified PTO for mining concession agreement 7495). See also Resolution No. 2019060148779 of the Antioquia Government, dated 14 Aug. 2019 (C-212) (approving the modified PTO for mining concession agreement 7495).

⁶⁷⁹ See *supra* § II.D.1; Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148).

⁶⁸⁰ See *supra* II.D.1; Agreement No. 042015 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 5 Mar. 2015 (C-148).

⁶⁸¹ See *supra* § II.D.1; Agreement No. 17-024 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 2 Oct. 2017 (C-199); Agreement No. 19-012 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia (C-223); Extension to Agreement No. 19-012 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 30 Dec. 2020 (C-249); Agreement No. 21-007 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 7 Apr. 2021 (C-254); Agreement No. 23-022 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 7 Jul. 2023 (C-365); Amendment to Agreement No. 23-022 between the Ministry of National Defense, the Colombian Military Forces, the National Army, and Continental Gold Limited Sucursal Colombia, dated 28 Dec. 2023 (C-385).

Company also entered into a similar agreement with the National Police (UNIMIL).⁶⁸²

- e) **Colombia delivered on its commitment to provide security and protection for the Mine through Operation Creta.** As the Mine was being built and developed, the Armed Forces and the National Police deployed 1,400 troops and conducted Operation Creta during the years 2016 to 2020 to flush out hundreds of criminals and illegal miners present at the Mine and in its tunnels and secure the area.⁶⁸³ In this context, the National Police reaffirmed its “unwavering commitment to the fight against illegal mining and related crimes, and will therefore continue to carry out the necessary operational and investigative actions with the aim of achieving the expected results in all aspects.”⁶⁸⁴
- f) **With the conclusion of Operation Creta in 2020, Colombia renewed its commitment to provide ongoing security and protection.** At the conclusion of Operation Creta, Colombia expressly promised that the area would continue to be protected by the National Army and the National Police, announcing that Claimant’s Project in Buriticá, “which hosts the largest gold mine in the country, will generate resources for the development and progress of the department of Antioquia. This area, covering approximately 75,000 hectares, will be protected by National Army troops and police officers.”⁶⁸⁵

365. Second, these specific promises and commitment regarding the Project took place against the backdrop of (and were reinforced by) Colombia’s public efforts and promises to

⁶⁸² See *supra* § II.D.2; Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Gold Limited Sucursal Colombia, dated 21 Jun. 2019 (C-210); Extension of Collaboration Agreement between the National Police, the Directorate of Carabineers and Rural Security, and Continental Gold Limited Sucursal Colombia, dated 17 Jul. 2020 (C-235).

⁶⁸³ See *supra* § II.D.2.

⁶⁸⁴ Letter from the Antioquia Police Department to Continental Colombia, dated 4 Apr. 2016 (C-182) pp. 3-4.

⁶⁸⁵ See “Positive Outcome of Operation Creta against the exploitation of mining deposits in Antioquia,” General Command of the Colombian Armed Forces (30 Oct. 2020) (C-247).

promote investments in its mining sector through combatting organized crime and illegal miners. In particular:

- a) **Through the “Democratic Security Policy,” Colombia sought to attract foreign investments in its mining sector.** Beginning in the early 2000s, and with a view to increase foreign direct investment, Colombia enacted the “Democratic Security Policy,” through which Colombia proceeded to increase the presence of military and police forces across the country to enhance security and combat criminal organizations, which Colombia rightly viewed as “obstacles to economic growth.”⁶⁸⁶ Colombia advertised the achievements of the Democratic Security Policy to foreign mining investors. For example, in a 2011 presentation targeted at foreign mining investors, the Ministry of Mines and Energy emphasized the increased presence of the armed forces and government in key areas and boasted that security improvements “have been impressive.”⁶⁸⁷
- b) **Colombia enacted a new legal framework to combat illegal mining.** Colombia created new agencies tasked with combatting illegal mining and made significant institutional changes to demonstrate its commitment to address the issue.⁶⁸⁸ For example, Colombia established the ANM as a decentralized agency to enhance mining security nationwide and monitor mining titles. It tasked the agency with preventing and controlling the illegal exploitation of minerals by supporting the Ministry of Mines and Energy in the formulation and implementation of policies.⁶⁸⁹ Colombia created the specialized police unit, UNIMIL, specifically to engage in underground operations and fight the spread of illegal mining.⁶⁹⁰ Colombia’s

⁶⁸⁶ See *supra* § II.B.1; National Development Plan (C-63) pp. 19, 21, 40-44, 145-146 (“The succession of homicides and kidnappings, the repetition of terrorist acts and the profusion of illicit businesses have become not only an obstacle to economic growth, but also a threat to the viability of the nation. Without security there is no prosperity, no peace of mind and there may be no future.”).

⁶⁸⁷ See *supra* § II.B.2.

⁶⁸⁸ See *supra* § II.B.3.

⁶⁸⁹ See *supra* § II.B.2; Decree No. 4134 of 2011, dated 3 Nov. 2011 (C-112) Art. 4.14 (“The functions of the National Mining Agency, ANM are the following: . . . 14. Support the Ministry of Mines and Energy in the formulation and implementation of the policy to prevent and control illicit mineral exploitation.”).

⁶⁹⁰ See *supra* § II.B.4; “Police creates unit to combat illegal mining,” *El Espectador* (25 Jun. 2014) (C-135). .

Ministry of Defense created the BRCMI, a specialized military brigade to combat illegal mining.⁶⁹¹ Shortly after its creation, the BRCMI, in collaboration with the Colombian and Brazilian armed forces and law enforcement authorities, dismantled major illegal mining sites within the Colombian department of Guainía near the Brazilian border, where criminal organizations had been extracting gold resources.⁶⁹²

- c) **Colombia demonstrated close coordination among various agencies responsible for combatting illegal mining.** Among other examples, Colombia implemented an inter-institutional agreement (*Convenio Administrativo, Programa Integral de Control a la Ilegalidad*) to coordinate efforts to combat and eradicate illegal mining, which was joined by the following State agencies: the Ministry of Mines and Energy, the Ministry of Environment, the Attorney General’s Office, and the agency that later became the ANM.⁶⁹³ The National Police also adopted and implemented a joint strategy (No. 16) against illegal mining.⁶⁹⁴
- d) **Colombia’s commitments materialized into actions, and the government actively combatted the scourge of illegal mining for two decades.** During the administrations of Presidents Uribe, Santos and Duque, and as Claimant and its affiliates were developing the Mine, Colombia took aggressive actions to combat illegal mining,⁶⁹⁵ which former President Santos described as a “cancer that [Colombia] must eliminate.”⁶⁹⁶

⁶⁹¹ See *supra* § II.B.4; “Brigade Against Illegal and Criminal Mining Strike a Blow in Joint Operation with Brazil,” Colombian Navy (7 Dec. 2015) (C-171).

⁶⁹² “Brigade Against Illegal and Criminal Mining Strike a Blow in Joint Operation with Brazil”, Colombian Navy (7 Dec. 2015) (C-171).

⁶⁹³ “Inter-institutional Agreement 00-027, Comprehensive Programme for the Control of Illegality, signed by the Ministry of Mines And Energy, the Ministry of Environment, Housing and Territorial Development, the Attorney General's Office, and the Colombian Institute of Geology and Mines Nation” (13 Aug. 2007) (C-73).

⁶⁹⁴ See *supra* § II.B.4; National Police of Colombia, 16 Operational Strategies of the National Police, *Plan Corazón Verde*, (Nov. 2013) (C-123), section 5.4, ps. 74 – 96.

⁶⁹⁵ See *supra* § II.B.1.

⁶⁹⁶ “Mining is ‘a cancer that must be removed’: Santos,” *El Espectador* (23 Feb. 2012) (C-24).

366. Third, together with the reforms to improve the security situation in the country and address illegal mining (as summarized above), Colombia engaged in a major public relations initiative to attract foreign direct investment in its mining sector. Colombia specifically targeted Canadian investors such as Claimant. For example, in 2011, the Colombian Minister of Mines and Energy attended the annual PDAC conference in Toronto. In his speech, the Minister called mining “one of the key driver[s] of economic growth” and encouraged investment in Colombia, boasting that the Colombian mining sector was “a good deal for investors” and underscoring the country’s improved security as a “significant” reason for investing in Colombia. Similarly, later that year, the Treaty entered into force, promising Canadian investors a series of key substantive and procedural protections, which, according to Colombia, was another means to attract foreign investment.⁶⁹⁷
367. Fourth, Colombia promised a supportive legal framework in which to invest in mining projects. In the early 2000s, Colombia sought to turn itself into an attractive mining jurisdiction through fundamental reforms and policies to its legal framework designed to attract investment in the mining sector. In this context, Colombia reformed its Mining Code and declared the mining industry to be “a matter of public utility and social interest.”⁶⁹⁸ Through its new Mining Code, Colombia made available to mining-sector investors additional tools to protect their investments. These included, among other things, giving titleholders the right to bring summary eviction proceedings (*amparos administrativos*) against any illegal miners operating without authorization on their titles and granting local authorities the authority (and obligation) to halt the illegal exploitation of minerals within their jurisdictions and impose sanctions.⁶⁹⁹
368. In reliance on the foregoing specific promises and acts by Colombia, Claimant and its affiliates invested more than US\$ 1.2 billion to develop and operate the Buriticá Mine over a period of years. And Colombia has already reaped the benefits of Claimant’s investment

⁶⁹⁷ See *supra* § II.B.2.

⁶⁹⁸ See *supra* § II.B.2; Law No. 685 of 2001, dated 15 Aug. 2001 (the “**Mining Code**”) (C-58) Art. 13.

⁶⁹⁹ See *supra* § II.H.5; Mining Code (C-58) ArtS. 306-307.

that it specifically induced. Leaving aside the thousands of jobs created by the Company, among other benefits, Colombia has collected over US\$ 244 million in income taxes and more than US\$ 85 million in royalties between 2020 and 2025.⁷⁰⁰

(c) Colombia frustrated Claimant's legitimate expectations

369. Starting on 7 August 2022, Colombia fundamentally changed course and broke each of its commitments, undertakings, representations and promises to Claimant, thereby frustrating Claimant's legitimate expectations in violation of the FET standard in Article 805 of the Treaty.
370. First, after promising that the Company would have the exclusive right to exploit the mineral resources in its concession area, Colombia has tolerated and condoned the invasion of the Mine by thousands of trespassers who are openly stealing the mineral resources to which Claimant has exclusive rights under Colombian law.
371. Second, after inducing Claimant's investment in the Project through multiple commitments and assurances of protection, and reinforcing this expectation with one of the largest military operations to protect mining assets in Colombian history (Operation Creta), Colombia has failed to protect the Claimant's investment in the Mine from invasion by illegal miners and other criminals. The record demonstrates that Colombia knows (and has known for years) what is going on at the Project site: the *Clan del Golfo* and other illegal miners are violently attacking Claimant and its investments, damaging its equipment and facilities, occupying the underground tunnels of the Mine, causing serious environmental damage, and brazenly and openly stealing the Mine's mineral resources.
372. Third, Colombia has failed in its repeated commitment to combat illegal miners and organized crime. Colombia instead drastically changed course, adopting a policy of open favoritism for illegal miners and pursuing accommodation with the *Clan del Golfo*, all at the expense of Claimant's legal mining investment.⁷⁰¹

⁷⁰⁰ [REDACTED]

⁷⁰¹ See *supra* § II.F.4.

373. Fourth, after inducing Claimant’s investment in the Project with promises that it would provide a supportive legal framework in which to operate in the mining sector, Colombia systematically broke those promises. Among other things, by failing to take enforcement actions, Colombia effectively deprived Claimant of its ability to avail itself of key protections promised under Articles 306 and 307 of the Mining Code, including the ability for titleholders to bring summary administrative proceedings (*amparos administrativos*) to evict illegal miners.⁷⁰²
374. Finally, Colombia has generally failed in its promise to support the Buriticá Project. Despite Colombia’s promise that the Company would receive unwavering State support, as a Project of “National and Strategic Interest,” Colombia broke that promise in tolerating the illegal invasion of the Mine.

3. Colombia has treated Claimant and the Project arbitrarily and inconsistently

(a) The FET standard in Article 805 of the Treaty protects Claimant and the Project from arbitrary and inconsistent treatment by Colombia

375. The MST and the FET standard protect investors from the host State’s arbitrary and inconsistent conduct. The tribunal in *Waste Management II* held in this respect that:

the minimum standard of treatment of fair and equitable treatment is 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.⁷⁰³

376. This holding has been endorsed by numerous tribunals.⁷⁰⁴ The *TECO v. Guatemala* tribunal quoted *Waste Management II* with approval and added that there is “no doubt” that

⁷⁰² See *supra* § II.H.5.

⁷⁰³ *Waste Management, Inc. v. The United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award (30 Apr. 2004) (CL-20) ¶ 98 (emphasis added).

⁷⁰⁴ See, e.g., *Odyssey Marine Exploration, Inc. v. The United Mexican States*, ICSID Case No. UNCT/20/1, Final Award (17 Sep. 2024) (CL-105) ¶ 297 (“Both parties agree that the FET standard under customary international

a State violates the MST (and the FET standard) when it acts “arbitrarily” or “show[s] a complete lack of candor or good faith in the regulatory process.”⁷⁰⁵ The *TECO* tribunal held that:

[A]lthough the role of an international tribunal is not to second-guess or to review decisions that have been made genuinely and in good faith by a sovereign in the normal exercise of its powers, it is up to an international arbitral tribunal to sanction decisions that amount to an abuse of power, are arbitrary, or are taken in manifest disregard of the applicable legal rules and in breach of due process in regulatory matters.⁷⁰⁶

377. Colombia itself has endorsed the description of the standard in *Waste Management II* quoted above. In *Neustar v. Colombia*, the tribunal thus noted that “the Parties appear to agree on the content of the FET requirement under the minimum standard of treatment, since both rely on the *Waste Management v. Mexico* decision.”⁷⁰⁷

law is that set forth by the ICSID tribunal in the *Waste Management Inc. v. United Mexican States (II)* case since it ‘persuasively integrates the accumulated analysis of prior NAFTA Tribunals and reflects a balanced description of the minimum standard of treatment.’”); *Scholz Holding GmbH v. Kingdom of Morocco*, ICSID Case No. ARB/19/2, Award (1 Aug. 2022) (CL-96) ¶ 246; *Vento Motorcycles, Inc. v. The United Mexican States*, ICSID Case No. ARB(AF)/17/3, Award (6 Jul. 2020) (CL-90) ¶¶ 283-284; *MNSS B.V. and Recupero Credito Acciaio N.V. v. Republic of Montenegro*, ICSID Case No. ARB(AF)/12/8, Award (4 May 2016) (CL-73) ¶¶ 326-327; *William Ralph Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability (17 Mar. 2015) (CL-64) ¶¶ 442-443 (“[T]he Tribunal finds this quote from *Waste Management* to be a particularly apt one.”); *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶¶ 568-573; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award (19 Dec. 2013) (CL-61) ¶ 455 (“The Arbitral Tribunal agrees with the many arbitral tribunals [including *Waste Management*] and authorities that have confirmed that such is the content of the minimum standard of treatment in customary international law.”); *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award (29 Jun. 2012) (CL-55) ¶ 219 (“*Waste Management II* persuasively integrates the accumulated analysis of prior NAFTA Tribunals and reflects a balanced description of the minimum standard of treatment.”); *Chemtura Corporation (formerly Crompton Corporation) v. Government of Canada*, PCA Case No. 2008-01, Award (2 Aug. 2010) (CL-46) ¶¶ 122, 215 (agreeing with the *Waste Management II*, *Mondev*, and *ADF* tribunals that a violation need not be outrageous to breach the MST in NAFTA Article 1105); *EDF (Services) Limited v. The Republic of Romania*, ICSID Case No. ARB/05/13, Award (8 Oct. 2009) (CL-42) ¶ 216; *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 Jul. 2008) (CL-37) ¶¶ 597-600.

⁷⁰⁵ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award (19 Dec. 2013) (CL-61) ¶ 480.

⁷⁰⁶ *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/17, Award (19 Dec. 2013) (CL-61) ¶ 493.

⁷⁰⁷ *Neustar, Inc and Vercara, LLC (formerly Security Services, LLC, d/b/a Neustar Security Services) v. The Republic of Colombia*, ICSID Case No. ARB/20/7, Award (20 Sep. 2024) (CL-106) ¶ 603. See also *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. The Republic of Colombia*, ICSID Case No. ARB/18/13, Award (7 Jun. 2024) (CL-103) ¶ 918 (observing that “[i]t is undisputed that MST gives investors protections against arbitrary measures,” and quoting with approval the description of the MST in *Waste Management II*).

378. Examples of arbitrary conduct include, among other things, State measures that (i) inflict damage on the investor without serving any apparent legitimate purpose; (ii) are not based on legal standards but on discretion, prejudice or personal preference; (iii) are taken for reasons that are different from those put forward by the decision maker; and/or (iv) are taken in willful disregard of due process and proper procedure.⁷⁰⁸

379. States can also breach the MST and the FET standard by acting in an inconsistent manner with respect to an investor and its investment. As the *Tecmed v. Mexico* tribunal explained, consistent and transparent State conduct is critical to investment planning and execution:

The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations.⁷⁰⁹

380. Professor Dolzer explains in this respect that “[i]nconsistent conduct by the host state confuses the investor, stands in the way of proper planning, and is not conducive to an investment-friendly climate” and, therefore “[n]ot surprisingly, arbitral tribunals have confirmed that inconsistency of conduct by the host state, as regards to the investor’s obligations, is not compatible with the requirement of FET.”⁷¹⁰ The tribunal in *Encana v. Ecuador* similarly observed that the FET standard requires a State to “act with reasonable

⁷⁰⁸ The *EDF v. The Republic of Romania* tribunal identified these examples in its award relying on the expert testimony of Prof. Christoph Schreuer. See *EDF (Services) Limited v. The Republic of Romania*, ICSID Case No. ARB/05/13, Award (8 Oct. 2009) (CL-42) ¶ 303. Other tribunals have quoted Prof. Schreuer’s examples with approval. See, e.g., *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award (6 Dec. 2022) (CL-97) ¶ 831; *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. The Argentine Republic*, ICSID Case No. ARB/14/32, Award (4 Nov. 2021) (CL-97) ¶ 347; *Joseph Charles Lemire v. State of Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability (14 Jan. 2010) (CL-44) ¶ 262.

⁷⁰⁹ *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (CL-16) ¶ 154 (emphasis added).

⁷¹⁰ RUDOLPH DOLZER, FAIR AND EQUITABLE TREATMENT: TODAY’S CONTOURS, 12 SANTA CLARA J. OF INT’L LAW 7 dated 17 Jan. 2014 (CL-62) at 20.

consistency and without arbitrariness in its treatment of investments. One arm of the State cannot finally affirm what another arm denies to the detriment of a foreign investor.”⁷¹¹

381. In *Eco Oro v. Colombia*, Colombia treated Eco Oro’s investment in a mining project arbitrarily and inconsistently. After granting a concession to Eco Oro, Colombia prohibited mining in so-called páramo ecosystems in the Andes, and a temporary delineation of one such páramo – the Santurbán Páramo – indicated that it overlapped substantially with Eco Oro’s concession area.⁷¹² Different arms of the Colombian State adopted inconsistent positions on whether Eco Oro’s mining project could proceed. On the one hand, Colombia approved Eco Oro’s extensions of the exploration stage under the concession, Eco Oro’s project was designated as a project of national interest, and Colombia enacted exceptions to the mining prohibition that may have allowed the project to proceed;⁷¹³ on the other hand, Colombia’s Constitutional Court struck down the exceptions and ordered the State to finally delineate páramo boundaries, yet the State failed to comply with that order.⁷¹⁴ The *Eco Oro* tribunal held by majority that Colombia’s conduct violated Article 805 of the Treaty:

It is clear from the above review of Colombia’s actions, viewed as a whole, that Colombia’s approach to the delimitation of the Santurbán Páramo was one of arbitrary vacillation and inaction which inflicted damage on Eco Oro without serving any apparent legitimate purpose. Colombia was not willing

⁷¹¹ *Encana Corporation. v. The Republic of Ecuador*, LCIA Case No. UN 3481, Award (3 Feb. 2006) (CL-27) ¶ 158 (emphasis added). See also *Telefónica, S.A. v. The Republic of Colombia*, ICSID Case No. ARB/18/3, Award (12 Nov. 2024) (CL-107) ¶¶ 409, 446 (explaining that the purpose of the FET is to avoid a State from taking measures that “reflect a lack of transparency or are contradictory”); *Garanti Koza LLP v. Government of Turkmenistan*, ICSID Case No. ARB/11/20, Award (19 Dec. 2016) (CL-76) ¶ 382 (“The inconsistency of behavior between one agency of the Turkmenistan Government, which had agreed to a system of payment based on the percentage of work completed, and other arms of the same Government ... would alone have been sufficient to call into question whether the Claimant had been treated fairly and equitably”); *Saluka Investments BV v. The Czech Republic*, UNCITRAL, Partial Award (17 Mar. 2006) (CL-28) ¶¶ 248, 307, 417 (finding that a foreign investor can expect a State to “implement its policies bona fide by conduct that is, as far as it affects the investors’ investment, reasonably justifiable by public policies and that such conduct does not manifestly violate the requirements of consistency, transparency, even-handedness and non-discrimination” and finding a breach where the State made it impossible or difficult to accommodate its proposals).

⁷¹² *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Merits and Damages (9 Sep. 2021) (CL-93) ¶¶ 98, 100, 105.

⁷¹³ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Merits and Damages (9 Sep. 2021) (CL-93) ¶¶ 120, 122, 154.

⁷¹⁴ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Merits and Damages (9 Sep. 2021) (CL-93) ¶¶ 165, 189.

to address and manage the widely disparate interests of those impacted by where the boundary of the Santurbán Páramo was drawn; it found itself torn between the competing interests of protecting the páramo and obtaining much needed royalties. It has failed to act coherently, consistently or definitively in its management of the Santurbán Páramo and in so doing has infringed a sense of fairness, equity and reasonableness and indeed has shown a flagrant disregard for the basic principles of fairness. This is more than just inconsistency or inadequacy by Colombia and its officials. Colombia has not accorded Eco Oro's investment treatment in accordance with the customary international law minimum standard of treatment of aliens, including the obligation to provide fair and equitable treatment, and the Tribunal therefore finds by a majority that Colombia is in breach of article 805 of the [Treaty].⁷¹⁵

382. In *Energía y Renovación v. Guatemala*, discussed above, the majority of the tribunal held that Guatemala acted inconsistently and arbitrarily, in violation of the FET standard, when it failed to comply with its obligations under an Agreement for Peace that it concluded to ensure the protection of the investor's hydropower project against attacks and violence by armed groups.⁷¹⁶
383. In *MTD v. Chile*, the tribunal held that Chile breached the FET standard by acting inconsistently through different branches of the State. Chile had approved the investor's project for a specific location through its Foreign Investment Committee, thereby creating an expectation that it could proceed in that location. However, other State authorities later contradicted that approval based on a zoning policy.⁷¹⁷ The *MTD* tribunal concluded that Chile failed to act consistently and provide a coherent and coordinated regulatory framework for the claimant's investment, in violation of the FET standard.⁷¹⁸
384. *Arif v. Moldova* is another example of a case where a State violated the FET standard through inconsistent conduct. Moldova's Airport State Enterprise, which had concluded a contract with the investor to operate an airport duty free store, created a basis for annulling

⁷¹⁵ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Merits and Damages (9 Sep. 2021) (CL-93) ¶ 821 (emphasis added).

⁷¹⁶ *Energía y Renovación v. Guatemala* (CL-108) ¶ 393.

⁷¹⁷ *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award (25 May 2004) (CL-21) ¶ 163.

⁷¹⁸ *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award (25 May 2004) (CL-21) ¶¶ 163-167, 189.

the contract by unlawfully denying the investor access to the premises for several months, in violation of Moldovan law.⁷¹⁹ The contract was annulled in court, and “the Airport State Authority took no remedial action. It behaved as a powerless bystander, rather than as an organ of the State whose illegal actions first paralyzed and then destroyed an investment that it had encouraged.”⁷²⁰ The tribunal held that Moldova’s inconsistent conduct violated the FET standard.⁷²¹

(b) Colombia has treated Claimant and the Project arbitrarily and inconsistently

385. Through a series of specific acts and omissions, Colombia has treated Claimant’s investment in the Project arbitrarily and inconsistently.

386. Colombia’s arbitrary and inconsistent acts include, among others, the following:

- a) Colombia induced Claimant’s investment in its mining sector with promises that it would protect that investment, including even designating it a “national interest” project, but have since refused to do so. It has done so without any transparency or clear explanation ever provided to Claimant. Indeed, rather than explain any reason for its arbitrary conduct, Colombian officials instead chose to simply represent to Claimant that State help was on the way but then never fulfilled those promises.⁷²²
- b) Colombia has arbitrarily and inconsistently deprived Claimant of its rights under Colombian law, including its exclusive rights to the mineral resources located at the Project. Instead, as myriad officials have acknowledged over many years,

⁷¹⁹ *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013) (CL-58) ¶ 544 (“The more time passed and the more efforts were made, the more Mr. Arif was entitled to trust Respondent that it would stand by the contract terms and would allow the realization of the investment. The contract was only a first step upon which Mr. Arif based his expectation that he was entitled to run the airport shop. The open, transparent and continuous performance of his investment contributed to building legitimate trust in the validity of his position.”).

⁷²⁰ *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013) (CL-58) ¶ 547(f).

⁷²¹ *Mr. Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award (8 April 2013) (CL-58) ¶ 547(f).

⁷²² *See supra* § II.H.4.

Colombia has openly permitted and potentially even facilitated the theft of those minerals by the *Clan del Golfo* and other illegal miners with total impunity and no compensation provided to Claimant for its losses.⁷²³

- c) Colombia's refusal to protect Claimant's investment has inflicted significant damage on the value of that investment with no legitimate purpose. Colombia's flipflop on security policies have caused a significant increase in criminality in the region, including violent attacks, the use of illegal weapons and explosives, and environmental degradation, including an increase in the use of mercury and an increased risk of a catastrophic collapse of the mountain in which the Mine is located.⁷²⁴
- d) Colombia's refusal to comply with its own domestic law and contractual obligations to protect the investment is also arbitrary. As summarized above, it is well-established in Colombian law that the State (and only the State) is the authority responsible and has a duty to provide protection to the Project. Moreover, through the security agreements signed by the Armed Forces and National Police, Colombia undertook additional obligations to provide security at the Site. Colombia's breaches in this regard are arbitrary.⁷²⁵
- e) Colombia promised Claimant a supportive legal framework in which to operate in the mining sector but then broke those promises. In particular, among other things, Colombia effectively deprived Claimant of its ability to avail itself of key protections promised in Colombian law, including the ability for titleholders to bring summary eviction proceedings (*amparos administrativos*) and to request provisional protection (*amparos provisionales*). Despite these promises, however,

⁷²³ See *supra* § II.H.

⁷²⁴ See *supra* § II.J.1.

⁷²⁵ See *supra* §§ II.F-H.

and despite Claimant's best efforts to avail themselves of these protections, Colombia's failure to enforce turned them into a dead letter.⁷²⁶

- f) Colombia's open policy of favoring illegal miners (which it often erroneously conflates with legal "artisanal" or "traditional" miners) over large-scale miners is arbitrary and has no legitimate purpose. It is also inconsistent with its promises to protect Claimant's investment, which served to induce that investment. Illegal miners engage in violent criminal acts and dangerous practices that imperil their own lives, as well as the lives of the Claimant's workers and contractors, and local community members on a daily basis, as Colombia's own officials have acknowledged.⁷²⁷ Their entirely unregulated conduct also results in significant environmental degradation as well as very poor conditions for the workers. The State's misguided efforts to favor criminals at prejudice to Claimant provides no benefit to Colombia and is entirely arbitrary.

4. Colombia's failure to enforce its own administrative and judicial decisions constitutes a denial of justice and arbitrary and inconsistent treatment

(a) The FET standard expressly incorporates the denial of justice standard and requires Colombia to enforce its administrative and judicial decisions

387. Article 805(2) clarifies that "[t]he obligation in [Article 805] paragraph 1 to provide 'fair and equitable treatment' includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process."⁷²⁸
388. A State commits a denial of justice where it administers justice in a seriously inadequate manner. Among other things, "[a] failure to allow a party due process will often result in

⁷²⁶ See *supra* § II.H.5.

⁷²⁷ See *supra* § II.H.

⁷²⁸ Treaty (CL-1) Article 805(2).

a denial of justice.”⁷²⁹ Where a court’s actions or resulting decision shocks a sense of judicial propriety, this too will constitute a denial of justice,⁷³⁰ as will judicial or administrative decisions that are biased, politically motivated, or otherwise arbitrary.⁷³¹ Moreover, as the tribunal in *ECE v. Czech Republic* observed, a denial of justice “is not limited to judicial proceedings but may equally occur in administrative proceedings”⁷³²

389. It is insufficient for a legal system to offer recourse to courts that is only theoretically, but not practically, available and effective. Thus, where a party encounters undue adjudicative delay, the State will commit a denial of justice.⁷³³ The non-enforcement of court decisions likewise amounts to a denial of justice.⁷³⁴ International tribunals, such as the European

⁷²⁹ *Waguhi Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award (1 June 2009) (CL-40) ¶ 452. See also *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Excerpt of the Award (2 July 2018) ¶ 462 (CL-84) (“[D]enial of justice is encapsulated as the arbitrary disregard of due process.”); The Law of Responsibility of States for Damages Done in Their Territory to the Person or Property of Foreigners (1929 Harvard Draft Convention), Art. 9, 23 AM. J. INT’L L. SPEC. SUP. 133, (1929) (CL-5) ¶ 173 (“Denial of justice exists where there is a denial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guaranties which are generally considered indispensable to the proper administration of justice or a manifestly unjust judgment.”).

⁷³⁰ *Dan Cake S.A. v. Hungary*, ICSID Case No. ARB/12/9, Decision on Jurisdiction and Liability (24 Aug. 2015) (CL-67) ¶ 146 (finding a denial of justice where the court’s decision “does shock a sense of juridical propriety.”); see also *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award (26 June 2003) (CL-17) ¶ 132 (observing that a denial of justice is a “[m]anifest injustice in the sense of a lack of due process leading to an outcome which offends a sense of judicial propriety”).

⁷³¹ Jan Paulsson, DENIAL OF JUSTICE IN INTERNATIONAL LAW (2005) (CL-25) pp. 89, 204.

⁷³² *ECE Projektmanagement v. The Czech Republic*, UNCITRAL, PCA Case No. 2010-5, Award (19 Sep. 2013), (CL-60) ¶ 4.742. See also, *Amco Asia Corporation et al., v. Republic of Indonesia (I)*, ICSID Case No. ARB/81/1, Award (31 May 1990) (CL-8A) ¶ 137 (“[T]he Tribunal sees no provision of international law that makes impossible a denial of justice by an administrative body.”).

⁷³³ See, e.g., JAN PAULSSON, DENIAL OF JUSTICE IN INTERNATIONAL LAW (2005) (CL-25) p. 177 (“[D]elays may be ‘even more ruinous’ than absolute refusal or access, because in the latter situation the claimant knows where he stands and take actions accordingly.”); The Law of Responsibility of States for Damages Done in Their Territory to the Person or Property of Foreigners (1929 Harvard Draft Convention), Comment to Art. 9, 23 A M. J. INT’L L. SPEC. SUP. 133, (1929) (CL-5) p. 175 (“[U]ndue delay in rendering judgment ... have all been deemed, under particular circumstances instances of ‘denial of justice.’”); *Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award (1 Nov. 1999) (CL-12) ¶ 102 (“A denial of justice could be pleaded if the relevant courts subject [a suit] to undue delay”); *Spyridon Roussalis v. Romania*, ICSID Case No. ARB/06/1, Award (7 Dec. 2011) (CL-52) ¶ 602 (“The Tribunal acknowledges that undue delay to rule on a dispute may amount to a denial of justice.”); *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Excerpts of the Award (2 July 2018) (CL-84) ¶¶ 449, 455 (referring to “the old adage of ‘justice delayed, justice denied’”).

⁷³⁴ JAN PAULSSON, DENIAL OF JUSTICE IN INTERNATIONAL LAW (2005) (CL-25) p. 168 (“Governments are [obliged] to the duty of providing officials who with reasonable diligence and without discrimination put the *imperium* of the law at the service of foreign judgment creditors. ... Denial of justice thus includes the failure to execute a final judgment.”). See also Newcombe & Paradell, LAW AND PRACTICE OF INVESTMENT TREATIES:

Court of Human Rights, have held that the enforcement of a judgment is an “integral part” of the right to a fair trial:

It would be inconceivable that Article 6 § 1 [of the European Convention on Human Rights] should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6.⁷³⁵

390. The Montano case before the US-Peruvian Claims Commission illustrates that a failure to enforce court judgments may amount to a denial of justice under customary international law. The US, acting through a federal marshal, failed to enforce a domestic court judgment that the Peruvian claimant had obtained. The Claims Commission’s Umpire found that “[t]he sentence of the court was not made effective through the fault of the public officer who was under an obligation to execute it,”⁷³⁶ and concluded that the US Government was therefore responsible for a denial of justice to the Peruvian claimant.⁷³⁷
391. Moreover, where a State fails to comply with a domestic judicial decision, such inconsistent conduct can constitute a breach of the FET standard independently of a denial

STANDARDS OF TREATMENT (2009) (CL-43) p. 240 (“Denial of justice can ... arise from procedural irregularities in judicial proceedings, such as undue delays, lack of due process, failure to provide a fair hearing or the non-execution of a judgment.”) (emphasis added); BERK DEMIRKOL, JUDICIAL ACTS AND INVESTMENT TREATY ARBITRATION (2018) (CL-87) p. 176 (“Another typical denial of justice case is the state’s failure to execute a judgment.”), p. 178 (“If the state fails to execute this judgment against a third person, it would be because the state does not operate the mechanisms of enforcement adequately. Since a state cannot ensure an effective and adequate judicial protection for substantive rights of individuals without providing an adequate enforcement mechanism, this mechanism is part of the judicial protection, albeit it does not directly relate to the adjudicatory process. Accordingly, the failure to operate enforcement mechanisms has the consequence that the state does not provide the procedural and substantive protection of the law towards the investor. This failure leads to a denial of justice.”).

⁷³⁵ *Timofeyev v. Russia*, European Court of Human Rights, Application no. 58263/00 (23 Oct. 2003) CL-19 ¶ 40.

⁷³⁶ 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* 2, 1615 (1898) (CL-4) 1635.

⁷³⁷ 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* 2, 1615 (1898) (CL-4) 1635

of justice. In *PSEG v. Turkey*, for example, the tribunal held that Turkey violated the FET standard when its Ministry of Energy and Natural Resources failed to comply with a judgment of the Turkish Constitutional Court.⁷³⁸ In *Mercuria Energy v. Poland*, the Polish company J&E Holding Limited, in which the claimant held shares, won a series of administrative court decisions against a Polish State agency, which the agency did not implement.⁷³⁹ The tribunal held that “[i]n the face of multiple administrative court rulings in favor of JSE [J&E Holding Limited] ... , the lack of enforcement of Claimant’s rights was non-transparent, inconsistent, and arbitrary,” in violation of the FET standard.⁷⁴⁰

(b) Colombia denied justice to Claimant and its investments

392. Colombian law grants concessionaires, such as Continental Colombia, access to legal remedies against illegal mining and other illegal activities, including by way of *amparos administrativos* and criminal complaints.⁷⁴¹
393. Consistent with this legal framework, Colombia took actions in the past to give effect to these remedies and, for example, used the police and armed forces to evict illegal miners with Operation Creta (2016-2020) in response to an *amparo administrativo* filed by the Company. This military operation is seen today as “the benchmark of a peaceful intervention, organized, planned and in team with the Public Forces, state entities and

⁷³⁸ *PSEG Global Inc. et al v. Turkey*, ICSID Case No. ARB/02/5, Award (19 Jan. 2007) (CL-32)¶ 249 (“[T]he Constitutional Court decision upholding the rights acquired under a contract ... was simply ignored by MENR in its dealings with the Claimants. Such inconsistent acts might be unlawful under Turkish law, but in light of the provisions of the Treaty they are also in breach of the standard of fair and equitable treatment.”).

⁷³⁹ *Mercuria Energy Group Limited v. Republic of Poland (II)*, SCC Case No. 2019/126, Award (29 December 2022) (CL-98) ¶¶ 839-842.

⁷⁴⁰ *Mercuria Energy Group Limited v. Republic of Poland (II)*, SCC Case No. 2019/126, Award (29 December 2022) (CL-98) ¶ 838-839 (“The conduct of Respondent that led this Tribunal to establish the violation of the effective means standard of Article 10(12) of the ECT gives this Tribunal grounds to establish the violation of the FET standard of Article 10(1) of the ECT. Specifically, the Tribunal holds that the treatment of Claimant by Respondent’s administrative authorities over the past decade lacked transparency and respect for procedural propriety. In the face of multiple administrative court rulings in favor of JSE (referred to in Section E.VII above), the lack of enforcement of Claimant’s rights was non-transparent, inconsistent, and arbitrary.”).

⁷⁴¹ *See supra* § II.H.5; Mining Code (C-58) Art. 307. *See also* Art. 306 of the Mining Code which aims to immediately suspend any mineral exploitation activity carried out without a registered mining title in the National Mining Registry. Mining Code (C-58) Art. 306.

private companies.”⁷⁴² Similarly, Colombia conducted Operation Hades in 2020-2021.⁷⁴³ These interventions showed that Colombia was generally committed to enforcing legal remedies against illegal mining.⁷⁴⁴

394. When illegal mining activities escalated after President Petro’s inauguration on 7 August 2022, the Company filed multiple criminal complaints to protect its rights and pursue the perpetrators.⁷⁴⁵ While the Company has obtained favorable decisions in many of these proceedings, these have for the most part been paper victories, as Colombia has failed to take effective action to enforce them.⁷⁴⁶
395. The property near the entrance to the Yaraguá tunnel known as “*Los Gómez*”, which has for years served as a staging ground for illegal mining activities, provides a striking example. The Company has filed several criminal complaints about the illegal mining activities taking place on that property over the years.⁷⁴⁷ In June 2021, pursuant to the Assets Forfeiture Law,⁷⁴⁸ the Attorney General’s Office concluded that *Los Gómez* was indeed linked to illegal mining activities and ordered the land, equipment and other assets located there be seized and confiscated.⁷⁴⁹ That order has never been enforced.

⁷⁴² See *supra* § II.D.2; “Buriticá: Legality and Ethical Gold,” Government of Antioquia (2019) (C-216) p. 37.

⁷⁴³ See *supra* § II.D.2; II.E.4.

⁷⁴⁴ See *supra* § II.E.4.

⁷⁴⁵ See *supra* § II.H.5.

⁷⁴⁶ [REDACTED].

⁷⁴⁷ Decree No. 74, Municipality of Buriticá (18 May 2018) (C-499) ¶ 11 (“[Continental Colombia] has filed countless reports and complaints against the municipal authorities and the attorney general, which show mining activities carried out at Los Gómez property without complying with legal requirements, as well as the imminent risk they pose, as outlined below.”). Minutes of Meeting of Continental Gold with the National Police, 13 November 2022 (C-317) (“The Company showed Captain Cruz with the properties including enclosures, and geographic information regarding the mines affected within these third-party properties. It is clear that mining activity is being carried out on these properties belonging to [the Company], and that the technical closures are being violated, constituting a fraud against the applicable resolution.”).

⁷⁴⁸ Assets Forfeiture Law (Law 1708 of 2014), (C-500) Art. 16.

⁷⁴⁹ Asset Forfeiture Proceeding, Interim Measures Decision dated 12 June 2021 (C-501).

396. Colombia has likewise also failed to take effective action to enforce eviction orders issued by the Mayor of Buriticá further to *amparo administrativos* filed by the Company.⁷⁵⁰ As one example among many, the Mayor granted an *amparo administrativos* in June 2023, ordering the expulsion of illegal miners in part of the Concession area, with the assistance of the police and armed forces.⁷⁵¹ That order has not been enforced. The Mayor in fact acknowledged in his order that the Municipality of Buriticá “does not have the technical or operational capacity to act” against illegal mining,⁷⁵² and, referring to the *Clan del Golfo*, noted that “public officers feel intimidated and are afraid to act.”⁷⁵³

⁷⁵⁰ In an *amparo* request filed on 20 November 2023, Continental Colombia observed that the illegal mining situation and its effects have “been getting worse because of government delays,” as shown by the fact that the government frequently takes three months to respond, while the legal deadline is 15 days. Continental Colombia also mentioned that authorities are fully aware of the critical situation of illegal mining and reported explosive material and chemical substances with unknown origins. See Continental Colombia’s Request for *Amparo Administrativo*, dated 20 November 2023 (C-502) ¶ 14. See also Continental Colombia’s Request for *Amparo Administrativo*, dated 21 February 2024 (C-503) ¶ 14.

⁷⁵¹ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) p. 26, Art. 2 (“ORDER the eviction and the immediate and definitive suspension of the activities performed by unidentified persons, with the enforcement support of the national police, and the national army, the seizure of the elements installed for the exploitation, and to give to the aggrieved party the extracted minerals in the area of the mining title P7495011.”).

⁷⁵² Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 23 (“Despite everything, the municipality takes all actions within its power, although it has manifested in some scenarios with the entities at the departmental level, the Government of Antioquia, and the national level, central government, the Vice-Ministry of Mines, that it does not have the technical and operational capacity to act against the phenomena of illegal and informal mining, since the problem is multidimensional and requires a comprehensive, intersectoral strategy, coordinated with the intervention of the institutions and authorities, which have competences in social matters, security and defense, environmental and mining.”).

⁷⁵³ Notice by the Mayor of Buriticá to Continental Colombia, dated 4 July 2023, attaching Resolution No. 179, dated 28 June 2023 (C-360) ¶ 23 (“Indeed, all the capacity of the State was focused on safeguarding the lives of Colombians [in relation to the pandemic]. However, the illegal mining activities continued, went from carrying out activities of extraction of the gold ore that was then taken to the surface, to perform the entire process of extraction and benefit in the subsoil, that is, the miners entered the underground and stayed there for periods of 20 to 30 days. The organized armed groups -GAO- (GULF CLAN) and -GAD- that are financed from this activity, were strengthened ... altering the public order, in the conditions of security, and peace of the population of Buriticá. Similarly, the guarantees for the exercise of public functions, on the understanding that officials feel intimidated, and are afraid to act”).

397. Finally, in August 2022 and again in May 2024, in response to the security situation at the Mine, the ANM issued Emergency Resolutions ordering the cessation of all illegal mining activities at the Mine.⁷⁵⁴ These resolutions were never enforced.

398. In short, Colombia has repeatedly failed to enforce the judicial and administrative decisions issued by its own organs and aimed at protecting and preserving the Company's rights under Colombian law. These failures amount to a denial of justice, as well as arbitrary and inconsistent State conduct, in breach of Colombia's FET obligation in Article 805(2) of the FTA.

V. COLOMBIA'S TREATY BREACHES HAVE CAUSED CLAIMANT SUBSTANTIAL LOSSES FOR WHICH COMPENSATION IS DUE

A. CAUSATION

399. Colombia's breaches of the Treaty have caused severe and permanent damage to Claimant's investment in the Mine. Claimant has established, among other things:

- a) Colombia has failed in its duty to protect the Company and the Mine under both the Treaty and the joint security agreements (and numerous renewals thereof) that it signed with the Company.⁷⁵⁵
- b) Colombia has failed in its repeated commitments to combat illegal miners and organized crime.⁷⁵⁶
- c) Colombia has allowed, tolerated and indeed condoned the forceful and unlawful invasion and occupation of the Mine by thousands of armed criminals.⁷⁵⁷

⁷⁵⁴ ANM Emergency Report No. 202209E, dated 29 Aug. 2022 (C-307) p. 17 (Ordering the "total and immediate closure of unauthorized mining activities that disrupt the area of title P749111 [i.e., the Project], conducted by individuals using unsafe and non-technical procedures."); ANM Emergency Report No. 007-E, dated 31 May 2024 (C-404) p. 30 (Ordering the "immediate suspension of all development, preparation, and exploitation activities related to unauthorized mining within the mining title P7495011 [the Project] in the jurisdiction of the municipality of Buriticá" and noting that these activities "are being conducted without the authorization of the mining titleholder [i.e., the Company].").

⁷⁵⁵ See §§ II.F-J; IV.B.2; IV.C.2(c); IV.C.2(c); IV.C.3(b).

⁷⁵⁶ See §§ II.F-J; IV.B.2; IV.C.2(c); IV.C.2(c); IV.C.3(b).

⁷⁵⁷ See §§ II.J; IV.B.2; IV.C.2(c); IV.C.2(c); IV.C.3(b).

- d) Colombia has allowed and tolerated criminals to rob the Company of the valuable minerals located in these areas and to which the Company holds exclusive rights under Colombian law and the Concession Agreement.⁷⁵⁸
- e) Colombia has failed to enforce Claimant and the Company's rights under Colombian law and the Concession Agreement, including arising out of decisions rendered in amparo proceedings and other judicial, criminal and administrative proceedings.⁷⁵⁹
- f) Colombia has allowed this to happen openly, with the knowledge of Colombian officials at every level of government, and with impunity for the illegal actors.⁷⁶⁰

400. As a result of Colombia's breaches, [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED].⁷⁶² The illegal occupation of these underground areas means that Claimant has lost access to the valuable minerals located in these areas and to which the Company holds exclusive rights under Colombian law and the Concession Agreement.⁷⁶³

401. Claimant's mining and financial experts, Ronald Lewis and Catherine Joyner of J.T. Boyd Company ("**Boyd**"), assess that mineral reserves totaling over [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

⁷⁵⁸ See §§ II.F-J; IV.B.2; IV.C.2(c); IV.C.2(c); IV.C.3(b).

⁷⁵⁹ See §§ II.F-J; IV.B.2; IV.C.2(c); IV.C.2(c); IV.C.3.b, IV.C.4(b).

⁷⁶⁰ See §§ II.F-J; IV.B.2; IV.C.2(c); IV.C.2(c); IV.C.3.b, IV.C.4(b).

⁷⁶¹ [REDACTED]

⁷⁶² [REDACTED]

⁷⁶³ [REDACTED]

⁷⁶⁴ John T. Boyd Independent Expert Report dated 20 October 2025 ("**Boyd Report**"), Chapter 5, p. 5.10 (showing a base case assessment of lost reserves of 29.14 tons of gold and 84.75 tons of silver in situ).

██
██
██
██.

After surveying the area, the Company is now proceeding to backfill the tunnels as the mineral reserves that had been demonstrated in that area before the invasion have been depleted by illegal miners and the area no longer has economic value.⁷⁶⁵

402. As ██████████ testifies, in addition to the valuable mineral reserves, the Company lost the use and benefit of the infrastructure (ventilation shafts or “raisebores,” underground tunnels, ramps and associated equipment) that it had developed in the occupied areas to exploit the ore.⁷⁶⁶

403. Colombia cannot escape liability for the injuries suffered by Claimant and the Company by blaming them on the actions of the criminals and illegal miners that it has for years tolerated.⁷⁶⁷ To the extent that these were the foreseeable result of Colombia’s treaty breaches, these injuries were caused by Colombia in law. As the *CME* tribunal explained in the context of an FPS claim, “[c]ausation 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.”⁷⁶⁸

⁷⁶⁵ ██████████

⁷⁶⁶ ██████████

⁷⁶⁷ *Energía y Renovación Holding, S.A. v. Republic of Guatemala*, ICSID Case No. ARB/21/56, Award, (31 Mar. 2025) (CL-108) ¶ 468 (“The Tribunal considers Claimant raises a reasonable argument when it argues that ‘Guatemala cannot escape liability for its breaches to the Treaty by saying that a third party must respond for damages caused by the State’”). See also *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011) (CL-51) ¶ 523 (“If a State fails to exercise due diligence to prevent or punish [wrongful injuries to the person or property of aliens caused by third parties within the state’s territory], it is responsible for this omission and is liable for the ensuing damage.”); *CME Czech Republic B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 (CL-152) ¶ 580 (“As the United Nations International Law Commission in its Commentary on State responsibility recognizes, a State may be held responsible for injury to an alien investor where it is not the sole cause of the injury; the State is not absolved because of the participation of other tortfeasors in the infliction of the injury.”).

⁷⁶⁸ *CME Czech Republic B.V. v. The Czech Republic*, UNCITRAL Partial Award (13 Sep. 2001) (CL-152) ¶ 527.

404. Here, the injuries that Claimant and the Company have suffered as a result of Colombia’s actions and omissions were entirely foreseeable. It is in the nature of illegal mining that, if left unchecked, it will result in the uncontrolled and illegal exploitation of minerals that belongs to the titleholder,⁷⁶⁹ and it was (and remains) a matter of public knowledge that the criminals operating illegally in the Mine are exploiting its valuable mineral reserves on an industrial scale.⁷⁷⁰ Colombia has long been on notice of the gravity of the situation in Buriticá. Claimant and the Company have repeatedly alerted the Colombian authorities (including at the highest levels of government with multiple letters to President Petro starting shortly after his inauguration in August 2022) and called for action,⁷⁷¹ but Colombia chose to do nothing. The Colombian mining authorities conducted regular regulatory visits at the Mine, and the Company reported to them its estimates of the quantities of reserves that had been lost to illegal miners.⁷⁷² In fact, President Petro himself recently acknowledged that private properties directly above the Mine had for years been used illegally by the *Clan del Golfo* to appropriate massive quantities of gold.⁷⁷³

B. COMPENSATION

405. Claimant seeks compensation for the losses it has suffered as a result of the illegal invasion of the Mine that Respondent has tolerated. The Tribunal has broad authority to order compensation under the Treaty. Pursuant to Article 834(2) of the Treaty, the Tribunal may award in its final award “monetary damages and any applicable interest.”⁷⁷⁴ The Tribunal may also award “costs and attorney’s fees in accordance with this Section and the applicable arbitration rules.”⁷⁷⁵

⁷⁶⁹ Mining Code (C-58) Art. 159 (“[I]llegal exploration and exploitation of mineral deposits, constituting the crime described in Article 244 of the Criminal Code, occurs when exploration, extraction, or collection of minerals owned by the State or private entities is conducted without the corresponding valid mining title or without the authorization of the property owner.”).

⁷⁷⁰ See, e.g., Juan Forero, “A Drug Gang Stole 3 Tons of Gold in a Scam So Perfect It’s Still Going,” *The Wall Street Journal* (12 Nov. 2024) (C-424).

⁷⁷¹ See § II.H.

⁷⁷² [REDACTED]

⁷⁷³ See § II.J.3; Mr. Gustavo Petro’s Post on Twitter (now X) (19 June 2025) (C-491).

⁷⁷⁴ Treaty (CL-1) Art. 834(2).

⁷⁷⁵ Treaty (CL-1) Art. 834(2).

1. The legal standard for Claimant’s damages claim

(a) Colombia must make full reparation by paying damages that wipe out the consequences of its Treaty breaches

406. The Treaty prescribes the standard of compensation for lawful expropriations, namely compensation “equivalent to the fair market value of the expropriated investment immediately before the expropriation took place”⁷⁷⁶ By contrast, the Treaty does not prescribe the standard of compensation in circumstances where Colombia breaches its Treaty obligations, including unlawful expropriations under Article 811 and FET or FPS violations under Article 805 of the Treaty. Compensation for such breaches must be determined in accordance with customary international law,⁷⁷⁷ as recently confirmed by the tribunal in *Eco Oro v. Colombia*, which applied the same Treaty.⁷⁷⁸
407. Under customary international law, a State must make full reparation for the injuries caused by its wrongful acts. This rule is expressed in Article 31(1) of the International Law Commission’s (“ILC”) Articles on State Responsibility: “The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.”⁷⁷⁹

⁷⁷⁶ Treaty (CL-1) Art. 811(2).

⁷⁷⁷ See, e.g., *Burlington Resources Inc. v. Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award (7 Feb. 2017) (CL-120) ¶ 160 (“In the Tribunal’s view, the appropriate standard of compensation in this case is the customary international law standard of full reparation. Article III (1) [of the applicable BIT] only describes the conditions under which an expropriation is considered lawful; it does not set out the standard of compensation for expropriations resulting from breaches of the Treaty.”); *ADC Affiliate Ltd. et al., v. Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) (CL-30) ¶ 483 (“Since the BIT does not contain any *lex specialis* rules that govern the issue of the standard for assessing damages in the case of an unlawful expropriation, the Tribunal is required to apply the default standard contained in customary international law in the present case.”); *Bear Creek Mining v. Republic of Peru*, ICSID Case No. ARB/14/21, Award (30 Nov. 2017) (CL-117) ¶ 595 (“The FTA does not provide any rules regarding the damages to be awarded in case of such a breach of the FTA. Accordingly, the standard provided under general international law is applicable.”).

⁷⁷⁸ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Award on Damages (15 Jul. 2024) (CL-125) ¶ 291 (“In the absence of any provision in the Treaty as to the appropriate standard of compensation, the Tribunal looks to customary international law as set out in the ILC Draft Articles on State Responsibility. The applicable standard of compensation, as routinely applied by investment tribunals, is the international law standard of full reparation for the damage actually suffered, as established by the Permanent Court of International Justice in the *Chorzów Factory* case.”).

⁷⁷⁹ ILC Articles (CL-110) Art. 31(1) (emphasis added).

408. The obligation to make full reparation extends to a State's obligations in treaties and conventions, as reflected in the Permanent Court of International Justice's decision in the *Chorzów Factory* case:

It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.⁷⁸⁰

409. The Court specified the content of the obligation to make full reparation in the following frequently cited passage:

The essential principle contained in the actual notion of an illegal act ... is that reparation must, as far as possible, wipe-out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.⁷⁸¹

410. The obligation of States to make full reparation has been affirmed and applied by numerous investment treaty tribunals.⁷⁸² Colombia itself has affirmed the full reparation principle in other investment treaty arbitrations.⁷⁸³

⁷⁸⁰ *Chorzów Factory (Germany v. Poland)*, Judgment No. 8 (Jurisdiction), 26 July 1927, P.C.I.J. Series A, No. 9 (1927) (CL-122) p. 21. See also *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 Feb. 2007) (CL-33) ¶ 353.

⁷⁸¹ *Chorzów Factory (Germany v. Poland)*, Judgment No. 13 (Merits), Sept. 13, 1928, P.C.I.J. Series A, No. 17 (1928) (CL-123) p. 47 (emphasis added).

⁷⁸² See, e.g., *ADC Affiliate Ltd. et al., v. Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) (CL-30) ¶ 493 (“[T]here can be no doubt about the present vitality of the Chorzów Factory principle, its full current vigor having been repeatedly attested to by the International Court of Justice.”); *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award (5 Jan. 2024) (CL-112) ¶ 1794 (“The Tribunal agrees with both Parties that the full compensation standard expressed in the Chorzów Factory Case applies.”); *Interconexión Eléctrica S.A. E.S.P. v. Republic of Chile*, ICSID Case No. ARB/21/27, Award (13 Dec. 2024) (CL-134) ¶ 1297 (“Customary international law obliges the Tribunal to apply the principle of full reparation, as established by the Permanent Court of International Justice in the *Chorzów Factory* case.”) (free translation of Spanish original).

⁷⁸³ See, e.g., *Glencore International A.G., C. I. Prodeco S.A., and Sociedad Portuaria Puerto Nuevo S.A. v. Republic of Colombia*, ICSID Case No. ARB/19/22, Award (19 Apr. 2024) (CL-130) ¶ 325 (“The Parties are in mutual agreement that the governing legal standard to be employed by this Tribunal is unequivocally that of full reparation for the injury caused. This principle, firmly established since the PCIJ’s decision in *Chorzów Factory*, and codified in the ILC Articles, is a cornerstone of customary international law.”); *South32 SA Investments Limited v. Republic of Colombia (I)*, ICSID Case No. ARB/20/9, Award (21 Jun. 2024) (CL-147) ¶ 758 (“Both Parties have referred to *Chorzów* as a benchmark for compensation: ... The Respondent has not denied the relevance of *Chorzów* for the principle of full reparation; it has only questioned whether restitution is an available remedy in investment arbitration.”).

411. The obligation to make full reparation applies to all breaches of investment treaty protections, including the prohibition of unlawful expropriations, FET, and FPS. The tribunal in *Vivendi v. Argentina* thus observed that “regardless of the nature of the illegitimate measure, the level of damages award in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state’s action.”⁷⁸⁴ The tribunal in *Total v. Argentina* confirmed this position in the context of a breach of the fair and equitable treatment standard:

[T]here is no doubt that Total is entitled to monetary compensation equivalent to the losses it suffered due to the breach by Argentina of the fair and equitable treatment obligation ... in accordance with the customary international law rule that requires a State to provide “full reparation for the injury caused by its internationally wrongful act”. This principle is applicable in respect of economic damages caused by a wrongful act, irrespective of the content of the obligation breached, which may entail an unlawful expropriation or the violation of a treaty obligation to afford fair and equitable treatment as is the case here.⁷⁸⁵

412. Insofar as restitution in kind is not meaningfully possible or sufficient to make full reparation, States must pay compensation for the damage caused. This obligation is reflected in Article 36 of the ILC Articles.⁷⁸⁶ In accordance with the principle in Article 36(2) that compensation must “include[e] loss of profits insofar as it is established,”⁷⁸⁷

⁷⁸⁴ *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. The Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 Aug. 2007) (CL-34) ¶ 8.2.7.

⁷⁸⁵ *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Award (27 Nov. 2013) (CL-150) ¶ 58 (emphasis added). See also *Murphy Exploration & Production Company International v. The Republic of Ecuador II*, PCA Case No. 2012-16 (formerly AA 434) Partial Final Award (6 May 2016) (CL-74) ¶ 425 (“The Tribunal is satisfied that the above principle of full reparation applies to breaches of investment treaties unrelated to expropriations. This is reflected in the practice of investment tribunals. The full reparation standard aims at ‘full reparation’ of the concrete and actual damage incurred.”).

⁷⁸⁶ ILC Articles (CL-110) Art. 36 (“1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”).

⁷⁸⁷ ILC Articles (CL-110) Art. 36(2) (emphasis added). See also *Sapphire Int’l Petroleum Ltd. v. National Iranian Oil Co.*, Award (15 Mar. 1963), 35 I.L.R. 136 (1994) (CL-144) at 43 (“The award of compensation for the lost profit or the loss of a possible benefit has been frequently allowed by international tribunals.”).

many investment treaty tribunals have awarded compensation for lost profits where such losses were established.⁷⁸⁸

(b) Damages need only be proven based on a balance of probabilities

413. The standard of proof for establishing the amount of damages suffered due to Colombia's Treaty breaches is the same as for any other fact – the amount must be proven to be more probable than not. The Court in *Chorzów Factory* case thus held that reparation for wrongful State conduct is designed to “reestablish the situation which would, in all probability, have existed if that act had not been committed.”⁷⁸⁹
414. Investment tribunals have rejected arguments for a higher standard of proof. In *Gold Reserve v. Venezuela*, the tribunal found “no support for the conclusion that the standard of proof for damages should be higher than for proving merits, and therefore is satisfied that the appropriate standard of proof is the balance of probabilities.”⁷⁹⁰ The tribunal held that “all of the authorities cited by the Parties – including by Respondent in relation to its claim that a degree of certainty is required – accord with the principle that the balance of probabilities applies, even if some tribunals phrase the standard slightly differently.”⁷⁹¹

⁷⁸⁸ See, e.g., *Flemingo Duty Free Shop Private Limited v. Republic of Poland*, UNCITRAL, Award (12 Aug. 2016) (CL-128) ¶ 865 (“Full reparation encompasses both actual losses (*damnum emergens*) and loss of profits (*lucrum cessans*)”); *Sistem Mühendislik İnşaat Sanayi ve Ticaret A.Ş. v. Kyrgyz Republic*, ICSID Case No. ARB(AF)/06/1, Award (9 Sep. 2009) (CL-146) ¶ 188 (“The Tribunal accepts that the function of financial reparation is to wipe out, as far as possible, all of the losses caused to the Claimant by the Respondent's breach of its legal duties owed to the Claimant. In broad terms, the successful Claimant is to be put in the same financial position as he would have been in if his rights had not been violated. Account must be taken of the fact that the Claimant lost not only the hotel, but also the profits which the hotel would have generated if the Claimant had retained ownership and possession of it.”); *Amco Asia Corporation et al., v. Republic of Indonesia (I)*, ICSID Case No. ARB/81/1, Award (20 Nov. 1984) (CL-8A) ¶ 267 (“Thus, the full compensation of prejudice, by awarding to the injured party the *damnum emergens* and *lucrum cessans* is a principle common to the main systems of municipal law, and therefore, a general principle of law which may be considered as a source of international law.”) (emphasis added).

⁷⁸⁹ *Chorzów Factory (Germany v. Poland)*, Judgment on the Merits, 13 Sept. 1928, P.C.I.J. Series A, No. 17 (1928) (CL-123) at 47 (emphasis added).

⁷⁹⁰ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶ 685.

⁷⁹¹ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 Sep. 2014) (CL-63) ¶ 685.

415. In the same vein, investment treaty tribunals have rejected arguments that the amount of damages must be proven with certainty. The tribunal in *Vivendi v. Argentina*, for example, observed that “it is well settled that the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred. In such cases, approximations are inevitable; the settling of damages is not an exact science.”⁷⁹² The tribunal in *Crystallex v. Venezuela* likewise held that “once the *fact* of future profitability is established and is not essentially of speculative nature, the amount of such profits need not be proven with the same degree of certainty.”⁷⁹³

(c) Damages must include the value of the asset of which the investor has been deprived

416. Where a State takes an investment from an investor by depriving the investor of all or a material part of its value, tribunals have awarded damages corresponding to the taken investment’s value, regardless of whether the taking is characterized as an unlawful expropriation or a breach of another treaty standard. In *Gold Reserve v. Venezuela*, for example, the tribunal found that the State’s denial of FET caused the loss of the entire value of Gold Reserve’s rights under domestic law, and that “under the principles of full reparation and wiping-out the consequences of the [FET] breach, a fair market value

⁷⁹² *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. The Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 Aug. 2007) (CL-34) ¶ 8.3.16. See also *Técnicas Medioambientales Tecmed S.A. v. The United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (CL-16) ¶ 190 (“[A]ny difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damage is certain”); *Ron Fuchs v. Georgia*, ICSID Case No. ARB/07/15, Award (3 Mar. 2010) (CL-142) ¶ 594 (“The Tribunal’s duty is to make the best estimate that it can of the amount of the loss, on the basis of the available evidence. That must be done even if there is no absolute documentary proof of the precise amount lost.”); *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 Aug. 2016) (CL-75) ¶ 642 (“Any assessment of damages in a complex factual situation, involving revenue-generating enterprises, includes some degree of estimation – the same degree which is also applied by (private and government) actors in the real world when valuing enterprises.”) (emphasis added); *Joseph Charles Lemire v. Ukraine II*, ICSID Case No. ARB/06/18, Final Award (28 Mar. 2011) (CL-136) ¶ 248 (“While the existence of damage is certain, calculating the precise amount of the compensation is fraught with much more difficulty ... The Tribunal has no crystal ball and cannot claim to know what would have happened under a hypothesis of no breach; the best any tribunal can do is to make an informed and conscientious evaluation, taking into account all the relevant circumstances of the case.”).

⁷⁹³ *Crystallex Int’l Corp. v. Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 Apr. 2016) (CL-72) ¶ 875 (italics in original). See also *id.* (“In other words, the Claimant must prove that it has been deprived of profits that would have actually been earned. This requires proving that there is sufficient certainty that it had engaged or would have engaged in a profitmaking activity but for the Respondent’s wrongful act, and that such activity would have indeed been profitable.”).

methodology is also appropriate”⁷⁹⁴ In *Lupaka Gold v. Peru*, the tribunal awarded compensation based on the fair market value of the claimant’s investment before the expropriation, noting that this valuation applied equally to the expropriation and to Peru’s breaches of FPS and FET.⁷⁹⁵ Similarly, investment tribunals held that where several treaty breaches cause the same loss, there is no need to distinguish between these breaches when calculating the damages to which the investor is entitled.⁷⁹⁶

417. Damages for unlawful expropriations logically must not be lower than the compensation required for lawful expropriations.⁷⁹⁷ By the same token, damages for breaches of other treaty standards that deprive the investor of all or a material part of its investment must not

⁷⁹⁴ *Gold Reserve Inc. v. Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 Sept. 2014) (CL-63) ¶ 680. *See also id.* ¶ 681 (“The relevant principles of international law applicable in this situation are derived from the judgment of the Permanent Court of International Justice in the *Chorzów Factory* case that reparation should wipe-out the consequences of the breach and re-establish the situation as it is likely to have been absent the breach. As the consequence of the serious breach in the present situation was to deprive the investor totally of its investment, the Tribunal considers it appropriate that the remedy that would wipe-out the consequences of the breach is to assess damages using a fair market value methodology.”).

⁷⁹⁵ *See e.g., Lupaka Gold Corp. v. Republic of Peru*, ICSID Case No. ARB/20/46, Award (30 Jun. 2025) (CL-138) ¶ 589 (“The Tribunal has also determined that the Respondent breached its obligations under the FTA to afford the Claimant’s investment FPS and FET. While the measure of compensation for these breaches may conceivably be different from that for expropriation, in the present case, the Claimant does not allege or prove damages caused by those breaches in excess of those resulting from the expropriation. Therefore, the Tribunal considers that the compensation owed by the Respondent on the expropriation claim includes also the compensation owed for the other breaches of the FTA for which the Respondent is liable.”).

⁷⁹⁶ *See e.g., Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. The Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 Aug. 2007) (CL-34) ¶ 8.2.8 (“[W]e are not faced with a need to ... differentiate [between damages for different treaty breaches], given our earlier finding that the same state measures infringed both relevant Articles of the BIT [on FET and expropriation] and that these measures emasculated the Concession Agreement, rendering it valueless. Put differently, the breaches of Articles 3 [on FET] and 5 [on expropriation] caused more or less equivalent harm.”); *Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Traiding Ltd v. Republic of Kazakhstan*, SCC Case No. V 116/2010, Award (19 Dec. 2013) (CL-116) ¶¶ 1205–1207; *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 Aug. 2000) (CL-139) ¶ 113.

⁷⁹⁷ *See Anatolie Stati, Gabriel Stati, Ascom Group SA and Terra Raf Trans Traiding Ltd v. Republic of Kazakhstan*, SCC Case No. V 116/2010, Award (19 Dec. 2013) (CL-116) ¶ 1461 (“[T]he Tribunal takes guidance to the effect that the damages to be awarded for what it has found above to be not a lawful expropriation, but rather a breach of the ECT, shall not be lower than what the ECT prescribes for a lawful expropriation.”); *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award (22 Apr. 2009) (CL-118) ¶ 111 (“Obviously, the value of an expropriated enterprise does not vary according to the lawfulness or the unlawfulness of the taking ... The difference is that, if the taking is lawful the value of the undertaking at the time of the dispossession is the measure and the limit of the compensation, while if it is unlawful, this value is or may be, only a part of the reparation to be paid.”); SERGEY RIPINSKY AND KEVIN WILLIAMS, *DAMAGES IN INTERNATIONAL INVESTMENT LAW* (2008), Chapters 6.3, 9.2, (CL-143) p. 245 (“[L]ogically, compensation for unlawful expropriation cannot be lower than that for a lawful one.”).

be lower than the compensation for lawful expropriations either. Article 811 of the Treaty requires that damages for lawful expropriations be equivalent to “the fair market value of the expropriated investment immediately before the expropriation took place.”⁷⁹⁸ This standard sets a floor, not a ceiling for damages for Treaty breaches. Damages for unlawful expropriations and other treaty breaches may be higher. As the tribunal in *Caratube v. Kazakhstan (II)* observed:

[I]nternational tribunals have sometimes applied the FMV [fair market value] standard in case of unlawful expropriations, e.g. by way of analogy with lawful expropriations or on the ground that an unlawful expropriation cannot entail lower compensation than a lawful expropriation ... However, when determining the amount of money that will provide full reparation to the injured party, this Tribunal does not consider itself limited to the FMV standard, but may apply other methods to determine the amount that, in the Tribunal’s opinion, best reflects the damages incurred by [the claimant].⁷⁹⁹

418. Moreover, damages for Treaty breaches may be higher than damages for lawful expropriations based on the choice of valuation date, as discussed below.

(d) Value is determined on the date immediately before the breach or as of the date of the Tribunal’s award, whichever is higher

419. The value of a wrongfully taken investment is determined on the date immediately before the taking or the date of the tribunal’s award, whichever is higher. The *Yukos v. Russia* tribunal thus explained that “investors must enjoy the benefits of unanticipated events that increase the value of an expropriated asset up to the date of the decision, because they have a right to compensation in lieu of their right to restitution of the expropriated asset as of that date.”⁸⁰⁰ By contrast, “investors do not bear the risk of unanticipated events decreasing the value of an expropriated asset over that time period,” as “they do not affect an investor’s entitlement to compensation of the damage ‘not made good by restitution’,” because in

⁷⁹⁸ Treaty (CL-1) Art. 811(2).

⁷⁹⁹ *Caratube International Oil Company LLP and Devinci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award (27 Sep. 2017) (CL-121) ¶ 1084.

⁸⁰⁰ *Yukos Universal Ltd. v. Russia*, PCA Case No. 2005-04/AA227, Final Award (18 Jul. 2014) (CL-151) ¶ 1767.

“the absence of the expropriation the investor could have sold the asset at an earlier date at its previous higher value.”⁸⁰¹

420. Other decisions are consistent with these principles. In applying the full reparation standard, the *ADC* tribunal held that “the application of the *Chorzów Factory* standard requires that the date of valuation should be the date of the Award and not the date of expropriation.”⁸⁰² The *ADC* tribunal explained that “[s]ince monetary compensation must, as far as possible, resemble restitution, the value at the date when indemnity is paid must be the criterion.”⁸⁰³ In *Siemens v. Argentina*, the tribunal likewise determined that “it [was] only logical that, if all the consequences of the illegal act need to be wiped out, the value of the investment at the time of this Award be compensated in full.”⁸⁰⁴ The *Siemens* tribunal also made clear that “the value of the investment to be compensated is the value it has now, as of the date of this Award, unless such value is lower than at the date of expropriation, in which event the earlier value would be awarded.”⁸⁰⁵

⁸⁰¹ *Yukos Universal Ltd. v. Russia*, PCA Case No. 2005-04/AA227, Final Award (18 Jul. 2014) (CL-151) ¶ 1768.

⁸⁰² *See ADC Affiliate Ltd. et al., v. Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) (CL-30) ¶ 497.

⁸⁰³ *ADC Affiliate Ltd. et al., v. Hungary*, ICSID Case No. ARB/03/16, Award (2 Oct. 2006) (CL-30) ¶ 498.

⁸⁰⁴ *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 Feb. 2007) (CL-33) ¶ 353. *See also Eurus Energy Holdings Corp. v. Spain*, ICSID Case No. ARB/16/4, Award (14 Nov. 2022) (CL-127) ¶ 108 (“In certain circumstances, this principle [of customary international law] justifies that the damage be determined on the date of the award - or its closest proxy -, rather than the date on which the unlawful measure was taken, recognising that in those circumstances the value of the damage may be more accurately reflected at the time of the award. This principle has previously been endorsed and applied.”); *Burlington Resources Inc. v. Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award (7 Feb. 2017) (CL-120) ¶ 332 (“The Tribunal’s task is to place Burlington in the situation it would have been had Ecuador not expropriated the PSCs. For this, the Tribunal must assess what the PSC’s value would have been in real life on the date of the award.”); *Hochtief AG v. Argentina*, ICSID Case No. ARB/07/31, Decision on Liability (29 Dec. 2014) (CL-132) ¶ 328 (adopting the date of the decision on liability as the valuation date); *Amco Asia Corp. and others v. Indonesia*, ICSID Case No. ARB/81/1, Award in Resubmitted Proceeding (5 Jun. 1990) (CL-114) ¶¶ 186-187 (adopting the date of the award as the valuation date); *Amoco Int’l Finance Corp. v. Iran, et al.*, 15 Iran-U.S. C.T.R. 189, Partial Award No. 310-56-3, Concurring Opinion of Judge Brower (14 Jul. 1987) (CL-115) ¶ 18 (“[E]ither the injured party is to be actually restored to his enjoyment of the property, or should this be impossible or impractical, he is to be awarded damages equal to the greater of (i) the value of the undertaking at the date of the loss (against including lost profits), judged on the basis of information available as of that day, and (ii) its value (likewise including lost profits) as shown by its probable performance subsequent to the date of loss and prior to the date of the award, based on actual post-taking experience, plus (in either alternative) any consequential damages.”).

⁸⁰⁵ *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 Feb. 2007) (CL-33) ¶ 360 (emphasis added).

421. These principles have special relevance to this case because of the very substantial increase in the gold (and silver) prices over the past several years. As Boyd notes, this upward trend “has directly and significantly increased the value of the lost mineral reserves to the detriment of Claimant.”⁸⁰⁶

2. Claimant is entitled to damages of [REDACTED]

422. To achieve full reparation, Colombia must pay Claimant damages equal to the value of the assets that it lost due to Colombia’s Treaty breaches, *i.e.*, the mineral reserves, infrastructure and equipment in those areas of the Buriticá Mine that Colombia has allowed to be taken over by illegal miners.

423. Although criminals have violently encroached on the Higabrá development area (the deepest area of the Mine) and continue to progress in that area, for simplicity and due to the ongoing nature of the illegal invasion and occupation of the Mine, Boyd assesses only the value of the assets lost to illegal miners in the upper areas of the Mine (the Yaraguá and Veta Sur development areas). Further, Boyd values only the areas that were lost after President Petro’s inauguration on 7 August 2022 (even though, as explained, the impact of President Petro’s rhetoric and policy announcements were felt before his inauguration in the form of an increase in illegal mining activity at the Mine). To that extent, Boyd’s valuation is conservative.

424. Boyd first determines the mineral reserves that were located in the Yaraguá and Veta Sur development areas in August 2022 and that were subsequently lost to illegal miners. “Mineral reserves” are the part of an identified mineral resource that has been demonstrated (through technical studies) to be economically and legally exploitable.⁸⁰⁷ Reserves are inherently valuable. Boyd proceeds in two steps:

- a) First, Boyd determines the reserves existing as of August 2022 by reference to an independent technical report on the Buriticá Mine prepared and issued by global

⁸⁰⁶ Boyd Report, Chapter 2, p. 2-3.

⁸⁰⁷ [REDACTED]

mining consulting firm BAW Mining Inc. (“**BAW Report**”) in July 2022.⁸⁰⁸ The BAW Report was prepared in the ordinary course of business in accordance with Canadian securities disclosure requirements (National Instrument 43-101) and is the most contemporaneous set of geological data.⁸⁰⁹ Boyd performs an independent review and validation of the mineral resources and reserves declared in the BAW Report (as well as of the geological model supporting them known as a “Block Model”).⁸¹⁰

- b) Second, Boyd maps the areas of the Mine that have been permanently barricaded by the Company’s security and protection department since August 2022 to prevent further infiltration of illegal miners (and which are therefore no longer within the control of the Company). By overlaying this data over the Block Model supporting the BAW Report and other geological and mining data, Boyd determines the quantities of mineral reserves in the areas that have been lost to illegal miners since 7 August 2022.⁸¹¹

425. To value the lost areas (including their mineral reserves, infrastructure and equipment), Boyd uses two orthodox approaches: the income and market valuation approaches. The valuation guidelines published by the Canadian Institute of Mining, Metallurgy, and Petroleum (“**CIMVAL**”) and the Australian VALMIN Committee,⁸¹² which are among the most widely accepted in the mining industry, promote the use of both approaches for valuations of projects that are in production (such as the Mine).

Valuation Approaches per CIMVAL Guidelines⁸¹³

⁸⁰⁸ Boyd Report, Chapter 5; BAW Report (C-292).

⁸⁰⁹ BAW Report (C-292) p. 272.

⁸¹⁰ Boyd Report, Chapter 5.

⁸¹¹ Boyd Report, Chapter 5.

⁸¹² The VALMIN Committee is a joint initiative of the Australasian Institute of Mining and Metallurgy (AusIMM) and the Australian Institute of Geoscientists (AIG).

⁸¹³ “The CIMVAL Code for the Valuation of Mineral Properties,” Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL) (29 Nov. 2019) (C-519) § 3.3.3.

TABLE 1. Valuation Approaches for Different Types of Mineral Properties				
Valuation Approach	Exploration Properties	Mineral Resource Properties	Development Properties	Production Properties
Income	No	In some cases	Yes	Yes
Market	Yes	Yes	Yes	Yes
Cost	Yes	In some cases	No	No

Valuation Approaches per VALMIN Guidelines⁸¹⁴

TABLE 1				
Valuation Approach	Exploration Projects	Pre-development Projects	Development Projects	Production Projects
Market	Yes	Yes	Yes	Yes
Income	No	In some cases	Yes	Yes
Cost	Yes	In some cases	No	No

426. As concerns the income approach, Boyd uses the standard discounted cash flow (DCF) method to value the lost portion of [REDACTED]. To develop its cash flow projections, Boyd uses reasonable production plan for the lost areas and is able to rely on the Mine’s history of operations, including actual cost, production and sales data.⁸¹⁵ After discounting future cashflows and applying a reasonable interest rate to past cashflows, Boyd concludes that, as of 30 June 2025, the lost mineral reserves and associated infrastructure and equipment had a value of [REDACTED]⁸¹⁶

427. As concerns the market approach, Boyd is able to use an arm’s-length market valuation of very asset in dispute: the acquisition price paid by Zijin Mining Group in March 2020 for 100% of the shares in Continental Gold Inc.⁸¹⁷ The price paid by Zijin Mining Group reflects an ordinary course of business, arms’-length market valuation of the Mine and its

⁸¹⁴ “The VALMIN Code: 2015 Edition,” VALMIN Committee (30 Jan. 2016) (C-520) § 8.3.

⁸¹⁵ Boyd Report, Chapter 6, pp. 6-4 to 5.

⁸¹⁶ Boyd Report, Chapter 6, pp. 6-11 to 12.

⁸¹⁷ Boyd Report, Chapter 6, p. 6-12.

reserves as of that date. Following that acquisition, PWC prepared an independent Purchase Price Allocation analysis that Claimant used to restate its financial statements and allocate the purchase price and value to its various assets and liabilities in accordance with IFRS.⁸¹⁸ Boyd observes that the acquisition valued the Mine's existing mineral reserves at the time (as of March 2020) at [REDACTED].⁸¹⁹ From this data point, and accounting for the very substantial increase in the gold (and silver) prices in subsequent years, Boyd concludes that the value of the lost reserves ranged from [REDACTED].⁸²⁰ Based on historical costs records, Boyd also assesses the value of the infrastructure and equipment located in the areas lost to illegal miners at [REDACTED],⁸²¹ for a total valuation of the lost mineral areas under this method of [REDACTED] used as a proxy for the date of the Award).⁸²²

428. Boyd explains that this market valuation is “very conservative” because it is based on the implied price of the reserves as of the date of the Zijin acquisition (March 2020) and does not reflect the increase in value that necessarily resulted from the substantial capital investment and development work that Continental Gold implemented after the Zijin acquisition to construct the Mine and bring it into production.⁸²³ This alternative market valuation nonetheless provides further confidence that Boyd's income-based (DCF) valuation of the lost assets at [REDACTED] is a “realistic value.”⁸²⁴ Claimant seeks compensation on the basis of this realistic value.

⁸¹⁸ “Valuation of Certain Assets and Legal Entities of Continental Gold Inc.: Estimate Valuation Report,” PWC (5 Mar. 2021) (C-521).

⁸¹⁹ Boyd Report, Chapter 6, pp. 6-13 to 14.

⁸²⁰ Boyd Report, Chapter 6, p. 6-14.

⁸²¹ Boyd Report, Chapter 6, pp. 6-14 to 17.

⁸²² Boyd Report, Chapter 2, p. 2-2.

⁸²³ Boyd Report, Chapter 2, p. 2-2, Chapter 6, pp. 6-13 to 14.

⁸²⁴ Boyd Report, Chapter 2, p. 2-2.

429. Boyd estimated damages on a pre-tax basis, before the application of Colombian taxes.⁸²⁵ Claimant reserves the right to update the analysis to reflect applicable taxes and request an appropriate declaration from the Tribunal regarding Colombia's tax treatment of any award of damages to Claimant and Continental Colombia.

C. COSTS

430. Article 61(2) of the ICSID Convention grants the Tribunal broad discretion to allocate the costs of the arbitration.⁸²⁶ Claimant requests that the Tribunal order Colombia to bear all costs incurred by Claimant in connection with this arbitration, including Claimant's legal fees and expenses, the fees and expenses of Claimant's expert witnesses, the fees and expenses of the members of the Tribunal, as well as the fees and expenses of the Centre.
431. Investment tribunals typically apply the "costs follow the event" principle when awarding costs, which requires the unsuccessful party to bear the costs of the proceeding, including those of the prevailing party.⁸²⁷ As the *Blue Bank v. Venezuela* tribunal observed, "as a general principle the successful party should be paid its reasonable legal costs by the unsuccessful party."⁸²⁸
432. Claimant has demonstrated in this Memorial that Colombia has breached its Treaty obligations without paying compensation. Such compensation should have been paid in accordance with Colombia's international obligations, and Claimant should never have had to commence this arbitration. An award of Claimant's arbitration costs is fully justified.

⁸²⁵ Boyd Report, Chapter 6, p. 6-4.

⁸²⁶ ICSID Convention Art. 61(2) ("[T]he Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid.").

⁸²⁷ See, e.g., *ACP Axos Capital GmbH v. Kosovo*, ICSID Case No. ARB/15/22, Award (3 May 2018) (CL-113) ¶¶ 267-268; *Karkey Karadeniz Elektrik Uretim A.S. v. Pakistan*, ICSID Case No. ARB/13/1, Award (22 Aug. 2017) (CL-137) ¶ 1060; *Blue Bank Int'l & Trust Ltd. v. Venezuela*, ICSID Case No. ARB/12/20, Award (26 Apr. 2017) (CL-119) ¶ 207; *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. Mexico*, ICSID Case No. ARB(AF)/04/3, Award (16 Jun. 2010) (CL-129) ¶ 17-22; *Methanex Corp. v. United States of America*, UNCITRAL, Final Award on Jurisdiction and Merits (3 Aug. 2005) (CL-140) Part V ¶¶ 11-13.

⁸²⁸ *Blue Bank Int'l & Trust Ltd. v. Venezuela*, ICSID Case No. ARB/12/20, Award (26 Apr. 2017) (CL-119) ¶ 208. See also *Methanex Corp. v. United States of America*, UNCITRAL, Final Award on Jurisdiction and Merits (3 Aug. 2005) (CL-140) Part V ¶ 10.

VI. RELIEF REQUESTED

433. For the foregoing reasons, Claimant respectfully requests that the Tribunal issue an Award:

- a) DECLARING that Colombia has breached Articles 805 and 811 of the Treaty;
- b) ORDERING Colombia to compensate Claimant and Continental Colombia for their losses arising from Colombia's breaches of the Treaty in an amount of at least [REDACTED];
- c) AWARDING Claimant all costs associated with this arbitration;
- d) ORDER Colombia to refrain from aggravating the dispute; and
- e) AWARDING Claimant any further or other relief that the Tribunal considers just and appropriate.

434. Claimant reserves its rights to amend their claims and requests for relief to the extent permitted under applicable rules, and to present further submissions, arguments and evidence, including related to damages and in light of further actions and inactions by Colombia, and as more information may become available through disclosure.

Respectfully submitted,


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Counsel for Claimant

20 October 2025