

*Infinito Gold Ltd. v. Republic of Costa Rica*  
(ICSID Case No. ARB/14/5)

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**Procedural Order No. 1**

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Infinito Gold Ltd.**

**v.**

**Republic of Costa Rica**

**(ICSID Case No. ARB/14/5)**

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**PROCEDURAL ORDER No. 1**

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal  
Mr. Bernard Hanotiau, Arbitrator  
Professor Brigitte Stern, Arbitrator

*Secretary of the Tribunal*  
Ms. Luisa Fernanda Torres

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**Introduction**

The first session of the Arbitral Tribunal was held on January 22, 2015, at 9:00 a.m. (EST) by telephone conference.

Participating in the conference were:

Members of the Tribunal

Professor Gabrielle Kaufmann-Kohler, President of the Tribunal  
Mr. Bernard Hanotiau, Arbitrator  
Professor Brigitte Stern, Arbitrator

ICSID Secretariat:

Ms. Luisa Fernanda Torres, Secretary of the Tribunal

Assistant to the Tribunal

Ms. Sabina Sacco

Participating on behalf of the Claimant:

Mr. John Terry, Torys LLP  
Ms. Myriam Seers, Torys LLP  
Mr. Ryan Lax, Torys LLP

Participating on behalf of the Respondent:

Mr. Paolo DiRosa, Arnold & Porter LLP  
Mr. Dmitri Evseev, Arnold & Porter LLP  
Ms. Natalia Giraldo Carrillo, Arnold & Porter LLP  
Ms. Claudia Taveras Alam, Arnold & Porter LLP  
Ms. Adriana González, Ministry of Foreign Trade, Costa Rica  
Ms. Karima Sauma, Ministry of Foreign Trade, Costa Rica  
Ms. Andrea Zumbado, Ministry of Foreign Trade, Costa Rica

The Tribunal and the Parties considered the following:

- The Draft Agenda circulated by the Secretary of the Tribunal on December 9, 2014, as amended by email of the Secretary of the Tribunal of January 20, 2015;
- The Draft Procedural Order circulated by the Secretary of the Tribunal on December 9, 2014; and
- The Parties' comments on the Draft Agenda and the Draft Procedural Order received on January 12, 2015 indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

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The session was adjourned at 9:46 a.m (EST).

An audio recording of the session was made and deposited in the archives of ICSID. A transcript of the recording was subsequently distributed to the Members of the Tribunal and the Parties.

Following the session, by communication of January 29, 2015, supplemented on February 2, 2015, the Parties submitted for consideration of the Tribunal a revised proposed procedural calendar.

Following the session and the Parties' communications thereafter, the Tribunal now issues the present order:

**Order**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The timetable is attached as **Annex A**.

1. Applicable Arbitration Rules  
*Convention Article 44*

1.1. These proceedings shall be conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations  
*Arbitration Rule 6*

2.1. The Tribunal was constituted on September 29, 2014 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on September 29, 2014.

2.3. The contact details for the Members of the Tribunal are:

Prof. Gabrielle Kaufmann-Kohler  
3-5, rue du Conseil-Général  
P.O. Box 552  
1211 Geneva 4 – Switzerland  
[gabrielle.kaufmann-kohler@lk-k.com](mailto:gabrielle.kaufmann-kohler@lk-k.com)

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Prof. Brigitte Stern  
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75005 Paris  
France  
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3. Fees and Expenses of Tribunal Members  
*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*
  - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
  - 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
    - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
    - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
  - 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
  - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum  
*Arbitration Rules 14(2) and 20(1)(a)*
  - 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings. Presence for procedural sessions may be by any appropriate means of communication.
5. Decisions and Procedural Rulings of the Tribunal  
*Convention Article 48(1); Arbitration Rules 16, 19 and 20*
  - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
  - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decisions by the full Tribunal.
  - 5.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.

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5.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Secretary of the Tribunal in the form of a letter or email.

6. Power to Fix Time Limits  
*Arbitration Rule 26(1)*

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal  
*Administrative and Financial Regulation 25*

7.1. The Secretary of the Tribunal is Ms. Luisa Fernanda Torres, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Luisa Fernanda Torres  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473-5018  
Fax: + 1 (202) 522-2615  
Email: [ltorresarias@worldbank.org](mailto:ltorresarias@worldbank.org)

7.3. For local messenger deliveries, the contact details are:

Luisa Fernanda Torres  
701 18th Street, N.W. ("J Building")  
2nd Floor  
Washington, D.C. 20006  
Tel.: + 1 (202) 473-5018

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8. Appointment of Assistant to the Tribunal

- 8.1. By letter of September 29, 2014, the President of the Tribunal explained to the Parties that she considered that it would assist the overall cost and time efficiency of the proceedings if the Tribunal had an assistant. By email communications of September 29, 2014, both Parties accepted the President's proposal.
- 8.2. By letter of December 9, 2014 the President of the Tribunal proposed, with the approval of the other members of the Tribunal, that Ms. Sabina Sacco of LÉVY KAUFMANN-KOHLER be appointed as assistant to the Tribunal. Ms. Sacco's *curriculum vitae* was distributed to the Parties on that same date.
- 8.3. In the letter of December 9, 2014, the President also set out the tasks which may be assigned to the assistant. The assistant is subject to the same confidentiality obligations as the Members of the Tribunal and has signed a declaration to that effect, which was distributed to the Parties by the ICSID Secretariat on January 20, 2015.
- 8.4. The Parties approved the appointment of Ms. Sacco as assistant to the Tribunal on January 12, 2015. It was also agreed that she would receive US\$ 250 for each hour of work performed in connection with the case or *pro rata*. She would also receive subsistence allowances and be reimbursed for her travel and other expenses in the limits prescribed by ICSID Administrative and Financial Regulation 14.

9. Representation of the Parties

*Arbitration Rule 18*

- 9.1. Each Party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Secretary of the Tribunal promptly of such designation.

For Claimant

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Ms. Myriam M. Seers  
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For Respondent

Mr. Paolo Di Rosa  
Mr. Raúl Herrera  
Ms. Gaela Gehring Flores  
Mr. Pedro Soto  
Ms. Natalia Giraldo-Carrillo  
Ms. Claudia Taveras  
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[Dmitri.Evseev@aporter.com](mailto:Dmitri.Evseev@aporter.com)

and

Ms. Marcela Chavarría

Ms. Adriana González

Ms. Andrea Zumbado

Ms. Karima Sauma

Ministerio de Comercio Exterior de Costa Rica

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[karima.sauma@comex.go.cr](mailto:karima.sauma@comex.go.cr)

All notifications and communications in connection with this proceeding should be sent to the above addresses and to

[xInfinitoCR@aporter.com](mailto:xInfinitoCR@aporter.com)



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10. Apportionment of Costs and Advance Payments to ICSID  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*

10.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

10.2. By letter of October 6, 2014, ICSID requested that each Party pay US\$ 200,000.00 to defray the initial costs of the proceeding. No payment was received from either Party within the 30-day deadline established by ICSID Administrative and Financial Regulation 14. Accordingly, by letter of November 10, 2014, ICSID notified the Parties of the default and invited either Party to pay the outstanding amount of US\$400,000.00. ICSID received Claimant's payment of US\$199,990.00 on November 26, 2014 and the Respondent's payment of US\$ US\$199,980.00 on December 9, 2014.

10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

11. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*

11.1. Washington D.C. shall be the place of the proceeding.

11.2. Subject to the approval of both parties, the Tribunal may hold hearings at a place other than Washington D.C.

11.3. The Tribunal may deliberate at any place it considers convenient.

12. Procedural Language(s), Translation and Interpretation  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*

12.1. English and Spanish shall be the procedural languages of the arbitration.

*For ICSID Secretariat*

12.2. Routine, administrative, or procedural correspondence, addressed to or sent by the ICSID Secretariat, as well as any written requests may be submitted in either procedural language without translation except where the Tribunal, on its own initiative or at the request of a Party, requests that a translation into the other language be produced.

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*For Parties' Pleadings*

- 12.3. Pleadings, expert opinions, witness statements, and other accompanying documentation shall be submitted in one procedural language, provided however that a translation of such materials to the other procedural language is filed within 30 days thereafter, except that any exhibits or legal authorities in English will not need to be translated into Spanish.
- 12.4. If the accompanying non-English language exhibits or authorities are lengthy and relevant only in part, it shall be sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any Party or on its own initiative.
- 12.5. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal requests a certified version.
- 12.6. Documents exchanged between the Parties under §16 below (Production of Documents) need not be translated.

*For Hearings*

- 12.7. Substantive hearings, including the hearing on Jurisdiction, shall be interpreted simultaneously in their entirety into English and Spanish. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English or Spanish languages shall be interpreted simultaneously into both languages.
- 12.8. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational conference (*see* §20 below), if any witnesses or experts will require interpretation from a language other than English or Spanish.
- 12.9. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

*For Tribunal's Documents Except the Award*

- 12.10. The Tribunal may initially make any order or decision in one procedural language, and subsequently issue that order or decision in the other procedural language. Both language versions shall be equally authentic.

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*For Tribunal's Award*

12.11. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

13. Routing of Communications

*Administrative and Financial Regulation 24*

13.1. Written communications in the case shall be transmitted by email or other electronic means to the Parties, the Secretary and Assistant of the Tribunal, and the Tribunal.

13.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Secretary of the Tribunal only, who shall send them to the opposing Party and the Tribunal.

13.3. The Secretary of the Tribunal shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

14.1. By 5:00 pm Washington, D.C. time on the relevant filing date, the Parties shall (i) submit by email to the Secretary of the Tribunal, the opposing Party and the Tribunal an electronic version (without exhibits) of the pleading, witness statements, expert reports and a list of exhibits,<sup>1</sup> and (ii) upload the pleading with all the supporting documentation to the folder created by ICSID for this case in the World Bank's file-sharing platform.

14.1.1. The Parties shall courier to the Secretary of the Tribunal within three business days:

14.1.1.1. one unbound hard copy in A4/Letter format<sup>2</sup> of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with exhibits (but not including legal authorities);

14.1.1.2. one hard copy of the entire submission including the pleading in A5 format, and the witness statements, expert reports, and exhibits (but not including legal authorities) in A4/Letter

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<sup>1</sup> Please note that the World Bank's server does not accept emails larger than 25 MB.

<sup>2</sup> The A4/Letter format is required for ICSID's archiving.

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format; and

14.1.1.3. two USB drives with full copies of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.

14.1.2. at the same time, courier to the opposing Party at the address(es) indicated at §9.1 above and to each Member of the Tribunal at the addresses indicated at §2.3 above:

14.1.2.1. one hard copy of the entire submission including the pleading in A5 format, and the witness statements, expert reports, and exhibits (but not including legal authorities) in A4/Letter format;<sup>3</sup> and

14.1.2.2. one USB drive with a full copy of the entire submission, including the pleading, the witness statements, expert reports, exhibits, and legal authorities.

14.2. Electronic versions of written submissions (also referred to in this Order as “pleadings”), witness statements and expert reports shall be submitted in either .doc or “non-scanned” and text searchable .pdf format, and, if possible, in “e-brief” version, containing hyperlinks to the evidence cited.

14.3. Written submissions on USB media shall be accompanied by a hyperlinked index of exhibits.

14.4. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Secretary of the Tribunal.

15. Written Submissions: Form, Number and Sequence  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

15.1. The Parties shall submit their written submissions (also referred to in this Order as “pleadings”) in accordance with the Procedural Calendar set out in **Annex A** and with the rules set out below.

15.2. In the first exchange of submissions within each phase, the Parties shall set forth all the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond specifically to all allegations of fact and legal arguments made by the other Party. Together with such submissions, each Party

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<sup>3</sup> Except that Professor Stern’s hard copies shall be sent as follows: pleading (in A4/Letter format), and the witness statements, expert reports, and exhibits – but not including legal authorities (in A5 format).

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shall produce all evidence upon which it wishes to rely, including documentary evidence such as fact exhibits and legal authorities, written witness statements and expert reports, if any, with the exception of documents to be obtained during the document production phase.

- 15.3. In the second exchange of submissions within each phase, the Parties shall limit themselves to responding to allegations of fact and legal arguments made by the other Party in the first exchange of submissions, or arising from evidence obtained in the document production phase unless new facts have arisen after the first exchange of submissions. Together with this second exchange of submissions, the Parties may file additional documentary evidence (including fact exhibits and legal authorities), witness statements and expert reports only insofar as relevant to the adverse Party's preceding submission (including the documents, witness statements and expert reports produced therewith) or the documents produced by the Parties during the document production phase.
  - 15.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced or to be adduced in support of that allegation.
  - 15.5. All written submissions, witness statements, and expert reports shall be divided into consecutively numbered paragraphs.
16. Production of Documents  
*Convention Article 43(a); Arbitration Rules 24 and 33-36*
- 16.1. Within the time limit set in **Annex A**, a Party may file a request to another Party for the production of documents or categories of documents within its possession, custody or control. Such a request for production shall identify each document or category of documents sought with precision, in the form of a Redfern Schedule as attached in Annex B hereto, in both Word and .pdf format, specifying why the documents sought are relevant and material to the outcome of the case.
  - 16.2. Within the time limit set in **Annex A**, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party, provide the requesting Party and the Tribunal with its reasons and/or objections for its failure or refusal to produce responsive documents.
  - 16.3. Within the time limit set in **Annex A**, the requesting Party shall reply to the other Party's objections in that same Redfern Schedule. The reply shall be limited to answering specific objections regarding (i) legal impediment, privilege, confidentiality or political sensitivity and/or (ii) unreasonable and/or overburdensome nature of the production and other fairness-related considerations.
  - 16.4. On or around the date set in **Annex A**, the Tribunal will, in its discretion, rule upon the production of the documents or categories of documents requested by a

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Party, having regard to the legitimate interests of the other Party and all of the surrounding circumstances.

16.5. Documents shall be produced directly to the requesting Party without copying the Tribunal. Documents so produced shall not be considered to be on record unless and until the requesting Party subsequently files them as exhibits in accordance with §17 below.

16.6. In addition, the Tribunal may, on its own initiative at any time, order a Party to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2). In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §17 below and shall be considered to be on record.

17. Submission of Documentary Evidence

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities, in accordance with §15.2 above. Further documentary evidence relied upon by the Parties may be submitted in rebuttal with the Reply and Rejoinder, in accordance with §15.3 above.

17.2. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other Party.

17.2.1. Should a Party request leave to file additional or responsive documents, that Party may not annex to its request the documents that it seeks to file.

17.2.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.

17.3. The documentary evidence shall be submitted in the following form:

17.3.1. Exhibits shall be numbered consecutively, in Arabic numerals, throughout these proceedings. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities. Exhibits shall start with the number “C-0001” and “R-0001”

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(for fact exhibits), and “CL-0001” and “RL-0001” (for legal authorities), respectively.

- 17.3.2. Fact exhibits shall be submitted in hard copy (in the size set out in §14 above) and electronic format. For hard copies, each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 17.3.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 17.3.4. Electronic versions of exhibits shall be submitted in PDF format and may be scanned, but shall be text searchable.
- 17.4. The Parties shall file all documents only once by attaching them to their written submission. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 17.5. All documents shall either be submitted to the Tribunal in complete form or the Parties shall indicate the respects in which any document is incomplete. All documents, including both originals and copies, submitted to the Tribunal shall be deemed to be authentic and complete, unless specifically objected to by the other Party, in which case the Tribunal will determine whether authentication is necessary.
- 17.6. For each substantive hearing, including the hearing on Jurisdiction, each of the Parties shall prepare a core bundle of key documents upon which it intends to rely. Each Party shall distribute its core bundle to the other Party, the Tribunal Members, the Secretary of the Tribunal, the Assistant to the Tribunal, the court reporter(s) and interpreter(s) immediately before its presentation at the hearing, in double-sided A5 format.
- 17.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Demonstrative exhibits shall note the source of the information shown. Each Party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the exhibit(s) from which it is derived. The Party submitting such demonstrative exhibits shall provide them in hard copy to the other Party, the Tribunal Members, the Secretary of the Tribunal, the Assistant to the Tribunal, the court reporter(s) and interpreter(s) at the hearing.

18. Witnesses

*Convention Article 43(a); Arbitration Rule 24, 35 and 36*

- 18.1. Any person may present evidence as a witness, including a Party or a Party’s

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officer, employee or other representative.

- 18.2. For each witness, a written and signed witness statement shall be submitted to the Tribunal. A witness who has not submitted a written witness statement may provide testimony to the Tribunal only in extraordinary circumstances and upon a showing of good cause; if these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.
- 18.3. In accordance with §15 above, each Party will submit its witness statements together with its written submissions. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 18.4. Each witness statement shall state the witness's name, date of birth, present address and involvement in the case. Each witness statement and expert report shall be signed and dated by the witness.
- 18.5. Witness statements and expert reports shall be submitted in one of the official languages of the arbitration, followed by a translation into the other official language in accordance with §12.3 above.
- 18.6. The first witness statement or expert report of a particular witness or expert shall be identified as "First Witness Statement" or "First Expert Report," the second as the "Second Witness Statement" or "Second Expert Report," and so on. In addition, the witness statements and expert reports submitted by each Party shall be numbered consecutively using the prefixes "CWS-" and "RWS-" (for Claimant and Respondent witness statements, respectively) and "CER-" and "RER-" (for Claimant and Respondent expert reports, respectively).
- 18.7. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, or to help prepare the witness statements and examinations.
- 18.8. Each Party shall be responsible for securing the appearance of its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 18.9. The facts contained in the written statement of a witness whose cross-examination has been waived by the other Party shall not be deemed established simply by virtue of the fact that no cross-examination has been requested. Unless the Tribunal determines that the witness must be heard, it will assess the weight of the written statement taking into account the entire record and all the relevant circumstances.
- 18.10. Each Party shall be responsible for the practical arrangements, costs, and availability of any witness it offers. The Tribunal will decide upon the



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appropriate allocation of any related costs in the final award.

- 18.11. The Tribunal may call upon a Party to produce as a witness and/or invite to appear as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
- 18.12. If necessary, the Tribunal in its discretion may allow a witness to be examined by videoconference and will issue appropriate directions to that effect.
- 18.13. The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the statement of a witness who fails to appear and does not provide a valid reason. For these purposes, it shall be understood that a witness who was not called to testify in person has a valid reason not to appear and that a witness whom the Tribunal has allowed to testify by videoconference has appeared at the hearing.
- 18.14. As a rule and subject to other arrangements during the pre-hearing telephone conference, fact witnesses shall be examined prior to expert witnesses, and the Claimant's fact (expert) witnesses shall be examined prior to the Respondent's fact (expert) witnesses.
- 18.15. At the hearing, the examination of each witness shall proceed as follows:
  - 18.15.1. The witness shall make the declaration specified at Arbitration Rule 35(2).
  - 18.15.2. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including to confirm and/or correct that witness's written statement, and to address matters which have arisen after such statement was drafted ("direct examination").
  - 18.15.3. The adverse Party may then cross-examine the witness on matters which are relevant and of which the witness has direct knowledge but not limited to matters addressed in that witness's written statement ("cross-examination").
  - 18.15.4. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination ("redirect examination").
  - 18.15.5. The Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.

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- 18.15.6. The Tribunal may order two or more witnesses to be examined concurrently (“witness conferencing”).
- 18.16. Subject to a different agreement by the Parties or a different ruling by the Tribunal, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read transcripts of oral testimony or argument, prior to his or her examination.
- 18.17. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
- 18.17.1. Limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
- 18.17.2. Direct that a witness be recalled for further examination at any time.
19. Experts  
*Convention Article 43(a); Arbitration Rules 24, 35 and 36*
- 19.1. Each Party may retain and produce evidence of one or more experts.
- 19.2. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).
- 19.3. Expert reports shall be accompanied by any documents or information upon which they rely unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §12 above.
- 19.4. The rules set forth in §18 above shall apply by analogy to the evidence of Party- and Tribunal-appointed experts, with the following specifications:
- 19.4.1. Before giving oral evidence, the expert shall make the declaration specified at Arbitration Rule 35(3).
- 19.4.2. After consultation with the Parties, the Tribunal may also request non-legal experts to give a presentation lasting no longer than thirty minutes before the start of their cross-examination summarizing their methodology and conclusions.
- 19.4.3. Subject to a different agreement by the Parties or a different ruling by the Tribunal, the limitation at §18.16 shall not apply to expert

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witnesses.

20. Organization of the Hearing  
*Arbitration Rule 13*

- 20.1. On or before the date indicated at **Annex A**, both Parties shall inform the Tribunal and the other Party the witnesses and/or experts submitted by the other Party whom they wish to cross-examine at the hearing.
- 20.2. A Party's witness or expert who has not been called for cross-examination by the other Party or as a result of an order from the Tribunal shall not testify at the hearing, except upon approval of Tribunal on the basis of a reasoned request from the relevant Party.
- 20.3. A pre-hearing organizational conference shall be held by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.
- 20.4. A pre-hearing conference will be held by telephone on the date indicated in **Annex A**.
- 20.5. After the pre-hearing conference, the Tribunal shall issue a procedural order setting any specific rules with respect to the organization of the hearing.

21. Hearings  
*Arbitration Rules 20(1)(e) and 32*

- 21.1. The oral procedure shall consist of a hearing for oral arguments by the Parties and the examination of witnesses and experts, if any.
- 21.2. The hearing shall be held at a place to be determined in accordance with §11 above.
- 21.3. The hearing shall take place on the date indicated in **Annex A**.
- 21.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.
- 21.5. In principle, each Party will have an equal time allocation to examine witnesses and/or experts at the hearing, subject to adjustments if due process so requires.
- 21.6. The hearing shall be closed to the public, with the exception of a non-disputing party that may be admitted in accordance with the ICSID Arbitration Rules.

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22. Records of Hearings and Sessions

*Arbitration Rules 13 and 20(1)(g)*

22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

22.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.

22.3. The Parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the Parties in the revised transcripts.

23. Post-Hearing Memorials and Statements of Costs

*Convention Article 44; Arbitration Rule 28(2)*

23.1. Following consultation with the Parties, the Tribunal shall determine at the appropriate time, either prior to or during the hearing, whether to request a post-hearing brief from each of the Parties. Should the Tribunal request post-hearing briefs, the Tribunal shall address the length, format, and content of the post-hearing brief. No additional evidence may be produced together with the post-hearing brief, except with leave from or on the request of the Tribunal.

23.2. The Tribunal will issue directions on the Parties’ statements of costs at the appropriate stage.

24. Publication

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

24.1. The Parties consent to ICSID publication of any substantive decision of the Tribunal or award (including any Decision or Award on Jurisdiction) issued in the present proceeding. In addition, the Parties consent to the publication of procedural orders, but only after the conclusion of the proceeding, except where the Parties agree otherwise.

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25. Additional Guidance on Evidence

25.1. The Tribunal may seek guidance from, but shall not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration (2010 edition).

26. Other Matters

26.1. Petition for *Amicus Curiae* status of Asociación Preservacionista de Flora y Fauna Silvestre (APREFLOFAS) (Arbitration Rule 37(2))

26.1.1. The Parties shall file written observations on this petition on the date established in **Annex A**.

26.1.2. Should the petition be granted by the Tribunal, any written submission on jurisdiction by the non-disputing party (also referred to as *Amicus Curiae*) shall be filed on the date established in **Annex A**.

26.1.3. Should the petition be granted by the Tribunal, any observations from the Parties on the non-disputing party's written submission on jurisdiction shall be filed on the date established in **Annex A**.

On behalf of the Tribunal,

[Signed]

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Professor Gabrielle Kaufmann-Kohler  
President of the Tribunal  
Date: 17 February 2015

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**ANNEX A**  
**PROCEDURAL CALENDAR**

<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
June 22, 2015	CLAIMANT	Memorial on the Merits
September 22, 2015	RESPONDENT	Memorial on Jurisdiction
October 13, 2015	CLAIMANT & RESPONDENT	Submissions on the Petition for <i>Amicus Curiae</i> (Non-Disputing Party) status
October 20, 2015	CLAIMANT & RESPONDENT	Final Date for Document Production Requests (if any)
November 3, 2015	CLAIMANT & RESPONDENT	Voluntary Production of Documents or Objections to Production
November 10, 2015	CLAIMANT & RESPONDENT	Reply to Objections to Document Production
November 24, 2015	TRIBUNAL	Decision on Document Production Requests
December 8 , 2015	CLAIMANT & RESPONDENT	Production of documents ordered by the Tribunal
December 21, 2015	CLAIMANT	Counter-Memorial on Jurisdiction
January 19, 2016	NON-DISPUTING PARTY	Non-Disputing Party Written Submission on Jurisdiction (if authorized by the Tribunal)
February 9, 2016	RESPONDENT	Reply on Jurisdiction & Observations on Non-Disputing Party's Written Submission (if applicable)
March 22, 2016	CLAIMANT	Rejoinder on Jurisdiction & Observations on Non-Disputing Party's Written Submission (if applicable)

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<b>Date</b>	<b>Party / Tribunal</b>	<b>Description</b>
April 1, 2016	CLAIMANT & RESPONDENT	Notification of witnesses and experts that will be cross-examined at the hearing on Jurisdiction, if any
April 5, 2016 (1pm Washington, DC time)	ALL, POSSIBLY ONLY WITH PRESIDENT OF TRIBUNAL	Pre-hearing Conference
April 19-20, 2016	ALL	Hearing on Jurisdiction (Washington, DC)

In the event that the Tribunal upholds jurisdiction, the Tribunal shall determine the subsequent procedural calendar following consultation with the Parties.

