

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Glencore International A.G. and C.I. Prodeco S.A.**  
Respondents on Annulment

**v.**

**Republic of Colombia**  
Applicant

**(ICSID Case No. ARB/16/6) – Annulment Proceeding**

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**PROCEDURAL ORDER No. 2**  
**On the Organization of the Hearing**

***Members of the ad hoc Committee***

Sir Christopher Greenwood, President of the *ad hoc* Committee  
Ms. Bertha Cooper-Rousseau, Member of the *ad hoc* Committee  
Prof. Doug Jones, Member of the *ad hoc* Committee

***Secretary of the ad hoc Committee***

Ms. Alicia Martín Blanco

***Secretary to the President of the ad hoc Committee***

Ms. Rosalind Anne Elphick

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2 November 2020

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**I. PROCEDURAL BACKGROUND**

1. On 3 September 2020, having consulted with the Parties, the Committee informed them that it had decided, in light of the current circumstances and restrictions on travel, to hold the Hearing by virtual means rather than in person. In the same communication, the Committee confirmed that the schedule for the Hearing would be that agreed between the Parties, subject to the power of the Committee to amend the schedule to allow for technical difficulties or similar problems.
2. On 19 October 2020, the Committee circulated a draft procedural order on the organization of the Hearing, invited the Parties to confer regarding the items in the draft order, and proposed to hold the pre-hearing organizational meeting on 26 or 28 October 2020.
3. In communications of 23 October 2020, the Parties submitted their comments on the draft procedural order and, in light of their agreement on all the items, later confirmed that they did not consider it necessary to maintain the pre-hearing organizational meeting. On 26 October 2020, the Committee confirmed that the pre-hearing organizational meeting had been cancelled.
4. In light of the above, the Committee issues the present Order setting out the procedural rules that the Parties have agreed, and the Committee has determined, will govern the conduct of the Hearing.

**II. ORGANIZATION OF THE HEARING**

**A. DATE AND FORMAT**

5. The Hearing will take place virtually through Zoom on 6 November 2020. A third-party provider (Sparq) will be the virtual host of the Hearing. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

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**B. ORDER OF PROCEEDINGS AND SCHEDULE**

6. In order to accommodate the multiple time zones of all Hearing Participants, the Hearing will start at 7:00 am EST and it is expected to conclude by 2:45 pm EST. There will be two breaks of 15 minutes each, as well as a meal break of 60 minutes.
7. The order of proceedings and structure of the Hearing will be as indicated in the schedule incorporated as **Annex A**.
8. The Committee reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

**C. TIME ALLOCATION**

9. Time shall be allocated as indicated in the schedule incorporated as Annex A, including a maximum of 105 minutes for each Party's opening presentation and a maximum of 45 minutes for each Party's reply presentation. Time not used during the opening presentations may not be added to the reply presentations.
10. The Committee may ask questions at any moment, including during the Parties' presentations.
11. The Secretary of the Committee shall keep a chess clock account of time and advise the Parties of the time remaining upon request. The Secretary will circulate a record of the total time used at the end of the Hearing.
12. Interruptions to the Parties' respective presentations, including questions from the Committee and answers to those questions (but excluding the answers to the Committee's questions posed before the meal break and to be covered in the reply presentations), shall not be counted against the Parties' time.

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**D. DOCUMENTS FOR USE AT THE HEARING**

**1. Electronic Hearing Bundle**

13. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties. The content of the Electronic Hearing Bundle shall be as indicated in Section 13.6 of Procedural Order No. 1, and organized as follows:

**Electronic Hearing Bundle**

**01. Pleadings**

- A. Applicant
- B. Respondents

**02. Exhibits**

- A. Applicant
- B. Respondents
- C. From the underlying arbitration

**03. Legal Authorities**

- A. Applicant
- B. Respondents
- C. From the underlying arbitration

**04. Committee Rulings**

- A. Procedural Orders

**05. Tribunal Award**

**06. Consolidated and hyperlinked index**

- A. Consolidated and hyperlinked index of all documents

14. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform by Friday, 30 October 2020. To ensure the proper operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file.

**2. Demonstrative Exhibits**

15. Demonstrative exhibits (including a Power Point or other slide presentations) shall be used in accordance with Section 15.7 of Procedural Order No. 1 (reproduced below), with the adjustments identified in paragraph 18 below:

“15.7. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no New Evidence and no documents from the underlying arbitration that have not been

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resubmitted in the annulment proceeding. Each Party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such exhibits shall provide them in electronic and hard copy to the other Party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing in advance of their use

16. To account for the virtual/remote nature of the Hearing, Section 15.7 of Procedural Order No. 1 above is amended such that: (i) hard copies of demonstratives are not required; (ii) an electronic copy of demonstratives shall be distributed by the Party intending to use them via email sent to the entire case email distribution list; and (c) the Secretary will forward a copy to the court reporter.
17. In addition, promptly after the conclusion of the Hearing, the Parties shall upload such demonstrative exhibits to the case folder in the BOX filesharing platform, designating each with the corresponding AAE/ RAE exhibit number.

**3. Electronic Presentation of Documents**

18. Hearing Participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with paragraph 18 above downloaded into their own devices and available for access offline.
19. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed by the Parties to all Hearing Participants via the Zoom videoconference platform. The Parties shall designate one person on each side (the “**Document Manager**”) who shall be responsible for presentation of evidence, authorities or demonstrative exhibits through the screen sharing function of the videoconference platform during the Hearing.
20. Documents that do not form part of the annulment record may not be displayed at the Hearing.

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**E. AUDIO/VIDEO RECORDING**

21. The provisions of Procedural Order No. 1, Section 19.1 concerning audio recording (reproduced below) apply.

“19.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Committee Members”

22. The recording shall be made by the ICSID Secretariat, and it will be shared with the Parties and the Members of the Committee at the conclusion of the Hearing. Hearing Participants shall not otherwise record, via audio, video or screenshot the Hearing or any part of it.<sup>1</sup>

**F. TRANSCRIPTION**

23. The provisions of Procedural Order No. 1, Sections 19.2 and 19.3 concerning transcription (reproduced below) apply, with the adjustments identified in paragraphs 26 and 27 below.

“19.2. Verbatim transcripts in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Committee, 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 Committee on a same-day basis. All necessary arrangements for the audio recordings and verbatim transcription shall be made by ICSID.

19.3. The Parties shall agree on any corrections to the transcripts within one week from the hearing, or within such period as shall be agreed between them and approved by the Committee. The agreed corrections shall be entered by the Parties in the transcripts (“Revised Transcripts”). The Committee shall decide upon any disagreement between the Parties and any correction adopted by the Committee shall be entered by the Parties in the revised transcripts.”

24. Pursuant to the Parties’ agreement that the Hearing be held in English only without interpretation into the other procedural language, real-time court reporting shall only be provided in English, via an online link connection to be provided by the court reporter.

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<sup>1</sup> With the exception of the audio recordings made by the court reporter for the purpose of the transcript.

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Hearing Participants shall connect to the transcript by opening this link in a browser window separate from the Zoom browser window. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the ICSID Secretariat to the Hearing Participants before the start of the Hearing.

25. The Parties shall agree on any corrections to the transcripts within 10 days of the later of the dates of the receipt of the recordings and the transcripts.

**G. INTERPRETATION**

26. Pursuant to the Parties’ agreement, the Hearing will be held in English only, without interpretation.

**H. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS**

27. The provisions of Procedural Order No. 1, Section 20.1 (reproduced below) apply.

“20.1. All matters concerning post-hearing memorials and statements of costs shall be discussed by the Committee and the Parties at the close of the oral hearing(s).”

**I. CLOSED HEARING**

28. The Hearing shall be closed to the public.

**J. VIRTUAL HEARING ARRANGEMENTS**

29. The following procedures shall be followed in order to ensure the efficient conduct of the virtual hearing:

**1. Participants**

30. Each Party shall provide a list of participants for the Hearing by Friday, 23 October 2020 using the format provided in **Annex B (“Hearing Participants”)**. Each Party shall designate the participants that will have active speaking roles (**“Active Participants”**) and those who will be passive attendees (**“Passive Participants”**).

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31. Each Party shall designate, by Friday, 23 October 2020 one of its representatives to act as videoconferencing emergency contact person (“**Technical Emergency Contact**”) for the purposes of addressing any technical incidents which arise during the videoconference. The Technical Emergency Contact shall be responsible for advising the Committee, Sparq and ICSID if an essential participant on their side is disconnected or otherwise cannot participate. Otherwise, the Technical Emergency Contact shall notify and address technical issues with Dameon Jennings, Sparq Technitian (Dameon.Jennings@sparq.live) and Marisela Vázquez Marrero, ICSID Paralegal (mvazquezmarrero@worldbank.org), with a copy to the Secretary.
32. When connecting to the Zoom platform on the day of the Hearing, all Hearing Participants shall identify themselves as they appear in the list of participants. Participants will be admitted to the Hearing through a waiting room managed by Sparq.

**2. Connectivity**

33. All Hearing Participants should connect to the Hearing using a computer connection. A telephone connection will also be provided, to be used only as a backup.
34. To improve operation of the Zoom platform, the Parties are advised to keep the number of video connections limited to Active Participants. Passive Participants should preferably keep their cameras off.
35. All Hearing Participants shall mute their microphones when not speaking to reduce background noise and to avoid interference with the recording. The Zoom host may also mute and unmute Hearing Participants if needed.

**3. Equipment and Set Up**

36. For optimal sound quality, it is recommended that all Hearing Participants use external microphones (or a headset equipped with a microphone).



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37. It is also recommended that Hearing Participants use at least two screens. Separate screens will permit the simultaneous viewing of: (i) the Zoom video connection; (ii) the online real time transcript; and/or (iii) the documents from the Electronic Hearing Bundle.
38. Participants shall join the Hearing from a location without background noise and with adequate lighting.

**4. Break-Out Rooms**

39. Participants will be assigned to the corresponding breakout rooms according to the designations provided in the list of Participants (“[T]”, “[A]” or “[RA]”). Each Party shall make the necessary arrangements for a separate channel to handle their team’s internal communications while the Hearing is ongoing, which shall be separate from the Zoom virtual Hearing room. Separate arrangements will be made for the Committee by the Centre.

**5. Test calls**

40. ICSID will organize and conduct test calls with each Party upon request. The Parties shall strive to replicate during the tests the conditions under which they will participate in the Hearing.

For and on behalf of the Committee,

[signed]

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Christopher Greenwood  
President of the Committee  
Date: 2 November 2020

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**ANNEX A**  
**Hearing Schedule**

**Friday, 6 November 2020**

<b>TIME</b>	<b>AGENDA</b>	<b>LENGTH OF TIME</b>
07:00 – 07:30 (EST) 12:00 – 12:30 (GMT)	Introduction and any procedural issues	30 minutes
07:30 – 09:15 (EST) 12:30 – 14:15 (GMT)	Colombia’s (Applicant on Annulment) presentation	Up to 105 minutes
09:15 – 09:30 (EST) 14:15 – 14:30 (GMT)	Break	15 minutes
09:30 – 11:15 (EST) 14:30 – 16:15 (GMT)	Glencore and Prodeco’s (Respondents on Annulment) presentation	Up to 105 minutes
11:15 – 11:45 (EST) 16:15 – 16:45 (GMT)	The Committee’s questions*	30 minutes
11:45 – 12:45 (EST) 16:45 – 17:45 (GMT)	Meal Break	60 minutes
12:45 – 13:30 (EST) 17:45 – 18:30 (GMT)	Colombia’s response to the Committee’s questions, and to the presentation of Glencore and Prodeco	Up to 45 minutes
13:30 – 13:45 (EST) 18:30 – 18:45 (GMT)	Break	15 minutes
13:45 – 14:30 (EST) 18:45 – 19:30 (GMT)	Glencore and Prodeco’s response to the Committee’s questions, and to the presentation of Colombia	Up to 45 minutes
14:30 – 14:45 (EST) 19:30 – 19:45 (GMT)	Concluding remarks and post-hearing matters	15 minutes

\* The Committee may ask questions at any moment, including during the Parties’ presentations.

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**ANNEX B**

**LIST OF PARTICIPANTS<sup>2</sup>**

<b>AD HOC COMMITTEE</b>				
<b>Breakout Room</b>	<b>First Name/Last Name</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
T	[T] – Christopher Greenwood c.j.greenwood123@gmail.com	A	President of the Committee	Cambridge, UK
T	[T] – Bertha Cooper-Rousseau bcrousseau@hotmail.com	A	Member of the Committee	Orlando, Florida, USA
T	[T] – Doug Jones dougjones@dougjones.info	A	Member of the Committee	Toronto, Canada

<b>ICSID SECRETARIAT</b>				
<b>Breakout Room</b>	<b>First Name/Last Name</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
T	[T] – Alicia Martín Blanco amartinblanco@worldbank.org	A	Committee Secretary	Washington, DC, USA

<b>ASSISTANT TO THE PRESIDENT</b>				
<b>Breakout Room</b>	<b>First Name/Last Name</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
T	[T] – Rosalind Anne Elphick roselphick@gmail.com	A	Assistant to the President	The Hague, Netherlands

<b>APPLICANT</b>				
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<sup>2</sup> Use “A” for Active Participant and “P” for Passive Participants.

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<b>Breakout Room</b>	<b>First Name/Last Name</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
	<b><i>Counsel:</i></b>			
A	[A] – Eduardo Silva Romero Eduardo.SilvaRomero@dechert.com	A	Dechert	Paris, France
A	[A] – Juan Felipe Merizalde Urdaneta juanfelipe.merizalde@dechert.com	A	Dechert	Washington, DC, USA
A	[A] – Amir Ardelan Farhadi Amir.Farhadi@dechert.com	A	Dechert	Washington, DC, USA
	<b><i>Parties:</i></b>			
A	[A] – Camilo Gómez Alzate camilo.gomez@defensajuridica.gov.co	A	ANDJE	Bogotá, Colombia
A	[A] – Ana María Ordoñez Puentes ana.ordonez@defensajuridica.gov.co	A	ANDJE	Bogotá, Colombia
A	[A] – Elizabeth Prado Lopez elizabeth.prado@defensajuridica.gov.co	P	ANDJE	Bogotá, Colombia
A	[A] – Andrés Felipe Esteban Tovar andres.esteban@defensajuridica.gov.co	P	ANDJE	Bogotá, Colombia
A	[A] – Giovanni Andrés Vega giovanny.vega@defensajuridica.gov.co	P	ANDJE	Bogotá, Colombia

<b>RESPONDENTS ON ANNULMENT</b>				
<b>Breakout Room</b>	<b>First Name/Last Name</b>	<b>Type</b>	<b>Affiliation</b>	<b>Place of Connection</b>
	<b><i>Counsel:</i></b>			
RA	[RA] – Nigel Blackaby QC nigel.blackaby@freshfields.com	A	Freshfields	Paris, France
RA	[RA] – Elliot Friedman elliott.friedman@freshfields.com	A	Freshfields	New York, NY, USA
RA	[RA] – Jessica Moscoso Jessica.moscoso@freshfields.com	P	Freshfields	Washington, DC, USA
RA	[RA] – Paige von Mehren Paige.vonmehren@freshfields.com	P	Freshfields	New York, NY, USA
RA	[RA] – Elvira Sihvola Elvira.Sihvola@freshfields.com	P	Freshfields	New York, NY, USA
RA	[RA] – Gustavo Topalian gtopalian@dechampsllaw.com	A	Dechamps International Law	Buenos Aires, Argentina
RA	[RA] – José Manuel Álvarez Zárate josealvarez.zarate@hotmail.com	P	Álvarez Zárate & Asociados	Bogotá, Colombia
	<b><i>Parties:</i></b>			

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RA	[RA] – Oscar Eduardo Gómez Oscar.Gomez@grupoprodeco.com.co	P	Prodeco	Bogotá, Colombia
RA	[RA] – Natalia Anaya Natalia.Anaya@grupoprodeco.com.co	P	Prodeco	Bogotá, Colombia
RA	[RA] – Jader Yubran Jader.Yubran@grupoprodeco.com.co	P	Prodeco	Bogotá, Colombia

**COURT REPORTER**

Group	First Name/Last Name	Type	Affiliation	Place of Connection
CR	[CR] – Claire Hill info@clairehillrealtime.com	P	English court reporter	London, UK

**TECHNICAL SUPPORT**

Group	First Name/Last Name	Type	Affiliation	Place of Connection
TEC	[TEC] – Dameon Jennings Dameon.Jennings@sparq.live <b>[Technical Emergency Contact]</b>	P	Sparq	London, UK
TEC	[TEC] – Marisela Vázquez Marrero mvazquezmarrero@worldbank.org <b>[Technical Emergency Contact]</b>	P	ICSID	Washington, DC, USA
TEC	[TEC] – Judith Alves judith.alves@dechert.com <b>[Technical Emergency Contact]</b>	P	Applicant	Paris, France
TEC	[TEC] – Reynaldo Pastor reynaldo.pastor@freshfields.com <b>[Technical Emergency Contact]</b>	P	Respondents on Annulment	Washington, DC, USA