

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Gran Colombia Gold Corp.**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/18/23)**

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**PROCEDURAL ORDER No. 10**  
**Decision on Non-Disputing Party Application**

*Members of the Tribunal*

Ms. Jean Kalicki, President of the Tribunal  
Professor Bernard Hanotiau, Arbitrator  
Professor Brigitte Stern, Arbitrator

*Assistant to the President of the Tribunal*

Dr. Joel Dahlquist

*Secretary of the Tribunal*

Ms. Ana Constanza Conover Blancas

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31 August 2021

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**I. PROCEDURAL BACKGROUND**

1. On 24 June 2019, the Tribunal issued Procedural Order No. 1 (“**PO1**”) regarding the procedural rules that govern this arbitration. It provides, *inter alia*, that these proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006, except to the extent modified by Section B of Chapter Eight (Investment) of the Free Trade Agreement between Canada and the Republic of Colombia signed on 21 November 2008 and which entered into force on 15 August 2011 (the “**Treaty**” or the “**FTA**”). A procedural calendar for the arbitration was attached to PO1 as Annex A.
  
2. Section 25 of PO1 concerns submissions by non-disputing parties, as follows:

Submissions by a Non-Disputing Party

*Arbitration Rule 37(2), Treaty Article 831 and Annex 831*

- 25.1. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with ICSID Arbitration Rule 37(2), and Article 831 and Annex 831 of the Treaty.
  
- 25.2. The parties shall have the right to submit observations in relation to any non-disputing party application for leave to file a non-disputing party submission, and to any non-disputing party submissions, in accordance with the schedule prescribed by the Arbitral Tribunal or as agreed to between the parties.
  
- 25.3. In accordance with ICSID Arbitration Rule 37(2) and Article 831 of the Treaty, the Tribunal shall ensure that any non-disputing party submission does not unduly disrupt the proceeding or unduly burden or unfairly prejudice either party.
  
- 25.4. The Tribunal shall decide whether and to what degree a non-disputing party granted leave to make a submission shall be granted access to the pleadings submitted by the parties, subject to the deletion of confidential information and excluding their supporting documentation (including exhibits, witness statements, and expert reports). Any access to the pleadings shall be granted upon the execution of a non-disclosure agreement by the non-disputing party.

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3. ICSID Arbitration Rule 37(2), and Article 831 and Annex 831 of the Treaty, referenced in Section 25 of PO1 provide as follows:

**Rule 37**

[...] **Submissions of Non-disputing Parties**

[...]

(2) After consulting both parties, the Tribunal may allow a person or entity that is not a party to the dispute (in this Rule called the “non-disputing party”) to file a written submission with the Tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the Tribunal shall consider, among other things, the extent to which:

- (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
- (b) the non-disputing party submission would address a matter within the scope of the dispute;
- (c) the non-disputing party has a significant interest in the proceeding.

The Tribunal shall ensure that the non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to present their observations on the non-disputing party submission.

[...]

**Article 831: Submissions by a Non-Disputing Party**

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any non-disputing party submission does not disrupt the proceedings and that neither disputing party is unduly burdened or unfairly prejudiced by it.

2. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with Annex 831.

[...]

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**Annex 831**

**Submissions by Non-Disputing Parties**

1. The application for leave to file a non-disputing party submission shall:

(a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;

(b) be no longer than five typed pages;

(c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);

(d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;

(e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;

(f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;

(g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;

(h) explain why the Tribunal should accept the submission; and

(i) be made in a language of the arbitration.

2. The submission filed by a non-disputing party shall:

(a) be dated and signed by the person filing the submission;

(b) be concise, and in no case longer than 20 typed pages, including any appendices;

(c) set out a precise statement supporting the applicant's position on the issues; and

(d) only address matters within the scope of the dispute.

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4. On 5 October 2020, the *Asociación Mutual de Mineros “EL COGOTE”* (the “**El Cogote Association**” or the “**Applicant**”) filed with ICSID an application for leave to intervene as non-disputing party, written in Spanish, pursuant to ICSID Arbitration Rule 37(2), Article 831 and Annex 831 of the Treaty (the “**Application**”). A copy of the Application was transmitted by the Secretary of the Tribunal to the Claimant and the Respondent (jointly, the “**Parties**”) and the Members of the Tribunal on 6 October 2020.
5. On 6 October 2020, the Tribunal invited the representatives of the El Cogote Association to submit an English translation of their Application at their earliest convenience, on the basis that the procedural languages of this arbitration are English and Spanish. In addition, the Tribunal informed the representatives of the El Cogote Association that it would invite comments from the Parties pursuant to ICSID Arbitration Rule 37(2) upon receipt of that translation.
6. On 13 October 2020, the Parties requested the Tribunal to defer its decision on the Application on the ground that it was premature, as they considered that none of the issues raised by the Applicant was pertinent to the jurisdictional phase of the arbitration. In particular, the Parties requested the Tribunal to defer its decision on the Application until after the Tribunal’s resolution of the Respondent’s denial of benefits objection to jurisdiction and, should that objection be denied, until after the Respondent’s submission of its Counter-Memorial on the remaining jurisdictional and merits issues in the case.
7. On the same date, the El Cogote Association filed an English translation of its Application of 5 October 2020. A copy of that translation was transmitted by the Secretary of the Tribunal to the Tribunal and the Parties on 14 October 2020.
8. On 30 October 2020, the Tribunal granted the Parties’ request of 13 October 2020. It decided that deferral of the Application was appropriate, *inter alia*, as the Tribunal would be assisted by reference to the Respondent’s Counter-Memorial on the Merits, which was yet to be filed, in addition to the Claimant’s Memorial on the Merits filed on 7 October 2019, to determine whether the proposed non-disputing party submission met the standard set out in ICSID Arbitration Rule 37(2).

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9. On 21 December 2020, following the Tribunal’s Decision on the Bifurcated Jurisdictional Issue of 23 November 2020 – by which it dismissed the Respondent’s objection to jurisdiction based on Article 814(2) of the FTA – the Tribunal issued Procedural Order No. 8 (“**PO8**”), setting out revised dates of the procedural calendar for the arbitration. The revised schedule set out in PO8 included the following deadlines: *(i)* 10 June 2021, for any interested third party to apply for leave to file a non-disputing party submission pursuant to Article 831 of the FTA; *(ii)* 15 July 2021, for the Parties to file responses to any non-disputing party application; *(iii)* 12 August 2021, for the Tribunal to rule on any non-disputing party application; and *(iv)* 26 August 2021, for the filing of non-disputing party submissions.
10. On 6 May 2021, following a request from the Respondent for a 7-week extension of the deadline to submit its Memorial on Jurisdiction and Counter-Memorial on the Merits, the Tribunal issued Procedural Order No. 9 (“**PO9**”), concerning the procedural calendar. Pursuant to the revised dates of the procedural calendar set out in PO9, the deadlines regarding non-disputing party participation were amended as follows: *(i)* 8 July 2021, for any interested third party to apply for leave to file a non-disputing party submission pursuant to Article 831 of the FTA; *(ii)* 12 August 2021, for the Parties to file responses to any non-disputing party application; *(iii)* 9 September 2021, for the Tribunal to rule on any non-disputing party application; and *(iv)* 23 September 2021, for the filing of non-disputing party submissions.
11. On 11 June 2021, the Respondent filed a Counter-Memorial on the Merits and Memorial on Jurisdiction, together with accompanying documents.
12. On 12 August 2021, pursuant to the schedule set out in PO9, the Parties filed their respective responses to the Application filed by the El Cogote Association. Claimant’s submission was accompanied by a consolidated index of factual exhibits and legal authorities, as well as legal authorities CL-0214 to CL-0220. Respondent’s submission was accompanied by a consolidated list of legal authorities, as well as legal authorities RL-0210 to RL-0215.
13. This Order sets out the Tribunal’s decision on the Application filed by the El Cogote Association.

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**II. THE APPLICATION**

**A. THE APPLICANT**

14. The Application is submitted by the Mutual Association of Miners “El Cogote,” a non-profit Colombian legal entity based in the Municipality of Segovia. The El Cogote Association states that it has “more than 40 years of work in the region,” dedicated to “non-profit mining extraction and reverting its surpluses in its corporate purpose with 119 associates which generate employment for more than 600 people in the Antioquia Northeast Region.”<sup>1</sup>

**B. SIGNIFICANT INTEREST**

15. The Applicant submits that it has a significant interest in the arbitration as a result of the Claimant’s reference in its Request for Arbitration to the El Cogote mine. The Applicant refers to its mission to defend the possession of the El Cogote mine by traditional and ancestral miners associated with the Applicant, and to safeguard the well-being of the population in the Municipalities of Segovia and Remedios. It also claims a right to information and participation in the proceedings in order to respond to allegations regarding illegal mining at the El Cogote mine, and to provide distinct views on disputed issues related to its goals and activities.<sup>2</sup>

**C. THE SUBJECT-MATTER OF THE PROPOSED SUBMISSION**

16. The Applicant states that it wishes to address in a written submission the following factual and legal issues in dispute: **(i)** the socioeconomic and cultural context of the El Cogote mine; **(ii)** the historical context of investment in FGM<sup>3</sup> assets, demand for direct repair against the State, alleged corruption in the acquisition of the RPP-140 title and the possession of the El Cogote mine; **(iii)** the Tribunal’s lack of jurisdiction *ratione temporis*; **(iv)** manifestations of the civilian population, including related negotiations, Claimant’s proposals and a

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<sup>1</sup> Application, pp. 1-2.

<sup>2</sup> *Id.*, pp. 2-3.

<sup>3</sup> The Tribunal understands the Applicant to refer to Frontino Gold Mines Ltd, the previous owner of some of the mining titles now owned by the Claimant, including RPP-140.

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precautionary measure resolution by the Inter-American Commission on Human Rights; (v) the Claimant's responsibility for violation of collective rights; and (vi) the mining legislation in favor of large extractive industries, the difference between illegal and traditional or ancestral mining, Colombia's international responsibility and Canada's extraterritorial responsibility for the Claimant's actions.<sup>4</sup>

17. The Applicant further invites the Tribunal to a site visit in the Municipalities of Segovia and Remedios to conduct an investigation of the investment project at issue.

### III. THE PARTIES' POSITIONS

#### A. THE CLAIMANT'S RESPONSE

18. In its letter of 12 August 2021, the Claimant opposes on three grounds the Applicant's request to file a non-disputing party submission. The Claimant did not comment on the Applicant's request to schedule a site visit.
19. *First*, with reference to ICSID Arbitration Rule 37(2) and Article 831 of the FTA, the Claimant argues that the Applicant's submission would unfairly prejudice it because the El Cogote Association does not seek merely to assist the Tribunal as a "friend to the court" by offering special perspectives on issues in dispute, but rather acts as a protagonist implicated in the underlying facts.<sup>5</sup>
20. The Claimant points out that its claims in the arbitration relate, *inter alia*, to Colombia's failure to enforce eviction orders in favor of GCG Segovia against illegal miners operating in the El Cogote mine, which orders were granted by the Colombian Mining Agency, after GCG Segovia's unsuccessfully attempted to negotiate with the El Cogote Association to hire its constituents as contract miners.<sup>6</sup> The Applicant's intervention thus would not bring a useful

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<sup>4</sup> Application, pp. 3-4.

<sup>5</sup> The Claimant's Response dated 12 August 2021, pp. 1-2.

<sup>6</sup> *Id.*, p. 2.



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perspective on broader policy issues in dispute, as was the case for *amici curiae* submissions in cases such as *Methanex*, *Biwater* and *Eli Lilly* (where none of the non-disputing parties played a role in the underlying dispute), but instead would provide essentially a witness statement on disputed questions of fact, without permitting the Claimant or the Tribunal to test its credibility and reliability through cross-examination.<sup>7</sup>

21. **Second**, the Claimant contends that the subject-matter of the proposed submission would fall outside the scope of the dispute as defined by the Parties, such as allegations of corruption, the alleged extraterritorial responsibility of Canada or the alleged violation of collective rights by the Claimant.<sup>8</sup>

22. **Finally**, the Claimant argues that the El Cogote Association would not bring a new perspective, particular knowledge or insight from that presented by Colombia in its submissions. It notes in this regard that the Applicant intends to refer to several factual and legal matters that have been already covered by the Respondent in its submissions or that merely echo the Respondent's position.<sup>9</sup>

**B. THE RESPONDENT'S RESPONSE**

23. In its response of 12 August 2021, the Respondent does not object to the Application and “considers that it would be appropriate for the Tribunal to allow it,” although it disagrees that a site visit and inquiry in Segovia and Remedios would be necessary for the Tribunal to resolve the dispute.<sup>10</sup>

24. **First**, given a number of references to the El Cogote Association and its activities in the Parties' submissions and witness statements, the Respondent asserts that the Applicant has a significant interest in the arbitration. It notes that the issues in dispute concern the community of artisanal

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<sup>7</sup> *Id.*, p. 3.

<sup>8</sup> *Id.*, p. 4.

<sup>9</sup> *Id.*, pp. 4-5.

<sup>10</sup> The Respondent's Response dated 12 August 2021, ¶¶ 2, 16.

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and small-scale miners in Segovia whom the Applicant represents, which makes the Applicant uniquely placed to assist the Tribunal in offering its first-hand perspective, knowledge and insight different from those provided by the Parties.<sup>11</sup>

25. **Second**, the Respondent submits that the questions which the El Cogote Association has proposed to address in the proceedings are relevant and apposite for the resolution of the dispute. This includes, for example, matters related to the socioeconomic and cultural context of El Cogote mine and the negotiations between artisanal miners and the Claimant.<sup>12</sup>

26. **Finally**, the Respondent submits that the Applicant's proposed submission would not unfairly prejudice either Party or disrupt the arbitration, as the FTA and Annex A of PO1 (as amended by PO9) set out detailed conditions and procedural steps for non-disputing party applications.<sup>13</sup>

#### **IV. THE TRIBUNAL'S ANALYSIS**

27. Under the applicable test, pursuant to Article 831 and Annex 831 of the FTA, ICSID Arbitration Rule 37(2), referenced in Section 25 of PO1, the Tribunal may allow a non-disputing party application if each of four conditions is met:

- i. The non-disputing party has a significant interest in the proceedings;
- ii. The non-disputing party submission would address a matter within the scope of the dispute;
- iii. The non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing Parties; and

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<sup>11</sup> *Id.*, ¶¶ 8-11.

<sup>12</sup> *Id.*, ¶¶ 12-15.

<sup>13</sup> *Id.*, ¶ 15.

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- iv. The non-disputing party submission does not disrupt the proceedings or unduly burden or unfairly prejudice either party.

28. *With respect to the first condition*, the Claimant does not dispute that the El Cogote Association has an interest in the proceedings. The dispute revolves around the RPP-140 title, which encompasses the El Cogote mine, and both Parties refer extensively to the local miners in their written submissions in this arbitration. Indeed, part of the Claimant's case is the Respondent's alleged failure to enforce eviction orders against miners, one of them regarding miners specifically in the El Cogote mine. Against this background, the Tribunal considers that the Applicant not only has an interest in the proceedings, but also that such interest is "significant," within the meaning of the first condition of the applicable test.

29. *As for the second condition*, the El Cogote Association explains in its Application that if granted leave to file a submission, it will do so with reference to six separate issues. For the sake of convenience, they are recounted here:

- i. the socioeconomic and cultural context of El Cogote mine, the Municipalities of Segovia and Remedios, and the Armed Conflict;
- ii. the historical context of investment in FGM assets, demand for direct repair against the State, alleged corruption in the acquisition of the RPP-140 title and the possession of El Cogote mine;
- iii. the Tribunal's lack of jurisdiction *ratione temporis*;
- iv. manifestations of the civilian population, including related negotiations, Claimant's proposals and a precautionary measure resolution by the Inter-American Commission on Human Rights;
- v. the Claimant's responsibility for violation of collective rights, healthy environment and others; res judicata by the Council of State and alleged corruption case; and

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- vi. the mining legislation in favor of large extractive industries, the difference between illegal and traditional or ancestral mining, Colombia's international responsibility and Canada's extraterritorial responsibility for the Claimant's actions.

30. The Tribunal considers that while certain aspects of the El Cogote Association's intended submission would address matters within the scope of the dispute, at least parts of two of the six issues fall outside of the scope. These are number (v), *i.e.*, "the Claimant's responsibility for violation of collective rights, healthy environment and others," and part of number (vi), *i.e.*, "Colombia's international responsibility and Canada's extraterritorial responsibility for the Claimant's actions." There is no claim in this case regarding an alleged violation (a) by the Claimant of some duty *vis-à-vis* "collective rights, healthy environment and others," (b) by Colombia of some "international responsibility" to protect traditional or ancestral mining, or (c) by Canada of some responsibility over "the Claimant's actions." To the extent the Application seeks to present arguments regarding such alleged violations, such arguments clearly would expand this dispute outside of its scope, in contravention of the applicable legal framework for non-disputing party submissions.

31. By contrast, three of the issues identified by the Application are clearly within the scope of the dispute, namely issues (i), (iii) and (iv). The Parties themselves have referenced these issues in their respective submissions. The same is true for part of issue (vi), namely "the mining legislation in favor of large extractive industries [and] the difference between illegal and traditional or ancestral mining," which has been addressed by the Respondent in its Counter Memorial on the Merits and Memorial on Jurisdiction.

32. Issue number (ii) presents more difficulties, in particular as it reflects an intention by the Applicant to address alleged corruption in the acquisition of the RPP-140 title. On the one hand, neither Party has raised any corruption allegations, which means that such allegations could be viewed as outside of the scope of the dispute. On the other hand, the RPP-140 title itself is clearly within the scope of the dispute, in the sense that the Claimant's case rests on the assumption that the relevant mining permissions are valid and convey rights, which the Claimant says the Respondent violated and/or failed to protect. If (entirely hypothetically at

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this juncture) those permissions had been obtained through corruption, that fact could be of relevance to the existence or enforceability of the very rights the Claimant seeks to assert. It could also be of relevance to the Tribunal’s assessment of its duties under the Treaty, the ICSID Convention, and international law. Moreover, as a general matter, the fact that neither an investor nor a host State may wish to address non-party allegations of corruption – including those that may implicate their respective representatives – does not require a tribunal to turn a blind eye to such allegations, if (again, entirely hypothetically) those allegations were to prove serious and well-substantiated. For these reasons, the Tribunal on balance considers that issue number (ii) is – or at least has the potential to be brought – within the scope of the dispute.

33. This leaves four issues and a part of a fifth, to be tested against the third condition, which requires that the Tribunal be assisted “in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing Parties.” In the Tribunal’s view, one issue plainly fails to meet this condition, namely issue (iii) concerning the Tribunal’s alleged lack of jurisdiction *ratione temporis*. It has not been established how the Tribunal would be assisted by the El Cogote Association’s particular knowledge or insight on this issue, which is one of an intrinsically legal nature where the Association’s knowledge can be assumed to be of limited assistance to the Tribunal, and which furthermore has been covered in the Parties’ submissions. The same is true for issue (vi)’s reference to “the mining legislation in favor of large extractive industries [and] the difference between illegal and traditional or ancestral mining”; the Tribunal does not consider it to have been demonstrated that a non-disputing party submission on these issues would assist the Tribunal, particularly given their legal nature and the fact that they already have been addressed by at least one Party.

34. By contrast, issues (i), (ii) and (iv) would seem to meet the third condition, because they address the specific context of the El Cogote mine, the local miners whom the El Cogote Association claims to represent, and the interactions between those miners and the GCG Segovia. On these issues, the Tribunal accepts that the El Cogote Association has a “perspective, particular knowledge or insight” that is likely to be different from that of either Claimant or Respondent.

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35. Having found that the El Cogote Association has a significant interest in the proceedings, and that three of the issues it seeks to address meet the second and third conditions of the applicable test, the Tribunal now turns to the final condition, *i.e.*, whether the submission would “disrupt the proceedings or unduly burden or unfairly prejudice either party.”
36. In this respect, the Tribunal finds that the Claimant has failed to show that the filing of a 20-page submission, as limited to these three issues, would constitute such disruption, burden or prejudice. The Tribunal notes that the procedural calendar contained in PO9 already includes a deadline for the filing of any non-disputing party’s submission, and that this filing was scheduled deliberately to fall before the Parties’ second round of submissions (Reply and Rejoinder), in order to provide ample opportunity for the Parties to comment.
37. Furthermore, the Tribunal finds unpersuasive the Claimant’s arguments that the potential factual (as opposed to purely legal) nature of any submission by the El Cogote Association creates undue prejudice, by equating such submission to a witness statement which cannot be tested in cross-examination. First, both Rule 37(2)(a) of the ICSID Arbitration Rules and Annex 831(g) of the FTA specifically envision non-disputing party submissions on factual issues, the former by referencing submissions that “would assist the Tribunal in *the determination of a factual* or legal issue related to the proceeding,” and the latter by requiring an applicant to “identify the *specific issues of fact* or law in the arbitration that the applicant will address in its written submission” (emphasis added). If the very fact that a proffered submission is likely to contain factual assertions on disputed issues were grounds to reject an application for undue prejudice, then these requirements in the applicable rules would be rendered nugatory. As for the fact that the Applicant is allegedly a “protagonist” in this dispute, there is no requirement in the applicable rules that a non-disputing party has had no role in the underlying events, such that the factual issues it wishes to address (pursuant to the rules) are solely ones in which it did not participate. Indeed, any such requirement would tend to undermine Rule 37(2)(a)’s requirement that an applicant have a “perspective, *particular knowledge* or insight” into the “specific issues of fact or law in the arbitration” that it wishes to address. Almost by definition, “particular knowledge” regarding an “issue[] of fact . . . in the arbitration” is likely to have been obtained by participating in the factual events in question.

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38. The important point is that the Parties will have the opportunity to comment on the credibility and weight of any assertions by the El Cogote Association, and that this Tribunal, like any tribunal permitting a non-disputing party submission on issues in dispute, has tools available to evaluate the non-disputing party assertions as well as the Parties' comments thereon. The Tribunal will review the submissions of the El Cogote Association alongside the Parties' submissions, oral pleadings and the totality of the evidence on record before rendering any decision in this arbitration. Moreover, if the non-disputing party submission contains notable factual assertions which the Tribunal feels ought to be tested directly, the Tribunal has the power to request further evidence from the El Cogote Association, including but not limited to non-party witnesses,<sup>14</sup> in order to examine whether such assertions are properly supported. In granting the Application of the El Cogote Association at least in part, the Tribunal expressly puts that Association on notice that the Tribunal may ask it to substantiate any significant factual assertions if it wishes those assertions to be given any potential weight.
39. Finally, the Tribunal denies the El Cogote Association's "invitation" that the Tribunal conduct a site visit to the Municipalities of Segovia and Remedios. As a threshold matter, the ICSID Arbitration Rules and the FTA authorize a non-disputing party to seek permission to file a written submission, but say nothing about any right of a non-disputing party to seek a site visit. Moreover, in circumstances where neither Party has requested a site visit, the Tribunal struggles to understand – and the El Cogote Association has failed to demonstrate – how such a complex and costly site visit would be justified.

**V. ORDER**

40. For the reasons stated above, the Tribunal hereby:
- a) GRANTS the El Cogote Association's Application only insofar as it seeks leave to file a written submission on points (i), (ii) and (iv) of its application, described as:

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<sup>14</sup> See generally Procedural Order No. 1, ¶ 19.1 (allowing the Tribunal to take guidance from the 2010 IBA Rules); IBA Rules, Articles 3(9), 3(10), and 4(9) (addressing the authority of arbitral tribunals to seek documents or witness testimony from non-parties).

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- the socioeconomic and cultural context of El Cogote mine and the Municipalities of Segovia and Remedios, and the Armed Conflict;
  - the historical context of investment in FGM assets, demand for direct repair against the State, alleged corruption in the acquisition of the RPP-140 title and the possession of El Cogote mine; and
  - manifestations of the civilian population, including related negotiations, Claimant's proposals and a precautionary measure resolution by the Inter-American Commission on Human Rights;
- b) DENIES the El Cogote Association's Application to file a written submission on any other issues;
- c) DIRECTS that the submission of the El Cogote Association comply with the requirements of Annex 831(2) of the FTA, including specifically that the submission be no more than 20 pages;
- d) DIRECTS that the submission of the El Cogote Association be filed electronically (in English and Spanish) with the ICSID Secretariat by 23 September 2021, pursuant to the timetable set forth in Procedural Order No. 9; and
- e) DENIES the invitation of the El Cogote Association that the Tribunal conduct a site visit.

For and on behalf of the Tribunal,

[Signed]

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Ms. Jean Kalicki  
President of the Tribunal  
Date: 31 August 2021