

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Glencore International A.G.

v.

Republic of Colombia

(ICSID Case No. ARB/21/30)

PROCEDURAL ORDER No. 10

Members of the Tribunal

Ms. Sabina Sacco, President of the Tribunal
Prof. Bernard Hanotiau, Arbitrator
Prof. Donald M. McRae, Arbitrator

Secretary of the Tribunal

Ms. Alicia Martín Blanco

Assistant to the Tribunal

Mr. Rahul Donde

31 March 2026

TABLE OF CONTENTS

I.	SCOPE OF THIS ORDER	3
II.	PROCEDURAL BACKGROUND.....	3
III.	THE RESPONDENT’S NEW EVIDENCE REQUEST	4
	A. THE RESPONDENT’S POSITION	4
	B. THE CLAIMANT’S POSITION	4
	C. ANALYSIS	5
IV.	THE CLAIMANT’S NEW LEGAL AUTHORITIES REQUEST	6
	A. THE CLAIMANT’S POSITION	6
	B. THE RESPONDENT’S POSITION	6
	C. ANALYSIS	7
V.	THE RESPONDENT’S NEW LEGAL AUTHORITIES REQUEST	7
VI.	ORDER.....	8

I. SCOPE OF THIS ORDER

1. This Order addresses: (i) the Respondent’s request to introduce new documentary evidence pursuant to paragraph 11 of Procedural Order No. 9 (“PO9”) and paragraph 17.3 of Procedural Order No. 1 (“PO1”); and (ii) both Parties’ requests to introduce additional legal authorities into the record pursuant to paragraph 12 of PO9.

II. PROCEDURAL BACKGROUND

2. On 26 January 2026, the Tribunal issued PO9, which addressed certain post-hearing matters, including the procedure for post-hearing briefs. Of relevance, paragraph 11 of PO9 provided that no new evidence could be submitted with the post-hearing briefs unless a Party sought and obtained leave to submit that evidence in accordance with paragraph 17.3 of PO1, and that any such request was to be made by 13 February 2026. Further, paragraph 12 of PO9 provided that any requests to introduce legal authorities into the record should be made by 27 February 2026, accompanied by reasons for seeking to introduce that authority, and that the other Party could submit observations within 10 business days. Finally, paragraph 9 of PO9 provided that, in their post-hearing briefs, the Parties could address any new arguments raised during the Hearing, including objecting to their admissibility, in which case a procedure for response, reply and rejoinder was set out.
3. On 13 February 2026, the Respondent requested leave from the Tribunal to introduce into the record four new exhibits, consisting of three briefs submitted by Cerrejón on 27 October 2016, 1 November 2017 and 9 November 2017 in the *tutela* review proceeding that led to the Constitutional Court’s Judgment SU-698, as well as a resolution (“*Auto*”) issued by the Court in that proceeding on 14 September 2017 (together, the “Documents”) (the “Respondent’s New Evidence Request”).
4. On 23 February 2026, the Claimant opposed the Respondent’s New Evidence Request (the “Response”).
5. On 27 February 2026, the Claimant requested leave to introduce thirteen legal authorities into the record pursuant to paragraph 12 of PO9, in connection with arguments it contended the Respondent raised for the first time at the Hearing (the “Claimant’s New Legal Authorities Request”).
6. On the same date, the Respondent requested leave to introduce two new legal authorities and to supplement one incomplete legal authority already on the record (Exh. CL-4) (the “Respondent’s New Legal Authorities Request”).

7. On 2 March 2026, the Tribunal invited the Parties to submit observations on the opposing Party's requests by 13 March 2026.
8. On 13 March 2026, the Respondent commented on the Claimant's New Legal Authorities Request.
9. On 19 March 2026, the ICSID Secretariat wrote to the Parties indicating that, as the Claimant had not commented on the Respondent's New Legal Authorities Request, the Tribunal understood that the Claimant did not object to that Request. The Claimant confirmed this understanding later the same day.

III. THE RESPONDENT'S NEW EVIDENCE REQUEST

A. The Respondent's Position

10. The Respondent alleges that, in its written submissions in this arbitration, the Claimant argued that the Constitutional Court reframed the plaintiff communities' claims to question the environmental viability of the Bruno Stream Project, and that Cerrejón was unaware of the nature of the Court's concerns until Judgment SU 698 was issued.
11. The Respondent contends that the Claimant advanced a "distinct and more far-reaching allegation" for the first time at the Hearing, asserting that Cerrejón was deprived of any opportunity to be heard on the environmental viability of the Bruno Stream Project, in violation of its rights of defense and due process. This allegation was materially different from the Claimant's written pleadings, which had argued that Cerrejón was merely "unaware" of the Constitutional Court's concerns until Judgment SU-698 was issued. The Documents that the Respondent wishes to introduce into the record bear directly on this allegation and are necessary to enable the Respondent to respond fully and specifically to the Claimant's arguments.
12. The Respondent adds that granting leave would not prejudice the Claimant, as the Documents were authored or filed by Cerrejón and have been available to the Claimant throughout the arbitration. The Claimant would have ample time to address them in its post-hearing brief due on 30 April 2026.

B. The Claimant's Position

13. The Claimant opposes the Request, stating that the argument to which the Respondent refers is not new. It was raised in the Claimant's written submissions, and the Respondent addressed it at length in its own pleadings. In fact, in its opening statement at the Hearing, the Respondent specifically referenced its prior written submissions on this issue.

14. The Claimant adds that the Documents are nearly a decade old and predate the arbitration by several years. The Respondent had access to them from the outset and could have submitted them with its written pleadings but chose not to do so. It is inappropriate for the Respondent to now seek to introduce the Documents in response to an allegation that had already been raised and addressed in the written phase.

C. Analysis

15. The central question is whether the allegation to which the Documents are said to respond was in fact raised for the first time at the Hearing, as the Respondent contends, or whether it had already been raised in the written phase, as the Claimant argues.
16. Having reviewed the relevant pleadings and the Hearing transcript, the Tribunal observes that the Claimant’s written submissions did address Cerrejón’s awareness of the Constitutional Court’s concerns and its opportunity to be heard in the *tutela* proceeding.¹ The Respondent engaged with this argument in its Rejoinder, where it argued that Cerrejón was afforded the opportunity to address the environmental viability of the Bruno Stream Project and in fact did so.² The Respondent referenced this argument in its opening statement at the Hearing.³
17. However, at the Hearing, the Claimant refined its argument, submitting that “Cerrejón never had the opportunity to be heard on [the environmental viability of the Bruno Stream Project], in direct violation of its basic rights of defense and due process, representing a clear denial of justice”.⁴ This argument – that Cerrejón did not have an opportunity to be heard, and that such deprivation amounted to a violation of due process and a denial of justice – was more categorical than the one made earlier. The Claimant does not dispute that the Documents respond to this argument.
18. The Tribunal recognizes that the Respondent addressed aspects of this issue in the written phase. Nonetheless, the Claimant’s oral reformulation gave the argument a sharper legal characterization, framing Cerrejón’s alleged lack of opportunity to be heard as a standalone

¹ Memorial, ¶¶120-125; Reply, ¶¶223, 262, 269.

² Rejoinder, ¶37 (“Cerrejón should have been aware that the proceeding concerned the protection of fundamental rights of the plaintiff communities, and the potential adverse impacts of the Bruno Stream Project on such rights. Indeed, the interventions by Cerrejón’s representatives during the judicial inspection demonstrate that Cerrejón was well aware of the nature of the Constitutional Court’s concerns regarding the Bruno Stream Project’s impacts. Further, only seven days before the judicial inspection, Cerrejón had filed a submission before the Constitutional Court in which it provided answers to 25 questions posed by the Court concerning the potential impacts of the Bruno Stream Project.”). See also Rej., ¶¶345-350.

³ Tr. Day 1, 196:13-16 (“As Colombia explains in Paragraphs 345-350 of its Rejoinder, Cerrejón not only was afforded the opportunity to be heard on the environmental viability of the Project, it, in fact, addressed it directly.”). See also Tr. Day 1, 196:17-197:1.

⁴ Tr. Day 1, 83:02-83:06.

violation of due process and a denial of justice. In these circumstances and having regard to the Tribunal's discretion under paragraph 17.3 of PO1 to admit evidence that is relevant and material to the issues in dispute, the Tribunal considers it appropriate to grant the Respondent's New Evidence Request.

19. The Tribunal is further satisfied that admitting the Documents will not prejudice the Claimant. The three briefs were authored and filed by Cerrejón, and the *Auto* was notified to it. The Documents have thus been in the Claimant's possession or available to it throughout the arbitration. The Claimant will have the opportunity to address them in its post-hearing brief.
20. On balance, the Tribunal considers that the interest in deciding the case on as complete an evidentiary record as possible outweighs any concern arising from the timing of the Request. Accordingly, the Respondent's New Evidence Request is granted. The Respondent is invited to submit the Documents into the record within three days of the notification of this Order.

IV. THE CLAIMANT'S NEW LEGAL AUTHORITIES REQUEST

A. The Claimant's Position

21. The Claimant seeks leave to introduce thirteen additional legal authorities (Exh. CL-146 through CL-158, listed in Annex A hereto), grouped under two headings.
22. First, in connection with damages, the Claimant seeks to introduce nine legal authorities in connection with arguments it contends the Respondent raised for the first time at the Hearing regarding (i) the risk of double recovery arising from the possibility that the suspension of the Bruno Stream Project might be lifted, and (ii) the contention that any damages should be limited to sunk costs. The Claimant objects to the admissibility of these arguments but seeks to introduce the authorities without prejudice to that objection, to enable the Tribunal to address the Respondent's arguments should it overrule the admissibility objection.
23. Second, in respect of the probative value of witness testimony, the Claimant seeks to introduce four legal authorities to address arguments it contends the Respondent raised for the first time at the Hearing regarding the weight to be accorded to the written testimony of witnesses not called for cross-examination.

B. The Respondent's Position

24. The Respondent did not object to the Claimant's Request, while reserving all its rights, including its right to respond to the Claimant's arguments based on such authorities and its right to respond to the admissibility objection anticipated by the Claimant.

C. Analysis

25. The Respondent has not objected to the Claimant's Request; it has only reserved the right to address the substance of the Claimant's arguments on the basis of the admitted authorities and to contest the admissibility of those arguments in accordance with the procedure set out in PO9. In the circumstances, the Tribunal admits all additional legal authorities submitted by the Claimant (Exh. CL-146 through CL-158). The Claimant is invited to submit these legal authorities into the record within three days of the notification of this Order.
26. For the sake of good order, the Tribunal notes that it has taken account of the Claimant's position that its request for additional legal authorities should not be construed as acquiescence to the introduction of the Respondent's new arguments or to the introduction of legal authorities in support of such arguments. It has also noted the Respondent's reservation of its right to respond to the Claimant's arguments based on the admitted legal authorities and to respond to the admissibility objection anticipated in the Claimant's application. The procedure set out in paragraph 9 of PO9 shall apply to any admissibility objections raised in the Post-Hearing Briefs.

V. THE RESPONDENT'S NEW LEGAL AUTHORITIES REQUEST

27. The Respondent seeks leave to introduce two new legal authorities, namely:
- a. *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala* (ICSID Case No. ARB/18/43), Award of 23 December 2025; and
 - b. *Iberdrola Energía S.A. v. Republic of Guatemala* (ICSID Case No. ARB/09/5), Award of 17 August 2012.
28. The Respondent also seeks leave to supplement one incomplete legal authority (Exh. CL-4, Eduardo Jiménez De Aréchaga, *International Law in the past Third of a Century*, 159-1 Recueil des cours (General Course in Public International Law), The Hague (1978)) already on the record.
29. The Claimant did not object.
30. In the circumstances, the Tribunal admits the two new legal authorities and the supplemented version of Exh. CL-4 into the record. The Respondent is invited to submit these legal authorities into the record within three days of the notification of this Order.

VI. ORDER

31. For the reasons set out above, the Tribunal:

- a. Grants the Respondent's request for leave to introduce four new documentary exhibits consisting of three briefs submitted by Cerrejón on 27 October 2016, 1 November 2017 and 9 November 2017 in the *tutela* review proceeding that led to the Constitutional Court's Judgment SU-698, as well as a resolution issued by the Court in that proceeding on 14 September 2017 into the record;
- b. Grants the Claimant's request for leave to introduce thirteen legal authorities into the record (Exh. CL-0146 through CL-0158, listed in Annex A hereto);
- c. Grants the Respondent's request for leave to:
 - i. Introduce the awards in (a) *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala* (ICSID Case No. ARB/18/43) of 23 December 2025; and (b) *Iberdrola Energía S.A. v. Republic of Guatemala* (ICSID Case No. ARB/09/5) of 17 August 2012 into the record; and,
 - ii. Supplement Exh. CL-4.
- d. Instructs the Parties to submit the Documents and legal authorities referred to in the preceding sub-paragraphs, with their corresponding exhibit numbers, within three days of the notification of the present Order.

On behalf of the Tribunal,

[Signed]

Sabina Sacco
President of the Tribunal
Date: 31 March 2026