

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Angel Samuel Seda and others

v.

Republic of Colombia

(ICSID Case No. ARB/19/6)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Dr. Klaus Sachs, President of the Tribunal

Prof. Hugo Perezcano Díaz, Arbitrator

Dr. Charles Poncet, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

7 April 2020

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Introduction

The first session of the Tribunal was held on April 2, 2020, beginning at 5 p.m. CET (11 a.m. in Washington, D.C. and 10 a.m. in Bogotá), by telephone conference. The session was adjourned at 6.06 p.m. CET.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal

Prof. Dr. Klaus Sachs, President of the Tribunal
Prof. Hugo Perezcano Díaz, Arbitrator
Dr. Charles Poncet, Arbitrator

Assistant to the Tribunal:

Mr. Marcus Weiler, Assistant to the Tribunal

ICSID Secretariat:

Ms. Sara Marzal, Secretary of the Tribunal

Participating on behalf of Claimants:

Ms. Anne Champion, Gibson, Dunn & Crutcher LLP
Mr. Rahim Moloo, Gibson, Dunn & Crutcher LLP
Ms. Ankita Ritwik, Gibson, Dunn & Crutcher LLP
Mr. Pedro Soto, Gibson, Dunn & Crutcher LLP

Participating on behalf of Respondent:

Ms. Ana María Ordoñez Puentes, *Agencia Nacional de Defensa Jurídica del Estado*
Mr. Andrés Felipe Esteban Tovar, *Agencia Nacional de Defensa Jurídica del Estado*
Ms. Elizabeth Prado López, *Agencia Nacional de Defensa Jurídica del Estado*
Ms. Mariana Reyes Munera, *Agencia Nacional de Defensa Jurídica del Estado*
Mr. Camilo Andrés Torres Casanova, *Agencia Nacional de Defensa Jurídica del Estado*
Mr. Juan Alonso Sierra Martínez, *Agencia Nacional de Defensa Jurídica del Estado*
Prof. Emmanuel Gaillard, Shearman & Sterling LLP
Ms. Ximena Herrera-Bernal, Shearman & Sterling LLP
Ms. Yael Ribco-Bormann, Shearman & Sterling LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on March 17, 2020;
- The Draft Procedural Order circulated by the Tribunal Secretary on March 17, 2020;

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- The parties' comments on the Draft Agenda and the Draft Procedural Order as well as their proposals to the Procedural Calendar received on March 28, 2020, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree; and
- The Tribunal's proposed Draft Procedural Calendar circulated by the Tribunal Secretary on April 1, 2020.

Following the session, 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 are 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 February 25, 2020 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 February 25, 2020.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

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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, including by any appropriate means of communication.
5. 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 decide procedural matters without consulting the other Members.
 - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period.
 - 5.3.1. If a ruling, excluding any Decision on Jurisdiction and/or Admissibility or Award, has not been issued: (i) within one month after the final submission

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on a particular matter, or (ii) by the date set out in the Procedural Calendar in Annex A, the Tribunal will provide the parties with weekly status updates.

5.3.2. If a Decision on Jurisdiction and/or Admissibility or Award has not been issued six months after the final submission on a particular matter, the Tribunal will provide the Parties with status updates every three months.

5.3.3. If a Decision required by the Procedural Calendar in Annex A has not been issued by the date set out therein, the Tribunal will provide the parties with status updates every two weeks.

5.4. The President is authorized to issue Procedural Orders and other procedural decisions on behalf of the Tribunal.

5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary 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 Tribunal Secretary is Ms. Sara Marzal, 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:

Ms. Sara Marzal
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA

Tel.: + 1 (202) 473 6434
Fax: + 1 (202) 522-2615
Email: smarzal@worldbank.org
Paralegal email: mvazquezmarrero@worldbank.org

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

Ms. Sara Marzal
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

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

For Claimants

Mr. Rahim Moloo
Ms. Anne Champion
Ms. Marryum Kahloon
Gibson, Dunn & Crutcher, LLP
200 Park Avenue
New York, NY 10166-0193
United States of America
and
Ms. Ankita Ritwik
Mr. Pedro Soto
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
United States of America
and
Ms. Sydney Sherman
Gibson, Dunn & Crutcher, LLP
3161 Michelson Drive

For Respondent

Ms. Ana María Ordóñez Puentes
Mr. Andrés Felipe Esteban Tovar
Agencia Nacional de Defensa
Jurídica del Estado
Carrera 7 No. 75-66 – 2do y 3er piso
Bogotá, Colombia
and
Ms. María Paula Arenas Quijano
Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 #13 A-15
Bogota, Colombia
and
Prof. Emmanuel Gaillard
Shearman & Sterling LLP
7 Rue Jacques Bingen,
Paris 75008

Irvine, CA 92612-4412
United States of America

rmoloo@gibsondunn.com
achampion@gibsondunn.com
mkahloon@gibsondunn.com
aritwik@gibsondunn.com
psoto@gibsondunn.com
ssherman@gibsondunn.com

France
and
Ms. Ximena Herrera-Bernal
Shearman & Sterling LLP
9 Appold Street
London, EC2A 2AP
United Kingdom
and
Ms. Yael Ribco-Borman
Shearman & Sterling LLP
Bockenheimer Landstraße 2-4,
Bockenheimer Anlage, 60306
Frankfurt am Main, Germany

ana.ordonez@defensajuridica.gov.co
andres.esteban@defensajuridica.gov.co
marenas@mincit.gov.co
arbitrajesdeinversion@defensajuridica.gov.co
EGaillard@shearman.com
ximena.herrera@shearman.com
yael.ribco@shearman.com

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

- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of February 26, 2020, ICSID requested that each party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received Claimants' payment on March 19, 2020 and a partial payment from Respondent of US\$ 175,000 on March 27, 2020.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. The unused balance held on deposit at the end of the arbitration shall be returned to the parties as directed by the Tribunal in proportion to the payments that they advanced to ICSID, without prejudice to the final decision of the Tribunal as to the allocation of costs.

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10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

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

10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.

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

11. Procedural Languages, Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

11.1. English and Spanish are the procedural languages of the arbitration.

11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language. However, any correspondence or communication sent to the ICSID Secretariat in Spanish shall be accompanied by a courtesy translation into English.

Parties' Pleadings

11.3. Any written requests and applications shall be submitted in either procedural language. If the submission is made in English, unless the Tribunal directs otherwise, no Spanish translation will be needed. If a request or application is made in Spanish, a translation into English will follow within 3 calendar days.

11.4. Pleadings, expert opinions, witness statements, and any other accompanying documentation may be submitted in either procedural language. If the pleading, expert opinion, witness statement, and any other accompanying documentation is made in English, unless the Tribunal directs otherwise, no Spanish translation will be needed. If the pleading, expert opinion, witness statement, and any other accompanying documentation is made in Spanish, a translation into English will follow within 14 calendar days.

11.5. If a factual or legal exhibit is lengthy and relevant only in part, it is 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. If the document is in English, no Spanish translation will be needed.

11.6. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.

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- 11.7. Documents exchanged between the parties under § 15 below (Production of Documents) may be produced in the original language and need not be translated.

Hearing

- 11.8. The hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 11.9. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see § 19 below), which witnesses or experts require interpretation.

Tribunal's Documents Except Decisions on Jurisdiction and/or Admissibility and Awards

- 11.10. The Tribunal may issue any order or decision in English provided that the order or decision is issued in Spanish shortly thereafter. Both language versions shall be equally authentic.

Tribunal's Decisions on Jurisdiction and/or Admissibility and the Award

- 11.11. The Tribunal shall render any Decision on Jurisdiction and/or Admissibility and the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

Interpretation and translation costs

- 11.12. The costs of the interpreter(s) and the costs of translating the Tribunal's orders, decisions and the Award 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.

12. Routing of Communications

Administrative and Financial Regulation 24

- 12.1. All communications from either or both parties to the Tribunal shall be routed through the ICSID Secretariat.
- 12.2. Each party's written communications shall be simultaneously transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Communications ordered by the Tribunal to be filed simultaneously by both parties shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and to the Tribunal.

12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

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

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

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the corresponding pleading along with any witness statements, expert reports and an index of all the supporting documentation (factual exhibits or legal authorities) attached to the pleading.¹

13.2. Within three business days after the filing date, the parties shall upload the pleading with all the supporting documentation to the file sharing platform created by ICSID for purposes of this case.

13.3. Any translations of submissions and evidence are to be uploaded to ICSID's electronic file sharing platform within 14 days of the electronic platform filing.

13.4. Within three business days following the electronic filing of the translations, the parties shall courier:²

To Prof. Dr. Sachs:

13.4.1. one hard copy in A5 format of the entire submission in English language only including the pleading, the witness statements, expert reports, together with any factual exhibits, but not including legal authorities; and

13.4.2. one USB drive with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, factual exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

To Dr. Poncet:

13.4.3. one hard copy in A5 format of the entire submission in English language only including the pleading, the witness statements, expert reports, together with any factual exhibits, but not including legal authorities; and

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² Prof. Perezcano does not wish to receive any hard copies or USB devices of pleadings, submissions, supporting or other documents. This applies to the whole of the Procedural Order.

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- 13.4.4. unless the submission is uploaded where it can be downloaded from, one USB drive with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, factual exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.
- 13.5. The addresses of the Tribunal Members are as follows:
- | | |
|-----------------------|------------------------|
| Prof. Dr. Sachs | Dr. Poncet |
| CMS Hasche Sigle | Poncet SARL |
| Nymphenburger Str. 12 | 2 rue Bovy-Lysberg, CP |
| Munich D-80335 | 5721 |
| Germany | CH-1211 Geneva 11 |
| Tel. +49 89 23807 109 | Switzerland |
| | Tel. +41 22 311 00 10 |
- 13.6. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
- 13.7. Electronic versions of pleadings, witness statements, expert reports, factual exhibits and legal authorities shall be in PDF text searchable format without any restrictions so that they can be printed, annotated and text copied.
- 13.8. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted and the language of the document.
- 13.9. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, factual exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
- 13.10. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.
- 13.11. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

- 14.1. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex A, except if the Tribunal, upon a showing of good cause by either party or on its own initiative, decides that this Procedural Timetable has to be amended, or both parties agree to such an amendment.
- 14.2. In the first exchange of submissions (Memorial and Counter-Memorial), the parties shall set forth all the facts and legal arguments on which they rely including any expert opinion evidence the parties submit in support of their respective cases. Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other party.
- 14.3. In their second exchange of submissions (Reply and Rejoinder), 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, unless new facts have arisen after the first exchange of submissions which justify new allegations of fact and/or legal arguments.
- 14.4. Following each factual allegation, the parties shall, whenever possible, identify the evidence adduced in support of that allegation. Following each legal argument, the parties shall, whenever possible, identify the legal authority adduced in support of that argument.
- 14.5. All written submissions shall be divided into consecutively numbered paragraphs.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

- 15.1. The International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (“IBA Rules of Evidence”) shall guide the Tribunal and the parties regarding document production in this case.
- 15.2. As set out in Annex A, one round of document production shall take place prior to the submission of Claimants’ Reply on the Merits and Damages. In case a bifurcation is requested, the Tribunal will decide on any request to conduct a round of document production during the first phase of the bifurcated proceedings in its Decision on Bifurcation.
- 15.3. Within the time limits set out in Annex A, each party may serve a request for production of documents on the other party. Every request for production of documents shall precisely identify each document, or category of documents,

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sought and establish its relevance and materiality for the outcome of the case. The requests shall be recorded in the schedule (using columns 1 through 3) in the form below. Such requests shall not be copied to the Tribunal or the Tribunal Secretary.

- 15.4. Within the time limits set out in Annex A, each party shall provide the other party with the documents in its possession, custody or control that are responsive to the other party's request and to which no objections are made. They shall not be copied to the Tribunal or the Tribunal Secretary.
- 15.5. Each party shall state in writing its responses or objections to the requested documents with reference to the objections listed in Article 9(2) of the IBA Rules of Evidence, within the time limits set out in Annex A. Such responses and objections shall be recorded in column 4 of the schedule below. They shall not be copied to the Tribunal or the Tribunal Secretary.
- 15.6. Within the time limits set out in Annex A, the requesting party shall state in writing its comments on any response or objection made to production (in both Word and PDF formats). Such comments shall be recorded in column 5 of the schedule below.
- 15.7. Within the time limits set out in Annex A, the requesting party shall submit the completed Redfern Schedule (requests, objections, responses to objections; in both Word and PDF formats) including any applications to decide on objected production requests to the Tribunal, with a copy to the other party.
- 15.8. The Tribunal will make its best efforts to rule on the objections within the time limits set out in Annex A.
- 15.9. A party shall produce those documents for which no objection is sustained by the Tribunal within the time limits set out in Annex A. They shall not be copied to the Tribunal or the Tribunal Secretary.
- 15.10. Any other request for the production of documents not provided for in the Procedural Calendar set out in Annex A, which is sought by either party from the other party or from any person or entity that it is not a party to this Arbitration, including any court, organization or other third party, shall be permitted only at the discretion of the Tribunal. The request must be substantiated with reasons. The Tribunal will rule on such reasoned application only after it has given the other party a proper opportunity to reply.
- 15.11. The request, responses or objections to the request, the reply to the responses or objections to the request, and the Tribunal's decisions referred to in this Section shall be recorded in a joint schedule in the form below:

1 Requesting Party [insert]	2	3		4	5	6
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Requests	Replies to Objections to Document Requests	Tribunal's Decisions
		Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports	Comments			

16. Submission of Documents

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

16.1. The Memorial and Counter-Memorial shall be accompanied by all documentary evidence relied upon by each party, respectively, including witness statements, expert reports, factual exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.

16.2. The documents shall be submitted in the manner and form set forth in § 13 above.

16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

16.3.1. Should a party request leave to file additional or responsive documents, that party may not attach the documents that it seeks to file to its request.

16.3.2. If the Tribunal grants such an application for submission of additional or responsive documents, the Tribunal shall ensure that the other party is afforded sufficient opportunity to submit a response.

16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.5. Documentary evidence shall be submitted in the following form:

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- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 16.5.2. Exhibits submitted by Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal authorities. Exhibits submitted by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal authorities.
- 16.5.3. Exhibits shall contain single documents. However, a party may include several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.5.4. Exhibits shall also be submitted in PDF format as provided for in 13.5. Electronic files shall be named starting with “C-”, “CL-”, “R-” or “RL-”, respectively, followed by the corresponding exhibit number, the document’s date in yyyy-mm-dd form and a brief indication of the document it contains. The numbering shall also indicate the language of the document *e.g.* C-10_2013-05-09_Luxury Living in a Bucolic, Shoreline Setting in Colombia, The New York Times_EN and similarly using “SP” for documents in Spanish or “EN-SP” if the exhibit contains both the document in its original language and its translation.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements. Documents submitted by one Party need not be resubmitted by the other Party either.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. 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 Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing. Each Party shall ensure that the opposing Party and each Tribunal Member have both electronic and hard copies of demonstrative exhibits prior to commencing its oral arguments or the examination in which they will be used.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in § 16.3).
- 17.3. Each witness statement and expert report shall be signed and dated by the witness or expert.
- 17.4. 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 § 11 above.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 18.1. Each witness and expert whose statement or report has been submitted as set forth in § 17 above shall be available for examination at the hearing, subject to the provisions below.
- 18.2. Each party shall be responsible for summoning 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.
- 18.3. Each party shall be responsible for the practical arrangements, cost and availability of any witness it offers. This is without prejudice for the Tribunal's final decision on costs.
- 18.4. At least one week prior to the pre-hearing organizational meeting, each party shall notify the other party, with the Secretary of the Tribunal in copy, which witnesses and experts for whom the other party has submitted a statement or a report it wishes to examine at the hearing.
- 18.5. Within a week of the parties' notifications, the Tribunal will indicate the witnesses or experts not called by the parties whom it wishes to question, if any.
- 18.6. Unless the parties agree otherwise, or unless the Tribunal decides otherwise, witnesses shall not be allowed to attend the hearing (including the opening statements) prior to their examination. After their examination, witnesses may

remain in the hearing room.

- 18.7. Whether the previous provision applies equally to factual witnesses who are party representatives will be decided by the Tribunal at the pre-hearing organizational meeting or at any other appropriate time after consulting with the parties.
- 18.8. Unless the parties agree otherwise, or unless the Tribunal decides otherwise, experts may attend the hearing in its entirety.
- 18.9. The order of appearance and the conditions of examination of the witnesses and experts during the hearing shall be determined during the pre-hearing organizational meeting.
- 18.10. The fact that a party does not call a witness or expert for cross-examination does not imply that the Party accepts the substance of any statement or report by such witness or expert.
- 18.11. If a witness or expert is called to testify at the hearing and fails to appear without a reason that the Tribunal deems valid, the Tribunal may draw any consequences it considers appropriate, including that the witness statement or expert report in question shall be disregarded.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties 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. Hearings
Arbitration Rules 20(1)(e) and 32, US-Colombia TPA Article 10.21

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with § 10 above.
- 20.3. The hearing shall take place on the date established in the Procedural Calendar in Annex A.
- 20.4. The allocation of time for the hearing shall be agreed between the Parties, or alternatively, decided by the Tribunal in consultation with the Parties.

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- 20.5. Hearings shall be open to the public in accordance with Article 10.21 of the United States - Colombia Trade Promotion Agreement (“US- Colombia TPA”).
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcripts in the procedural languages 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.
- 21.3. The parties shall agree on any corrections to the transcripts within 30 calendar days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter 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 court reporter in the revised transcripts. The Secretariat shall provide the Parties and the Tribunal Members the final version of the transcripts once the revised transcripts have been approved by the Tribunal.
22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 22.1. All matters concerning post-hearing memorials and statements of costs shall be discussed at the close of the oral hearing. In any event, such submissions, if any, shall not contain new evidence, documents, sources, witness statements or expert reports or opinions, except in exceptional circumstances, as determined by the Tribunal upon consultation with the Parties.
- 22.2. Each party will submit its Statement of Costs within 4 weeks after the hearing or the final exchange of Post-Hearing Memorials (if any).
23. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4), US-Colombia TPA Article 10.21
- 23.1. ICSID shall make available to the public, on its website, the documents listed in Article 10.21(1) of the US-Colombia TPA, in accordance with the provisions set out in such Article and any other relevant provisions of the TPA.

- 23.2. Absent any objection under Article 10.21(4) of the US-Colombia TPA, the parties agree that the materials may be published 14 days after the filing date of the pleading, memorial, brief, or submission; the date of issuance of the order, decision or award; or the date of transmission of the final version of the minutes or hearing transcript in question.
- 23.3. For purposes of §23.1 *supra*, the reference in Article 10.21(1) of the US-Colombia TPA to the "notice of arbitration" and to "pleadings, memorials and briefs" does not include accompanying material (i.e. witness statements, expert reports, exhibits and legal authorities).

On behalf of the Tribunal,

[signed]

Prof. Dr. Klaus Sachs
President of the Tribunal
Date: 7 April 2020

ANNEX A

PROCEDURAL TIMETABLE

No.	Procedural Step	Date
(a)	First Session	2 April 2020
(b)	Procedural Order No. 1	7 April 2020 (5 days)
(c)	Claimants' Memorial on the Merits and Damages	1 June 2020 (55 days)
(d)	Respondent's request for bifurcation	1 July 2020 (30 days)
(e)	Claimants' reply to the request for bifurcation	15 July 2020 (14 days)
(f)	Tribunal's decision on bifurcation	29 July 2020 (14 days)
Option 1: No bifurcation requested or bifurcation denied		
(1)(g)	Respondent's Counter-Memorial on Jurisdiction, Merits and Damages	19 October 2020 (82 days)
(1)(h)	Non-Disputing Party Submissions	TBD
(1)(i)	Parties' Requests for Document Production	16 November 2020 (28 days)
(1)(j)	Parties' Responses / Objections to Requests for Document Production (if any)	30 November 2020 (14 days)
(1)(k)	Parties' Replies to Responses / Objections to Produce Documents (if any)	14 December 2020 (14 days)
(1)(l)	Production of Documents to Requests for Document Production not objected to by the Parties	14 December 2020 (14 days from Parties' Responses)
(1)(m)	Tribunal's Decision on Document Requests (if necessary)	8 January 2021 (25 days)
(1)(n)	Production of Documents as ordered by the Tribunal	5 February 2021 (28 days)
(1)(o)	Claimants' Reply on Merits and Damages	22 March 2021 (45 days)
(1)(p)	Respondent's Rejoinder on Merits and Damages	10 June 2021 (80 days)

No.	Procedural Step	Date
(1)(q)	Pre-Hearing Organizational Meeting	TBD
(1)(r)	Oral Hearing on Merits and Damages	25-29 October 2021
Option 2: Bifurcation granted		
(2)(g)	Respondent's Memorial on Jurisdiction and Admissibility	18 September 2020 (51 days)
(2)(h)	Claimants' Counter-Memorial on Jurisdiction and Admissibility	8 November 2020 (51 days)
(2)(i)	Non-Disputing Party Submissions	TBD
(2)(j)	Parties' Requests for Document Production	Option 2a: No document production
		Option 2b: 30 November 2020 (22 days)
(2)(k)	Parties' Responses / Objections to Requests for Document Production (if any)	Option 2a: No document production
		Option 2b: 14 December 2020 (14 days)
(2)(l)	Parties' Replies to Responses / Objections to Produce Documents (if any)	Option 2a: No document production
		Option 2b: 8 January 2021 (25 days)
(2)(m)	Production of Documents to Requests for Document Production not objected to by the Parties	Option 2a: No document production
		Option 2b: 8 January 2021 (25 days from Parties' Responses)
(2)(n)	Tribunal's Decision on Document Requests (if necessary)	Option 2a: No document production
		Option 2b: 29 January 2021 (21 days)
(2)(o)	Production of Documents as ordered by the Tribunal	Option 2a: No document production

No.	Procedural Step	Date
		Option 2b: 16 February 2021 (28 days)
(2)(p)	Respondent's Reply on Jurisdiction and Admissibility	Option 2a: 8 January 2021 (61 days from Counter-Memorial)
		Option 2b: 7 April 2021 (50 days)
(2)(q)	Claimants' Rejoinder on Jurisdiction and Admissibility	Option 2a: 1 March 2021 (52 days)
		Option 2b: 27 May 2021 (50 days)
(2)(r)	Pre-Hearing Organizational Meeting	TBD
(2)(s)	Oral Hearing on Jurisdiction and Admissibility	Option 2a: 22-23 March 2021 (with 24 March 2021 as reserve day)
		Option 2b: 7-8 June 2021 (with 9 June 2021 as reserve day)
(2)(t)	Tribunal Decision on Jurisdiction and Admissibility	TBD (90 days after conclusion of the Hearing)
(2)(u)	Respondent's Counter-Memorial on the Merits and Damages	To be determined after the Decision on Jurisdiction and Admissibility
(2)(v)	Parties' Requests for Document Production	See above
(2)(w)	Parties' Responses / Objections to Requests for Document Production (if any)	See above
(2)(x)	Parties' Replies to Responses / Objections to Produce Documents (if any)	See above
(2)(y)	Production of Documents to Requests for Document Production not objected to by the Parties	See above
(2)(z)	Tribunal's Decision on Document Requests (if necessary)	See above

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No.	Procedural Step	Date
(2)(aa)	Production of Documents as ordered by the Tribunal	See above
(2)(bb)	Claimants' Reply on the Merits and Damages	See above
(2)(cc)	Respondent's Rejoinder on the Merits and Damages	See above
(2)(dd)	Pre-Hearing Organizational Meeting	See above
(2)(ee)	Oral Hearing on the Merits and Damages	See above