

In the Matter of an Arbitration under
The Rules of Arbitration of the
International Centre for Settlement
Of Investment Disputes

GRAN COLOMBIA GOLD CORP.

Claimant

-v-

THE REPUBLIC OF COLOMBIA

Respondent

REQUEST FOR ARBITRATION

25 May 2018

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I. INTRODUCTION

1. Gran Colombia Gold Corp. (“**GCG**”, or the “**Company**” or “**Claimant**”), a corporation constituted under the laws of British Columbia, Canada,¹ hereby requests the institution of arbitration proceedings against the Republic of Colombia (“**Colombia**”, “**Respondent**” or the “**State**”), in accordance with Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”), to which Colombia and Canada are parties.
2. This Request for Arbitration (the “**Request**”) is submitted pursuant to Article 819 and Article 820 of Chapter Eight of the Free Trade Agreement between Canada and the Republic of Colombia (the “**Treaty**”, the “**FTA**” or the “**Canada-Colombia FTA**”) signed on 21 November 2008 and which entered into force on 15 August 2011.²
3. With regard to Article 820, the four (4) Colombian enterprises owned and controlled by GCG through which GCG has made its investments are: (i) Zandor Capital S.A. Colombia (“**Zandor**”), the Colombian branch of Panamanian company Gran Colombia Gold Segovia S.A.³; (ii) Minerales Andinos de Occidente S.A.S., a company established in Colombia (“**MAO**”) ⁴; (iii) Mineros Nacionales S.A.S., a company established in Colombia

¹ See **Ex. C-1**, Certificate of Good Standing of Gran Colombia Gold Corp. issued by the Registrar of Companies of British Columbia, Canada, dated 20 April 2018. As part of GCG’s efforts to streamline its corporate structure, effective 1 January 2017, GCG completed a vertical short form amalgamation with its wholly owned subsidiary, Medoro Resources (B.C.) Ltd., pursuant to a certificate of amalgamation issued by the Registrar of Companies, British Columbia and through which the securities of the company were not affected. See **Ex. C-2**, Certificate of Amalgamation between Gran Colombia Gold Corp. and Medoro Resources (B.C.) Inc., dated 1 January 2017; see also **Ex. C-3**, Articles of Incorporation of Gran Colombia Gold Corp., effective 1 January 2017. All exhibits referred to herein consist of true copies of original documents. Where exhibits consist of excerpts of documents, these excerpts constitute true and complete excerpts of the relevant parts of said documents.

² **Ex. CL-1**, Free Trade Agreement between Canada and the Republic of Colombia, signed on 21 November 2008 and entered into force on 15 August 2011 (“Canada-Colombia FTA”).

³ See **Ex. C-4**, Certificate of Existence and Representation for Zandor Capital S.A. Colombia, dated 25 April 2018. GCG indirectly owns Zandor, a company incorporated under the laws of Panama, through its ownership of 100% of the issued and outstanding share capital of Grand Colombia Gold S.A. (“**GCGSA**”), a company incorporated and existing under the laws of Panama, which owns 100% of the issued and outstanding share capital of Zandor. Recently, the Panamanian entity Zandor has changed its name to “Gran Colombia Gold Segovia S.A.” (“**Zandor Panama**”).

⁴ See **Ex. C-5**, Certificate of Existence and Representation for Minerales Andinos de Occidente S.A.S., dated 25 April 2018. GCG indirectly owns the issued and outstanding share capital of MAO.

(“**Mineros**”)⁵; and Minera Croesus S.A.S., a company established in Colombia (“**Croesus**”).⁶ Together, these four (4) enterprises are referred to herein as the “**Companies**”.

4. GCG has notified Colombia of its intent to submit the present claim to arbitration in its letter dated 10 October 2016 (the “**Notice of Intent**”).⁷ In accordance with Article 821(2)(c) of the FTA, Claimant delivered the Notice of Intent with regard to the present dispute on 12 October 2016. Colombia acknowledged receipt of the Notice of Intent by letter dated 25 October 2016.⁸
5. By letter dated 18 November 2016, Colombia confirmed that the Notice of Intent complied with the requirements established in the FTA and proposed to convene a meeting between the parties in November 2016 in order to begin the negotiations process pursuant to Article 821 of the FTA.⁹ Regrettably, this and subsequent meetings between the parties ultimately proved fruitless and, following several communications from GCG that went unanswered by Colombia, GCG informed the Republic of Colombia by letter dated August 2017 that negotiations between the parties had ended and that it would pursue arbitration.¹⁰

⁵ See **Ex. C-6**, Certificate of Existence and Representation for Mineros Nacionales S.A.S., dated 25 April 2018. GCG indirectly owns the issued and outstanding capital of Mineros.

⁶ See **Ex. C-7**, Certificate of Existence and Representation for Minera Croesus S.A.S., dated 25 April 2018. GCG indirectly owns the issued and outstanding capital of Croesus.

⁷ See **Ex. C-8**, Notice of Intent to submit the claim to arbitration with Annexes 1-6 attached thereto, dated 10 October 2016 (“Notice of Intent with Annexes 1-6”).

⁸ See **Ex. C-9**, Correspondence and the Minutes of the April 2017 Meeting between Gran Colombia Gold Corp. and the Republic of Colombia following Gran Colombia Gold Corp.’s Notice of Intent, dated 25 October 2016 - August 2017.

⁹ See *id.*

¹⁰ The parties’ first meeting was held on 25 November 2016. GCG and Colombia exchanged a series of correspondences thereafter. Following another meeting between the parties on 19 April 2017, the parties signed a written agreement to extend the terms of negotiation provided in Article 821 of the FTA, originally set to expire on 12 April 2017, until 22 July 2017, in order to undertake efforts to try and reach an amicable settlement. Then, from May through July 2017, GCG made several attempts to communicate with Colombia, urging Colombia to negotiate with GCG and inquiring as to whether Colombia wished to continue negotiations. Colombia only responded to GCG’s last letter, from July 2017, in which it informed GCG that its proposal was still being evaluated and that Colombia was still searching for potential solutions. GCG’s follow-up letters requesting an update were left unanswered. Thus, by letter dated August 2017, GCG informed Colombia that the negotiations period between the parties had ended and that it would move forward with arbitration. Once again, Colombia never responded. See *id.*

6. GCG has taken all the necessary actions to authorize the submission of this Request to ICSID and has duly authorized the undersigned counsel to institute and pursue arbitration proceedings on its behalf against Colombia pursuant to the ICSID Convention and the Treaty.¹¹ Furthermore, GCG and the Companies have waived their right to initiate or continue proceedings with respect to the impugned measures before any administrative tribunal or court in Colombia, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, for the sole purpose of preserving GCG's and the Companies' rights and interests, in accordance with Article 821 of the Treaty.¹²
7. GCG brings this claim in relation to Colombia's measures and its failure to take required actions which have resulted and continue to result in the destruction of the value of GCG's investments in the Colombian mining sector and are depriving GCG of its rights in hundreds of mining titles that it holds through the Companies. These mining titles relate to gold and silver deposits that are located primarily in the municipality of Marmato ("**Marmato**"), in the Department of Caldas, and the neighbor municipalities of Segovia and Remedios ("**Segovia-Remedios**" or "**Segovia**"), in the Department of Antioquia. Under these titles, which are registered by the Colombian National Mining Registry, the State conferred on GCG (through the Companies) the exclusive right to explore and mine territories within the title areas.
8. GCG is one of several foreign mining companies to invest in the Colombian gold and silver mining sectors, having made one of the largest investments in the country's gold sector. Through various acquisitions described in detail below, GCG first invested in Segovia in 2010 and in Marmato in 2011.
9. In 2010, GCG, through its subsidiary Zandor, acquired all of the assets belonging to the Colombian-registered branch of Frontino Gold Mines Ltd. ("**FGM**") in the midst of FGM's liquidation as well as certain mining titles formally owned by a private vendor. The assets

¹¹ **Ex. C-10**, Power of Attorney granted by Gran Colombia Gold Corp. to attorneys of Dentons US LLP and Dentons Cardenas & Cardenas Abogados S.A.S., dated 11 May 2018.

¹² **Ex. C-11**, Consents and Waivers of Gran Colombia Gold Corp., Minera Croesus S.A.S., Minerales Andinos de Occidente S.A.S., Mineros Nacionales S.A.S., and Zandor Capital S.A. Colombia, dated 11 May 2018 ("**Consents and Waivers of GCG and the Companies**").

acquired from FGM and a private vendor, including Private Property Recognition of a Mining Title (RPP) 140¹³ covering an area of nearly 3,000 hectares, and mining concession contracts covering an area of approximately 6,000 hectares, are referred to herein as “**Segovia Project**”.

10. In 2011, through a merger with Medoro Resources Ltd. (“**Medoro**”), GCG acquired 100% of Medoro’s interest in its mining rights in Marmato (the “**Marmato Project**”). These rights include an interest in three primary areas in the Marmato region: Zona Baja, Zona Alta and Echandía. In addition to the mining titles of Medoro, and as part of the Marmato Project, GCG purchased over one hundred mining titles in the region and issued payments to illegal miners to cease their work in mines located within GCG’s mining title areas.
11. GCG has invested over US\$700,000,000 to acquire and develop its mining project in Colombia, including the Marmato and Segovia Projects by, among other things, constructing and improving the infrastructure throughout its mining areas and neighboring towns, including investing in mine infrastructure upgrades, ventilation, health, safety and environmental initiatives, mine equipment, storage facilities, and conducting various exploration programs and ongoing drilling campaigns.
12. As part of its investments, GCG has continually re-affirmed its commitment to social responsibility initiatives in the Segovia-Remedios and Marmato regions by, among other things, contributing nearly US\$2 million to Marmato and the surrounding towns for the construction of the “Hospital of San Antonio of Marmato,” a modern, state-of-the-art hospital, housing various specialists, such as optometrists and ultrasound technicians, to care for and treat local residents, constructing an administrative center and new school, among other community projects, and acquiring new equipment and supplies for the hospital. Additionally, GCG pays royalties of roughly 4% to the national government on the value of its production as well as a 6% special administrative fee for certain of its mining titles

¹³ An RPP, or Private Property Recognition of a Mining Title (*Reconocimiento de Propiedad Privada*), is not a concession contract. Rather, it is a unique type of mining title created under Law No. 20 of 1969, which grants mining rights in perpetuity. RPP-140, originally granted to FGM and now held by Zandor, was granted in perpetuity until the depletion of mineral resources in the area covered by the title. Since RPP-140 is not a mining concession, it is not beholden to the same obligations as a concession would be. The main legal obligation that the titleholder of RPP-140 has is not to suspend exploitation for more than one year.

payable to the local authorities in Marmato, totaling approximately US\$19 million in royalty and license payments for the time that it has been operating in the Marmato region. Similarly, in Segovia, GCG has promoted various social and economic initiatives, including supporting education among children by funding the operating costs of the “La Salada” school and granting scholarships for 350 students; fostering health and wellness through health and disease prevention campaigns; donating a hospital for the town; helping with building water treatment facilities; providing training in industrial safety for small scale miners; repairing and upgrading several schools and houses for senior citizens; and investing nearly US\$1 million in the construction of new roads and maintenance of existing roads. Separately, GCG also pays production royalties of 4.4% to the national government, totaling approximately US\$6.6 million for the fiscal 2017 year alone, for ore extracted from its Segovia mines.

13. To address growing environmental concerns related to illegal mining, in August 2012, GCG joined the Global Mercury Project, which began in 2002 to combat mercury contamination of the environment owing to the use of outdated mining methods in small-scale gold mining. The objectives of the project have been to introduce cleaner technologies, train miners, develop regulatory capacities within national and regional governments, conduct environmental and health assessments, and build capacity within participating countries to continue monitoring mercury pollution after projects finish. GCG also joined “Legal Gold,” an initiative sponsored by the United States Agency for International Development (“USAID”) to promote the formalization and legalization of illegal miners in Colombia. Through the program, GCG works to improve the lives and livelihood of illegal miners operative within its mining titles.
14. GCG directly employs approximately 2,500 staff in Colombia and also contracts with thousands of local contract miners in Segovia. Since 2010, GCG has completed more than 150,000 meters of drilling in Segovia and 120,000 meters of drilling in Marmato. As a result of its gold exploration efforts, GCG has discovered and assessed invaluable new gold deposits, the exploitation of which could potentially generate hundreds of millions of dollars’ worth of new revenues for the State and economic benefits for the Segovia and Marmato communities. For example, in Marmato alone, GCG has discovered nearly 11.8 million

ounces of gold in measured and indicated resources. GCG also assessed comparably significant increases in silver deposits throughout its mining areas.

15. GCG's investments were made in reliance upon the specific commitments made by Colombia pursuant to the exclusive mining titles it granted, including the exclusive right to explore and exploit mineral resources in GCG's title areas, and the right to sell the mineral resources that GCG extracted on the international market subject to the payment of applicable royalties and taxes. Implicit in Colombia's granting and registration of these exclusive mining titles was the understanding that Colombia would protect GCG's mining rights as against third parties.
16. Yet through its years of operation, the vast majority of GCG's mining titles have been plagued by illegal miners who occupy the territory and work in groups (even through well-known local associations) to exploit GCG's mines without authorization and without legal title to the mines.



Figure 1. Illegal mining operations have thrived in GCG's mining title areas as operations increase in size, taking over the countryside as shown above in the photo of the Cogote mine in Segovia.

17. These trespassers have profited handsomely from the mining titles granted exclusively to GCG pursuant to national law, depleting GCG's gold reserves and resources, and obstructing its legitimate mining works; have operated in disregard of labor, fiscal, mining and environmental regulations, subjecting GCG to liability as a result of their actions; and have accordingly created significant risk not only to themselves but to GCG's employees legally mining in the title areas, the inhabitants and environment in the surrounding areas, and have endangered the physical integrity of GCG's mines and the infrastructure of the town in Segovia.



Figure 2. Lack of proper safety equipment creates a dangerous work environment for illegal miners who often climb down into narrow mine shafts without a harness or sufficient lighting, as this miner is doing at Mina Estrella de Orión in Segovia.

18. Additionally, periodic violent civil unrest instigated by these illegal miners has beset the regions in which GCG's mining titles are located since at least 2011. Ignoring GCG's and the Companies' pleas for help, the Colombian National Police, the Colombian army, the Mayors of Marmato and Segovia, the Governments of Caldas and Antioquia, the Colombian central government, the autonomous entities in charge of overseeing compliance with applicable laws, and the courts, have consistently failed to take the necessary measures and actions to protect GCG's operations from this unrest, resulting in substantial damages to the Company, including environmental damage, physical damage to GCG's general offices

located around the mines, nearby houses owned by GCG, and the company's drilling equipment and other assets, not to mention psychological and physiological damage to GCG's workers, many of whom have been threatened by protesting illegal miners, told not to show up for work, and even held against their will. If not for the failure at almost every level of government - from local mayors to national government agencies - to protect GCG's investments and for the ongoing civil disruptions, GCG could have produced more gold. For instance, in 2017, GCG lost thousands of ounces of production as a result of the shutdown because of civil disruption.

19. Despite GCG's and the Companies' clear and exclusive titles, administrative actions by the Companies for the eviction of illegal miners have remained largely unresolved before Colombian authorities. The key means of legal recourse at the national level for GCG is the administrative action (*amparo administrativo*). Established under Colombian Mining Law No. 685 of 2001, the administrative action was created specifically to protect mining entities' legal rights (*i.e.*, rights to explore and/or exploit minerals under a legally granted mining title) by providing a process through which an entity like GCG could submit a request to evict trespassers from its mining title areas to Colombia's national mining authorities, such as the National Mining Agency (*Agencia Nacional de Minería de Colombia*) ("NMA"), or to the mayor of the corresponding municipality. Upon receipt of an application to evict illegal miners, the NMA (or the mayor, as applicable) conducts an inspection of the area in question in order to verify illegal activity. Once such activity is confirmed, the NMA issues an eviction order against the trespassers, which the mining entity can then present to the local mayor for enforcement. The mayor, assisted by the police force, is then required to enforce the eviction order.
20. Since 2010, GCG has employed numerous legal avenues available at its disposal to evict the trespassing miners, including filing well over 400 administrative actions and petitions before Colombian authorities for the protection of their mining titles and the eviction of illegal miners. Most of these actions have remained pending before the NMA for years and only a small fraction of these matters have resulted in final and binding eviction orders. And even then, despite the binding nature of these eviction orders, the State, including the Mayors of Marmato and Segovia - the officials tasked with executing the eviction orders - and the

National Police, has failed to enforce the vast majority of them. Regional authorities in control of the police force and other State apparatuses have even informed GCG that they will not enforce eviction orders or provide much-needed protection and security to GCG in its operations in the Marmato and Segovia regions.

21. This willful failure by every level of government - from executive agencies to the judicial branch to the heads of municipalities and regional governments and to the National Police - to take necessary measures under the law continues to deprive GCG and the Companies of their rights under the mining titles. This has severely affected the commercial production of the deposits that belong to GCG in the Marmato and Segovia regions.
22. Moreover, Colombia has deprived GCG of further rights under the mining titles as a result of the unprecedented Constitutional Court decision in Case No. SU-133, decided on 28 February 2017, concerning the Villonza mine in the Marmato area,¹⁴ which effectively suspended mining activities in certain exclusive mining rights and titles of GCG and its Companies. The plurality decision was not based on any reasonable legal grounds and made the lifting of the suspension subject to a consultation process with the indigenous communities even though no such requirement exists under the law for companies that have already acquired or been assigned mining rights. More than a year after the court decision was issued, the State has neither conducted such a consultation nor remedied the substantial detrimental impact that the decision has had on the mining titles that the State itself had conferred on GCG's Companies. As a result, mining activities by GCG - the rightful titleholder - remain suspended while illegal mining persists in the area.¹⁵
23. The State's failure to provide full protection and security and fair and equitable treatment to GCG's investments in accordance with national and international law has deprived GCG and

¹⁴ See **Ex. CL-2**, Communication No. 8 regarding the Constitutional Court's decision in Sentence SU-133/17, dated 28 February 2017.

¹⁵ Despite this decision and ongoing illegal mining, GCG has not turned its back on illegal miners in need. For example, on 18 April 2018, an accident at San Pedro mine, an illegal mine within GCG's CHG-081 mining title, trapped 14 illegal miners underground with no way to escape on their own. GCG quickly mobilized an emergency response team, and its team, with assistance from the NMA, rescued all 14 miners. See **Ex. C-12**, "*Exitoso rescate de 14 mineros en Marmato, Caldas*" (*Successful rescue of 14 miners in Marmato, Caldas*), Portafolio (19 April 2018).

its Companies of their exclusive rights under their mining titles, continues to destroy the value of GCG's investments in the Colombian mining sector, and exposes GCG and its Companies to liability for the acts of illegal miners in areas covered by those mining titles. The State's continued failures have directly caused GCG to lose hundreds of millions of dollars in damages including but not limited to: the loss of investments, losses derived from mineral resources illegally stripped from the Company's mines in Marmato and Segovia, lost profits arising from the plundering and destruction of newly proven gold exploration and exploitation opportunities, damage to GCG property caused by illegal miners, and losses caused by production stoppages.

24. In this Request, GCG will establish the jurisdictional and substantive bases of this treaty claim. Specifically, GCG will show that:

- a) Colombia has failed to take measures to provide protection to GCG's investments and has subjected its investments to unfair treatment, as a result depriving GCG of the returns on its investments without paying any compensation (**Section II** below);
- b) Colombia has breached its obligations under the Treaty and under international law (**Section III** below);
- c) GCG is a Canadian investor with investments in Colombia that are protected by the Treaty (**Section IV** below); and
- d) GCG is entitled to initiate these arbitration proceedings because both Colombia and GCG have consented to ICSID arbitration and because all of the conditions to access ICSID arbitration under the ICSID Convention and the Treaty have been fulfilled (**Section V** below).

25. In **Section VI** below, GCG proposes a method to constitute the three-member Tribunal to adjudicate this dispute, along with other procedural matters. The names and addresses of the parties are set out in **Section VII**. GCG sets out its requests for relief in **Section VIII**.

26. GCG reserves its rights to specify, supplement or amend the factual or legal claims and arguments herein, including in the event that Colombia's further conduct breaches its international obligations.

II. THE FACTS RELEVANT TO THE DISPUTE

27. GCG is a gold and silver exploration and development company focused on acquiring, developing, and operating mining properties in Colombia. It holds various mining titles throughout Colombia, including the largest underground gold and silver mining operation in Colombia. It holds these mining titles through the Companies, four (4) subsidiary enterprises operating in Colombia: (i) Zandor, which holds the Segovia Project Mining Titles; (ii) MAO, which holds mining titles to the "Zona Alta" of the Marmato Project; (iii) Mineros, the holder of the "Zona Baja" mining titles of the Marmato Project; and (iv) Croesus, which is the holder of the "Echandía" mining titles of the Marmato Project. GCG directly and indirectly owns and controls each of the Companies.

28. GCG entered the gold mining industry in Colombia when the country was experiencing an economic renaissance brought about, in part, by increased security in the country resulting from decisive government action against illicit forces, growth in foreign investment and favorable gold prices. By 2010, mining, including gold mining, was one of the strongest economic sectors and was touted by the Colombian Ministry of Mines and Energy as a "pillar of the Colombian economy."¹⁶ Colombian government agencies went to great lengths to promote this highly lucrative industry to potential foreign investors by noting that, among other things, the mining boom in Colombia had allowed the country to become one of the few countries in the world to record positive growth in the economy following the global financial crisis of 2008-2009.

29. As part of that State effort, the then-newly elected central government of Colombia identified the mining sector as one of the "engines" of the Colombian economy, enacting a series of legal reforms and new measures aimed at legitimizing and formalizing legal mining titles within its territory, in order to dispel the harmful effects of unofficial, illegal mining and to

¹⁶ See Ex. C-13, Ministry of Mining and Energy, Newsletter No. 12, "Colombian Mining Potential," dated July 2010.

encourage modern and efficient large-scale mining, that would contribute to the official economy and public coffers. To demonstrate the importance of Colombia's mining sector to its economy and Colombia's efforts to create a more pro-investor environment, in 2011, Colombian President Juan Manuel Santos was named Statesman of the year by the Canadian Council for the Americas.

30. Lured in by the promise of lucrative gold mine exploration and production under a legal regime protective of property rights, GCG was eager to enter Colombia's gold mining industry. It began a slow but determined and elaborate process to acquire mining titles by various assignment and purchase agreements, described in more detail below in Section II(A).
31. Since 2010, GCG's primary focus has been to acquire, develop, and operate mining properties throughout Colombia. GCG, through various corporate acquisitions, owns and controls subsidiary enterprises that, in turn, own and operate nearly 120 mining titles.
32. However, what began as an opportune venture to explore and develop gold mines quickly soured as illegal miners plundered GCG's mines while the State did nothing to stop them. Though GCG has sought assistance from the State, filing hundreds of complaints with various municipal and national government agencies, aid and protection have not been forthcoming. To the contrary, the State has actually engaged in efforts to bring GCG and these trespassers together to negotiate for shared use of GCG's mines, legitimizing the trespassers' illegal activities and disregarding the very rights to exclusive use of these mines that the State had granted to GCG in many cases just a few years earlier.
33. These illegal miners claim to have a right to mine in GCG's title areas without any rights or titles under Colombian mining law. Nor do they operate in compliance with Colombian health, safety and environmental laws and regulations. Rather, their illegal activity is the result of the State's continuous failure to evict them from mining title areas owned by those with legal title, like GCG, despite the State's promises to guarantee mining title exclusivity to foreign investors entering the Colombian gold mining industry.
34. Despite GCG's hundreds of pleas to government officials, including hundreds of administrative complaints to the NMA to evict illegal miners (most of which remain

undecided), and dozens of petitions to the Mayors of Segovia-Remedios and Marmato¹⁷ to enforce the few eviction orders granted, trespassers continue to damage and destroy GCG's infrastructure, steal gold and silver ore from GCG's mines, and instigate civil disruptions to prevent GCG's operations. The National Police have not provided the requisite aid to protect GCG's investments from damage nor have they taken action with respect to the few eviction orders granted. The Colombian courts not only have proven unwilling to protect GCG's exclusive legal title, but in one instance actively hindered GCG's legal rights by according preference to the alleged constitutional rights of a group of local individuals to be consulted prior to GCG's mining operations at the Villonza mine, ordering the suspension of GCG's mining operations in the area. The court's highly questionable disregard of GCG's legal rights, conferred by the State under legal due process, undermines GCG's and the Companies' rights under the Treaty.

35. Rather than aid GCG in eliminating these criminal activities by groups that government officials *themselves* have acknowledged have no legal right to mine in GCG's mining title areas, State actors have, in the last two years, attempted to force GCG into "negotiations" to share the mines or have even threatened and suspended GCG's mining titles. Almost every attempt by GCG to enforce its rights and seek protection has been met with silence, rejection, or inaction by State officials. No State actor, whether it be the NMA, the National Police, regional municipal authorities, local mayors, or the courts, has provided the necessary aid or protection to GCG's investments.

¹⁷ **Ex. CL-3**, Excerpts of Colombia's Constitution of 1991 with Amendments through 2015, Article 315. The mayor's role is crucial to GCG's efforts to get rid of illegal miners encroaching on its mines. Pursuant to Article 315(2) of the Colombian Constitution,

The mayor is the highest police authority of the municipality. The National Police will promptly and diligently execute the orders given to it by the mayor through the channel of the respective commander.

As such, only the mayor may execute the eviction orders that the NMA has ordered. Despite the many pleas by GCG, the Mayors of Segovia and Marmato remain recalcitrant in their refusal to execute the orders.

A. GCG's Investments Made in Reliance On Colombia's Commitments

36. GCG was first incorporated under the British Columbia Company Act on 27 May 1982, under the name "Impala Resources Ltd." For the next decade, GCG underwent several name changes, and by 22 December 2004 had adopted the name "Tapestry Resource Corp."¹⁸
37. On 13 August 2010, in connection with a reverse takeover transaction ("**RTO**") of GCGSA, the Company changed its name from Tapestry Resource Corp. to "Gran Colombia Gold Corp." As part of the RTO process, GCGSA completed two rounds of private placement pursuant to which it raised nearly C\$300,000,000 (over US\$290,000,000) by the end of July 2010.
38. On 17 August 2010, GCGSA loaned COP\$372,500,000,000 (US\$205,600,202) (the "**Principal Amount**") to Zandor Panama (now called Gran Colombia Gold Segovia S.A.), then a wholly-owned Panamanian subsidiary of Medoro and the holder of a purchase agreement to acquire mining assets belonging to FGM, a mining enterprise in liquidation in Colombia. On 18 August 2010, Zandor Panama used the Principal Amount to complete the acquisition of all of FGM's assets (the "**FGM Acquisition**"). These assets, *i.e.* the Segovia Project, included mining title RPP-140, which covers GCG's largest mining areas in the Segovia-Remedios region, and other related assets located in the municipality of Segovia.
39. As part of the FGM Acquisition, Zandor Panama agreed, among other things, to (i) take over FGM's pension liability by which Zandor Panama would make monthly health contribution payments to the pensioners of FGM, which amount to approximately US\$87,000 per month (over US\$1 million per year) and (ii) pay a royalty averaging around ranging from US\$4 to US\$56 per ounce of produced gold (tied to the gold market price) to a trust fund as a "social contribution" for the benefit of the communities of Segovia and Remedios. In 2017 such contribution neared US\$4 million.

¹⁸ On August 26, 1987, Impala Resources Ltd. changed its name to "International Impala Resources Ltd.;" on November 13, 1992, the Company then changed its name to "Tapestry Ventures Ltd.;" and on December 22, 2004, Tapestry Ventures Ltd. changed its name to "Tapestry Resource Corp."

40. On 19 August 2010, the Principal Amount was converted into shares in Zandor Panama, resulting in GCGSA acquiring a 95% equity interest in Zandor Panama with Medoro retaining a 5% equity interest in Zandor Panama. Around the same time, GCGSA, Medoro, and Zandor entered into a joint venture agreement setting out the parties' rights and obligations with respect to their ownership shares in the capital of Zandor. By 7 September 2010, GCG had taken managerial and operational control of the Segovia Project.
41. On 13 April 2011, GCG announced that it had entered into an agreement with Medoro, pursuant to which GCG was to acquire all of the issued and outstanding securities owned by Medoro. As a result of the merger, GCG acquired 100% of Medoro's interest in mining titles in the region of Marmato, *i.e.* the Marmato Project, as well as Medoro's remaining 5% interest in Zandor Panama, thereby increasing GCG's interest in Zandor Panama from 95% to 100% and, consequently, completing its indirect whole ownership of the Segovia Project.
42. GCG has made over US\$700,000,000 in total investments related to its Colombian mining assets. In addition to the acquisition costs of the Segovia Project and Marmato Project mining assets, since becoming the owner of the Segovia and Marmato Projects, GCG has also invested significantly in various infrastructure projects, including numerous exploration programs and drilling campaigns, mine infrastructure upgrades, and ventilation, health, safety and environmental works. GCG has also acquired other mining projects in Colombia: Mazamorra, for US\$4,000,000 (of which US\$2,700,000 have been paid to date); Zancudo, for US\$15,000,000; and Providencia, for US\$900,000. GCG also pays various royalties and taxes to national and local authorities, including a 4% general royalty, as well as 6% special administrative fee for certain of its mining titles, totaling approximately US\$19 million in royalty and license payments for the time that it has been operating in the Marmato region, as well as production taxes of 4.4% that it pays to the national government, totaling approximately US\$6.6 million for the fiscal 2017 year alone, for ore extracted from its Segovia mines.
43. In addition, GCG has invested in various social and environmental initiatives to improve the lives of the inhabitants neighboring GCG's mines. For example, GCG has contributed almost US\$2 million to Marmato and the surrounding towns for the construction of the Hospital of

San Antonio of Marmato, a modern, state-of-the-art hospital to care for and treat local residents; acquired new equipment and supplies for the hospital; built the “El Llano” town to accommodate the inhabitants of the dilapidated town of Marmato; and constructed an administrative center and new school, among other community projects. In Segovia, GCG has funded operating costs of a school and granted scholarships for 350 students; repaired schools and two senior citizen half-way centers; fostered health and wellness through health and disease prevention campaigns; provided training in industrial safety for small-scale miners; and invested nearly US\$1 million in the construction of new roads and maintenance of existing roads and schools.

1. The Segovia Project

44. The Segovia Project includes gold mining titles in and around the municipalities of Remedios and Segovia, in the Department of Antioquia, Colombia, approximately 180 kilometers northeast of the departmental capital city of Medellín.¹⁹ GCG, through its 100% interest in Zandor, maintains full control and ownership of mining titles that comprise the Segovia Project, which includes twelve separate mining titles as follows:

- Mining Private Property Recognition RPP-140, “Ñemeñeme”, awarded under Law 20 of 1969;
- Exploration licenses Nos. 3854 and 3855, awarded under the former Mining Code, Decree 2655 of 1988; and
- Mining concession contracts Nos. 4998, 5995, 6000, 6038, 6045, 6046, 6048 (50% undivided interest, with the remaining 50% held by Nugget S.A.S.), 7367 and 7520, awarded under the current Mining Code, Law 685 of 2001.

45. GCG has sought to develop its gold and silver assets in the region in accordance with a geological and environmental report developed in 2010 and submitted pursuant to the National Instrument 43-101 Standards of Disclosure for Mineral Projects, a set of disclosure procedures laid out by Canadian authorities. GCG’s reports on the Segovia Project have

¹⁹ See **Ex. C-14**, Map of the Segovia Project as of April 2018.

been updated several times since 2010, including the latest pre-feasibility report dated as of May 2018.

46. GCG established national offices in Colombia in the national capital of Bogotá and departmental capital of Medellín in order to maintain close cooperative relations with Colombia's Ministry of Mining, the NMA, and other regulatory entities, and to keep a watchful eye over its business operations in the area.

2. The Marmato Project

47. The Marmato Project is located in the municipality of Marmato, Department of Caldas, Colombia, roughly 125 kilometers south of Medellín. The project is currently divided into three zones: Zona Alta (operated by MAO), Zona Baja (operated by Mineros), and Echandía (operated by Croesus).²⁰ Together, these three zones comprise 103 mining titles (the “**Marmato Mining Titles**”).²¹

48. The following is the current breakdown of GCG's indirect (and the Companies' direct) ownership of the Marmato Mining Titles:

- MAO is the sole beneficiary and current holder of record for ninety-one (91) of the 103 mining titles;
- MAO is the current holder of record of a 50% undivided interest, and the sole beneficiary and beneficial owner in the remaining 50% undivided interest of three (3) of the 103 mining titles, pending approval and/or registration of MAO as the holder of record;
- MAO is the sole beneficiary and beneficial owner of two (2) of the 103 mining titles, pending approval and/or registration of MAO as the holder of record;
- MAO is the current holder of record of 50% undivided interest in three (3) of the 103 mining titles, with the remaining 50% interest being held by private owners;

²⁰ See **Ex. C-15**, Map of the Marmato Project as of April 2018.

²¹ See **Ex. C-8**, Notice of Intent with Annexes 1-6, Annex 4, listing all 103 mining titles.

- MAO is the current holder of record of a 97.222% interest in Mining Title CHG-081, with Mineros holding the remaining 2.7778% undivided interest therein;
- Mineros is the sole beneficiary and current holder of record of Mining Title No. 014-89; and
- Croesus is the sole beneficiary and current holder of record of Mining Titles Nos. 127-95M and RPP-357.²²

B. Colombia's Continuous Failure to Take Measures and its Impact on GCG's Investments

49. For more than seven years, the State has and continues to undermine GCG's efforts to conduct its business in Colombia. State organs - from the NMA to the Mayors of Segovia and Marmato to the Constitutional Court - have whittled away at what were supposed to be GCG's and the Companies' exclusive rights to mine, conferred directly by the State. Other State actors, such as the National Police, have done little or nothing to assist GCG in protecting its investments. The State's ongoing failures are at least three-fold.
50. First, the NMA has failed to render decisions on the overwhelming majority of administrative complaints filed by GCG, requesting that illegal miners on its properties be evicted; of the few eviction orders actually granted by the NMA, the Mayors of Segovia and Marmato have refused to enforce nearly all of them; the State's judiciary has proven ineffective recourse for GCG; and no higher State authority, including the National Police, has intervened to execute the eviction orders or protect GCG's investments.
51. Second, the State has effectively stripped the exclusive rights held by GCG and the Companies in their mining titles of meaning by failing to evict illegal miners as promised and required by law, thus leaving GCG no choice but to engage in negotiations with illegal miners.
52. Third, the suspension and threatened cancellation of GCG's Marmato Mining Title for Villonza by the State's judiciary, and the Colombian government's subsequent failure to

²² See *supra* for the discussion on RPPs, ¶ 9 n.13.

remedy the situation, constitutes a total disregard of GCG's and the Companies' rights, as well as a reversal of policy by the State with regard to its commitment to GCG's mining titles.

53. Section II(B)(1) below provides details on illegal mining and civil unrest in the Segovia-Remedios regions, which have severely depreciated GCG's investments in the region. Section II(B)(2) below describes the GCG's failed attempts to hold on to its exclusive right to the Marmato-region mining titles, thwarted by ongoing interference by illegal miners and a decision rendered by the Constitutional Court which shut down GCG's mining operations in its largest mine in lieu of enforcing an eviction order.

1. Illegal Mining and Civil Unrest in Segovia-Remedios Has Harmed GCG's Mining Activities in the Segovia Project

54. Since its acquisition by GCG, the Segovia Project has been plagued by recurring disruptive acts of violence conducted by illegal miners operating within GCG's mining titles in the Segovia-Remedios region and who continue to mine and steal gold that only GCG can legally extract.²³ As more fully described below, these miners have instigated major blockades and acts of vandalism, which have often prevented GCG personnel from accessing GCG mines and other properties, and have caused significant physical damage to GCG's property. For example, the last major civil disruption by illegal miners lasted for 42 days during the summer of 2017 and resulted in a production loss for GCG totaling thousands of ounces of gold. Despite GCG's efforts to remove these miners from GCG mining premises, illegal miners have persisted in digging undocumented and substandard tunnels, risking not only their own safety but also the safety of miners employed by GCG. These illegal miners' unregulated exploits and practices endanger the integrity of GCG's mines and have caused significant environmental damage to the area immediately surrounding the mines.

²³ In some cases, illegal miners have actively worked with armed groups to conduct their mining operations. As foreign investors have flocked to Colombia, lured in by the promise of exclusive mining rights, local gangs, including leftist guerillas, neo-paramilitary groups, and drug trafficking rings, have established their presence throughout the State, including in the department of Antioquia, to control mining operations. These groups work with illegal miners in the area to extract gold. By 2016, illegal mining brought in roughly US\$7,000,000,000 per year to armed groups and criminal bands, with Antioquia being a major center of illegal gold commerce. See **Ex. C-16**, "Así 'lavan' el oro de la minería ilegal en el país" (*This is how the gold from illegal mining in the country is 'laundered'*), Portafolio (10 June 2016).

55. The Colombian legal system has proven wholly ineffective in each of GCG's myriad efforts to seek relief, with all relevant State authorities stalling the matter and prolonging the status quo. GCG has commenced upwards of 200 separate administrative and court actions to remove illegal miners from its Segovia mining areas. Even though many of these administrative and court actions date back five or more years, the vast majority have not even been decided in the first instance.²⁴ In fact, to date, across the more than 200 Segovia-related actions commenced by GCG and the Companies, the NMA has only issued a decision in 35 instances. Of those, 22 have been decided in GCG's favor. Yet even then, only two have led to the eviction of illegal miners from the area.²⁵ In both cases, however, the relief was of little consequence as, by the time that these two eviction orders were to be enforced, the illegal miners had completed their mining works and voluntarily left the area. For the remaining 20 actions where eviction orders were entered, the government has failed to take any action to enforce these official rulings and evict the illegal miners.²⁶ The Mayor of Segovia, who is responsible for implementing the eviction orders has, time and again, expressly refused to enforce these orders, and neither the Government of Antioquia, the national government of Colombia, nor the police force have responded to GCG's efforts to persuade the Mayor to enforce the eviction order.

56. Moreover, GCG has had to withdraw 19 of its administrative complaints due to the NMA's inertia. In these instances, the NMA waited so long to act that illegal miners were able to strip the particular mines of all mineral resources and then abandon the mines completely, rendering GCG's request to evict the miners moot.

²⁴ **Ex. C-17**, Tables with Schedules of Administrative Actions for Segovia.

²⁵ These are the El Bambu 2 Mine, effectively evicted on 8 September 2017, and La Iraca Mine, effectively evicted on 23 March 2017.

²⁶ GCG has been successful in obtaining eviction orders at the following mines, but the illegal miners have not yet been evicted: (i) El Guameru Mine; (ii) La Luciana Mine; (iii) La Escalona Mine; (iv) Cordoba Mine; (v) La Milena Mine; (vi) La Pola Mine; (vii) Los Guadales Mine; (viii) La Granja Mine; (ix) El Chocho Mine; (x) El Rumbon Mine; (xi) La Iraca Mine; (xii) La Esmeralda Mine; (xiii) La Nevera Mine; (xiv) Lingote Gold Mine; (xv) El Cagui Mine; (xvi) La Luna Mine; (xvii) La Esperanza 3 Mine; (xviii); Las Runas Mine; (xix) El Cogote Mine; and (xx) LA 29 Mine.

57. The Colombian government's conduct towards GCG and the Companies stands in stark contrast to the level of aid and protection it has offered to numerous other similarly-situated mining companies. As one recent example, in 2016, a formal security council organized by the national army and regional police commander for the municipality of Buriticá in Antioquia, and comprised of national and regional police authorities, carried out operations to evict illegal miners operating in mining areas owned by Continental Gold Inc. ("**Continental Gold**"), a Canadian entity engaged in gold mining operations in Antioquia, Colombia.²⁷ The NMA had ordered local authorities, with the participation of Continental Gold as legal title holder in the area, to formally close down illegal operations, all without any harm to Continental Gold's operations. Other examples of effective interventions, involving other foreign and Colombian enterprises, can be found in, *inter alia*, the Colombian gold mining and coal mining sectors.

58. Such disparate treatment is inexplicable given the many ways in which these mining companies and GCG are similar, including that most of these mining enterprises are operating in the same industry and often even in nearby regions, facing the same or substantially similar issues with respect to illegal miners trespassing on their mining properties and extracting gold and other minerals without legal title or permission. The Colombian government has acted swiftly and determinedly in response to other mining companies' pleas to remove illegal miners from their title areas, enlisting authorities at both the national and regional levels of government and demonstrating that it can, when so inclined, easily and adequately protect investors from illegal trespassers and miners.

i. Illegal Miners in and Around El Cogote Have Harmed GCG's Investments While the Colombian Government Has Failed to Take the Necessary Measures to Protect GCG's Investments

59. GCG's efforts to evict illegal miners part of an organized group called the El Cogote Association ("**ECA**"), operating in the RPP-140 mining title area, exemplify the government's utter failure to protect GCG's investments.

²⁷ See **Ex. C-18**, Continental Gold Inc. Press Release, "Continental Gold Announces Government Measures for Eviction of Illegal Informal Mines in Buriticá," dated 18 January 2016.

60. Prior to the FGM Acquisition on 19 August 2010, on 19 September 2003, FGM had granted a “loan use” (the “**Comodato**”) to the ECA over Ñemeñeme, a property located in the RPP-140 title area. Under the Comodato, ECA was permitted to explore and exploit minerals in the region for a term of ten (10) years, ending on 19 September 2013. Despite the expiration of the Comodato, the ECA continued exploiting minerals in the area illegally.
61. In response, GCG, through Zandor, filed an Administrative Action with the NMA in order to (i) stop ECA’s illegal activities in the RPP-140 area and (ii) evict the ECA illegal miners from the area. On 4 March 2015, the NMA granted Zandor’s request, issuing an eviction order to be enforced by the Mayor of Segovia (the “**Segovia Eviction Order**”).
62. GCG petitioned the Mayor of Segovia to enforce the Segovia Eviction Order, but its request fell on deaf ears. The Mayor refused to enforce the order. Rather than compelling the Mayor to observe the law, the Government of Antioquia, the Ministry of Mines and Energy, and the NMA pushed GCG to negotiate an operation contract that would allow the ECA to operate the mine even though the ECA otherwise had no right to do so. Though GCG made efforts to negotiate, the ECA in bad faith repeatedly failed to attend meetings and comply with the schedule set by the parties, and never responded to the proposed contract, preferring instead to benefit from the status quo.
63. Following failed negotiations, GCG once again attempted to compel the Mayor of Segovia to enforce the Segovia Eviction Order. Like the petition before it, this petition, too, was unsuccessful. Running out of recourse, GCG turned to the Colombian courts, seeking relief before the Administrative Tribunal of Antioquia by filing a request to enforce the Segovia Eviction Order. The tribunal refused to do so, leaving GCG with an eviction order that no branch of the Colombian government is willing to enforce. Illegal mining continues.
64. Not only has illegal mining robbed GCG of its gold reserves, it also presents a danger to illegal miners themselves as well as the public at large. Illegal mines do not comport with Colombian health and safety laws and regulations and have caused significant damage to surrounding areas. For example, in April 2014, the local hospital in Segovia had to be evacuated and demolished after suffering integral infrastructure problems as a result of illegal mining (underground activities by illegal miners damaged the foundations of the structure).

Segovians were thus left stranded without a functioning hospital. So, GCG donated to Segovia its own private hospital, “La Salada”, so that it could be used by the wider public. The Department of Antioquia allocated money to remodel and adapt the hospital to the needs of the more than 34,000 inhabitants of Segovia and GCG also donated money and equipment to outfit the hospital for the broader public.



Figure 3. Severe infrastructure problems in the local hospital in Segovia were primarily caused by underground illegal mining.

ii. Civil Disruptions and Violence Caused by Illegal Miners Are Substantially Depreciating the Value of GCG’s Investments

65. In addition to illegal mining activities at El Cogote and other mines (*see supra*, Section II(B)(1)(i)), miners at various locations have engaged in disruptions and violent riots, coinciding temporally with every time that GCG has attempted to evict these miners. These bouts of civil unrest have significantly impaired GCG’s mining operations in Segovia. In some cases, the civil disruption has forced a complete stop to GCG’s mining operations, costing GCG millions of dollars. Civil disruptions have resulted in significant damage to GCG properties and infrastructure.

66. Deprived by government authorities of any other means of redressing these disruptions, GCG tried to negotiate with the illegal miners, but these miners were intransigent, orchestrating major protests in 2016 and 2017 in order to gain leverage at the negotiating table. Bending to

the will of the miners, various government authorities convened a roundtable (*Mesa Institucional* or *Mesa Minera*) to try to force GCG to share access to the gold in its mining titles with individuals and groups whom the Colombian government *itself* acknowledges have no legal right to mine in GCG's mining areas. Even so, illegal miners refused to engage in any constructive dialogue.

67. Growing increasingly combative, from July 2017 - September 2017, a group of illegal miners convened a 42-day period of violent civil unrest in response to increased measures implemented by the Colombian government to restrict illegal mining pursuant to Law No. 169 of 2016, including restrictions on access to the mercury and explosives used by illegal miners in the extraction process, the imposition of new requirements on the processing of ore at certified plants, and the criminalization of illegal mining.²⁸ As a result of the miners' disruptive actions, the majority of GCG's workforce was unable to safely reach the mining areas and report for work. Cars, trucks, and other GCG properties were completely destroyed during the protest and the very safety of GCG personnel was put in jeopardy. Despite being apprised of the situation, the State did nothing to prevent the destruction of GCG's property or protect GCG employees. For every day that the illegal miners protested, GCG incurred millions of dollars in damages.

²⁸ See **Ex. C-19**, Gran Colombia Gold Corp. Press Release, "Gran Colombia Gold Continuing to Negotiate in Good Faith Despite Actions of Illegal Miners in Segovia and Remedios," 31 July 2017.



Figure 4. Firefighters attempt to put out a fire caused by protesting illegal miners during the 42-day civil disruption orchestrated by illegal miners from July 2017 to September 2017.



Figure 5. Property damage to drill rigs caused by the 42-day civil disruption instigated by illegal miners from July 2017 to September 2017.

68. Once again, the State left GCG with no choice but to capitulate in order to stop the violence and to mitigate damages. On 1 September 2017, it abated most of the civil unrest in Segovia by “contracting” with some of the illegal miners in the region, whereby GCG hired them to mine on GCG’s Segovia Titles, for GCG’s benefit, at a price far in excess of that which GCG would normally incur in mining costs during the regular course of business. At the same time, the largest illegal mining operations, including those at El Cogote, refused to contract with GCG and continue to operate illegally to date. While the agreement allowed GCG to continue large-scale mining operations in Segovia, it was, at best, only a cosmetic, and very expensive, stopgap measure that did not address the underlying tensions between the parties involved. Illegal mining persists along with the ever-present fear of more civil disruptions and further damage to GCG’s operations. As it is, prior stoppages caused by illegal miners resulted in GCG’s reduced production and loss of potential production.
69. Respondent’s failure to protect GCG’s mining titles in the Segovia region has substantially depreciated the value of these titles. For example, the profitability of GCG’s mining activities in Segovia has declined significantly now that GCG must share its profits with the Segovia illegal miners while single-handedly covering the cost of supervising the illegal miners’ activities.
70. Just as arduous and costly is GCG’s impossible task of ensuring the miners’ compliance with safety and environmental regulations while unable to control their conduct. The illegal miners’ methods for extracting gold pose serious environmental and community risks, including mercury poisoning, around GCG’s mines as illegal mining persists.²⁹ In response, GCG joined the Global Mercury Project in order to tackle the environmental issue of mercury contamination from such small-scale gold mining.³⁰ Yet despite GCG’s best efforts, the threat of mercury poisoning persists. While GCG has made efforts to improve the lives of illegal miners by joining USAID’s “Legal Gold” initiative, many illegal miners within

²⁹ The danger of mercury poisoning is particularly prescient in Segovia, where ground-level concentrations of mercury gas are so high that experts fear an immediate outbreak of an environmental health crisis. See **Ex. C-20**, Shefa Siegel, “Threat of Mercury Poisoning Rises With Gold Mining Boom”, YaleEnvironment360, dated 3 January 2011.

³⁰ See ¶ 13 *supra*.

GCG's mining titles have refused such assistance and continue to use outdated and unsafe extraction methods that endanger their lives and the surrounding environment.

2. Illegal Mining Has Harmed GCG's Mining Activities in the Marmato Project

71. Since at least 2010, GCG's mining activities in Marmato have been severely encumbered by the presence of illegal miners who have engaged in mining activities spanning several of GCG's mining title areas and have caused major civil disruptions and substantial damage to GCG's mining operations in the region. As a result, MAO, Mineros, and Croesus, the direct mining title holders of the Marmato mines, have commenced over 200 administrative actions requesting the eviction of illegal miners in the Marmato mining areas, out of which only 92 have been decided by the authorities and only 76 have been decided in GCG's favor. Yet even when eviction orders were granted, no evictions were carried out. Rather, GCG's every effort to evict the illegal miners has been stymied by municipal authorities who have stalwartly refused to execute those eviction orders granted against illegal miners and by politically biased Colombian courts that have inappropriately applied law retroactively in order to impede execution of the eviction orders. What follows are examples of the State's repeated failures to take action to enforce the eviction orders and protect GCG's mining titles under the Marmato Project.

i. Colombia Has Failed to Take Action to Protect GCG's Investments in Title CHG-081

72. GCG's years-long saga to evict illegal miners in its CHG-081 mining title area has been beset by an intransigent municipal authority refusing to abide by an eviction order and a Constitutional Court so addled by judicial activism that it has brought a full stop to GCG's operating plans at the Villonza mine, while illegal mining continues at the mine, costing GCG millions of dollars in lost mineral deposits, destroyed infrastructure, and increased risk in operations due to physical instability of its mines as a result of illegal mining methods. On 1 September 2010, in response to a petition by MAO, GCG's subsidiary holding the CHG-081 mining title, the Secretary of Mines of Antioquia in Medellín issued an eviction order (the "**Marmato Eviction Order**") providing for the eviction of illegal miners within CHG-081's areas and ordering the Mayor of Marmato to enforce it.

73. GCG's attempts to enforce the Marmato Eviction Order immediately failed when the Ombudsman of the Municipality of Marmato (*Personería del Municipio de Marmato*) issued an opinion that the Marmato Eviction Order might potentially violate the constitutional rights of the individuals and families working in affected mining areas. The Marmato Eviction Order was thus suspended pending mediation between MAO and the illegal miners. Mediation proved fruitless. On 4 October 2013, after two years during which the State failed and refused to enforce the Marmato Eviction Order, MAO requested the suspension of all obligations related to several mining contracts, including CHG-081, claiming a *force majeure* event as a result of government authorities' failure to enforce eviction orders, including the Marmato Eviction Order, that led to MAO's inability to perform under its mining titles because of the continued presence of illegal miners.
74. After receiving no reply to its October request, in January 2014, MAO again petitioned the Mayor of Marmato to carry out the Marmato Eviction Order. The government's unwillingness to evict the illegal miners or accept *force majeure* had placed MAO's mining titles in jeopardy. Not until 6 May 2014 did the Mayor of Marmato notify the illegal miners working in the Villonza mine that, pursuant to the Marmato Eviction Order, closure and eviction of the mines was scheduled to take place on 14 May 2014. Closure of the mine never actually occurred, however, because following this notification, on 10 May 2014, a representative of the miners working in the Villonza mine filed a Claim for the Protection of Constitutional Rights (*Acción de Tutela*) against the NMA, MAO, and Mineros, claiming that they (the petitioners) were never notified of the Marmato Eviction Order, and thus the closure and eviction of the miners was illegal. The court hearing the case issued an interim order suspending closure of the mine and eviction of the miners until such time as a final decision on the constitutionality of the Marmato Eviction Order was reached.
75. On 11 August 2015, MAO once again petitioned the Mayor of Marmato to enforce the Marmato Eviction Order. The Mayor of Marmato responded by offering to hold a meeting to address the situation. That meeting never occurred.
76. Following a total lack of action by the Mayor of Marmato, MAO filed criminal charges against the Mayor, after which the Office of the Attorney General, on 9 February 2016,

requested that the Mayor enforce the order. The Mayor still refused to enforce the Marmato Eviction Order.

77. Then, four “traditional miners” from Marmato brought claims before the Constitutional Court against the Mayor of Marmato, the NMA, MAO and Mineros, claiming, among other things, that their rights to participate in mining in the Marmato region had been stripped from them as a result of State actions that had approved the assignment of mining rights to companies controlled by GCG and that the Marmato Eviction Order violated their right to work.³¹ On 28 February 2017, the Constitutional Court issued a plurality decision annulling the Marmato Eviction Order. Essential to its rationale was its *retroactive application* of the Indigenous and Tribal Peoples Convention of 1989 (the “**ITP Convention**”), which mandates that local indigenous populations be consulted whenever consideration is being given to legislative or administrative measures which may affect them directly. The court determined that the ITP Convention, as incorporated into the Colombian Constitution, afforded inhabitants and traditional miners of Marmato the right to participate in a process through which they would be allowed discuss the impact MAO’s ownership of Title CHG-081 would have on their traditional mining rights.

78. What the court failed to acknowledge was that this right to consultation applies only to proposed new mining titles. It was not intended to provide for a consultation process in a case like GCG’s, where an entity already owned a mining title and assigned it to a third party (GCG). Trying to circumscribe this technical requirement, the Court created its own requirement: that a consultation process is necessary where an assignee has not yet performed exploration or exploitation activities.³²

79. Though MAO and the NMA appealed the decision, the Constitutional Court denied the appeal, and worse still, suspended MAO’s mining rights to Title CHG-081 until such time as the local government authorities in Caldas and the NMA implemented a consultation process inviting the local mining communities to speak. The Constitutional Court’s decision

³¹ See **Ex. CL-2**, Communication No. 8 regarding the Constitutional Court’s decision in Sentence SU-133/17, dated 28 February 2017, p. 1.

³² *Id.*

effectively stripped GCG's rights to mine in the areas listed under Title CHG-081, prohibiting mining activities by GCG in the areas listed under Title CHG-081 while essentially issuing a *carte blanche* to illegal miners to continue their illicit activities at the Villonza mine to this day. Despite the court's mandate that government authorities implement a consultation process, over a year later, a consultation has yet to be organized.



Figure 6. The illegal mine at Mina Esperanza, located within GCG mining title 147-98M in the Marmato region, was created out of roughshod materials and contains no safety features to protect workers.



Figure 7. Illegal miners at Mina Esperanza in Marmato do not wear appropriate safety equipment.

ii. Colombia Has Failed to Take Action to Protect GCG's Investments in Additional Mines in the Marmato Region

80. Illegal miners have also affected mining activities conducted under Mining Title 014-89M (a mining title adjacent to Title CHG-081), held by Mineros, another GCG subsidiary.

81. By November 2015, GCG, through Mineros, filed two administrative actions with the NMA, seeking to evict illegal miners from the Title 014-89M area. Following the NMA's grant of eviction orders in response to GCG's administrative actions, GCG petitioned the Mayor of Marmato to execute the eviction orders. Despite the eviction orders by the NMA, no eviction took place.

82. Finally, after nearly two (2) years of concerted efforts to convince the Mayor of Marmato to execute the eviction orders, GCG convened a meeting at the Mayor's office with the National Police on 1 December 2015. Talks, however, proved unsatisfactory and Colombian authorities appeared reluctant to enforce the eviction order which covered six (6) different mines. Following the meeting, the Police Inspector of Traffic and Mining sent a letter to

GCG identifying certain requests made by the National Police in order to carry out a *partial* eviction of only two (2) of the six (6) mines on 11 December 2015. By letter dated 7 December 2015, GCG informed the National Police that, pursuant to the eviction order, partial eviction was insufficient, especially where the National Police was only agreeing to evict the two (2) mines causing the least amount of disruption. The National Police never responded to GCG's letter nor did they carry out the eviction. To date, the illegal miners have not yet been evicted and illegal mining continues.

83. Overall, GCG has obtained eviction orders for 76 actions it has filed with the NMA with regard to Marmato. Out of these 76 orders, 46 are final and cannot be appealed.³³ To date, the government has failed to carry out any of these 46 eviction orders. A further twenty-eight (28) of these 76 actions remain pending due to the government's delays in either notifying miners of these eviction orders or resolving challenges to the orders. The remaining eviction order for the Villonza mine was annulled by the Constitutional Court's decision in SU/133, dated 28 February 2017. In sum, out of 76 eviction orders only one has

³³ GCG has been successful in obtaining 46 eviction orders for the following mines, but the illegal miners have not yet been evicted (i) Title 127-98M (Nameless Mine in front of Tesorito Mine); (ii) Titles 156-98M and 166-98M (Canalón Mine); (iii) Title 161-98M (Ventura Mine); (iv) Title 4467 (Patacón Mine); (v) second eviction order for Title 4467 (Patacón Mine); (vi) Title 067-98M (Cumba 3 Maturro Mine); (vii) Title 073-98M (Cumba 1 Mine); (viii) Titles 026-98M (La Tintiliana Mine); (ix) Titles 152-98M and 168-98M (Mine NN located below Las Marinas); (x) Title 134-98M (La Leona Mine); (xi) Title RPP-357 (nameless mine located by La Chiquita Cuatro); (xii) Title CHG-081 (nameless mine in front of the Villonza mine); (xiii) Title CHG-081 (Kiki-Melfi mine); (xiv) Title CHG-081 (Nameless mine below the Cien Pesos road); (xv) Title 014-89M (RMN GAFL-11) (Bajo Antiguo Molino El Ceibo Mine); (xvi) Title 134-98M (RMN HFRG-01) (Unnamed mine located below La Esperanza Mine); (xvii) Title CHG-081 (Third mine located above Tolva De Gato Mine); (xviii) Title CHG-081 (Cascabel Mine); (xix) Title 055-98M (HETJ-22) (Torno 2 Mine); (xx) Title 825-17 (RMN HHHBJ-03) (Unnamed mine above "El Retorno" Mine and below "La Vaga" Mine); (xi) Title 068-98M (HETL-11) (Rotavisky Mine); (xxii) Title 026-98M Y 160-98M (NN2 Mine located above Churimo Mine); (xxiii) Title 118-98M (HETK-02) (Paula Mine); (xxiv) Title 070-98M (HETL-15) (Angie Mine); (xxv) Titles 160-98M (RMN HGWL-01) and 026-98M (RMN HETJ-14) (Mine 089 located next to Churimo Mine); (xxvi) Titles 091-98M and 131-98M (Melissa B Mine); (xxvii) Titles 050-98M, 051-98M and 171-98M (Unnamed Mine located near Las Marinas Mine); (xxviii) Title CHG-081 (Sara G Mine); (xxix) Title CHG-081 (El Progreso Mine); (xxx) Title CHG-081 (Palomera Mine); (xxxi) Title CHG-081 (Lagrimosa Mine); (xxxii) Title 034-98M (Barranca 1 Mine); (xxxiii) Title 052-98M (Ochoa 1 Mine); (xxxiv) Title 053-98M (Ochoa 2 Mine); (xxxv) Title 105-98M (El Mango 1 Mine); (xxxvi) Title 118-98M (Rolita Mine); (xxxvii) Title 160-98M (Tintiliana Mine); (xxxiii) Title 014-89M (Nameless Mine); (xxxix) Title CHG-081 (Nameless mine located in front of Villonza 2 Mine); (xl) Title RPP-357 (Torre 5 Mine); (xli) Title 014-89M (Las Verónicas Mine); (xlii) Title 091-98M (La Eva and La Peña Mine); (xliii) Title 172-98M (Chinchiliana Mine); (xliv) Title 065-98M (Paulina Moda Mine); (xlv) Title CHG-081 (Arley Mine); (xlvi) Titles 121-98M, 148-98M, 149-98M, and 165-98M (Leticia Mine).

been carried out. Moreover, there are 132 administrative actions³⁴ relating to Marmato that have yet to be decided by Colombia.

iii. Civil Disruptions and Violence Caused by the Illegal Miners Are Substantially Depreciating the Value of GCG's Investment

84. Since 2012, illegal miners have orchestrated a series of civil disruptions to damage GCG's mining operations in Marmato. By way of background, from 25 to 27 July 2012, illegal miners initiated civil disruptions throughout the municipality of Marmato in protest of the arrival of GCG to Marmato following GCG's acquisition of Medoro and its mining titles. Then, from 27 July to 30 August 2012, illegal miners participated in nation-wide civil violence. For 34 days, they blocked access to the municipality of Marmato, preventing GCG employees from reaching their mines. From 18 to 20 February 2014, illegal miners blocked access to Cien Pesos, a key thoroughfare in Marmato, effectively preventing GCG personnel from accessing mines in the region.

85. These protests have been marked by violence. GCG's properties, including cars, trucks, and mining equipment have been severely damaged during protests and the safety of GCG's employees was at real risk. The violence has been so extreme that GCG employees still fear for their safety when traveling to GCG properties and the threat of future violence against GCG and/or its personnel is constant. The damage in terms of lost profits is staggering. Not only did GCG lose millions of dollars during civil disruptions, but it has never been able to conduct any mining operations at the Villonza mine due to the presence of the illegal miners. With a court-ordered annulment of the execution of the Marmato Eviction Order and the Mayor of Marmato's ongoing refusal to enforce other pending eviction orders, illegal miners have been empowered by the State to continue their illegal exploits and to continue to threaten or engage in further civil disruption should GCG make any moves to prevent them from continuing their mining operations.

³⁴ **Ex. C-21**, Tables with Schedules of Administrative Actions for Marmato.

C. Notification of the Dispute

86. As discussed above, on 12 October 2016, in accordance with Articles 821(2)(c) and 822(5) of the FTA, and by way of its Notice of Intent, GCG notified the Directorship of Foreign Investment and Services of the Colombian Ministry of Trade, Industry and Tourism in Bogotá of its intent to submit the present dispute to arbitration.³⁵

87. In its Notice of Intent, GCG formally requested amicable consultations triggering the consultation period under Article 821(2)(b) of the Treaty. Despite GCG's efforts to seek an amicable resolution, including several meetings, correspondences, and acceding to an extension of the FTA's amicable consultation period,³⁶ nineteen months later, still no agreement has been reached with Colombia.

III. COLOMBIA'S VIOLATIONS OF THE TREATY

88. The conduct of Colombia's organs and authorities described above is in breach of several of Colombia's obligations under the Treaty and international law, and triggers Colombia's state responsibility, as explained below.

89. Specifically, Colombia has breached its obligations by taking unfair measures with respect to GCG's investments, as described in Section II(B) above. In particular, but without limitation, Colombia breached its obligations pursuant to this Treaty provision by failing to protect the physical and legal integrity of GCG's investments, by acting in an arbitrary, discriminatory, and non-transparent manner and by frustrating GCG's legitimate expectations as a result of persistent uncertainty, and an unpredictable and untrustworthy legal framework that has effectively nullified the rights and specific commitments provided to GCG and the Companies by Colombia. These actions by the State, individually and in totality, have deprived GCG and the Companies of substantially all of the value of many of their Colombian mining operations, and have significantly reduced and partially expropriated the value of GCG's and the Companies' total gold mining ventures in Colombia. GCG will

³⁵ **Ex. C-8**, Notice of Intent with Annexes 1-6, dated 10 October 2016; *see also* ¶ 4 *supra*.

³⁶ *See* ¶ 5 n. 10 *supra*.

submit detailed evidence at the appropriate stage of the proceedings to quantify the losses suffered.

90. Owing to the continuing nature of many of the State measures and conduct referenced herein, GCG reserves all rights to amend, supplement, and restate its claims for breaches of the FTA by the Republic of Colombia.

A. Colombia Failed to Treat GCG's Investments in Accordance with the Customary International Law Minimum Standard, including Fair and Equitable Treatment and Full Protection and Security

91. Article 805 of the Treaty provides the following protection to GCG's investments:

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

[...]

92. First, with respect to the full protection and security standard ("FPS"), this standard of protection is intended to protect the security and integrity of investments. Its scope is two-fold: it (a) requires host States to refrain from actively interfering with foreign investments, and (b) imposes on host States an obligation of due diligence and vigilance in protecting investments from actions of third parties.

93. When GCG and its Companies first notified the Colombian authorities of the presence of illegal miners on its title lands, as well as through the hundreds of administrative complaints filed by GCG and the Companies since then, the Colombian authorities were on clear notice of ongoing and future risks of the physical harm and disruptive damage to GCG's investments. The Colombian authorities were thus under an obligation under international law to exercise due diligence and vigilance in ensuring the continued physical security of GCG's investments. This obligation also materialized under national law when the authorities issued numerous eviction orders, including the 2010 Marmato Eviction Order and

the 2015 Segovia Eviction Order. Colombia's local, departmental, and government authorities' ongoing failure to enforce both the 2010 Marmato Eviction Order and the 2015 Segovia Eviction Order or otherwise act to protect GCG's investments from further disruption and harm amounts to a clear failure to exercise due diligence.

94. By failing to enforce these eviction orders or otherwise respond to GCG's and the Companies' notices to the State, and by engaging in delaying tactics to slow down if not altogether thwart the eviction of illegal miners, Colombia has contributed to the substantial deterioration of the physical and legal security of GCG's investments. The State has allowed illegal mining activities in GCG's mines to persist for years, thereby allowing the theft of GCG's resources and reserves, endangering the safety of both the legal and illegal miners who work at the mines, risking the structural integrity of the mines themselves, and causing irreparable environmental damage to the surrounding areas. Moreover, GCG's mining activities have been plagued by disruptive violence and unrest since at least 2012. These disruptions have prevented GCG and the Companies from accessing or operating many parts of their mining title areas, resulting in substantial deprivation of GCG's investments.
95. The State's failure to prevent these harms, despite being on clear notice thereof -- and even having recognized its obligation to prevent them under national law -- amounts to an utter failure to accord full physical and legal protection and security to GCG's investments in breach of the FPS standard in Article 805 of the FTA.
96. Second, Article 805 of the Treaty also imposes on the host State an obligation to accord covered investments the "customary international law minimum standard of treatment," including "fair and equitable treatment" ("**FET**"). The Colombian government declared its commitment to development of its mineral resources and invited foreign investors, including GCG, to operate in Colombia. The State further registered and issued to GCG's Companies mining licenses and titles that unequivocally established exclusive rights to mine gold and silver within the title areas. By: (i) failing to enforce the exclusivity of the Companies' mining titles and licenses against illegal miners; (ii) forcing GCG to share its exclusive mining rights; and (iii) the Constitutional Court's reversal and erosion of the permanence and legal integrity of the Companies' mining titles; the Colombian authorities have violated

GCG's and the Companies' legitimate expectations in breach of the FET standard of Article 805 of the FTA.

97. Colombia has breached this obligation by taking unfair and inequitable measures with respect to GCG's investments, as described in Section II(B) above. In particular, but without limitation, Colombia breached its obligations pursuant to this Treaty provision by acting in an arbitrary, inconsistent, non-transparent and disproportionate manner; by frustrating GCG's and the Companies' legitimate expectations as a result of persistent uncertainty; and by subject GCG and the Companies to an unstable and unpredictable legal framework and leading to the deprivation of the rights and specific commitments provided to GCG by Colombia.

98. Furthermore, Article 805 also provides, in relevant part,

[...]

2. The obligation in paragraph 1 to provide "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process.

[...]

99. GCG has suffered inexplicable and significant procedural delays and inaction in the administrative and judicial decision-making process which constitute a denial of justice, one of the categories of government conduct that violates the FET standard. GCG has been filing petitions and administrative complaints since November 2010 with respect to the Segovia mining operations and March 2010 with respect to the Marmato mining operations. In the case of Segovia, GCG, through its subsidiaries, has filed over 200 petitions and complaints. Only 35 of those have been decided (of which 22 ordered the eviction of illegal miners in the title areas and only two (2) of those 22 have been duly performed). The average time for the authorities to issue a decision for the petitions in Segovia - in the small minority where such decisions have actually been issued - has ranged from three (3) to six (6) years. Even worse, GCG withdrew 19 administrative complaints because GCG's requests had been rendered moot by the NMA's inaction -- Colombian mining authorities waited so long to act that illegal miners had been able to extract all the mineral resources in the particular mine and

then abandon the mine. In the case of Marmato, GCG, through its subsidiaries has filed over 200 petitions and administrative complaints. Only 92 of those have been decided (of which 76 ordered the eviction of illegal miners in the title areas). To date, only one eviction has been carried out in Marmato and 132 actions have yet to be decided.

100. Of those complaints that did result in evictions orders - including, the Segovia and Marmato Eviction Orders - municipal authorities failed to enforce those eviction orders, despite numerous petitions by GCG to do so.

101. The Colombian administrative regime's systemic failure to provide any effective recourse in GCG's and the Companies' years-long efforts to enforce their rights amounts to a denial of justice in breach of the FET standard of Article 805 of the FTA.

B. Colombia Expropriated GCG's Investments without Prompt, Adequate and Effective Compensation

102. Article 811 of the Treaty, in relevant part, provides the following protection to GCG's investments:

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4; and

(d) in accordance with due process of law.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. To determine fair market value a Tribunal shall use appropriate valuation criteria, which may include going concern value, asset value including the declared tax value of tangible property, and other criteria.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

[...]

103. This obligation has been breached by Colombia. Colombia effectively deprived GCG of its mining rights, and destroyed the value of GCG's investments in the Colombian mining sector, without the payment of prompt, adequate, and effective compensation.

104. Municipal and state authorities have either delayed relief granted by Colombian courts or administrative agencies to evict illegal miners from GCG's title areas or have refused to enforce those court judgments or administrative decisions. As a result of various government authorities' delay and non-responsiveness, GCG has been deprived of valuable gold reserves in all of its mines, as well as having sustained losses of critical time, new exploration and exploitation opportunities, and production in its time-limited concessions.

105. To the extent that the State's ongoing measures do not yet amount to a complete deprivation of all GCG's investments in Colombia, GCG reserves all rights to restate, amend, and supplement its claim for expropriation in this proceeding.

C. Colombia Breached the FTA by Subjecting GCG and the Companies to Discriminatory Treatment

106. Article 803 of the FTA binds Colombia to refrain from discriminatively according Colombian investors and investments more favorable treatment than accorded to Canadian investors and covered investments:

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment,

acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

107. Similarly, Article 804 of the FTA binds Colombia to refrain from discriminatively according investors and investments of third states more favorable treatment than accorded to Canadian investors and covered investments:

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. For greater clarity, treatment “with respect to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments” referred to in paragraphs 1 and 2 does not encompass dispute resolution mechanisms, such as those in Section B of this Chapter, that are provided for in international treaties or trade agreements.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

108. Furthermore, included within the scope of the customary international law and FET standards referenced in Article 805 of the FTA is the obligation that the FTA Parties refrain from imposing arbitrary and discriminatory measures on the investors of the other FTA Party.

This provision prohibits Colombia from arbitrarily treating GCG and the Companies in a manner less favorable than other similarly-situated investors.

109. Finally, in the context of civil unrest, Article 806 of the FTA serves as a further prohibition on discriminatory measures:

1. Notwithstanding subparagraph 3(b) of Article 809, each Party shall accord investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

110. Colombia has breached these anti-discrimination standards by failing to protect GCG's investments in the same way that it has protected other similarly-situated investors. As mentioned in paragraphs 57 to 58 above, Colombia has actively and effectively intervened on behalf of other similarly-situated mining enterprises, including Colombian and foreign enterprises.

111. Accordingly, Colombia's willful, arbitrary and discriminatory failure to offer GCG the same protective measures it has offered and provided to other mining ventures under like circumstances constitutes a breach of the FTA's prohibitions on discrimination and arbitrary and unreasonable measures.

IV. GCG'S INVESTMENTS ARE PROTECTED UNDER THE TREATY

A. GCG Is a Protected Investor under the Treaty

112. Article 838 of the Treaty defines an "*investor of a Party*" as follows:

investor of a Party means a Party or state enterprise thereof, or an enterprise or national of a Party, that seeks to make, is making or has made an investment. A natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship. A natural person who is a citizen of a Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of which he or she is a citizen.

113. Furthermore, Article 838 of the Treaty defines "*enterprise*" as:

enterprise means an enterprise as defined in Article 105 (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;³⁷

114. In turn, Article 106³⁸ of the Treaty provides:

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;³⁹

115. As a corporation constituted under the laws of Canada, GCG qualifies as a protected investor under the Treaty.

B. GCG's Investments Are Protected under the Treaty

116. The Treaty's investment protections under Section A of Chapter Eight are extended to "covered investments".

117. Article 838 of the Treaty defines a "*covered investment*" as follows:

with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

118. Article 838 of the Treaty defines an "*investment*" in turn as follows:

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise, but does not include a debt instrument of a state enterprise;

³⁷ **Ex. CL-1**, Canada-Colombia FTA, Article 838.

³⁸ We note that there is an inconsistency in Art 838, as the reference to Art 105 should instead be to Art 106, which contains the "Definitions of General Application".

³⁹ **Ex. CL-1**, Canada-Colombia FTA, Article 106.

(d) a loan to an enterprise, but does not include a loan to a state enterprise;

(e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;

(g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

(h) intellectual property rights; and

(i) any other tangible or intangible property, moveable or immovable property, and related property rights acquired in the expectation or used for the purpose of economic benefit or other business purposes.

119. GCG directly and indirectly holds significant investments in Colombia which are protected under the Treaty, in the form of its 100% ownership of the equity shares in the Companies (*i.e.* enterprises) in Colombia. Furthermore, through the Companies, GCG's other indirect investments also include, but are not limited to: mineral exploration and exploitation licenses and titles registered with the Colombian National Mining Registry; the tangible and intangible property and infrastructure, including real estate and land, owned by the Companies and acquired in the expectation or use for mining and other economic activities; and claims to money and performance arising thereunder. These investments either already existed on the date the FTA entered into force, 15 August 2011, or were made or acquired thereafter. Indeed, GCG has, over the course of a decade, committed substantial capital, and other resources (e.g., hiring employees, contractors and suppliers) in order to develop the Marmato and Segovia regions' deposits (as discussed in detail in Section II above).

120. Moreover, in that vein, GCG's Colombian Companies also qualify as covered investments, including insofar as they constitute enterprises under Article 838 of the Treaty.

121. In this regard, each of MAO, Mineros, and Croesus is an "enterprise of the other Party that is a juridical person that [GCG] owns or controls . . . indirectly" within the meaning of Article 820. Zandor is "a branch located in the territory of [Colombia] and carrying out business activities there" and therefore is also an "enterprise . . . of the other Party," *i.e.* Colombia (as defined in Article 838 of the Treaty), owned or controlled by GCG. Therefore, in addition to standing for claims on its own behalf pursuant to Article 819, GCG also has standing under Article 820 to assert claims on behalf of each of the Companies.

122. Claimant is submitting this Request both on its own behalf, pursuant to Article 819 of the FTA, and on behalf of the Companies through which it invested, pursuant to Article 820 of the FTA.

V. THE PARTIES' CONSENT TO ARBITRATION UNDER THE TREATY AND THE ICSID CONVENTION

123. GCG and the Companies have fulfilled all the requirements for access to arbitration under the Treaty and ICSID Convention, as explained below.

A. The Requirements to Access Arbitration under the Treaty Have Been Fulfilled

124. Colombia's consent to submit investment disputes with foreign investors to ICSID arbitration is provided in the Treaty under Article 822(1)(a) of the Treaty, which reads, in material part, as follows:

1. Except as provided in Annex 822, a disputing investor who meets the conditions precedent in Article 821 may submit the claim to arbitration under:

(a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention.

125. Furthermore, Article 821 of the Treaty contains the conditions on Colombia's consent to the submission of a claim to arbitration:

1. The disputing parties shall hold consultations and negotiations in an attempt to settle a claim amicably before a disputing investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the Notice of Intent to Submit a Claim to Arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. Consultations and negotiations may include the use of non-binding, third-party procedures. The place of consultations shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 819 or Article 820 only if:

(a) the disputing investor and, where a claim is made under Article 820, the enterprise, consent to arbitration in accordance with the procedures set out in this Section;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) the disputing investor has delivered to the disputing Party a written notice of its intent to submit a claim to arbitration (Notice of Intent) at least six months (n.8 With a view to encouraging the review, confirmation or modification of administrative acts prior to such acts becoming final, the Parties recognize that disputing investors should make every effort to exhaust administrative recourse under Colombian law. A disputing investor that fails to exhaust administrative recourse, where applicable, shall submit its Notice of Intent nine months prior to submitting a claim to arbitration.) prior to submitting the claim. The Notice of Intent shall specify:

(i) the name and address of the disputing investor and, where a claim is made under Article 820, the name and address of the enterprise,

(ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,

(iii) the legal and the factual basis for the claim, including the measures at issue, and

(iv) the relief sought and the approximate amount of damages claimed;

(d) the disputing investor has delivered evidence establishing that it is an investor of the other Party with its Notice of Intent;

(e) in the case of a claim submitted under Article 819:

(i) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby, and

(ii) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration; and

(f) in the case of a claim submitted under Article 820:

(i) not more than 39 months have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and

(ii) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the applicable law of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration.

3. A consent and waiver required by this Article shall be in the form provided in Annex 821, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. Where a disputing Party has deprived a disputing

investor of control of an enterprise, a waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required.

4. An investor may submit a claim relating to taxation measures covered by this Chapter to arbitration under this Section only if the taxation authorities of the Parties fail to reach the joint determinations specified in Article 2204 (Exceptions – Taxation) within six months of being notified in accordance with those provisions.

5. An investor of a Party who is also a national of a non-Party may not initiate or continue a proceeding under this Article if, as a national of the non-Party, it submits or has submitted, directly or indirectly, an investment claim with respect to the same measure or series of measures under any agreement between the other Party and that non-Party.

126. All of the relevant conditions precedent in Article 821 of the Treaty are satisfied in this case.

Specifically:

- a) The parties held consultations, including correspondence and meetings in Bogotá, Colombia and other locales, to attempt to settle the present dispute for a period of no less than ten (10) months from the date of the Notice of Intent (*see* ¶¶ 4-5 *supra*; *see also* Article 821(1));
- b) Claimant and the Companies have consented in writing to arbitration of this dispute in accordance with the procedures set out in Section B of Chapter Eight of the FTA (*see* ¶ 140 *infra* & **Ex. C-11**, Consents and Waivers of GCG and the Companies; *see also* Article 821(2)(a));
- c) More than six months have transpired since the events giving rise to the claim (*see generally* Section II *supra*; *see also* Article 821(2)(b));
- d) On 10 October 2016, more than six months prior to the date of this Request, Claimant, on its own behalf and on behalf of its investments, the Companies, delivered to Colombia a written notice of its intent to submit a claim to arbitration in the manner

set out in Article 821(2)(c) of the FTA (*see* **Ex. C-8**, Notice of Intent with Annexes 1-6);⁴⁰

- e) In its Notice of Intent, GCG delivered evidence establishing that it is a Canadian investor and provided, *inter alia*, evidence of its ownership of the Companies and the Companies' status as registered enterprises in Colombia possessing the relevant Colombian mining titles (*see* **Ex. C-8**, Notice of Intent with Annexes 1-6, Annexes 1-5; *see also* Article 821(2)(d));
- f) By letter dated 18 November 2016, Colombia acknowledged that GCG's Notice of Intent complied with all requirements laid out under the FTA's rules (*see* **Ex. C-8**, Notice of Intent with Annexes 1-6; *see also* ¶ 5 *supra*);
- g) The breaches of the FTA alleged in this Request are either of a continuing nature or, insofar as standalone measures are concerned, with respect to breaches for which Claimant seeks damages, not more than 39 months have elapsed from the date of on which Claimant and the Companies acquired, or should have acquired, knowledge of having incurred loss or damage thereby (*see* Article 821(2)(e)(i) & (f)(i)); and
- h) By way of their submissions in Exhibit C-11 hereto, Claimant and the Companies have waived their right to initiate or continue before any national court or tribunal, or any other dispute settlement procedure, any proceedings with respect to the measures of the Respondent that Claimant alleges to be a breach of the FTA, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before Colombian courts and administrative tribunals for the sole purpose of preserving Claimant's and its Companies' rights and interests during the pendency of this proceeding (*see* Article 821(2)(e)(ii) & (f)(ii)). All of the pending Colombian proceedings enumerated in Exhibit C-17 and Exhibit C-21 are proceedings for injunctive, declaratory or other extraordinary relief, not involving the

⁴⁰ The Notice of Intent complied with the requirements of Art 821(2)(c), as it specified (i) the name and address of GCG (p. 3); (ii) the provisions of the Treaty that Colombia had breached (pp. 4-5); (iii) the legal and factual basis for the claim (pp. 1-4); and (iv) the relief sought and the approximate amount of damages (pp. 5-6). **Ex. C-8**, Notice of Intent with Annexes 1-6.

payment of damages, before Colombian courts and administrative tribunals for the sole purpose of preserving Claimant's and its Companies' rights and interests during the pendency of this proceeding;

- i) The consents and waivers of GCG and the Companies provided in Exhibit C-11 hereto and delivered to Colombia pursuant to Article 822(5) are in the form provided in Annex 821 (*see* **Ex. C-11**, Consents and Waivers of GCG and the Companies; *see also* Article 821(3));
- j) Article 821(4) does not apply because this dispute does not relate to any taxation measures by Colombia; and
- k) Article 821(5) does not apply because GCG is not a national of any state other than Canada and has not submitted any other investment claim with respect to the present measures under any other treaty between Colombia and any third state.

127. Furthermore, given GCG's and the Companies' compliance with Article 821, arbitration under the ICSID Rules is available to Claimant pursuant to Article 822(1)(a), because:

- a) Annex 822 is inapplicable because, prior to this Request, neither Claimant nor any of the Companies ever alleged a breach of any obligation under Section A of the FTA in proceedings before a court or administrative tribunal of Colombia or in any other binding dispute settlement proceeding agreed by the disputing parties; and
- b) Both the disputing Party to the FTA, Colombia, and the FTA Party of the disputing investor, Canada, are parties to the ICSID Convention. Colombia ratified the ICSID Convention on 15 July 1997 and the ICSID Convention entered into force for Colombia on 14 August 1997. Canada ratified the ICSID Convention on 1 November 2013 and the ICSID Convention entered into force for Canada on 1 December 2013.

128. In light of the foregoing, Claimant may, and does, submit the present dispute to arbitration under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings.

B. The Requirements under the ICSID Convention Have Been Fulfilled

129. Articles 25(1) and (2) of the ICSID Convention set out the requirements to access ICSID arbitration:

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

(2) ‘National of another Contracting State’ means: [...]

(b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.

130. Article 25 provides that ICSID has jurisdiction over (1) legal disputes; (2) that arise directly out of an investment; (3) between an ICSID Contracting State and (i) a national of another Contracting State and/or (ii) a national of the Contracting State party to the dispute that, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of the ICSID Convention; and (4) which the parties to the dispute have consented to submit to ICSID arbitration.

131. These requirements are satisfied in the present case. Claimant submits to the jurisdiction of the Centre a legal dispute arising out of its investments in mining activities in the Segovia and Marmato regions of Colombia, which Claimant and Colombia have consented in writing to submit to the Centre. Each element necessary to establish the jurisdiction of the Centre is addressed in turn below.

1. The legal dispute

132. The subject-matter of this dispute is the alleged breaches by Colombia of its legal obligations under the Treaty and other standards of law. Furthermore, the dispute concerns

the ability of Claimant to exercise its legal rights and the nature and extent of the relief sought by Claimant for losses it has suffered.

133. Paragraph 26 of the Report of Executive Directors on the ICSID Convention, dated 18 March 1965, that accompanied the publication of the ICSID Convention helpfully adds that:

The expression “legal dispute” has been used to make clear that while conflicts of rights are within the jurisdiction of [ICSID], mere conflicts of interests are not. The dispute must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.

134. This dispute is thus a “*legal*” dispute for the purposes of Article 25(1) of the ICSID Convention.

2. The dispute arises directly out of an investment

135. As described in Sections II and III above, this dispute arises directly out of Claimant’s investments made in Colombia. The relief sought by GCG is the losses suffered as a result of Colombia failing to protect those investments. Were it not for its investments, GCG would have no claims against the Respondent under the FTA.

136. This dispute is thus one “*arising directly out of*” “*investments*” made by GCG in Colombia, as described in Section II(A) above, which are qualified investments under the Treaty and for the purposes of Article 25(1) of the ICSID Convention.

3. The dispute is between a Contracting State and nationals of another Contracting State

i. The Claimant is a “national of another Contracting State”

137. The jurisdiction of the Centre extends to claims brought by investors that are nationals of another Contracting State.

138. Claimant GCG is a “national of another Contracting State”. It is incorporated in Canada under the laws of the Province of British Columbia. Canada became a Contracting State when the ICSID Convention entered into force for Canada on 1 December 2013.

ii. Colombia is a “Contracting State”

139. Colombia signed the ICSID Convention on 18 May 1993 and deposited its instrument of ratification on 15 July 1997. The ICSID Convention entered into force for Colombia on 14 August 1997. Colombia is therefore a “Contracting State” for the purposes of Article 25 of the ICSID Convention.

4. Written consent of the Parties to submit the dispute to the Centre

140. Both parties agreed in writing to submit the dispute to the Centre. As set out above at paragraphs 124-128, Colombia’s agreement is set out in Article 822(1) of the FTA, and all conditions precedent thereto have been satisfied. Claimant first agreed in writing to the submission of the dispute to the Centre by delivery of its written Notice of Intent on 12 October 2016, and has ratified its consent in writing by filing this Request.

VI. CONSTITUTION OF THE ARBITRAL TRIBUNAL, PLACE AND LANGUAGE OF THE ARBITRATION

A. Constitution of the Arbitral Tribunal

141. Article 824 of the Treaty provides for the following procedure for the constitution of the Arbitral Tribunal:

1. Except in respect of a Tribunal established under Article 826, and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the dispute parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.
2. The Secretary-General [of ICSID] shall serve as appointing authority for arbitration under this Section.
3. If a Tribunal, other than a Tribunal established under Article 826 [Consolidation], has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General [of ICSID] to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

4. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international trade or international investment agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor.

5. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

142. Given that the parties have not reached an agreement on the number of arbitrators, in accordance with Article 824 of the Treaty the Tribunal to be appointed in this case shall be composed of three arbitrators. Furthermore, in accordance with Article 825, Claimant and the Companies agree to the appointment of each member of the Tribunal.⁴¹ Accordingly, Claimant understands that the nationality-based restrictions of Article 39 of the ICSID Convention shall not apply to the Tribunal, once constituted.

143. Claimant further proposes that the parties proceed under the default rule in Article 824(5) that arbitrators be remunerated at the prevailing ICSID rate for arbitrators.

144. Pursuant to Article 822(6) of the Treaty, GCG appoints Bernard Hanotiau as its party-appointed arbitrator. Mr. Hanotiau's contact details are as follows:

Hanotiau & Van Den Berg (HVDB)
IT Tower (9th Floor)
480 Avenue Louise · B9
1050 Brussels · Belgium
T. +32 2 290 39 09
F. +32 2 290 39 39
E. bernard.hanotiau@hvdb.com

145. GCG proposes that Colombia appoint its arbitrator within 30 days from the registration of the Request for Arbitration and that the President be appointed by agreement of the parties within a period of 30 days after the nomination by Colombia of its party-appointed arbitrator. If the Tribunal has not been constituted within 90 days of the submission of the Request for

⁴¹ **Ex. C-22**, Article 825 written statements on behalf of Minera Croesus S.A.S., Minerales Andinos de Occidente S.A.S., Mineros Nacionales S.A.S., and Zandor Capital S.A. Colombia, dated 15 May 2018.

Arbitration, the remaining members of the Tribunal shall be appointed in accordance with Article 824(3) of the Treaty.

B. Place of the Arbitration

146. Pursuant to Article 62 of the ICSID Convention, the arbitration proceedings “shall be held at the seat of the Centre”, *i.e.* Washington, D.C. (*see* Article 2 of the ICSID Convention), unless the parties agree otherwise under Article 63.

147. GCG proposes that the parties proceed pursuant to Article 62 with Washington, D.C. as the place of the arbitration.

C. Language of the Arbitration

148. The Treaty is silent on the question of the language of the arbitration, and the parties have not reached an agreement on this issue in accordance with Rule 22 of the ICSID Arbitration Rules. GCG proposes English as the language of the arbitration.

VII. THE PARTIES TO THE DISPUTE

149. The Claimant is Gran Colombia Gold Corp., a corporation established in Canada under the laws of the Province of British Columbia. It is publicly traded on the Toronto Stock Exchange (“**TSX**”) and maintains its principal place of business at 401 Bay Street, Suite 2400, PO Box 15, Toronto, Ontario M5H 2Y4, Canada, with additional offices in Bogota and Medellín, Colombia.

150. All correspondence and notices relating to this case should addressed to:

Meriam Al-Rashid
John J. Hay
Diora M. Ziyaeva
Levon Golendukhin
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151. Respondent, the Republic of Colombia, is a sovereign State, and, as discussed in paragraph 139 above, a Party to the Canada-Colombia FTA and a Contracting State to the ICSID Convention.

152. ICSID is respectfully requested to serve copies of this Request for Arbitration on Colombia at each of the following addresses:

(a) His Excellency Juan Manuel Santos Calderon

President of the Republic of Colombia
Casa de Nariño
Carrera 8 No 7-26
Bogotá D.C.
Colombia

(b) Nicolás Palau Van Hissenhoven

Directorate of Investments and Services of the Ministry of Foreign Trade,
Industry and Tourism
Calle 28 No. 13 A - 15, Piso 3
Bogotá D.C.
Colombia

153. Pursuant to Article 822 of the FTA, both Claimant and Respondent have consented in writing to submit this dispute to arbitration. Respondent expressed its consent in Article 822(1) of the FTA. Claimant has expressed its consent in its Notice of Intent, and ratifies its consent in writing by filing this Request. Written consents by GCG, Zandor, MAO, Mineros, and Croesus are attached to this Request as Exhibit C-11. Pursuant to Article 822(1)(a) of the FTA, Claimant refers this dispute to arbitration under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings.

154. Pursuant to Articles 821(2)(e)(ii) and 821(2)(f)(ii) of the FTA, Claimant and its Companies waive their right to initiate or continue before any administrative tribunal or court under the

law of any Party to the FTA, or other dispute settlement procedures, any proceedings with respect to the measures alleged to be a breach referred to in Articles 819 and 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of Colombia, for the sole purpose of preserving Claimant's and its enterprises' rights and interests during the pendency of the arbitration. Claimant, Zandor, MAO, Mineros, and Croesus have delivered these written waivers, attached as Exhibit C-11.

VIII. REQUESTS FOR RELIEF

155. On the basis of foregoing, without limitation and reserving GCG's right to supplement or otherwise amend the present prayers for relief at appropriate stages of the proceedings, GCG respectfully requests that the Arbitral Tribunal issue an Award:

- a) DECLARING that Colombia has breached Articles 803, 805, 806, and 811 of the Treaty; and
- b) ORDERING that Colombia:
 - i) compensate GCG in full for all losses it continues to suffer as a result of Colombia's ongoing breaches of the Treaty and international law in an amount to be determined at a later stage in these proceedings, plus interest until the date of payment, but which shall in no case be less than US\$ 250 million;
 - ii) pay, on a full indemnity basis, all of the costs and expenses of these arbitration proceedings, including without limitation, the fees and expenses of the members of the Arbitral Tribunal, ICSID, legal counsel, and any experts or consultants appointed by Claimant or the Arbitral Tribunal;
 - iii) pay any such other and further relief that the Tribunal considers appropriate.

156. Claimant reserves its right to amend, supplement or expand upon the facts, legal claims, arguments and evidence submitted in this Request in the course of the arbitral proceedings.

25 May 2018

Respectfully submitted for
and on behalf of Claimant

By: 

Meriam Al-Rashid
John J. Hay
Diora M. Ziyaeva
Levon Golendukhin
Christina S. Dumitrescu
DENTONS US LLP