IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/24/23

BETWEEN:

ALMADEN MINERALS LTD.

and

ALMADEX MINERALS LTD.

Claimants

-and-

THE UNITED MEXICAN STATES

Respondent

MEMORIAL

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20 MARCH 2025

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1. INTRODUCTION

1. Almaden Minerals Ltd. ("**Almaden**") and Almadex Minerals Ltd. ("**Almadex**," and together with Almaden, the "**Claimants**"), on their own behalf and on behalf of their respective Mexican subsidiaries, Minera Gorrión S.A. de C.V ("**Minera Gorrión**") and Minera Gavilán S.A. de C.V ("**Minera Gavilán**"), submit this Memorial in support of their claims against the United Mexican States ("**Mexico**" or the "**Respondent**") under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the "**CPTPP**" or the "**Treaty**"), in accordance with the procedural calendar established by the Tribunal.[1]

2. This dispute arises out of Mexico's breaches of the CPTPP in relation to the Claimants' protected investments in Mexico. The Claimants made those investments in the state-of-the-art Ixtaca gold-silver project located in the municipality of Ixtacamaxtitlán in the State of Puebla, Mexico (the "**Ixtaca Project**" or the "**Project**"). As a result of Mexico's breaches, the Claimants lost the entirety of their investments.

3. Under the new leadership of the populist president Andrés Manuel López Obrador ("**AMLO**"), Mexico decided to effectively ban foreign mining development in 2018. The reasons for this ban were, in the typically populist manner, nebulous, xenophobic, and unsupported by the facts. AMLO complained that his presidential predecessors had essentially handed control of the country's natural resources to speculating foreigners and promised to stop the issuance of new mining concessions.

4. But Mexico's reliance on foreign capital in the mining sector was by design. After nearly 75 years of State control over the mining industry, in 1992, Mexico decided to privatize the sector and allow foreign companies to develop mining projects with majority ownership. That decision worked. Like in many other mineral rich jurisdictions with underdeveloped mineral resource wealth, foreign mining companies brought their expertise and capital to explore Mexico, the Claimants among them. Indeed, thanks to the Claimants, Mexico now has a thorough understanding of the mineral potential of its entire Eastern region – the novel geological modelling of which had never taken place before the Claimants undertook costly, time-consuming geological reconnaissance.

5. While AMLO publicly expressed his frustration with his predecessors' invitation to foreign miners to invest in Mexico, he took that frustration out on the foreign miners themselves.

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[1] Procedural Order No. 1 dated 27 November 2024.

AMLO railed against foreign mining companies as rapacious "speculators" who used mining concession titles to "negotiate and profit through speculation on stock exchanges"[2] and argued that they had "no reason to complain because . . . they were given half of the country's territory during the neoliberal period."[3] He underscored that, "[i]n the past, many concessions and permits were granted to foreign companies," but that Mexico was "not going to continue giving concessions or permits that go against the environment."[4]

6. This was not hollow rhetoric. AMLO took concrete steps to put mining back in the hands of the State. First, he promised that no new mining concessions would be granted, irrespective of whether the mining companies were entitled to such concessions under the law – a promise that he and his successor have honored for nearly seven years. Second, in 2022, he nationalized all lithium production, a decision which has led to investment claims in its own right. Third, in 2023, AMLO rammed through legislation nationalizing all mining exploration activities, putting those activities into the hands of the Mexican Geological Service, and voiding all pending mining concessions. Finally, in February 2024, he proposed a constitutional reform to ban outright open pit mining – the primary means of extracting precious metal in Mexico.

7. These sorts of openly protectionist measures and blatant favoritism towards State-owned enterprise are precisely what the investment treaty framework – including the newly minted CPTPP – is designed to protect against. But that framework unfortunately does not protect against the collateral damage of such an approach to foreign investment – the communities deprived of economic opportunity and beneficial corporate social responsibility programs, or the decimated share prices caused by a regulatory environment that, overnight, became openly hostile towards an entire industry. This hostility pervaded every aspect of mining regulation in Mexico from 2018 onwards, and while the State's actions and omissions clearly breached the CPTPP as outlined below, the prevailing *attitude* made operations nearly impossible and has even impacted the Claimants' choice of valuation date in these proceedings.

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2 *Cin Censura Presenta* YouTube Channel (Web page), *AMLO Destaca Trabajo de Ma. Luisa Albores al Frente de la SEMARNAT*, <https://www.youtube.com/watch?v=wr15-QItWg0>, dated 11 June 2024, (Spanish original: "*Se les entregaban las concesiones para que pudieran negociar y obtener beneficios con la especulación en las bolsas de valores.*"), **Exhibit C-433**.

3 *Cin Censura Presenta* YouTube Channel (Web page), *AMLO Destaca Trabajo de Ma. Luisa Albores al Frente de la SEMARNAT*, <https://www.youtube.com/watch?v=wr15-QItWg0>, dated 11 June 2024, (Spanish original: "*Y no tienen por qué quejarse quienes tienen estas concesiones, porque imagínense: les dieron la mitad del territorio en el periodo neoliberal.*"), **Exhibit C-433**.

4 Paloma Duran, "Permits – Best Practivce or a Barrier," Mexican Business News, dated 9 January 2021, **Exhibit C-356**.

8. Thus, the fate of the Project was effectively sealed with the election of an administration so inimical to mining.

9. Having announced publicly its policy to block mining projects like the one conscientiously developed by the Claimants over 20 years, AMLO's administration still had to undertake measures carrying out this policy. In the case of the Claimants' Ixtaca Project, those measures were twofold and both plainly pretextual in nature: (i) its *Secretaría de Medio Ambiente y Recursos Naturales* ("**SEMARNAT**") belatedly rejected the *Manifestación de Impacto Ambiental* ("**MIA**") for the Project in a decision that reflected the procedural irregularity with which it was issued, deliberately disregarded the evidence, and demanded that Minera Gorrión meet an impossibly absurd and legally baseless "absolute scientific certainty" standard in demonstrating the Project's lack of impact on the environment; and (ii) Mexico's *Secretaría de Economía* ("**Economía**") arbitrarily and retroactively cancelled the Claimants' 20 and 14 year-old mining concessions on the legally undefined basis of "infeasibility," relying mainly on *de minimis* measurement defects in the original concession applications that had not troubled Economía at the time of application or in the nearly 20 years that followed, and despite sustained and repeated assurances as to the concessions' validity.

10. In carrying out these measures, Mexico worked with and relied upon the efforts of US-backed NGOs engaged in a form of misguided virtue tourism. In respect of the MIA, after SEMARNAT belatedly rejected Almaden's application on pretextual grounds, it held secret, closed-door meetings with NGOs to strategize the organization of purportedly scientific, *post-hoc* studies to discredit the Project and ensure its cancellation by Economía. *After* reaching agreement to manufacture a case against the Project and pressurize Economía to cancel it, SEMARNAT and the NGOs set out to belatedly collect untrustworthy data as ammunition in their secret joint campaign against the Project. We know this from meeting minutes obtained through requests under Mexico's Transparency Act and described below. In turn, SEMARNAT took up a lobbying effort against the Project that was more redolent of the unscrupulous NGOs with which it was working than an objective regulatory body. Notably, AMLO had filled important regulatory roles in SEMARNAT with some of the same NGO activists who had vocally opposed the Project.

11. With respect to Economía's pretextual, retroactive cancellation of the Concessions, this bizarre outcome had its roots in an *amparo* lawsuit brought by the Tecoltemi community. However, the claim was prepared and prosecuted by NGOs that seemingly coopted the impoverished Telcoltemi community which was in fact remotely distant from the Project site itself and not within the Project's area of influence. The sad manipulation of this rural community is

suggested by several facts. *First*, that the community, which had not previously been identified by the Mexican Government as indigenous and had not self-identified as such, suddenly declared itself indigenous several years after the concessions were issued and a mere three weeks before bringing the *amparo. Second*, the *amparo* proceeding did not simply demand that the Government carry out an indigenous consultation but also dramatically sought a declaration of unconstitutionality of entire sections of the Mexican Mining Law that had been in place for 23 years. *Third*, when Minera Gorrión sought to have the *amparo* proceeding dismissed by relinquishing the concession areas that overlapped with Tecoltemi, the community went so far as to *appeal* that decision to maintain its suit, even though the reduced concessions would not have touched upon their lands, thereby obviating the very basis of Tecoltemi's complaint. In short, seemingly at the behest of its NGO sponsors, Tecoltemi took several decisions that extended curiously beyond its own self-interest. In any event, when the Supreme Court ultimately decided in Telcoltemi's favor and ordered Economía to carry out indigenous consultations, Economía instead cancelled the Concessions altogether on the spurious ground of "infeasibility." Notably, Economía's feasibility decision had nothing to do with the *amparo* proceedings that gave rise to the Supreme Court's decision in the first instance. But it did comply with AMLO's marching orders.

12. As the above makes clear, AMLO's Government found common cause with certain NGOs against the Mexican mining industry and was only too happy to rely on their efforts as a form of pincer movement against foreign mining companies like the Claimants. This coordinated campaign was rooted in a shared enmity towards mining companies that Mexico sought to paint broadly as "corrupt" carpet-bagging agents of "Neo-liberalism" seeking to land-bank Mexican territory, destroy communities, and pollute the environment, while simultaneously failing to advance mining projects. But there is just one problem with this caricature in the present case.

13. They picked the wrong mining company.

14. Almaden is, in effect, a family company. Founded by Mr. Duane Poliquin and led by his son Mr. Morgan Poliquin, Almaden's efforts in Mexico mirror the family ethos of hard work, respect for the land, and respect for people. That ethos has its roots in the prairies of Canada, where Duane grew up on a farm without indoor plumbing before becoming one of the first in his family to attend university. After years of exploration success and a meeting with then-President Zedillo of Mexico in Vancouver in 1996, Duane led Almaden to first invest in Mexico to great success. The family's love affair with Mexico passed down to Morgan, who, as noted, almost single handedly re-defined and mapped the mineral potential of Eastern

Mexico using a helicopter as part of his PhD thesis. The family ethos was omnipresent in Almaden's development of the Project where its respect for the needs of surrounding communities prompted it to carry out extensive community support initiatives and the first ever Human Rights Impact Assessment in the history of the Mexican mining sector, led by one of the world's foremost experts on indigenous rights. The positive results of that assessment underscored Almaden's commitment to community and environment.

15. In fact, Almaden was the poster child for responsible mining. Mexico and, indeed, the United Nations recognized this as recently as June 2022, when Economía and the the United Nationas Economic Commission for Europe ("**UNECE**") selected the Ixtaca Project for the UNECE Mining Pilot Project, a global initiative identifying best practices in responsible mining. That recognition was mirrored in the overwhelming support of the Project by local communities. Because of years of highly coordinated, extensive, and costly community engagement efforts, Almaden had won the hearts and minds of the community members surrounding the Project. Those community members had seen with their own eyes that the Project would mine responsibly, with great care for the environment, and would offer economic and social development that had been previously unknown to them.

16. Notwithstanding this, in these proceedings, Mexico will undoubtedly take up the inapt mantle of the NGOs that had mislabeled the Claimants' labors as a "Project of Death." But as highlighted above, those efforts will be unavailing. Moreover, they will miss the point. Ultimately, Mexico did not cancel the Concessions because of community opposition to the Project. In fact, there was no material local opposition.

17. Rather, Mexico cancelled the Concessions on a basis that was unprecedented in the Mexican regulatory environment – an undefined and inherently ambiguous concept of "infeasibility" predicated on niggling defects in the Project's geographical coordinates. What is more, Mexico did not allow Minera Gorrión a chance to rectify those alleged defects, and thereby flouted its own legal framework. That clearly pretextual basis is the main measure that Mexico has to defend in these proceedings – everything else it will say about the Project is mere noise. Mexico must defend the "infeasibility" decision and explain that it was not, in fact, pretextual.

18. Mexico cannot do so. The truth is that in the face of undue regulatory delays, Almaden had done everything necessary to bring the Project into production from a regulatory, technical, and practical perspective. Unable to rely on the blanket mining bans it was in the process of legislating, Mexico had to find some means to cancel the Concessions to meet AMLO's

avowed "commitment" to shutting out foreign investment in the mining sector. The means it ultimately settled on were, as shown above and below, flimsy at best.

19. Cancelling the Project on such a trivial basis breached several of Mexico's obligations under the CPTPP. Those breaches will lead to considerable damages. This is because the Project had vast economic potential as embodied in its feasibility study and particularly in light of the skyrocketing upward trend in global gold prices. Mexico will be liable for those damages and will be unable to rely on tired causation defenses increasingly invoked by States with anti-mining policies in a desperate attempt to avoid considerable damages. As Almaden will show in these proceedings, it had carried out the Project with notable professionalism and respect for the surrounding communities and environment, had brought in world-renowned consultants to consider every eventuality, and had paid scrupulous attention to meeting all legal and regulatory requirements.

20. As shown below, this Tribunal will come to recognize that the father-son led team behind the Claimants had done things the right way in Mexico. In a world in which populist governments on both the right and left – like the Government in Mexico – have declared open season on supposed "globalists" and "speculators" who have "exploited" host States and local communities, the Claimants simply do not fit this dastardly stereotype. The Claimants did everything in their power to bring the community along on a shared journey to a mutually beneficial economic outcome while sparing no expense in the painstaking development of the Project done to the highest international standards. As this dispute unfolds, the Tribunal will see through Mexico's inevitable victim-blaming and recognize those efforts in the form of an award of liability and significant damages.

21. The Claimants' Memorial is supported by the following witnesses:

- *Jorge Luis García Herrera*: Security Inspector for the Santa María Zotoltepec community in the municipality of Ixtacamaxtitlán, Puebla, Mexico.[5]

- *Douglas J. McDonald*: Executive Vice President of the Claimants.[6]

[5] Witness Statement of Mr. Jorge Luis García Herrera ("**García Herrera WS**"), dated 17 March 2025.

[6] Witness Statement of Mr. Douglas J. McDonald ("**McDonald WS**"), dated 17 March 2025.

- *Jesús Enrique Pablo-Dorantes*: Vice President of the Environmental Department at the *Centro de Investigaciones Interculturales, Jurídicas y Ambientales*.[7]

- *James Duane Poliquin*: Founder and Chairman of the Board of Directors of the Claimants.[8]

- *Morgan Poliquin*: President, CEO, and Director of the Claimants.[9]

- *Daniel Santamaría Tovar*: Vice President of Minera Gorrión and Project Manager of the Ixtaca Project.[10]

- *Rosario Margarita Uzcanga Vergara*: former Director of Human Rights, Corporate Social Responsibility, and Community Relations at Minera Gorrión.[11]

22. In addition, the Claimants' Memorial is supported by expert reports from the following experts:

- *Mauricio Limón Aguirre*: Expert in Mexican environmental law; Associate Director of Limón Consultants, S.C., an environmental law firm.[12]

- *Darrell Chodorow and Florin Dorobantu*: Valuation and damages experts; Principals at The Brattle Group.[13]

- *Ian C. Weir and Derek J. Riehm*: Experts in technical and cost elements, as well as environmental and social aspects, of mining projects; Principal Mining Engineer and Technical Manager of Mining Engineering and Principal Consultant, respectively, at SLR Consulting (Canada) Ltd.[14]

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7 Witness Statement of Mr. Jesús Enrique Pablo-Dorantes ("**Pablo-Dorantes WS**"), dated 18 March 2025.

8 Witness Statement of Mr. James Duane Poliquin ("**D. Poliquin WS**"), dated 19 March 2025.

9 Witness Statement of Mr. Morgan Poliquin ("**M. Poliquin WS**"), dated 17 March 2025.

10 Witness Statement of Mr. Daniel Santamaría Tovar ("**Santamaría Tovar WS**"), dated 17 March 2025.

11 Witness Statement of Ms. Rosario Margarita Uzcanga Vergara ("**Uzcanga Vergara WS**"), dated 17 March 2025.

12 Expert Report of Mr. Mauricio Limón Aguirre ("**Limón**"), dated 20 March 2025.

13 Expert Report of The Brattle Group ("**Brattle**"), dated 20 March 2025.

14 Expert Report of SLR Consulting (Canada) Ltd. ("**SLR**"), dated 20 March 2025.

2. FACTUAL BACKGROUND

2.1 Almaden and Almadex Are Canadian Mining Companies Specialized in the Generation of New Mineral Prospects in North America

23. In 1981, Mr. Duane Poliquin founded Almaden Resources Corporation ("**Almaden Resources**") – the predecessor to the Claimants in this case – as a Canadian corporation incorporated under the laws of British Columbia, Canada.[15] In 1986, he took Almaden Resources public, listing it on the Vancouver Stock Exchange.[16]

24. In 2002, Almaden Resources merged with Fairfield Minerals Ltd. – a Canadian corporation with mineral projects in Yukon and British Columbia – to create Almaden, a Canadian corporation incorporated under the laws of British Columbia, Canada.[17] Almaden is listed on the Toronto Stock Exchange,[18] and until recently was also listed on the NYSE American.[19]

25. Almadex was established in 2018 as a Canadian corporation incorporated under the laws of British Columbia, Canada.[20] Almadex is listed on the TSX Venture Exchange.[21]

26. Since its inception in 1981, Almaden has been a family-run business, directed by its founder, Mr. Duane Poliquin, and his son, Mr. Morgan Poliquin, alongside a team of like-minded individuals.[22]

27. The name "*Al-maden*" comes from the Arabic word for "*the mine*" and refers to an ancient mercury deposit in the Iberian Peninsula, which was one of the most innovative and sustainable mines in world history.[23] As Mr. Duane Poliquin testifies, he chose this historical reference to name his mining company because it reflects his goal of employing innovative strategies to

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15 D. Poliquin WS, at paras. 13, 16.

16 Almaden Minerals Ltd.'s SEC Form 20-F, dated 29 March 2016, **Exhibit C-221**.

17 Certificate of Amalgamation, No. 641366, dated 1 February 2002, **Exhibit C-167**.

18 Toronto Stock Exchange listing, Almaden Minerals Ltd. (AMM), **Exhibit C-143**.

19 Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at p. 83, **Exhibit C-247**.

20 Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at pp. 31, 36, **Exhibit C-247**; Certificate of Incorporation, No. BC1154229, dated 26 February 2018, **Exhibit C-242**; Certificate of Name Change, No. BC1154229, dated 18 May 2018, **Exhibit C-250**. The spinoff entity was originally named "1154229 B.C. Ltd." but later changed its name to "Almadex Minerals Ltd.", McDonald WS, at para. 31 n.17.

21 Toronto Stock Exchange listing, Almadex Minerals Ltd. (DEX), **Exhibit C-144**.

22 D. Poliquin WS, at para. 20.

23 D. Poliquin WS, at para. 16; Tristian Semiod, 'The Almaden mines, an Andalusi heritage', Fundación de Cultura Islámica, dated 22 February 2022, **Exhibit C-383**.

discover rich mineral deposits and to develop sustainable mines that promote long-term economic growth and societal welfare.[24] Innovation and social and environmental responsibility are the cornerstones of Almaden's ethos, guiding its culture and its decisions.[25]

28. Mr. Duane Poliquin's passion for global mineral exploration and his affection for rural communities trace to his roots.[26] He was born in rural Saskatchewan to a family of farmers, and he and his brothers were the first in their family to attend university.[27] From those humble beginnings, he went on to become a leader in global mineral exploration and has spent over six decades exploring and developing mineral projects in North America, Asia, Australia, and Europe.[28] In all, Mr. Duane Poliquin has been involved in or directly responsible for the discovery or recognition of eight mineral deposits, of which four became producing mines.[29]

29. Mr. Duane Poliquin founded his first gold mining company, Westley Mines, in 1972.[30] Westley Mines operated throughout North America and routinely engaged local community members to help explore and develop its mineral projects.[31] While leading Westley Mines, Mr. Duane Poliquin located a high-potential gold deposit at the Santa Fe fault in Nevada, formed joint ventures to develop it, and eventually sold the project before it was brought into production.[32]

30. Following his success with the Santa Fe project, Mr. Duane Poliquin founded Almaden Resources in 1981, as noted above.[33] As detailed below, in 1993, Almaden began exploration in Mexico under new and favorable laws and regulations enacted by the then President of Mexico, Carlos Salinas de Gortari.[34] Intrigued by Mexico's rich mineral deposits and encouraged by the investor-friendly policies in place at the time, in 1993, Mr. Duane Poliquin

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24 D. Poliquin WS, at para. 16.

25 D. Poliquin WS, at paras. 20-26; Almaden Minerals, Corporate Social Responsibility 2019 ("**Almaden CSR 2019**"), at p. 11, **Exhibit C-80**.

26 *See* D. Poliquin WS, at para. 6.

27 D. Poliquin WS, at para. 6.

28 D. Poliquin WS, at paras. 6-8, 9-15.

29 D. Poliquin WS, at para. 15.

30 D. Poliquin WS, at para. 11.

31 D. Poliquin WS, at para. 11.

32 D. Poliquin WS, at para. 11.

33 D. Poliquin WS, at para. 13.

34 D. Poliquin WS, at para. 14.

identified and acquired the La Trinidad gold deposit in Sinaloa, Mexico.[35] He first optioned and later sold the deposit to Eldorado Gold Corporation, which brought the project into production.[36] This experience, as Mr. Duane Poliquin testifies, sparked his decades-long interest in and affection for Mexico and its mineral potential.[37] It also paved the way for the Ixtaca Project at the heart of this case, as well as other successful exploration projects, including the El Cobre and Caballo Blanco projects in Veracruz, Mexico.[38]

31. To carry out exploration and exploitation activities in Mexico, Almaden Resources established Minera Gavilán in 1996 as a wholly owned Mexican subsidiary.[39] As detailed in Section 2.4 below, Minera Gavilán applied for and obtained the Cerro Grande and Cerro Grande 2 mining concessions (together, the "**Ixtaca Concessions**" or "**Concessions**") in 2003 and 2009, respectively, for renewable terms of 50 years in the municipality of Ixtacamaxtitlán, Puebla.[40]

32. In 2011, following the discovery of the Ixtaca deposit, Almaden established Minera Gorrión as a wholly owned Mexican subsidiary specifically to develop the Ixtaca Project.[41] As explained in greater detail below, in 2011, Minera Gavilán assigned the Ixtaca Concessions to Minera Gorrión.[42] As also explained, in 2012, the parties amended their assignment agreement to reflect that Minera Gavilán would also receive, in exchange for assigning the concession rights, a two-percent net-smelter-return royalty ("**NSR**") on the Project.[43] An NSR royalty is a

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35 D. Poliquin WS, at para. 14.

36 D. Poliquin WS, at para. 14; *See* Cision, 'GR Silver Mining Signs Definitive Binding Agreement with Mako to Acquire Marlin Gold Mining Ltd.', dated 1 February 2021, **Exhibit C-358**.

37 D. Poliquin WS, at para. 14.

38 M. Poliquin WS, at paras. 7, 8; D. Poliquin WS, at para. 14.

39 Minera Gavilán S.A. de C.V., *Libro de Registro de Accionistas*, dated 10 July 2023, at p. 1, **Exhibit C-426**; Minera Gavilán S.A. de C.V. Capital Minimo Fijo, Serie "A", dated 18 September 2002, **Exhibit C-1**.

40 Minera Gavilán, *Solicitud de concesión o de asignación minera* for Cerro Grande, Administrative File 107/00131, dated 28 October 2002, **Exhibit C-2**; Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**; Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera* for Cerro Grande 2, Administrative File 107/00292, dated 14 July 2008, **Exhibit C-7**; Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, **Exhibit C-8**.

41 *Escritura 10,470*, dated 4 January 2011, **Exhibit C-178**; *Escritura 7,026*, dated 16 November 2011, **Exhibit C-179**. Minera Gorrión was originally named Minera Albatros but changed its name to "Minera Gorrión" the same year it was incorporated. *See id.*

42 *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, **Exhibit C-17**.

43 *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, **Exhibit C-17**.

percentage of the net revenue from a mining operation, typically calculated as the gross revenue less the cost of smelting, refining, and related transportation, and insurance costs.[44]

33. Also in 2012, Almaden established a wholly owned Canadian holding company, Puebla Holdings, Inc.,[45] to hold 99.9% of the shares in Minera Gorrión.[46]

34. In 2015, Almaden began a strategic restructuring to, among other things, avoid diluting shareholdings in its non-Ixtaca-related assets and to allow Almaden and Minera Gorrión to focus exclusively on developing the Ixtaca Project.[47] Almaden thus spun off its non-Ixtaca-related assets into a newly incorporated entity, Almadex Minerals Ltd. ("**AML**").[48] After AML's incorporation, Almaden transferred to AML its 99.9% interest in Minera Gavilán.[49]

35. In 2017, Newcrest Mining, a major Australian mining company, approached AML to participate in the El Cobre copper-gold project in Veracruz.[50] To facilitate Newcrest's participation, AML decided to conduct another spinoff.[51] On 26 February 2018, AML established a spinoff company, Almadex, and then transferred to Almadex all of its non-El Cobre project assets.[52] Among the interests Almadex received was ownership of Minera

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44 McDonald WS, at para. 26.

45 Puebla Holdings, Inc., Certificate of Incorporation, dated 5 April 2012, **Exhibit C-182**.

46 Certificate of Share Transfer, dated 30 April 2012, **Exhibit C-183**; General Conveyance, dated 30 April 2012, **Exhibit C-184**.

47 McDonald WS, at para. 18.

48 AML is not the same entity as the Claimant Almadex Minerals Ltd. To avoid confusion, the Claimants have used "AML" to describe this entity. Certificate of Incorporation, Almadex Minerals Limited, Inc., dated 10 April 2015, **Exhibit C-213**; Minera Gavilán S.A. de C.V., Libro de Registro de Accionistas, dated 10 July 2023, at p. 5, **Exhibit C-426**; Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at p. 71, **Exhibit C-247**; Almaden Minerals Ltd., Almaden Updates Spin-Out Timing; Sets Transaction Trading Dates, dated 31 July 2015, **Exhibit C-151**; Almaden Minerals, About Almaden, **Exhibit C-145**.

49 *See* Minera Gavilán S.A. de C.V., *Libro de Registro de Accionistas*, dated 10 July 2023, at p. 5, **Exhibit C-426**; Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at p. 70, **Exhibit C-247**.

50 McDonald WS, at para. 31.

51 McDonald WS, at para. 31.

52 Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at pp. 31, 36, **Exhibit C-247**; Certificate of Incorporation, No. BC1154229, dated 26 February 2018, **Exhibit C-242**; Certificate of Name Change, No. BC1154229, dated 18 May 2018, **Exhibit C-250**. The spinoff entity was originally named "1154229 B.C. Ltd." but later changed its name to "Almadex Minerals Ltd." *See id.*

Gavilán.[53] Coincident with this spinoff, AML renamed itself Azucar Minerals Ltd. ("**Azucar**"),[54] and its sole focus became advancing the El Cobre project.[55]

36. The result of these spinoff transactions was that, as of May 2018, Almaden remained focused on the Ixtaca Project and Azucar focused on the El Cobre project, while Almadex held a royalty on both projects, as well as all other assets that the Almaden group of companies had accumulated since its founding in 1981.[56] This corporate structure, as it pertains to the Claimants' ownership of the Ixtaca Project and NSR royalty interest therein, has remained the same since May 2018.[57] The diagram below depicts the ownership structure of the Ixtaca Project as of the present date.[58]

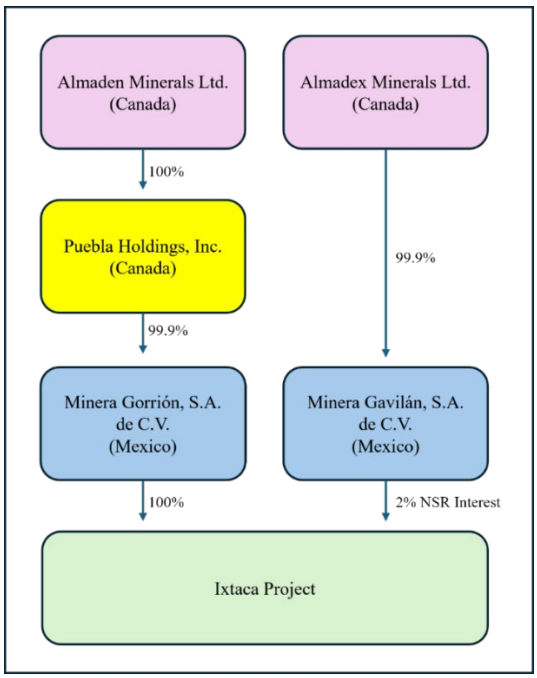

Diagram depicting the Claimants' ownership structure (Source: prepared by the Claimants)[59]

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53 Consolidated Financial Statements of Almadex Minerals Ltd. (formerly 1154229 B.C. Ltd.), Period from incorporation on 26 February 2018 to 31 December 2018, at p. 9, **Exhibit C-60**; Minera Gavilán, *Octavo Registro de Accionistas*, dated 10 July 2023, **Exhibit C-489**.

54 Certificate of Name Change, No. BC1033169, dated 18 May 2018, **Exhibit C-251**.

55 McDonald WS, at para. 31; Almadex Minerals Ltd., Notice of Special Meeting of Shareholders, dated 6 April 2018, at pp. 2, 32, **Exhibit C-247**.

56 McDonald WS, at para. 32.

57 McDonald WS, at para. 32.

58 McDonald WS, at para. 34.

59 McDonald WS, at para. 34.

37. Almaden's commitment to responsible and sustainable mine development, as well as its successful approach to derisking mining projects, are further described below.

2.2 Almaden's Commitment to Transparency, Sustainability, and Socially Responsible Mining

38. As Messrs. Duane and Morgan Poliquin testify, Almaden has resisted over-corporatization and stayed true to its core guiding principles and family values.[60] These principles distinguish the Almaden group of companies from other mining companies.[61]

39. Almaden believes strongly in building positive partnerships with all stakeholders from an early stage in the exploration process.[62] By employing local residents on its mining projects, respecting their culture and property, and financing local improvements important to them, such as access to education, health care, and fresh water, Almaden is committed to making a positive social difference.[63]

40. Consistent with these values, Almaden published in 2019 its second Corporate Social Responsibility Report, which sets out its guiding principles.[64] These principles include, among other things, a commitment to "work to earn the trust of all people [Almaden] interact[s] with;" to "inform local communities in a timely, inclusive, honest, transparent, and culturally appropriate way throughout the life of a project;" and to "pursue sustainable health, education, and local infrastructure improvements in the areas we operate."[65] These principles also include a commitment to "emphasize local employment, provid[ing] opportunity for skills transfer and personal growth," and to "meet or exceed industry standards for environment protection."[66]

41. As explained below and in the Claimants' witness statements, Almaden implemented these guiding principles in developing the Ixtaca Project and in establishing strong and trusting relationships with the local communities in Ixtacamaxtitlán.[67] Almaden's goal was not just to inform the local communities but to foster a climate conducive to genuine dialogue, ensuring

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60 D. Poliquin WS, at para. 20; M. Poliquin WS, at paras. 10, 53.

61 D. Poliquin WS, at paras. 21, 22.

62 D. Poliquin WS, at paras. 22-24.

63 D. Poliquin WS, para. 23; Almaden CSR 2019, at p. 11, **Exhibit C-80**.

64 Almaden CSR 2019, at p. 11, **Exhibit C-80**.

65 Almaden CSR 2019, at p. 11, **Exhibit C-80**.

66 Almaden CSR 2019, at p. 11, **Exhibit C-80**.

67 D. Poliquin WS, at paras. 24-26; M. Poliquin WS, at paras. 45, 52.

that local voices were heard and incorporated into the Company's initiatives and development plans.[68] These efforts were guided by international frameworks, such as the UN Global Compact, OECD Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, IFC Environmental and Social Performance Standards, Equator Principles, ILO Declaration on Fundamental Principles and Rights at Work, and GRI Sustainability Reporting Guidelines.[69] Almaden executed and managed the Ixtaca Project to exceed these international standards, ensuring respect for the dignity, culture, human rights, and property of the communities and individuals touched by the Ixtaca Project.[70]

42. As described further below, in recognition of Almaden's dedication to sustainable and responsible mining, in June 2022, the UNECE and Economía selected the Ixtaca Project for inclusion in the first ever UNECE Mining Pilot Project.[71] Rosario Uzcanga Vergara and Daniel Santamaría Tovar explain in their witness statements the importance of Mexico's and UNECE's recognition of the Project in this regard.[72]

43. Equally, Almaden is committed to ensuring a positive environmental impact on the areas in which it operates.[73] Almaden undertakes its exploration operations with the utmost care for local flora and fauna and dedication to environmental stewardship, often exceeding industry standards in those areas.[74] In 2013, for example, Minera Gorrión led a reforestation program around the drill sites at Ixtaca, planting three varieties of indigenous pine at the beginning of the rainy season to ensure successful planting.[75] Minera Gorrión also amended its original mine design to address water concerns following extensive consultations with local communities.[76]

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68 McDonald WS, at para. 59; Almaden CSR 2019, at p. 11, **Exhibit C-80**.

69 Almaden CSR 2019, at p. 7 ("UN Global Compact, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, the IFC Environmental and Social Performance Standards, the Equator Principles, the ILO Declaration on Fundamental Principles and Rights at Work, and the GRI Sustainability Reporting Guidelines, to name a few. These guidelines have helped frame the principles which nourish our interaction with our stakeholders, such as respect for others, human rights, transparency, stakeholder engagement, care for the environment, capacity building, and good governance. We see these principles as being fundamentally linked, and critical to the long-term success of any business."), **Exhibit C-80**.

70 M. Poliquin WS, at para. 45, 49; Almaden CSR 2019, President's Letter, at pp. 6-7, **Exhibit C-80**.

71 Almaden Press Release, Almaden Announces Selection by United Nations UNECE for Mining Pilot Project in Coordination with Mexican Ministry of the Economy, dated 6 July 2022, **C-392**.

72 Uzcanga Vergara WS, paras. 56-58; Santamaría Tovar WS, at paras. 43-50.

73 Almaden CSR 2019, Guiding Principles, at p. 18, **Exhibit C-80**.

74 M. Poliquin WS, at para. 50; Almaden CSR 2019, Guiding Principles, at p. 18, **Exhibit C-80**.

75 M. Poliquin WS, at para. 51; Almaden Minerals Ltd. webpage, Environmental Projects, **Exhibit C-458**.

76 McDonald WS, at para. 61.

These changes included constructing permanent water storage infrastructure and adopting innovative dry-stack filtered tailings technology, replacing traditional wet tailings dams.[77] This adaptation reflected local requests for safe, sustainable, and environmentally responsible water management.[78]

44. In short, Almaden was committed to developing the Ixtaca Project in a respectful, sustainable, and environmentally responsible manner, and in full compliance with the human rights of the communities and individuals surrounding it. As the Poliquins explain in their witness statements, this approach is an extension of their family ethos – as a family hailing from humble, rural beginnings that lived off the land, they respect communities that do the same.[79]

2.3 Almaden Identified Potential Gold and Silver Mineralization at Ixtaca in the Eastern Mexican State of Puebla

45. Almaden began mineral exploration in Mexico in 1993.[80] In 1992, the then President of Mexico, Carlos Salinas de Gortari, enacted a new *Ley Minera* (the "**1992 Mining Law**") to facilitate foreign investment in the exploration and exploitation of Mexico's vast mineral resources.[81] Among other measures, the 1992 Mining Law removed restrictions on foreign ownership, allowing foreign companies to own 99.9% of Mexican mining companies.[82]

46. In 1996, the then President of Mexico, Ernesto Zedillo Ponce de León, held an exclusive event in Vancouver, Canada for approximately 30 Canadian industry leaders in the mining exploration sector.[83] Mr. Duane Poliquin was among those invited.[84] At this meeting, President Zedillo expressly encouraged these industry leaders to make mining investments in Mexico

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77 Moose Mountain Technical Services, Ixtaca Feasibility Study – Technical Report (effective date 24 Jan. 2019, final date 3 Oct. 2019), dated 24 January 2019 ("**Ixtaca Feasibility Study**"), at p. 38, **Exhibit C-314**.

78 M. Poliquin WS, at para. 50; McDonald WS, at para. 44.

79 M. Poliquin WS, at para. 44; D. Poliquin WS, at para. 6.

80 D. Poliquin WS, at para. 14.

81 D. Poliquin WS, at para. 28.

82 D. Poliquin WS, at para. 28; President Salinas de Gortari underwent a "process of evaluation of the nation's mineral policies . . . to influence the creation of a healthier investment climate in Mexico;" these efforts culminated in the enactment of the 1992 Mining Law published on 24 June 1992 (the "**1992 Mining Law**"), which "continued to follow and streamlined the liberalized structure first suggested in the 1990 regulations." Miranda, Fausto C., "*Mining Law and Regulations of Mexico"*, Rocky Mountain Mineral Law Foundation, 1993, Denver, at pp. 3-4, **Exhibit C-471**.

83 D. Poliquin WS, at para. 29; *see also* Prime Minister of Canada, 'President of Mexico to Visit Canada', dated 4 June 1996, **Exhibit C-161**.

84 D. Poliquin WS, at para. 29.

and to develop its mineral resources into producing mines.[85] The Government of the Mexican State of Sonora also sent a delegation to Vancouver to encourage such investments.[86]

47. As Mr. Morgan Poliquin explains, around that same time, he was undertaking his postgraduate studies in geothermal systems and epithermal gold deposits, focusing on the geology and mineral deposits of Eastern Mexico.[87] During those studies, he hypothesized that Eastern Mexico contained a series of important, unrecognized mineral deposits.[88]

48. Specifically, at the University of Auckland, Mr. Morgan Poliquin studied a gold-rich mineral deposit in Fiji.[89] His examination of that deposit and its properties led him to theorize that similar such deposits might exist on the other side of the Pacific Rim, namely, in the Trans-Mexican Volcanic Belt.[90] That Belt is a volcanic arc that runs east-west across Mexico from Nayarit in Western Mexico to Veracruz in Eastern Mexico; at the time, the Eastern part of the Belt was underexplored.[91] This novel hypothesis led directly to Almaden's discovery of the Caballo Blanco and El Cobre deposits in Veracruz, as well as the Ixtaca deposit in Puebla that is at the center of this case.[92]

49. Seeking to better understand the geology of Eastern Mexico and to test his hypothesis, Mr. Morgan Poliquin began his doctoral studies at the Camborne School of Mines in the United Kingdom, focusing on the geology and mineral deposits of Eastern Mexico.[93] Parsing scholarship and employing Aster Satellite imagery, as well as other state-of-the-art tools, he identified hundreds of targets in the Trans-Mexican Volcanic Belt from the Texas border to Guatemala to visit and inspect for geologic potential.[94]

50. BHP Billiton – one of the largest mining companies in the world – agreed to fund Mr. Morgan Poliquin's exploration efforts through a joint venture with Almaden, contributing US$ 200,000

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85 D. Poliquin WS, at para. 29; *see also* Prime Minister of Canada, 'President of Mexico to Visit Canada', dated 4 June 1996, **Exhibit C-161**.

86 D. Poliquin WS, at para. 29.

87 M. Poliquin WS, at paras. 7-8.

88 M. Poliquin WS, at paras. 12-13.

89 M. Poliquin WS, at para. 12.

90 M. Poliquin WS, at para. 12.

91 M. Poliquin WS, at para. 12.

92 M. Poliquin WS, at paras. 12-13.

93 M. Poliquin WS, at para. 13.

94 M. Poliquin WS, at para. 14.

to Morgan's helicopter exploration missions throughout Eastern Mexico.[95] Morgan's use of a helicopter for exploration allowed him to survey between 10 and 50 sites per day.[96] Through this helicopter-based exploration program, Mr. Morgan Poliquin covered a wide swath of the Eastern part of Mexico and homed in on more specific prospective areas, including in the State of Puebla.[97] He focused on areas of exposed clay minerals (called alteration zones) which can be associated with and potentially overlie mineral deposits.[98] The below photo depicts one of the sites where Morgan landed in Northern Mexico.[99]

Photo of Morgan Poliquin (standing with his hand on the truck bed) at a site in Coahuila State, circa 2005.

51. As Mr. Morgan Poliquin explains, on these helicopter expeditions, he would frequently stop in the rural countryside and talk to the local residents, sometimes staying in small towns, always mindful to exhibit the respect for local citizenry and their private property.[100] He has functional Spanish and would always engage with the local residents in their native language.[101] When

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95 M. Poliquin WS, at para. 15; Exploration and Property Option Agreement Between BHP Billiton World Exploration Inc. and Almaden Minerals Ltd., dated 9 May 2002, **Exhibit C-168**.

96 M. Poliquin WS, at para. 16.

97 M. Poliquin WS, at para. 16.

98 M. Poliquin WS, at para. 16.

99 M. Poliquin WS, at para. 16.

100 M. Poliquin WS, at para. 17.

101 M. Poliquin WS, at para. 17.

Mr. Morgan Poliquin would explain that he was a prospector, the local residents would almost always offer to show him mines, quarries, and rocks.[102]

52. As a result of these literature reviews and helicopter-supported exploration efforts, Almaden Resources staked a number of claims across Eastern Mexico.[103] As noted above, in 2002, Almaden Resources merged with Fairfield Minerals Ltd. to create Almaden.[104] Almaden likewise staked a number of claims in Eastern Mexico, among them the area comprising the Ixtaca deposit in Puebla, illustrated in red below.[105]

Map from the Claimants' Manifestación de Impacto Ambiental (MIA), explained further below, reflecting in red the regional environmental system, as defined in the MIA, encompassing the Ixtaca deposit.[106]

53. As detailed further below, Mr. Morgan Poliquin and the Almaden team discovered the Ixtaca deposit between the villages of Santa María Zotoltepec and Zacatepec in the municipality of Ixtacamaxtitlán beneath a large area of clay alteration, an indicator of hydrothermal activity.[107]

54. Through Minera Gavilán – then a wholly-owned Mexican subsidiary of Almaden Resources – Almaden staked two mineral claims in this area, collectively referred to as the Tuligtic

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102 M. Poliquin WS, at para. 18.

103 M. Poliquin WS, at para. 18.

104 Certificate of Amalgamation, No. 641366, dated 1 February 2002, **Exhibit C-167**.

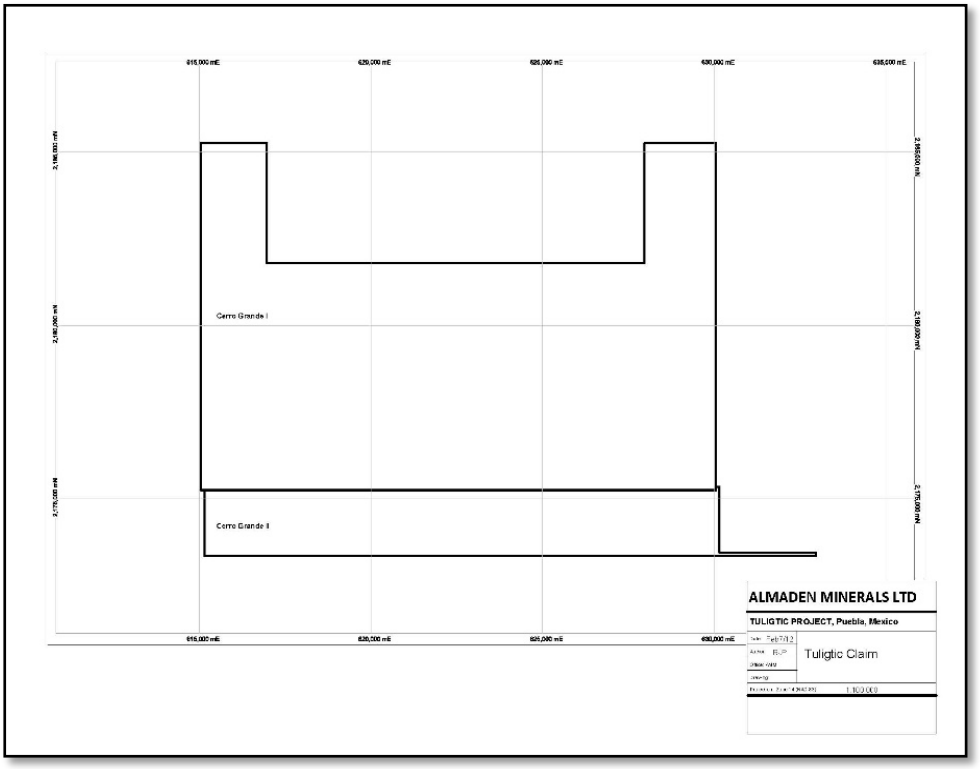
105 M. Poliquin WS, at para. 18.

106 Minera Gorrión, *Manifestación de Impacto Ambiental para el Proyecto de Ixtaca* ("**MIA**"), at Ch. I, p. 5, **Exhibit C-262**.

107 M. Poliquin WS, at para. 18.

property: Cerro Grande and Cerro Grande 2.[108] Almaden hired a mining expert certified with Mexico's Directorate General of Mines (*Dirección General de Minas* or "**DGM**"), Abelardo Garza, to stake the milestones (*mojoneras*) – *i.e.*, the monuments erected for the purpose of marking and designating the perimeter of the desired concession area.[109]

55. Cerro Grande comprised 11,202 hectares of land and was located in the municipalities of Tetela de Ocampo, Ixtacamaxtitlán, and Aquixtla, while Cerro Grande 2 comprised 3,028 hectares of land and was located in the municipality of Zautla, as illustrated in the below map.[110]



Map of the Tuligtic Claim by Almaden Minerals Ltd., comprising the Cerro Grande and Cerro Grande 2 Concessions (Source: the Claimants' internal company files)

108 M. Poliquin WS, at para. 19; Annual Information Form for the fiscal year ended December 31, 2022, at p. 22, **Exhibit C-115**.

109 M. Poliquin WS, at para. 19.

110 M. Poliquin WS, at para. 20; Ixtaca Feasibility Study, at p. 45 (map), **Exhibit C-314**; Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, (title to Cerro Grande), **Exhibit C-3**; Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, (title to Cerro Grande 2), **Exhibit C-8**.

56. After filing mineral concession applications for the area comprising the Tuligtic Property, Minera Gavilán applied for, and duly received, the Cerro Grande and Cerro Grande 2 Concessions, as set forth below.[111]

2.4 Through Its Mexican Subsidiary, Minera Gavilán, Almaden Applied For And Obtained Two Mineral Concessions At Ixtaca Valid For 50 Years

2.4.1 Under the Mexican Legal and Regulatory Framework, Economía Is Responsible for Granting Mining Concessions for the Exploration and Exploitation of Minerals

57. The Mexican Mining Law, its Regulations ("**Mining Regulations**"), and Article 27 of the Mexican Constitution regulate the exploration, exploitation, and processing of minerals in Mexico.[112] The application of the Mining Law is the responsibility of the Federal Executive Branch through Economía.[113] The DGM, an agency under Economía, is responsible for the administration of the mining industry in Mexico, including the granting of mining concessions.[114] The DGM also maintains the Public Mining Registry, in which all mining concessions, as well as mining legal acts, contracts, and agreements, are registered.[115]

58. Under the Mexican Mining Law, originally enacted in June 1992,[116] all minerals found within the territory of Mexico are owned by the Mexican State, and private parties may exploit these

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111 M. Poliquin WS, at para. 21; Ixtaca Feasibility Study, at p. 45 (map), **Exhibit C-314**; Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, (title to Cerro Grande), **Exhibit C-3**; Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, (title to Cerro Grande 2), **Exhibit C-8**.

112 1992 Mining Law, published in the *Diario Oficial* on 26 June 1992 ("**1992 Mining Law**"), **Exhibit C-157**; 2005 Mining Law Amendment, published in the *Diario Oficial* on 28 April 2005 ("**Mining Law**"), **Exhibit C-174**; 1999 Mining Regulations, published in the *Diario Oficial* on 15 February 1999 ("**1999 Mining Regulations**"), **Exhibit C-164**; Political Constitution of the United Mexican States (last amended 17 February 2025) ("**Mexican Constitution**"), at Art. 27, paras 4 ,6, and 10, Section I, **Exhibit C-439**.

113 、 2005 Mining Law Amendment, published in the *Diario Oficial* on 28 April 2005 ("**Mining Law**"), at Arts. 1 and 7, **Exhibit C-174**.

114 *See Reglamento Interior de la Secretaría de Economía*, published in the *Diario Oficial* on 22 November 2002 (as amended on 17 August 2009), Art. 33, **Exhibit C-170**; *see also Reglamento Interior de la Secretaría de Economía*, published in the *Diario Oficial* on 22 November 2012, Art. 27, **Exhibit C-189** (in 2012, DGM was renamed *Dirección General de Regulación Minera*)**.**

115 Mining Law, at Art. 46, **Exhibit C-158**; *see also Reglamento Interior de la Secretaría de Economía*, published in the *Diario Oficial* on 22 November 2002 (as amended on 17 August 2009), at Art. 33, Section III, **Exhibit C-170**.

116 The 1992 Mining Law was published in the *Diario Oficial* on 26 June 1992. Pursuant to Transitory Art. 1, the law entered into force 90 days after its publication, *i.e.*, on 24 September 1992. 1992 Mining Law, **Exhibit C-157**.

minerals through mining concessions granted by the DGM.[117] Under Article 6 of the 1992 Mining Law, mining has preferential status over other types of land usage.[118] Specifically, as Article 6 provides, "[t]he exploration, exploitation and benefit of the minerals or substances referred to in this Law are of public utility, and shall be preferred over any other use or exploitation of the land."[119]

59. Mining concessions are granted on a "first-come, first-served" basis, provided that the applicant satisfies the conditions set out in the Mining Law and Regulations.[120] Under Article 15 of the 1992 Mining Law, exploration concessions had a non-renewable term of six years, counted from the date of registration of the concession titles in the Public Mining Registry, while exploitation concessions had a renewable term of 50 years.[121] On 28 April 2005, the 1992 Mining Law was amended to merge the exploration and exploitation regimes into one single regime, under which mining concessions have a renewable term of 50 years.[122]

60. The Mining Regulations, originally enacted on 15 February 1999,[123] implement the Mining Law and set forth the procedural requirements for obtaining a mining concession. Specifically, under Articles 16 and 17 of the Mining Regulations, to obtain a mining concession, the

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117 Mexican Constitution, at Art. 27, paras. 4 and 6, **Exhibit C-439**; Mining Law, at Arts. 7.VI, 10, **Exhibit C-158**; *Reglamento Interior de la Secretaría de Economía*, published in the *Diario Oficial* on 22 November 2002 (as amended on 17 August 2009), Art. 33, Section VI, **Exhibit C-170**.

118 Mining Law, at Art. 6, **Exhibit C-158**.

119 Mining Law, at Art. 6, **Exhibit C-158**.

120 Mining Law, at Art. 13, ("Mining concessions and assignments shall be granted on free land to the first applicant in time of a mining lot, provided that the conditions and requirements set forth in this Law and its Regulations are met."), **Exhibit C-158**; *see also* Alberto Vasquez, Spotlight: the Legal Framework and Licensing Regime for Mining in Mexico, Lexology, dated 9 October 2019, **Exhibit C-78**.

121 1992 Mining Law, at Art. 15, **C-157**.

122 The 2005 Mining Law Amendment was enacted on 22 February 2005 and published in the *Diario Oficial* on 28 April 2005, **Exhibit C-174**. This amendment came into effect on 1 January 2006 with respect to certain articles relating to mining concessions. Under Article 15 of the 2005 Mining Law Amendment, "[m]ining concessions will have a term of fifty years, counted from the date of their registration in the Public Mining Registry and will be extended for the same term," provided that an extension is requested five years before expiration of the term and the concession is in good standing under the Law. *See id*.

123 1999 Mining Regulations, at Transitory Art. 1, **Exhibit C-164**. The 1999 Regulations were modified in 2012 by the new Regulations enacted on 9 October 2012, entered into force on 12 October 2012. 2012 Mining Regulations, published in the *Diario Oficial*, dated 12 October 2012 ("**2012 Mining Regulations**"), at Transitory Art. 1, **Exhibit C-187**. This new Regulation was further amended on 14 October 2014, entered into force on 31 October 2014. 2014 Mining Regulations, published in the *Diario Oficial*, dated 31 October 2014 ("**2014 Mining Regulations**"), at Transitory Art. 1, **Exhibit C-207**.

applicant must file an application with the relevant regional office of Economía,[124] containing the requisite information and supporting documentation, including proof that the applicant complies with the Mexican nationality requirement,[125] identification of the main minerals to which the envisaged exploration and exploitation activities relate, and information in relation to the concession area, including:

- The land's surface area measured in hectares;
- The location of the departure point used to measure the concessioned perimeter, and references to known places and population centers indicating the closest access routes from the nearest town;
- Photographs of the departure point as defined in Article 12 of the Mining Law;[126]
- Indication of the sides, bearings, horizontal distances and perimeter of the land, including any auxiliary lines used for calculating the land's perimeter;[127] and
- When the surface area exceeds 50 hectares, a map that indicates the departure point of the concessioned lot, in accordance with the technical specifications set forth in the *Manual de Servicios al Público en Materia Minera*, originally published in 1993 and revised in 1999 ("**Mining Manual**").[128]

61. Upon receipt of a mining concession application, Economía registers the application in accordance with Article 17 of the Mining Regulations and applies its seal on the original,

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124 1999 Mining Regulations, at Arts. 16 and 17, (Art. 17 provides that "[a]pplications for exploration concession or mining assignment shall be filed in person before the corresponding unit according to the location of the mining lot, in accordance with the district determined by the Secretary"), **Exhibit C-165**.

125 Under Arts. 10 and 11 of the Mining Law and Art. 4 of the 1999 Mining Regulation the applicant must be a Mexican corporation, *ejido*, agrarian community, or indigenous community. Mining Law, at Arts. 10, 11, **Exhibit C-158**; 1999 Mining Regulations, Art. 4, **Exhibit C-164**.

126 Mining Law, at Art. 12, ("The location of the mining lot will be determined based on a fixed point on the ground, called the starting point, linked to the perimeter of said lot or located on it."), **Exhibit C-158**.

127 In accordance with Art. 12 of the Mining Law, "[e]very concession, assignment or zone that is incorporated to mining reserves shall refer to a mining lot, solid of indefinite depth, limited by vertical plans and whose upper face is the surface of the land, on which the perimeter it comprises is determined" and its sides that make up the perimeter of the lot "must be oriented astronomically North-South and East-West and the length of each side will be one hundred or multiples of one hundred meters", Mining Law, at Art. 12, **Exhibit C-158**.

128 1999 Mining Regulations, at Art. 16, **Exhibit C-164**; *Manual de Servicios al Público en Materia Minera*, published in the *Diario Oficial*, dated 28 July 1999 ("**1999 Mining Manual**"), **Exhibit C-165**; *Manual de Servicios al Público en Materia Minera*, published in the *Diario Oficial*, dated 7 April 1993 ("**1993 Mining Manual**"), **Exhibit C-159**.

copies, and annexes accompanying the application.[129] Importantly, Article 17 provides that Economía will verify the completeness of the application, without assessing its content, and "[i]f any requirement or document is missing" from the application, Economía "will verbally request the person who submitted the application to provide [the missing information] at that time."[130] If the application is not corrected, "the application will be rejected and [Economía] will record the causes that give rise to this situation in the original and in the corresponding copies, one of which must be delivered to the interested party."[131]

62. If the application is complete, Economía will issue a certificate to the applicant affirming that the application has been "admitted for study and processing."[132] The applicant's mining expert then has 60 days to carry out the required expert work on the land where the lot is located and to submit an expert report establishing the coordinates of the departure point of the mining concession and memorializing the topographical information in relation to the concession.[133] Article 21 of the Mining Regulations sets out the fieldwork study and information that the expert report must contain,[134] while the Mining Manual provides technical guidelines on how to compile each section of the expert report.[135]

63. Under Article 22 of the Mining Regulations, once the expert report is submitted, Economía has 45 days to review the expert report and to verify its compliance with the Mining Regulations and Mining Manual.[136] Importantly, Article 22 further provides that if the expert report does not comply with the Mining Regulations or Mining Manual, Economía will notify the applicant within 30 days of receiving the expert report, "in writing and only once, to present the pertinent corrections or new expert works, within 60 days" following the date of notification.[137]

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129 1999 Mining Regulations, at Art. 17, **Exhibit C-164**. For mining concession applications submitted before the 2005 Mining Amendment, the process outlined in Arts. 16, 17, 21, 22, and 23 is the same whether the application was for an exploration or exploitation concession. The only difference is that when the exploitation concession application relates to a plot of land with no pre-existing concession, Economía will have 21 days to issue the title. *See* 1999 Mining Regulation, at Arts. 24-27, **Exhibit C-164**.

130 1999 Mining Regulations, at Art. 17, Section II, **Exhibit C-164**.

131 1999 Mining Regulations, at Art. 17, Section II, **Exhibit C-164**.

132 1999 Mining Regulations, at Art. 17, Section I, **Exhibit C-164**.

133 1999 Mining Regulations, at Art. 17, **Exhibit C-164**; *see also* 1999 Mining Manual, at Provision 2, Section XXII, **Exhibit C-165**.

134 1999 Mining Regulations, at Art. 21, **Exhibit C-164**.

135 1993 Mining Manual, at Provisions 13-23, **Exhibit C-159**.

136 1999 Mining Regulations, at Art. 22, Section II, **Exhibit C-164**.

137 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**.

64. The applicant's right to correct the application is also reflected in the Federal Law of Administrative Procedure, which applies generally to administrative law procedures in Mexico. Article 17A of the Law provides that "[w]hen the documents submitted by the interested parties do not contain the data or do not comply with the applicable requirements," the relevant administrative agency (in this case, Economía) "must notify the interested parties, in writing and only once, so that they can correct the omission" within the timeframe established by the agency, which must not be less than five days.[138] Critically, Article 17A further provides that if the agency fails to notify the applicant of the relevant error, "the application cannot be rejected on the grounds that it is incomplete."[139]

65. Under Article 23 of the Mining Regulations, once Economía has approved the expert report, it will review the complete concession application and issue a decision within 15 days.[140] During this 15-day period, Economía "will verify the free character of the lot that is the object of the application and, if the other conditions and requirements provided by the Law and these Regulations are satisfied, it will issue" the mining concession.[141] The Public Mining Registry will then register the approved mining concession *ex officio* within 10 days from its approval and publish it in the Book of Mining Concessions.[142]

66. Upon registration of a mining concession, the concessionaire acquires all of the rights set forth in Article 19 of the Mining Law, including the right to carry out exploration and exploitation works within the concessioned area; to use water for exploration activities and for employee consumption; to transfer or option the rights under the concession to qualified persons; and to reduce, divide, or apportion the lots that comprise the concession area.[143] In exchange, the concessionaire must fulfill various obligations to maintain the concession in good standing as set out in Article 27 of the Mining Law, including the obligation to carry out exploration and exploitation activities sufficient to fulfill the investment requirements defined in Articles 64

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138 Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

139 Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

140 1999 Mining Regulations, at Art. 23, **Exhibit C-164**.

141 1999 Mining Regulations, at Art. 23, **Exhibit C-164**.

142 Mining Law, at Art. 47, **Exhibit C-158**; 1999 Mining Regulations, at Art. 93, Section I, **Exhibit C-164**.

143 Mining Law, at Art. 19, **Exhibit C-158**.

and 65 of the Mining Regulations;[144] to pay the mining rights established under the Mining Law and the *Ley Federal de Derechos* in a timely manner;[145] and to comply with security and environmental requirements.[146]

67. Notably, under Article 24 of the Mining Regulations, Economía has the right to modify an approved mining concession, if "it is subsequently required to make any corrections, if its data are erroneous or do not correspond to the land that it should legally cover."[147] In such a case, Economía must follow the procedure set out in Article 31 of the Mining Regulations, which requires Economía to notify the concessionaire of the corrections to be made.[148] Economía thus has the power and the authority under the Mining Law and Regulations to correct minor technical defects in approved mining concessions.

68. Likewise, under the Mining Law and Regulations, minor discrepancies or defects in the technical information underlying a concession application cannot lead to the outright rejection of that application, unless the applicant fails to make the required correction following notification. More fundamentally, where Economía identifies defects in the expert report accompanying a concession application, it is *required* under Article 22 of the Mining Regulations to provide notice and to allow the applicant to correct the expert report within 60 days.[149] If it fails to do so, it is prohibited from rejecting the application on that basis.[150]

69. As discussed further below, in this case, Economía failed to give the Claimants any notice or opportunity to correct the purported minor defects Economía identified in the underlying expert reports (15-20 years after approving them), despite its express legal obligation to do so.

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144 1999 Mining Regulations, at Arts. 64 and 65, (providing a per hectare investment requirement in Mexican Pesos that the concessionaire must meet), **Exhibit C-164**.

145 *Ley Federal de Derechos*, at Arts. 262 and 264, (establishing a fee per hectare that the concessionaire must pay the Mexican Government every six months), **Exhibit C-155**.

146 Mining Law, at Art. 27, **Exhibit C-158**.

147 1999 Mining Regulations, at Art. 24, second para., **Exhibit C-164**.

148 1999 Mining Regulations, at Art. 31, second para., (establishing that Economía shall inform the concessionaire the reasons to correct the title and allowing the concessionaire to provide a response within 30 days), **Exhibit C-164**.

149 1999 Mining Regulations, at Art. 22, **Exhibit C-164**.

150 Federal Law on Administrative Procedure, published in the *Diario Oficial de la Federación*, dated 4 August 1994, at Art. 17A (amended by law published in the official gazette on 24 December 1996), **Exhibit C-160**.

2.4.2 After Approving the Concession Applications and Expert Reports, Economía Granted the Cerro Grande and Cerro Grande 2 Concessions

70. In accordance with the legal and regulatory framework described above, Minera Gavilán applied for and obtained in 2003 and 2009 two mining concessions in Ixtacamaxtitlán, namely, the Cerro Grande and Cerro Grande 2 Concessions.[151] The Cerro Grande Concession was originally valid for a term of six years under the 1992 Mining Law.[152] After the 2005 amendment to the 1992 Mining Law, its term was automatically extended to a renewable term of 50 years.[153] The Cerro Grande 2 Concession was issued under the amended Mining Law for a renewable term of 50 years.[154]

71. Specifically, on 28 October 2002, Minera Gavilán submitted to the *Delegación Federal de la Secretaría de Economía*, Economía's regional Office in Puebla State, an application to obtain a mining concession for the Cerro Grande property.[155] As required under Article 16 of the Mining Regulations, Minera Gavilán appended to its concession application all required information and documentation, including the name of the land (Cerro Grande), the minerals implicated by the concession (gold, silver, copper, lead, and zinc), the departure point to measure the perimeter of the lot, the surface area of the lot, the closest municipalities (Tetela de Ocampo, Ixtacamaxtitlán, and Aquixtla), and three photographs of the milestone marking the departure point and the angles used for the measurement of the perimeter of the lot.[156]

72. Economía's Office in Puebla State duly registered the application, applied Economía's seal, and proceeded to verify whether the application was complete.[157] As reflected in the checklist

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151 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**. Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, at p. 4, **Exhibit C-8**.

152 Cerro Grande Initial Title No. 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**.

153 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**.

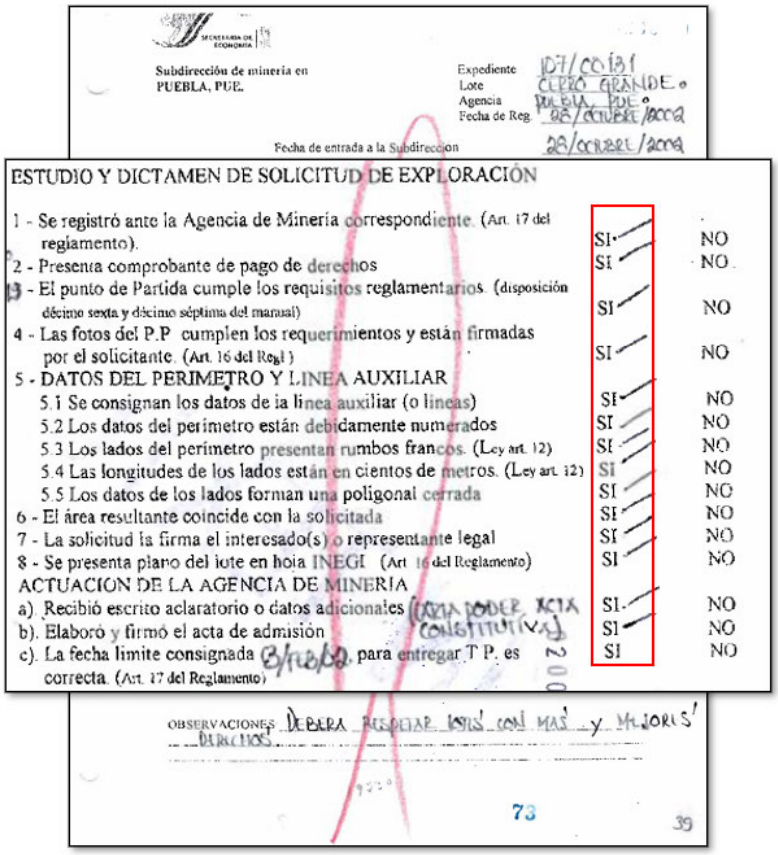
154 Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, at p. 4, **Exhibit C-8**.

155 Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, dated 28 October 2002, **Exhibit C-2**.

156 Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, dated 28 October 2002, **Exhibit C-2**.

157 Cerro Grande evaluation assessment by the *Subdirección de Minería de Puebla* for the mining case file No. 107/00131, 18 November 2002, **Exhibit C-169**.

below, Economía did not identify any missing information; it therefore issued a certificate dated 18 November 2002 admitting Minera Gavilán's application for study and processing.[158]



Subdirección de minería en PUEBLA, PUE.

Expediente 107/00131
Lote CERRO GRANDE
Agencia PUEBLA, PUE.
Fecha de Reg 28/OCTUBRE/2002

Fecha de entrada a la Subdirección 28/OCTUBRE/2002

ESTUDIO Y DICTAMEN DE SOLICITUD DE EXPLORACIÓN

1 - Se registró ante la Agencia de Minería correspondiente. (Art. 17 del reglamento).	SI	NO
2 - Presenta comprobante de pago de derechos	SI	NO
3 - El punto de Partida cumple los requisitos reglamentarios. (disposición décimo sexta y décimo séptima del manual)	SI	NO
4 - Las fotos del P.P cumplen los requerimientos y están firmadas por el solicitante. (Art. 16 del Regl.)	SI	NO
5 - DATOS DEL PERIMETRO Y LINEA AUXILIAR		
5.1 Se consignan los datos de la linea auxiliar (o lineas)	SI	NO
5.2 Los datos del perimetro están debidamente numerados	SI	NO
5.3 Los lados del perimetro presentan rumbos francos. (Ley art. 12)	SI	NO
5.4 Las longitudes de los lados están en cientos de metros. (Ley art. 12)	SI	NO
5.5 Los datos de los lados forman una poligonal cerrada	SI	NO
6 - El área resultante coincide con la solicitada	SI	NO
7 - La solicitud la firma el interesado(s) o representante legal	SI	NO
8 - Se presenta plano del lote en hoja INEGI (Art. 16 del Reglamento)	SI	NO
ACTUACION DE LA AGENCIA DE MINERIA		
a). Recibió escrito aclaratorio o datos adicionales (COPIA PODER ACTA CONSTITUTIVA)	SI	NO
b). Elaboró y firmó el acta de admisión	SI	NO
c). La fecha limite consignada 8/ENERO/03 para entregar T P. es correcta. (Art. 17 del Reglamento)	SI	NO

OBSERVACIONES DEBERA PRESENTAR PLANOS CON MAS Y MEJORES DERECHOS

73

39

73. On 17 January 2003, within the deadline of 60 days from the admission of its concession application,[159] Minera Gavilán duly submitted an expert report prepared and signed by Mr. Abelardo Garza Hernández, a mining expert registered with and certified by the DGM.[160] Economía then proceeded to review and analyze the expert report. Economía did not notify Minera Gavilán of any corrections.[161]

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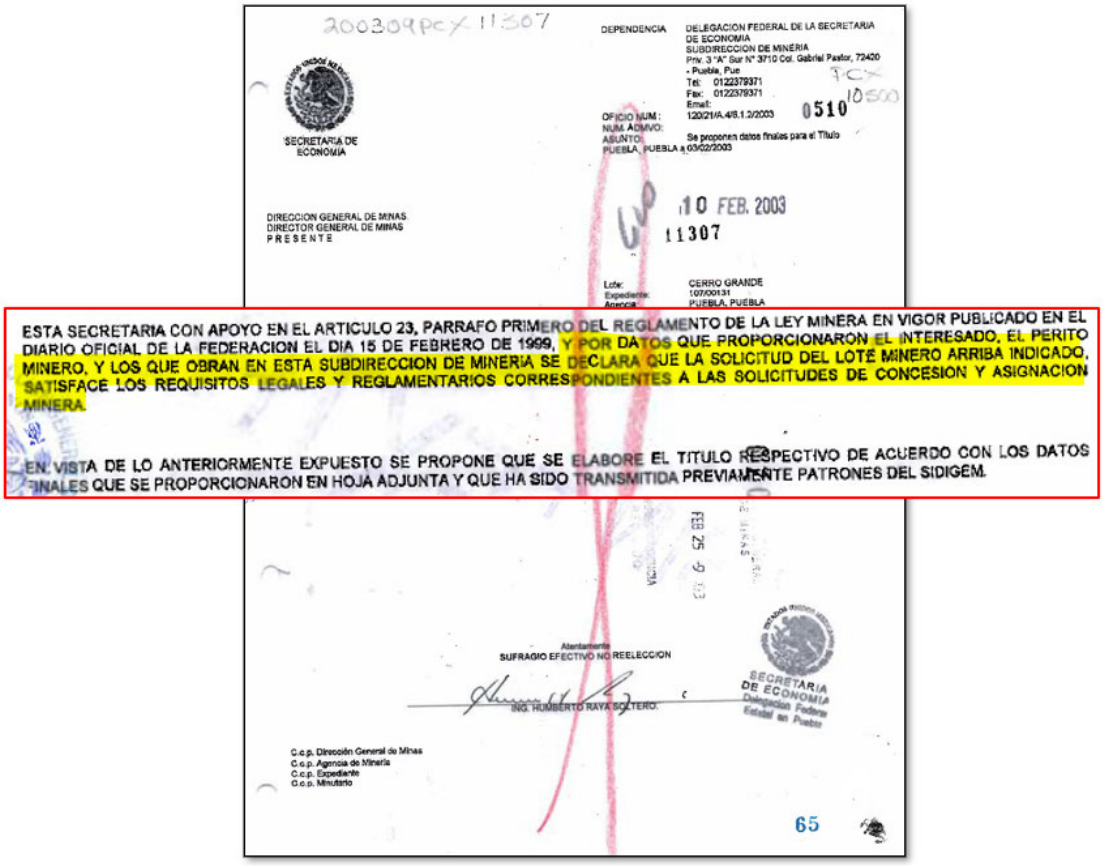
158 Cerro Grande evaluation assessment by the *Subdirección de Minería de Puebla* for the mining case file No. 107/00131, 18 November 2002, **Exhibit C-169**. *See* Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, dated 28 October 2002, at p. 4, **Exhibit C-2**.

159 Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, dated 28 October 2002, at p. 4, **Exhibit C-2**.

160 Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, dated 28 October 2002, at pp. 6-15, **Exhibit C-2**.

161 Official letter No. 120/21/A.4/6.1/2003 from the *Subdirección de Minería* of DGM to the Director of DGM with respect to the Cerro Grande concession application, dated 10 February 2003, **Exhibit C-171**.

74. On 10 February 2003, Economía issued Oficio No. 120/21/A.4/6.1/2003, which approved Minera Gavilán's application and expert report, and recommended that the Director General of Mines proceed to issue the approved mining concessions, as reflected below:[162]



200309PCX 11307

DEPENDENCIA: DELEGACION FEDERAL DE LA SECRETARIA DE ECONOMIA
SUBDIRECCION DE MINERIA
Priv. 3 "A" Sur N° 3710 Col. Gabriel Pastor, 72420
- Puebla, Pue
Tel: 0122379371
Fax: 0122379371
Email:

SECRETARIA DE ECONOMIA

OFICIO NUM.: 120/21/A.4/6.1.2/2003
NUM. ADMVO:
ASUNTO: Se proponen datos finales para el Título
PUEBLA, PUEBLA a 03/02/2003

0510

DIRECCION GENERAL DE MINAS
DIRECTOR GENERAL DE MINAS
P R E S E N T E

10 FEB. 2003
11307

Lote: CERRO GRANDE
Expediente: 107/00131
Agencia: PUEBLA, PUEBLA

ESTA SECRETARIA CON APOYO EN EL ARTICULO 23, PARRAFO PRIMERO DEL REGLAMENTO DE LA LEY MINERA EN VIGOR PUBLICADO EN EL DIARIO OFICIAL DE LA FEDERACION EL DIA 15 DE FEBRERO DE 1999, Y POR DATOS QUE PROPORCIONARON EL INTERESADO, EL PERITO MINERO, Y LOS QUE OBRAN EN ESTA SUBDIRECCION DE MINERIA SE DECLARA QUE LA SOLICITUD DEL LOTE MINERO ARRIBA INDICADO, SATISFACE LOS REQUISITOS LEGALES Y REGLAMENTARIOS CORRESPONDIENTES A LAS SOLICITUDES DE CONCESION Y ASIGNACION MINERA.

EN VISTA DE LO ANTERIORMENTE EXPUESTO SE PROPONE QUE SE ELABORE EL TITULO RESPECTIVO DE ACUERDO CON LOS DATOS FINALES QUE SE PROPORCIONARON EN HOJA ADJUNTA Y QUE HA SIDO TRANSMITIDA PREVIAMENTE PATRONES DEL SIDIGEM.

Atentamente
SUFRAGIO EFECTIVO NO REELECCION

ING. HUMBERTO RAYA SOLTERO.

SECRETARIA DE ECONOMIA
Delegación Federal
Estatal en Puebla

C.c.p. Dirección General de Minas
C.c.p. Agencia de Minería
C.c.p. Expediente
C.c.p. Minutario

65

75. On 26 February 2003, DGM prepared the checklist below, affirming that Minera Gavilán's application and expert report complied with the applicable legal requirements:[163]

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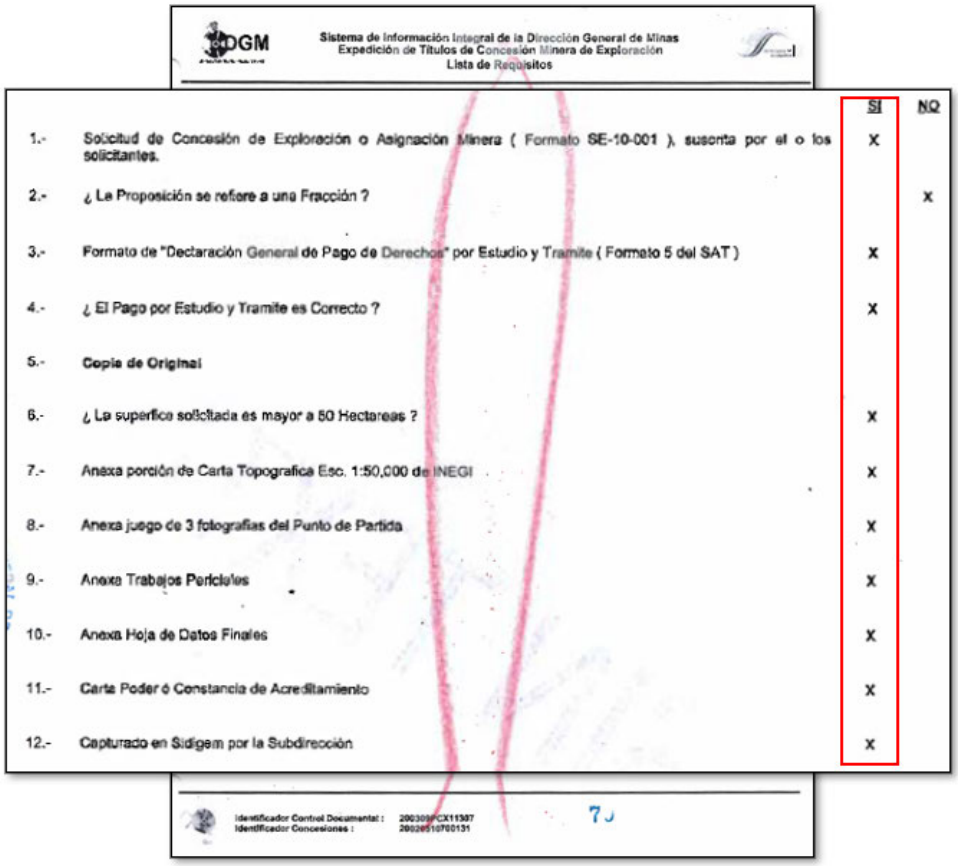
162 Official letter No. 120/21/A.4/6.1/2003 from the *Subdirección de Minería* of DGM to the Director of DGM with respect to the Cerro Grande concession application, dated 10 February 2003, **Exhibit C-171**.

163 Requirements list issued for the Cerro Grande concession application, dated 26 February 2003, **Exhibit C-172**.



Sistema de Información Integral de la Dirección General de Minas
Expedición de Títulos de Concesión Minera de Exploración
Lista de Requisitos

		SI	NO
1.-	Solicitud de Concesión de Exploración o Asignación Minera (Formato SE-10-001), suscrita por el o los solicitantes.	X	
2.-	¿ La Proposición se refiere a una Fracción ?		X
3.-	Formato de "Declaración General de Pago de Derechos" por Estudio y Tramite (Formato 5 del SAT)	X	
4.-	¿ El Pago por Estudio y Tramite es Correcto ?	X	
5.-	Copia de Original		
6.-	¿ La superfice solicitada es mayor a 50 Hectareas ?	X	
7.-	Anexa porción de Carta Topografica Esc. 1:50,000 de INEGI	X	
8.-	Anexa juego de 3 fotografias del Punto de Partida	X	
9.-	Anexa Trabajos Periciales	X	
10.-	Anexa Hoja de Datos Finales	X	
11.-	Carta Poder ó Constancia de Acreditamiento	X	
12.-	Capturado en Sidigem por la Subdirección	X	

Identificador Control Documental : 2003030CX11307
Identificador Concesiones : 2032651070013 1

76. Accordingly, on 5 March 2003, Economía issued Mining Concession Title No. 219,469 for Cerro Grande to Minera Gavilán for a term of six years, *i.e.*, from 6 March 2003 to 5 March 2009, over 11,201.5515 hectares of land, as requested.[164] The Public Mining Registry duly registered the Mining Concession Title and published it in the Book of Mining Concessions.[165] As noted, upon the entry into force of the 2005 amendment, the Cerro Grande Mining Title was automatically amended and extended until 5 March 2053.[166]

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164 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**; *see also* Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, dated 28 October 2002, at p. 9, **Exhibit C-2**.

165 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**.

166 The 2005 Mining Law Amendment was enacted on 22 February 2005 and published in the *Diario Oficial* on 28 April 2005, **Exhibit C-174**. This amendment came into effect on 1 January 2006 with respect to certain articles relating to mining concessions. Under Art. 15 of the 2005 Mining Law Amendment, "[m]ining concessions will have a term of fifty years, counted from the date of their registration in the Public Mining Registry and will be extended for the same term." *See id*.

77. On 14 July 2008, Minera Gavilán submitted to Economía's Office in the Puebla State an application to obtain a mining concession for the Cerro Grande 2 property.[167] Minera Gavilán appended to its mining concession application the information and documents required under Article 16 of the Mining Regulations, including the name of the land (Cerro Grande 2), the description of the mineral resources (gold, silver, lead, copper, and zinc), the surface area of the lot, the departure point to measure the perimeter of the lot, the closest municipality (Zautla), and three photographs with the milestone marking the departure point and the angles used for the measurement of the perimeter.[168]

78. Economía duly registered the application, applied Economía's seal, and proceeded to verify whether the application was complete.[169] As reflected in the checklist below, Economía again did not identify any missing information; it therefore issued a certificate dated 14 July 2008 admitting Minera Gavilán's application for study and processing.[170]

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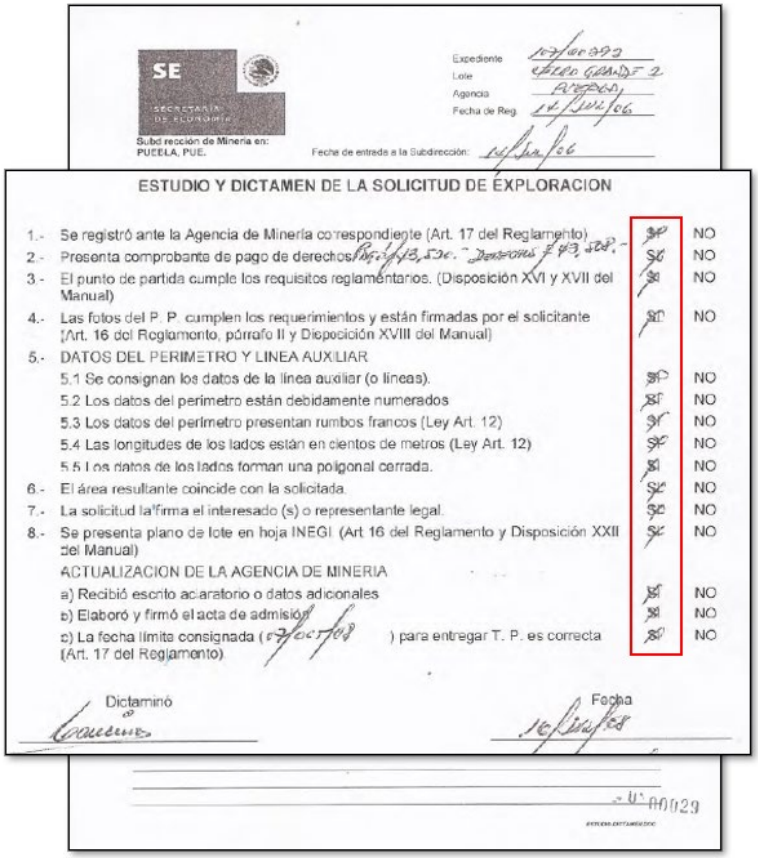
167 Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande* 2, Administrative File 107/00292, dated 14 July 2008, **Exhibit C-7**.

168 Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande 2*, Administrative File 107/00292, dated 14 July 2008, **Exhibit C-7**.

169 Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande 2*, Administrative File 107/00292, dated 14 July 2008, **Exhibit C-7**.

170 Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande 2*, Administrative File 107/00292, dated 14 July 2008, at pp. 3 and 7, **Exhibit C-7**.



SE
SECRETARÍA DE ECONOMÍA

Subdirección de Minería en: PUEBLA, PUE.

Expediente 107/00292
Lote CERRO GRANDE 2
Agencia PUEBLA
Fecha de Reg. 14/JUL/08

Fecha de entrada a la Subdirección: 14/jul/08

ESTUDIO Y DICTAMEN DE LA SOLICITUD DE EXPLORACION

1.- Se registró ante la Agencia de Minería correspondiente (Art. 17 del Reglamento)	SI	NO
2.- Presenta comprobante de pago de derechos $ 43,538.- $ 43,538.-	SI	NO
3.- El punto de partida cumple los requisitos reglamentarios. (Disposición XVI y XVII del Manual)	SI	NO
4.- Las fotos del P. P. cumplen los requerimientos y están firmadas por el solicitante (Art. 16 del Reglamento, párrafo II y Disposición XVIII del Manual)	SI	NO
5.- DATOS DEL PERIMETRO Y LINEA AUXILIAR		
5.1 Se consignan los datos de la línea auxiliar (o líneas).	SI	NO
5.2 Los datos del perímetro están debidamente numerados	SI	NO
5.3 Los datos del perímetro presentan rumbos francos (Ley Art. 12)	SI	NO
5.4 Las longitudes de los lados están en cientos de metros (Ley Art. 12)	SI	NO
5.5 Los datos de los lados forman una poligonal cerrada.	SI	NO
6.- El área resultante coincide con la solicitada.	SI	NO
7.- La solicitud la firma el interesado (s) o representante legal.	SI	NO
8.- Se presenta plano de lote en hoja INEGI (Art 16 del Reglamento y Disposición XXII del Manual)	SI	NO
ACTUALIZACION DE LA AGENCIA DE MINERIA		
a) Recibió escrito aclaratorio o datos adicionales	SI	NO
b) Elaboró y firmó el acta de admisión	SI	NO
c) La fecha límite consignada (07/oct/08) para entregar T. P. es correcta (Art. 17 del Reglamento)	SI	NO

Dictaminó: Conforme

Fecha: 16/jul/08

U: 00129

79. On 7 October 2008, within 60 days from the admission of its application,[171] Minera Gavilán duly submitted its expert report prepared and signed by Mr. José Carlos Coutiño Morales, an engineer registered with and certified by the DGM.[172] Economía proceeded to review the expert report, and again did not notify Minera Gavilán of any corrections.[173]

80. On 9 December 2008, Economía issued Oficio No. 141.8.1.20087 04713, approving Minera Gavilán's application and expert report, and recommending that the Director General of Mines proceed to issue the mining concession, as reflected below:[174]

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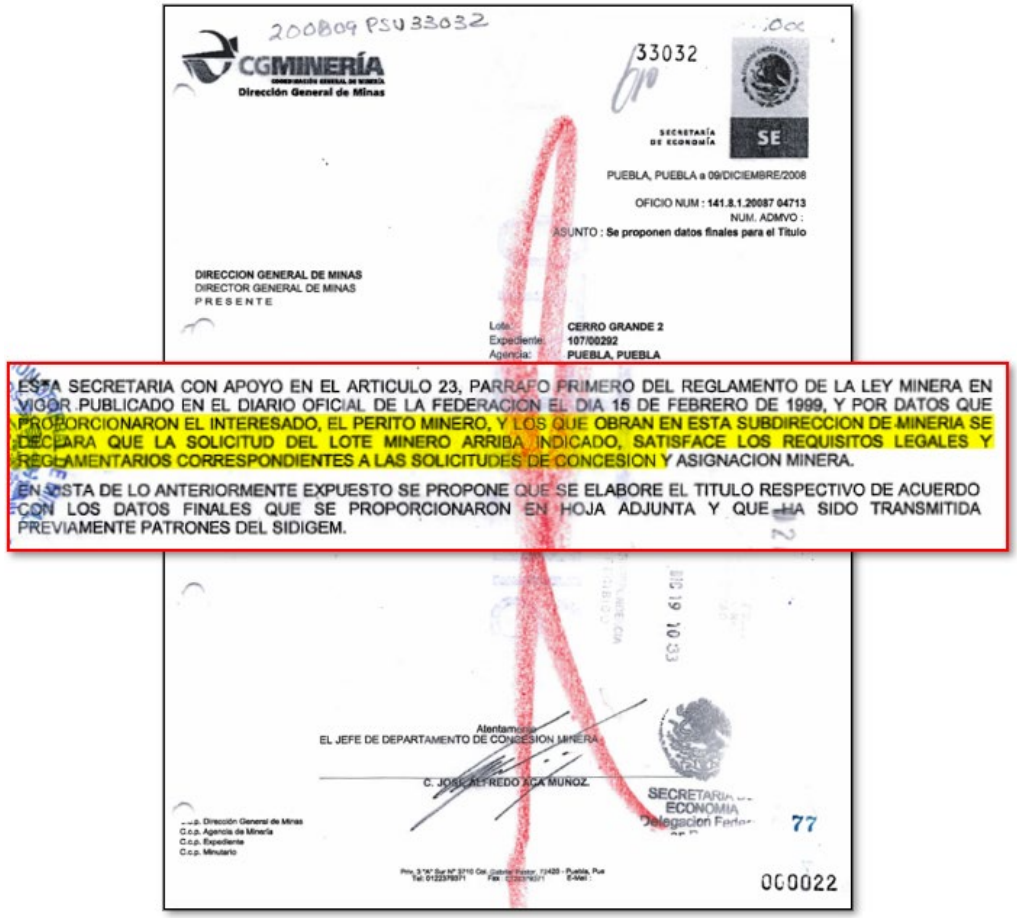
171 Minera Gavilan, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande 2*, Administrative File 107/00292, dated 14 July 2008, at p. 7, **Exhibit C-7**.

172 Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande 2*, Administrative File 107/00292, dated 14 July 2008, at pp. 14-44, **Exhibit C-7**.

173 Official letter No. 141.8.1.20087 04713 from the *Jefe de Departamento de Concesiones Mineras* of DGM to the Director of DGM with respect to the Cerro Grande 2 concession application, dated 9 December 2008, **Exhibit C-175**.

174 Official letter No. 141.8.1.20087 04713 from the *Jefe de Departamento de Concesiones Mineras* of DGM to the Director of DGM with respect to the Cerro Grande 2 concession application, dated 9 December 2008, **Exhibit C-175**.



200809 PSU 33032

CGMINERÍA
Dirección General de Minas

33032

SECRETARÍA DE ECONOMÍA
SE

PUEBLA, PUEBLA a 09/DICIEMBRE/2008

OFICIO NUM : 141.8.1.20087 04713
NUM. ADMVO :
ASUNTO : Se proponen datos finales para el Título

DIRECCION GENERAL DE MINAS
DIRECTOR GENERAL DE MINAS
P R E S E N T E

Lote: CERRO GRANDE 2
Expediente: 107/00292
Agencia: PUEBLA, PUEBLA

ESTA SECRETARIA CON APOYO EN EL ARTICULO 23, PARRAFO PRIMERO DEL REGLAMENTO DE LA LEY MINERA EN VIGOR PUBLICADO EN EL DIARIO OFICIAL DE LA FEDERACION EL DIA 15 DE FEBRERO DE 1999, Y POR DATOS QUE PROPORCIONARON EL INTERESADO, EL PERITO MINERO, Y LOS QUE OBRAN EN ESTA SUBDIRECCION DE MINERIA SE DECLARA QUE LA SOLICITUD DEL LOTE MINERO ARRIBA INDICADO, SATISFACE LOS REQUISITOS LEGALES Y REGLAMENTARIOS CORRESPONDIENTES A LAS SOLICITUDES DE CONCESION Y ASIGNACION MINERA.

EN VISTA DE LO ANTERIORMENTE EXPUESTO SE PROPONE QUE SE ELABORE EL TITULO RESPECTIVO DE ACUERDO CON LOS DATOS FINALES QUE SE PROPORCIONARON EN HOJA ADJUNTA Y QUE HA SIDO TRANSMITIDA PREVIAMENTE PATRONES DEL SIDIGEM.

Atentamente
EL JEFE DE DEPARTAMENTO DE CONCESION MINERA

C. JOSE ALFREDO ACA MUÑOZ

SECRETARIA DE ECONOMIA
Delegación Federal

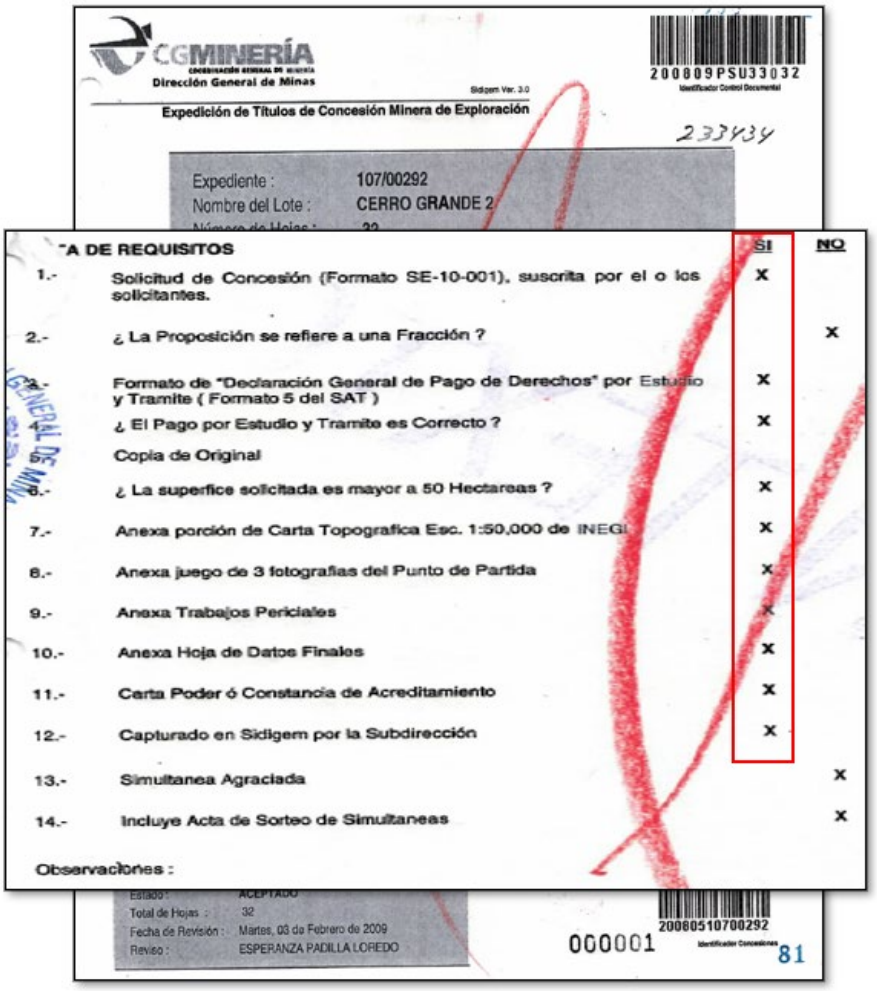
77

C.c.p. Dirección General de Minas
C.c.p. Agencia de Minería
C.c.p. Expediente
C.c.p. Minutario

000022

81. On 3 February 2009, DGM prepared the checklist below, affirming that Minera Gavilán's application and expert report complied with all legal requirements:[175]

[175] Requirements list issued for the Cerro Grande 2 concession application, dated 3 February 2009, **Exhibit C-176**.


CGMINERÍA
Dirección General de Minas
Expedición de Títulos de Concesión Minera de Exploración
233434
Expediente : 107/00292
Nombre del Lote : CERRO GRANDE 2
A DE REQUISITOS

		SI	NO
1.-	Solicitud de Concesión (Formato SE-10-001), suscrita por el o los solicitantes.	X	
2.-	¿ La Proposición se refiere a una Fracción ?		X
3.-	Formato de "Declaración General de Pago de Derechos" por Estudio y Tramite (Formato 5 del SAT)	X	
4.-	¿ El Pago por Estudio y Tramite es Correcto ?	X	
5.-	Copia de Original		
6.-	¿ La superfice solicitada es mayor a 50 Hectareas ?	X	
7.-	Anexa porción de Carta Topografica Esc. 1:50,000 de INEGI	X	
8.-	Anexa juego de 3 fotografias del Punto de Partida	X	
9.-	Anexa Trabajos Periciales	X	
10.-	Anexa Hoja de Datos Finales	X	
11.-	Carta Poder ó Constancia de Acreditamiento	X	
12.-	Capturado en Sidigem por la Subdirección	X	
13.-	Simultanea Agraciada		X
14.-	Incluye Acta de Sorteo de Simultaneas		X

Observaciones :
Total de Hojas : 32
Fecha de Revisión : Martes, 03 de Febrero de 2009
Reviso : ESPERANZA PADILLA LOREDO
000001
81

82. Accordingly, on 23 February 2009, Economía issued Mining Concession Title No. 233,434 for Cerro Grande 2 to Minera Gavilán for a term of 50 years, *i.e.*, from 24 February 2009 to 23 February 2059, over 3,028 hectares of land, as requested.[176] The Public Mining Registry duly registered the Mining Concession Title and published it in the Book of Mining Concessions.[177]

83. As detailed below, on 29 February 2012, the Public Mining Registry registered a December 2011 agreement in which Minera Gavilán agreed to transfer to Minera Gorrión the Cerro Grande and Cerro Grande 2 Concessions.[178] On 24 August 2012, Minera Gorrión, as the new

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176 Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, **Exhibit C-8**; Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande 2*, Administrative File 107/00292, dated 14 July 2008, at pp. 5-16, **Exhibit C-7**.

177 Cerro Grande 2 233434 registered in Minutes No. 214 of Volume 374, dated 24 February 2009, at p. 4, **Exhibit C-8**.

178 *See infra* para. 86; *see also Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, p. 15, **Exhibit C-13**. *See also* Agreement duly filed under number 62 page 33, Volume 32 of the *Libro de Actos, Contratos y Convenios Mineros* of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**.

concessionaire, requested DGM to issue a duplicate of the Cerro Grande Concession to verify that the title was in good standing. After verifying its validity, on 22 January 2013, DGM issued a duplicate title No. 219,469 for the Cerro Grande Concession.[179] The reissued title reflected all of the terms of the original title and expressly stated that the Cerro Grande Concession was valid for 50 years, *i.e.*, from 6 March 2003 to 5 March 2053.[180]

84. Notably, under Concessions and the Mining Law as amended in 2005, Minera Gavilán was permitted not only to conduct exploration works, but also to extract mineral products from the deposits it developed, subject to applicable environmental permits.[181]

2.4.3 Economía Repeatedly Reaffirmed the Validity and Good Standing of the Cerro Grande and Cerro Grande 2 Concessions

85. As elaborated further below, following Economía's grant of the Concessions, Minera Gavilán and Minera Gorrión carried out significant exploration activities in the concession areas in full compliance with applicable Mexican law and regulations.[182] During this exploration phase, Economía reaffirmed the validity and good standing of the Concessions twice between 2012 and 2013, when it approved and registered various changes to the concessions, including their transfer from Minera Gavilán to Minera Gorrión.

86. As noted above and as Mr. McDonald explains in his witness statement, to allow Minera Gorrión to focus exclusively on developing the Ixtaca Project, Minera Gavilán transferred the Cerro Grande and Cerro Grande 2 Concessions to Minera Gorrión in December 2011.[183] Economía duly approved and registered the transfer of the Concessions on 29 February 2012, after verifying that the Concessions were valid and in good standing, as required.[184]

87. Specifically, under Article 23 of the Mining Law, in order to effect a transfer of a registered mining concession, the concessionaire must provide to Economía the relevant assignment

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179 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**.

180 Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, dated 5 March 2003, **Exhibit C-3**.

181 Mining Law, Art. 19, Fraction II, **Exhibit C-158**.

182 *See infra* Section 2.5.

183 *See* McDonald WS, at para. 24.

184 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, p. 15, **Exhibit C-13**. *See also* Agreement duly filed under number 62 page 33, Volume 32 of the *Libro de Actos*, *Contratos y Convenios Mineros* of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**.

agreement,[185] together with an assignment application, in accordance with Articles 23, 46, and 47 of the Mining Law.[186] Under Article 83 of the Mining Regulations, the assignment application must include, among other things, a description of the assignment agreement, the name of the parties involved; the name of the mining concessions; and a notarized copy of the assignment agreement.[187]

88. Under Articles 90 and 91 of the Mining Regulations, Economía has 21 days to review, approve, and register the assignment agreement.[188] Before doing so, Economía must verify, among other things, that the concession to be transferred is valid and in good standing; that the transfer does not infringe upon the rights of third parties registered in the Public Mining Registry; and that the transfer meets the requirements set forth in the Mining Law and Regulations.[189] If the transfer application does not meet these requirements, Economía must notify the parties and then grant them ten days to correct the identified errors.[190] Upon registration of an assignment agreement, the assignee acquires the rights to the mining concession.[191]

89. In this case, Minera Gavilán and Minera Gorrión signed an assignment agreement on 13 December 2011, whereby Minera Gavilán agreed to transfer to Minera Gorrión its rights under the Cerro Grande and Cerro Grande 2 Concessions.[192] In consideration for the transfer, Minera Gorrión agreed to pay Minera Gavilán MXN 4.5 million plus taxes.[193]

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185 Mining Law, at Arts. 46, last paragraph, and 47, (Art. 46 provides that "[i]n connection with the provisions of this Law, the acts and contracts provided for in Sections V to XI [including the assignment agreement set forth in Section VI therein] above will be effective against third parties as of the date and time of filing with the Secretariat of the respective promotion.") (Art. 47 establishes that the registration of transfer of rights will be made "in order of presentation and when the requirements established in the Regulations of this Law are satisfied"), **Exhibit C-158**.

186 Mining Law, at Arts. 23, 46, and 47, **Exhibit C-158**; 1999 Mining Regulations, at Art. 83, **Exhibit C-164**.

187 1999 Mining Regulations, at Art. 83, **Exhibit C-164**.

188 1999 Mining Regulations, at Art. 91, second paragraph, (providing that "the Secretariat [Economía] will have a term of 21 days, counted from the receipt of the respective request, to carry out or not the corresponding registration"), **Exhibit C-164**.

189 1999 Mining Regulations, at Art. 90, **Exhibit C-164**.

190 1999 Mining Regulations, at Art. 90, ("in the case of deficiencies and omissions that can be corrected" the "applicant will be granted a period of 10 days to correct them, and in case failure to do so within said period, the registration will be denied"), **Exhibit C-164**.

191 Mining Law, at Art. 23, **Exhibit C-158**.

192 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, 13 December 2011, **Exhibit C-13**.

193 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, 13 December 2011, at Second Clause, p. 4, **Exhibit C-13**.

90. On 20 January 2012, Minera Gorrión filed the assignment agreement and its transfer application with DGM, together with the requisite information and documents.[194] Economía's Public Mining Registry duly registered the assignment agreement on 29 February 2012 and published it in the Book of Mining Acts, Contracts and Agreements.[195] By doing so, Economía, through the DGM and its Public Mining Registry, reaffirmed that the Cerro Grande and Cerro Grande 2 Concessions were valid and in good standing, and that the transfer complied in full with the Mining Law and Regulations.[196]

91. On 21 December 2012, Minera Gavilán and Minera Gorrión amended the assignment agreement to specify that Minera Gavilán would retain a two percent net smelter return royalty interest based on mineral sales from the Cerro Grande and Cerro Grande 2 Concessions.[197] The other terms of the assignment agreement remained in full force and effect.[198]

92. Minera Gavilán and Minera Gorrión also entered into a net smelter return royalty agreement ("**NSR agreement**"), setting out the terms of the net smelter return royalty.[199] Under the NSR agreement, Minera Gorrión agreed to pay Minera Gavilán during the production phase of the Ixtaca Project a two percent royalty based on the final mineral products sold meeting Bullion Market specifications for gold or Handy & Hardman specifications for silver.[200] Minera Gorrión further agreed to make payments to Minera Gavilán on the last day of each quarter, with deductions for processing, transportation, insurance, storage, and taxes of sold minerals.[201]

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194 Application to register assignment of Cerro Grande and Cerro Grande 2 concessions filed by Minera Gorrión with Economía, 20 January 2012, **Exhibit C-521**.

195 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, p. 15, **Exhibit C-13**; *see also* Agreement duly filed under number 62 page 33, Volume 32 of the *Libro de Actos*, *Contratos y Convenios Mineros* of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**.

196 1999 Mining Regulations, at Art. 90, **Exhibit C-164**.

197 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December. 2012, **Exhibit C-17**.

198 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December. 2012, at Clause 2, **Exhibit C-17**.

199 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December. 2012, **Exhibit C-17**.

200 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, at Clause 2, **Exhibit C-17**.

201 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, at Annex 1, Clause 2(b), **Exhibit C-17**.

93. On 8 February 2013, Economía's Public Mining Registry duly registered the agreements and published them in the Book of Mining Acts, Contracts and Agreements.[202] By doing so, Economía and its Public Mining Registry again reaffirmed that the Claimants' Cerro Grande and Cerro Grande 2 Concessions were valid and in good standing.[203]

94. As elaborated further below, despite Economía's repeated affirmations that the Claimants' Concessions were valid and in good standing, Economía would later use the Supreme Court's 2022 ruling on indigenous rights as a pretext to cancel those Concessions arbitrarily and retroactivity to accord with AMLO's anti-mining agenda.

2.5 As A Result of Its Grassroots Exploration and Targeted Drilling Program, Almaden Discovered a Significant Gold-Silver Deposit at Ixtaca

95. With the mining concession titles in hand, Almaden began exploration at Ixtaca through Minera Gavilán and later through Minera Gorrión. The studies they carried out indicated the potential for both epithermal gold silver and porphyry-type copper mineralisation.[204] As noted, the Almaden team had identified clay and other hydrothermal alteration on the property, which Mr. Morgan Poliquin interpreted, based on his training and experience, to represent the upper levels of a possible epithermal gold-silver vein system $concealed below.[205]

96. In 2010, based on Mr. Morgan Poliquin's observations, Almaden decided to drill a "blind hole," *i.e.*, an exploratory hole designed to test at depth the above-described hypothesis.[206] Remarkably, it was a "hole in one": in this very first hole drilled under the clay alteration, Almaden intersected significant gold-silver mineralisation in epithermal veins.[207] The chances of success in early stages of exploration are perhaps one in a thousand, and the chances of hitting a mineral deposit on the first hole are smaller still.[208] As one commentator noted,

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202 *See Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 22 December 2012, **Exhibit C-17**.

203 2012 Mining Regulations, at Art. 85, **Exhibit C-187**.

204 M. Poliquin WS, at para. 26.

205 M. Poliquin WS, at para. 26; Resource Stock Digest Interview: Almaden Minerals (TSX:AMM) Chairman Duane Poliquin ("**RSD Interview**") (Web page), <https://www.youtube.com/watch?v=KJgQlztmnY0>, dated 14 September 2020, at 1:30-1:49, **Exhibit C-345**.

206 M. Poliquin WS, at para. 26.

207 M. Poliquin WS, at para. 26.

208 M. Poliquin WS, at para. 26.

"[t]here is art as well as science in exploration," and Almaden simply "saw something that others didn't."[209]

97. Immediately after locating the deposit, between July 2010 and November 2012, Almaden undertook expanded exploratory drilling.[210] To conduct these drilling works, Almaden employed approximately 70 local residents and trained them to a high skill level.[211] The only non-local residents that Almaden employed were specialists in drilling and scaffolding from Canada and America, who Almaden brought in specifically to train the local residents.[212]

98. Through extensive drilling efforts comprising 225 drill holes, Almaden confirmed the presence of high-grade gold and silver mineralization at Ixtaca.[213] In January 2013, Almaden announced the initial resource estimate for the Ixtaca deposit.[214] In December, 2018 Almaden announced its Feasibility Study, which demonstrated that, with proven and probable reserves of 1.38 million ounces of gold and 85.1 million ounces of silver, the Ixtaca deposit was one of the largest new gold-silver discoveries in Latin America at the time.[215]

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209 Business Insider, Drill Baby Drill—the Secret to Prospect Generation: Duane and Morgan Poliquin, **Exhibit C-186**.

210 APEX Geoscience Ltd. & Giroux Consultants Ltd., Technical Report on the Tuligtic Project, Puebla State, Mexico, 12 February 2014 ("**Apex Report**"), at p. 2, at **Exhibit C-23**.

211 RSD Interview, at 7:39-8:00, at **Exhibit C-363**.

212 Duane Poliquin WS, at para. 47.

213 Apex Report, at p. 2, **C-23**.

214 Almaden Press Release, Almaden Announces Maiden Resource Estimate and Results of Preliminary Metallurgy for the Ixtaca Gold-Silver Zone of the Tuligtic Project, Mexico, dated 31 January 2013, **Exhibit C-191**; APEX Geoscience Ltd. & Giroux Consultants Ltd. & BC Mining Research Ltd., Technical Report on the Tuligtic Project, Puebla State, Mexico, dated 13 March 2013 ("**Maiden Resource Estimate**"), **Exhibit C-193**; Apex Report, at pp. 1-2, 57, **Exhibit C-23**; Financial Post, Morgan Poliquin Discusses Almaden's Ixtaca Gold-Silver Project, dated 6 February 2013, **Exhibit C-192**.

215 Ixtaca Feasibility Study, at p. 195, **C-314**.

Photograph of an area within the Ixtaca Deposit[216]

Panorama of the Ixtaca deposit area[217]

99. The identification of the Ixtaca deposit was a remarkable achievement. It represented a new discovery in a region of Mexico not previously recognized to have potential for gold and silver mineralisation.[218] As such, the Ixtaca deposit added significantly to Mexico's resource inventory and represented a significant potential enhancement of the country's economy.[219]

100. Almaden's exploration efforts at Ixtaca further led to the development of an extensive geological drill core library, one of the most comprehensive and well-documented geological

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216 Santamaría Tovar WS, at para 13.

217 Santamaría Tovar WS, at para. 13.

218 M. Poliquin WS, at para. 28.

219 Mining.com (Web page), VIDEO: Father and son team develop Mexico's newest gold district, dated 6 February 2015, <https://www.mining.com/web/video-father-and-son-team-develop-mexicos-newest-gold-district>, **Exhibit C-212.**

records in the region.[220] As Mr. Santamaría Tovar explains, Almaden and its Mexican subsidiaries amassed tens of thousands of meters of drill core samples, which they meticulously logged and analysed to build a high-resolution geological model of the deposit.[221] Known as the "*litoteca*," this library became an essential educational resource.[222] It was a focal point for students from the *Universidad Nacional Autónoma de México* in Mexico City, who came to the *litoteca* every year to study firsthand the Company's geological records.[223] As Mr. Santamaría Tovar notes, this resource had the potential to serve as a reference point for exploration for all of Eastern Mexico, guiding discoveries beyond Ixtaca.[224] In the hands of another company, it would save years of exploration work and millions of dollars in research.[225]

101. Almaden's breakthrough discovery won acclaim within the mineral exploration community. In 2014, the Association for Mineral Exploration British Columbia awarded Messrs. Duane and Morgan Poliquin the Colin Spence Award for Excellence in Global Mineral Exploration.[226] The announcement of that award characterized the Ixtaca discovery as "one of the most significant greenfield discoveries of recent times, following several years of diligent research and exploration efforts focused on an underexplored area."[227]

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220 Santamaría Tovar WS, at para. 14.

221 Santamaría Tovar WS, at para. 14.

222 Santamaría Tovar WS, at para. 14.

223 Santamaría Tovar WS, at para. 14.

224 Santamaría Tovar WS, at para. 14.

225 Santamaría Tovar WS, at para. 14.

226 Mining.com (Web page), AME BC announces 2014 award recipients, dated 9 December 2014, **Exhibit C-209**.

227 Mining.com (Web page), AME BC announces 2014 award recipients, dated 9 December 2014, **Exhibit C-209**.

102. Likewise, following the discovery, Mr. Morgan Poliquin was invited to speak at a number of mining-industry conferences[228] and forums[229] and to give interviews to industry journalists[230] to comment on Almaden's discovery and development of the Ixtaca deposit.[231] In 2013, he was invited to deliver a speech to the Society of Economic Geologists, the scientific organisation that oversees the advancement of global mineral exploration.[232] Moreover, in 2018, Economía itself invited him to participate in Mexico Day at the Prospectors & Developers Association of Canada Conference in Toronto to discuss the important exploration potential of Mexico.[233]

103. In addition to the promise of the Ixtaca gold-silver deposit, the municipality of Ixtacamaxtitlán in which the deposit was located represented an attractive location for a mining project. The Project site had reliable access to key infrastructure necessary to support Project development, including access to major roads, railways, power, and natural gas.[234] As illustrated in the map below, the Ixtaca Project was surrounded by major roadways that would facilitate the easy

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228 *See, e.g.*, Vancouver Mining Exploration Group (MEG), Past Talks, 2012-2013, dated 20 March 2013, **Exhibit C-194**; Casey Research YouTube Channel (Web page), Morgan Poliquin – Prospector Model, dated 22 February 2012, <https://www.youtube.com/watch?v=Nw9hT2aC4qI>, **Exhibit C-180**; Casey Research Conference, 8 August 2012, last accessed 20 February 2025, available at https://www.youtube.com/watch?v=zqvyYrp3zSI, **Exhibit C-472**; Maurice Jackson YouTube Channel (Web page), Maurice Jackson Interviews Morgan Poliquin at the Sprott-Stansberry Conference, dated 21 August 2015, <https://www.youtube.com/watch?v=Q1F3QsBPQiE>, **Exhibit C-215**; Email from M Poliquin to P Heywood (Mining America) re AEMA Technical Session, dated 2 November 2018, **Exhibit C-261**; Email from M Poliquin to E Aramburu (Mexican Geological Survey) re AME Roundup, dated 26 February 2018, **Exhibit C-241**; Email from A George (PDAC) to M Poliquin re PDAC 2016 Technical Program Speaker, dated 4 May 2016, **Exhibit C-222**.

229 *See, e.g.*, Metals Investor Forum YouTube Channel (Web page), MIF May 2016: Almadex Minerals Limited – Morgan Poliquin, dated 4 June 2016, <https://www.youtube.com/watch?v=9HrG0PMewFo>, **Exhibit C-223**; Metals Investor Forum YouTube Channel (Web page), MIF Nov. 16: Almadex Minerals Limited (AMZ) – Morgan Poliquin, dated 16 November 2016, <https://www.youtube.com/watch?v=feQ0zJFimhI>, **Exhibit C-226**.

230 *See, e.g.*, Crux Investor YouTube Channel (Web page), Almadex Minerals (DEX) – Cashed-Up Prospect Generator, dated 17 February 2023, < https://www.youtube.com/watch?v=dCeOobyaucg>, **Exhibit C-417**; The Independent Speculator YouTube Channel (Web page), In The Pit: Morgan Poliquin, President and CEO Almaden Minerals, dated July 2019, <https://www.youtube.com/watch?v=AH7srQHsY5M>, **Exhibit C-305**; Resource Stock Digest YouTube Channel (Web page), RSD Interview: Almaden Minerals (TSX: AMM) CEO Morgan Poliquin – May 5, 2021, dated 5 May 2021 <https://www.youtube.com/watch?v=C0D9-jWz1LU>, **Exhibit C-363**.

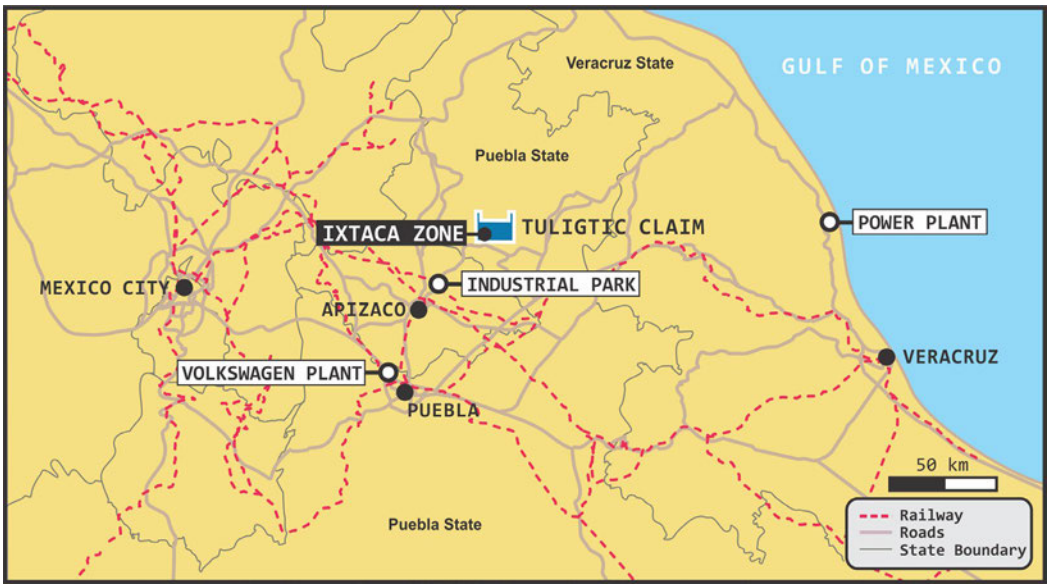
231 M. Poliquin WS, para. 27.

232 M. Poliquin WS, para. 27; Society of Economic Geologists, Whistler 2013: Geoscience for Discovery, Program, dated September 2013, **Exhibit C-197**.

233 M. Poliquin WS, para. 27; Exploration Insights, PDAC 2018 Brent Cook talks rocks with Morgan Poliquin of Almadex Minerals (TSX-V AMZ), dated 2 April 2018, **Exhibit C-244**.

234 M. Poliquin WS, at para. 38.

transport of key supplies to and from the Project site.[235] These roadways in turn granted access to major city centres. The Project site was located just 80 kilometres north of Puebla City and only 130 kilometres east of Mexico City.[236]



Map showing the location of the Tuligtic claim and its position relative to major cities, railway, roads, and industrial plants (Source: Almaden Corporate Presentation, December 2015).

104. The Project also benefitted from access to nearby power sources. The neighbouring towns of Santa María Zotoltepec and Zacatepec are connected to Mexico's national electricity grid, and Almaden planned a transmission line that would connect the Ixtaca Project to the Zocac substation, located 27 kilometres from the Project site, to provide high-capacity power for the mine.[237] Moreover, the Xicohtencatl Industrial Complex – a complex with agricultural, chemical, biomedical, and industrial manufacturing facilities – was located just 30 kilometres south of the Project.[238] The presence of nearby industrial development, significant regional manufacturing, and large quarries for industrial minerals like limestone for cement feed made

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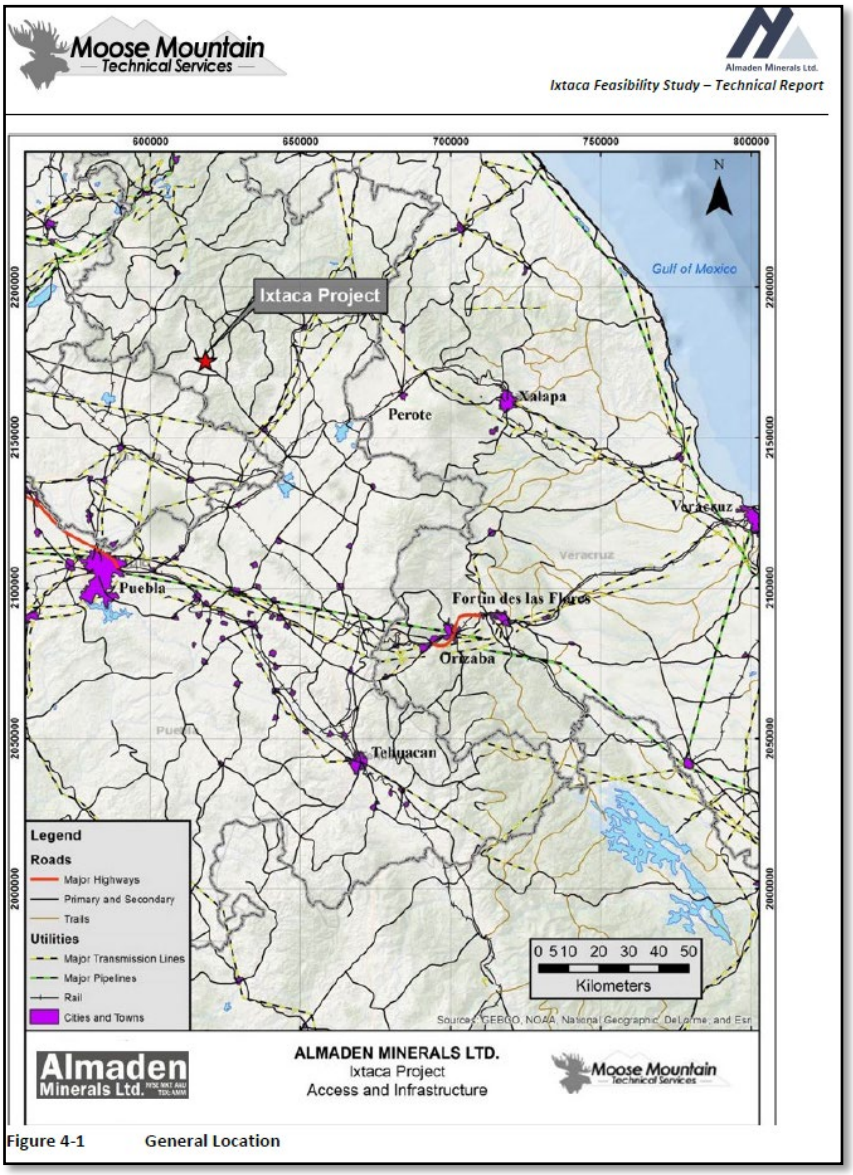
235 Minera Gorrión, *Solicitud para Manifestación de Impacto Ambiental para el Proyecto de Ixtaca*, dated 22 February 2019, at Ch. 2, p. 15, **Exhibit C-62**; Ixtaca Feasibility Study, at 239, **Exhibit C-314**.

236 Ixtaca Feasibility Study, at p. 239, **Exhibit C-314**.

237 Ixtaca Feasibility Study, at p. 22, **Exhibit C-314**.

238 Ixtaca Feasibility Study, at p. 47, **Exhibit C-314**.

the location of the Ixtaca deposit ideal for a modern, environmentally and socially sound, and responsible mineral project.[239] The regional logistics are illustrated in the map below.[240]



Map showing the Ixtaca Project's access to major transmission lines, pipelines, railways, and highways (Source: Feasibility Study)[241]

239 M. Poliquin WS, paras. 39, 40.

240 Ixtaca Feasibility Study, at p. 44, **Exhibit C-314**.

241 Ixtaca Feasibility Study, at p. 44 **Exhibit C-314**.

105. Likewise, rainwater and runoff promised to provide ample water resources to sustain the mine and to serve nearby local communities.[242] Rainfall in the Ixtaca region comes primarily during a relatively short rainy season from June to September.[243] As discussed below, Almaden devised a comprehensive water-management plan that included strategically placed reservoirs to enable effective rainwater capture during peak rainy periods and controlled water release throughout the drier months, simultaneously benefiting the mining operation and the local communities.[244]

106. Moreover, as Mr. Morgan Poliquin observes, the discovery of the Ixtaca gold-silver deposit had the potential to be even more significant than estimated. To date, neither the full concession area nor the region more broadly has been fully explored.[245] As he notes, mineral endowment usually occurs in clusters, and mining regions commonly grow in resources over time.[246] Since the 1970s, discoveries have been made in the modern era beneath silver-gold epithermal veins elsewhere in Mexico where historic mining had ceased.[247] There is no reason to believe that the same could not have happened over time in the Ixtaca region, leading to further economic growth and development.[248] But, as a result of Mexico's unlawful actions in breach of the CPTPP, the true mineral potential of the Ixtaca region remains undiscovered.

2.6 Following Its Announcement of the Ixtaca Deposit, Almaden Made Significant Investments to Advance the Ixtaca Project Toward Development

107. Following the initial mineral resource announcement of the Ixtaca gold-silver deposit in 2013, Almaden commissioned a series of technical studies to increase confidence in the resource estimate, thereby de-risking the Ixtaca Project and moving it closer to production.[249]

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242 M. Poliquin WS, at para. 40.

243 Ixtaca Feasibility Study, at p. 22, **C-314**.

244 Ixtaca Feasibility Study, at p. 271, **Exhibit C-314**.

245 M. Poliquin WS, paras. 29, 53; D. Poliquin WS, at para. 36.

246 M. Poliquin WS, para. 29.

247 M. Poliquin WS, para. 29.

248 M. Poliquin WS, para. 29; *see also, e.g.*, W.H. Gross, New ore discovery and source of silver-gold veins, Guanajuato, Mexico, dated 1 November 1975, 70(7) Economic Geology 1175-1189, **Exhibit C-154**.

249 M. Poliquin WS, para. 31.

108. Specifically, between 2014 and 2019, Almaden completed an additional resource estimate;[250] a preliminary economic assessment;[251] an updated preliminary economic assessment;[252] a second updated preliminary economic assessment;[253] a pre-feasibility study;[254] and a feasibility study.[255] The Ixtaca Project proceeded successfully through each of these critical development phases, with each of its technical studies showing that the Project had immense potential.[256]

109. As the preliminary economic assessment ("**PEA**") announced on 16 April 2014 reflects, with an average annual production of 130,000 ounces of gold and 7,798,000 ounces of silver and an average metal recovery of around 90%, the Ixtaca Project had a pre-tax Net Present Value ("**NPV**") of USD 728M at a 5% discount rate and a pre-tax internal rate of return of 29%, assuming prices of USD 1320 per ounce of gold and USD 21 per ounce of silver.[257]

110. After the initial PEA, Almaden acquired the Rock Creek Mill in Alaska for use on the Ixtaca Project.[258] This acquisition was significant because the Mill promised to "significantly reduc[e] capital cost" of the Project's ramp-up scenario from USD 244 million to USD 174 million and "[e]nhance[] project economics and financing alternatives for Ixtaca."[259] After acquiring the

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250 Almaden Press Release, Almaden announces updated mineral resource estimate for the Ixtaca Gold-Silver Zone of the Tuligtic Project, Mexico, dated 22 January 2014, **Exhibit C-22**; APEX Geoscience Ltd. & Giroux Consultants Ltd., Technical Report on the Tuligtic Project, Puebla State, Mexico ("**Updated Resource Estimate**"), dated 12 February 2014, **Exhibit C-23**.

251 Almaden Press Release, Almaden announces Positive PEA for the Ixtaca Gold-Silver Deposit, Mexico, dated 16 April 2014, **Exhibit C-25**; Moose Mountain Technical Services, 'Preliminary Economic Assessment of the Ixtaca Project' ("**Maiden PEA**"), dated 13 May 2014, **Exhibit C-200**.

252 Almaden Press Release, Almaden announces Ixtaca Gold-Silver Deposit PEA Update showing significant capital savings using the Rock Creek Mill, dated 9 December 2015, **Exhibit C-38**; Moose Mountain Technical Services, Preliminary Economic Assessment of the Ixtaca Project ("**Updated PEA**"), dated 6 November 2015, **Exhibit C-217**.

253 Almaden Press Release, Almaden Files Updated Preliminary Economic Assessment Technical report for its Ixtaca Gold-Silver Deposit, Mexico, dated 22 January 2016, **Exhibit C-220**; Moose Mountain Technical Services, Preliminary Economic Assessment of the Ixtaca Project ("**Second Updated PEA**"), dated 22 January 2016, updated 7 April 2016, **Exhibit C-219**.

254 Almaden Press Release, Almaden reports 41% after-tax IRR from pre-feasibility study, updated resource and production target of 2019 for the Ixtaca Precious Metals Project, Mexico, dated 3 April 2017, **Exhibit C-43**.; Pre-Feasibility Study of the Ixtaca Gold-Silver Project Puebla State, Mexico, dated 17 May 2017, at **Exhibit C-230**.

255 Ixtaca Feasibility Study, at **Exhibit C-314**.

256 McDonald WS, at para. 43.

257 Almaden Press Release, Almaden announces Positive PEA for the Ixtaca Gold-Silver Deposit, Mexico, 16 April 2014, at **Exhibit C-25**; Maiden PEA, dated 13 May 2014, **Exhibit C-200**.

258 Almaden Press Release, Almaden enters into Mill Purchase Option Agreement; significantly reduces capital cost of Ixtaca "Ramp-Up" scenario, dated 19 October 2015, **Exhibit C-37**; Maiden PEA, dated 13 May 2014, **Exhibit C-200**.

259 Almaden Press Release, Almaden enters into Mill Purchase Option Agreement; significantly reduces capital cost of Ixtaca "Ramp-Up" scenario, dated 19 October 2015, **Exhibit C-37**.

Mill, Almaden conducted an updated PEA, announced on 9 December 2015, which confirmed that the Mill would yield significant capital savings and demonstrated the economic potential of the Ixtaca deposit even at the significantly depressed gold and silver prices at the time.[260]

111. Given the encouraging findings in the PEAs, the Project then proceeded to the pre-feasibility stage[261] and, ultimately, to the feasibility stage.[262]

112. In April 2017, Almaden announced the positive results from the pre-feasibility study ("**PFS**") it had commissioned from Moose Mountain – an independent and respected third-party consultancy that services mining and exploration clients around the world.[263] Assuming prices of US$ 1250 per ounce of gold and US$ 18 per ounce of silver, the PFS identified a pre-tax NPV of US$ 484 million for the Ixtaca Project, with an internal rate of return of 54%.[264] It also found proven and probable mineral reserves of 65 million metric tons, averaging 0.62 g/t gold and 37.8 g/t silver with an average head grade of 1.16 g/t gold equivalent using a 69:1 silver to gold ratio.[265] As Mr. McDonald notes, these results were very promising.[266] After publishing the PFS results, Mr. Duane Poliquin aptly described the Ixtaca deposit as an "outstanding inventory of precious metals" and expressed the Company's commitment to "further developing the deposit."[267]

113. With the promising results in the PFS, the Company announced it would initiate work towards a feasibility study.[268] As Mr. McDonald explains, a feasibility study is a comprehensive

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260 *Compare* Almaden Press Release, Almaden announces Positive PEA for the Ixtaca Gold-Silver Deposit, Mexico, dated 16 April 2014, **Exhibit C-25***, and* Maiden PEA, dated 13 May 2014, **Exhibit C-200**, *with* Almaden Press Release, Almaden announces Ixtaca Gold-Silver Deposit PEA Update showing significant capital savings using the Rock Creek Mill, 9 December 2015, at **Exhibit C-38**, *and* Updated PEA, dated 6 November 2015, **Exhibit C-217**.

261 Almaden Press Release, Almaden announces Positive PEA for the Ixtaca Gold-Silver Deposit, Mexico, 16 April 2014, **Exhibit C-25**; Maiden PEA, dated 13 May 2014, at p. 181, **Exhibit C-200**.

262 Ixtaca Feasibility Study, at **Exhibit C-314**.

263 Moose Mountain Technical Services (Web page), **Exhibit C-455**.

264 Almaden Press Release, Almaden reports 41% after-tax IRR from pre-feasibility study, updated resource and production target of 2019 for the Ixtaca Precious Metals Project, Mexico, dated 3 April 2017, **Exhibit C-43**.

265 Almaden Press Release, Almaden reports 41% after-tax IRR from pre-feasibility study, updated resource and production target of 2019 for the Ixtaca Precious Metals Project, Mexico, dated 3 April 2017, **Exhibit C-43**.

266 McDonald WS, at para. 39.

267 Almaden Press Release, Almaden reports 41% after-tax IRR from pre-feasibility study, updated resource and production target of 2019 for the Ixtaca Precious Metals Project, Mexico, dated 3 April 2017, **Exhibit C-43**; *see also* Moose Mountain Technical Services, Pre-Feasibility Study of the Ixtaca Gold-Silver Project Puebla State, Mexico, dated 17 May 2017, **Exhibit C-230**.

268 McDonald WS, at para. 40.

technical and economic study of the selected development option for a mineral project that includes appropriately detailed assessments of mining, processing, metallurgical, infrastructure, environmental, economic, and other factors, along with a detailed financial analysis, to assess whether extraction is reasonably justified.[269] It is the highest confidence of engineering studies, and its results can reasonably serve as the basis for a final decision by a company or a financial institution to proceed with, or finance, project development.[270] In short, advancing a project to the feasibility study level is rare, a significant milestone, and a strong indicator that a project will be economically brought into production.

114. To produce the feasibility study for the Ixtaca Project in accordance with the standards set out in National Instrument 43-101 of the Canadian Securities Administration,[271] Almaden retained a team of respected independent consultants.[272] Moose Mountain led the effort, in collaboration with APEX Geoscience Ltd., which handled the exploration and drill data, Giroux Consultants, which handled the resource estimation, and SRK Consulting U.S. Inc., which handled the geotechnical, tailings, and water management aspects of the study.[273]

115. On 11 December 2018, Almaden announced the promising results of the FS, noting that the FS "incorporate[d] significant changes" from the PFS, resulting in a "reduced project footprint and improved economics."[274] The FS concluded that the "Ixtaca deposit is well suited for a potential mining operation" with "robust economics" for an initial 11-year mine plan.[275] As such, the FS recommended "that the project proceed to [the] permitting and detailed design" stage of development[276] and proposed a detailed development plan for the Ixtaca Project,

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269 McDonald WS, at para. 36.

270 McDonald WS, at para. 36; Canadian Institute of Mining, 'CIM Definition Standards for Mineral Resources & Mineral Reserves', dated 19 May 2014, p. 4, **Exhibit C-201**.

271 McDonald WS, at para. 40 & n.35. Canada's National Instrument 43-101 is a Canadian regulatory standard published by the Canadian Securities Administrators that outlines the requirements for disclosing scientific and technical information on mineral projects by companies that are publicly traded on Canadian stock exchanges.

272 Ixtaca Feasibility Study filed with SEDAR updated on 3 October 2019, at p. 39, **Exhibit C-314**.

273 McDonald WS, at para. 40; Almaden press release, 'Almaden reports 42% after-tax IRR with 203,000 OZS Gold Equivalent Production per year over first 6 years from Feasibility Study for the Ixtaca Precious Metals Project', Mexico, 11 December 2018, at page 2, at **Exhibit C-58.**

274 McDonald WS, at para. 41; Almaden press release, 'Almaden reports 42% after-tax IRR with 203,000 OZS Gold Equivalent Production per year over first 6 years from Feasibility Study for the Ixtaca Precious Metals Project, Mexico', 11 December 2018, at **Exhibit C-58.**

275 McDonald WS, at para. 41; Ixtaca Feasibility Study filed with SEDAR updated on 3 October 2019, Sections 16 and 18, at pp.196-224; 238-252, **Exhibit C-314**.

276 McDonald WS, at para. 41; Ixtaca Feasibility Study filed with SEDAR updated on 3 October 2019, at p. 39, **Exhibit C-314**.

including a production schedule[277] and a cost model.[278] Assuming long-term gold and silver prices of USD 1,275 per ounce and USD 17 per ounce[279] respectively – figures far below the current gold price – the FS contained a series of very promising conclusions:

- An average annual production of 108,500 ounces of gold and 7.06 million ounces of silver over the first six years;
- An initial estimated capital cost of USD 174.2 million, which would be paid back in full in 1.9 years (after tax);[280]
- An after-tax internal rate of return of 42%;
- An after-tax NPV of USD 310 million at a 5% discount rate;
- A Proven and Probable Mineral Reserves of 73 million metric tons grading 0.59 g/t gold and 36.3 g/t silver, containing 1.39 million ounces of gold and 85.2 million ounces of silver, representing the highest level of geological certainty and confidence in the mineral estimates;[281]
- All-in sustaining costs of USD 850 per gold of equivalent ounce or US$ 11.3 per silver equivalent ounce, including operating costs, sustaining capital costs, expansion capital costs, private and public royalties, mineral refining, and transportation.[282]

116. The FS also confirmed that the Ixtaca Project would generate significant economic benefits for Mexico and for the local communities at Ixtaca. For instance, the FS calculated that the Project "would generate approximately US$130 million in Federal taxes, US$50 million in State taxes, and US$30 million in Municipal taxes."[283] In addition, the FS noted that "[p]ositive impacts to the socio-economy of the region are expected to continue as the Project is developed into a

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277 McDonald WS, at para. 41; Ixtaca Feasibility Study, at Section 16.8, pp. 211-218, **Exhibit C-314**.

278 Ixtaca Feasibility Study, at Sections 21 and 22, pp. 273-287, **Exhibit C-314**.

279 Ixtaca Feasibility Study, at p. 21, **Exhibit C-314**.

280 Ixtaca Feasibility Study, at p. 21, **Exhibit C-314**.

281 As explained by Brattle, the term Mineral Reserves includes quantities of minerals that are measured with the maximum degree of geological knowledge and confidence. It encompasses both proven (measured) and probable reserves of minerals. *See* Brattle, at paras. 13-15; *see* also Canadian Institute of Mining, CIM Definition Standards for Mineral Resources & Mineral Reserves, dated 19 May 2014, at p. 8, **Exhibit C-201**.

282 Ixtaca Feasibility Study, at p. 21, **Exhibit C-314**.

283 Ixtaca Feasibility Study, at p. 285, **Exhibit C-314**.

mine and becomes a source of more jobs."[284] The Ixtaca Project also promised to create significant value for Almaden. As explained above, the Ixtaca Project's after-tax NPV was estimated to be US$ 310 million at a 5% discount rate assuming a gold price of US$ 1,275 per ounce and a silver price of US$ 17 per ounce.[285] Although the prices of gold and silver were low at the time of publication, beginning in mid-2019, the international prices for gold and silver steadily increased.[286] As of the date of this Memorial, the price per ounce of gold is US$ 3,032, and the price per ounce of silver is US$ 34.00.[287]

117. Moreover, the FS calculations derived only from mineral reserves and suggested that additional resources were likely to exist.[288] It also noted that the limestone extracted from the open pit, which would typically be disposed of as a waste product, could be sold as an input for cement and aggregate products, thus further enhancing profit potential and contributing to the circular economy.[289]

118. Based on the positive results from the FS, Almaden set about obtaining financing for the Project. Mr. McDonald led these efforts, drawing on his extensive experience in financial markets.[290] On 13 December 2019, Almaden retained [redacted] These efforts led Almaden to secure various letters of intent offering favorable terms for financing the Project.[292]

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284 Ixtaca Feasibility Study, at p. 270, **Exhibit C-314**.

285 Ixtaca Feasibility Study, at p. 21 **Exhibit C-314**.

286 *See* Brattle, at para. 75.

287 *See* Kitco, Buy/Sell Gold and Silver, **Exhibit C-459.**

288 *See* Ixtaca Feasibility Study, at p. 298, **Exhibit C-314**.

289 The FS concluded it would be viable to use a "large portion" of "non-mineralized limestone" extracted from the pit, to "use as an aggregate" in the cement industry and in agriculture due to its high content of calcium Ixtaca Feasibility Study, at p. 300, **Exhibit C-314**; *see also* [redacted]

290 McDonald WS, at para. 48.

291 [redacted], **Exhibit C-265**.

292 McDonald WS, at para. 48.

118.1 Specifically, Almaden received the following term sheets for financing the Ixtaca Project, confirming that the Project was bankable, *i.e.*, reasonably expected to bring in profit:

118.2 On 13 May 2019, Almaden received [redacted]

118.3 On 25 June 2019, Almaden received [redacted] to cover the costs of constructing and developing the Ixtaca Project from [redacted] This package included a combination [redacted]

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293 McDonald WS, at para. 49; [redacted], **Exhibit C-468**.

294 McDonald WS, at para. 49; [redacted] **Exhibit C-287**.

295 McDonald WS, at para. 49; [redacted], **Exhibit C-328**.

296 McDonald WS, at para. 49; [redacted], **Exhibit C-328**.

297 McDonald WS, at para. 49; [redacted] **Exhibit C-460**.

298 McDonald WS, at para. 49; A facility that enables a mining company to sell future gold production in exchange for an immediate case payment. *See* Law Insider, 'Gold Prepayment Facility definition', https://www.lawinsider.com/dictionary/gold-prepayment-facility/, **Exhibit C-461.**

299 McDonald WS, at para. 49; An agreement that allows the purchase of gold at a set price for a certain production. *See* Canadian Mining, 'Ofttake agreements and financing mine projects', **Exhibit C-431**.

[redacted]

118.4 On 13 February 2019, Almaden [redacted] Under the indicative term sheet, [redacted]

119. These [redacted] reflected and confirmed the market's confidence in the development of the Ixtaca Project.[303] Such documents represent serious intent, demonstrating that the Project was considered worthy of financing.[304] With these [redacted], on 27 June 2019, Almaden informed the public that it was "focused on identifying a strong partner or partners with whom to advance Ixtaca on a basis which clearly adds value for shareholders."[305]

2.6.1 Almaden devised a robust project-delivery strategy

120. In view of the promising results of the Ixtaca FS, Almaden began looking for employees with the necessary skill sets to bring the Ixtaca Project into production.[306] On 7 February 2018, Almaden announced the hiring of Mr. Laurence Morris to serve as Almaden's Vice President for Projects and Operations.[307] Mr. Morris brought over 35 years of experience as a mining engineer and geologist, including experience in mine construction and operation.[308] Before joining Almaden, Mr. Morris was a Mine Manager at First Quantum Minerals, administering

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300 McDonald WS, at para. 49; [redacted], **Exhibit C-294**.

301 McDonald WS, at para. 49; [redacted] **Exhibit C-462**.

302 McDonald WS, at para. 49; [redacted] **Exhibit C-270**.

303 McDonald WS, at para. 50.

304 McDonald WS, at para. 50.

305 McDonald WS, at para. 50; Almaden Press Release, Almaden Announces Results of Annual General Meeting; Provides Update on Ixtaca Project, 27 June 2019, at p. 2, **Exhibit C-296**.

306 McDonald WS, at para. 51.

307 McDonald WS, at para. 51.

308 McDonald WS, at para. 51.

the US$ 5.5 billion Cobre Panamá project in Panama.[309] Mr. Morris participated in the oversight of the Ixtaca FS, and was responsible for seeing the Ixtaca Project through construction and production.[310] His role also encompassed coordinating detailed engineering, mine and strategic planning, project scheduling, contract management, cost control, mining team assembly and training, among other activities.[311]

121. Thereafter, on 9 September 2019, Almaden hired Mr. John Thomas as Vice President for Project Development to assist with, among other things, pre-development engineering and construction of the Ixtaca Project.[312] Mr. Thomas, a chemical engineer by training who had been consulting to Almaden since 2017, brought over 46 years of experience in process development, engineering, mine construction and operations, including projects in Canada, Zambia, Brazil, Venezuela, and other countries.[313]

122. In parallel with Almaden's project finance discussions with lenders, the Company, with the assistance of Messrs. Morris and Thomas, worked to prepare the project delivery strategy, [redacted]

309 McDonald WS, at para. 51; Almaden Press Release, 'Almaden Appoints Laurence Morris Vice President, Projects And Operations, To Oversee Development And Construction Of The Ixtaca Gold Silver Deposit, Mexico', dated 7 February 2018, **Exhibit C-240.**

310 McDonald WS, at para. 51.

311 McDonald WS, at para. 51; Almaden Press Release, Almaden Appoints Laurence Morris Vice President, Projects And Operations, To Oversee Development And Construction Of The Ixtaca Gold Silver Deposit, Mexico, dated 7 February 2018, **Exhibit C-240**.

312 McDonald WS, at para. 52; Almaden Press Release, Almaden appoints Dr. John Thomas as Vice President, Project Development, to oversee detailed engineering and construction of the Ixtaca Gold/Silver Deposit, Mexico, dated 9 September 2019, **Exhibit C-310**.

313 McDonald WS, at para. 52; Almaden Press Release, Almaden appoints Dr. John Thomas as Vice President, Project Development, to oversee detailed engineering and construction of the Ixtaca Gold/Silver Deposit, Mexico, dated 9 September 2019, **Exhibit C-310**.

314 McDonald WS, at para. 53; Ixtaca Project Delivery Strategy prepared by Almaden Minerals Ltd. in February 2019, at p. 1, **Exhibit C-268**.

315 McDonald WS, at para. 53; Ixtaca Feasibility Study, at p. 290, **Exhibit C-314**.

316 McDonald WS, at para. 53; Ixtaca Project Delivery Strategy [redacted], at p. 2, **Exhibit C-268.** At the time, [redacted] McDonald WS, at para. 53, n.74. [redacted] are set out in the witness statement of Mr. Pablo-Dorantes.

[redacted]

123. In early 2019, the project-delivery strategy consisted [redacted]

[redacted]

[redacted]

317 McDonald WS, at para. 54.

318 Ixtaca Project Delivery Strategy [redacted], at p. 4, **Exhibit C-268**.

319 McDonald WS, at para. 54.

124. [redacted]

125. In furtherance of the pre-construction phase, and in parallel with project financing initiatives, Minera Gorrión prepared and submitted to the Ministry of Environment and Natural Resources ("**SEMARNAT**") its environmental impact assessment (*manifestación de impacto ambiental* or "**MIA**") for review and approval on 22 February 2019.[321] SEMARNAT was required by law to issue a decision on the MIA within 60 business days.[322] Following SEMARNAT's approval of the MIA, Minera Gorrión would then apply to obtain the necessary permits to begin construction and mining operations, including permits for change of land use, surface water rights, and explosives storage and use.[323]

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320 Ixtaca Project Delivery Strategy [redacted], at p. 3, **Exhibit C-268.**

321 McDonald WS, at para. 56; Pablo-Dorantes WS, at para. 4.

322 McDonald WS, at para. 56; Pablo-Dorantes WS, at para. 38.

323 McDonald WS, at para. 56; Pablo-Dorantes WS, at para. 105.

126. While Minera Gorrión awaited MIA approval, Almaden completed additional pre-construction activities for the Project, including:

- Formulating and drafting the [redacted]
- Completing detailed geological and engineering studies for the water dams required for the mine;[325]
- Compiling a study for constructing and connecting a power line to service the Ixtaca Project and securing the necessary easements;[326] and
- Continuing the negotiation of agreements with landowners in the Project area; by February 2021, Almaden, through Minera Gorrión, had acquired land rights covering [redacted] required to develop the Ixtaca Project.[327]

127. As set forth further below, despite the robust and favorable FS and the Claimants' significant efforts to advance the Project to the cusp of production, the Project hit a roadblock: it became the target of actors within the AMLO administration, who orchestrated an end to the Project.

2.7 Almaden successfully acquired surface rights needed for the Ixtaca Project

128. Because private property covered the surface area of the Ixtaca Project, Minera Gorrión undertook to secure approximately [redacted] While the majority of these land agreements involved direct purchases, in certain cases, Minera Gorrión negotiated lease agreements.[329]

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324 McDonald WS, at para. 57; Ixtaca Project Delivery Strategy [redacted]

325 McDonald WS, at para. 57; *Estudio Geológico-Geofísico de la Presa FWS* (Fresh Water Dam) prepared by PMICSA, dated 4 November 2019, **Exhibit C-326**; *see also Estudio Geológico-Geofísico de la Presa WSD* (Water Storage Dam) prepared by PMICSA, dated 4 November 2019, **Exhibit C-325**.

326 McDonald WS, at para. 57; Report on Progress with Power Line, dated 11 September 2019, **Exhibit C-312**.

327 McDonald WS, at para. 57; Ixtaca Land Updates, dated February 2021, **Exhibit C-357**.

328 Santamaría Tovar WS, at para. 18.

329 Santamaría Tovar WS, at para. 18.

129. Minera Gorrión approached negotiations with local landowners tactfully, using property valuations from the Mexican *Instituto de Administración y Avalúos de Bienes Nacionales* as a baseline.[330] These valuations were then adjusted to reflect local market conditions and specific property attributes.[331] Mr. Santamaría Tovar highlights the importance of direct and respectful engagement in these negotiations, stating: "I met with landowners in their homes, shared meals with their families, and fostered an atmosphere of mutual respect and transparency." [332]

130. Ensuring financial transparency was also a fundamental aspect of the land acquisition process. Minera Gorrión made payments via electronic transfers directly to landowners' bank accounts, ensuring a secure and traceable transaction.[333]

131. Ultimately, Minera Gorrión secured purchase and lease agreements covering land [redacted] Minera Gorrión's diligent and transparent approach to these negotiations guaranteed fair and mutually beneficial agreements.[335] This acquisition process was, as can be seen, extensive and labor intensive in its own right.

132. However, beyond the transactions themselves, the land acquisition process for the Ixtaca Project was an opportunity to strengthen community relationships and build mutual trust, reinforcing Minera Gorrión's commitment to socially responsible resource development.[336]

2.8 Almaden Invested Significant Time, Effort, And Resources Into The Local Communities At Ixtaca

2.8.1 Community Initiatives

133. From the outset of the Ixtaca Project, Almaden made significant investments in community engagement and outreach programs, as well as in education and infrastructure improvement.[337]

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330 Santamaría Tovar WS, at para. 17.

331 Santamaría Tovar WS, at para. 17.

332 Santamaría Tovar WS, at para. 20.

333 *See, e.g.*, [redacted] **Exhibit C-206**.

334 Santamaría Tovar WS, at para. 18.

335 Santamaría Tovar WS, at para. 20.

336 Santamaría Tovar WS, at para. 20.

337 Santamaría Tovar WS, at paras. 21-22; McDonald WS, at para. 60.

Aligned with the family-driven ethos of the company, Almaden intended to build a mine that would serve, rather than harm, the local communities. Creating a dialogue whereby the company could understand community needs and communicate the nature of its plans was therefore a critical objective, one that Almaden carried out professionally and respectfully. Those efforts are described below.

134. Understanding the importance of dialogue and early, transparent engagement, Almaden and Minera Gorrión built direct, collaborative, and strong relationships with the communities surrounding the Ixtaca Project,[338] earning recognition for their pioneering approach and setting new benchmarks for transparency, inclusivity, and sustainable local collaboration.[339] As the Claimants' witnesses note, establishing these relationships at such an early stage is not a common practice in the mining industry, where such initiatives typically do not commence until after a project begins to generate revenue.[340]

135. Recognizing that many local residents were unfamiliar with modern mining practices, Ms. Uzcanga Vergara and her Community Relations team devised a coordinated approach to ensure that local stakeholders received accurate and transparent information effectively and had ample opportunities to ask questions.[341] Unlike the Zacatecas, Durango, and Chihuahua regions, where mining is an important and long-standing part of the local economy and culture, modern mining was never previously a part of Puebla's economy and culture.[342] As such, it was essential for the Claimants to share information respectfully and thoughtfully to foster trust and understanding.[343] Alongside its exploration efforts, Minera Gorrión therefore made it a top priority to put in place open and transparent information-sharing with the local communities.[344] These efforts reflected Almaden's core belief that a successful mining project must not only respect but contribute meaningfully to the well-being of its host communities.[345]

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338 Santamaría Tovar WS, at para. 22; Uzcanga Vergara WS, at paras. 11, 12, 14.

339 Santamaría Tovar WS, at para. 22; Uzcanga Vergara WS, at para. 12.

340 Uzcanga Vergara WS, at para. 14.

341 Uzcanga Vergara WS, at para. 14.

342 Uzcanga Vergara WS, at para. 14.

343 Uzcanga Vergara WS, at para. 14.

344 Minera Gorrión's 20th Anniversary Magazine ("*Revista de los 20 años*"), dated 2021, at p. 8, (Spanish original: "*A lo largo de estos 20 años, una de las máximas de Minera Gorrión ha sido construir una práctica de información abierta y transparente con las comunidades*."), **Exhibit C-354**.

345 Almaden CSR 2019, at p. 7 ("Our mandate now, for everyone's sake, is to develop this resource into a meaningful and valued contributor to the wellbeing of the communities that surround it and the area as a whole."), **Exhibit C-80**.

136. As Ms. Uzcanga Vergara and Mr. Santamaría Tovar explain in detail in their witness statements, they put into place a robust framework of community initiatives to advance Minera Gorrión's sustainability and community empowerment goals. These initiatives included:

- **Permanent Community Office** ("*Modulo Permanente*"): Minera Gorrión established a Permanent Community Office in Santa María Zotoltepec – an open, accessible space where residents could voice concerns, seek information, and engage in meaningful dialogue about the Ixtaca Project.[346] Staffed by local professionals trained in human rights and mining, this initiative reinforced the Company's commitment to hiring from within the region, ensuring that engagement was rooted in genuine community representation.[347] As Mr. Santamaría Tovar describes, the Office evolved organically into a natural community gathering spot.[348]

- **Mobile Information Module** ("*Modulo Itinerante*"): To bridge geographical gaps, the Company introduced a Mobile Information Module, a traveling resource that brought visual materials, interactive discussions, and direct engagement to remote

346 Almaden CSR 2019, at p. 30 ("Our initial door to door conversations in the early days of the project have now developed into a permanent community information centre in our local community. Here, 6 days a week people from surrounding communities can find our team available to answer questions, submit suggestions and openly discuss the lxtaca project."), **Exhibit C-80**.

347 Uzcanga Vergara WS, at paras. 30-31.

348 Santamaría Tovar WS, at para. 23.

communities.[349] This initiative ensured equal access to transparent, accessible information, reinforcing trust and inclusivity across the region.[350]

- **Monthly Community Dialogues** ("*Diálogos Transversales*"): To foster deeper engagement on technical matters, Minera Gorrión launched *Diálogos Transversales*, a series of monthly forums dedicated to complex topics such as cyanide use, water management, or mining safety.[351] These sessions provided an open and direct platform for residents to interact with Company representatives, ask questions, and receive clear, detailed explanations. By promoting transparency and constructive dialogue, these discussions strengthened mutual trust and community involvement.[352] As Ms. Uzcanga Vergara notes, "Many attendees became regular participants, returning session after session to contribute to the discussions."[353]

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349 Uzcanga Vergara WS, at para. 34.

350 Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 27 ("We will endeavour to inform our communities in a timely, inclusive, honest, transparent, and culturally appropriate way throughout the life of a project."), **Exhibit C-80**.

351 Uzcanga Vergara WS, at paras. 23-24; Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 24 ("We encourage and assist local stakeholders to develop an understanding of the business and science of mining, so that they are enabled to form their own opinions on our activities. We accomplish this by taking the time to explain our activities in regular community dialogues, and by hiring experts to present different aspects of the business, such as the use of explosives or the legal framework for mining in Mexico."), **Exhibit C-80**. *See, e.g.*, Community Dialogues, PowerPoint Presentation on Water, dated 25 April 2019, **Exhibit C-563**; Community Dialogues, PowerPoint Presentation on RPI Clarifications, dated 25 July 2019, **Exhibit C-562**; Community Dialogues, PowerPoint Presentation on Various Topics, dated 28 April 2022, **Exhibit C-561**; Community Dialogues, PowerPoint Presentation on the Amparo Proceedings, dated 28 July 2022, **Exhibit C-560**; *see also* Brochure Inviting Community Members to the *Diálogos Transversales* Session: Key Aspects of the MIA, **Exhibit C-280**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Study of Flora and Fauna in the Ixtaca Project, **Exhibit C-391**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Mine Infrastructure, **Exhibit C-255**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Modifications to the Tailings Dam, **Exhibit C-451**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Ixtaca Project Next Steps and Presentation of Minera Gorrión's Fire Prevention Brigade, **Exhibit C-387**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Safety and Hygiene in Mining, **Exhibit C-452**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Zacatepec Small Landowners Agreement, **Exhibit C-453**; Brochure Inviting Community Members to the *Diálogos Transversales* Session: Update on Court Ruling – Ixtaca Case, **Exhibit C-454**; Introduction to *Diálogos Transversales* PowerPoint Presentation, **Exhibit C-567**; Cyanide PowerPoint Presentation, **Exhibit C-568**.

352 Uzcanga Vergara WS, at para. 25; *see also Diálogos Transversales*, Minera Gorrión YouTube Channel, dated 18 May 2018, <https://www.youtube.com/watch?v=aLHkWNQ3Wh8>, **Exhibit C-249**.

353 Uzcanga Vergara WS, at para. 25.

- **Annual Informative Assemblies** ("*Juntas Informativas Anuales*"): Larger-scale Annual Informative Assemblies became major civic events, drawing hundreds of residents eager for technical updates on the Project.[354] Government officials, including Undersecretary of Mining Francisco Quiroga, attended these assemblies, publicly recognizing Minera Gorrión's adaptability, commitment to participatory democracy, and leadership in responsible mining.[355] Their presence underscored the Ixtaca Project's national significance as a responsible, sustainable mining project.

354 2014 Annual Informative Assembly PowerPoint Presentation, **Exhibit C-569**; 2018 Annual Informative Assembly PowerPoint Presentation, **Exhibit C-238**; 2021 Annual Informative Assembly PowerPoint Presentation, **Exhibit C-570**.

355 Santamaría Tovar WS, at para. 35; Speech by Undersecretary of Mining Francisco Quiroga at Minera Gorrión's 9th Annual Informative Assembly in Santa María Zotoltepec, dated December 2018, **Exhibit C-264**.

- **Mine Tours** ("*Visitas a Minas*"): Minera Gorrión recognized that firsthand experience is more powerful than words alone.[356] The Company gave residents direct exposure to modern mining operations through immersive mine tours. The Company organized 25 mine tours, bringing over 500 residents to active mining sites across Mexico.[357] These visits provided an unfiltered look at modern mining operations, enabling participants to challenge preconceptions, scrutinize processes, and engage directly with communities living near established mines.[358]

  If local residents did not fully understand what the Project would mean for them before these visits, they did afterwards and, notably, support for the Project remained high, as shown below. A 2018 video prepared by Minera Gorrión and testimonies featured in the Company's 20th Anniversary Magazine captured a common theme – firsthand experience shattered misconceptions about mining. Residents who participated in the mine tours left with a transformed perspective. The following testimonials from neighbours of San Francisco Ixtacamaxtitlán reflect this shift:

  > My ideas changed about everything I was misinformed about, because I have now realized that work is done through a process, a legal process, and they operate with all the concessions that govern a mining company.[359]

  > We must see, we must see to believe, because sometimes we are told one thing, and we believe it completely, but that's not the case. There, I saw

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356 Santamaría Tovar WS, at para. 29.

357 Santamaría Tovar WS, at para. 28; Uzcanga Vergara WS, at para. 36.

358 Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 23 ("We also have instituted a unique program of organising tours for the local stakeholders of relevant nearby mines so they can see for themselves what mining looks like. We believe our local stakeholders are intelligent people, well capable of coming to their own conclusions if given the opportunity to learn firsthand about the mining industry."), **Exhibit C-558**.

359 *Viaje a Mina en la localidad de Luis Moya, Zacatecas*, Minera Gorrión YouTube Channel, dated 13 April 2018, available at https://www.youtube.com/watch?v=FZ_Zcxj-_eI&t=1s (last accessed 8 March 2025) (Spanish original: "*Cambiaron mis ideas de todo aquello que tenía mal informado, porque ya me di cuenta de que se trabaja a través de un proceso, un proceso legal, y trabajan con todas las concesiones que rigen a una minera*."), **Exhibit C-248**.

firsthand how the work is done. Honestly, for me, it was an eye-opener.[360]

- **Skills Development**: Recognizing that true impact extends beyond direct employment,[361] the Company launched a comprehensive education and skills-training initiative, equipping residents with transferable technical expertise applicable both within and beyond the Ixtaca Project.[362] This included training in geological surveying, drilling operations, fieldwork logistics, equipment handling and maintenance, stakeholder engagement, and administrative management, ensuring participants developed valuable skills applicable both within the mining sector and across various industries. Whether they chose to continue working at the Ixtaca Project or sought employment in other industries, the training they received gave them a

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360 Minera Gorrión's 20th Anniversary Magazine ("*Revista de los 20 años*"), 2021, at p. 11 (Spanish original: "*Debemos de ver para creer, debemos de ver para creer, porque luego nos dicen una cosa y lo creemos al cien y no es así. Yo ahí me di cuenta cómo se trabaja. Ahí la verdad, para mí fue un desengañarme*."), **Exhibit C-354**; *see also* Minera Gorrión's 20th Anniversary Magazine ("*Revista de los 20 años*"), 2021, at p. 12 ("People from here had told us that if there is a mine, all the children or all the people will be born with a malformation. Another very pleasant surprise, contrary to what I had heard, is realizing that it is not true that no plant life exists after a mine." Spanish original: "*Gente de aquí nos había dicho que si hay una mina, todos los niños o todas las personas van a nacer con una malformación. Otra impresión muy agradable a diferencia de lo que he escuchado, es que es mentira que ya no exista vida vegetal después de la mina*."), **Exhibit C-354**.

361 Almaden Minerals CSR 2019, at p. 22 ("We work to be a positive force in the local community by strengthening education opportunities and promoting local activities which reinforce traditions and culture."), **Exhibit C-80**.

362 Santamaría Tovar WS, at para. 15; Uzcanga Vergara WS, at para. 62; Almaden Minerals CSR 2019, at p. 14 ("Almaden operates the drills used at the project and hence can draw and train a local workforce as opposed to bringing in external contractors."), **Exhibit C-80**.

competitive edge in the job market.[363] To further support employment opportunities, Minera Gorrión also hosted a Mining Expo, bringing together industry experts, suppliers, and potential employers to showcase career paths and job prospects in the sector.[364] The event not only reinforced Minera Gorrión's presence in the industry but also provided valuable exposure for residents seeking employment in mining, as well as for companies interested in collaborating with Minera Gorrión in various capacities.

- **Environmental stewardship:** Environmental stewardship was also a core priority for the Claimants. The Company spearheaded reforestation efforts, waste management programs, and a PET recycling initiative, empowering local women through sustainable economic participation.[365] To foster communities' long-term sufficiency, it worked with the Puebla State Ministry of Environment to establish a Fire Prevention Brigade, equipping residents with essential skills to protect their own communities from wildfires and environmental hazards.[366]

The Fire Prevention Brigade actively working during a wildfire prevention and control campaign.

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363 Santamaría Tovar WS, at paras. 15-16.

364 Uzcanga Vergara WS, at paras. 53-55; *EXPO MINERA PROIXTACA 2019*, Minera Gorrión YouTube Channel, dated 20 October 2019, available at https://www.youtube.com/watch?v=K89TL4kyLj4 (last accessed 8 March 2025), **Exhibit C-317**.

365 Minera Gorrión #ProIxtaca Recycling Program Brochure, **Exhibit C-566**.

366 Uzcanga Vergara WS, at para. 51; *Brigada de Prevención de Incendios de Minera Gorrión*, Minera Gorrión YouTube Channel, dated 8 June 2022, https://www.youtube.com/watch?v=izCf7sQdnDI (last accessed 8 March 2025), **Exhibit C-389**; Minera Gorrión, Press Release Announcing Conclusion of Fire Prevention Brigade Operations as Rainy Season Begins, dated 6 June 2023, **Exhibit C-425**.

- **Summer Camps** ("*Cursos de Verano*"): For younger generations, the Company organized annual Summer Camps, welcoming 70 to 100 children each year.[367] These camps blended recreation with education, offering activities in sports, arts, baking, gardening, and life skills, encouraging curiosity, independence, and personal development in a supportive environment.[368] Families saw these camps as more than just seasonal activities – they were a valuable opportunity for learning, growth, and personal development.

- **Education**: To expand access to higher education, Minera Gorrión awarded 100 scholarships to students from 20 communities.[369] In response to local demand, it introduced extracurricular programs in English, reading, theatre, dance, music, and sports, fostering talent and broadening opportunities.[370] Ms. Uzcanga Vergara describes these activities as "incredibly impactful, as many children had limited access

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367 Uzcanga Vergara WS, at para. 41; Almaden Minerals CSR 2019, at p. 53 ("Our summer camps provide an educational opportunity for local children during school vacation and give a break to their parents. Many parents attend these camps along with their children."), **Exhibit C-80**; *see also Curso de Verano 2018*, Minera Gorrión YouTube Channel, dated 19 December 2019, available at https://www.youtube.com/watch?v=GRRFLiR98FM (last accessed 8 March 2025), **Exhibit C-332**.

368 Uzcanga Vergara WS, at para. 45; 2014 Summer Course Activity Schedule, **Exhibit C-564**; Geology Session PowerPoint Prepared by Mr. Santamaría Tovar for the 2022 Summer Course, **Exhibit C-565**.

369 Uzcanga Vergara WS, at para. 47.

370 Uzcanga Vergara WS, at para. 46; Sample Invitation to Participate in Community Workshops Organized by Minera Gorrión, **Exhibit C-210**.

to structured activities outside of school."[371] To bridge the digital divide, the Company donated laptops, tablets, and internet access, ensuring students could keep up with their studies regardless of technological limitations.[372] For adults, Minera Gorrión provided vocational training, sewing workshops, and fitness programs, fostering economic self-sufficiency and community cohesion. As Ms. Uzcanga Vergara states, these programs, taught mostly by local instructors, "provided more than just skills – they contributed to community well-being and cohesion."[373]

- **Community well-being**: Driven by a commitment to tangible impact, Minera Gorrión went beyond dialogue and education to directly enhance community well-being. In healthcare, it donated vital signs monitors, a portable ultrasound machine,[374] and over

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371 Uzcanga Vergara WS, at para. 47.

372 D. Poliquin WS, at para 43; Almaden Minerals CSR 2019, at p. 19 ("Focused on education, enabling 4,366 people to be positively impacted by our investments, such as rehabilitation of school-related infrastructure, donation of electronic equipment, and scholarships for top-performing students."), **Exhibit C-80**.

373 Uzcanga Vergara WS, at para. 48.

374 D. Poliquin WS, at para. 45; Uzcanga Vergara WS, at para. 50; Almaden Minerals CSR 2019, at p. 42 ("In the past, Almaden and its partners have donated medical equipment to local healthcare authorities including vital monitoring machines and an ultrasound unit for the maternal care clinic in Santa Maria."), **Exhibit C-80**.

600 wheelchairs,[375] significantly improving local medical services. During the COVID-19 crisis, it provided sanitizers and masks, safeguarding frontline workers.[376]

- **Community integration**: Minera Gorrión hosted and actively participated in key local celebrations including Father's Day, Mother's Day, Children's Day, and national holidays.[377] These events provided natural spaces for interaction, reinforcing trust between the Company and the communities.[378] As Ms. Uzcanga Vergara notes:

> Some of the most meaningful exchanges happened on the sidelines of the more informative events. . . These every day moments, woven into the fabric

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375 D. Poliquin WS, at para. 44; Uzcanga Vergara WS, at para. 50; Almaden Minerals CSR 2019, at p. 45 ("Almaden has participated with the wheelchair foundation and the Puebla DIF to donate over 600 wheelchairs in Puebla and the municipality of lxtacamaxtitlan to help improve the quality of life for people with mobility issues."), **Exhibit C-80**.

376 Letter of Appreciation from the Government of Puebla to Minera Gorrión for COVID-19 Support, dated 14 May 2020, **Exhibit C-555**.

377 Uzcanga Vergara WS, at para. 52; *Preservación de Tradiciones y Cultura en Ixtacamaxtitlán*, Minera Gorrión YouTube Channel, dated 14 September 2021, available at https://www.youtube.com/watch?v=byniEX-nris (last accessed 8 March 2025), **Exhibit C-372**; *DIA DEL PADRE MINERA GORRIÓN 2022*, Minera Gorrión YouTube Channel, dated 23 December 2022, available at https://www.youtube.com/watch?v=Ku6QHnzyQxw (last accessed 8 March 2025), **Exhibit C-405**; *Día del Niño y la Niña Minera Gorrión 2022*, Minera Gorrión YouTube Channel, dated 6 June 2022, available at https://www.youtube.com/watch?v=0usK4kF7YXo (last accessed 8 March 2025), **Exhibit C-388**.

378 Uzcanga Vergara WS, at para. 52.

> of everyday life, allowed us to build trust and strengthen our relationship with the community.[379]

137. As the examples above show, Minera Gorrión's engagement strategy was not about compliance, it was about legitimacy. It treated the communities within the Ixtaca Project's area of influence as active stakeholders, rather than passive recipients. Mexico itself recognized the positive impacts the Ixtaca Project was having on local communities. Undersecretary of Mining Quiroga emphasized at the Company's 9th Annual Assembly that:

> Minera Gorrión has made an effort to understand the community's needs. . . it has worked to integrate itself into the community, rather than expecting the community to integrate itself into mining activities. . . The eyes of Mexican mining are on Ixtaca: something is happening here that will set the standard for mining in the rest of the country.[380]

138. It is worth pausing here to reflect on the breadth of these initiatives. As this experienced Tribunal will appreciate, mining companies rarely undertake such an extensive and costly community development program, let alone a mining company that has not yet even put their mine into production. Put another way, exploration companies simply do not go to this effort. Mexico will doubtless argue in these proceedings that Almaden had not done enough to secure a nebulously defined "social license" from local communities. The activities described above demonstrate that argument to be false and underscore the sad irony that Mexico has sided with NGOs that, at least in the case of Almaden, have simply barked up the wrong tree.

139. Industry leaders likewise took notice of these efforts, drawing visits from representatives of [redacted] and CAMIMEX – Mexico's leading mining chamber – who sought to learn from Minera Gorrión's approach to community relations.[381]

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379 Uzcanga Vergara WS, at para. 21.

380 Speech by Undersecretary of Mining Francisco Quiroga at Minera Gorrión's 9th Annual Informative Assembly in Santa María Zotoltepec, dated December 2018 (Spanish original: "*Minera Gorrión ha hecho un trabajo por conocer cuáles son las necesidades... ha hecho un trabajo por integrarse a la comunidad en lugar de esperar que la comunidad se integre a la actividad minera... Los ojos de la minería mexicana están puestos en Ixtaca: aquí está pasando algo que será el ejemplo de cómo se hace la minería en el resto del país.*"), **Exhibit C-264**.

381 Santamaría Tovar WS, at para. 34.

140. The cumulative effect of years of engagement, transparency, and trust-building was a strong community consensus in favor of the Ixtaca Project.[382] The local residents, having directly experienced the Company's commitment to responsible mining and sustainable development, saw the potential benefits of the Ixtaca Project.[383] Their endorsement was not superficial; it was built on informed decision-making, direct involvement in initiatives, and tangible improvements in their daily lives.[384] As Mr. García Herrera explains:

> We knew and understood how mining could positively impact our community. We had visited other operational mine sites across Mexico and had witnessed how responsible mining practices could improve local economies without harming agriculture or the environment. We saw real evidence of prosperity and, based on this knowledge, supported the Project.[385]

141. The fact that hundreds of residents actively demonstrated their support, including through formal letters submitted to the Government, speaks to the depth of this trust.[386] These letters were not generic endorsements but authentic expressions of support from community members, many of whom had actively participated in discussions, workshops, and site visits to better understand the Project.

142. One of the most significant letters was submitted to SEMARNAT in July 2019 and signed by over 800 local residents expressing clear and informed support for the Project.[387] In the letter, the residents emphasized that they had been directly involved in discussions with Minera Gorrión, had witnessed the Company's transparency and commitment to responsible mining, and firmly rejected the claims of activist groups who falsely claimed to represent their communities.[388]

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382 García Herrera WS, at paras. 12-13.

383 García Herrera WS, at paras. 12-13.

384 Almaden Minerals / Minera Gorrión Corporate Social Responsibility Report 2019, at p. 23 ("Perhaps the most important component of our efforts to build mutual trust and respect is the notion of 'informed consent.' We believe the local population has the capacity to be active players in the potential future mining activity at Ixtaca."), **Exhibit C-80**.

385 García Herrera WS, at para. 28.

386 García Herrera WS, at paras. 14-19.

387 Letter from community members to SEMARNAT dated 25 July 2019, **Exhibit C-77**.

388 Letter from community members to SEMARNAT dated 25 July 2019, at p. 13, **Exhibit C-77**.

143. Beyond SEMARNAT, the community also sought to engage directly with the highest levels of government. On 30 August 2019, a group of local residents sent a letter to AMLO, reinforcing their support for the Project and requesting that their voices be heard.[389] The letter made it clear that their support was based on firsthand knowledge, experience, and direct engagement with the Company.[390] After receiving no response, the community sent a follow-up letter on 4 October 2019, reiterating their request for recognition and dialogue.[391] Despite these efforts, the Government never acknowledged their outreach, failing to recognize the voices of those who would have been directly impacted by the Project.

2.8.2 Shared benefit agreements

144. In tandem with its social engagement efforts, Minera Gorrión built meaningful partnerships with local communities through shared benefit agreements in relation to water resources, ensuring the Ixtaca Project would deliver lasting economic, social, and environmental contributions.

2.8.2.1 Zacatepec small landowners group agreements

145. The first water-related agreement was signed in August 2019 between Minera Gorrion and the *Grupo de Pequeños Propietarios del Barrio de Zacatepec A.C.* ("**Zacatepec Small Landowners Group**").[392] It committed the Company to constructing geomembrane-lined reservoirs to capture irrigation water, installing modern drip irrigation systems, and improving water infrastructure, including distribution tanks and storage tanks.[393]

146. Following successful implementation of the above agreement, Minera Gorrión and the Zacatepec Small Landowners Group entered into a second agreement on 29 July 29 2022, which expanded the original commitments.[394] As Mr. Santamaría Tovar notes, the reservoir

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389 Letter from community members to AMLO, dated 30 August 2019, **Exhibit C-308**.

390 Letter from community members to AMLO, dated 30 August 2019, **Exhibit C-308**.

391 Letter from community members to AMLO, dated 4 October 2019, **Exhibit C-315**.

392 First General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Grupo de Pequeños Propietarios del Barrio de Zacatepec A.C.*, dated 16 August 2019, **Exhibit C-304**; Santamaría Tovar WS, at para. 55.

393 First General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Grupo de Pequeños Propietarios del Barrio de Zacatepec A.C.*, dated 16 August 2019, at p. 3, **Exhibit C-304**.

394 Second General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Grupo de Pequeños Propietarios del Barrio de Zacatepec A.C.*, dated 29 July 2022, **Exhibit C-395**.

designs envisaged under these agreements were based on local engineering plans developed by Zacatepec farmers themselves, demonstrating the collaborative nature of the agreements.[395]

147. By 27 February 2020, the first reservoir was inaugurated, marking a turning point for Zacatepec. With reliable water access, the community rapidly developed a regional reputation for year-round strawberry production, something previously unthinkable due to persistent water shortages.[396] At the opening ceremony, a local farmer emphasized the significance of this achievement for his community, "[the reservoir] will not only help to boost our current harvests but also ensure that fewer people will have to leave the community due to lack of employment."[397]

395 Santamaría Tovar WS, at para. 55.

396 Santamaría Tovar WS, at para. 57.

397 *Almaden Announces Opening of Local Community Water Reservoir*, Almaden, **Exhibit C-083**; *Reservorio de agua en Zacatepec "Un aliado del agua, el Proyecto de Mina Ixtaca" Parte 2*, Minera Gorrión YouTube Channel, dated 22 January 2023, available at https://www.youtube.com/watch?v=6kdY0s9d-Oo (last accessed 2 March 2025), **Exhibit C-411**; *Reservorio de agua en Zacatepec "El proceso"*, Minera Gorrión YouTube Channel, dated 22 January 2023, available at https://www.youtube.com/watch?v=O2eZC9sd3r0&t=17s (last accessed 2 March 2025), **Exhibit C-412**; *Reservorio de agua en Zacatepec-Etapa final*, Minera Gorrión YouTube Channel, dated 21 April 2023 <https://www.youtube.com/watch?v=_1w52tJGb64>, **Exhibit C-424**.

Photo of the same Zacatepec reservoir, December 2024.

2.8.2.2 EJUNDS agreement

148. On 31 August 2022, following the successful agreement with the community of Zacatepec, Minera Gorrión entered into a separate agreement with *Ejidatarios Unidos para el Desarrollo Sustentable de Santa María Zotoltepec, AC* ("**EJUNDS**").[398] EJUNDS was a grassroots community-driven association formed by residents seeking alternative development solutions.[399] This agreement, a result of continued dialogue and engagement, aimed to enhance agricultural sustainability and improve water access. It was structured in three phases:

- Phase 1 – Infrastructure: the construction of a 20,000 m^3 geomembrane-lined irrigation reservoir, electrical lines, a pumping system, and irrigation pipelines, co-funded by Minera Gorrión and CONAGUA.[400]

- Phase 2 – Agricultural Support: the provision of annual bio-fertilizers, improved seeds, pest control solutions, and technical assistance to increase productivity and soil regeneration.[401]

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398 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and *Ejidatarios Unidos para el Desarrollo Sustentable de Santa María Zotoltepec, AC.* (EJUNDS), dated 31 July 2022, **Exhibit C-396**.

399 Santamaría Tovar WS, at para. 60.

400 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and *Ejidatarios Unidos para el Desarrollo Sustentable de Santa María Zotoltepec, AC.* (EJUNDS), dated 31 July 2022, at Clauses 2.8.1-2.8.2, **Exhibit C-396**.

401 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and *Ejidatarios Unidos para el Desarrollo Sustentable de Santa María Zotoltepec, AC.* (EJUNDS), dated 31 July 2022, at Clause 2.8.3, **Exhibit C-396**.

- Phase 3 – Long-Term Development: the expansion of irrigation systems, greenhouses, and biotechnologies to sustain economic resilience.[402]

149. In 2024, excavation work for the reservoirs envisaged under the agreement was completed. Since then, the Project faced delays due to regulatory challenges.[403] Despite this, however, Mr. Santamaría remains confident that "had the Project been allowed to proceed. . . Minera Gorrión and EJUNDS would have overcome these obstacles successfully" and these initiatives would have been successfully completed.[404]

2.8.2.3 Ejido Santa María Zotoltepec agreement

150. In February 2023, building on the positive results of previous agreements with the community of Zacatepec and EJUNDS, the *Ejido* Assembly of Santa María Zotoltepec approved its own collaboration agreement with Minera Gorrión.[405] Seeing the tangible benefits brought to the neighbouring Zacatepec, the *Ejido* sought a similar partnership, one that would address their specific agricultural needs.

151. The agreement focused on enhancing agricultural productivity, providing fertilizers, soil analysis, improved seeds, and sustainable farming techniques to boost crop yields and soil health. Additionally, Minera Gorrión committed to funding tractor work hours and implementing biological pest control solutions, ensuring more efficient and resilient agricultural practices.[406]

152. The *Ejido*'s approval of the agreement reflected clear and democratic support for the planned agricultural activities and the partnership with Minera Gorrión. This demonstrated that residents viewed the collaboration as a valuable opportunity for growth.[407]

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402 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and *Ejidatarios Unidos para el Desarrollo Sustentable de Santa María Zotoltepec, AC.* (EJUNDS), dated 31 July 2022, at Clause 2.8.4, **Exhibit C-396**.

403 Santamaría Tovar WS, at para. 63.

404 Santamaría Tovar WS, at para. 63.

405 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Ejido* Santa María Zotoltepec, dated 12 February 2023, **Exhibit C-414**; Santamaría Tovar WS, at para. 64.

406 General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Ejido* Santa María Zotoltepec, dated 12 February 2023, at pp. 7-8, **Exhibit C-414**.

407 Minutes of the *Ejido* Assembly Approving the General Collaboration Agreement Between Minera Gorrión S.A. de C.V. and the *Ejido* Santa María Zotoltepec, dated 12 February 2023, **Exhibit C-415**.

2.9 Minera Gorrión Commissioned a Social Impact Assessment and Human Rights Impact Assessment of the Project

153. In addition to its community engagement initiatives, Almaden also carried out through Minera Gorrión two independent studies to assess the human and social impact of the Project: a social impact study called a *Trámite Evaluación de Impacto Social* ("**EVIS**") published in 2017, and a Human Rights Impact Assessment ("**HRIA**") published in 2023.[408] Mexican law did not require Almaden to carry out these studies.[409] Rather, Almaden commissioned them voluntarily to reaffirm its dedication to transparency, impartiality, and human rights.[410] Almaden then used the results of these studies to guide its operation of the Project and calibrate its approach to human rights. Both studies confirmed that Almaden was developing the Project in a socially responsible manner and in compliance with the human rights of the communities surrounding it. Such results constitute important independent evidence of Almaden's commitment to sustainable and socially responsible mining.[411]

154. Conducted first by the independent firm GMI Consulting and subsequently by its successor, Igual Consultores,[412] the EVIS adhered to international standards, including the Equator Principles,[413] which are a widely-used set of independent standards for determining, assessing and managing environmental and social risks. The EVIS engaged over 300 families across 12 communities in the Project's area of influence.[414] Igual Consultores held two rounds of interactive dialogue tables ("*mesas de diálogo*"), where initial findings were presented using maps, visual aids, and accessible explanations.[415] The process included:

- **In-depth interviews**: Structured discussions with 119 individuals across multiple localities and a wide demographic, including men, women, and elders. Topics covered

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408 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, **Exhibit C-252**; *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), **Exhibit C-408**.

409 Santamaría Tovar WS, at para. 38.

410 Santamaría Tovar WS, at para. 38; McDonald WS, at para 63.

411 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 1, **Exhibit C-540**; *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at p. 197, **Exhibit C-408**.

412 Santamaría Tovar WS, at para. 39.

413 The Equator Principles are a risk management framework adopted by financial institutions to manage environmental and social risks in large-scale development projects. They apply to projects seeking financing are based on international best practices for responsible environmental and social governance.

414 Santamaría Tovar WS, at para. 39.

415 Santamaría Tovar WS, at para. 39.

sociocultural conditions, economic needs, governance, security, and infrastructure priorities. The objective of such discussions was to ensure that project planning was informed by real community concerns.[416]

- **Dialogue tables**: Two structured rounds of discussions across the local communities, involving over 200 participants in each round.[417] These discussions were videorecorded (with participants' consent), ensuring transparency and accountability. Some of these discussions can be seen in YouTube videos published on Minera Gorrión's official channel, showcasing the discussions and community participation.[418]

155. Based on the extensive input from community stakeholders described above, the EVIS concluded that the Ixtaca Project would deliver substantial, long-term benefits to the region and to the local communities, including:

- **Job creation and economic growth**: The Project had injected new employment opportunities into the local economy, fostering prosperity and reducing migration pressures.[419]

- **Infrastructure improvements**: Investments in road upgrades and public services had already enhanced – and would continue to enhance – the local communities' quality of life.[420]

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416 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 10, **Exhibit C-540**.

417 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 11-12, **Exhibit C-540**.

418 *First Phase of Dialogue Tables*, Minera Gorrión YouTube Channel, dated 18 March 2019, available at https://www.youtube.com/watch?v=ZN7fR9lCfqU (last accessed 2 March 2025), **Exhibit C-276**; *Second Phase of Dialogue Tables*, Minera Gorrión YouTube Channel, dated 18 March 2019, available at https://www.youtube.com/watch?v=fhci3Qi2GoA (last accessed 2 March 2025), **Exhibit C-276**.

419 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 2, 24 ("After more than 500 drill holes, 160,000 meters drilled, and 74 formal jobs created in one of the most underdeveloped municipalities in Mexico… In this area, the most significant impacts include job creation as a positive impact. . ." Spanish original: "*Después de más de 500 barrenos, 160 mil metros perforados, 74 empleos formales en uno de los Municipios más rezagados de México…En este rubro, los impactos más significativos son la generación de empleo como impacto positivo. . .*"), **Exhibit C-540**.

420 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 3, 25 ("The actions and donations carried out by the company range from the development or rehabilitation of infrastructure in educational institutions within the area of influence to support for the acquisition of furniture. . .Regarding the Pro-Ixtaca programs, the population highlights. . . the improvement of roads." Spanish original: "*Las acciones y donaciones que la empresa ha efectuado van desde el desarrollo o rehabilitación de infraestructura en instituciones educativas del área de influencia, apoyo para la adquisición de*

- **Support for local traditions and cultural preservation**: Minera Gorrión reinforced community identity by backing local customs and events.[421]

- **Education development**: Minera Gorrión collaborated actively with educational institutions, empowering local students through scholarships, infrastructure enhancements, and improved learning resources.[422]

- **Healthcare contributions**: Minera Gorrión strengthened local healthcare services through donations of essential medical supplies.[423]

- **Transparency and community engagement**: Minera Gorrión maintained an open, ongoing dialogue with local stakeholders, ensuring unrestricted access to information.[424]

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mobiliario. . . En relación a los programas de Pro-Ixtaca, destaca que la población identifica. . . el mejoramiento de caminos."), **Exhibit C-540**.

421 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24 ("The company's support for the promotion of cultural traditions during religious festivities is identified as a positive impact." Spanish original: "*El apoyo al fomento de las tradiciones culturales que viene habiendo la empresa en las fiestas religiosas que se identifica como positivo.*"), **Exhibit C-540**.

422 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at pp. 3-4 ("The actions and donations carried out by the company range from the development or rehabilitation of infrastructure in educational institutions within the area of influence to support for the acquisition of furniture, as well as 100 scholarships granted between 2014 and 2017 at the Instituto de Educación Digital del Estado de Puebla (IEDEP), Ixtacamaxtitlán campus, among others. From 2012 to 2017, a total of 6,014 people across five educational levels have benefited from these initiatives." Spanish original: "*Las acciones y donaciones que la empresa ha efectuado van desde el desarrollo o rehabilitación de infraestructura en instituciones educativas del área de influencia, apoyo para la adquisición de mobiliario, 100 becas de 2014 a 2017 en el Instituto de Educación Digital del Estado de Puebla (IEDEP) campus Ixtacamaxtitlán por mencionar algunas. En el periodo de 2012 a 2017 se han beneficiado a 6,014 personas de los 5 niveles educativos.*"), **Exhibit C-540**.

423 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 4 ("Minera Gorrión has provided. . . in-kind donations to the Health Clinic. . .the Community Hospital of Ixtacamaxtitlán, and the general population. The donated materials include wheelchairs through the State DIF, ophthalmic exams, eyeglasses, vital signs monitors, an ultrasound machine, and support for the clinic through the construction of a multipurpose room. . ." Spanish original: "*Minera Gorrión ha realizado. . . donaciones en especie a la Clínica de Salud. . . al Hospital Comunitario de Ixtacamaxtitlán y a la población en general, el material donado ha sido: Sillas de ruedas por medio del DIF estatal, exámenes oftálmicos, lentes, monitores de signos vitales, ultrasonido, apoyo a clínica por medio de la construcción de un salón de usos múltiples. . .*"), **Exhibit C-540**.

424 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24 ("The most significant potential impact perceived on the environment is the possible contamination of aquifers and water bodies, along with concerns about water supply shortages, the risk of landslides, changes to the natural landscape, and impacts on the flora and fauna of the project site." Spanish original: "*El mayor posible impacto percibido sobre el entorno es la potencial contaminación de los acuíferos y cuerpos de agua, siendo importantes también el temor por la escasez en el suministro de agua, seguida por la posibilidad de deslaves, la modificación del paisaje natural, y la afectación a la flora y fauna del sitio en el que se realizará el proyecto.*"), **Exhibit C-540**.

156. The EVIS also identified certain concerns, each of which Minera Gorrión addressed proactively through strategic mitigation plans. The concerns raised in the EVIS and addressed by Minera Gorrión included:

- **Water access and quality**: The EVIS identified concerns regarding the potential contamination of aquifers and water bodies, fears of water supply shortages, and risks of landslides and environmental impacts on local flora and fauna.[425] In response, Minera Gorrión implemented strategic mitigation measures, including investments in water infrastructure, ensuring responsible and sustainable resource management.[426]

- **Social integration**: The anticipated influx of external workers raised concerns about social disruption.[427] In response to this concern, Minera Gorrión would continue implementing local hiring policies and workforce training programs to prioritize community development.[428]

- **Long-term sustainability**: The EVIS identified concerns regarding economic stability in the region after the mine's closure, particularly regarding the potential economic downturn once mining activities ceased.[429] Recognizing these concerns

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425 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 29 ("Subprogram for the Protection of Water Resources (Water)." Spanish original: "*Subprograma de protección de recursos hídricos (agua).*"), **Exhibit C-540**.

426 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 29 ("Subprogram for the Protection of Water Resources (Water)." Spanish original: "*Subprograma de protección de recursos hídricos (agua).*"), **Exhibit C-540**.

427 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24 ("The negative impact that may arise. . . from the arrival of external personnel with different customs, which could, to some extent, dilute the community's traditions. . .as well as the concern that the arrival of external personnel could increase insecurity and strain the carrying capacity of the communities." Spanish original: "*El impacto negativo que puede acarrear…la llegada de personal externo con costumbres diferentes que pueda llegar a diluir en cierto sentido las tradiciones de la comunidad…que la llegada de personal externo pueda incrementar la inseguridad y afecte a la capacidad de carga de las comunidades.*"), **Exhibit C-540**.

428 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 3 ("Emphasizing the creation of local jobs, providing opportunities for the transfer of technical skills and individual professional growth, and supporting community projects that enhance quality of life while preserving local traditions and culture." Spanish original: "*Enfatizar en la generacion de empleos locales, proveyendo la oportunidad para transferir habilidades técnicas, así como el crecimiento profesional individual, y asistir con proyectos comunitarios que puedan mejorar la calidad de vida y preservar las tradiciones y la cultura de las comunidades.*"), **Exhibit C-540**.

429 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24 ("It is identified as a negative impact that these jobs may be temporary during the life of the project and that, once it concludes, the economy of families could be affected." Spanish original: "*Se identifica como un impacto negativo que estos empleos puedan ser temporales durante la vida del proyecto, y que una vez que este finalice puede verse afectada la economía de las familias.*"), **Exhibit C-540**.

about post-mining economic stability in the region, the Project launched forward-thinking initiatives to support lasting benefits for the communities, such as the water agreements reached with the Zacatepec Small Landowners Group, the *Ejido* Santa Maria Zotoltepec, and EJUNDS described above.[430] Additionally, Minera Gorrión decided to donate the Permanent Information Module to the community, transforming it into a public library for community use well beyond the life of the mine.[431]

- **Health risks**: Community members expressed concerns about dust emissions and potential disease risks,[432] which the Company committed to tackle through strict air quality controls, ensuring minimal impact on residents.[433]

- **Property rights concerns**: Some landowners expressed concerns about adjacent properties being affected by the mine's activities.[434] To address these concerns, Minera Gorrión conducted land impact assessments, and maintained open dialogue with landowners to prevent disputes. The Company also ensured that fair compensation would be provided in the event that any unintended impacts on adjacent properties arose.[435]

157. Turning to the HRIA, this was conducted by the independent *Centro de Investigaciones Interculturales, Jurídicas y Ambientales* ("**CIIJA**"). In carrying out the HRIA, CIIJA applied the Danish standard for human rights impact assessments, which is widely recognized for its comprehensive approach to identifying, preventing, and mitigating human rights risks, as well

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430 Santamaría Tovar WS, at paras. 51-64.

431 Uzcanga Vergara WS, at para 33.

432 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24 ("There was also concern about potential health issues due to dust emissions and the related risk of respiratory diseases. Additionally, worries were raised about the possible emergence of dermatological, intestinal, and epidemiological illnesses." Spanish original: "*Se expresó también el temor de posibles enfermedades a la salud por la emisión de polvos y la generación de enfermedades relacionadas con ello. También se identificó la preocupación por la aparición de enfermedades dermatológicas, intestinales y epidemiológicas.*"), **Exhibit C-540**.

433 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 28 ("Subprogram for Air Emissions Control." Spanish original: "*Subprograma control de emisiones a la atmósfera.*"), **Exhibit C-540**.

434 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 24 ("There was also concern about the potential impact on adjacent properties due to the project's construction and activities." Spanish original: "*Se expresó también el temor de la posible afectación a propiedades colindantes por las obras y actividades del proyecto.*"), **Exhibit C-540**.

435 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, at p. 28 ("Program for Environmental Protection and Boundary Delimitation." Spanish original: "*Programa de Protección al entorno y delimitación de la poligonal.*"), **Exhibit C-540**.

as its stakeholder-centered methodology.[436] To the Claimants' knowledge, this marked the first time that a mining company in Mexico had completed a HRIA to international standards for a mineral development project.[437]

158. The HRIA comprised a meticulous, fact-based assessment of the Ixtaca Project's impact on human rights.[438] It identified potential opportunities for positive impacts and actual and potential risks, focusing on critical community concerns such as water security, environmental impact, and socio-economic shifts.[439]

159. As explained by Mr. Santamaría Tovar, to ensure credibility and independence, the HRIA was overseen by an Advisory Committee of globally recognized experts. Notably, that committee was chaired by Professor James Anaya – a former UN Special Rapporteur on Indigenous Peoples' Rights, renowned scholar and Dean of Colorado Boulder Law School. Professor Anaya is widely recognized to be the leading authority on indigenous consultation.[440] His expertise and leadership strengthened the HRIA, enhancing its credibility, methodological robustness, and impact as a model for responsible and transparent assessment.[441] The Advisory Committee also included Dr. María del Carmen Carmona Lara, a distinguished expert in environmental law; Katya Puga, a specialist in environmental policy and social impact assessment; and Professor Sergio Puig, a leading legal scholar at the University of Arizona focused on human rights and economic law.[442]

160. Unlike traditional, static assessments,[443] the HRIA followed a dynamic, participatory model. Over 300 families across the Ixtaca Project's area of influence actively contributed to the HRIA

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436 HRIA, Annex 6 – Methodology for the Evaluation of Human Rights Impacts, dated 24 January 2023, at p. 2, **Exhibit C-550**.

437 Santamaría Tovar WS, at para. 38; McDonald WS, at para 63.

438 HRIA, Annex 1 – HRIA Guiding Principles, dated 24 January 2023, at p. 1, **Exhibit C-429**.

439 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, **Exhibit C-408**.

440 Evaluación de Impactos en Derechos Humanos del Proyecto Ixtaca (HRIA), Annex 20 – Advisory Committee, dated 10 April 2023, at pp. 2, 5, 11, **Exhibit C-422**; Santamaría Tovar WS, at para. 40; Mr. Douglas J, McDonald First Witness Statement, para. 64; *see also* S. James Anaya, Faculty profile, University of Colorado Boulder <https://lawweb.colorado.edu/profiles/profile.jsp?id=729>, **Exhibit C-464.**

441 Santamaría Tovar WS, at para. 40.

442 Santamaría Tovar WS, at para. 40; HRIA, Annex 20 – Advisory Committee, dated 10 April 2023, at pp. 2, 5, 11, **Exhibit C-422571**; Almaden Minerals, Human Rights Impact Assessment, **Exhibit C-422**.

443 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at pp. 374-375, (Spanish original: "*La participación significativa de las partes interesadas se caracteriza por una comunicación en los dos sentidos y depende de la buena fe de todos los participantes. También es un proceso receptivo y continuo, e incluye en muchos casos la*

through interviews, surveys, and workshops.[444] Minera Gorrión encouraged continuous engagement, ensuring all voices, including marginalized groups, shaped the assessment.[445] These methods allowed for direct engagement with community members, facilitating an open dialogue with respect to their concerns, perceptions, and experiences related to the Ixtaca Project.[446]

161. This robust and inclusive procedure stood in stark contrast to the 2017 Human Rights Impact Assessment commissioned by the Project on Organization, Development, Education and Research ("**PODER**"). PODER is a U.S.-registered NGO backed by the Ford Foundation and founded by Mr. Benjamin Cokelet, an American activist.[447] PODER's Human Rights Impact Assessment relied on outdated designs, speculative worst-case scenarios, and unverified claims.[448] Unlike PODER's report, Minera Gorrión's HRIA was firmly grounded in facts, shaped by community participation, and aligned with international best practices, including those outlined by the Danish Institute for Human Rights.[449] Put another way, the HRIA was a serious academic human rights undertaking rather than the muckraking undertaken by PODER.[450]

162. The Advisory Committee rigorously reviewed and supervised the HRIA process throughout. In its final statement, the Advisory Committee declared that the assessment had been developed with professionalism, seriousness, and in good faith:

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participación de las partes interesadas relevantes antes de que se hayan tomado las decisiones. La participación en los dos sentidos significa que la empresa y las partes interesadas expresen libremente sus opiniones, compartan perspectivas y escuchen puntos de vista alternativos para llegar a un entendimiento mutuo."), **Exhibit C-408**.

444 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 17, (Spanish original: "*Se hizo un levantamiento de 449 encuestas en diversas comunidades del área de influencia del proyecto*."), **Exhibit C-408**.

445 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 26, (Spanish original: "*En buena medida, la línea base retoma y analiza los datos obtenidos de las tres diferentes herramientas de participación con las comunidades relacionadas con el proyecto, esto es: (i) encuestas, (ii) talleres, y (iii) entrevistas*."), **Exhibit C-408**.

446 Santamaría Tovar WS, at para. 39.

447 *#PODER10años – Saludo de Benjamin Cokelet*, PODER YouTube Channel, dated 5 October 2020, available at https://www.youtube.com/watch?v=Vp5tI3cwM_g/. (last accessed 8 March 2025), **Exhibit C-348**.

448 PODER Human Rights Impact Assessment ["Canadian Mining in Puebla and Its Impact on Human Rights: For the Life and Future of Ixtacamaxtitlán and the Apulco River Basin"], dated February 2017, **Exhibit C-229**.

449 HRIA, Annex 6 – Methodology for the Evaluation of Human Rights Impacts, dated 24 January 2023, at p. 2, **Exhibit C-550**.

450 PODER Human Rights Impact Assessment, "*Minería Canadiense en Puebla y su Impacto en los Derechos Humanos. Por la Vida y el Futuro de Ixtacamaxtitlán y la Cuenca del Río Acapulco*," dated February 2017, **Exhibit C-299**.

> The members of the Committee who have signed this document have reviewed the updated version of the HRIA delivered on January 24, 2023. This version will henceforth be considered the final version of the HRIA.
>
> In general, *the Committee considers that the HRIA has been developed in accordance with robust procedures, based on international standards and best practices, and with professionalism, seriousness, and good faith.*[451](Emphasis added.)

163. Ultimately, the HRIA concluded that it found no "*facts or acts directly attributable to the company developing the Project that violate the human rights of individuals and communities surrounding it*."[452] It also confirmed that the Ixtaca Project would generate significant economic, social, and infrastructural benefits for the region. It further concluded that the Project would provide new and well-remunerated employment opportunities for local communities in a region where the majority of residents rely on subsistence farming and lack access to stable, formal employment.[453] The HRIA confirmed that a significant majority of residents considered that agricultural and livestock activities would remain unaffected by the Company's operations, thus reinforcing the Project's compatibility with local livelihoods.[454]

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451 HRIA, Annex 20 – Adsivory Committee, dated 10 April 2023 (Spanish original: "*Los miembros del Comité que suscriben el presente documento han revisado la versión actualizada de la EIDH entregada el 24 de enero de 2023. Tal versión será considerada en lo sucesivo como la versión final de la EIDH. En general, el Comité considera que la EIDH ha sido desarrollada conforme a procedimientos sólidos, basados en estándares y buenas prácticas internacionales, así como con profesionalismo, seriedad y buena fe.*"), **Exhibit C-422**.

452 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), at p. 196, (Spanish original: "*No se obtuvieron datos específicos de las encuestas, talleres y entrevistas que demuestren hechos o actos directamente imputables a la empresa desarrolladora del Proyecto violatorios de los derechos humanos de los individuos y comunidades aledañas al mismo*."), **Exhibit C-408**.

453 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 191, ("The Project is expected to directly generate some well-paid positions with benefits, which are generally unavailable since most members of the community are engaged in subsistence farming." Spanish original: "*El Proyecto debiera generar de forma directa algunas posiciones bien remuneradas y con prestaciones, que en general no existen dado que la mayoría de los integrantes de la comunidad se dedican a la agricultura para autoconsumo*."), **Exhibit C-408**.

454 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 165, ("66.15% considers that "agricultural and livestock activities. . . have not been restricted by the company's activities." Spanish original: "*Un 66.15% considera que las actividades agrícolas y ganaderas. . . no han sido restringidas por las actividades de la empresa.*"), **Exhibit C-408**.

The Project's demand for goods and services was also found to have positive ripple effects on infrastructure, including transportation networks, access roads, and public services.[455]

164. The HRIA further recognized Minera Gorrión's commitment to transparency, noting that the Company had consistently engaged with communities through structured informational initiatives to foster a clearer understanding of the Project and address concerns proactively.[456]

165. While the results of the HRIA were overwhelmingly positive, the HRIA highlighted certain community concerns, which again Minera Gorrión undertook to address immediately. These included:

- **Water security**: Communities expressed concern about aquifer disruption, contamination of water sources, and depletion of local resources,[457] given the region's reliance on natural water flows and springs for daily use and agriculture. To mitigate these concerns, Minera Gorrión committed to real-time water quality monitoring and public reporting, enabling the community to track environmental performance independently and verify environmental safety.[458]

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455 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 194, ("The Project will also require direct and indirect suppliers, which, through the increased exchange of goods and services, will inevitably lead to improvements in the area's infrastructure. This is of particular interest to the community and rights holders, as it supports the development and enhancement of such infrastructure." Spanish original: "*El Proyecto también requerirá de proveedores directos e indirectos, los cuales, a su vez, por los intercambios de bienes y servicios que se verán incrementados, generarán necesariamente mejoras a la infraestructura de la zona, siendo del particular interés de la comunidad y de los titulares de los derechos, el desarrollo y mejora de dicho tipo de infraestructura.*"), **Exhibit C-408**.

456 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 194, (*"*Continuous activities have been conducted by the mining company to ensure that communities and individuals at risk understand the location, characteristics, magnitude, and effects of the Project, as well as its potential impacts." Spanish original: "*De forma continua, se han llevado diversas actividades por parte de la minera con el objeto de que las comunidad e individuos en riesgos de ser afectados conozcan la ubicación, características, magnitud y efectos del Proyecto y las posibles afectaciones.*"), **Exhibit C-408**.

457 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 29, ("Contamination: 1). Springs water contamination (use of cyanide). 2). Impacts from chemical spills. 3). Due to lack of maintenance of mining infrastructure. 4). Contamination of groundwater reservoirs. Possible damage to water sources due to chemical spills. Reduction of water levels in the springs. Concern that water may be lost into the open pit." Spanish original: "*Contaminación: 1). de agua de manantiales (uso de cianuro). 2). Impactos por derrames de químicos. 3). Por falta de mantenimiento de la infraestructura de la mina. 4). De los mantos freáticos. Posibles daños en el agua por la utilización de químicos (derrames). Disminución del agua de los manantiales. Disminución del agua de los manantiales. Que el agua se puede ir por el tajo*."), **Exhibit C-408**.

458 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at pp. 398-399, **Exhibit C-408**.

- **Workplace conduct**: Allegations of sexual harassment surfaced during community interviews, prompting swift action.[459] In response to concerns about workplace misconduct, Minera Gorrión established a confidential grievance mechanism that allowed both workers and community members to report incidents safely and anonymously. Additionally, the Company intended to introduce gender-sensitivity training and reinforce workplace ethics policies to prevent future violations and cultivate a safer work environment in line with the Project's development.[460]

- **Gender exclusion**: Women faced barriers to participation in community decision-making, often requiring male permission to speak.[461] Additionally, gender norms also limited their access to formal employment.[462] To address gender exclusion concerns, Minera Gorrión adopted a more inclusive engagement model, ensuring that women and historically marginalized groups gained direct representation in Project discussions.[463] The Company also planned to implement proactive measures to promote gender equity in hiring, including outreach programs to encourage female applicants and training initiatives to equip women with skills relevant to the mining sector, in line with the Project's development.[464] This effort was led and materialized in part through Ms. Uzcanga Vergara, who actively worked to bring greater diversity

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459 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 350, ("During the interviews with people from the community, data was provided related to sexual harassment of women from communities close to the Project by personnel." Spanish original: "*Durante las entrevistas a las personas de la comunidad, fueron indicados datos relacionados con acoso sexual hacia las mujeres de las comunidades cercanas al Proyecto, por parte del personal*."), **Exhibit C-408**.

460 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at pp. 353-354, **Exhibit C-408**.

461 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 374, ("Women in our community have no voice or vote; even if they attend assemblies, they are not allowed to say yes or no, as they must seek their husband's permission to speak or express an opinion." Spanish original: "*Las mujeres en nuestra comunidad no tienen voz ni voto, aunque asistan a las asambleas las mujeres no pueden decir sí o no, ya que tiene que pedir permiso del marido para hablar u opinar*."), **Exhibit C-408**.

462 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 288, ("90.1% of women perform domestic and caregiving work (activities that are not remunerated)." Spanish original: "*El 90.1% de las mujeres realiza trabajo doméstico y de cuidados (actividades que no son remuneradas).*"), **Exhibit C-408**.

463 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 374, **Exhibit C-408**.

464 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 290, **Exhibit C-408**.

and demonstrate that modern mining can be inclusive and provide equal opportunities for both men and women.[465]

- **Misinformation and selective communication concerns**: Some residents associated the Project with unrelated mining disasters in other states, fuelling unfounded fears.[466] Others expressed concerns about selective communication by the Company, fearing that unequal outreach led to misunderstandings and mistrust.[467] To counter these concerns, Minera Gorrión intended to continue expanding its outreach strategy by launching workshops, newsletters, and direct outreach efforts, ensuring that all stakeholders, regardless of their stance on the Project, had access to accurate, up-to-date information.[468]

166. As Mr. Santamaría Tovar explains, although Minera Gorrión submitted the HRIA to Economía on 19 May 2023, Economía never provided any feedback or comments on the HRIA.[469]

167. In sum, and as confirmed by the EVIS and HRIA, Minera Gorrión steadfastly sought to ensure that its mining activities had the full participation of the local communities, made extensive efforts to foster trust and ensure that the communities would benefit from the Project and planned to implement mechanisms to ensure continual improvement in these areas. Ultimately, however, as addressed further below, the local communities never received such benefits, as Mexico arbitrarily cancelled the Concessions, thereby ensuring that the Ixtaca Project would never reach the exploitation phase.

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465 Uzcanga Vergara WS, at paras. 15, 40.

466 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 64, ("As this is the first mining project to be developed in the state of Puebla, people are very distrustful due to news of mining accidents that have occurred in other states where the activity is carried out, coupled with the circulation of information that if the Project is implemented a cataclysm will occur." Spanish original: "Al tratarse del primer proyecto minero a desarrollarse en el estado de Puebla, las personas muestran mucha desconfianza por las noticias de accidentes de minas que han ocurrido en otros estados donde se desarrolla la actividad, aunado a la circulación de información que de implementarse el Proyecto ocurrirá un cataclismo."), **Exhibit C-408**.

467 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at p. 418, ("They also express concern that the company does not communicate with everyone, leading to widespread ignorance and distrust." Spanish original: "*También presentan preocupación porque la empresa no se comunica con todos y por ello, existe mucho desconocimiento y desconfianza*."), **Exhibit C-408**.

468 *Evaluación de Impactos en Derechos Humanos del "Proyecto Ixtaca"* (HRIA), dated 24 January 2023, at pp. 206-207, **Exhibit C-408**.

469 Minera Gorrión, Submission of HRIA for the Ixtaca Project to the DGM, dated 19 May 2023, **Exhibit C-488**; Santamaría Tovar WS, at para. 41.

2.10 The Claimants Complied With All Applicable Environmental Regulations

168. As detailed above, after discovering the Ixtaca deposit in 2010, Almaden undertook, through Minera Gavilán and Minera Gorrión, expanded exploratory and resource drilling to support an initial resource estimate.[470] These exploration and drilling works complied in full with all applicable Mexican laws and regulations. Specifically, as elaborated below, Minera Gavilán and Minera Gorrión secured all necessary environmental permits to carry out this work, which Mexico itself confirmed through periodic inspections.

2.10.1 The Environmental Regulatory Framework for Mining Exploration

169. Under Mexican law, mining exploration activities must comply with the environmental provisions set forth in the *Ley General del Equilibrio Ecológico y la Protección al Ambiente* ("**LGEEPA**")[471] and its Regulations ("**R-LGEEPA**"). The *Secretaría de Medio Ambiente y Recursos Naturales* ("**SEMARNAT**") is the agency responsible for applying environmental laws.[472] In addition, SEMARNAT is empowered to issue "official norms," or *normas oficiales mexicanas* ("**NOMs**"), which prescribe certain technical requirements and specifications applicable to mining exploration and other activities deemed to have environmental impacts.[473]

170. NOM-120 is the official norm that applies to mining exploration activities.[474] It requires that, where exploration activities will have an environmental impact on an area greater than 25% of the total surface area of the concession,[475] the concessionaire must file with SEMARNAT an environmental impact assessment (*manifestación de impacto ambiental,* or "**MIA**")[476] for its approval before commencing exploration activities.[477]

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470 Apex Report, at p. 2, **Exhibit C-23**.

471 LGEEPA, at Art. 28, **Exhibit C-156**; Section III; R-LGEEPA, at Art. 5, Section L), Section I, **Exhibit C-166**.

472 LGEEPA, at Arts. 6-8, **Exhibit C-156**

473 LGEEPA, at Art. 36, **Exhibit C-156**

474 During the relevant period in which Minera Gavilán and Minera Gorrión carried out their exploration activities, two versions of NOM-120 were relevant: (i) NOM-120-SEMARNAT-1997 published in the Mexican Official Diary on 19 November 1998, **C-163**, and (ii) NOM-120-SEMARNAT-2011, in force as of May 2012, at **Exhibit C-181**.

475 NOM-120-SEMARNAT-1997 published in the Mexican Official Diary on 19 November 1998, Section 4.3, **C-163**; NOM-120-SEMARNAT-2011, Section 4.3, at **Exhibit C-181**; *see* also Pablo-Dorantes WS, at para. 15.

476 As explained in greater detail in Section 2.14 *infra*, an MIA is a technical environmental document in which the project owner details the potential environmental impacts of the proposed works and activities, as well as the measures to prevent, mitigate, and compensate for any negative effects on the environment. *See* Pablo-Dorantes WS, at para. 15; *see* also Limón, at para. 17.

477 LGEEPA, at Art. 28, **Exhibit C-156**

171. For exploration activities that do not exceed the 25% threshold under NOM-120, the concessionaire must file an *informe preventivo* ("**preventative report**" or "**IP**").[478] An IP must describe the proposed activities and propose prevention and mitigation measures to offset any environmental impacts.[479] As Mr. Pablo-Dorantes explains, before 2012, filing and obtaining an IP was optional.[480] If no IP was filed, however, NOM-120 required the concessionaire to notify SEMARNAT five days before starting the exploration activities.[481] The notice was required to include the same information as an IP, along with a detailed account of compliance with NOM-120's requirements.[482] In 2012, the R-LGEEPA was amended to make the approval of an IP mandatory for all activities that fell below the relevant threshold for a MIA.[483]

172. When an applicant files an IP, SEMARNAT has 20 days to assess the application and either (i) approve the proposed activities; or (ii) direct the applicant to file a MIA.[484] If SEMARNAT does not resolve the IP application within the deadline, the application is automatically deemed approved, and the applicant is permitted to proceed with the proposed activities.[485]

2.10.2 The Tuligtic I and II, Calderas II and Ixtaca I and II IP Applications

173. On 29 May 2009, in accordance with the provisions of NOM-120 then in force,[486] Minera Gavilán filed a notice of commencement of its first drilling program, the Tuligtic drilling program, with SEMARNAT's office in Puebla.[487] SEMARNAT did not request any additional information; accordingly, Minera Gavilán proceeded to complete the program.[488]

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478 *See* LGEEPA, at Art. 31, **Exhibit C-156**. NOM-120-SEMARNAT-1997, dated 19 November 1998, **Exhibit C-163**.

479 NOM-120-SEMARNAT-1997, dated 19 November 1998, **Exhibit C-163**.

480 Pablo-Dorantes WS, at para. 15. Prior to the entry into force of NOM-120-SEMARNAT-2011 in 2012, NOM-120-SEMARNAT-1997 did not require the submission and approval of a preventive report to carry out mining exploration activities. *See*, NOM-120-SEMARNAT-1997, dated 19 November 1998, at Section 4.1.2, **Exhibit C-163.**

481 NOM-120-SEMARNAT-1997, dated 19 November 1998, at Section 4.1.2 and Annex 1, **Exhibit C-163**.

482 NOM-120-SEMARNAT-1997, dated 19 November 1998, at Section 4.1.2 and Annex 1, **Exhibit C-163**.

483 1988 LGEEPA Regulation on Environmental Impact Assessment, Art. 7 of the 1988, providing that "...before beginning the work or activity in question, **it may** submit a preventive report to the Secretariat for the purposes indicated in this article." (*emphasis added*), **Exhibit C-156**. *See* Pablo-Dorantes WS, at para. 15.

484 R-LGEEPA, at Art. 33, Section II, **Exhibit C-166**.

485 R-LGEEPA, at Art. 33, **Exhibit C-166**.

486 NOM-120-SEMARNAT-1997, dated 19 November 1998, **Exhibit C-163**.

487 Minera Gavilán, Notice of Commencement of Exploration at Ixtaca, 19 March 2009, p. 14 **Exhibit C-9**.

488 Pablo-Dorantes WS, at para. 15.

174. In July 2010, Minera Gavilán conducted further drilling to test epithermal clay alteration within the Tuligtic Property. As detailed above, this was the "hole in one" through which Mr. Morgan Poliquin and his team discovered the Ixtaca Zone, an area with significant gold-silver mineralization in epithermal veins.[489] Building on that discovery, Minera Gavilán submitted four IP applications – for the Tuligtic II, Calderas II, Ixtaca I, Ixtaca II drilling programs – to SEMARNAT between October 2010 and April 2013.[490] The purpose of such programs was to evaluate and expand the resource potential of the Concessions, including in the Ixtaca Zone. SEMARNAT approved all four of these IP applications.[491] As noted above, those drilling programs, and those noted below, significantly advanced the Project and led to a series of encouraging resource estimates, preliminary economic assessments, and feasibility studies.

2.10.3 The Ixtaca III, III bis and IV IP Applications

175. Between 2014 and 2017, Minera Gavilán and Minera Gorrión filed with SEMARNAT IP applications for three further drilling programs, namely, the Ixtaca III, Ixtaca III *bis*, and Ixtaca IV drilling programs.[492] On 22 May 2014, SEMARNAT approved Minera Gavilán's Ixtaca III IP, but conditioned its approval on the completion of consultations with the indigenous communities located in Zacatepec, Vista Hermosa de Lázaro Cárdenas, Tuligtic (San Miguel), Santa María Zotoltepec, Xiuquenta, and Ixtacamaxtitlán.[493] Furthermore, it required Minera Gavilán to conclude and submit to SEMARNAT an agreement with these indigenous

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489 M. Poliquin WS, at para. 26.

490 Minera Gavilán Tuligtic II IP application filed with SEMARNAT on 11 October 2010, **Exhibit C-500**; Minera Gavilán Ixtaca application filed with SEMARNAT on 25 October 2011, **Exhibit C-501**; Minera Gavilán Ixtaca application filed with SEMARNAT on 25 April 2013, **Exhibit C-502**. In May 2012, NOM-120-1997 was replaced by NOM-120-SEMARNAT-2011. This revised version of NOM-120 applied to the Ixtaca II IP application and imposed additional technical requirements related to the protection of groundwater, handling of waste from inputs used in exploration activities, updating the use of soil and vegetation per the guidelines published by the Institute of Statistics and Geography ("**INEGI**"), and eliminating duplicative requirements imposed by other regulations. *See* NORMA Oficial Mexicana NOM-120-SEMARNAT-2011, **Exhibit C-181**.

491 SEMARNAT Oficio DFP/5024 (approving Exploración Minera Tuligtic II IP), 3 November 2010, **Exhibit C-10**; SEMARNAT Oficio DFP/1551 (approving Exploración Minera Calderas II), 8 April 2011, **Exhibit-C-6**; SEMARNAT Oficio No. DFP 4406/11 (approving Exploración Minera Ixtaca IP), 18 November 2011, **Exhibit C-12**; SEMARNAT Oficio No. DFP/2303/13 (approving Ixtaca II IP), 3 June 2013, **Exhibit C-19**.

492 Minera Gavilán Ixtaca III application filed with SEMARNAT on 22 April 2014, **Exhibit C-504**; Minera Gavilán Ixtaca III bis application filed with SEMARNAT on 16 July 2015, **Exhibit C-505**; Minera Gavilán Ixtaca IV application filed with SEMARNAT on 24 February 2017, **Exhibit C-506**.

493 SEMARNAT, Letter from La Delegada Federal, Daniela Migoya Mastretta to Minera Gorrion re: Resolución de Informe Preventivo Oficio No. DFP/1835/14, 22 May 2014, at p. 8, **Exhibit C-27**.

communities before carrying out any exploration works.[494] Notably, SEMARNAT did *not* include the village of Tecoltemi as a community for indigenous consultations.

176. As the Claimants' witnesses explain, they were surprised by this new condition for several reasons.[495] *First*, as Mr. Santamaría Tovar notes, Minera Gavilán had filed and obtained SEMARNAT's approval for all its IPs up to that date without any mention of a requirement to conduct indigenous consultations.[496] *Second*, this unexpected new requirement was unsupported by the laws and regulations in force at that time.[497] As Dr. Limón Aguirre explains in detail in his expert report, neither the LGEEPA nor the R-LGEEPA provide for indigenous consultation as part of the environmental evaluation process.[498]

177. *Third*, under the International Labour Organisation's Indigenous and Tribal Peoples Convention 169 ("**ILO 169**") – the international treaty that protects the rights of indigenous and tribal peoples – the duty to carry out indigenous consultation lies with the Government, not private parties.[499] For example, Article 6(1) of ILO 169 provides that:

> In applying the provisions of this Convention, Governments shall . . . Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.[500]

178. It bears noting that Mexico lacks a coherent legal framework for indigenous consultation.[501] While Mexico has enshrined the right to indigenous consultation in Article 2 of its

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494 SEMARNAT, Letter from La Delegada Federal, Daniela Migoya Mastretta to Minera Gorrion re: Resolución de Informe Preventivo Oficio No. DFP/1835/14, 22 May 2014, at para 9, and seventh resolutive, **Exhibit C-27**.

495 Santamaría Tovar WS, at para. 73.

496 Santamaría Tovar WS, at para. 73.

497 *See* Limón, at para. 3(b)(iv); paras. 188-192.

498 *See* Limón, at para. 191.

499 Under Article 2 of the ILO Convention 169, "Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity." Under Article 6 of the Convention 169, Governments shall "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly." ILO Convention 169, Arts. 2, 6, **CL-16**.

500 ILO Convention 169, Art. 6 (emphasis added), **CL-16**.

501 *See* Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development Mining Policy Framework, page 46, **Exhibit C-467** ("in spite of the different attempts to pass an Indigenous consultation law, Mexico does not have one yet. Issues

Constitution[502] and is a party to ILO 169, Mexico has not enacted any laws or regulations setting out the modalities or requirements for indigenous consultation, or the main authorities responsible for carrying out such consultation.[503] In addition, critical terms such as when a community is "directly affected" by a legislative or administrative measure remain undefined. Instead, the legal framework for indigenous consultation in Mexico consists of a patchwork of fragmented and unclear guidelines compiled by various Mexican Government agencies and inconsistent case law from the Supreme Court.[504] This has led to a lack of transparency, predictability, and legal stability, as discussed further below.

179. In the absence of any statutory framework for indigenous consultation, authorities refer to the February 2013 *Protocolo para la Implementación de Consultas a Pueblos y Comunidades Indígenas* (the "**2013 CDI Protocol**"), compiled by the *Comisión Nacional para el Desarrollo de los Pueblos Indígenas* ("**CDI**"), the agency responsible for guiding Mexico's indigenous policy.[505] While not legally binding, the 2013 CDI Protocol offers a framework to determine when indigenous consultations are necessary, how to structure consultation processes, how to identify the stakeholders involved, and other essential aspects.[506]

180. Pursuant to the 2013 CDI Protocol, the Government should conduct an initial diagnostic process to determine whether indigenous consultations are required. This process first identifies indigenous communities and then evaluates the direct impact of proposed Government measures, such as the authorization of mining activity. The first step involves assessing whether "indigenous localities" or "localities with indigenous presence" exist within

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that need to be resolved include the procedure to be followed, which authorities should take part, and how to manage or verify compliance with the agreements reached.")

502 *See* Mexican Constitution, at Art. 2, **Exhibit C-439**.

503 *See* Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development Mining Policy Framework, page 46, **Exhibit C-467** ("in spite of the different attempts to pass an Indigenous consultation law, Mexico does not have one yet. Issues that need to be resolved include the procedure to be followed, which authorities should take part, and how to manage or verify compliance with the agreements reached.")

504 *See* Limón, at paras. 163; 174.

505 The CDI is a federal decentralized organ under the *Ley Organización de la Administración Pública Federal and Ley Federal de las Entidades Paraestatales* whose objective is to orient, coordinate, promote and develop projects and strategies for the integral Development of the indigenous communities. *See* Official Letter No. UP/DGPC/OF/1255 from CDI to Minera Gavilán dated 4 September 2014, **Exhibit C-513**.

506 CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, **Exhibit C-499**.

the project's area of influence.[507] An "indigenous locality" refers to a place where at least 40% of the population is indigenous, while a "locality with indigenous presence" is a location where more than 5,000 indigenous individuals reside.[508]

181. If no indigenous localities or localities with indigenous presence are present in the project's area of influence, the 2013 CDI Protocol indicates that indigenous consultations may not be necessary.[509] If, on the other hand, there are such localities within the project's area of influence, the 2013 CDI Protocol indicates that consultations should be carried out, and the authority should define the scope, subject matter, and objective of the consultation.[510] Thereafter, the authority engages with the indigenous communities and determines the type of consultation and process that will be followed, including the degree of participation of the project's owner.[511]

182. Thus, while a private party may need to participate and engage in the consultation process that the Government organizes, the Government is responsible for identifying the presence of indigenous communities, coordinating the process, and completing the consultation. This is reflected in the 2013 CDI Protocol, which provides that indigenous consultation is an "inescapable" duty incumbent on the Government.[512]

183. Although Minera Gavilán disagreed with SEMARNAT's decision to condition approval of the Ixtaca III IP on indigenous consultation, it elected in good faith to adopt a proactive and cooperative approach. Thus, it prepared the initial diagnostic information pursuant to the 2013 CDI Protocol to identify the indigenous communities residing within the area of influence of

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507 A mining project's "area of influence" is defined as the geographic space in which the activities and physical infrastructure of the mining project (*i.e.* the mine, the production plan, etc.) exert some type of environmental and social impact. See MIA, Chapter IV, p. 161, **Exhibit C-262**; *see also* Limón, at para. 22 n.22.

508 CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, p. 23, **Exhibit C-499**.

509 CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, **Exhibit C-499**.

510 CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, p. 23, **Exhibit C-499**.

511 *See* CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, p. 23, **Exhibit C-499**.

512 CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, pages 12 and 17, **Exhibit C-499**.

its drilling program, even though the duty to compile this diagnostic fell on the Mexican Government.[513] It submitted this diagnostic information to SEMARNAT in July 2014.[514]

184. Minera Gavilán also sought to support SEMARNAT in coordinating the necessary indigenous consultations. Based on the 2010 INEGI census data and applying the criteria under the 2013 CDI Protocol,[515] however, the Zacatepec, Vista Hermosa de Lázaro Cárdenas, Tuligtic (San Miguel), Santa María Zotoltepec, Xiuquenta, and Ixtacamaxtitlán municipalities, were not identified either as "indigenous localities" or as "localities with indigenous presence."[516] This was because they had less than 40% indigenous population and fewer than 5,000 indigenous residents according to the information gathered in the 2010 INEGI census.[517] For instance, only 5.56% of the population in Santa María Zotoltepec, 1.32% in Tuligtic (San Miguel), and 0.84% in Vista Hermosa de Lázaro Cárdenas were registered as indigenous people.[518]

185. SEMARNAT did not comment on Minera Gavilán's initial diagnostic. On 27 August 2014, Minera Gavilán therefore petitioned the CDI to conduct the indigenous consultation required by SEMARNAT. However, on 4 September 2014, CDI advised Minera Gavilán that it could not conduct the indigenous consultation, as this was a duty that lay with Economía or SEMARNAT.[519] Minera Gavilán was therefore caught in limbo – SEMARNAT had failed to

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513 Minera Gavilán, "*Localidades o Comunidades Rurales Cercanas al Proyecto, De acuerdo al protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT "PROYECTO DE EXPLORACIÓN IXTACA II*", dated July 2014, **Exhibit C-509**.

514 Minera Gavilán, "*Localidades o Comunidades Rurales Cercanas al Proyecto, De acuerdo al protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT "PROYECTO DE EXPLORACIÓN IXTACA II*", dated July 2014, **Exhibit C-509**.

515 CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, pages 28-29, **Exhibit C-499**.

516 Minera Gavilán, "*Localidades o Comunidades Rurales Cercanas al Proyecto, De acuerdo al protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT "PROYECTO DE EXPLORACIÓN IXTACA II*", dated July 2014, page 13, **Exhibit C-509**.

517 Minera Gavilán, "*Localidades o Comunidades Rurales Cercanas al Proyecto, De acuerdo al protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT "PROYECTO DE EXPLORACIÓN IXTACA II*", dated July 2014, pages 7-8, **Exhibit C-509**.

518 Minera Gavilán, "*Localidades o Comunidades Rurales Cercanas al Proyecto, De acuerdo al protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT "PROYECTO DE EXPLORACIÓN IXTACA II*", dated July 2014, pages 9-11, **Exhibit C-509**.

519 Santamaría Tovar WS, at para. 74; *see also* Official Letter No. UP/DGPC/OF/1255 from CDI to Minera Gavilán dated 4 September 2014, **Exhibit C-513.**

respond to its proposal, and CDI declined to carry out the consultation. Meanwhile, Minera Gavilán's desire to undertake additional exploration at Ixtaca remained unresolved.

186. Without any clear indication as to how to proceed, Minera Gavilán sought to engage in an open and transparent dialogue with SEMARNAT officials. In November 2014, Messrs. Santamaría Tovar and Mauricio Heiras Garibay – Minera Gavilán's legal representative – met with the Secretary of the Puebla office of SEMARNAT. During the meeting, they explained Minera Gavilán's predicament, and the fact that it had no practicable way to meet the arbitrary requirement imposed by SEMARNAT. The Secretary was receptive to Minera Gavilán's efforts to address the situation and informed them that she would confer with the *Unidad Coordinadora de Participación Social y Transparencia* ("**UCPAST**"), a department within SEMARNAT responsible for, among other things, liaising with stakeholders on any project involving the environmental authority,[520] to determine what the next step should be.[521]

187. On 16 December 2014, having still not received any response to its initial diagnostic, Minera Gavilán requested formally that SEMARNAT eliminate the condition to complete indigenous consultation.[522] SEMARNAT failed to respond to this request.

188. In March 2015, Mr. Heiras Garibay attended a meeting with Mr. Juan Pablo Gudiño Gual, the Deputy Director General of Equality and Human Rights at SEMARNAT, the office overseeing indigenous consultations.[523] Mr. Gudiño Gual agreed that no indigenous consultation was required in the context of the IP and advised that he would issue a document from SEMARNAT reflecting this understanding.[524] Mr. Gudiño Gual never issued this document; however, in June 2015, the then Subsecretary of SEMARNAT Rafael Pacchiano finally agreed to meet with Minera Gavilán to discuss the indigenous consultation requirement that SEMARNAT had arbitrarily imposed one year earlier.[525]

189. Mr. Pacchiano is no stranger to investment arbitration. Notably, the NAFTA Chapter 11 tribunal in the *Odyssey v. Mexico* arbitration found that Mr. Pacchiano had unlawfully

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520 The list of projects under SEMARNAT's purview are detailed in Art. 5 of the R-LGEEPA, **Exhibit C-166**.

521 Santamaría Tovar WS, at para. 74

522 Minera Gavilán's request to SEMARNAT Puebla, dated 16 December 2014, **Exhibit C-523**.

523 Email chain exchanged between Mauricio Heiras Garibay et al., and Morgan Poliquin et al, from 9 March 2015 to 13 March 2015, **Exhibit C-520**.

524 Email from Mauricio Heiras to Morgan Poliquin dated 12 March 2015, *see* chain exchanged between Mauricio Heiras Garibay et al., and Morgan Poliquin et al, from 9 March 2015 to 13 March 2015, **Exhibit C-520**.

525 Email chain from Daniel Santamaría to Fernando Mejía from 4 June 2015 to 8 June 2015, **Exhibit C-522**.

influenced SEMARNAT's decisions to reject a deep seabed mining project, "not based on true environmental considerations . . . but rather on extraneous and personal motives."[526] Ultimately, however, Minera Gavilán never met with Mr. Pacchiano, as shortly before that meeting was scheduled to take place, and consistent with Mr. Gudiño Gual's opinion, SEMARNAT informed Mr. Santamaría Tovar that if Minera Gorrión submitted a new and separate IP application, SEMARNAT would approve it without requiring indigenous consultations.[527] Thus, it would appear that a year of delay had been imposed arbitrarily on the Project's additional exploration for seemingly no reason.

190. Accordingly, Minera Gorrión, which by then was responsible for exploration works at Ixtaca, submitted a fresh IP application for the Ixtaca III drilling program on 16 July 2015.[528] To support its application, Minera Gorrión included a chapter in its application addressing the lack of significant indigenous community presence, based on the 2013 CDI Protocol.[529] On 18 August 2015, SEMARNAT approved the Ixtaca III *bis* application without indigenous consultation.[530]

191. Although SEMARNAT ultimately approved the IP, these events had exposed the lack of clarity in the Mexican legal system regarding the indigenous consultation process. To mitigate this risk, Minera Gorrión sought, and received, additional assurances from the Government regarding the presence of indigenous communities in the Ixtaca Project's area of influence.

192. Specifically, on 3 August 2016, Minera Gorrión petitioned the Commission of Indigenous Affairs of the Federal Chamber of Representatives, which is the lower chamber of Mexico's legislature, to assess whether indigenous communities resided in Zacatepec, Vista Hermosa de Lázaro Cárdenas, Tuligtic (San Miguel), Santa María Zotoltepec, Xiuquenta, and Ixtacamaxtitlán, and whether they should be consulted under ILO 169.[531] In response, the Commission unequivocally confirmed that:

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526 *Odyssey Marine Exploration, Inc. v. United Mexican States*, ICSID Case No. UNCT/20/1 ("***Odyssey v Mexico***"), Final Award, 17 September 2024, para. 335, **CL-134**.

527 Email chain from Daniel Santamaría to Fernando Mejía from 4 June 2015 to 8 June 2015, **Exhibit C-522**.

528 Minera Gavilán Ixtaca III bis application filed with SEMARNAT on 16 July 2015, **Exhibit C-505**.

529 Minera Gavilán Ixtaca III bis application filed with SEMARNAT on 16 July 2015, pages 149-155, **Exhibit C-505**.

530 SEMARNAT Oficio No. DFP/SGPARN/2638/2015 (approving Ixtaca III Bis IP), 18 August 2015, **Exhibit C-36**.

531 Letter from Mr. Hernán de Jesús Orantes López from the *Comisión de Asuntos Indígenas de la LXIII Legislatura de la Cámara de Diputados* to Minera Gorrión dated 10 August 2016, **Exhibit C-225**.

> the municipality of lxtacamaxtitlan and its communities of Santa Maria Zotoltepec, Tuligtic, Vista Hermosa de Lazaro Cardenas and Zacatepec are not considered indigenous municipalities or localities, according to the information obtained from the relevant catalogue.[532]

193. The Commission notably did not mention Tecoltemi. On 19 November 2016, in a response to a separate request from Minera Gorrión, the Secretary of the Commission for Indigenous Affairs of the Federal Chamber of Representatives likewise affirmed that the above referenced localities were not considered to be indigenous municipalities or localities.[533] Given the absence of indigenous localities or localities with indigenous presence within the Project's area of influence, Minera Gorrión understood that indigenous consultations were thus not required.

194. On 24 February 2017, Minera Gorrión submitted to SEMARNAT its IP application for the Ixtaca IV drilling program.[534] On 31 March 2017, SEMARNAT approved the application, without any reference to indigenous consultation.[535]

195. On 6 September 2017, a group of individuals supported by anti-mining activist NGOs,[536] filed a complaint with the Environmental and Regulation Specialized Chamber of the Federal Tribunal of Administrative Justice ("**FTAJ**"), requesting the nullification of SEMARNAT's resolution approving the Ixtaca IV IP.[537] The complaint asserted that SEMARNAT had allegedly failed to verify that (i) the Ixtaca IV IP did not exceed the 25% impact limit per

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532 Letter from Hernán de Jesús Orantes López from the *Comisión de Asuntos Indígenas de la LXIII Legislatura de la Cámara de Diputados* to Minera Gorrión dated 10 August 2016, **Exhibit C-225**.

533 Letter from Hernán de Jesús Orantes López from the *Comisión de Asuntos Indígenas de la LXIII Legislatura de la Cámara de Diputados* to Minera Gorrión dated 19 November 2016, **Exhibit C-227**.

534 Minera Gavilán Ixtaca IV application filed with SEMARNAT on 24 February 2017, **Exhibit C-506**.

535 SEMARNAT Oficio No. 21/IP-0825/02/17 (approving Ixtaca IV IP), 31 March 2017, **Exhibit C-42**.

536 As set out below, one of the plaintiffs in this proceedings, [redacted] also filed in 2016 a complaint with PROFEPA and identified as part of the "peoples in resistance" to the implementation of the Ixtaca Project. These "peoples in resistance" included PODER, IMDEC, and CESDER. *See* Resolution in the case PFPA/27.7/2C.28.2/00102-16 dated 23 June 2017, **Exhibit C-231**.

537 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, **Exhibit C-503**.

hectare outlined in NOM-120;[538] (ii) the drilling program did not harm aquifers;[539] and (iii) the drilling program respected the rights of indigenous communities.[540]

196. SEMARNAT defended its IP authorization vigorously, arguing that it had applied the standards set forth in NOM-120 to calculate the impacts generated by the Ixtaca IV drilling program.[541] Further, SEMARNAT argued that its IP authorization did *not* infringe on the rights of the indigenous communities.[542] In this regard, SEMARNAT noted that the plaintiffs identified as members of the San Francisco Ixtacamaxtitlán and Santa María Zotoltepec localities, which were not catalogued as indigenous according to the 2010 INEGI census.[543] Minera Gorrión, as an interested third party, also defended the legality of the IP authorization, arguing that it was properly reasoned,[544] and that it did not violate indigenous communities' rights.[545]

197. On 4 June 2019, the FTAJ dismissed the complaint. The FTAJ found that: (i) Minera Gorrión's mining activities were limited to exploration works, which were governed by NOM-120,[546] and (ii) SEMARNAT had verified that the Ixtaca IV drilling program did not exceed the maximum impact levels permitted under NOM-120.[547] With respect indigenous consultation rights, the FTAJ found that because the Ixtaca IV drilling program did not cause a significant social and environmental impact, no indigenous consultation was required.[548]

198. During the course of these proceedings, Minera Gorrión again sought assurances from the Mexican authorities as to whether indigenous consultations were required for the Ixtaca Project more generally. Again, the authorities confirmed that no such consultations were required:

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538 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, at pages 11-16, **C-503**.

539 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, at page 43, **C-503**.

540 SEMARNAT's answer to the complaint before the Federal Administrative Tribunal dated 11 January 2017, **C-514**; Decision issued by the Federal Administrative Tribunal dated 4 June 2019, at pages 11-16, **C-503**.

541 SEMARNAT's answer to the complaint before the Federal Administrative Tribunal dated 11 January 2017, **C-514**;

542 SEMARNAT's answer to the complaint before the Federal Administrative Tribunal dated 11 January 2017, page 10, **C-514**; Decision issued by the Federal Administrative Tribunal dated 4 June 2019, pages 15, 27-28, 44, **C-503**.

543 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, pages 50-52, **C-503**.

544 Expert report submitted by Jesus Enrique Pablo Dorantes from CAM on 28 August 2018, **C-524**.

545 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, at page 44, **C-503**.

546 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, page 17, **C-503**.

547 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, page 17, **C-503**

548 Decision issued by the Federal Administrative Tribunal dated 4 June 2019, page 55 to 58, **C-503**.

- On 7 September 2017, the Ixtacamaxtitlán municipality wrote to Minera Gorrión, confirming that no indigenous communities had been registered in Puebla State's official database in accordance with the Law on the Rights, Culture and Development of Indigenous Settlements and Indigenous Communities (*Ley de Derechos, Cultura y Desarrollo de los Pueblos Indígenas y Comunidades Indígenas*).[549]

- On 30 August 2018, the *Directora General de Promoción* from the *Secretaría de Competitividad, Trabajo y Desarrollo Económico* of Puebla State ("**SECOTRADE**"), the authority responsible for promoting indigenous labor rights and inclusion in Puebla State,[550] replied to Minera Gorrión's inquiry appending a communication from CDI that provided a catalogue of localities in Ixtacamaxtitlán where indigenous communities resided.[551] Tecoltemi again was not included in the catalogue of localities within the Project's area of influence.[552]

- Following receipt of the 30 August 2018 letter, Minera Gorrión requested that SECOTRADE clarify whether indigenous consultation was required for the Ixtaca Project.[553] On 28 September 2018, SECOTRADE relayed to Minera Gorrión CDI's updated conclusion, stating that after reviewing the information related to the Ixtaca Project, indigenous consultation was *not* required due to the absence of indigenous communities within the Project's area of influence.[554]

199. The above communications further reinforced the Claimants' understanding that no indigenous consultations were required in relation to the Ixtaca Project.

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549 Official letter No. 272/PM/2017 from the Ixtacamaxtitlán municipality dated 7 September 2017, **C-474**.

550 *Ley de Derechos, Cultura y Desarrollo de los Pueblos Indígenas y Comunidades Indígenas,* Arts. 49 and 50, dated 24 January 2011, **C-526**.

551 Official letter No. SECOTRADE/SDE/DGP/068/2018 issued by SECOTRADE appending Official letter DPUE/2018/OF/1891 from CDI dated 30 August 2018, **C-508**.

552 Official letter No. SECOTRADE/SDE/DGP/068/2018 issued by SECOTRADE appending Official letter DPUE/2018/OF/1891 from CDI dated 30 August 2018, **C-508**.

553 Official letter No. SECOTRADE/SDE/DGP/074/2018 issued by SECOTRADE appending Official letter BGPE/2018/OF/0802 from CDI dated 28 September 2018, **C-257**.

554 Official letter No. SECOTRADE/SDE/DGP/074/2018 issued by SECOTRADE appending Official letter BGPE/2018/OF/0802 from CDI dated 28 September 2018, **C-257**.

2.10.4 PROFEPA's Inspections Affirmed the Ixtaca Project's Compliance with Environmental Law

200. During this same time period, namely 2009-2017, the *Procuraduría Federal de Protección al Ambiente* ("**PROFEPA**"), the agency responsible for investigating environmental violations,[555] visited the Ixtaca Project on multiple occasions to inspect and verify Minera Gavilán's and Minera Gorrión's compliance with Mexican environmental laws. PROFEPA's investigations and visits affirmed the companies' compliance with those laws.[556]

201. Specifically, on 1 September 2009, four months after Minera Gavilán began the Tuligtic drilling program, PROFEPA notified the company of a community complaint asserting that one of Minera Gavilán's drill holes had released water mixed with toxic residues and deposited mineral waste on neighboring lands.[557] On 13 October 2009, PROFEPA visited the exploration site located in the community of Zacatepec to investigate.[558] During the visit, PROFEPA inspected the site and did not find any issues of environmental non-compliance. On 5 April 2010, PROFEPA closed its investigation without imposing any sanction.[559]

202. On 6 October 2016, an inspector from PROFEPA made an unannounced inspection of Minera Gorrión's property. The inspector informed Minera Gorrión that community members had filed a complaint against it for alleged violations of environmental regulations – the parties behind this seemingly trumped-up complaint would soon become clear. Mr. Santamaría Tovar accompanied the inspector on a tour through the property, showed him videos of the work that Minera Gorrión was carrying out, and allowed him to inspect the IPs issued by SEMARNAT authorizing Minera Gorrión's drilling works.[560]

203. Following this inspection, on 23 June 2017, PROFEPA formally notified Minera Gorrión that it had not found any evidence of wrongdoing.[561] Based on this notice, Minera Gorrión learned that [redacted] and certain other residents from the localities of Santa María and San Francisco, Ixtacamaxtitlán, Puebla, had filed the complaint on 29 August 2016.[562] These

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555 *Reglamento Interno de la SEMARNAT* dated 26 November 2012, Art. 2, Fraction XXXI, Subfraction a, **C-190**.

556 Santamaría Tovar WS, at paras. 66-67, 70.

557 Official letter No. PFPA/27.7/2C28.1/5469/09 from PROFEPA to Minera Gavilán dated 1 September 2009, **C-525**.

558 Resolution in the case file No. PFPA/27.2/2C27.5/039-09/083, dated 5 April 2010, at p. 2, **C-510**.

559 Resolution in the case file No. PFPA/27.2/2C27.5/039-09/083, dated 5 April 2010, at p. 4, **C-510**.

560 Email from Daniel Santamaría from Minera Gorrión to Mauricio Heiras et al, dated 6 October 2016, **C-511**.

561 Resolution in the case PFPA/27.7/2C.28.2/00102-16 dated 23 June 2017, **C-231**.

562 Resolution in the case PFPA/27.7/2C.28.2/00102-16 dated 23 June 2017, **C-231**.

individuals self-identified themselves in the complaint as members of a so-called "peoples in resistance" to the implementation of the Ixtaca Project. They also noted that they were working with the assistance of the "organized civil society," including PODER.[563] The complainants noted that, in conjunction with PODER and other NGOs, such as *Instituto Mexicano para el Desarrollo Comunitario, AC* ("**IMDEC**") and *Centro de Estudios para el Desarrollo Rural* ("**CESDER**"), they had prepared a purported Human Rights Impact Assessment in relation to the Project, which they claimed showed that the project was causing land erosion, environmental contamination, loss of biodiversity, and reducing available drinking water.[564]

204. These allegations were, however, baseless, as confirmed by PROFEPA's 23 June 2017 decision dismissing the complaint. In particular, PROFEPA confirmed that it had carried out detailed site inspections of the drilling programs and had identified no irregularities.[565]

205. Following PROFEPA's decision, Minera Gorrión requested PROFEPA to advise whether there were any other pending environmental administrative investigations against it. On 14 September 2017, PROFEPA confirmed that Minera Gorrión had no pending environmental investigations against it over the prior five years.[566]

206. Minera Gorrión did not encounter any further environmental complaints in the years that followed. In 2019, in the context of its evaluation of the MIA, discussed further below, SEMARNAT requested PROFEPA to confirm whether or not Minera Gorrión had any pending or concluded investigations against it for environmental violations. In response, PROFEPA once again confirmed that there were no such investigations.[567]

207. As set forth above, Minera Gavilán and Minera Gorrión fully complied with all environmental regulations governing their mining exploration programs. Additionally, the Mexican Government repeatedly and consistently assured them that indigenous consultations were not required to exercise their mining concession rights. These assurances and compliance with the law, however, did not discourage anti-mining activist NGOs to continue their attacks on the

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563 #PODER10años – Saludo de Benjamin Cokelet, https://www.youtube.com/watch?v=Vp5tI3cwM_g/., dated 5 October 2020, last accessed on 4 March 2025, **Exhibit C-348.**

564 Resolution in the case PFPA/27.7/2C.28.2/00102-16 dated 23 June 2017, at page 2, **C-231**.

565 Resolution in the case PFPA/27.7/2C.28.2/00102-16 dated 23 June 2017, Recitals Sixth and Eighth, at pages 3 and 4, **C-231**.

566 Certificate issued by PROFEPA on 14 September 2019, **C-223**.

567 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 4, Section IV, **Exhibit C-86**.

Ixtaca Project. As explained below, in 2015, Tecoltemi, mobilized by these same NGOs, filed an *amparo* to challenge the existing Mining Law and the Claimants' Ixtaca Concessions.

2.11 In 2015, Tecoltemi filed an *amparo* against Mexico for its alleged failure to conduct indigenous consultations when it granted the Concessions in 2003 and 2009

208. On 8 April 2015, just as it ramped up its engineering studies for the Ixtaca Project, Minera Gorrión found itself embroiled in an *amparo* – or constitutional protection action – brought by the Tecoltemi *ejido* against the Mexican Government.

209. As explained below, anti-mining activist NGOs orchestrated that *amparo* action and sought to use the Tecoltemi community as a vehicle to put an end to mining in Mexico. The *amparo* action ultimately led to the Mexican Supreme Court's decision in April 2022 on indigenous consultations, which Economía then used as a pretext to arbitrarily and retroactively cancel the Claimants' concession rights in full.

2.11.1 Tecoltemi became the tool of anti-mining activist NGOs

210. Tecoltemi is a small, remote mountain village of approximately 142 residents, located at an altitude of 2,569 meters.[568] It is situated entirely outside the Ixtaca Project's "area of influence" or area of impact,[569] approximately 45 minutes to an hour by car from the Project site.[570]

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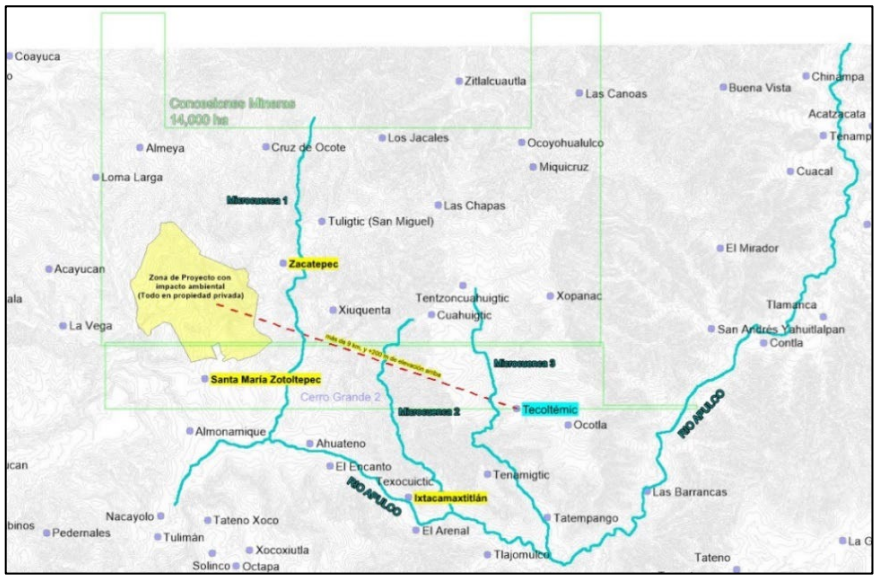
568 Santamaría Tovar WS, at para. 78.

569 A mining project's "area of influence" is defined as the geographic space in which the activities and physical infrastructure of the mining project (*i.e.*, the mine, the production plant, etc.) exert some type of environmental and social impact. *See* MIA, Chapter IV, page 161, **C-262**.

570 Santamaría Tovar WS, at para. 78.



Map of the Ixtaca region with the Project site in yellow and a red dotted line to Tecoltemi.[571]

211. The roads from Santa María Zotoltepec – where the Project site was located – to Tecoltemi are narrow and uneven, winding through steep hills and rocky terrain, making the village difficult to access, as reflected in the photograph below.[572]

[571] Map prepared by Almaden.

[572] Santamaría Tovar WS, at para. 78.

View from Tecoltemi showing the mountain roads to the village, December 2024.

212. The people of Tecoltemi depend on subsistence farming, cultivating crops and raising livestock to sustain their families.[573] As explained by Mr. Santamaría Tovar, [redacted] the lives of the Tecoltemi people are deeply tied to the land, and their priorities reflect the daily challenges of rural living.[574]

213. As Mr. Santamaría Tovar explains, the isolation of Tecoltemi has reinforced its social and economic seclusion, limiting its integration into broader regional development.[575] Minera Gorrión provided opportunities for the Tecoltemi community to participate in its initiatives, such as mine tours and community meetings,[576] but participation by the Tecoltemi community in these initiatives was low, likely due to the significant distance and difficult travel conditions between the village and the Project.[577] As Mr. McDonald notes, before the NGOs filed the *amparo* on Tecoltemi's behalf, he was not aware of the Tecoltemi community voicing any concerns about the Ixtaca Project.[578]

214. Beginning in 2013, anti-mining activist NGOs sought to put an end to mining in Ixtacamaxtitlán.[579] These efforts received support from politicians and activists who would later become key high-ranking officials in AMLO's administration. These activist-cum-government officials included Ms. María Luisa Albores, the former Secretary of SEMARNAT, and Mr. Víctor Manuel Toledo, her predecessor, both of whom had long-standing ties to environmental activism in Puebla.[580] As explained further below, AMLO publicly acknowledged his alignment with Secretaries Albores and Toledo against mining in Puebla.[581]

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573 Santamaría Tovar WS, at para. 79.

574 Santamaría Tovar WS, at para. 79.

575 Santamaría Tovar WS, at para. 80.

576 Santamaría Tovar WS, at para. 80.

577 Santamaría Tovar WS, at para. 80.

578 McDonald WS, at para. 79.

579 McDonald WS, at para. 65.

580 Santamaría Tovar WS, at para. 90; McDonald WS, at para. 87.

581 *Conferencia matutina de AMLO*, Milenio YouTube Channel, dated 3 September 2020, *available at* https://www.youtube.com/watch?v=V1frDFYHVsM (last accessed 2 March 2025) ("María Luisa Albores, in addition to being a woman of principles and a professional, is an environmentalist. Yes, she is part of the same team as Toledo, as Víctor Manuel Toledo. I met them both in Puebla, in Cuetzalan, Puebla, at a cooperative. There, they have accomplished incredibly important things in defending the environment, specifically in protecting the land and opposing projects like mining or other polluting

215. As Mr. McDonald observes, the fear-based, anti-mining campaign against the Ixtaca Project did not emerge from genuine, grassroots community opposition.[582] Instead, it was spearheaded by a network of well-funded international NGOs, led by PODER.[583] PODER coordinated its anti-mining activities with activist organizations in Mexico, including the *Unión de Ejidos y Comunidades en Defensa de la Tierra, el Agua y la Vida* ("**Atcolhua**"), Consejo Tiyat Tlali ("**CTT**"), *Instituto Mexicano para el Desarrollo Comunitario, AC* ("**IMDEC**"), and *Centro de Análisis e Investigación, A.C.* ("**Fundar**").[584]

216. These NGOs engaged with the local communities in Ixtacamaxtitlán on a limited and superficial basis.[585] As Ms. Uzcanga Vergara notes, their activities targeted specific families and individuals whom they perceived as most vulnerable to pressure or more likely to align with their position, rather than engaging the broader community in an inclusive and transparent manner.[586] The NGOs leveraged their media influence to spread misinformation, mobilizing local residents through false and alarmist narratives.[587] Their messaging relied heavily on fear tactics, propagating factually incorrect slogans, such as that the mining company would take away their water, and framing support for the Ixtaca Project as a betrayal of one's family and future.[588] They asserted that failure to resist mining would mean the destruction of land, water, and livelihoods, and they branded the Ixtaca Project as a "project of death," posing existential threats to local communities and ecosystems.[589]

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initiatives. That's where I met them, in that struggle. So, María Luisa Albores will act with the same integrity as Víctor Manuel Toledo." Spanish original: "*El relevo es continuidad con cambio, continuidad con cambio porque continúa la misma política. María Luisa Albores, además de ser una mujer con principios, una profesional, es ambientalista. Sí, es del mismo equipo de Toledo, de Víctor Manuel Toledo. Yo los conocí juntos en Puebla, Cuetzalan, Puebla, en una cooperativa. Ahí han hecho cosas importantísimas de defensa del medio ambiente, precisamente en defensa de la tierra y en contra de estos proyectos, como el de las minas u otros proyectos contaminantes. Ahí los conocí, en esa lucha. Entonces, María Luisa Albores va a actuar con la misma rectitud de Víctor Manuel Toledo*."), **Exhibit C-529**.

582 McDonald WS, at para. 67.

583 McDonald WS, at para. 67.

584 McDonald WS, at para. 66. As the Tribunal will recall, Atcolhua, together with PODER, sought immediately to intervene in these proceedings and to prejudice the Claimants, before the Claimants had even had an opportunity to set out their case in full. *See Amicus Curiae* Submission Application Filed by Mr. Oscar Pineda (PODER) on Behalf of Atcolhua, dated 12 December 2024, **Exhibit C-545**.

585 Uzcanga Vergara WS, at para.68.

586 Uzcanga Vergara WS, at para.68.

587 Uzcanga Vergara WS, at para. 67.

588 Uzcanga Vergara WS, at para. 37, 67; Santamaría Tovar WS, at para. 84; McDonald WS, at para. 67.

589 Claimants' Request for Arbitration, para. 3.76.

217. In short, these unscrupulous NGOs looked to take advantage of the relative lack of sophistication and education of local rural communities, including Tecoltemi, to push a radical anti-mining agenda. In so doing, they deployed manipulative tactics that ironically aped the same propogandist efforts of which they later accused the mining companies.

An example of the visuals used by NGOs.[590]

218. Nevertheless, as the Claimants' witnesses explain, PODER and its allies had difficulty influencing the opinion of the local communities within the Project's area of influence, including Santa María Zotoltepec.[591] This is because these communities had made their own informed decisions about the Project based on direct engagement with Minera Gorrión and visits to other operational mines in Mexico.[592] In fact, as Mr. García Herrera recalls in his witness statement, local residents from across Ixtacamaxtitlán denounced in two separate letters to AMLO the attempt by anti-mining NGOs to influence the local communities and to speak on their behalf.[593] As Mr. García Herrera explains, his community of Santa María Zotoltepec recognized the Project's potential to generate stable employment, deliver essential infrastructure, and drive long-term development.[594] They thus viewed the Ixtaca Project as a valuable opportunity for regional growth and opposed the actions of external NGOs to undermine the Project:

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590 "*Ixtaca: El 'Proyecto de Muerte' que es rechazado por las comunidades de la Sierra Norte de Puebla*," REMA, dated 4 July 2021, **Exhibit C-368**.

591 García Herrera WS, at paras. 12-19; Santamaría Tovar WS, at paras. 33, 126; McDonald WS, at para. 76.

592 Santamaría Tovar WS, at paras. 32-33; Uzcanga Vergara WS, at para. 37.

593 García Herrera WS, at paras. 15-17; Letter from community members to AMLO, dated 30 August 2019, **Exhibit C-308**; Letter from community members to AMLO, dated 4 October 2019, **Exhibit C-315**.

594 García Herrera WS, at paras. 12-13.

> We knew and understood how mining could positively impact our community. We had visited other operational mine sites across Mexico and had witnessed firsthand how responsible mining practices could improve local economies without harming agriculture or the environment. We saw real evidence of prosperity and, based on this knowledge, supported the Project.[595]

219. Likewise, the municipal president of Ixtacamaxtitlán himself denounced PODER's actions and attempts to speak on behalf of the local communities in Ixtacamaxtitlán. In 2017, PODER's founder, Mr. Cokelet, and his allies travelled to Canada to lobby against the Ixtaca Project, disingenuously presenting themselves as representatives of the local communities.[596] Shortly thereafter, the municipal president of Ixtacamaxtitlán issued a formal statement making clear that these individuals did not represent the municipality and had no official mandate to speak on its behalf.[597] As Ms. Uzcanga Vergara notes, this incident underscored "the disconnect between external NGOs and the actual perspectives and views of the local population."[598]

220. Unlike Santa María Zotoltepec and other communities located near the Project, Tecoltemi had no exposure to mining operations and very little – if any – interaction with the Project, notwithstanding the Claimants' efforts at inclusion. As a result, NGOs were able to fill the information void with misleading claims and alarmist slogans, as outlined above, and thereby exploit the community to further their anti-mining agenda.[599]

221. Against this backdrop, on 15 March 2015, the Tecoltemi community self-declared as an "indigenous community" for the first time in its history.[600] It then proceeded to file an *amparo* action on 7 April 2015 before the Sixth District Court in San Andrés Cholula, Puebla against the Mexican Government for violation of its Constitutional rights as an indigenous

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595 García Herrera WS, at para 28.

596 McDonald WS, at para. 72; Uzcanga Vergara WS, at para. 68.

597 Clarification Letter from Ixtacamaxtitlán Municipal President Regarding Unauthorized Representation, dated 11 January 2018, **Exhibit C-239**.

598 Uzcanga Vergara WS, at para. 68.

599 Santamaría Tovar WS, at paras. 80-84; McDonald WS, at para. 67; Uzcanga Vergara WS, at para. 67.

600 Tecoltemi Community Assembly Act Declaring Indigenous Identity and Opposition to Mining, dated 15 March 2015, **Exhibit C-543**.

community.[601] As the *amparo* reflects, it was filed by [redacted] of CTT and [redacted] of Fundar – both members of the anti-mining activist NGO network closely linked to PODER – acting as Tecoltemi's legal representatives.[602]

222. As explained below, the *amparo* sought not only to end the Ixtaca Project, but to challenge the existence of Mexico's mining sector as a whole.

2.11.2 In the *amparo*, Tecoltemi sought a ruling that the Concessions were void and that the Mining Law was unconstitutional

223. In the *amparo*, Tecoltemi asserted that its status as both an *ejido*[603] and an indigenous community necessitated procedural safeguards (*i.e.*, consultation) during concession approvals.[604] Despite the fact that it had self-declared as indigenous only in 2015, Tecoltemi accused the Mexican Government of failing to conduct indigenous consultations with it before granting the Cerro Grande and Cerro Grande 2 Concessions to Minera Gavilán *years before* in 2003 and 2009, respectively.[605] Put another way, legal representatives from the NGOs, acting on behalf of a rural community of which they were not actually members, claimed that the Mexican Government had an obligation to have treated these communities as indigenous some 12 and 6 years *before* the community had self-declared itself as indigenous. In making this argument, Tecoltemi relied on ILO 169 and Articles 1, 2, and 27 of the Mexican Constitution,

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601 Notice of Admission of Amparo Indirecto 506/2015, Sixth Judicial District, San Andrés Cholula, Puebla, dated 8 April 2015, **Exhibit C-33**; Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, **Exhibit C-32**.

602 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 1, **Exhibit C-32** (explaining that the *ejido* was represented in the Amparo proceeding by [redacted] of CTT and [redacted] of FUNDAR).

603 In Mexican law, an *ejido* refers to a form of communal land tenure where a group of individuals, known as *ejidatarios*, collectively own and manage agricultural land. This system was established to promote equitable land distribution and support rural communities. The Agrarian Law ("*Ley Agraria*") of 1992, following constitutional reforms, provides the legal framework for *ejidos*, detailing their organization, governance, and the rights and obligations of *ejidatarios*. In this regard, *see* Agrarian Law, dated 26 February 1992, at Articles 9-11, **Exhibit C-542**.

604 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 2 ("*En lógica de lo anterior, y debido a la doble protección jurídica con que cuenta respecto de las violaciones cometidas, es decir, a partir del carácter indígena de la Comunidad, pero también desde su calidad de Núcleo de Población Ejidal*."), **Exhibit C-32**:

605 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 10, **Exhibit C-32**.

which protect indigenous communities from land alienation and ensure their right to participate in decisions affecting their territories.[606]

224. Tecoltemi asserted that it was a cultural and territorial entity dating back to pre-colonial times, descending from the Nahua people.[607] Tecoltemi asserted that the Concessions violated its ancestral rights and threatened its social fabric, undermining traditions, customary practices, and language.[608]

225. Notably, Mexican law requires *objective* demographic and legal recognition for indigenous status beyond self-identification.[609] Indeed, Mexican Supreme Court precedent makes clear that *autoadscripción* (self-identification) must be supported by verifiable criteria, such as historical continuity, territorial connection, and distinctive social, economic, cultural, or political institutions.[610] In this case, specific evaluations by the Mexican Government and CDI – the Government agency responsible for identifying and supporting indigenous communities

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606 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at pp. 17, 27-31, **Exhibit C-32**.

607 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 2, **Exhibit C-32**.

608 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 2, **Exhibit C-32**.

609 Suprema Corte de Justicia de la Nación, Tesis 1a. CCXII/2009 (9a.), Semanario Judicial de la Federación y su Gaceta, Novena Época, Diciembre de 2009, Tomo XXX, página 291. Registro digital: 165718 ("The assessment of whether indigenous self-identification exists in a particular case must be based on a comprehensive review of the case, supported by documentation and legal proceedings, and must be conducted with an approach aimed at ensuring the effectiveness of individual rights." Spanish original: "*La apreciación de si existe o no existe una autoadscripción indígena en un caso concreto debe descansar en una consideración completa del caso, basada en constancias y actuaciones, y debe realizarse con una actitud orientada a favorecer la eficacia de los derechos de las personas*."), **Exhibit C-539**.

610 Suprema Corte de Justicia de la Nación, Primera Sala, Tesis 1a. CCXXXIV/2013 (10a.), Semanario Judicial de la Federación y su Gaceta, Décima Época, Libro XXIII, Agosto de 2013, Tomo 1, página 743. Registro digital: 2004277 ("Self-awareness or self-identification constitutes the determining criterion for defining who qualifies as "indigenous persons, peoples, and communities" under Article 2, third paragraph of the Political Constitution of the United Mexican States. In this regard, self-identification, while an intrinsic element of the individual as it pertains to their internal sense of belonging, does not have an ambiguous or inferential connotation. Rather, self-awareness can be delineated by the characteristics and affinities of the group to which one claims membership, which can be demonstrated through various objective and verifiable elements, such as: a) historical continuity; b) territorial connection; and c) distinctive social, economic, cultural, and political institutions, or parts thereof." Spanish original: "*La autoconciencia o la auto adscripción constituye el criterio determinante para definir quiénes son las 'personas, los pueblos y las comunidades indígenas', en términos del artículo 2o., párrafo tercero, de la Constitución Política de los Estados Unidos Mexicanos. En ese sentido, la autoidentificación, aun cuando es un elemento propio del sujeto por pertenecer a su fuero interno, no tiene una connotación ambigua o inferencial, pues la autoconciencia puede delimitarse por las características y afinidades del grupo al que se estima pertenecer, de las cuales se desprenden diversos elementos objetivos comprobables y particulares, como son: a) la continuidad histórica; b) la conexión territorial; y, c) las instituciones sociales, económicas, culturales y políticas distintivas, o parte de ellas*.") , **Exhibit C-536**.

based on census data and sociocultural indicators[611] – concluded in 2016 and 2018 that Tecoltemi did *not* meet the objective criteria for official indigenous recognition under ILO 169 or the Constitution.[612] These assessments, based on census data and CDI's own established criteria such as indigenous population density and linguistic presence, determined that Tecoltemi fell below the threshold for indigenous administrative recognition.[613]

226. As the Federal Congress confirmed in response to an inquiry from Minera Gorrión in 2016, Tecoltemi at that time had a total population of 151 inhabitants, of which only 50 were indigenous.[614] This placed Tecoltemi below the 40% indigenous threshold required by the CDI's Catalogue of Indigenous Communities for official recognition.[615] This meant that while Tecoltemi was a community with indigenous presence, it did not qualify as an indigenous community itself.[616] While these findings did not negate Tecoltemi's cultural or historical identity, they contradicted the *amparo*'s narrative of longstanding indigenous oppression.[617]

227. In addition to its questionable legal basis, the *amparo* was also riddled with contradictions and unsupported claims. It postulated hypothetical project risks, rather than demonstrable harm, and deliberately misconstrued the Ixtaca Project and its social and environmental impact, asserting that it would allegedly lead to, among other things:

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611 *See Ley de la Comisión Nacional Para el Desarrollo de los Pueblos Indígenas*, dated 21 May 2003, **Exhibit C-532**.

612 Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Tecoltemi, dated 10 August 2016, **Exhibit C-225**; Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Ixtacamaxtitlán and Surrounding Localities, dated 19 November 2016, **Exhibit C-227**; CDI Response to SECOTRADE Regarding Indigenous Consultation for the Ixtaca Project, dated 28 September 2018, at p. 2, **Exhibit C-256**.

613 CDI Response to SECOTRADE Regarding Indigenous Consultation for the Ixtaca Project, dated 28 September 2018, at p. 2 ("In light of the above and reiterating that an analysis of the information provided regarding the referenced project was conducted, the General Coordination considers that there would be no grounds for consultation, given that the analyzed data indicate the absence of an indigenous population in the project's area or its zone of influence, according to the Social Impact Assessment and the Environmental Impact Study." Spanish original: "*En atención a lo anterior y reiterando que se llevó a cabo el análisis de la información proporcionada sobre el proyecto de referencia, la Coordinación General considera que no habría materia de consulta en función de que los datos analizados indican la no presencia de población indígena en la zona de dicho proyecto, ni en su área de influencia, de acuerdo a la Evaluación de Impacto Social y el estudio de Impacto Ambiental.*"), **Exhibit C-256**.

614 Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Ixtacamaxtitlán and Surrounding Localities, dated 19 November 2016, **Exhibit C-227**.

615 Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Ixtacamaxtitlán and Surrounding Localities, dated 19 November 2016, **Exhibit C-227**.

616 Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Ixtacamaxtitlán and Surrounding Localities, dated 19 November 2016, **Exhibit C-227**.

617 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at pp. 4-7, **Exhibit C-32**.

- Forced displacement and the total destruction of Tecoltemi;[618]
- Systematic erasure of the community's existence under Mexican law;[619]
- Destruction of indigenous culture, spirituality, and religious practices attributable to the Ixtaca Project;[620] and
- Irreversible environmental damage, including the poisoning of water sources due to the use of toxic chemicals like cyanide.[621]

228. As set forth above and in the Claimants' witness statements, these assertions were and are demonstrably false.[622] *First*, Tecoltemi's allegations of forced displacement and destruction

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618 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 35 ("It is important to emphasize that one of the possible effects of the serious impacts that open-pit mining activities would have on the lands, territories, waters, and other natural resources of our Indigenous Community, its *Ejido*, and the rest of the population of the Municipality of Ixtacamaxtitlán is the forced displacement of the Community and its consequent relocation, as the integrity and life of the Community would seek to be preserved." Spanish original: "*Es importante enfatizar que uno de los efectos posibles de los graves impactos que la actividad minera a cielo abierto tendría sobre las tierras, territorios, aguas y demás recursos naturales de nuestra Comunidad indígena, su Ejido y el resto de la población del Municipio de Ixtacamaxtitlán, es el desplazamiento forzado de la Comunidad y su consecuente reubicación, pues la integridad y de vida de la buscarían preservarse*."), **Exhibit C-32**.

619 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 25 ("Through these provisions, the legislator established that exploration and exploitation activities would take precedence over any other use or utilization of the land, practically negating our very existence on the concession-granted land and denying our right to use and enjoy our own territory." Spanish original: "*Mediante dichas disposiciones, el legislador estableció que las actividades de exploración y explotación tendrán preferencia sobre cualquier otro uso o aprovechamiento del terreno, negando prácticamente nuestra propia existencia sobre la tierra otorgada en concesión, negando nuestro derecho a usar y disfrutar de nuestro propio territorio*."), **Exhibit C-32**.

620 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 25, **Exhibit C-32**.

621 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 23 ("These activities affect the natural resources that we have historically accessed and possessed as part of our ancestral heritage, as they involve the clearing of existing vegetation. Added to this is the damage to springs and water sources, which are used by companies for the separation of metals such as gold and silver. These water sources will be contaminated with substances like sodium cyanide, which is used in mining operations." Spanish original: "*Dichas actividades conllevan la afectación a los recursos naturales a los que hemos tenido acceso y que hemos poseído de manera ancestral, pues implica se efectúen desmontes de la existente; a ello se irá sumando el daño a los manantiales y fuentes de agua utilizadas por las empresas para la separación de metales como el oro y la plata, pues se verán contaminadas por sustancias como el cianuro de sodio, usada para las actividades mineras*."), **Exhibit C-32**.

622 Santamaría Tovar WS, at para. 65; McDonald WS, at paras. 69-71, 79.

were entirely without basis because, as demonstrated in the MIA application, Tecoltemi was located well outside the Project's area of influence.[623]

229. *Second*, the Ixtaca Project was designed to the highest environmental and safety standards, and its mine design complied with all applicable Mexican laws and regulations.[624] Contrary to the *amparo*'s claims of environmental damage and water poisoning,[625] independent assessments confirmed that the Project would not pose risks to water resources or local ecosystems.[626] Furthermore, the Project incorporated innovative dry-stack filtered tailings technology, which would significantly reduce the Project's water consumption and eliminate the risks associated with traditional wet tailings dams, thus minimizing potential environmental impacts.[627]

230. In addition, as noted above, the Tecoltemi *ejido* lands did not overlap with the Project site or with its area of influence.[628] Neither Minera Gavilán nor Minera Gorrión had ever conducted any exploration work in Tecoltemi, or ever used its lands.[629] There was therefore no possibility of the Project "negating [Tecoltemi's] very existence on the concession-granted land and denying [their] right to use and enjoy [their] own territory," as the *amparo* asserted.[630]

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623 MIA, Chapter IV, page 161, **C-262**; *see also* McDonald WS, at para. 79.

624 Santamaría Tovar WS, at paras. 65-67; McDonald WS, at para. 69.

625 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 23 ("These activities affect the natural resources that we have historically accessed and possessed as part of our ancestral heritage, as they involve the clearing of existing vegetation. Added to this is the damage to springs and water sources, which are used by companies for the separation of metals such as gold and silver. These water sources will be contaminated with substances like sodium cyanide, which is used in mining operations." Spanish original: "*Dichas actividades conllevan la afectación a los recursos naturales a los que hemos tenido acceso y que hemos poseído de manera ancestral, pues implica se efectúen desmontes de la existente; a ello se irá sumando el daño a los manantiales y fuentes de agua utilizadas por las empresas para la separación de metales como el oro y la plata, pues se verán contaminadas por sustancias como el cianuro de sodio, usada para las actividades mineras*."), **Exhibit C-32**.

626 Santamaría Tovar WS, at para. 38; McDonald WS, at paras. 63-64.

627 Ixtaca Feasibility Study filed with SEDAR updated on 3 October 2019, at page 39, **Exhibit C-314**.

628 Santamaría Tovar WS, at para. 82; McDonald WS, at para. 79.

629 McDonald WS, at para. 79.

630 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 25 ("Through these provisions, the legislator established that exploration and exploitation activities would take precedence over any other use or utilization of the land, practically negating our very existence on the concession-granted land, denying our right to use and enjoy our own territory." Spanish original: "*Mediante dichas disposiciones, el legislador estableció que las actividades de exploración y explotación tendrán preferencia sobre cualquier otro uso o aprovechamiento del terreno, negando prácticamente nuestra propia existencia sobre la tierra otorgada en concesión, negando nuestro derecho a usar y disfrutar de nuestro propio territorio*."), **Exhibit C-32**; *see also* Almaden Minerals Ltd., Management's Discussion and Analysis, dated 30 September 2020, at p. 20 ("Mineral tenure over the *Ejido* Lands is not

231. Tecoltemi, under the apparent influence of the NGOs, did not stop at complaining of alleged violations of its indigenous rights. Rather, in what appears to be a reflection of the zealous ambitions of its NGO backers, Tecoltemi also sought to challenge the *entire legal foundation* of Mexico's mining sector. Specifically, Tecoltemi targeted Articles 6, 10, 15, and 19 of the Mining Law as unconstitutional, arguing that these provisions allowed mining in Mexico without adequate social and environmental oversight.[631] Tecoltemi asserted that these provisions resulted in decisions that were detrimental to its community and in violation of its rights, including the grant of the Cerro Grande and Cerro Grande 2 Concessions:

> We challenge the approval of articles 10, 15 and 19, sections I, II, IV, V, VI, and VIII of the Mining Law due to their unconstitutionality; these were applied specifically to the detriment of the Indigenous Community and the *Ejido* of Tecoltemi, through the issuance of Mining Concession Titles 219469 and 233434, under the names of the lots "Cerro Grande" and "Cerro Grande 2".[632]

232. As Claimants' witnesses testify, they were very surprised by the *amparo*.[633] The Tecoltemi community had never expressed opposition to the Project.[634] Indeed, given its considerable distance and isolation from the Project, SEMARNAT did not even include Tecoltemi as one of the communities to be consulted in connection with the Ixtaca III IP, as discussed above.[635] And although Tecoltemi presented itself in the *amparo* as a symbol of indigenous opposition to the Ixtaca Project, official findings by Mexican State organs over the years found no

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material to Almaden. The *Ejido* Lands do not overlap the Ixtaca project or its environmental or social area of impact. Almaden has never tried to negotiate access to the *Ejido* Lands, never conducted exploration work on the *Ejido* Lands, and has no interest in conducting any future exploration or development work over the *Ejido* Lands. The *Ejido* Lands are in a different drainage basin than the Ixtaca project and the Company does not need to travel though the *Ejido* Lands to access the Ixtaca project."), **Exhibit C-406**.

631 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at pp. 23-27, **Exhibit C-32**.

632 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 3 (Spanish original: "*Reclamamos la aprobación de los artículos 10, 15 y 19 fracciones I, II, IV, V, VI y VIII de la Ley Minera, por su inconstitucionalidad; mismos que fueron aplicados concretamente en perjuicio de la Comunidad indígena y Ejido de Tecoltemi, mediante la emisión de los Títulos de Concesión Minera 219469 y 233434 bajo los nombres de lotes 'Cerro Grande' y 'Cerro Grande 2'.*"), **Exhibit C-32**.

633 McDonald WS, at para. 79; Santamaría Tovar WS, at para. 82.

634 McDonald WS, at para. 79.

635 *See supra* 2.10; SEMARNAT, Letter from La Delegada Federal, Daniela Migoya Mastretta to Minera Gorrión re: *Resolución de Informe Preventivo* Oficio No. DFP/1835/14, dated 22 May 2014, at p. 7, **Exhibit C-27**.

evidence that the community opposed mining before external actors and NGOs became involved in the community.[636]

233. In response to Tecoltemi's *amparo*, the Mexican Government, including Economía, vigorously defended the legality of the Concessions, emphasizing their full compliance with Mexican law.

234. For example, in its 12 May 2015 submission to the District Court, Economía asserted unequivocally that the grant of the Cerro Grande and Cerro Grande 2 Concessions adhered to Constitutional provisions, the Mining Law, and its Regulations:

> The acts confessed are justified in the very terms of their issuance, with their legal basis grounded in Articles 27, paragraph six of the Political Constitution of the United Mexican States; 34, Section XXIX of the Organic Law of the Federal Public Administration; 7, Section VI, 10, first paragraph, 15, and 19 of the Mining Law; and the corresponding provisions of its Regulations. [637]

235. Economía also categorically denied that the Concessions resulted in land dispossession, dismantling one of the *amparo*'s core claims:

> And the said contested act [the issuance of the mining concession titles] does not have the effect of totally or partially depriving, temporarily or definitively, the *ejido* or communal population centers of the ownership, possession, or enjoyment of their agrarian rights.[638]

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636 Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Tecoltemi, dated 10 August 2016, **Exhibit C-225**; Federal Congress Response to Minera Gorrión Regarding Indigenous Status of Ixtacamaxtitlán and Surrounding Localities, dated 19 November 2016, **Exhibit C-227**; CDI Response to SECOTRADE Regarding Indigenous Consultation for the Ixtaca Project, dated 28 September 2018, at p. 2, **Exhibit C-256**.

637 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at pp. 1-2 (Spanish original: "*Los actos confesados se justifican en los propios términos de su emisión, radicando su fundamento legal en lo dispuesto en los artículos 27, párrafo sexto de la Constitución Politica de los Estados Unidos Mexicanos; 34, fracción XXIX de la Ley Orgánica de la Administración Pública Federal; 7, fracción VI, 10, párrafo primero, 15 y 19 de la Ley Minera; y los correspondientes a su Reglamento*."), **Exhibit C-34**.

638 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 6 (Spanish original: "*Y dicho acto reclamado no tiene como efecto privar total o parcialmente, en forma temporal o definitiva, de la propiedad, posesión o disfrute de sus derechos agrarios a los núcleos de población ejidal o comunal*."), **Exhibit C-34**.

236. Economía further argued that Tecoltemi's *amparo* was flawed and should be dismissed on multiple procedural grounds:

- **Time-barred action**: Tecoltemi acknowledged in the *amparo* that it had been aware of Minera Gorrión's exploration activities for over two years before filing the amparo, making the lawsuit untimely.[639]

- **Lack of legal standing**: Tecoltemi failed to prove that it was directly affected by the Concessions, a fundamental requirement for an *amparo* claim to proceed.[640]

- **Failure to demonstrate actual harm**: The *amparo* relied on hypothetical risks rather than concrete harm to Tecoltemi's legal rights; specifically, "the plaintiffs have not provided suitable evidence demonstrating that the granting of the mining concessions affects any legally protected right over what they refer to as their 'ancestral territory.'"[641] In addition, the plaintiffs did not present "any evidence that it [their territory] is indeed a sacred territory, nor the awareness of identity in relation to it, in terms of the provisions of Articles 13 and 15 of the aforementioned Convention

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639 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 3 ("From the above it can be seen that the complainants had been aware of the mining exploration work for two years, as they themselves acknowledge in their writ of complaint as indicated above. This statement constitutes full evidence against the complainants in accordance with Article 202 of the Federal Code of Civil Procedure, applied in a supplementary manner to the relevant law. However, the *amparo* lawsuit was not filed until April 2015, which updates its untimeliness, and the consent of the acts complained of." Spanish original: "*De lo anterior se desprende que los quejosos tenían conocimiento de los trabajos de exploración minera desde hace dos años, tal y como ellos mismos lo reconocen en su escrito de demanda como quedó señalado anteriormente. Manifestación que hace prueba plena en contra de los quejosos de conformidad con el artículo 202 del Código Federal de Procedimientos Civiles, aplicado en forma supletoria de la Ley de la materia. Empero, la demanda de amparo fue presentada hasta el mes de abril de 2015, lo que actualiza su extemporaneidad y el consentimiento de los actos reclamados*."), **Exhibit C-34**.

640 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 11 ("The present case is dismissed, in accordance with the provisions of articles 61, section XII and 63, section V, both of the Amparo Law, since the legal interests of the complaining party are not affected, because the issuance of the confessed mining concession titles does not affect any right of the complainant. The above is so, since contrary to what the complainant affirms, the granting of the mining concessions that they claim does not affect their legal or legitimate interests, since there is no right that has been disrupted with them, hence the notorious inadmissibility of the amparo lawsuit." Spanish original: "*Procede el sobreseimiento del presente juicio, de conformidad con lo dispuesto por los artículos 61, fracción XII y 63, fracción V, ambos de la Ley de Amparo, toda vez que no se afectan los intereses jurídicos de la parte quejosa, ya que la expedición de los títulos de concesión minera confesados no afecta derecho alguno de la quejosa. Lo anterior es así, ya que contrario a lo que afirma la quejosa, el otorgamiento de las concesiones mineras que reclaman no afecta sus intereses jurídicos ni legítimos, pues no existe derecho alguno que haya sido trastocado con las mismas, de ahí la notoria improcedencia de la demanda de amparo que nos ocupa.*"), **Exhibit C-34**.

641 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 35 (Spanish original: "*Los hoy quejosos no han demostrado con prueba idónea que con el otorgamiento de las concesiones mineras se afecta algún derecho jurídicamente tutelado sobre lo que ellos denominan su 'territorio ancestral.'*"), **Exhibit C-34**.

169."[642] Nor did they "in any way prove the alleged impact caused by the mining concessions."[643]

- **Misrepresentation of mining concessions**: Economía also refuted Tecoltemi's claim that mining concessions equate to land ownership, clarifying that mining concessions grant only rights to subsurface resources.[644]

237. Furthermore, citing Mexican Supreme Court rulings, Economía underscored that an *amparo* cannot be granted based on speculative harm but rather must be "proven with clear and conclusive evidence and not inferred solely on the basis of presumptions."[645] Most fundamentally, Economía emphasized that *amparo* actions cannot serve as political tools, but must demonstrate specific violations of fundamental legal rights, and in this case "no legally protected rights have been infringed."[646]

238. Based on these arguments, Economía requested the District Court to dismiss the *amparo* in its entirety.[647] Notably, Economía did not identify *any* irregularities in the Claimants' Concessions, nor did it raise any issues with the land or the coordinates.[648] On the contrary, as

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642 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 35 (Spanish original: "*Ni han acreditado con prueba alguna que realmente se trata de un territorio sagrado, ni la conciencia de identidad en relación con éste, en términos de lo señalado en los artículos 13 y 15 del Convenio 169 antes citado*."), **Exhibit C-34**.

643 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 35 (Spanish original: "*Ni acreditaron de forma alguna la afectación que tienen con las concesiones mineras que nos ocupan*."), **Exhibit C-34**.

644 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 35 ("Mining concessions do NOT confer on their holders any rights over the surface of the land where the corresponding lots are located, but only grant them the right to explore or exploit all the minerals listed in Article 4 of the Mining Law. From the above it can be concluded that the mere issue of the title does not transfer either the ownership or the possession of the land to the holder of the rights of a mining concession of reference but rather grants the right to the aforementioned." Spanish original: "*Las concesiones mineras NO confieren a sus titulares derechos sobre la superficie del terreno donde se localizan los lotes correspondientes, sino únicamente les otorgan el derecho a explorar o explotar todos los minerales que se enumeran en el artículo 4 de la Ley Minera. De lo anterior se colige que la sola expedición del título no le transmite ni la propiedad ni la posesión del terreno al titular de los derechos de una concesión minera de referencia, sino que le otorga derecho a lo anteriormente explicado*."), **Exhibit C-34**.

645 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 21 (Spanish original: "*En el juicio de amparo, la afectación del interés jurídico debe acreditarse en forma fehaciente y no inferirse solamente a base de presunciones*."), **Exhibit C-34**.

646 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 23 (emphasis added) (Spanish original: "*No existen derechos jurídicamente tutelados que hayan sido trastocados.*"), **Exhibit C-34**.

647 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, at p. 54 ("THREE.- To dismiss the present case in view of the grounds asserted. FOUR.- To deny the *amparo* and protection of the Justice of the Union requested by the complainant." Spanish original: "*TERCERO.- Sobreseer el presente juicio en atención a las causales hechas valer. CUARTO.- Negar el amparo y protección de la Justicia de la Unión que solicita la quejosa.*"), **Exhibit C-34**.

648 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, **Exhibit C-34**.

set forth above, it strongly defended the legality of the Concessions as granted. Sadly, in a few years and with a change of Government, Economía took a very different attitude towards the Concessions.

2.12 In a good faith effort to resolve the *amparo* action, Minera Gorrión sought to reduce the size of its concession areas voluntarily, which Mexico blocked

239. While the *amparo* action was pending before the District Court, Minera Gorrión took steps to address the Tecoltemi *ejido*'s purported concerns proactively and definitively.

240. As Mr. McDonald explains, despite Economía's affirmation that it had granted the Concessions in full compliance with law, the Claimants developed what they believed would be an effective "win-win" solution to give Tecoltemi the relief they sought.[649] Specifically, at root, Tecoltemi's stated concern was that the Cerro Grande and Cerro Grande 2 Concessions overlapped with their ancestral land.[650] In a good faith effort to resolve that stated concern, Minera Gorrión sought voluntarily to reduce the size of its Concessions, as permitted under the Mining Law,[651] to eliminate any overlap with Tecoltemi's land.[652] This decision was driven primarily by the fact that mineral tenure over this land was not material to the Ixtaca Project. Almaden had neither attempted to negotiate access to the land nor conducted any exploration work there and had no interest in conducting any future exploration or development work over the land.[653]

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649 McDonald WS, at para. 81.

650 Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), 7 April 2015, at p. 23 ("These acts limit, and even annul, the exercise of the right to the land and the territory of the Nahua Indigenous Community of Tecoltemi, as well as the *Ejido* that forms part of it, as they have the effect of depriving us of its possession, use and enjoyment, and even of its ownership." Spanish original: "*Dichos actos limitan, e incluso anulan el ejercicio del derecho a la tierra y el territorio de la Comunidad Indígena Nahua de Tecoltemi, así como del Ejido que forma parte de ella, pues tienen por efecto privarnos de su posesión, uso y aprovechamiento, e incluso de su propiedad*."), **Exhibit C-32**.

651 1992 Mining Law, Article 22, **C-157**; 1992 Mining Law, as amended by the 2005 Mining Law Amendment, Art. 19, Section VIII, **Exhibit C-174**.

652 Minera Gorrión, Application to DGM Reduce Cerro Grande, 31 July 2015, at **Exhibit C-35**; Minera Gorrión, Application to DGM Reduce Cerro Grande 2, 31 July 2015, at **Exhibit C-51**.

653 McDonald WS, at para. 81; Santamaría Tovar WS, at para. 82; Almaden Minerals Ltd., Management's Discussion and Analysis, dated 30 September 2020, at p. 20 ("*Mineral tenure over the Ejido Lands is not material to Almaden. The Ejido Lands do not overlap the Ixtaca project or its environmental or social area of impact. Almaden has never tried to negotiate access to the Ejido Lands, never conducted exploration work on the Ejido Lands, and has no interest in conducting any future exploration or development work over the Ejido Lands. The Ejido Lands are in a different drainage basin than the Ixtaca project and the Company does not need to travel though the Ejido Lands to access the Ixtaca project*."), **Exhibit C-406**.

241. Instead of facilitating these requests in accordance with the Mining Law, Economía failed to act for over 17 months.[654] Economía argued that the grant of an injunction by the District Court overseeing the *amparo* had frozen the Concessions altogether.[655] Frustrated by Economía's delay in addressing its good faith applications, on 30 August 2016, Minera Gorrión sought judicial intervention.[656] By decision dated 12 December 2016, the District Court ruled in Minera Gorrión's favour,[657] ordering Economía to process the reduction applications within 24 hours:

> The responsible authorities, namely the Secretary of Economy, the General Coordinator of Mines of the Ministry of Economy, the Director General of Mines of the Ministry of Economy, and the Public Mining Registrar, are required to comply with the definitive suspension of April 8, 2016, within a period of twenty-four hours; that is, to decide on the request for withdrawal of the interested third party, Minera Gorrión, Sociedad Anónima de Capital Variable, with the warning that if they do not do so, they will be reported to the Public Prosecutor's Office of the Federation for the crime that, depending on the case, is established in sections III and IV of article 262 of the Amparo Law.[658]

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654 McDonald WS, at para. 82.

655 Citatorio, Juzgado Segundo de Distrito en Materia de Amparo Civil, Administrativa y de Trabajo y de Juicios Federales en el Estado de Puebla, 9 December 2016, at page 4, **Exhibit C-40**.

656 Citatorio, Juzgado Segundo de Distrito en Materia de Amparo Civil, Administrativa y de Trabajo y de Juicios Federales en el Estado de Puebla, dated 9 December 2016, **Exhibit C-40**.

657 Citatorio, Juzgado Segundo de Distrito en Materia de Amparo Civil, Administrativa y de Trabajo y de Juicios Federales en el Estado de Puebla, dated 9 December 2016, **Exhibit C-40**.

658 Citatorio, Juzgado Segundo de Distrito en Materia de Amparo Civil, Administrativa y de Trabajo y de Juicios Federales en el Estado de Puebla, dated 9 December 2016, at p. 11 (Spanish original: "*Se requiere a las autoridades responsables denominadas Secretario de Economia, Coordinador General de Minas de la Secretaria de Economia, Director General de Minas de la Secretaria de Economia y Registrador Público de Mineria, para que en el plazo de veinticuatro horas de cumplimiento con la suspension definitiva de ocho de abril de dos mil dieciséis, esto es acuerden la petición de desistimiento de la parte tercero interesada Minera Gorrión, Sociedad Anónima de Capital Variable; con el apercibimiento que de no hacerlo, serán denunciadas al Ministerio Público de la Federación por el delito que, según el caso, establecen las fracciones III y IV del articulo 262 de la Ley de Amparo*."), **Exhibit C-40**.

242. Because Economía failed to comply with this deadline, the District Court issued a second order on 17 May 2017, demanding that Economía process the reduction applications.[659] Only then did Economía finally act. By separate *oficios* dated 30 May 2017, Economía formally accepted Minera Gorrión's requests to reduce the size of its mining concessions; Economía subsequently amended these *oficios* through two subsequent *oficios*, both dated 9 June 2017, which corrected certain administrative details related to the reduction process.[660]

243. Although Tecoltemi had received the relief it wanted – namely, exclusion of its lands from the concession areas – Tecoltemi nonetheless sought to nullify the reduced Concessions so that it could continue to pursue its *amparo* action.

244. Specifically, shortly after Economía issued the reduced Concessions, Tecoltemi inserted itself as an interested third party and appealed the District Court's ruling to the Second Collegiate Court in Administrative Matters of the Sixth Circuit in Puebla, on the ground that the District Court's order to Economía violated the implied injunction imposed on the Public Mining Registry by the *amparo* action.[661] As Tecoltemi's arguments made clear, it opposed the reduced Concessions simply because they would have rendered its *amparo* action moot:

> Thus, the issuance of new concession titles resulting from an alleged reduction (which the company identifies as Cerro Grande R2 and Cerro Grande 2 R1), constitutes an act that deprives the *ejido* of its territory and its rights, even if it is done temporarily for the purpose of being authorized to withdraw (*which, needless to say, is clearly a strategy to render this trial moot and thus avoid entering into an analysis of the violations committed*).[662]

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659 Citatorio re: Interested Third Party Minera Gorrión S.A. de C.V., Second District Court in Matters of Civil Amparos, State of Puebla, dated 17 May 2017, **Exhibit C-44**.

660 DGM Oficio No. SE/610-02973/2017, dated 30 May 2017, **Exhibit C-45** (as amended by DGM Oficio No. SE/610-03211/2017, dated 9 June 2017, **Exhibit C-48**); DGM Oficio No. SE/610-02972/2017, dated 30 May 2017, **Exhibit C-46** (as amended by DGM Oficio No. SE/610-03210/2017, dated 9 June 2017, **Exhibit C-49**; *see also* Títulos de Concesión Minera: Cerro Grande R1, Cerro Grande R3, Cerro Grande R4, Cerro Grande R5, Cerro Grande R6, Cerro Grande 2 R2, and Cerro Grande 2 R3, de 29 Mayo de 2017 al 23 de Febrero de 2059, **Exhibit C-152**.

661 Notice of Admission of Amparo Indirecto 506/2015, Sixth Judicial District, San Andrés Cholula, Puebla, dated 8 April 2015, at pp. 3-4, **Exhibit C-33**.

662 Ejido Tecoltemi's Complaint Regarding Minera Gorrión's Reduced Concessions, dated 2 June 2017 (emphasis added) (Spanish original: "*Así, la expedición de nuevos títulos de concesión resultado de una supuesta reducción (que la empresa identifica como Cerro Grande R2 y Cerro Grande 2 R1), constituye un acto que priva al núcleo ejidal de su territorio y sus derechos, aun cuando*

245. As Mr. McDonald explains in his witness statement, he was genuinely surprised by Tecoltemi's appeal and opposition to the reductions, given that Minera Gorrión had requested those reductions in good faith to address Tecoltemi's stated concerns.[663] Simply put, there was no genuine reason for Tecoltemi to continue to oppose a Project that had no impact on its land.[664]

246. On 1 February 2018, the Collegiate Court nonetheless ruled against Minera Gorrión, upholding Tecoltemi's appeal and affirming that the *amparo* suspension prevented any administrative acts that could affect Tecoltemi's purported agrarian rights, including the reduction of the Concessions.[665] The Court reasoned that, even though the Concessions had been voluntarily reduced to eliminate any overlap with Tecoltemi's land, the suspension granted at the outset of the *amparo* still applied:

> If the procedure [i.e., the reduction of the concessions] were to continue, the ownership, possession, or enjoyment of the agrarian rights of the aforementioned *Ejido* could be affected, which is precisely what was the subject matter of the outright suspension decreed.[666]

247. It remains unclear how eliminating the overlap between the Concessions and Tecoltemi's land could have affected Tecoltemi's property, possession, or enjoyment of its agrarian rights.[667] If anything, the reduced Concessions *guaranteed* Tecoltemi's property, possession, and enjoyment of its agrarian rights, by ensuring the Concessions no longer covered its land. Nevertheless, on 14 December 2018, the Second District Court in Puebla issued a ruling ordering Economía to annul the reduction approvals and restore the Concessions to their original state in accordance with the Collegiate Court's ruling.[668] In compliance with this order,

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se hiciere de forma temporal para efecto que le sea autorizado el desistimiento (lo cual no sobra decir, es claramente una estrategia para dejar sin materia este juicio y evitar así que se entre al análisis de las violaciones cometidas)."), **Exhibit C-534**.

663 McDonald WS, at para. 83.

664 McDonald WS, at para. 83.

665 Queja 184/2017, Segundo Tribunal Colegiado en Materia Administrativa del Sexto Circuito, dated 1 February 2018, **Exhibit C-53**.

666 Queja 184/2017, Segundo Tribunal Colegiado en Materia Administrativa del Sexto Circuito, dated 1 February 2018, at pp. 30-31, **Exhibit C-53**. Spanish original: "*De continuar el procedimiento, podría afectarse la propiedad, posesión o disfrute de los derechos agrarios del citado Ejido, que es precisamente lo que fue objeto de la suspensión de plano decretada.*"

667 1992 Mining Law, as amended by the 2005 Mining Law Amendment, Art. 19, Section VIII, **Exhibit C-174**.

668 Subsecretaría de Minería, Dirección de Cartografía y Concesiones Mineras, *Acuerdo*, dated 21 December 2018, at p. 3, **Exhibit C-59**.

Economía issued an "Agreement" (*acuerdo*) on 21 December 2018, formally leaving without legal effect the Cerro Grande and Cerro Grande 2 reduced concessions.[669] Notably, Economía did not notify Minera Gorrión of this decision,[670] and the Company only learned of it in May 2019 after Minera Gorrión's legal counsel reviewed the physical court docket.[671]

248. As Mr. McDonald observes, what these events revealed was that the *amparo* filed by the NGOs on Tecoltemi's behalf was not a genuine effort to protect Tecoltemi's land or to obtain indigenous consultations.[672] Rather, the *amparo* was simply a vehicle through which these NGOs sought to nullify the Concessions and to challenge key provisions of the Mining Law. In other words, the Claimants and their lawfully obtained Concessions were caught in the crosshairs of a campaign by the NGOs to bring down the entire Mexican mining sector.

249. As Mr. McDonald explains, while the appeals were pending, he instructed Minera Gorrión's legal representative to clarify with Economía the status of the Concessions.[673] On 16 December 2019, the DGM issued two official certifications confirming that the Cerro Grande and Cerro Grande 2 concessions were in force at that time.[674] The certificates stated that:

- The Cerro Grande concession (Title No. 234333) was valid from 6 March 2003 to 5 March 2053;[675] and
- The Cerro Grande 2 concession (Title No. 246008) was valid from 24 February 2009 to 23 February 2059.[676]

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669 Subsecretaría de Minería, Dirección de Cartografía y Concesiones Mineras, *Acuerdo*, dated 21 December 2018, **Exhibit C-59**.

670 McDonald WS, at para. 84.

671 Almaden Minerals, Annual Report for the Year Ended December 31, 2023, at p. 34, **Exhibit C-430**; McDonald WS, at para. 84.

672 McDonald WS, at para. 85.

673 McDonald WS, at para. 99.

674 Certificate No. Exp. 185/3 issued by Ms. Laura Araceli Cervantes Alejandre, Deputy Director of the Public Mining Registry from Economía Regarding Cerro Grande Concession, dated 16 December 2019, at pp. 1, 3, at **Exhibit C-330**; Certificate No. Exp. 185/3 issued by Ms. Laura Araceli Cervantes Alejandre, Deputy Director of the Public Mining Registry from Economía Regarding Cerro Grande 2 Concession, dated 16 December 2019, at pp. 1, 3, at **Exhibit C-331**.

675 Certificate No. Exp. 185/3 issued by Ms. Laura Araceli Cervantes Alejandre, Deputy Director of the Public Mining Registry from Economía Regarding Cerro Grande Concession, dated 16 December 2019, at p. 1, at **Exhibit C-330**.

676 Certificate No. Exp. 185/3 issued by Ms. Laura Araceli Cervantes Alejandre, Deputy Director of the Public Mining Registry from Economía Regarding Cerro Grande 2 Concession, dated 16 December 2019, at p. 1, at **Exhibit C-331**.

250. These certificates affirmed that Minera Gorrión remained the legal titleholder and that the Concessions were in full force and effect.

2.13 The AMLO administration's campaign against the mining industry

251. On 1 December 2018, while Tecoltemi's amparo action was pending before the District Court, Mexico elected AMLO as its new President. His election imperiled every mining project in development in Mexico at that time. AMLO adopted an openly adversarial stance to mining, denouncing mining concessions as tools of "speculation"[677] and vowing to recover Mexican territory from foreign control.[678] He accused previous administrations of recklessly granting mining concessions without adequate environmental or social safeguards,[679] and directed his administration not to grant any new mining concessions.[680]

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677 Grupo REFORMA YouTube Channel, *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8 (last accessed 12 March 2025) ("There is quite a lot, in this case, of speculation—of holding concession titles to speculate in the financial market. So, we are not cancelling the concessions, just simply stopping the concessions, because with what is already concessioned, it is enough for millions of years." Spanish original: "*Hay bastante, en este caso, de especulación, de tener los títulos de concesión para especular en el mercado financiero. Entonces, no estamos cancelando las concesiones, sencillamente ya detener las concesiones, porque con lo que hay concesionado, pues alcanza para millones de años*."), **Exhibit C-535**.

678 *AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT*, dated 11 June 2024, available at https://www.youtube.com/watch?v=wr15-QItWg0 (last accessed 7 March 2025) ("Concessions were handed out so they could negotiate and profit through speculation on stock exchanges. Now, many concessions have even been returned – without any procedure, without stripping anyone of their rights." Spanish original: "*Se les entregaban las concesiones para que pudieran negociar y obtener beneficios con la especulación en las bolsas de valores. Ahora, hasta se han recuperado muchas concesiones, sin ningún procedimiento, sin quitarles ningún derecho*."), **Exhibit C-433**; *Permits: Best Practice or a Barrier?*, Mexico Business News, dated 9 January 2021 (citing AMLO's statements on 11 March 2021, "[i]n the past, many concessions and permits were granted to foreign companies. We are not going to continue giving concessions or permits that go against the environment. Mining companies must act righteously; taking care of the environment and not destroying the territory."), **Exhibit C-356**.

679 *AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT*, Sin Censura Presenta YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=wr15-QItWg0 (last accessed 7 March 2025) **Exhibit C-433**; *see also No hemos dado una autorización para explotación minera a cielo abierto: AMLO*, La Jornada de Oriente YouTube Channel, dated 15 October 2021, available at https://www.youtube.com/watch?v=CKDnPDowW7c (last accessed 12 March 2025) ("The same goes for mining concessions. They were handed out left and right, but there is no investment. Just imagine, when will they ever finish exploiting 120 million hectares?" Spanish original: "*Lo mismo en el caso de las concesiones mineras. Las entregaron a diestra y siniestra, no invierten. Pues imaginen, ¿cuándo van a terminar de explotar 120 millones de hectáreas?*"), **Exhibit C-533**.

680 Concesiones mineras – 24/03/22 – #ConferenciaPresidente, Morena Sí Facebook, dated 24 March 2022, available at https://www.facebook.com/watch/?v=283864170569212 (last accessed 2 March 2025) ("During our time in government, we have not granted a single concession, nor have we allowed genetically modified corn or the use of fracking for energy exploitation." Spanish original: "*En el tiempo que llevamos en el gobierno, no hemos dado una sola concesión, ni hemos permitido el maíz transgénico, ni el uso del fracking para la explotación energética*."), **Exhibit C-385**.

252. AMLO celebrated his no new mining concession policy, proudly displaying the following slide during one of his daily press conferences, known as "*mañaneras*," in June 2024:

One of the visuals displayed by AMLO during his mañaneras highlighting that his administration had granted "zero" mining concessions.[681]

253. As can be seen, AMLO proudly extolled that under his administration, no new mining concessions had been granted.[682] Indeed, that "no new mining concessions policy" has remained even under his successor, President Claudia Sheinbaum.

254. In parallel, AMLO directed SEMARNAT not to permit any new mining projects, particularly open-pit mining projects.[683] The then Secretary of SEMARNAT María Luisa Albores – who had close ties to environmental activism and NGOs, particularly in the Sierra Nororiental de Puebla,[684] a region known for vocal environmental movements – heralded SEMARNAT's

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681 *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, Grupo REFORMA YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8 (last accessed 12 March 2025), **Exhibit C-535**.

682 The Mexican press has similarly reported that, "between 1988 and 2018, 65,534 permits were granted – overwhelmingly to companies from Canada and the United States;" "[h]owever, since the advent of the Morena government, there has been a total halt in the approval of new permits." Mexican News Daily, *AMLO proposes mining and water regulation reform* dated 30 March 2023, **Exhibit C-576**.

683 In a December 2022 address to Congress, Secretary Albores underscored that "*the Government of the Fourth Transformation does not grant new concessions for open-pit mining due to its negative impacts on the environment and public health*." See *EN VIVO / Comparecencia de titular Semarnat, Ing. Ma. Luisa Albores González,* Cámara de Diputados - H. Congreso de la Unión Facebook Page, available at https://www.facebook.com/camaradediputados/videos (last accessed 13 March 2025) (Spanish original: "*El Gobierno de la Cuarta Transformación no otorga nuevas concesiones para la minería a cielo abierto debido a sus impactos negativos en el medio ambiente y la salud*."), **Exhibit C-541**.

684 La Jornada de Oriente YouTube Page, *López Obrador reconoce a Albores quien apoyaba en la cooperativa "Tosepan Titataniske" en Cuetzalan*, dated 14 February 2024, available at https://www.youtube.com/watch?v=ymWZHodYyyw (last accessed 14 March 2025) ("*I come from labour, from social and solidarity economy, working directly with a cooperative located in the Sierra*

obedience to this directive: "[o]pen-pit mining has been prohibited in our country ever since our president announced its ban. As a result, not a single permit has been granted by the Secretariat of Environment [SEMARNAT]."[685] Consistent with Secretary Albores's statement, studies have reported that, under her leadership, mining projects representing nearly US$ 2.8 billion in investments have stalled due to unresolved permitting at SEMARNAT.[686]

254.1 When Secretary Albores stepped down from her position in 2024, AMLO praised her commitment and consistency with his anti-mining policy:

> I also want to take this opportunity to agree with you on the work María Luisa Albores has done at the Ministry of Environment; she is a first-class public servant. I have been fortunate to have a great team, and María Luisa's case, as you've observed, is exemplary. We have made significant progress in the conservation of reserves, flora, and fauna, *and in refusing to grant permits for mining extraction following the excess of concessions handed out during the neoliberal period*.
>
> We're talking about approximately 100 million hectares granted for mining exploitation during the neoliberal period, in just 36 years. *And we haven't granted a single permit, not a single authorization. And those who hold these concessions have no reason to complain because, imagine, they were given half of the country's territory during the neoliberal period*. For mining exploitation, they were

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Nororiental of Puebla. It has a beautiful name, Tosepan Titaniske, which in Nahuatl means 'united we will overcome.' This cooperative was created in 1977 and has never stopped its cooperative work. . . I arrived in 2000 as an agronomist. I thought I would stay for one year, but I stayed for many years, until I left the Sierra to work with the president. I had the fortune and privilege of meeting the president while working there." Spanish original: "*Yo vengo de trabajo, de economía social y solidaria, trabajando directamente con una cooperativa que se ubica en la Sierra Nororiental poblana. Tiene un nombre muy bonito: Tosepan Titataniske, que en náhuatl significa 'unidos venceremos'. Esta es una cooperativa creada desde 1977; nunca ha interrumpido su vida cooperativista. . . Yo llego en el año 2000 como agrónoma. Creía que iba a quedarme un año, me quedé muchos años, hasta que salí de la Sierra para estar con el presidente. Yo tuve la fortuna y el gusto de conocer al presidente trabajando allá*."), **Exhibit C-530**.

685 *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, available at https://www.youtube.com/watch?v=oTicTRLrWyQ (last accessed 2 March 2025) (Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

686 D.A. Garcia, *Mining Firms in Mexico Must Fact 'Strict Scrutiny',* Reuters, dated 17 September 2019, at **Exhibit C-91**.

> granted half of the national territory, which totals 100 million hectares. They were given 100 million hectares. When will they use them up? When will they run out? 100 million hectares! [687]

254.2 In praising Secretary Albores for her refusal to grant a "*single permit*," AMLO made clear that those refusals were not based on a fair or objective assessment of these projects under the law, but rather were based on his arbitrary anti-mining political agenda:

> The truth is, they used these concessions for speculation, not even for mining exploitation. *Concessions were handed out so they could negotiate and profit through speculation on stock exchanges. Now, many concessions have even been returned – without any procedure, without stripping anyone of their rights*.
>
> . . .
>
> *And the landowners – communal landholders, small property owners, ejidatarios – don't even know that what lies beneath their land has already been concessioned because no information was ever provided. So, we made the decision not to issue any new concessions, and we've honored that commitment*.[688]

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687 *AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT*, Sin Censura Presenta YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=wr15-QItWg0 (last accessed 7 March 2025) (Spanish original: "*Aprovecho también para coincidir contigo sobre la labor que ha realizado María Luisa Albores en la Secretaría de Medio Ambiente; es una servidora pública de primera. Yo he tenido la suerte de contar con un buen equipo de trabajo, y el caso de María Luisa, como tú lo has constatado, es algo ejemplar. Hemos avanzado muchísimo en la conservación de reservas, en la conservación de la flora, de la fauna, y en no dar permiso para la extracción minera luego del derroche de concesiones que se otorgaron durante el periodo neoliberal. Estamos hablando de alrededor de 100 millones de hectáreas para la explotación minera en el periodo neoliberal, en 36 años. Y no hemos dado un solo permiso, una sola autorización. Y no tienen por qué quejarse quienes tienen estas concesiones, porque imagínense: les dieron la mitad del territorio en el periodo neoliberal. Les concesionaron para la explotación minera la mitad del territorio nacional, que tiene 100 millones de hectáreas. Les entregaron 100 millones. ¿Cuándo se van a acabar? ¿Cuándo se van a terminar? ¡100 millones de hectáreas!*"), **Exhibit C-433**.

688 *AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT*, dated 11 June 2024, available at https://www.youtube.com/watch?v=wr15-QItWg0 (last accessed 7 March 2025) (Spanish original: "*Lo cierto es que utilizaron las concesiones para especular, ni siquiera para la explotación minera, sino que se les entregaban las concesiones para que pudieran negociar y obtener beneficios con la especulación en las bolsas de valores. Ahora, hasta se han recuperado muchas concesiones, sin ningún procedimiento, sin quitarles ningún derecho. Empezaron a devolverlas porque tienen que pagar un impuesto y ya, pues no les convenía. Y se ha recuperado mucho territorio. Un día voy a informar sobre eso. . . Y los propietarios de las tierras – comuneros, pequeños propietarios, ejidatarios – ni siquiera saben todavía que lo que hay debajo de sus tierras ya*

255. AMLO's statement speaks directly to the kind of State abuses the CPTPP seeks to protect. Arbitrary anti-foreign investment whims, unsupported by empirical evidence, and executed without regard to the merits of individual projects or the legal framework in which they operate. This is readily apparent from the caricature AMLO painted of foreign mining companies reflected above, the qualities of which match none of the characteristics of the Claimants, as can be seen in the description provided in Sections 2.2, 2.8 and 2.9 above.

256. To execute his commitment not to issue new concessions or permit new projects, AMLO appointed regulatory officials, like Secretary Albores, who shared his anti-mining ideology and removed those who did not align with his agenda. Key agencies tasked with regulating mining projects were purged of objective or moderate officials, who were then replaced with individuals known for their opposition to extractive industries. Once in place, those officials had an easy job – to do nothing, vocally advertise their obstinance, and lobby other State organs not to carry out their constitutional functions in respect of mining projects.[689]

257. In particular, SEMARNAT reflected this pattern, led by two anti-mining NGO activists appointed by AMLO:

- Mr. Víctor Manuel Toledo (Secretary, 2019–2020), a self-proclaimed "ethnobiologist" and long-time anti-mining activist, who promised that the Ixtaca Project would not be approved: "*With SEMARNAT, Ixtaca will not happen*. The most important task of the government is to promote social power. We will do nothing that does not seek to empower communities."[690]

- Ms. María Luisa Albores (Secretary, 2020–2024), an environmental activist with deep ties to anti-mining organizations in Puebla, who, as noted above, continued Toledo's

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fue concesionado, porque no hubo ninguna información. Entonces, tomamos la decisión de no entregar ninguna concesión y hemos cumplido."), **Exhibit C-433**.

689 In a December 2022 address to Congress, Secretary Albores underscored that "the Government of the Fourth Transformation does not grant new concessions for open-pit mining due to its negative impacts on the environment and public health." See *EN VIVO / Comparecencia de titular Semarnat, Ing. Ma. Luisa Albores González,* Cámara de Diputados - H. Congreso de la Unión Facebook Page, available at https://www.facebook.com/camaradediputados/videos (last accessed 13 March 2025) (Spanish original: "*El Gobierno de la Cuarta Transformación no otorga nuevas concesiones para la minería a cielo abierto debido a sus impactos negativos en el medio ambiente y la salud*."), **Exhibit C-541**; Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**; Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

690 "*Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser'*," Lado B, dated 29 August 2019, at pp. 2-3, **Exhibit C-307**.

policies and confirmed that SEMARNAT was acting under AMLO's express directive not to permit new projects.[691]

258. When AMLO replaced Secretary Toledo with Albores, he recalled that Secretary Albores was "part of the same team as Toledo" and that he had met them both in Puebla "opposing projects like mining or other polluting initiatives:"

> *The transition is continuity with change, continuity with change because the same policy continues***.** María Luisa Albores, in addition to being a woman of principles and a professional, is an environmentalist. *Yes, she is part of the same team as Toledo, as Víctor Manuel Toledo. I met them both in Puebla, in Cuetzalan, Puebla, at a cooperative. There, they have accomplished incredibly important things in defending the environment, specifically in protecting the land and opposing projects like mining or other polluting initiatives*. That's where I met them, in that struggle. So, *María Luisa Albores will act with the same integrity as Víctor Manuel Toledo*.[692]

259. AMLO also brought Economía, the Ministry responsible for issuing mining concessions, into line with his anti-mining agenda. After replacing the more moderate Tatiana Clouthier (Secretary, 2018-2022) – who had defended the Ixtaca Concessions in the *amparo* proceedings, engaged with Minera Gorrión on indigenous consultation, and actively supported the UNECE Mining Pilot Project[693] – AMLO appointed Raquel Buenrostro as Secretary in 2022. A staunch

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691 *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, available at https://www.youtube.com/watch?v=oTicTRLrWyQ (last accessed 2 March 2025) ("Open-pit mining has been prohibited in our country since our president announced its ban. As a result, the Ministry of the Environment has not granted a single permit for it." Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

692 *Conferencia matutina de AMLO*, Milenio YouTube Channel, dated 3 September 2020, available at https://www.youtube.com/watch?v=V1frDFYHVsM (last accessed 8 March 2025) (Spanish original: "*El relevo es continuidad con cambio, continuidad con cambio porque continúa la misma política. María Luisa Albores, además de ser una mujer con principios, una profesional, es ambientalista. Sí, es del mismo equipo de Toledo, de Víctor Manuel Toledo. Yo los conocí juntos en Puebla, Cuetzalan, Puebla, en una cooperativa. Ahí han hecho cosas importantísimas de defensa del medio ambiente, precisamente en defensa de la tierra y en contra de estos proyectos, como el de las minas u otros proyectos contaminantes. Ahí los conocí, en esa lucha. Entonces, María Luisa Albores va a actuar con la misma rectitud de Víctor Manuel Toledo*."), **Exhibit C-529**.

693 Santamaría Tovar WS, at paras. 45, 48.

opponent of the mining industry, Secretary Buenrostro immediately reversed Economía's approach and ensured that the Ixtaca Concessions would be cancelled, in line with AMLO's policy.[694] As she declared in 2022, "[i]t makes no sense to continue granting concessions. A very strong purge is being carried out, I think it is one of the areas with the greatest problem of corruption in the Ministry of Economy."[695]

260. Such statements reflect the arbitrary approach to mining regulation adopted by AMLO and his administration. Vague notions of "corruption" unsupported by any actual investigation underpinned measures that can best be described as using a sledgehammer to kill flies. This is why Almaden and Almadex find themselves as claimants in these proceedings rather than running a mine that would have benefitted the local community, Mexico, and themselves.

261. The AMLO administration also dismantled the Undersecretariat of Mining (*Subsecretaría de Minería*) within Economía, signaling AMLO's intention to gut the industry.[696] Mr. Francisco Quiroga, who served as Undersecretary from December 2018 until September 2020, promoted responsible mining practices focused on social inclusion and environmental sustainability. As noted above, Undersecretary Quiroga was effusive in his praise for the Ixtaca Project, highlighting that it was setting a new standard for participatory and inclusive mining in Mexico by adapting itself to community needs rather than forcing communities to adapt to mining.[697] Such praise may have been one of the reasons he lost his job as Undersecretary of Mining; however, rather than simply removing him, the position itself was eliminated. Following the dissolution of the Undersecretariat, the responsibilities related to mining were reallocated to other departments within Economía, such as the DGM.[698]

262. On 8 May 2023, AMLO enacted a sweeping Mining Reform Act which reversed Mexico's long-standing "free land, first applicant" system for mining concessions. The legislative change cemented a policy shift that had already been in effect – for years, the government had

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694 McDonald WS, at para. 113; Santamaría Tovar WS, at para. 123.

695 SPR Informa, "*Mineras prácticamente no pagan impuestos: Raquel Buenrostro,*" dated 8 December 2022, at p. 1 (Spanish original: "*No tiene ningún sentido seguir dando concesiones. Se está haciendo una depuración muy fuerte, creo que es de las áreas con mayor problema de corrupción en Economía.*"), **Exhibit C-109**.

696 Economía Press Release, "*La Secretaría de Economía anuncia la cancelación delcargo de subsecretario de Minería a partir del 1° de septiembre de 2020*," dated 31 August 2020, **Exhibit C-531**.

697 Speech by Undersecretary of Mining Francisco Quiroga at Minera Gorrión's 9th Annual Informative Assembly in Santa María Zotoltepec, dated December 2018, **Exhibit C-264**.

698 Economía Press Release, "*La Secretaría de Economía anuncia la cancelación delcargo de subsecretario de Minería a partir del 1° de septiembre de 2020*," dated 31 August 2020, **Exhibit C-531**.

informally halted the issuance of new mining concessions, either by pausing applications or simply refusing to award them. Under the new law, companies can no longer obtain concessions before proceeding to permitting. Instead, they must secure numerous environmental, social, and economic permits, creating new bureaucratic hurdles and effectively blocking private investment.[699] The reform further centralized control in Economía, granting it the power to issue *permanent* mining concessions exclusively to public instrumentalities and Government agencies, while stripping the private sector of the right to conduct mining exploration – a power now reserved solely for the Mexican Geological Service.[700] This should be seen for what it is – the renationalization of prospecting and exploration in Mexico and a move towards a command economy in the minerals sector.

263. Additionally, the Mining Reform Act voided all pending mining concession applications, mandating that new concession requests be automatically dismissed without further review.[701] Meanwhile, for concessions already granted, the law imposed a six-year limit on exploration concessions, rendering authorized work programs without effect.[702] Furthermore, the Reform introduced a requirement for consultations with indigenous and Afro-Mexican communities *before granting mining concessions* affecting their lands.[703]

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699 Ley de Minería (Última reforma publicada DOF 08-05-2023), **Exhibit C-158**.

700 Ley de Minería (Última reforma publicada DOF 08-05-2023), at Articles 9 Bis, 10 Bis, 18 Bis, **Exhibit C-158**.

701 Ley de Minería (Última reforma publicada DOF 08-05-2023), at Transitory Article 6 ("Applications for new exploration or exploitation concessions will be dismissed without further processing, in accordance with the provisions of Transitory Articles Seven and Eight." Spanish original: "*Las solicitudes de nueva concesión de exploración o de nueva concesión de explotación se desecharán sin mayor trámite, en virtud de lo dispuesto por los artículos Séptimo y Octavo Transitorios*."), **Exhibit C-158**.

702 Ley de Minería (Última reforma publicada DOF 08-05-2023), at Transitory Article 7 ("Exploration concessions whose cancellation has not been declared will have a duration of six years from the date of their issuance, and the work programs included in their titles will no longer be in effect." Spanish original: "*Las concesiones de exploración cuya cancelación no haya sido declarada tendrán duración de seis años contados a de la fecha de su expedición los programas de trabajos insertos en sus títulos quedarán sin efecto*."), **Exhibit C-158**.

703 Ley de Minería (Última reforma publicada DOF 08-05-2023), at Article 6 ("In the case of lots located in the territories of indigenous or Afro-Mexican peoples or communities, the Ministry, for the granting of a mining concession or assignment, shall request the competent authority to carry out a prior, free, informed, culturally appropriate, and good-faith consultation to obtain the consent of these peoples and communities, in accordance with the applicable regulations. The Ministry shall participate in this process within the scope of its responsibilities. The consultation shall be conducted prior to the granting of the concession title and simultaneously with the consultation required for the environmental impact assessment, during which information from the social impact study shall also be provided." Spanish original: "*En caso de lotes ubicados en territorios de pueblos o comunidades indígenas o afromexicanas, la Secretaría, para el otorgamiento de concesión o asignación minera, solicitará a la autoridad competente lleve a cabo la consulta previa, libre, informada, culturalmente adecuada y de buena fe, para obtener el consentimiento de dichos pueblos y comunidades, en los términos de la normativa aplicable, y participará en dicho proceso en el ámbito de sus atribuciones. La consulta se realizará previo al otorgamiento del título de concesión y de manera simultánea con*

264. Likewise, AMLO weaponized federal social programs, in particular *Sembrando Vida*, to cultivate opposition to mining projects like Ixtaca. While officially presented as a reforestation and rural development initiative, AMLO's administration deployed *Sembrando Vida* to further his anti-mining agenda, aligning local communities against the extractive industries. Launched by Secretary Albores in October 2018, *Sembrando Vida* provided monthly payments to participants in exchange for planting and maintaining trees on their land.[704] At the program's launch, Secretary Albores framed it as a movement to restore traditional land-based livelihoods, positioning agriculture as the only legitimate form of land use.[705]

265. Although the program did not explicitly require participants to oppose mining, evidence suggests that program organizers pressured recipients to align with AMLO's anti-mining stance. As Mr. Santamaría Tovar explains, community members at Ixtacamaxtitlán reported that officials overseeing *Sembrando Vida* monitored participants' attitudes toward mining, creating an implicit understanding that supporting projects like Ixtaca could jeopardize their eligibility for financial aid.[706]

266. AMLO's policies and appointments transformed Mexico into a hostile environment for mining investment, driving away competition, eroding transparency, and prioritizing State-run

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la que se requiera para la manifestación de impacto ambiental, consulta en la que se proporcionará información del estudio de impacto social."), **Exhibit C-158**.

704 *Sembrando Vida* Overview, *Programas para el Bienestar*, available at https://programasparaelbienestar.gob.mx/sembrando-vida (last accessed 13 March 2025), **Exhibit C-537**.

705 *Presentación del programa de comunidades sustentables: #SembrandoVida*, Andrés Manuel López Obrador YouTube Channel, dated 8 October 2018, available at https://www.youtube.com/watch?v=NLjTw8b6kro (last accessed 8 March 2025) ("It is a project called Sembrando Vida because that is what we are going to try to do in these six years: to plant life in the ejidos, in the communities that have been somewhat abandoned, and from there something different will emerge. . . The great potential is its people, the people who are in these territories and who have an invaluable richness, that is what this project is about. . . Priority will be given to small producers from 19 states; the producer will receive 5,000 Pesos per month for their workday. . . The requirements to join will be basic, avoiding bureaucratic complications. We are going to work with the poorest people, with those who have the least, so we are going to eliminate those complications of excessive paperwork.") Spanish original: "*Es un proyecto que se llama Sembrando Vida, porque es lo que vamos a intentar hacer en estos seis años: sembrar vida en los ejidos, en las comunidades que han sido un poco abandonadas, y desde ahí nacerá algo diferente. . . El gran potencial es su gente, la gente que está en estos territorios y que tiene una riqueza invaluable. De eso se trata este proyecto. . . Se atenderá prioritariamente a pequeños productores de 19 estados. El productor recibirá 5,000 pesos mensuales por su jornal. . . Los requisitos para ingresar serán básicos, evitando complicaciones burocráticas. Vamos a trabajar con la gente más pobre, con la que menos tiene; entonces, vamos a quitar esas complicaciones de muchos papeleos. Este programa está vinculado con otras secretarías, y ya digo 'vinculado' porque hemos estado trabajando de manera conjunta. . . En el caso de la SEMARNAT, en las áreas donde haya zonas protegidas, pero donde nosotros también podamos llegar al ámbito forestal*."), **Exhibit C-258**.

706 Santamaría Tovar WS, at para. 92.

enterprises over foreign investors like the Claimants.[707] Between 2019 and 2023, Mexico plummeted in the Fraser Institute's Investment Attractiveness Index for the Mining Sector, falling from 38th place out of 76 jurisdictions to a dismal 74th out of 86.[708] This precipitous drop reflects the direct impact of AMLO's nationalist, anti-mining policies.

2.14 SEMARNAT Improperly Assessed Minera Gorrión's MIA And Devised Baseless And Pretextual Reasons To Reject It

267. In February 2019, Minera Gorrión submitted to SEMARNAT its MIA for the Ixtaca Project. That MIA complied fully with all applicable environmental laws and regulations. As explained above, at the time Minera Gorrión filed the MIA, AMLO's nationalist anti-mining agenda was in full swing and led to appointments by AMLO of vocal anti-mining activists at SEMARNAT – namely, Mr. Toledo and subsequently Ms. Albores. AMLO appointed both officials with the express mandate *not* to issue new permits for mining projects, particularly open-pit mining projects like the Ixtaca Project.[709] SEMARNAT fulfilled that mandate, first by stalling the MIA evaluation process and then by rejecting the MIA outright on baseless and pretextual grounds by decision dated 17 December 2020 (the "**MIA Denial Decision**").

268. As demonstrated below, SEMARNAT's decision to deny Minera Gorrión's MIA was not the result of an objective or fair administrative process, but rather was the result of a political decision to carry out AMLO's *de facto* mining ban. This is affirmed by contemporaneous statements made by AMLO and by Secretaries Toledo and Albores. As detailed below, those statements leave no doubt that SEMARNAT's actions were not based on true environmental considerations, but rather on AMLO's political directives. As explained below in Section 4.2,

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[707] McDonald WS, at paras. 86-87; Santamaría Tovar WS, at paras. 86-87; *see also* MILENIO YouTube Channel, *Nueva Ley Minera aplicará para concesiones futuras, aclara AMLO*, dated 4 May 2023, <https://www.youtube.com/watch?v=TwkhdTm1VF8&t=10s> ("There are some mining companies that were dissatisfied, especially regarding the duration of the concession. . . And now, conditions are being imposed that did not exist before. For example, as you mentioned, there must be consultations with the communities. A review will be conducted, but I want to clarify that, once approved, it will apply moving forward. I also clarify that this includes what was necessary, because what they did was indeed an abuse. We will never forget that, due to gold extraction, they destroyed the Cerro de San Luis Potosí." Spanish original: "*Hay algunas empresas mineras que estaban inconformes, sobre todo por el tiempo de duración de la concesión. . . Y ya se ponen condiciones que no existían. Por ejemplo, lo que tú estás mencionando: tiene que haber consulta a las comunidades. Se va a hacer una revisión, pero sí aclaro que, al aprobarse, es hacia adelante. Aclaro que incluye esto, que hacía falta, porque fue un abuso, en efecto, lo que hicieron. Nunca vamos a olvidar que destruyeron, por la extracción de oro, el Cerro de San Luis Potosí.*"), **Exhibit C-538**.

[708] Julio Mejia & Elmira Aliakbari, Fraser Institute Annual Survey of Mining Companies 2023, at p. 14, Table 1, **Exhibit C-127**.

[709] *See supra* Section 2.13.

such conduct was arbitrary, discriminatory, lacking in transparency, and contrary to administrative due process and therefore in breach of Mexico's obligations under the CPTPP.

2.14.1 Mexican environmental law provides a clear regulatory framework to assess a MIA

269. Under Mexican environmental law, a concessionaire must submit a MIA to SEMARNAT for its approval prior to commencing mineral exploitation activities.[710] The MIA serves primarily to identify environmental risks and prevention measures to mitigate environmental impacts.[711]

270. Specifically, as explained by Mr. Pablo-Dorantes, the experienced environmental consultant who prepared Minera Gorrión's MIA in this case, under Articles 12 and 13 of the R-LGEEPA, the MIA must include: (i) general details regarding the project and the applicant; (ii) a description of the project; (iii) a description of how the project will comply with the relevant environmental regulations and NOMs (which prescribe technical environmental standards); (iv) a description of the relevant environmental system[712] where the project is located; (v) an identification, description, and evaluation of the project's environmental impacts in that system; (vi) the preventive and mitigation measures the company proposes to address those impacts; (vii) an explanation of the environmental forecasts[713] of the environmental system, and (viii) an identification of the methodologies and information that support each chapter.[714]

271. The *Dirección General de Impacto y Riesgo Ambiental* ("**DGIRA**"), an office within SEMARNAT, is tasked with evaluating the MIA under Articles 35 and 35 *bis* of the LGEEPA

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710 Limón, at paras. 13-14.; R-LGEEPA, at Art. 5, Section L), Section I, **Exhibit C-166**.

711 Limón, at para. 17.; LGEEPA, Art. 28, **Exhibit C-156**; Section III; R-LGEEPA, at Art. 5, Section L), Section I, **Exhibit C-166**.

712 Defined under SEMARNAT Guidelines as the "set of biotic, abiotic and socioeconomic elements that interact in the geographical space of the project, and where the environmental impacts of the project are manifested, its distribution limit will end as far as the components are influenced by its development (area of influence)." SEMARNAT presentation, *Guía para la presentación de la manifestación de impacto ambiental del sector*, at p. 4, **Exhibit C-447**.

713 The environmental forecast consists in the presentation of alternative scenarios where the applicant describes how the environmental system would be with the project, without the project, and with the project but with the prevention, mitigation, and compensation measures. SEMARNAT, *Guía para la presentación de la manifestación de impacto ambiental del sector*, at p. 13, **Exhibit C-447**.

714 Pablo-Dorantes WS, at para. 20; R-LGEEPA, at Arts. 12 and 13, Sections I to VIII., **Exhibit C-166**.

and Articles 9 to 28 of the R-LGEEPA.[715] As Mr. Pablo-Dorantes and the Claimants' expert Dr. Limón Aguirre explain, the MIA evaluation process consists of the following steps:

- Within five days of receiving the MIA, DGIRA publishes in its *Gaceta Ecológica* a notice confirming the MIA had been submitted for evaluation.[716] Within the same period, the applicant must publish an "excerpt of the project" – *i.e.*, a summary of the main details of the project described in the MIA – in a widely circulated newspaper.[717]

- Within 10 days of receiving the MIA, DGIRA conducts a preliminary review to confirm that the applicant's MIA meets the formal requirements outlined in the applicable law and regulations, namely the LGEEPA and R-LGEEPA.[718] Once verified, DGIRA formally creates the MIA case file.[719]

- Within ten days following the creation of the MIA case file, any citizen may request DGIRA to conduct a public consultation process.[720] As part of the public consultation process, DGIRA may also determine that a *reunión pública de información* ("**RPI**") is required if the project poses a risk of significant ecological imbalance or harm to ecosystems or public health.[721] The opinions voiced during the RPI are not binding on DGIRA when evaluating the MIA.[722]

- Within five days of DGIRA's decision to initiate a public consultation process, the applicant must publish, for a second time, an excerpt of the project described in the MIA in a widely circulated newspaper.[723]

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715 LGEEPA, at Arts. 35 and 35 *bis*, **Exhibit C-156**; R-LGEEPA, at Arts. 9-28, **Exhibit C-166**; *DECRETO por el que se expide el Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales*, published in the *Diario Oficial* on 26 November 2012, Art. 28, Sections II and III (granting DGIRA authority to assess MIAs), **Exhibit C-527**; *see also* Pablo-Dorantes WS, at para. 17; *see* also Limón, at paras 18-19.

716 Pablo-Dorantes WS, at para. 40; *see also* Limón, at para. 34.; LGEEPA, at Art. 34, **Exhibit C-156**.

717 Pablo-Dorantes WS, at para. 40; *see also* Limón, at para. 34.; LGEEPA, at Art. 34, Section I, **Exhibit C-156**.

718 Pablo-Dorantes WS, at para. 40; *see also* Limón, at para. 35.; LGEEPA, at Art. 35, **Exhibit C-156**.

719 Pablo-Dorantes WS, at para. 40; *see also* Limón, at para. 35.; LGEEPA, at Art. 35, **Exhibit C-156**.

720 Pablo-Dorantes WS, at para. 42; *see also* Limón, at para. 36.; LGEEPA, at Art. 34, **Exhibit C-156**.

721 Pablo-Dorantes WS, at para. 42; *see also* Limón, at para. 37.; LGEEPA, at Art. 34, Section II, **Exhibit C-156**. *See also* R-LGEEPA, at Arts. 40, 43, Section III, **Exhibit C-166**.

722 Pablo-Dorantes WS, at para. 42; *see also* Limón, at para. 39.

723 Limón, at para. 37.

- If DGIRA decides to hold an RPI, it must schedule the meeting through the *Gaceta Ecológica* within 25 days of deciding to hold it. DGIRA coordinates the logistics of the RPI in collaboration with UCPAST, a department within SEMARNAT responsible for, among other things, liaising with stakeholders on projects involving SEMARNAT.[724] As shown below, DGIRA failed to comply with these statutory deadlines in this case.

- Within five days after scheduling the meeting in the *Gaceta Ecológica*, DGIRA must carry out the RPI and complete it in one day.[725] Again, as explained below, DGIRA failed to comply with these statutory deadlines in this case.

- While the public consultation process is ongoing, DGIRA may request technical opinions from federal agencies and expert groups to aid its assessment of the MIA.[726] These opinions must be submitted within 25 days of the creation of the MIA case file.[727] As part of the applicant's due process rights, SEMARNAT must forward to the applicant a copy of such opinions to allow it the opportunity to submit comments.[728] As demonstrated below, in this case, DGIRA solicited and obtained opinions from agencies *after* the specified deadline *and* failed to provide them to Minera Gorrión for comments, thereby denying Minera Gorrión's due process rights.

- If DGIRA finds that the MIA is missing information required to evaluate the project, it may send to the applicant a request for additional information (the "**RAI**"); this request can only be made once.[729] If SEMARNAT makes such a request, the initial 60-day evaluation period is suspended for a maximum of 60 days to allow time for the applicant to provide the information.[730] As Dr. Limón Aguirre explains, because the applicant is allowed only *one* opportunity to submit additional information and comment on the opinions, DGIRA cannot request additional opinions after the

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724 Pablo-Dorantes WS, at para. 45; *see also* Limón, at para. 38.

725 Pablo-Dorantes WS, at paras. 45-46; *see also* Limón, at para. 39; R-LGEEPA, at Art. 43, Sections I and II, **Exhibit C-164**.

726 Pablo-Dorantes WS, at para. 39; *see also* Limón, at para. 41; R-LGEEPA, at Art. 24, **Exhibit C-166**.

727 Limón, at para. 41. R-LGEEPA, at Art. 24, **Exhibit C-166**. Art. 55 of the *Ley Federal de Procedimiento Administrativo*, **Exhibit C-155**.

728 Pablo-Dorantes WS, at paras. 38-39; *see also* Limón, at para. 44; R-LGEEPA, at Art. 24, **Exhibit C-166**.

729 *See* Pablo-Dorantes WS, at paras. 38-39; *see also* Limón, at para. 45; R-LGEEPA, at Art. 22, **Exhibit C-166**.

730 Pablo-Dorantes WS, at paras. 38-39; *see also* Limón, at para. 45; R-LGEEPA, at Art. 22, **Exhibit C-166**.

prescribed period of 25 days from the creation of the case file.[731] As demonstrated below, in this case, DGIRA requested opinions outside the prescribed statutory deadline and, again, failed to provide them to Minera Gorrión for comments. Dr. Limón Aguirre further notes that in order to respect the guarantees of legality, legal certainty, and the right of defense, DGIRA must, in the RAI, request all information necessary to evaluate the MIA and must refrain from requesting information that is not required by the rules applicable to the procedure, or that is already in the file.[732]

- Within ten days of receiving the additional information from the applicant, DGIRA may extend the evaluation process by 60 days if the project's complexity warrants it; this extension can occur only once.[733] The purpose of the extension is to allow DGIRA additional time to evaluate the MIA and the additional information submitted by the concessionaire.[734] In sum, the maximum total time period for a MIA evaluation process is 180 days – *i.e.*, the initial 60 day period, the 60 day suspension period while the applicant responds to a request for information from SEMARNAT, plus a further 60 days if DGIRA extends the evaluation period. As shown below, DGIRA breached these deadlines by a significant margin in this case, as it issued its MIA Denial Decision more than one year after it was due under law.

272. In accordance with Article 44 of the R-LGEEPA, when assessing the MIA, DGIRA must consider the following factors: (i) the potential effects of the project on the entire ecosystem, not just the resources directly used or affected by it; (ii) the sustainable use of natural resources while preserving ecosystem integrity and capacity over time; and (iii) the preventive and mitigation measures proposed by the applicant to minimize environmental impact.[735]

273. Once it has completed its evaluation, DGIRA issues a resolution either (i) authorizing the works and activities proposed by the applicant; (ii) authorizing them with conditions; or

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731 Limón, at para. 44.

732 Limón, at para. 46.

733 Pablo-Dorantes WS, at paras. 38-39; *see also* Limón, at para. 47; LGEEPA, at Art. 35 bis, **Exhibit C-156**. Article 46 of the R-LGEEPA provides that the ordinary period may be extended once within (i) the 40 days after the MIA is received and the authority does not require additional information, or (ii) the 10 days following the reception of the additional information, when SEMARNAT requested it. **Exhibit C-166**.

734 Limón, at para. 47.

735 R-LGEEPA, at Art. 44, **Exhibit C-166**.

(iii) denying the MIA. The grounds for denying a MIA are limited to those defined under Article 35 of the LGEEPA,[736] namely that:

- The MIA contravenes the LGEEPA, R-LGEEPA, NOMs, or other applicable legal provisions;[737]
- The project endangers species that are at risk of extinction; or
- The MIA contains misrepresentations or false information.[738]

274. As Dr. Limón Aguirre explains, SEMARNAT may not deny a MIA when the applicant has provided insufficient information in the MIA, when SEMARNAT disagrees with the technical approach that the applicant used to prepare the MIA, or when SEMARNAT considers that the applicant's proposed prevention and mitigation measures are not sufficient to offset the impacts of the project on the environment.[739] In those cases, SEMARNAT has broad discretion to conditionally approve the project and to impose additional prevention or mitigation measures to ensure that the project will not harm the environment.[740] As noted above, SEMARNAT may also request additional information from the applicant, by issuing a RAI.[741]

275. Dr. Limón Aguirre further notes that SEMARNAT has a legal duty to issue a well-founded and reasoned decision based on best-available scientific evidence.[742] In accordance with Article 35 of the LGEEPA and the general duty of good faith that applies to all administrative authorities in Mexico,[743] SEMARNAT must be guided by scientific objectivity and its reasoning must be limited to the legal-environmental reasons pertinent to the project in question.[744] As demonstrated below, SEMARNAT failed to comply with these duties in this case.

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736 Pablo-Dorantes WS, at para. 18; Limón, at para. 50.

737 Pursuant to Article 36 of the LGEEPA, Mexican official norms are technical environmental instruments establishing requirements, specifications, conditions, proceedings, thresholds, and conditions that certain activities must comply. LGEEPA, at Art. 36, Sections I to III, **Exhibit C-156**.

738 LGEEPA, at Art. 35, Sections I to III, **Exhibit C-156**.

739 *See* Pablo-Dorantes WS, at paras. 18, 85; Limón, at paras. 125-126; 135; 137; 140.

740 LGEEPA, at Art. 35, Fraction II, **Exhibit C-156**. *See* Limón, at paras. 125-126; 135; 137; 140.

741 LGEEPA, Art. 35 BIS, **Exhibit C-156**.

742 Limón, at paras. 52-53.

743 Limón, at paras. 52-53.

744 Limón, at paras. 52-53.

276. If SEMARNAT approves or conditionally approves the MIA, the applicant may begin the construction and operation of its mining exploitation activities, subject to the conditions imposed by SEMARNAT and subject to the approval of additional discrete permits from relevant authorities, as the project may require.[745] If SEMARNAT rejects the MIA, the applicant may revise the MIA and resubmit it for approval.[746]

2.14.2 Minera Gorrión prepared and submitted to SEMARNAT a MIA complying with all applicable environmental laws and regulations

277. As noted, in parallel with Almaden's project financing initiatives, Minera Gorrión prepared and submitted to SEMARNAT its MIA for review and approval on 22 February 2019.[747]

278. As reflected in Chapter I of the MIA, the Ixtaca Project involved the exploitation of the Ixtaca epithermal gold and silver deposit through the construction and operation of an open pit mine with a total surface area of 133.68 hectares (Ha).[748] The Project's total area was 1,044.02 Ha, including the open pit.[749] As discussed by Mr. Pablo-Dorantes, the Ixtaca Project envisaged the construction and operation of the following infrastructure:

- A processing plant where mined material would be sorted and subjected to various metallurgical processes to obtain gold-silver doré bars for subsequent refining.[750]
- The construction of two permanent rainwater reservoirs, one with an estimated capacity of up to 300,000 cubic meters to be used specifically for the Project's mining activity, and the other with a capacity of up to 1.8 million cubic meters, which was to be a backup water source that would also provide water for the nearby communities.[751] These reservoirs were the engineering outcome of a comprehensive daily hydrological

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745 Pablo-Dorantes WS, at para. 18.

746 McDonald WS, at paras. 93-94.

747 Pablo-Dorantes WS, at para. 36. As Mr. Pablo-Dorantes notes, the MIA for the Ixtaca Project was first submitted in January 2019; however, "[d]ue to an oversight, this information was published in the newspaper one day late, so [he] advised Minera Gorrión that it should refile the MIA. It did so on 22 February 2019." *Id.*

748 MIA, Executive Summary, page 2, **Exhibit C-262.**

749 MIA, Executive Summary, page 2, **Exhibit C-262.**

750 Doré bars are the final product of the processing of minerals which, after refining, are then traded in the international markets of gold. *See* Brattle, at paras. 16, 79.

751 MIA, Chapter II, page 5, **Exhibit C-262.**

balance report prepared by the international mining consultancy, SRK Consulting, to optimize the collection and use of rainwater.[752]

- The construction of two mineral waste dumps (*tepetateras* or overburden dumps[753]), *i.e.*, areas where waste material extracted from the overlying rock and soil (known as stripping material) would be placed.[754] Minera Gorrión designed the first of these dumps exclusively for stripping material.[755] The second dump, called the overburden-dry tailings stack, was designed to dispose of stripping material mixed with filtered or "dry" tailings.[756] As noted above, Minera Gorrión designed this process itself, which "dried" the tailings used innovative, state-of-the-art technology both to reduce the water intake of the Project and to minimize the risk of contamination of ground water by acid drainage associated with traditional "wet" tailings.[757] Mr. Pablo-Dorantes explains in his witness statement the purpose and design of these waste dumps.[758]

279. The Ixtaca Project's envisaged infrastructure is detailed in the map below:

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752 *See* Appendix A to Minera Gorrión's reponse for additional information to SEMARNAT updated July 2019, **Exhibit C-286**; MIA, Chapter II, page 13, **Exhibit C-262**.

753 *Tepetates* are residues formed by piling of mineral material, with no economic value. It includes 'stripping'. The *tepetate* is a mining waste or sterile material that comes from mining that is collected and taken to the hauling area or stocks with machinery, called Tepetatera. *See* NOM-141-SEMARNAT-2003 issued by SEMARNAT on 13 September 2004, Section 4.2, **Exhibit C-173**. Overburden (also called waste or spoil) is the material that lies above an area that is being exploited.

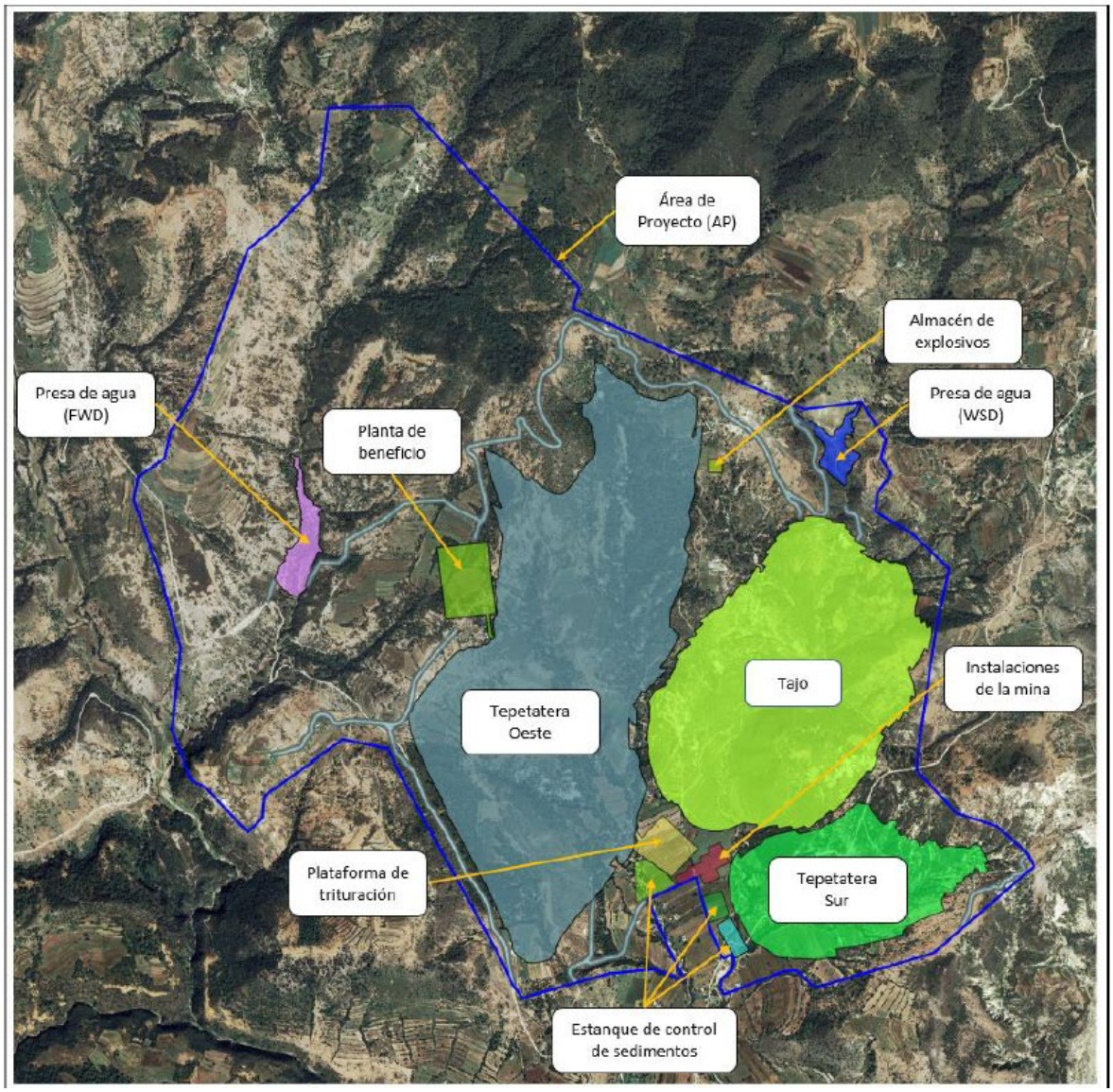
754 MIA, Chapter II, page 24, **Exhibit C-262**; Pablo-Dorantes WS, at para. 25(c).

755 MIA, Chapter II, page 24, **Exhibit C-262**; Pablo-Dorantes WS, at para. 25(c).

756 Tailings are solid wastes generated in primary operations of mineral separation and concentration. *See* NOM-141-SEMARNAT-2003 issued by SEMARNAT on September 13, 2004, Section 4.11, **Exhibit C-173**.

757 Pablo-Dorantes WS, at para. 25(c).

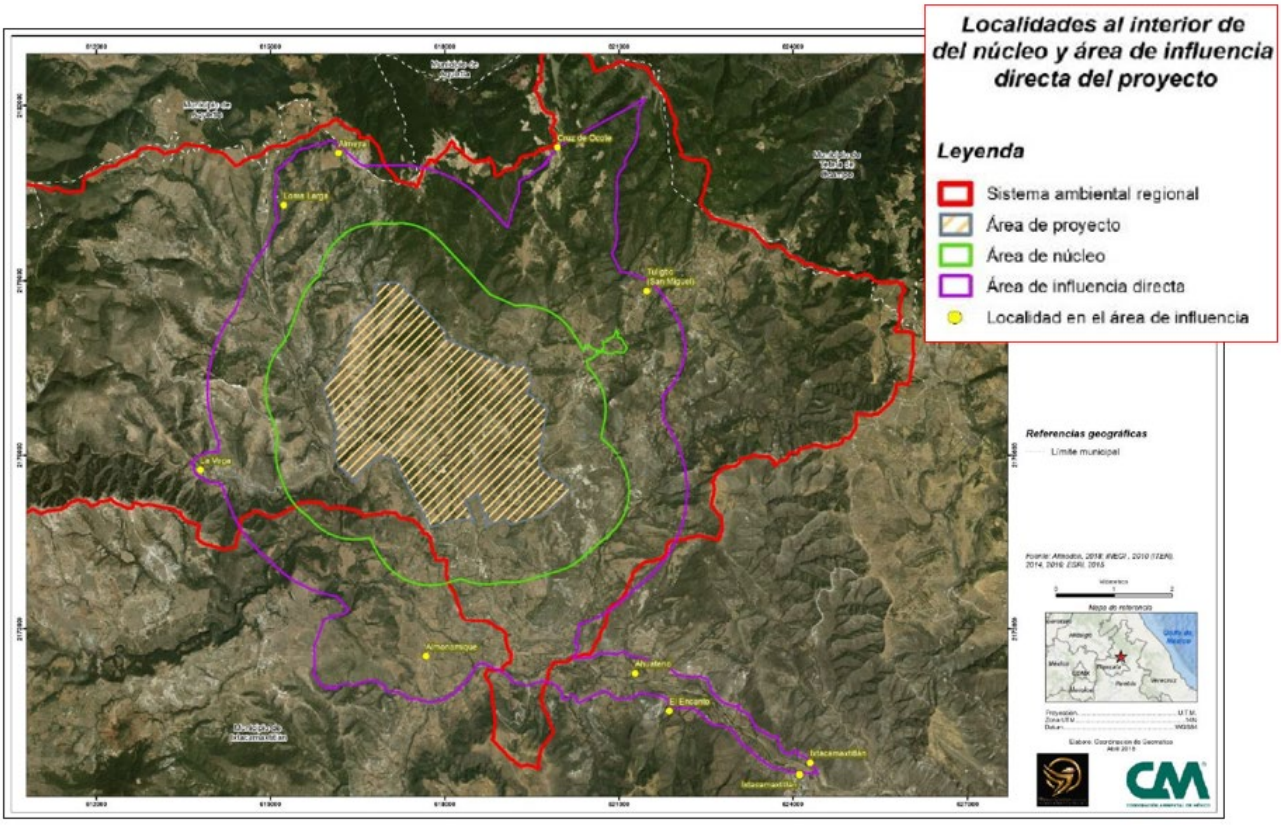
758 MIA, Chapter II, page 24, **Exhibit C-262**; *see* Pablo-Dorantes WS, at para. 25(c).



Map showing the infrastructure envisaged for the Ixtaca Project, including the open-pit (bright green), the two waste dumps (emerald green and grey-blue), the processing plant (green rectangle), and the two rainwater reservoirs (pink and blue) (Source: MIA, Chapter II, Figure II.2).[759]

[759] MIA, Chapter II, Figure II.2, p. 20, **Exhibit C-262.**

280. As Mr. Pablo-Dorantes explains in his witness statement, preparing the MIA was a lengthy and intensive process.[760] That process entailed conducting studies and defining in detail (i) the environmental regional system;[761] (ii) the Project's area of influence where the direct and indirect impacts associated with the Project would be concentrated,[762] and (iii) designing comprehensive prevention, mitigation, and compensation measures.[763] After carrying out these studies, the MIA defined the Project's area of influence as depicted in the map below. The impacts were concentrated only in the Ixtacamaxtitlán municipality.



Map showing the project area (yellow), the nucleus area (which concentrates the direct impacts, green) and the project's area of influence (where both the direct and indirect impacts of the project are located, purple) (Source: MIA, Chapter IV, Map IV.35).[764]

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760 Pablo-Dorantes WS, at para. 26.

761 SEMARNAT, *Guía para la presentación de la manifestación de impacto ambiental del sector*, defines the environmental system as the "set of biotic, abiotic and socioeconomic elements that interact in the geographical space of the project;" at p. 4, **Exhibit C-447.**

762 MIA, Chapter IV, page 161, **Exhibit C-262**. Direct impacts are defined as modifications of the environment resulting from the project, whereas indirect impacts are modifications to the environment resulting from those direct impacts. For instance, constructing an open pit mine has a direct impact on the trees that must be removed, whereas an indirect impact is the relocation of people that move to the area to work in the construction and operation of the open pit mine. Pablo-Dorantes WS, at para. 30.

763 Pablo-Dorantes WS, at para. 26.

281. The MIA also identified the environmental risks and impacts associated with the Ixtaca Project, noting 41 positive impacts and 137 negative impacts, only 12 of which were severe.[765] The MIA did not deem any those 12 severe impacts critical or incompatible with the preservation of the regional ecosystem.[766]

282. In accordance with Articles 12 and 13 of the R-LGEEPA, the MIA included a range of prevention and mitigation measures to offset the negative impacts that would be generated by the Ixtaca Project.[767] These included measures related to: (i) soil protection and erosion control, such as the construction of gutters to control sediments;[768] (ii) flora rescue and relocation, such as programs for monitoring the survival of species and measures to control the effects of wildfires; and (iii) eight other areas, such as pollution control and dangerous substances control.[769] These comprehensive prevention and mitigation measures – and the *programa de vigilancia ambiental* to monitor them – are set forth in the MIA and explained in greater detail in Mr. Pablo-Dorantes's witness statement.[770]

283. Based on Mr. Pablo-Dorantes's experience as an environmental consultant and involvement in the preparation of over 80 MIAs, he observes that the environmental impacts identified for the Ixtaca Project were within the expected range for comparable mining projects.[771] In fact, SEMARNAT has approved MIAs for projects with significantly greater environmental impacts than those associated with the Ixtaca Project. For example, on 24 June 2021, SEMARNAT approved the expansion of the existing Boleo copper, cobalt, zinc, and manganese project in Baja California Sur.[772] That Project spans approximately 20,490 Ha, *i.e.*, nearly 20 times the

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764 MIA, Chapter IV, pages 160 to 162, and map IV.35, page 163, **Exhibit C-262.**

765 MIA, Chapter VI, page 47 and Executive Summary, pages 6 and 7, **Exhibit C-262**.

766 MIA, Chapter VI, page 47 and Executive Summary, pages 6 and 7, **Exhibit C-262**.

767 MIA, Chapter VII, **Exhibit C-262**.

768 MIA, Chapter VII, page 6, **Exhibit C-262**.

769 MIA, Chapter VII, page 7, **Exhibit C-262**.

770 Pablo-Dorantes WS, at paras. 33-34.

771 Pablo-Dorantes WS, at paras. 35, 47.

772 SEMARNAT Official Notice SGPA/DGIRA/DG/03117 dated 24 June 2021, **Exhibit C-366**.

size of the Ixtaca Project,[773] and its expansion posed higher environmental risks than the Ixtaca Project because it is located within a natural protected area with a frailer ecosystem.[774]

284. Ultimately, the MIA concluded that the Ixtaca Project was environmentally viable and that it did not contradict "any elements in the Mexican legislation."[775]

285. As Mr. Pablo-Dorantes affirms, he and the team of consultants he oversaw to prepare the MIA carried out their work to the highest standard:

> In my experience preparing more than 80 MIAs throughout my over 30 years of experience, I can say that the MIA for the Ixtaca Project was prepared by experienced professionals, applying the highest technical standards for risk prevention and mitigation, and strictly complying with the technical environmental rules and regulations prescribed under Mexican Law.[776]

286. In sum, Minera Gorrión's MIA complied in full with the legal and technical requirements set out in the LGEEPA and R-LGEEPA, and was supported by robust technical information prepared by independent consultants.[777] As Dr. Limón Aguirre opines, Minera Gorrión "provided all the information that was required and therefore it was sufficient for SEMARNAT to evaluate and approve" the MIA.[778] Rather than do so in good faith, however, SEMARNAT instead first suspended and then rejected Minera Gorrión's MIA based on a series of baseless and pretextual grounds, as explained below.

2.14.3 SEMARNAT's management of the MIA evaluation process was riddled with irregularities

287. From start to finish, SEMARNAT's evaluation of Minera Gorrión's MIA was marred by irregularities, depriving Minera Gorrión of its fundamental due process rights, including its right to be heard. What is more, as the record demonstrates, SEMARNAT's decisions first

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773 Minería en Línea webpage, "Proyecto Boleo", <https://mineriaenlinea.com/proyectos/proyecto-boleo/>, **Exhibit C-449,** Pablo-Dorantes WS, at para. 35.

774 Pablo-Dorantes WS, at para. 35.

775 MIA, Executive Summary, page 9, **Exhibit C-262.**

776 Pablo-Dorantes WS, at para. 23.

777 Pablo-Dorantes WS, at para. 23.

778 Limón, at paras. 108-109.

suspending and then rejecting Minera Gorrión's MIA were not based on an objective or fair evaluation of the MIA under applicable Mexican environmental law, but rather on AMLO's express political directive not to approve any new mining projects, as elaborated below.

2.14.3.1 SEMARNAT unduly postponed the RPI

288. As noted, on 22 February 2019, Minera Gorrión submitted its MIA for the Ixtaca Project.[779] On 27 February 2019, within the prescribed five days, Minera Gorrión published an excerpt of the Ixtaca Project in the *Heraldo de Puebla* newspaper.[780] The next day, SEMARNAT published in its *Gaceta Ecológica* a notice announcing the MIA submission.[781]

289. On 12 March 2019, DGIRA, the SEMARNAT office tasked with reviewing MIAs, informed Minera Gorrión that, on 7 March 2019, two members of the Ixtacamaxtitlán municipality had requested a public consultation process and that DGIRA had granted the request.[782] On 15 March 2019, Minera Gorrión published for a second time the Project's excerpt in the *Milenio Diario Puebla*, as required.[783] In that excerpt, Minera Gorrión noted the significant positive impact that the Ixtaca Project envisaged, including the investment of MXN 3,484 million and creation of approximately 600 jobs during construction and 420 during operation.[784] Minera Gorrión further described the Project's environmental impacts and proposed mitigation measures.[785] True to its principles, Minera Gorrión pledged to engage in an open and transparent dialogue to address the community's environmental concerns and it fulfilled that

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779 Minera Gorrión, *Solicitud para Manifestación de Impacto Ambiental para el Proyecto de Ixtaca*, 22 February 2019, at **Exhibit C-62**.

780 Letter from Minera Gorrión to SEMARNAT dated 1 March 2019 appending the newspaper article publishing the excerpt of the MIA on the 27 February 2019 *Heraldo de Puebla* paper, **Exhibit C-272**; *see* also Letter from Minera Gorrión to SEMARNAT dated 15 March 2019 appending the newspaper article publishing the excerpt of the MIA on the 27 February 2019 *Heraldo de Puebla* paper, **Exhibit C-274.**

781 Oficio No. SGPA/DGIRA/DG/02017 from the Director General of Impact and Environmental Risk at SEMARNAT to Minera Gorrión dated 12 March 2019, **C-64**.

782 Oficio No. SGPA/DGIRA/DG/02017 from the Director General of Impact and Environmental Risk at SEMARNAT to Minera Gorrión dated 12 March 2019, **C-64.**

783 Letter from Minera Gorrión to the Director General of Impact and Environmental Risk at SEMARNAT dated 22 March 2019, **C278**.

784 Letter from Minera Gorrión to the Director General of Impact and Environmental Risk at SEMARNAT dated 22 March 2019, **C278**.

785 Minera Gorrión, *Extracto de la MIA 2da Publicacion,* 14 March 2019, at **Exhibit C-65**.

pledge, as detailed in the witness statements of Messrs. Santamaría Tovar and Pablo-Dorantes.[786]

290. DGIRA published its decision to hold an RPI as part of the public consultation process on 26 March 2019.[787] It was thus required to schedule the RPI within 25 business days, *i.e.*, no later than 30 April 2019, and to hold the RPI within five business days after that, *i.e.*, no later than 8 May 2019.[788] In breach of these deadlines, DGIRA published the public notice scheduling the RPI only on 2 May 2019 and scheduled the RPI for 11 June 2019, *i.e.*, one month outside the legally required timeline.[789] The reason given by SEMARNAT at the time was that it did not want to interfere with the Puebla State elections or for the RPI to be perceived as "an act of political partisanship."[790] However, as Dr. Limón Aguirre and Mr. Pablo-Dorantes both observe, that rationale lacked any reasonable basis – an RPI is not a political act, but rather an opportunity for the public to be informed about a commercial project.[791] Of course, AMLO's politicization of the mining sector was well underway at that point.[792]

291. Notwithstanding DGIRA's baseless delay, Minera Gorrión made significant efforts to prepare for the RPI.[793] However, on 10 June 2019, less than 24 hours before the RPI was to be held, DGIRA announced in its *Gaceta Ecológica* that it was postponing the RPI until 25 June 2019.[794]

292. In a letter dated that same day – 10 June 2019 – UCPAST, the SEMARNAT office responsible for organizing RPIs, advised Minera Gorrión of the purported reasons for the postponement. The stated rationale was again spurious. This time, UCPAST justified the postponement of the RPI on the basis that the Secretary of SEMARNAT, Ms. Josefa González Blanco, had been replaced by a new Secretary, Mr. Toledo.[795] According to UCPAST, the change in Secretary meant that the RPI had to postponed to "ensure the effectiveness of the environmental impact

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786 Pablo-Dorantes WS, at paras. 44-45.; Santamaría Tovar WS, at paras. 23, 27, 54.

787 *Gaceta Ecológica No. DGIRA/16/19* dated 26 March 2019, **Exhibit C-279**.

788 Pablo-Dorantes WS, at para. 45.

789 *Gaceta Ecológica No. DGIRA/023/19* dated 2 May 2019, **Exhibit C-283**.

790 *Gaceta Ecológica No. DGIRA/023/19* dated 2 May 2019, at p. 11, **Exhibit C-283**.

791 Pablo-Dorantes WS, at para. 47.

792 *See supra*.

793 Pablo-Dorantes WS, at para. 48.; Santamaría Tovar WS, at paras. 98-99.

794 *Gaceta Ecológica No. DGIRA/031/19* dated 10 June 2019, **Exhibit C-290**.

795 Oficio No. UCPAST/19/434/1-4 from UCPAST at SEMARNAT to Minera Gorrión dated 10 June 2019, **C-291**.

assessment procedure."[796] Again, however, UCPAST's rationale lacked any reasonable basis. As Mr. Pablo-Dorantes explains, the Secretary rarely (if ever) attends RPIs and so the change in Secretary did not require any postponement of the RPI to ensure its effectiveness.[797] What is more, Secretary Toledo did not even bother to attend the rescheduled RPI, as noted below.

293. Moreover, as documents obtained by the Claimants under Mexico's Transparency Act reflect,[798] SEMARNAT's eleventh-hour postponement was actually the result of NGO intervention. Specifically, by letter dated 9 June 2019 – *i.e.*, one day before the postponement – local residents and self-identified members of the NGO Atcolhua urged SEMARNAT to cancel the RPI.[799] According to Atcolhua, Minera Gorrión's conduct had allegedly compromised the impartiality of the RPI.[800] These complaints were fatuous on their face. For example, Atcolhua complained that Minera Gorrión's offer to provide food at the RPI, which would potentially last all day, and its renovation of the Santa María Zotoltepec's auditorium would affect the impartiality of the RPI.[801] Such baseless allegations made clear that Atcolhua sought only to prevent the RPI from taking place, rather than give the Project a fair public dialogue.[802]

294. The postponement of the RPI disrupted Minera Gorrión's planning and confused the local communities.[803] Ironically, even SEMARNAT officials from Puebla arrived in Santa María Zotoltepec on 11 June 2019 for the RPI, unaware that SEMARNAT in Mexico City had abruptly and wrongfully cancelled the RPI the day before.[804]

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796 Oficio No. UCPAST/19/434/1-4 from UCPAST at SEMARNAT to Minera Gorrión dated 10 June 2019, **C-291.**

797 Oficio No. UCPAST/19/434/1-4 from UCPAST at SEMARNAT to Minera Gorrión dated 10 June 2019, **C-291.**

798 UCPAST Official Letter SEMARNAT/UCPAST/UT/24004/19 to Minera Gorrión dated 12 July 2019 appending letter from Atcolhua SEMARNAT, 9 June 2019, at **Exhibit C-71**.

799 UCPAST Official Letter SEMARNAT/UCPAST/UT/24004/19 to Minera Gorrión dated 12 July 2019 appending letter from Atcolhua SEMARNAT, 9 June 2019, at **Exhibit C-71**.

800 UCPAST Official Letter SEMARNAT/UCPAST/UT/24004/19 to Minera Gorrión dated 12 July 2019 appending letter from Atcolhua SEMARNAT, 9 June 2019, at **Exhibit C-71**.

801 UCPAST Official Letter SEMARNAT/UCPAST/UT/24004/19 to Minera Gorrión dated 12 July 2019 appending letter from Atcolhua SEMARNAT, 9 June 2019, at **Exhibit C-71**.

802 *See* Pablo-Dorantes WS, at paras. 50-51.; Santamaría Tovar WS, at paras. 97-99**.**

803 Santamaría Tovar WS, at para. 97.

804 Santamaría Tovar WS, at para. 97.

295. On 25 June 2019, the rescheduled RPI took place at the Santa María Zotoltepec auditorium.[805] Neither Secretary Toledo nor DGIRA's Director bothered to attend. Representatives from human rights organizations attended, including OXFAM México A.C. and the Office of the High Commissioner of the United Nations, as well as representatives from various NGOs, including PODER and Fundar.[806] In total, 1,446 people attended the RPI.[807]

296. As Mr. Santamaría Tovar testifies, the atmosphere at the RPI was lively, with an undeniable sense of enthusiasm from those community members in favor of the Project.[808] Minera Gorrión's official YouTube channel features a video that captures how the session unfolded peacefully inside the venue.[809] However, SEMARNAT did not conduct the RPI in a balanced manner.[810] This is illustrated by the following facts:

- SEMARNAT allocated to Minera Gorrión a mere 45 minutes to explain the details of the Project, even though DGIRA had allocated 90 minutes to Minera Gorrión in its original RPI agenda.[811] That allocated time not only was insufficient but also contravened SEMARNAT's prior practice in RPIs for comparable projects, where applicants had at least 90 minutes to present their projects.[812] There was no reason why this RPI should have deviated from that standard practice.

- SEMARNAT limited the topics that Minera Gorrión was permitted address in its presentation, allowing it to discuss only the impact of the Project on flora and fauna and asserting that other subjects, such as employment and environmental rehabilitation, were "not directly relevant."[813] By contrast, SEMARNAT allowed

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805 SEMARNAT, *Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca",* 25 June 2019, at page 3, **Exhibit C-74**.

806 SEMARNAT, *Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca",* 25 June 2019, at page 5, **Exhibit C-74**; Santamaría Tovar WS, at para. 99.

807 SEMARNAT, *Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca",* 25 June 2019, at page 3, **Exhibit C-74**.

808 *Reunión Pública de Información "Proyecto de Explotación y Beneficio de Minerales Ixtaca" RPI*, Minera Gorrión YouTube Channel, dated 28 June 2019, available at https://www.youtube.com/watch?v=0LBUun_uL9A (last accessed 2 March 2025), **Exhibit C-297**.

809 Santamaría Tovar WS, at para. 100; *Reunión Pública de Información "Proyecto de Explotación y Beneficio de Minerales Ixtaca" RPI*, Minera Gorrión YouTube Channel, 28 June 2019, https://www.youtube.com/watch?v=0LBUun_uL9A.

810 *See* Pablo-Dorantes WS, at para. 53.; Santamaría Tovar WS, at paras. 101-102.

811 Santamaría Tovar WS, at para. 101.

812 *See Tiempos RPI de la 4T,* Excel spreadsheet, **Exhibit C-450**.

813 Santamaría Tovar WS, at para. 102.

opposition groups to make a broad range of unfounded and generalized allegations, from the alleged death of animals caused by mining to the alleged "abuse" of Canadian companies worldwide.[814] These topics, according to SEMARNAT, were relevant.[815]

- SEMARNAT allowed 22 presentations, mostly from NGOs who opposed the Project or community members aligned with such NGOs.[816] These presentations took up a disproportionate amount of the RPI – approximately two hours out of the total five-hour duration.[817] By contrast, SEMARNAT denied presentations proposed by community members who supported the Project based on trivial reasons, such as the alleged failure to present "a printed or electronic document containing observations or proposals related to the project's environmental impact."[818] By prioritizing the presentations of the Project's opponents over its supporters, SEMARNAT failed to ensure the impartiality of the RPI process.

297. Despite SEMARNAT's unbalanced approach, Messrs. Santamaría Tovar and Pablo-Dorantes were able to effectively present the technical aspects of the Project in response to live questions from the attendees, including water treatment and conservation, risk identification and prevention measures, construction of the overburden-dry tailings stack, and the processes involved in the extraction of minerals and the operation of the processing plant.[819] They also were able to effectively address several concerns that reflected disinformation from the NGOs. Specifically, as Mr. Pablo-Dorantes explains, some community members inquired about the Project's use of arsenic and the risk of contamination via acid drainage, two issues that the NGOs had been focusing on to foment opposition to the Project.[820] Messrs. Santamaría Tovar and Pablo-Dorantes made clear during the RPI that the Project would *not* require the use of arsenic and that this toxic chemical was also *not* present in significant concentrations within the Ixtaca deposit.[821] They further clarified that the risk of contamination by acid drainage was very low as a result of the large quantity of buffering limestone in the waste rock and the use

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814 Santamaría Tovar WS, at para. 102.

815 *See* Santamaría Tovar WS, at para. 102.

816 Santamaría Tovar WS, at para. 102**.**

817 SEMARNAT, *Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca",* 25 June 2019, at page 3, **Exhibit C-74**; *see* R-LGEEPA, at Art. 43, Section IV, **Exhibit C-166**.

818 E-mail from SEMARNAT to [redacted] Denying Attendance to RPI, dated 10 June 2019, **Exhibit C-288**.

819 *See* Pablo-Dorantes WS, at para. 54.; Santamaría Tovar WS, at para. 101.

820 Pablo-Dorantes WS, at para. 54(c), (d).

821 Pablo-Dorantes WS, at para. 54(c), (d).

of the "dry" tailings technology, but that Minera Gorrión would implement constant monitoring throughout Project operations.[822]

298. Notwithstanding SEMARNAT's efforts to interfere in the RPI, the RPI concluded with the signing of the *Acta* by the community members in attendance, as well as by officials from UCPAST, DGIRA, and Minera Gorrión, as required for MIA approval.[823]

2.14.3.2 Minera Gorrión timely submitted all additional information

299. On 9 May 2019, some three months after Minera Gorrión submitted its MIA, SEMARNAT requested additional information in the form of an RAI.[824] In the RAI, SEMARNAT requested Minera Gorrión to provide additional information in relation to ten areas, including (i) hydrology; (ii) flora and fauna; (iii) the potential impacts of the Ixtaca Project on indigenous communities; (iv) construction, operation and mitigation measures for the overburden-dry tailings stack, referencing NOM-141;[825] and (v) concerns raised in questionnaires filed by interested parties during the public consultation process, among other topics.[826]

300. Legally, this was the only RAI SEMARNAT was permitted to make.[827] As such, the topics outlined in the RAI defined the entire scope of issues that SEMARNAT considered required clarification or additional information.[828] In other words, SEMARNAT was required to identify any and all perceived insufficient information in the RAI – and not later.[829]

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822 Pablo-Dorantes WS, at para. 54(d).

823 SEMARNAT, *Acta Circunstanciada de La Reunion Publica de Informacion del Proyecto Denominado "Proyecto de Explotacion y Beneficio de Minerals Ixtaca",* 25 June 2019, at page 3, **Exhibit C-74**.

824 Pablo-Dorantes WS, at para. 62.

825 As explained in detail by Messrs. Pablo-Dorantes and Limón Aguirre, NOM-141 is the legal instrument that sets forth the requirements for assessing the project's tailings and the construction, operation, and closure of the tailing stack or dam. *See* NOM-141-SEMARNAT-2003 issued by SEMARNAT on 13 September 2004, Sections 5.2 and 5.3, **Exhibit C-173**. *See* Pablo-Dorantes WS, at para. 63(f); *see also* Limón, at paras. 143-145.

826 Pablo-Dorantes WS, at para. 63; *see also* Limón, at para. 142.

827 R-LGEEPA, at Art. 22, **Exhibit C-166**.

828 *See* Pablo-Dorantes WS, at para. 39; *see also* Limón, at paras. 108-109.

829 *See* Pablo-Dorantes WS, at para. 39; *see also* Limón, at paras. 108-109.

301. On 31 July 2019, Minera Gorrión filed its response to the RAI.[830] That response spanned over 100 pages and addressed comprehensively the additional information SEMARNAT had requested.[831] It also appended extensive supporting evidence, including:

- An updated Feasibility Study Site-Water Balance Report compiled by SRK Consulting,[832] which addressed in detail the water balance between supply and demand for the Ixtaca Project and confirmed the adequacy of the company's water management system;[833]

- Certain geographical information with respect to the location of the proposed construction work for the Ixtaca Project;[834]

- The Executive Summary of the EVIS prepared by Igual Consultores describing the communities within the Ixtaca Project's area of influence; as noted, Igual Consultores did *not* identify Tecoltemi as located within the area of influence or as an indigenous community;[835]

- The SECOTRADE and CDI letters concluding that no indigenous consultations were required prior to carrying out the Ixtaca Project, as discussed above;[836]

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830 *Respuesta a la Solicitud de Información Adicional de la Manifestación de Impacto Ambiental, modalidad regional,* prepared by CAM in July 2019, **Exhibit C-299**.

831 *Respuesta a la Solicitud de Información Adicional de la Manifestación de Impacto Ambiental, modalidad regional,* prepared by CAM in July 2019, **Exhibit C-299**.

832 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, at p. 8, Annex A to Minera Gorrión's RAI Response, **Exhibit C-286**.

833 SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, at p. 8, Annex A to Minera Gorrión's RAI Response, **Exhibit C-286**.

834 Specifically, the RAI requested the Universal Transverse Mercator coordinates for such work. The Universal Transverse Mercator coordinate system "*divides the world into sixty north-south zones, each 6 degrees of longitude wide. UTM zones are numbered consecutively beginning with Zone 1, which includes the westernmost point of Alaska, and progress eastward to Zone 19, which includes Maine . . . [w]ithin each zone, coordinates are measured as northings and eastings in meters. The northing values are measured from zero at the equator in a northerly direction. Each zone has a central meridian that is assigned an easting value of 500,000 meters." See* USGS, 'How are UTM coordinates measured on USGS topographic maps?' <https://www.usgs.gov/faqs/how-are-utm-coordinates-measured-usgs-topographic-maps>, **Exhibit C-444**.

835 *Evaluación de Impacto Social Proyecto Ixtaca* (EVIS), Executive Summary, dated July 2018, **Exhibit C-540** (appended as Annex C-1 to Minera Gorrión's RAI Response).

836 Oficio No. SECOTRADE/SDE/DGP/074/2018 from SECOTRADE dated 5 October 2018, Annex C-2 to Minera Gorrión's RAI Response, **Exhibit C-257**; Oficio No. CGPE/2018/OF/0802 from CDI dated 28 September 2018, Annex C-2 to Minera Gorrión's RAI Response, **Exhibit C-257**.

- Calculations demonstrating that the ecological water flows in the environmental system would not be significantly impacted by the proposed water reservoirs;[837] and

- A report prepared by the respected independent engineering and environmental consultancy Knight Piésold, demonstrating the low risk of acid drainage from the overburden dry-tailings stack, due to the neutralizing characteristics of the limestone hosting the gold-silver mineralization.[838]

302. As both Dr. Limón Aguirre and Mr. Pablo-Dorantes confirm, Minera Gorrión's response to the RAI was comprehensive and addressed in detail each of SEMARNAT's ten requests for additional information, as well as each of the concerns raised in the technical opinions and questionnaires filed by interested parties.[839]

303. On 1 August 2019, the day after Minera Gorrión filed its response, the ordinary evaluation period resumed.[840] On 6 August 2019, however, SEMARNAT extended the evaluation period for an additional 60 days on the ground that SEMARNAT needed additional time to address the technical elements set out in Minera Gorrión's RAI response.[841]

304. This extension meant that SEMARNAT was required to issue its final decision on or before 8 November 2019.[842] However, as explained further below, rather than doing so, SEMARNAT instead devised a pretextual and improper basis to suspend the MIA evaluation indefinitely.

2.14.3.3 SEMARNAT violated Minera Gorrión's due process rights by requesting belatedly technical opinions and not allowing Minera Gorrión to review or comment thereupon

305. In addition to the RAI and in parallel with the RPI process described above, on 4 March 2019, SEMARNAT requested technical opinions from 14 federal agencies and groups of experts on

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837 *Memoria Calculo Qecol Ixtaca Rev02 201907-15* xls., Annex D to Minera Gorrión's RAI Response, **Exhibit C-301**. Ecological flows relate to an assessment of the quality, quantity, and variations of the water levels required to maintain the functions and processes of an ecosystem.

838 *Respuesta a la Solicitud de Información Adicional de la Manifestación de Impacto Ambiental, modalidad regional,* prepared by CAM in July 2019, p. 39, **Exhibit C-299**.

839 *See* Pablo-Dorantes WS, at para. 65; *see also* Limón, at paras. 111-124; 142.

840 *See* LGEEPA, at Art. 35 *bis*, **Exhibit C-156**.

841 SEMARNAT Official Notice No. SGPA/DGIRA/DG/0681 dated 6 August 2019, **Exhibit C-303**.

842 *See* Pablo-Dorantes WS, at para. 67; *see also* Limón, at para. 93.

topics such as geology, engineering, and indigenous matters.[843] SEMARNAT set a 25 March 2019 deadline for the submission of these opinions, giving the agencies and experts 15 working days to respond, in line with the maximum 25-day period allowed under the R-LGEEPA for the submission of technical opinions.[844]

306. During this 15-day period, SEMARNAT received and added to the MIA case file responses from the four entities (out of 14) that had responded to its request, namely: (i) the CDPI;[845] (ii) the Puebla delegation of PROFEPA;[846] (iii) the *Instituto de Geología* of UNAM;[847] and (iv) the *Subsecretaría de Atención a Pueblos Indígenas* of the Puebla State Governor.[848] As Mr. Pablo-Dorantes explains, it is usual for certain authorities not to respond to SEMARNAT's request for technical opinions.[849]

307. In addition to these four opinions – which were the only ones received within the deadline – SEMARNAT received and incorporated two additional, belated opinions and improperly relied on them in its MIA Denial Decision, namely:[850]

- An opinion from INPI's Puebla Office, filed on 10 April 2019, which SEMARNAT received 16 days after the deadline;[851] and
- An opinion from the *Dirección General de Vida Silvestre* ("**DGVS**"), the subdivision of SEMARNAT responsible for preserving and guaranteeing the sustainability of

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843 Pablo-Dorantes WS, at para. 57; *see also* Limón, at para. 74.

844 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 4, Section IV, **Exhibit C-86.** Limón, at para. 41.

845 Received on 12 March 2019, *see* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 6, Section XI, **Exhibit C-86**. The *Comisión Para el Diálogo con los Pueblos Indígenas de México* ("**CDPI**") is an office of the Secretary of Government ("**SEGOB**") that fosters dialogue with indigenous communities. *See* Pablo-Dorantes WS, at para. 58.

846 *See* Oficio No. PFPA/27.2/440/2019 from PROFEPA to SEMARNAT dated 12 March 2019, **Exhibit C-273**; *see also* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 6, Section XII, **Exhibit C-86**.

847 Received on 21 March 2019, *see* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 6, Section XIV, **Exhibit C-86**.

848 Received on 21 March 2019, *see* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 6, Section XIV, **Exhibit C-86**; *see also* Pablo-Dorantes WS, at para. 58.

849 *See* Pablo-Dorantes WS, at para. 59.

850 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 85, 101, and 131, **Exhibit C-86**; *see also* Pablo-Dorantes WS, at para. 60.

851 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 8, Section XXIII, **Exhibit C-86**.

wildlife, which SEMARNAT received on 11 February 2020, almost *a full year* after SEMARNAT's 4 March 2019 request.[852]

308. While SEMARNAT gave Minera Gorrión an opportunity to comment on the belated INPI opinion in its RAI,[853] Minera Gorrión had *no* opportunity to comment on or even to review the belated DGVS opinion, even though, as explained below, SEMARNAT relied on this opinion in multiple instances to reject Minera Gorrión's MIA.[854] As Dr. Limón Aguirre notes, such conduct was a serious departure from the regulatory framework and in breach of due process.[855]

309. That SEMARNAT was casting about to find additional grounds to deny the MIA is confirmed by its next course of irregular actions. Unbeknownst to Minera Gorrión, on 19 August 2019, SEMARNAT sought further technical opinions from two more SEMARNAT subdivisions, even though it had no legal basis to solicit additional technical opinions.[856] Specifically, DGIRA requested opinions from (i) the *Dirección General de Gestion Forestal y de Suelos* ("**DGGFS**"), and (ii) the *Unidad Coordinadora de Asuntos Jurídicos* ("**UCAJ**").[857]

310. On 24 October 2019, DGGFS submitted its opinion to SEMARNAT.[858] SEMARNAT did not forward Minera Gorrión a copy of this opinion, as required.[859] Rather, Minera Gorrión only came to learn of the irregular DGGFS opinion in December 2020, when SEMARNAT issued the MIA Denial Decision relying in part on that opinion.[860] As Dr. Limón Aguirre observes, this conduct too was highly irregular, in breach of the regulatory framework, and in violation of due process.[861]

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852 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 132, Section XXIII, **Exhibit C-86**.

853 *Respuesta a la Solicitud de Información Adicional de la Manifestación de Impacto Ambiental, modalidad regional,* prepared by CAM in July 2019, pages 61 et seq., **Exhibit C-299**.

854 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 85, 103, and 132, **Exhibit C-86**; *see also* Pablo-Dorantes WS, at para. 61.

855 Limón, at paras. 44; 76; 102.

856 Limón, at paras. 44; 76; 102. R-LGEEPA, at Art. 24, **Exhibit C-166**.

857 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pp. 10 and 11, Section XL, **Exhibit C-86**.

858 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, recital 21, at p. 131, **Exhibit C-86**. UCAJ did not file a technical opinion.

859 Pablo-Dorantes WS, at para. 69.

860 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 37-42, **Exhibit C-86**.

861 Limón, at paras. 44; 76; 102.

2.14.3.4 SEMARNAT suspended the MIA evaluation without legal basis

311. While SEMARNAT continued its review of Minera Gorrión's MIA, public statements made by Secretary Toledo and AMLO in the latter part of 2019 made clear that irrespective of the merits of the MIA, SEMARNAT was going to reject it in line with AMLO's policy.

312. Specifically, on 23 August 2019, approximately three months before SEMARNAT was due to render its decision on the MIA, Secretary Toledo declared publicly at a forum held in Puebla at the *Benemérita Universidad Autónoma de Puebla* that "*with respect to Ixtacamaxtitlán, SEMARNAT is not going to permit it.*"[862] He reiterated that same promise later, stating that, "*[w]ith SEMARNAT, Ixtaca will not happen . . . The most important task of the government is to promote social power. We will do nothing that does not seek to empower communities*."[863]

313. Minera Gorrión only learned of these shocking declarations while preparing for this arbitration. With these announcements, made seemingly before SEMARNAT had fully considered Minera Gorrión's MIA, SEMARNAT had made clear its role in AMLO's pledge not to permit any new mining projects. The result of the MIA evaluation was therefore a foregone conclusion – SEMARNAT simply needed to come up with a basis to reject it.

314. On 31 October 2019, in one of his daily *mañaneras*, AMLO himself reaffirmed Secretary Toledo's declarations.[864] In response to a question regarding the status of the MIA for the

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862 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2019), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, last accessed on 8 March 2025, **Exhibit C-309** (emphasis added). (This answer was given to the following question from the audience: that (2:44:58-2:46:10) "What is going to happen with Ixtacamaxtitlán, what is going to happen with the open-pit mining project in Ixtacamaxtitlán. The entire Sierra Norte is plagued with death projects, hydroelectric plants, mining projects. And internally in these days the Secretary will be responding to the resolution regarding the yes or no to the exploitation... as citizens we demand the cancellation of all mining projects. It is not possible for us to continue with this model." *See* response at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, last accessed on 8 March 2025, **Exhibit C-309** (emphasis added). (original in Spanish "*Qué va a pasar con Ixtacamaxtitlán, qué va a pasar con el proyecto minero a cielo abierto en Ixtacamaxtitlán. Toda la Sierra Norte está plagada de proyectos de muerte, hidroeléctricas, proyectos mineros. E internamente en estos días la Secretaría estará dando respuesta a la resolución sobre el sí o no a la explotación... como ciudadanos exigimos la cancelación de todos los proyectos mineros. No es posible que sigamos con este modelo" Toledo's response was "Con respecto a Ixtacamaxtitlán, la SEMARNAT no lo va a permitir si se establece que... [aplausos] No, no lo vamos a permitir, no pensamos permitir que la SEMARNAT [aplausos].*")

863 Lado B, 'Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán "no va a ser"', dated 29 August, available on: https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307.**

864 "Confío en Victor Manuel Toledo (titular de la Semarnat)" indicó López Obrador respecto a otorgar permisos a la minera Canadiense Almaden Minerals en Ixtacamaxtitlán, La Jornada de

Ixtaca Project, AMLO expressed his full confidence in Secretary Toledo: "*[y]ou have to trust Victor Manuel Toledo. He . . . participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others. I have absolute confidence in him*."[865] Simply put, AMLO knew and understood that Secretary Toledo would comply with his marching orders not to permit any new mining projects, including Ixtaca.

315. SEMARNAT made good on these declarations first by using the Telcoltemi *amparo* proceedings as a pretext to improperly suspend the MIA evaluation, and then ultimately by rejecting the MIA outright in December 2020.

316. Specifically, on 4 October 2019, almost one month before SEMARNAT was required to issue its decision on the MIA, DGIRA submitted a letter to the Second District Court inquiring about the existence of the Tecoltemi *amparo* and the injunction imposed by the Court years earlier.[866] But SEMARNAT was not a party to the *amparo* proceeding, and the proceeding was entirely unrelated to the MIA process.[867] SEMARNAT therefore had no basis to make this request. The fact that it did so anyway indicates that it was laying the groundwork to suspend the MIA evaluation process and avoid issuing a decision on the MIA.[868]

317. The timing corroborates this. By its own admission and as reflected in DGIRA's letter to the District Court, SEMARNAT had known about the *amparo* proceeding since June 2019, when

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Oriente, https://www.facebook.com/LaJornadadeOrientePuebla/videos/%EF%B8%8F-conf%C3%ADo-en-victor-manuel-toledo-titular-de-la-semarnat-indic%C3%B3-l%C3%B3pez-obrador-res/1257317074465900/. **Exhibit C-324**.

865 "Confío en Victor Manuel Toledo (titular de la Semarnat)" indicó López Obrador respecto a otorgar permisos a la minera Canadiense Almaden Minerals en Ixtacamaxtitlán, La Jornada de Oriente, https://www.facebook.com/LaJornadadeOrientePuebla/videos/%EF%B8%8F-conf%C3%ADo-en-victor-manuel-toledo-titular-de-la-semarnat-indic%C3%B3-l%C3%B3pez-obrador-res/1257317074465900/. (emphasis added) (A journalist asked about the Ixtaca Project: "the Nahuas in Puebla against the Almaden Minerals mining company [...] that MIA is about to come out." AMLO responded: "You have to trust Victor Manuel Toledo. He was an advisor to the movements or he participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others, I have absolute confidence in him.") (Spanish original: "*los Nahuas en Puebla contra la minera Almaden Minerals […] esa MIA está por salir." AMLO responded "Si, pero hay que tenerle confianza a Victor Manuel Toledo. El era asesor de los movimientos qo participó con los movimientos que se oponían a las mineras en Puebla. Y es hombre consecuente. No es como otros. Le tengo absoluta confianza*.") **Exhibit C-324**.

866 SEMARNAT Official Notice No. SGPA/DGIRA/DG/07860 dated 4 October 2019 from DGIRA to the Second District Court, **Exhibit C-516**.

867 SEMARNAT Official Notice No. SGPA/DGIRA/DG/07860 dated 4 October 2019 from DGIRA to the Second District Court, **Exhibit C-516**.

868 Letter from Minera Gorrión to DGIRA dated 24 October 2019, **Exhibit C-321**.

it learned about the *amparo* during the RPI.[869] If SEMARNAT had been genuinely concerned about the impact of the *amparo* proceeding on its ability to issue the MIA decision, it surely would have written to the District Court as soon as it became aware of the proceeding, and not three months later. SEMARNAT's decision to wait until one month before the MIA decision was due indicates that it was seeking out an excuse not to issue its decision in accordance with the regulatory framework. Indeed, this is borne out by the events that followed.

318. On 14 October 2019, the District Court responded to DGIRA's request confirming the existence of the *amparo* proceeding and noting that there was an injunction suspending the exploration works in Cerro Grande and Cerro Grande 2 Concessions *with respect to the ejido's land* to protect the *ejido's* property and agrarian rights—which had nothing to do with the MIA evaluation.[870] The Court's response did not comment on the MIA evaluation, let alone order DGIRA to suspend it.

319. Despite this, on 24 October 2019, SEMARNAT went ahead and suspended its evaluation in any event without an order from the Court to do so and without any colorable argument under the law.[871] To make matters worse, SEMARNAT failed to inform Minera Gorrión of the suspension. Instead, Minera Gorrión only learned of the suspension on 24 October 2024 when Mr. Pablo-Dorantes happened upon an entry on SEMARNAT's website indicating that the authority had decided to suspend the MIA evaluation based on a "*sentencia de amparo*."[872]

320. That very day, Minera Gorrión wrote to SEMARNAT requesting it to lift the suspension.[873] Several days later, on 29 October 2019, SEMARNAT finally formally notified Minera Gorrión of its decision to suspend the MIA evaluation.[874] The letter referenced SEMARNAT's 4 October 2019 inquiry to the Second District Court, but made no mention of the Court's response, which had *not* ordered SEMARNAT to suspend the MIA evaluation.[875] Despite this,

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869 SEMARNAT Official Notice No. SGPA/DGIRA/DG/07860 dated 4 October 2019 from DGIRA to the Second District Court, **Exhibit C-516**.

870 *Oficio* issued by the Second District Court in Puebla dated 14 October 2019, **Exhibit C-316.**

871 *Oficio* issued by the Second District Court in Puebla dated 14 October 2019, **Exhibit C-316.**

872 *See* Pablo-Dorantes WS, at para. 70.

873 Letter from Minera Gorrión to DGIRA dated 24 October 2019, **Exhibit C-321**.

874 SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394 dated 3 October 2019 notified on 29 October 2019, **Exhibit C-322**.

875 *Oficio* issued by the Second District Court in Puebla dated 14 October 2019, **Exhibit C-316.** SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394 dated 3 October 2019 notified on 29 October 2019, **Exhibit C-322**.

SEMARNAT averred that it was necessary to suspend the MIA evaluation allegedly to avoid breaching the described injunction until the *amparo* was resolved.[876]

321. That SEMARNAT justified the suspension based on the District Court's injunction – despite the fact that the Court had neither ordered SEMARNAT to suspend the evaluation process nor confirmed that its injunction prevented the MIA evaluation from proceeding – indicates that the justification was a pretext. Indeed, Dr. Limón Aguirre describes the decision as "surprising" and indicative of SEMARNAT's use of "dilatory tactics" to avoid issuing a substantive resolution on the MIA.[877] Moreover, SEMARNAT itself recognized in its 29 October 2019 letter to Minera Gorrión that it was not a responsible authority in the Tecoltemi *amparo*.[878]

322. The real motive prompting SEMARNAT's suspension is clear in hindsight. Knowing that the MIA complied with all environmental regulations, DGIRA officials had to find a way to enforce AMLO's and Secretary Toledo's directive "*not [] to permit*" the Ixtaca Project.[879] And because no legitimate legal or technical basis existed to deny the MIA, DGIRA officials opted to suspend the MIA evaluation instead.

323. On 1 November 2019, Minera Gorrión received yet another letter from SEMARNAT, confirming that the MIA evaluation would remain suspended until the District Court issued a definitive decision in the *amparo* proceeding.[880] By letter dated 29 November 2019, Minera Gorrión again objected to the suspension, arguing that the injunction issued by the District Court in the *amparo* proceeding had no bearing on the MIA evaluation process.[881] Remarkably, SEMARNAT only responded to Minera Gorrión's objection one year and seven months later, on 24 June 2021, in a letter that appears to have been backdated to 21 February 2020.[882] In that belated response, SEMARNAT simply confirmed that the MIA evaluation process would remain suspended, this time until the District Court responded to a renewed inquiry from SEMARNAT dated 21 February 2020 – but filed with the Court nearly six months later, on 1

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876 SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394 dated 3 October 2019 notified on 29 October 2019, **Exhibit C-322**.

877 Limón, at paras. 96-98.

878 SEMARNAT Official Notice No. SGPA/DGIRA/DG/08394 dated 3 October 2019 notified on 29 October 2019, **Exhibit C-322**.

879 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded top YouTube on 3 September 2019), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, last accessed on 8 March 2025, **Exhibit C-309** (emphasis added).

880 SEMARNAT Official Notice No. SGPA/DGIRA/DG/08605 dated 3 October 2019 notified on 1 November 2019, **Exhibit C-79**.

881 Letter from Minera Gorrión to DGIRA dated 29 November 2019, **Exhibit C-329**.

882 SEMARNAT Official Notice No. SGPA/DGIRA/DG/01596 dated 21 February 2020 notified to Minera Gorrión on 24 June 2021, **Exhibit C-334**.

September 2020 – seeking guidance on whether resuming the evaluation process would not violate the injunction.[883]

324. On 3 September 2020, the District Court responded to SEMARNAT's inquiry, confirming that SEMARNAT was not a party to the *amparo* proceedings and therefore was not prohibited from assessing and issuing a decision on the MIA.[884] In other words, the District Court confirmed what Minera Gorrión had known for nearly a year, namely, that SEMARNAT had no stake in the *amparo* proceeding and that SEMARNAT's suspension had been entirely without basis.[885]

325. With no remaining avenues to stall the evaluation process, SEMARNAT had no choice but to issue a decision. Given AMLO's clear directive against permitting new mining projects *and* the public statements made by Secretary Toledo and AMLO about the MIA in this case, the result was preordained – by decision dated 17 December 2020, SEMARNAT rejected the MIA in full, on a pretextual basis, as further described below.

326. In September 2020, sensing that the MIA decision was imminent, the NGOs Atcolhua, PODER, and CTT intensified their opposition campaign. On 20 September 2020, they issued a press release demanding that SEMARNAT reject the MIA, arguing without foundation that the Ixtaca Project would (i) cause irreversible harm to the environment; (ii) endanger flora and fauna species, including the "Táscate" forest, which, as explained below, would acquire surprising prominence in SEMARNAT's MIA Denial Decision; and (iii) be harmful to the water sources in the region.[886]

327. The NGOs' arguments were not new, but they continued to be baseless. As explained by Mr. Pablo-Dorantes, the detailed information Minera Gorrión had provided in its MIA and in its responses to the RAI, as well as the information it provided during the RPI, refuted these arguments in full.[887] Those efforts, however, were for naught as SEMARNAT had already

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883 SEMARNAT Official Notice No. SGPA/DGIRA/DG/01558 dated 21 February 2020 filed with the Second District Court on 1 September 2020, **Exhibit C-335**.

884 *Oficio* No. 8870 issued by the Second District Court in Puebla dated 3 September 2020, **Exhibit C-343**.

885 Limón, at para. 98.

886 *Comunidades reiteran las razones por las que SEMARNAT debe negar a Minera Gorrión la autorización a su Manifestación de Impacto Ambiental* issued by Atcolhua, PODER, and Consejo Tiyat Tlali dated 20 September 2020, **Exhibit C-347**.

887 *Respuesta a la Solicitud de Información Adicional de la Manifestación de Impacto Ambiental, modalidad regional,* prepared by CAM in July 2019, at pages 82-83, **Exhibit C-299**.

committed to reject any new mining project, in accordance with AMLO's *de facto* policy, as explained below.

2.14.4 SEMARNAT devised baseless and pretextual reasons to reject outright Minera Gorrión's MIA

328. On 17 December 2020, SEMARNAT issued the MIA Denial Decision, rejecting outright Minera Gorrión's MIA.[888] Inexplicably, SEMARNAT issued its decision more than three months after the Second District Court's ruling and more than one year after the prescribed deadline. As set out below, that decision was replete with procedural defects and deliberately disregarded key information provided by Minera Gorrión.

329. Notably, the MIA Denial Decision tracked most of the unsupported arguments advanced by the NGOs in their 20 September 2020 press release.[889] The similarities between the regulator's decision and that partisan press release were not coincidental. Indeed, shortly before the MIA Denial Decision, AMLO appointed Ms. Albores to replace Mr. Toledo as SEMARNAT Secretary.[890] As noted above, in appointing her, AMLO assured the public that she would continue the same anti-mining policies, emphasizing *that "she is part of the same team as Toledo" and that AMLO had met them both when they were working jointly in Puebla, "protecting the land and opposing projects like mining or other polluting initiatives*."[891]

330. Moreover, Secretary Albores's subsequent public comments make clear that she understood the assignment. As noted above, she heralded SEMARNAT's adherence to AMLO's anti-

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888 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, **Exhibit C-86**.

889 *Comunidades reiteran las razones por las que SEMARNAT debe negar a Minera Gorrión la autorización a su Manifestación de Impacto Ambiental* issued by Atcolhua, PODER, and Consejo Tiyat Tlali dated 20 September 2020, **Exhibit C-347.**

890 In a December 2022 address to Congress, Secretary Albores underscored that "*the Government of the Fourth Transformation does not grant new concessions for open-pit mining due to its negative impacts on the environment and public health*." See *EN VIVO / Comparecencia de titular Semarnat, Ing. Ma. Luisa Albores González,* Cámara de Diputados - H. Congreso de la Unión Facebook Page, available at https://www.facebook.com/camaradediputados/videos (last accessed 13 March 2025) (Spanish original: "*El Gobierno de la Cuarta Transformación no otorga nuevas concesiones para la minería a cielo abierto debido a sus impactos negativos en el medio ambiente y la salud*."), **Exhibit C-541**.

891 *Conferencia matutina de AMLO*, Milenio YouTube Channel, dated 3 September 2020, available at https://www.youtube.com/watch?v=V1frDFYHVsM (last accessed 8 March 2025) (Spanish original: "*El relevo es continuidad con cambio, continuidad con cambio porque continúa la misma política. María Luisa Albores, además de ser una mujer con principios, una profesional, es ambientalista. Sí, es del mismo equipo de Toledo, de Víctor Manuel Toledo. Yo los conocí juntos en Puebla, Cuetzalan, Puebla, en una cooperativa. Ahí han hecho cosas importantísimas de defensa del medio ambiente, precisamente en defensa de la tierra y en contra de estos proyectos, como el de las minas u otros proyectos contaminantes. Ahí los conocí, en esa lucha. Entonces, María Luisa Albores va a actuar con la misma rectitud de Víctor Manuel Toledo*."), **Exhibit C-529**.

mining policy during her tenure: "[o]pen-pit mining has been prohibited in our country ever since our president announced its ban. As a result, not a single permit has been granted by the Secretariat of Environment [SEMARNAT]."[892] The MIA Denial Decision for the Ixtaca Project was a direct result of this arbitrary political directive.

331. Unsurprisingly, given the haphazard and dilatory evaluation process from which it emerged, SEMARNAT's 139-page long MIA Denial Decision is convoluted and lacks clarity. To aid the Tribunal in understanding the main issues, Dr. Limón Aguirre and Mr. Pablo-Dorantes have summarized and simplified SEMARNAT's findings and explained why they lack any factual or legal basis, deliberately disregarded SEMARNAT's own legal and regulatory framework, and denied Minera Gorrión its fundamental due process rights.[893] The Claimants address these issues in turn below.

2.14.4.1 SEMARNAT relied on out-of-time technical opinions that Minera Gorrión never reviewed or had the opportunity to address

332. As noted above, in its MIA Denial Decision, SEMARNAT relied improperly on belated technical opinions solicited by SEMARNAT well after the statutory deadline and without affording Minera Gorrión any opportunity to review or address them.[894] These included the DGGFS opinion dated 24 October 2019 and the DGVS opinion dated 11 February 2020.[895]

333. In breach of its own regulatory framework, SEMARNAT relied on these opinions to conclude that Minera Gorrión's MIA allegedly failed to demonstrate that the Project would not harm endangered species within the regional environmental system.[896] In addition to denying Minera Gorrión its fundamental due process rights to review and address these opinions, SEMARNAT also deliberately disregarded information in the MIA case file demonstrating that the Ixtaca

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892 *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, available at https://www.youtube.com/watch?v=oTicTRLrWyQ (last accessed 2 March 2025) (Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

893 *See* Pablo-Dorantes WS, at paras. 87-103; *see also* Limón, at paras. 105-192.

894 *See* Pablo-Dorantes WS, at paras. 61, 91-93; *see also* Limón, at paras. 44; 76; 102.

895 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 132, Section XXIII, **Exhibit C-86**.

896 *See* Pablo-Dorantes WS, at para. 91. SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pp. 37-42, **Exhibit C-86**.

Project did *not* endanger species and that Minera Gorrión had designed robust prevention and compensation strategies to offset the potential impacts on certain species in the region.[897]

334. Specifically, relying on the belated and irregular DGVS and DGGFS opinions, SEMARNAT found that Minera Gorrión had failed to include in its MIA sufficient technical and scientific information to demonstrate that no exceptional ecosystems or endangered species would be affected by the Project.[898] However, the MIA addressed comprehensively the issue of whether endangered species would be affected by the Project, as required.[899] Specifically, in accordance with NOM-059, Minera Gorrión included in Chapter IV of the MIA a comprehensive catalogue of the types of vegetation in the region and their distribution;[900] the plant species in the region that were at risk;[901] and the wildlife species in the region.[902] Based on that catalogue, Minera Gorrión concluded that the Project would not irreversibly endanger any protected species in the area.[903]

335. Chapter VI further concluded that there would not be *any* impact to religious indigenous sites or sites of cultural significance. Minera Gorrión reached these set of conclusions as a result of prospective archeological excavation works carried out in coordination with the Puebla branch of the *Instituto Nacional de Arqueología e Historia*.[904] In Chapter VII of the MIA, Minera Gorrión also detailed a range of proposed measures to protect the identified species, including the rescue and relocation of flora and fauna.[905] If SEMARNAT had granted Minera Gorrión the opportunity to review and comment on the baseless DGVS and DGGFS opinions, as it was required to do under the regulatory framework, Minera Gorrión would have underlined these points in its response.

336. SEMARNAT also relied on the DGGFS opinion to conclude that the Ixtaca Project would adversely affect the allegedly endangered Táscate tree (the same complaint asserted in the

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897 Pablo-Dorantes WS, at para. 91.

898 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 37-42, **Exhibit C-86**.

899 *See* Pablo-Dorantes WS, at para. 91; *see also* Limón, at paras. 116-120.

900 MIA, Chapter IV; at pages 55-111, **C-262**.

901 MIA, Chapter IV; at pages 111-113, **C-262**.

902 MIA, Chapter IV; at pages 114-143, **C-262**.

903 MIA, Chapter IV; at page 153, **C-262**.

904 Minera Gorrión, Manifestación de Impacto Ambiental (MIA, Chapter), dated December 2018, ch. VI, at pp. 46 and -47, **Exhibit C-262**. Pablo-Dorantes WS, at para. 91.

905 MIA, Chapter VII; at pages 22-23, **C-262**.

NGO's earlier press release, as noted above).[906] That conclusion had no factual or legal basis. In its opinion, DGGFS asserted that the Project was located between two unique environmental units, both of which contained fragile Táscate forests that provided important ecological services related to the conservation of rainwater and aquifers.[907] As Mr. Pablo-Dorantes explains, "Táscate" is the common and generic name applied to various types of trees – it is not the scientific name of a *protected species*, and not all Táscate trees are endangered.[908] It is therefore unclear which "Táscate" tree SEMARNAT was referring to in its MIA Denial Decision, or if this tree is actually in danger of extinction.[909] In any event, Minera Gorrión included in Chapter II of the MIA a table demonstrating that the Ixtaca Project would affect only 0.05% of the primary Táscate forest out of a total of 8.99% present in the regional environmental system, demonstrating that the effect on this type of forest was minimal.[910] The same table indicated that 65% of the Project area was made up of secondary vegetation of Táscate forest,[911] *i.e.*, vegetation that has been considerably modified by human activity and is therefore not endangered or specially protected.[912]

337. Moreover, as the MIA makes clear, the only specially protected species of tree in the Project's area of influence is the *Cupressus Lusitanica* (white cedar) tree. Minera Gorrión set out in its MIA various rescue and relocation measures that it would take to protect this species.[913] SEMARNAT overlooked all of this, while denying Minera Gorrión any opportunity to comment on the DGGFS opinion.

2.14.4.2 SEMARNAT ignored information in the MIA case file

338. In its MIA Denial Decision, SEMARNAT concluded without any basis that Minera Gorrión did not provide adequate technical information for SEMARNAT to assess the effects of the Ixtaca Project on the environment.[914] SEMARNAT supported that finding on two main grounds: (i) Minera Gorrión's hydrological balance model allegedly did not provide sufficient

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906 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 52-53, 72-73 and 85, **Exhibit C-86**.

907 The *Karst Huasteco Sur* and the *Depresión Oriental (de Tlaxcala y Puebla. See* SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at page 39, **Exhibit C-86**.

908 Pablo-Dorantes WS, at para. 93.

909 Pablo-Dorantes WS, at para. 93.

910 MIA, Chapter II, Table II.5, p. 16, **Exhibit C-262**.

911 MIA, Chapter II, Table II.5, p. 16, **Exhibit C-262**.

912 PAOF, Capítulo 2, *Vegetación y Uso del Suelo*, at p. 2, **Exhibit C-470**.

913 MIA, Chapter VII; at at pp. 22-23, Chapter VIII, Tabla VIII-1 p.8, **Exhibit C-262**.

914 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 135, para. 24, **Exhibit C-86**.

information to assess the Project's impact on upstream and downstream ecosystems;[915] and (ii) Minera Gorrión allegedly failed to submit sufficient information regarding the characteristics of the tailings and its plans to store such tailings.[916] In so finding, SEMARNAT again deliberately disregarded information provided by Minera Gorrión.

339. *First*, SEMARNAT failed to address the substance of the SRK report that supported Minera Gorrión's hydrological balance model.[917] Instead, SEMARNAT criticized that model on the purported basis that it used a 12-year life cycle, instead of the full 14.5 years life cycle of the Ixtaca Project.[918] As Mr. Pablo-Dorantes notes, this was an expedient and superficial way for SEMARNAT to avoid engaging with the extensive technical data contained in SRK's report. SEMARNAT's criticism likewise ignored the fact that the first two years of the Ixtaca Project would be devoted to site-preparation and the construction of the Project, during which time substantial water resources would *not* be required, [919] as SRK made clear in its report. [920] Dr. Limón Aguirre confirms that such information was sufficient to address the issues raised by SEMARNAT.[921] In any event, Minera Gorrión and SRK would have been willing to adjust the time cycle in the model, if SEMARNAT had advised that this was a concern; SEMARNAT did not do so.[922]

340. *Second*, SEMARNAT's conclusion that Minera Gorrión had failed to submit sufficient information regarding the characteristics of the tailings likewise deliberately disregarded information provided by Minera Gorrión.[923] In both the MIA and the RAI response, Minera Gorrión analyzed and thoroughly described the tailings that would be produced by the Project's mineral processing and the dry-stack method that would be used to store such tailings.[924] Dr.

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915 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pp. 31 to 37, **Exhibit C-86**.

916 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 55-61, **Exhibit C-86**.

917 *See* Pablo-Dorantes WS, at para. 90.

918 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, dated 17 December 2020, at at p. 33, **Exhibit C-86**.

919 Minera Gorrión, Manifestación de Impacto Ambiental (MIA), dated December 2018, ch. I, at p. 8, **C-262**.

920 Minera Gorrión's reponse for additional information to SEMARNAT dated July 2019, pages 9-11, **Exhibit C-299**.

921 Limón, at para. 110.

922 *See* Pablo-Dorantes WS, at para. 90.

923 Pablo-Dorantes WS, at para. 95.

924 *See* Limón, at paras. 146-148.

Limón Aguirre confirms that such information was sufficient to address the issue of compliance with NOM-141-SEMARNAT.[925]

341. Moreover, the information provided by Minera Gorrión, including detailed sampling carried out by Knight Piésold, showed that no environmental contamination risks existed with respect to tailings storage, particularly given the overburden-dry stack technology proposed by the Claimants.[926] SEMARNAT again overlooked this information, finding that Minera Gorrión had allegedly failed to describe the characteristics of the tailings altogether.[927]

342. In any event, even if Minera Gorrión had failed to provide sufficient information in relation to the above issues (*quod non*), this would not have been a valid basis to reject the MIA. As Dr. Limón Aguirre confirms, the closed list of grounds for SEMARNAT to deny a MIA under Article 35 of the LGEEPA do not include a lack of complete information.[928] Indeed, SEMARNAT has an affirmative duty to request any and all information it needs to evaluate the MIA, and is therefore prohibited from rejecting the MIA based on the failure to provide information it did not request.[929] As Dr. Limón Aguirre notes, where an applicant provides insufficient information, SEMARNAT must grant the MIA on a conditional basis, pending modification of the project or the imposition of additional preventive or mitigating measures.[930]

2.14.4.3 SEMARNAT applied an absurd, non-existent standard of "absolute scientific certainty" and misapplied the precautionary principle to reject the MIA

343. Even to the casual observer, a remarkable aspect of SEMARNAT's MIA Denial Decision is that, in rejecting the MIA, SEMARNAT asserted that the Claimants had failed to show with "absolute scientific certainty" that the Project was environmentally viable and would not cause any ecological disequilibrium.[931] To be clear, there is no provision in the relevant legal and regulatory framework requiring an applicant to demonstrate "absolute scientific certainty" for its MIA to be approved. Indeed, even a secondary school science student is aware that there is

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925 *See* Limón, at paras. 146-148.

926 Pablo-Dorantes WS, at para. 97.

927 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 55-61, **Exhibit C-86**.

928 LGEEPA, at Art. 35, **Exhibit C-156**. *See* Limón, at paras. 125-142.

929 *See* Limón, at paras. 108-109.

930 Limón, at paras. 125; 151(b)

931 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 135, point 23, 52-53, 72-73 and 85, p. 135, point 23, **Exhibit C-86**.

no such thing as "absolute scientific certainty." Dr. Limón Aguirre notes that in his over 20 years of experience, he has "*never* seen SEMARNAT apply the principle of 'absolute scientific certainty' to deny the MIA of a project."[932] Moreover, he notes that "[t]his principle is not established in the environmental legislation. Thus, SEMARNAT had no legal basis to apply this principle to deny Ixtaca's MIA."[933] It is therefore evident that SEMARNAT arbitrarily conjured up this standard simply to reject the Ixtaca Project.

344. Indeed, by applying a standard of "absolute scientific certainty," SEMARNAT set a standard that no project would ever be able to meet. As Mr. Pablo-Dorantes remarks, "no project anywhere in the world can demonstrate with 'absolute scientific certainty' that it will have no environmental impact. Holding a project to such a standard would lead to the rejection of environmental approval of all projects worldwide."[934] By inventing a legal standard that had no basis in the legal framework, SEMARNAT ensured that the MIA could never be approved, no matter what information the Claimants provided.

345. To justify its use of the "absolute scientific certainty" standard, SEMARNAT invoked the precautionary principle, as enshrined in Principle 15 of the Rio Declaration, which is a guiding principle for environmental regulation in Mexico.[935] But that principle provides no support for SEMARNAT's approach in this case. Principle 15 provides that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."[936] The purpose of the principle is therefore to permit preventive measures even where environmental degradation has not been proven. Nowhere does it impose a requirement that projects should only proceed if there is "absolute scientific certainty" that they will not damage the environment.

346. If anything, the precautionary principle counselled in favor of granting the MIA. As Dr. Limón Aguirre explains, the precautionary principle *obliges* SEMARNAT to impose measures to prevent or mitigate environmental harm where there is a lack of scientific certainty regarding the potential impacts of a project.[937] Thus, if SEMARNAT had actually followed the precautionary principle, it would have imposed additional measures to prevent or mitigate the

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932 Limón, at para. 159.

933 Limón, at para. 159.

934 Pablo-Dorantes WS, at para. 99.

935 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, at p. 139, **Exhibit C-86**.

936 Rio Declaration on Environment and Development, 12 August 1992, at Principle 15, **CL-18**.

937 Limón, at para. 151(b).

environmental risks, and not simply reject the MIA. SEMARNAT's contrary approach directly contradicted the precautionary principle, again indicating that it was invoking such principle as a pretext to deny the MIA.

2.14.4.4 SEMARNAT violated the law and discriminated against Minera Gorrión by rejecting the MIA based on indigenous consultation

347. A final flaw in the MIA Denial Decision is its legally baseless conclusion that Minera Gorrión had breached an alleged duty to carry out indigenous consultations in accordance with ILO 169.[938] SEMARNAT also asserted that Minera Gorrión had based its conclusion that no indigenous consultation was required on alleged "subjective opinions."[939] These aspects of SEMARNAT's decision were arbitrary for several reasons.

348. *First*, SEMARNAT's conclusion lacked any legal foundation. As Dr. Limón Aguirre affirms, neither the LGEEPA nor the R-LGEEPA requires indigenous consultations before SEMARNAT can approve a MIA; indeed, neither the LGEEPA nor the R-LGEEPA even addresses indigenous consultations, which is not an aspect of environmental compliance.[940] As Dr. Limón Aguirre observes, Article 35 of the LGEEPA provides that "[t]he resolution of the Secretariat [on the MIA] shall only refer to the *environmental aspects of the works and activities in question*."[941] As Dr. Limón Aguirre notes, indigenous consultations, which relate to "social impact," is an administrative procedure independent from the MIA.[942]

349. Moreover, even if there had been a duty to carry out indigenous consultations (*quod non*), that duty was on SEMARNAT, and not Minera Gorrión.[943] As explained in Section [2.7] above, consistent with ILO 169 and Article 2 of the Mexican Constitution, where indigenous consultations are required, the duty to carry them out lies squarely on the Mexican

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938 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 136, point 25, **Exhibit C-86**.

939 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 136, point 25, **Exhibit C-86**.

940 Limón, at para. 191.

941 Limón, at para. 51.

942 Limón, at para. 189.

943 Limón, at paras. 185-186. *See supra* Section 2.10.

Government.[944] This is confirmed by the CDPI opinion that SEMARNAT itself references in its MIA Denial Decision.[945]

350. *Second*, the opinions on which SEMARNAT relied in its MIA Denial Decision do *not* support its conclusion that indigenous consultations were required for MIA approval. Specifically, SEMARNAT relied on the INPI Puebla Office and CDPI opinions, but neither of these opinions sets out any requirement for *Minera Gorrión* to conduct indigenous consultations.[946] Rather, the CDPI opinion simply notes that, according to the INEGI 2015 census, "it was determined in 2015 that the Municipality of Ixtacamaxtitlán had a total population of 24,512 inhabitants and a dispersed indigenous population of 4,841 (19.75%) inhabitants, the majority of whom are Nahuatl speakers."[947] The opinion did not, however, indicate that Minera Gorrión must conduct indigenous consultations with those communities. On the contrary, it emphasized that *if* SEMARNAT were to take measures that would affect indigenous communities, *SEMARNAT* would be responsible for carrying out consultations.[948]

351. For its part, the INPI Puebla Office noted that 24 out of 431 inhabitants of Santa María Zotoltepec were indigenous and therefore *recommended* (not required) "sustained and inclusive dialogue" with those inhabitants.[949] Plainly a sustained and inclusive dialogue is not the same thing as indigenous consultations and, as noted in the witness statements of Mr. Santamaría Tovar, Ms. Uzcanga Vergara, and Mr. García Herrera, the Claimants had long effected such a dialogue through their extensive and highly successful social initiatives with local communities, including the Santa María Zotoltepec community.[950]

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944 *See* CDI, Protocolo para la implementación de consultas a pueblos y comunidades indígenas de conformidad con Estándares del Convenio 169 de la OIT dated February 2013, p. 23, **Exhibit C-499**. The *Comisión Para el Diálogo con los Pueblos Indígenas de México* ("**CDPI**") is an office of the Secretary of Government ("**SEGOB**") that fosters dialogue with indigenous communities. *See* Pablo-Dorantes WS, at para. 57(l).

945 SEMARNAT Official Notice SGPA/DGIRA/DG/03478, 11 August 2020, at page 130, **Exhibit C-84** ("if the Ministry of the Environment and Natural Resources (SEMARNAT, as per the acronym in Spanish) were the government agency that would implement administrative measures that could affect indigenous peoples and communities that may be settled in the areas mentioned in the preamble of this document, for the assessment and ruling of the Regional Environmental Impact Statement (MIA-R, as per the acronym in Spanish), such Ministry of the Environment and Natural Resources would act as the authority responsible for carrying out the necessary consultations with indigenous peoples.").

946 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at pages 136-138, **Exhibit C-86**.

947 SEGOB's CDPI, Official letter No. SG/CDPIM/102/2019, dated 11 March 2019, **C-63.**

948 Limón, at para. 185. *See supra* Section 2.10.

949 INPI Puebla, Official letter No. DPUE/2019/OF/0373 dated 22 March 2019, **C-478.**

950 Santamaría Tovar WS, at paras. 21-37; Uzcanga Vergara WS, at paras. 13-17; García Herrera WS, at para. 13.

352. *Third*, SEMARNAT's conclusion that Minera Gorrión relied on "subjective opinions" is entirely without basis.[951] As explained above, in addition to its own independent studies,[952] Minera Gorrión attached to its RAI response letters from the *Mexican Government*, including SECOTRADE and CDI, confirming that no indigenous consultations were required.[953] Such opinions are hardly "subjective."

353. *Fourth*, SEMARNAT's decision in this regard was discriminatory. As Dr. Limón Aguirre explains in detail in his expert report, when SEMARNAT is concerned that a project may affect an indigenous community, SEMARNAT typically conditions its MIA approval on completing the following three-step process:

- *First*, the applicant liaises with the relevant State and Federal authorities to confirm whether indigenous consultation must be completed before carrying out the project. If those authorities consider that no indigenous consultation is required, they will provide the applicant with a certification confirming this fact.

- *Second*, if the relevant authorities consider that indigenous consultation must be completed, *the authorities* will commence the consultation process and complete it. After completion of the indigenous consultations, the relevant authorities will issue a certification confirming such completion.

- *Third*, the applicant will then present to SEMARNAT the certification confirming either the absence of any indigenous consultation requirement, or the completion of such consultations before commencing mining operations.[954]

354. As Dr. Limón Aguirre confirms, SEMARNAT has followed precisely this process in multiple cases, including with respect to the following mining projects:

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951 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 136, point 25, **Exhibit C-86**.

952 Minera Gorrión's RAI Response, response to requirement c), pages 13 et seq, **Exhibit C-299**.

953 Oficio No. SECOTRADE/SDE/DGP/074/2018 from SECOTRADE dated 5 October 2018, Annex C-2 to Minera Gorrión's RAI Response, **Exhibit C-257**. Oficio No. CGPE/2018/OF/0802 from CDI dated 28 September 2018, Annex C-2 to Minera Gorrión's RAI Response, **Exhibit C-257**.

954 Limón, at paras. 199; 209; 215.

- The Canadian-owned Camino Rojo gold-silver open-pit mining project located in Mazapil, Zacatecas;[955]

- The Korean-owned Boleo copper-cobalt-zinc open-pit mining project located in Baja California Sur;[956]and

- The Mexican-owned Huazamota river gravel extraction project located in Mezquital, Durango.[957]

355. There was no reasonable basis for SEMARNAT to depart from such prior practice in this case. The fact that SEMARNAT did not grant conditional approval of the MIA, as it had done for these similarly situated projects, serves to underscore the pretextual nature of its decision.

356. In sum, SEMARNAT's MIA Denial Decision was arbitrary, discriminatory, lacking in transparency, and contrary to fundamental principles of due process. It also breached Mexico's obligations under the CPTPP, as elaborated further below.

2.15 Four years after Tecoltemi filed its *amparo* action, the District Court upheld it

357. On 11 April 2019, four years after Tecoltemi filed its *amparo* action, the Second District Court of Puebla ruled in its favour, finding that the Mexican Government had violated Tecoltemi's Constitutional rights by failing to conduct indigenous consultations prior to granting the Cerro Grande and Cerro Grande 2 Concessions.[958] The District Court also declared certain sections of the Mining Law unconstitutional due to the Mexican legislature's failure to incorporate a clear indigenous consultation mechanism, which rendered the Concession titles illegal.

> The failure of the legislator to adapt the Mining Law to recognize this right to free, informed, culturally appropriate, and good-faith prior consultation and to develop a way to guarantee its content is a violation of the fundamental rights of the complainants, especially

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955 Limón, at paras. 194-203; SEMARNAT Official Notice SGPA/DGIRA/DG/03478, 11 August 2020, at page 96, **Exhibit C-84**; *see also* Pablo-Dorantes WS, at para. 102;

956 Limón, at paras. 204-212; SEMARNAT Official Notice SGPA/DGIRA/DG/03117 dated 24 June 2021, **C-366**; *see also* Pablo-Dorantes WS, at paras. 35, 102

957 Limón, at paras. 213-217; SEMARNAT Official Notice SG/130.2.1.1/2618/18, 18 October 2018, at page 19, **Exhibit C-259**; *see also* Pablo-Dorantes WS, at para. 102.

958 Opinion of Yolanda Velazquez Rebollo and Juan Miguel Juarez Caudillo (Principal 44/2015), Second Judicial District in Matters of Civil Amparo (445/2015), dated 11 April 2019, at pp. 89, 98-99, **Exhibit C-66**.

> since consultation is the means or precondition for indigenous communities to exercise their right to autonomy and self-determination.
>
> . . .
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> Consequently, since the articles claimed are unconstitutional because of a relative legislative omission, the acts of application, i.e., the mining concession titles. . . become illegal, because they were granted without taking into account the opinion of the affected indigenous community.[959]

358. Rather than ordering the Government to conduct the required consultations, the District Court instead ordered Economía's DGM to declare the Cerro Grande and Cerro Grande 2 Concessions "*insubsistentes*" or ineffective,[960] while DGM reevaluated "with full discretion" the original concession applications, taking into account two key factors: (i) that the Mining Law does *not* require prior consultation or free, informed consent for indigenous peoples (meaning that the absence of such consultations could not invalidate the original concession applications as a legal matter), and (ii) that the original concession applications related to lands granted to the Tecoltemi *ejido*.[961]

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959 Opinion of Yolanda Velazquez Rebollo and Juan Miguel Juarez Caudillo (Principal 44/2015), Second Judicial District in Matters of Civil Amparo (445/2015), dated 11 April 2019, at pp. 131-133 ("*La omisión del legislador de adecuar la Ley Minera en la que se reconozca ese derecho a la consulta previa, libre, informada, culturalmente adecuada y de buena fe, y desarrolle la forma de garantizar su contenido significa una vulneración a los derechos fundamentales de los quejosos; en especial, porque la consulta se constituye en el medio o la precondición para que las comunidades indígenas puedan ejercer su derecho a la autonomía y la autodeterminación. . . En consecuencia, al ser inconstitucionales los artículos reclamados por existir una omisión legislativa relativa, los actos de su aplicación, esto es, los títulos de concesión minera. . . devienen ilegales, porque fueron otorgados sin tomar en cuenta la opinión de la comunidad indígena afectada*."), **Exhibit C-66**.

960 Opinion of Yolanda Velazquez Rebollo and Juan Miguel Juarez Caudillo (Principal 44/2015), Second Judicial District in Matters of Civil Amparo (445/2015), dated 11 April 2019, at p. 134, **Exhibit C-66**.

961 Opinion of Yolanda Velazquez Rebollo and Juan Miguel Juarez Caudillo (Principal 44/2015), Second Judicial District in Matters of Civil Amparo (445/2015), dated 11 April 2019, at pp. 134-135 ("With freedom of jurisdiction, this Directorate General shall again determine the applications that are the source of the administrative files for mining concessions. . . taking into account that there is no regulation in the Mining Law on consultation and free and informed consent of indigenous peoples, and that these applications fall within the territory that was endowed to the complainant." Spanish original: "*Con libertad de jurisdicción, dicha Dirección General determine nuevamente las solicitudes origen de los expedientes administrativos de las concesiones mineras… tomando en cuenta que no existe regulación en la Ley Minera sobre consulta y consentimiento libre e informado a los pueblos indígenas, así como que dichas solicitudes recaen sobre el territorio de que fue dotada la parte quejosa.*"), **Exhibit C-66**.

359. The District Court also ruled that Tecoltemi's self-identification as an indigenous community in 2015 was sufficient to give rise to a right to prior consultation, despite the fact that self-identification transpired *after* the grant of the Concessions and there was no official administrative recognition of the community as indigenous.[962] As the Court observed, "this Federal Judge considers the self-identification made by the amparo petitioners to be sufficient to consider that they are part of the. . . indigenous people."[963]

360. As the Claimants' witnesses explain, the decision of the District Court came as a complete surprise, given the Mexican Government's repeated affirmation over the course of many years that the Concessions were valid and in good standing.[964] Mr. McDonald, in his witness statement, explains his disbelief at the ruling:

> I did not understand why such a reassessment was required years after Economía had approved and granted the Concessions. The Claimants had obtained the Cerro Grande and Cerro Grande 2 Concessions in careful compliance with the Mexican mining laws and regulations. And the Mexican Government had repeatedly affirmed that our Concessions were valid and in good standing. Moreover, to my understanding, the amparo trial never suggested that the process that we followed to secure the Concessions was any different from the process followed by any other company that applied for concessions in Mexico at that time.[965]

361. Following the District Court's ruling, each party filed an appeal before the Collegiate Court in Administrative Matters of the Sixth Circuit between May and July 2019, raising distinct legal challenges.

362. On 3 May 2019, Tecoltemi filed an appeal, agreeing with the District Court's ruling, but objecting to the DGM reevaluating the original concession applications without free, informed

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962 Opinion of Yolanda Velazquez Rebollo and Juan Miguel Juarez Caudillo (Principal 44/2015), Second Judicial District in Matters of Civil Amparo (445/2015), dated 11 April 2019, at pp. 68-69, **Exhibit C-66**.

963 Opinion of Yolanda Velazquez Rebollo and Juan Miguel Juarez Caudillo (Principal 44/2015), Second Judicial District in Matters of Civil Amparo (445/2015), dated 11 April 2019, at p. 69 (Spanish original: "*[E]sta Juzgadora Federal considera suficiente la autoadscripción realizada por los peticionarios de amparo para considerar que forman parte del pueblo indígena*."), **Exhibit C-66**:

964 McDonald WS, at para. 96.

965 McDonald WS, at para. 96.

consent.[966] It argued that free, informed consent is a binding legal obligation under ILO 169, and that Mexico was required "to conduct consultations whenever they intend to grant any authorization, license, or concession related to investment or development projects on indigenous territories."[967]

363. On 8 May 2019, Economía filed an appeal, again strongly defending its grant of the Concessions.[968] It argued that free, informed consent applies only when a project is proven to impact indigenous land or cultural practices, which requires something more than mere proximity of the project to indigenous territory.[969] Economía again emphasized that Tecoltemi had failed to present evidence of specific, concrete harm and argued that the District Court had applied an incorrect legal standard by focusing only on the status of Tecoltemi as an indigenous community, rather than the Project's actual impact on the community.[970] Economía listed the specific circumstances that warrant free, informed consent – such as the loss of territory, forced

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966 *Ejido* Tecoltemi, Revision en Amparo 445/2015, dated 3 May 2019, at pp. 21-26, **Exhibit C-67**

967 *Ejido* Tecoltemi, Revision en Amparo 445/2015, dated 3 May 2019, at p. 24 (Spanish original: "*Existe para las autoridades del Estado Mexicano la obligación de efectuar consultas cada vez que pretendan otorgar alguna autorización, licencia o concesión respecto de proyectos de inversión o desarrollo sobre territorios indígenas*.", **Exhibit C-67**.

968 Economia, Revision en Amparo 445/2015, dated 8 May 2019, at p. 32, **Exhibit C-68**.

969 Economia, Revision en Amparo 445/2015, dated 8 May 2019, at p. 46 ("This does not mean that consultations should be carried out whenever indigenous groups are involved in a state decision, but only in those cases in which the activity of the state could have a significant impact on their lives or environment." Spanish original: "*No significa que deban llevarse a cabo consultas siempre que grupos indígenas se vean involucrados en alguna decisión estatal, sino solo en aquellos casos en que la actividad del Estado pueda causar impactos significativos en su vida o entorno*."), **Exhibit C-68**; *see also* Economia, Revision en Amparo 445/2015, 8 May 2019, at pp. 41-44, **Exhibit C-68**.

970 Economia, Revision en Amparo 445/2015, dated 8 May 2019, at p. 31 ("It does not demonstrate that their culture and spiritual values are really related to the lands or territories, or both, in the territory where these mining concessions were granted and that they are affected in any way, nor did it demonstrate that they occupy these lands as their habitat, or that they use them for the development of their uses and customs as an indigenous people. . . nor did they prove in any way that they are affected by the mining concessions in question. . . the A quo limited itself to assessing only the status of the complainant as an indigenous community or people, and failed to consider that there is no evidence to prove that the 'ancestral territory' of the complainant is affected." Spanish original: "*No demuestra que realmente su cultura y valores espirituales revisten relación con las tierras o territorios, o con ambos, sobre el territorio donde fueron otorgadas dichas concesiones mineras y que sufren afectación alguna, así como tampoco demostró la ocupación de dichas tierras para su hábitat, o que las utilizan para el desarrollo de sus usos y costumbres como pueblo indígena. . . ni acreditaron de forma alguna tienen la afectación que con las concesiones mineras que nos ocupan. . . la A quo se acotó a valorar únicamente la calidad de la parte quejosa como comunidad o pueblo indígena siendo omisa en considerar que no existe prueba alguna que acredite que existe afectación sobre el 'territorio ancestral' de la quejosa*."), **Exhibit C-68**.

displacement, environmental degradation, and adverse health effects – and emphasized (correctly) that none of these circumstances applied to Tecoltemi.[971]

364. Through a separate appeal on 17 July 2019, the DGM argued that the District Court had overstepped its authority by issuing a ruling with general effects.[972] The DGM emphasized that *amparo* decisions should apply only to the complainants, "granting protection and safeguarding them, if appliable," yet the District Court had imposed legislative obligations on Congress by ordering it to amend the existing legal framework to include prior consultation and free, informed consent.[973] According to the DGM, this went beyond the Court's jurisdiction and violated the principle of relativity in *amparo* rulings, *i.e.*, the principle that the effects of an *amparo* ruling are limited to the individuals who filed the legal challenge and do not automatically nullify or modify the general law, regulation, or act being contested.[974] The DGM also argued that the Concessions had no direct impact on Tecoltemi, as a mining concession does not involve land expropriation or restrict access to community resources.[975]

365. As Mr. McDonald notes, the appeals filed by Economía and the DGM in support of the Concessions and the Mining Law affirmed the Claimants' confidence in the security of their

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971 Economia, Revision en Amparo 445/2015, dated 8 May 2019, at p. 46 ("Thus, a series of generic situations considered to have a significant impact on indigenous groups have been identified, including, but not limited to: 1) the loss of traditional territories and land; 2) eviction from their lands; 3) possible resettlement; 4) the depletion of resources necessary for physical and cultural subsistence; 5) the destruction and contamination of the traditional environment; 6) social and community disorganization; and 7) negative health and nutritional impacts, among others. Therefore, the authorities must address the specific case and analyze whether the contested act could significantly impact the living conditions and environment of the indigenous peoples; however, the petitioners do not fall under any of the assumptions." Spanish original: "*Así, se ha identificado, de forma enunciativa mas no limitativa, una serie de situaciones genéricas consideradas de impacto significativo para los grupos indígenas como son: 1) la pérdida de territorios y tierra tradicional; 2) el desalojo de sus tierras; 3) el posible reasentamiento; 4) el agotamiento de recursos necesarios para la subsistencia física y cultural; 5) la destrucción y contaminación del ambiente tradicional; 6) la desorganización social y comunitaria; y 7) los impactos negativos sanitarios y nutricionales, entre otros. Por tanto, las autoridades deben atender al caso concreto y analizar si el acto impugnado puede impactar significativamente en las condiciones de vida y entorno de los pueblos indígenas; sin embargo, los impetrantes no se encuentran en ninguno de los supuestos*."), **Exhibit C-68**.

972 DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 7, **Exhibit C-528**.

973 DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 6, **Exhibit C-528**.

974 *See* Mexican Constitution, at Art. 107.II, "The sentence pronounced in a constitutional adjudication shall cover only to the plaintiffs, protecting them only in the specific case concerned in the complaint.", **Exhibit C-439**.

975 DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 18 ("In the case in question, mining concession titles were issued, but no expropriation has been requested or resolved that affects any legal or legitimate interest of the complaining community." Spanish original: "*En el caso que nos ocupa, se expidieron títulos de concesión minera, más no se ha solicitado ni se ha resuelto expropiación alguna que afecte algún interés jurídico o legítimo de la comunidad quejosa*."), **Exhibit C-528**.

legal rights and the legitimacy of the Ixtaca Project.[976] While the District Court's decision appeared to be a setback for the Project, it also appeared from these appeals that Mexico's institutions were determined to defend the Mexican legal and regulatory framework for mining and ensure its stability and predictability.

366. Separately, on 23 May 2019 and 31 May 2019, respectively, the Mexican Congress and the Senate – both parties to the *amparo* – contested the District Court's finding that the Mining Law's lack of indigenous consultation provisions rendered it unconstitutional.[977] In particular, the Mexican Senate affirmed that the Constitution mandates consultation only in specific contexts – such as during the development of the National Development Plan – and that failing to include a mechanism for indigenous consultations in the Mining Law did not constitute a legislative omission.[978]

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976 McDonald WS, at para. 80.

977 Camara de Diputados del Congreso de la Union, Revision Filed in Amparo 405/2015, dated 23 May 2019, at pp. 7, 13-14 ("The ordinary legislator does not have the aforementioned 'obligation' . . . the fact that the ordinary legislator has not expressly adopted the provisions of international law in domestic law . . . does not translate for the Legislator into a violation or disregard of the right that the complainants consider violated, since to maintain the contrary would imply the absurdity (as is the case now) that in every legal system (municipal, State and Federal) had the duty to consider that 'in the event that a legislative or administrative measure directly affects the rights of indigenous peoples and communities, the competent authority must respect the fundamental right to prior consultation'. . . In this vein, it can be concluded that the Mining Law does not violate the right to free, prior and informed consultation of indigenous peoples and communities contained in paragraph 6 of ILO Convention 169, and for this reason, the articles labeled as unconstitutional are constitutionally and conventionally valid." Spanish original: "*El legislador ordinario no cuenta con la aludida 'obligación'. . . el hecho de que el legislador ordinario no haya adoptado de manera expresa las disposiciones de derecho internacional en el derecho interno. . . no se traduce para el Legislador en una violación o desconocimiento al derecho que las quejosas estiman violado, pues sostener una premisa contraria, implicaría el absurdo (coma ahora acontece) que en todo ordenamiento jurídico (Municipal, Estatal y Federal) se tuviera el deber de contemplar que 'en caso de que una medida legislativa o administrativa trastoque directamente derechos de pueblos y comunidades indígenas, la autoridad competente debe respetar el derecho fundamental de consulta previa.'. . . En ese tenor, es de concluir que la Ley Minera no viola el derecho a la consulta previa, libre e informada de los pueblos y comunidades indígenas contenido en el numeral 6 del Convenio 169 de la OIT, y por tal motivo, los artículos tildados de inconstitucionales gozan de validez constitucional y convencional.*"), **Exhibit C-544**; *see also* Camara de Senadores del Congreso de la Union, Revision en Amparo 445/2015, dated 31 May 2015, at p. 7, **Exhibit C-70**.

978 Camara de Senadores del Congreso de la Union, Revision en Amparo 445/2015, dated 31 May 2015, at pp. 3, 9 ("Contrary to the decision of the court a quo, the aforementioned omission that is being claimed does not exist... this constitutional provision [article 2 of the Mexican Constitution] does not regulate the obligation to establish in each legal system the imperative of consulting indigenous peoples prior to any state decision, but rather to carry out consultations with the peoples, through appropriate procedures and in particular through their representative institutions, as well as that the consultations with indigenous peoples be carried out in the elaboration of the National Development Plan, that is to say, the constitutional framework only determines that the consultations deal with the aforementioned Plan and not with any administrative, legislative or judicial determination adopted by the authorities." Spanish original: "*Contrario a lo resuelto por el A quo, no existe la referida omisión que se reclama… este precepto constitucional* [artículo 2 de la Constitución mexicana] *no regula la obligación de establecer en cada ordenamiento*

367. As an interested third party, on 8 May 2019, Minera Gorrión likewise challenged the District Court's decision, arguing that while self-identification is a relevant criterion for determining whether a community is indigenous, it cannot stand alone without substantive verification of cultural and territorial ties to the land.[979] Minera Gorrión presented evidence that Tecoltemi had never been formally recognized as an indigenous community nor functioned as one under applicable legal frameworks.[980]

368. Minera Gorrión further argued that free, informed consent is not required at the concession stage, even under ILO 169.[981] Rather, consistent with precedent from the Inter-American Court

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jurídico el imperativo de consultar a los pueblos indígenas previo a la toma de cualquier decisión estatal, sino el llevar a cabo las consultas a los pueblos, mediante procedimientos apropiados y en particular a través de sus instituciones representativas, así como que las consultas a los pueblos indígenas se llevara a cabo en la elaboración del Plan Nacional de Desarrollo, es decir, el marco constitucional, sólo determina que las consultas versan sobre el referido Plan y no sobre cualquier determinación administrativa, legislativa o judicial que adopten las autoridades."), **Exhibit C-70**.

979 Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at p. 6 ("The truth is that the criterion of self-identification is not in itself sufficient to determine the existence of an indigenous community, as the court does, since this extends the concept and its function in an unacceptable way, as established in the Constitution and in the rulings issued by the Supreme Court on the matter." Spanish original: "*Lo cierto es que el criterio de autoadscripción no alcanza por sí mismo para determinar la existencia de una comunidad indígena, como lo hace la juzgadora, ya que esto sobre extiende de manera inaceptable el concepto y su función como se encuentra establecido en la Constitución y en las tesis emitidas por la Suprema Corte en la materia*."), **Exhibit C-68**; *see also* Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at p. 14 ("Objective elements for the existence of the community, which cannot be reduced to a mere expression of self-ascription, but rather these elements must be weighed by the judge and developed in a well-founded and reasoned manner and not merely assumed to be true, as this places the injured third party in a situation of defencelessness." Spanish original: "*Elementos objetivos para la existencia de la comunidad, la cual no puede reducirse a una mera expresión de autoadscripción, sino que estos elementos deben ser ponderados por la juez y desarrollados de manera fundada y motivada y no meramente asumidos como ciertos, ya que ello pone en una situación de indefensión a la parte tercera perjudicada*."), **Exhibit C-68**.

980 Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at pp. 45-46 (Spanish original: "*Bajo ninguna circunstancia y de ninguna forma puede considerarse como autoadscrita una población que en todos los actos y acciones se ha conducido como Ejido y observado las disposiciones de la Ley Agraria. El grupo de personas de Tecoltemi, conforme al Decreto de Dotación de tierras de referencia y, en el mismo, bajo ninguna circunstancia y sin referencia alguna se menciona que sea una comunidad indígena o que se ostentara bajo ese régimen*."), **Exhibit C-68**.

981 Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at p. 148 ("The holding of a prior consultation with indigenous peoples and communities is not a requirement for the granting of a mining concession to be valid. It is not an obligation established in the Mining Law or its Regulations; there is no established duty to carry it out, nor is the failure to hold the consultation a cause for suspension, cancellation or annulment of the mining concession. . . Although indigenous peoples and communities have the right to prior consultation enshrined in ILO Convention 169, this right is not violated by the simple granting of the mining concession, since for the right to be violated it would be necessary to carry out exploitation and exploration works that are likely to have a direct impact." Spanish original: "*La realización de la consulta previa a los pueblos y comunidades indígenas no es un requisito de validez para el otorgamiento de la concesión minera. No es una obligación que se establece en la Ley Minera ni en su Reglamento; no se establece el deber de realizarla, ni tampoco el hecho de omitir la consulta es una causa de suspensión, cancelación o nulidad de la concesión minera. . . Si bien existe un derecho de los pueblos y comunidades indígenas a la consulta previa consagrado en el Convenio 169 de la OIT, no se produce una violación a este derecho por el simple*

of Human Rights ("**IACHR**"), consultation obligations arise during the environmental impact evaluation phrase, when actual impacts on indigenous communities can be assessed.[982] To support this argument, Minera Gorrión referred to the decision in the *Saramaka v. Suriname* case, in which the IACHR had held that "the Surinamese State's responsibility for failing to conduct prior consultation arose at the stage when environmental impact authorization for mining exploitation should have been granted."[983] Minera Gorrión emphasized that at no point did the IACHR determine that prior consultation was required earlier than the environmental assessment stage, let alone that a lack of consultation would justify suspending the mining concession titles themselves.[984]

369. On 26 March 2021, the Collegiate Court declined jurisdiction over the appeal and referred the case to the Supreme Court, recognizing that the issues raised in the appeal required constitutional interpretation that went beyond its jurisdiction.[985]

2.15.1 While the appeal was pending before the Supreme Court, SEMARNAT issued official public statements urging the Supreme Court to reject it

370. On 13 January 2022, SEMARNAT issued what can only be described as a highly irregular official public statement calling on the Supreme Court to reject the appeal, stating unequivocally that it "*trusts that the Ministers of the Supreme Court of Justice of the Nation will resolve the matter in accordance with the highest standards of protection of rights for*

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otorgamiento de la concesión minera, pues para que se viole el derecho sería necesario ejecutar obras de explotación y exploración que sean susceptibles de producir una afectación directa."), **Exhibit C-68**.

982 Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at p. 134 ("The ideal time to carry out the prior consultation, in order to be able to find out whether or not there may be a potential or real impact on the rights of an indigenous community, in a case such as that of a mining project, is until the environmental impact assessments have to be carried out; in our legislation this happens up to the exploitation stage and by no means at the stage of applying for and granting a concession." Spanish original: "*El momento idóneo para realizar la consulta previa, a efecto de poder estar en posibilidades de saber si puede o no existir una potencial o real afectación a los derechos de una comunidad indígena, en un caso como lo es el de un proyecto minero, es hasta que se tengan que realizar las evaluaciones de impacto ambiental; lo que en nuestra legislación ocurre hasta la etapa de explotación y de ninguna manera en la etapa de solicitud y otorgamiento de una concesión*."), **Exhibit C-68**.

983 Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at p. 134 (Spanish original: "*La Corte lnteramericana, en el caso Saramaka vs. Surinam, estableció de manera precisa que el momento en que se dio la responsabilidad del Estado Surinamés por la omisión de realizar la consulta previa, fue en el momento en que se tendría que haber autorizado el impacto ambiental de los trabajos de explotación minera*."), **Exhibit C-68**.

984 Minera Gorrión, Revision Filed in Amparo 405/2015, dated 8 May 2019, at p. 134, **Exhibit C-68**.

985 R.A.(P) 476/2019, Ruling of Judge Enrique Cabanas Rodriguez, Second Collegiate Tribunal, dated 26 March 2021, at pp. 73-74, **Exhibit C-88**.

indigenous peoples and agrarian groups" and "*will prioritize life, territory and the environment, above the interests of mining companies*."[986]

371. One month later, on 14 February 2022, SEMARNAT issued a second irregular official public statement, this time jointly with the National Institute of Indigenous Peoples ("**INPI**") and the Agrarian Prosecutor's Office ("**PA**").[987] This joint statement again urged the members of the Supreme Court to reject the appeal, framing the case as "*a historic opportunity*" for the Court:

> [T]o effectively contribute to the protection and guarantee of the rights of all indigenous peoples and agrarian groups in the country, by exposing discriminatory legislation that places mining activities – and with them the interests of the beneficiary companies – as preferential and above any other use of the territory.[988]

372. It is worth pausing here to recall that SEMARNAT, INPI, and the PA are Mexican Government regulatory agencies tasked with overseeing environmental, indigenous, and agrarian affairs, respectively.[989] They are not lobbyists, nor do they have authority to issue political statements. They were also not parties to the *amparo* proceedings. Their actions violated the legal obligations that Mexican public officials and agencies must uphold. Under Article 7 of the *Ley General de Responsabilidades Administrativas*, public servants must safeguard the principles of due process of law and act with impartiality and objectivity, always prioritizing the public interest.[990] Furthermore, Article 8 of that same Law expressly requires public officials to "perform their duties without incurring in any act or omission that causes the suspension or

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986 SEMARNAT Public Statement, "*SEMARNAT hace un llamado para que la Ley Minera priorice la vida de los pueblos y no los intereses de las empresas*," dated 13 January 2022, **Exhibit C-380**.

987 SEMARNAT Public Statement, "*SEMARNAT, INPI y Procuraduría Agraria confían en que la SCJN resuelva a favor del ejido de Tecoltemi, en Puebla*," dated 14 February 2022, **Exhibit C-382**.

988 SEMARNAT Public Statement, "*SEMARNAT, INPI y Procuraduría Agraria confían en que la SCJN resuelva a favor del ejido de Tecoltemi, en Puebla*," dated 14 February 2022, at p. 2, **Exhibit C-382**.

989 With respect to SEMARNAT, *see Ley Orgánica de la Administración Pública Federal*, at Art. 32 bis, **Exhibit C-515**.

With respect to INPI, *see Ley del Instituto Nacional de los Pueblos Indígenas*, at Art. 4, **Exhibit C-517**.

With respect to the PA, *see Reglamento Interior de la Procuraduría Agraria*, at Ch. I, **Exhibit C-518**.

990 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Article 7, **Exhibit C-519**.

deficiency of the service or implies any abuse or undue exercise of their position" and behave with "respect, diligence, impartiality, and integrity" in exercising their functions.[991]

373. By engaging in political advocacy in an attempt to influence the members of the Supreme Court in a proceeding to which they were not a party, these regulatory bodies compromised their duty to remain neutral and to act in accordance with the principles of good governance established by law. As noted by Messrs. McDonald and Santamaría Tovar, SEMARNAT's public statements were unprecedented and deeply concerning. As Mr. McDonald emphasizes:

> I was shocked and disappointed to see Mexican regulatory agencies openly deride their own mining laws – laws that we relied on in making the decision to invest millions of dollars into the advancement of the Ixtaca Project. It was equally concerning to me that SEMARNAT, for a second time, actively pressured the Supreme Court to rule in favor of Tecoltemi.[992]

374. Mr. Santamaría Tovar similarly observes that SEMARNAT's statements "made it clear that they had abandoned any pretence of neutrality and were pushing for an ideological agenda."[993] Simply put, SEMARNAT sought – on entirely political grounds – to ensure the Ixtaca Project would never proceed.

2.16 The Supreme Court ordered Economía to suspend the Concessions, reassess their "feasibility," and conduct indigenous consultations before reissuing them

375. On 16 February 2022, the Supreme Court issued its decision on the appeals, modifying the District Court's ruling and upholding key aspects of the ruling in favor of Tecoltemi.[994]

376. Specifically, in its decision, the Supreme Court determined that Economía had granted the Concessions without consulting the affected indigenous communities, including Tecoltemi.[995] Consequently, the Supreme Court ordered Economía to declare the Cerro Grande and Cerro Grande 2 Concessions "*insubsistentes*" or ineffective, pending a reassessment by Economía of

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991 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Articles 8.I, 8.VI, **Exhibit C-519**.

992 McDonald WS, at para. 103.

993 Santamaría WS, at para. 117.

994 *Amparo* 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**.

995 *Amparo* 134/2021, SCJN Decision, dated 16 February 2022, at pp. 205-206, **Exhibit C-92**.

the "feasibility" of issuing the Concession titles under the "conditions and requirements" in force at the time they were originally granted.[996] Before reissuing the Concession titles, the Supreme Court ordered Economía to conduct consultations with Tecoltemi and other potentially impacted indigenous communities:

> Effects. This First Chamber rules that it is appropriate to order the Ministry of Economy, through its General Directorate of Mining Regulation, to declare ineffective the mining concession titles. . .
>
> Now, taking into account that the proceeding was initiated at the request of the interested third party, carrying out various actions in terms of Articles 13 of the Mining Law and 16 of its Regulations, as in force at the time of filing, the effect of this judgment will be for the responsible authority *to rule again in relation to the feasibility of issuing the requested titles*, and in the event that it is considered that the conditions and requirements are met, *before granting them on land belonging to the indigenous community*, shall previously *carry out the consultation procedure with the indigenous community*. . .[997] (Emphasis added).

377. The Supreme Court's decision in this respect was irregular and contrary to Mexican legal principles of non-retroactivity and legal certainty.[998] It introduced new procedural

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996 *Amparo* 134/2021, SCJN Decision, dated 16 February 2022, at pp. 205-206, **Exhibit C-92**.

997 *Amparo* 134/2021, SCJN Decision, dated 16 February 2022, at pp. 205-206 (Spanish original: "*Efectos. Esta Primera Sala determina que lo procedente es ordenar a la Secretaría de Economía, a través de su Dirección General de Regulación Minera, dejar insubsistentes los títulos de concesión minera. . . Ahora bien, tomando en cuenta que el procedimiento inició a solicitud de la tercero interesada, realizándose diversas actuaciones en términos de los artículos 13 de la Ley Minera y 16 de su Reglamento, vigentes al momento de la presentación, el efecto de esta sentencia será para que, la autoridad responsable se pronuncie nuevamente con relación a la factibilidad de expedir los títulos solicitados, y en el caso de que se considere que se cumplen las condiciones y requisitos, antes de otorgarlas sobre terrenos de la comunidad indígena, deberá previamente realizar el procedimiento de consulta a la comunidad indígena. . .*"), **Exhibit C-92**.

998 *See* Mexican Constitution, at Article 14, ("No law will have retroactive effect. No one can be deprived of his freedom, properties or rights without a fair trial before previously established courts, complying with the essential formalities of the proceedings and according to those laws issued beforehand." *See also* Article 16: "No person shall be in his private affairs, or his home invaded, without a written order from a competent authority, duly explaining the legal cause of the proceeding." *See also* Article 17: "All people have the right to enjoy justice before the courts and under the terms and conditions set forth by the laws. The courts shall issue their rulings in a prompt, complete and impartial manner. Court's services shall be free, judicial fees are prohibited."), **Exhibit C-439.**

requirements specifically targeting the Concessions,[999] which Economía and its DGM had approved and registered decades earlier.[1000] Specifically, the Supreme Court ordered a retroactive reassessment of the "feasibility" of the existing concession titles and imposed a requirement of mandatory consultation.[1001]

378. The Supreme Court's ruling was also vague. Notably, the Court did not define "feasibility," which is not a term that appears in either the Mining Law or its Regulations in connection with Economía's grant of mining concessions.[1002] Indeed, the only context in which the term "feasibility" appears is in Article 6 of the Mining Law, which addresses the coexistence of mining activities with oil, gas, and energy-related activities in the same area and plainly has no application here.[1003] Moreover, this reference to "feasibility" was only introduced in a 2014

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999 *See* Mexican Constitution, at Article 14, ("No law will have retroactive effect. No one can be deprived of his freedom, properties or rights without a fair trial before previously established courts, complying with the essential formalities of the proceedings and according to those laws issued beforehand." *See also* Article 16: "No person shall be in his private affairs, or his home invaded, without a written order from a competent authority, duly explaining the legal cause of the proceeding.", **Exhibit C-439**. *See also* Article 17: "All people have the right to enjoy justice before the courts and under the terms and conditions set forth by the laws. The courts shall issue their rulings in a prompt, complete and impartial manner. Court's services shall be free, judicial fees are prohibited."), **Exhibit C-439**.

1000 With respect to the Cerro Grande concession, *see* Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, 28 October 2002, **Exhibit C-2**; Cerro Grande evaluation assessment by the *Subdirección de Minería de Puebla* for the mining case file No. 107/00131 dated 18 November 2002, **Exhibit C-169**; Official letter No. 120/21/A.4/6.1/2003 from the *Subdirección de Minería* of DGM to the Director of DGM with respect to the Cerro Grande concession application, dated 10 February 2003, **Exhibit C-171**; Requirements list issued for the Cerro Grande concession application on 26 February 2003, **Exhibit C-172**; Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, 5 March 2003, at **Exhibit C-3**.

With respect to the Cerro Grande 2 concession, *see* Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande* 2, Administrative File 107/00292, 14 July 2008, at **Exhibit C-7**; Official letter No. 141.8.1.20087 04713 from the *Jefe de Departamento de Concesiones Mineras* of DGM to the Director of DGM with respect to the Cerro Grande 2 concession application, dated 9 December 2008, **Exhibit C-175**; Requirements list issued for the Cerro Grande 2 concession application on 3 February 2009, **Exhibit C-176**; Cerro Grande 2 233,434 registered in Minutes No. 214 of Volume 374, 23 February 2009, at page 4, at **Exhibit C-8**.

1001 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 205-206, **Exhibit C-92**.

1002 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 206, **Exhibit C-92**.

1003 Mining Law, at Article 6 ("In the event that the requested information confirms the performance of any of the activities referred to in the second paragraph of this article within the area for which the concession is requested, the Secretariat, based on a technical study carried out with the Secretariat of Energy and in which the **feasibility of** the coexistence of mining activities with the exploration and extraction of oil and other hydrocarbons, or with public services for the transmission and distribution of electricity, in the same area, it may deny the mining concession or grant it excluding the area covered by the preferred activities, insofar as they are incompatible with mining." Spanish original: "*En caso de que la información solicitada confirme la realización de alguna de las actividades a que se refiere el párrafo segundo de este artículo dentro de la superficie para la que se solicita la concesión, la Secretaría, con base en un estudio técnico que realice con la Secretaría de Energía y en el cual se determine la* ***factibilidad*** *de*

amendment, meaning that at the time the Concessions were granted, there was no legal basis whatsoever for assessing feasibility – let alone for reassessing it in 2023. The Court likewise did not clarify the meaning, scope, or criteria for reassessing feasibility in the case at hand. Curiously, despite its supposed significance, the term "*feasibility*" appears only once in the entire decision – in paragraph 297 quoted above.[1004]

379. This ambiguity was further compounded by the fact that none of the parties involved in the *amparo* proceedings had ever referenced or debated the so-called "*feasibility*" of the Concessions as a relevant legal standard over the seven-year duration of the proceedings. Indeed, as noted above, Economía consistently defended the legality and validity of the Concessions as granted in 2003 and 2009.[1005] For nearly two decades, Mexico upheld these Concessions, affirming their good standing and even taxing them accordingly.[1006] By suddenly introducing a so-called feasibility standard in its ruling, the Supreme Court departed from the very legal and regulatory framework under which the Concessions were granted and operated.

380. In so doing, the Supreme Court violated the legal principle of judicial congruence ("*principio de congruencia*"), which requires courts to rule within the scope of the case at hand and on the issues actually raised.[1007] In this case, the Supreme Court introduced a feasibility standard that

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la coexistencia de actividades mineras con las actividades de exploración y extracción de petróleo y demás hidrocarburos, o con las de servicio público de transmisión y distribución de energía eléctrica, en la misma superficie, podrá negar la concesión minera u otorgarla excluyendo la superficie que comprendan las actividades preferentes, en la medida en que resulten incompatibles con la explotación minera."), **Exhibit C-174**. Similarly, Article 7, Section XV of the Decree Amending and Supplementing the Regulatory Law of Article 27 of the Constitution in the Petroleum Sector and the Mining Law, dated 26 June 2006, establishes that the Ministry of Energy is responsible for evaluating the feasibility of utilizing gas associated with coal deposits – again, a completely different context from mining concession approvals. Nor did the Court clarify the meaning, scope, or criteria for reassessing feasibility in the case at hand. In this regard, *see* Secretariat of Energy, Decree Amending and Supplementing the Regulatory Law of Article 27 of the Constitution in the Petroleum Sector and the Mining Law, at Article 7.XV ("In coordination with the Ministry of Energy, evaluate the **feasibility** of projects for the recovery and utilization of gas associated with mineral coal deposits and their alignment with energy policy." Spanish original: "*En conjunto con la Secretaría de Energía, evaluar la* ***factibilidad*** *de los proyectos de recuperación y aprovechamiento del gas asociado a los yacimientos de carbón mineral y su congruencia con la política de energía*."), **Exhibit C-174**.

1004 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 206, **Exhibit C-92**.

1005 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, **Exhibit C-34**; Economia, Revision en Amparo 445/2015, 8 May 2019, at p. 31, **Exhibit C-68**; DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 6, **Exhibit C-528**.

1006 McDonald WS, at para. 71.

1007 Suprema Corte de Justicia de la Nación, Primera Sala, Tesis 1a./J. 33/2005, Semanario Judicial de la Federación y su Gaceta, Novena Época, Abril de 2005, Tomo XXI, página 108. Registro digital: 178783 ("The principles of congruence and exhaustiveness that govern *amparo* rulings that derive from articles 77 and 78 of the Amparo Law, refer to the fact that they are not only consistent with themselves, but also with the litigation and the *amparo* claim, assessing the relevant evidence and ruling without omitting

had no legal foundation and that was entirely irrelevant to the subject matter of the *amparo* proceeding, namely, the indigenous rights of Tecoltemi. The Court also imposed that feasibility standard retroactively, upending legal stability, transparency, and predictability.

381. Importantly, the Supreme Court confirmed, however, that the administrative process leading to the grant of the Concessions in 2003 and 2009 remained valid.[1008] In outlining the informative phase (*fase informativa*) of the consultation process, the Supreme Court underscored that Economía must provide "complete, prior, and meaningful information on the measure under consultation, *taking into account that the administrative procedure began with the request for the concession, and various actions were carried out before the ineffective titles were issued*."[1009] In other words, the Supreme Court made clear that it was not invalidating the

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anything, or adding issues that have not been asserted, or expressing considerations that are contrary to each other or to the operative paragraphs." Spanish original: "*Los principios de congruencia y exhaustividad que rigen las sentencias en amparo contra leyes y que se desprenden de los artículos 77 y 78 de la Ley de Amparo, están referidos a que éstas no sólo sean congruentes consigo mismas, sino también con la litis y con la demanda de amparo, apreciando las pruebas conducentes y resolviendo sin omitir nada, ni añadir cuestiones no hechas valer, ni expresar consideraciones contrarias entre sí o con los puntos resolutivos.*"), **Exhibit C-547**; Suprema Corte de Justicia de la Nación, Primera Sala, Tesis 1a. CCXLII/2017 (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 49, Diciembre de 2017, Tomo I, página 415. Registro digital: 2015722 ("[T]he principle of congruence, which consists of rulings being handed down in accordance with the case brought before the court, that is, in accordance with what has been formulated by the parties (external congruence), and that they do not contain considerations or statements that contradict each other or the operative paragraphs (internal congruence). However, the Supreme Court of Justice of the Nation has consistently maintained that consistency must prevail in the delivery of all judgments, which is in accordance with the effective compliance with *amparo* rulings, established by the legislator in articles 196, 197 and 201, section I, of the Amparo Law, which specify that such compliance must be total, without excesses or defects. Thus, when the authority responsible must issue a new resolution as a result of the *amparo* ruling, the constitutional control body must analyse whether the aforementioned authority is attending in a manner circumscribed to the matter determined by the constitutional action and to the limit indicated by the ruling itself." Spanish original: "*[E]l principio de congruencia, el cual consiste en que las resoluciones se dicten de conformidad con la litis planteada, es decir, atendiendo a lo formulado por las partes (congruencia externa), y que no contengan consideraciones ni afirmaciones que se contradigan entre sí o con los puntos resolutivos (congruencia interna). Ahora bien, la Suprema Corte de Justicia de la Nación ha sido consistente en sostener que en el dictado de toda sentencia debe prevalecer la congruencia, lo cual es acorde con el cumplimiento eficaz de las ejecutorias de amparo, establecido por el legislador en los artículos 196, 197 y 201, fracción I, de la Ley de Amparo, los cuales precisan que dicho cumplimiento debe ser total, sin excesos o defectos. Así, cuando por la ejecutoria de amparo la autoridad responsable deba dictar una nueva resolución, el órgano de control constitucional debe analizar si la autoridad referida atiende de forma circunscrita a la materia determinada por la acción constitucional y al límite señalado por la propia ejecutoria.*"), **Exhibit C-548**.

1008 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 207-208, **Exhibit C-92**.

1009 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 207-208 (Spanish original: "*Fase informativa. Durante el proceso de difusión de la consulta, la autoridad deberá dotar de contenido a esta con información completa, previa y significativa sobre la medida consultada, tomando en cuenta que el procedimiento administrativo inició con la solicitud de la concesión y se han realizado diversas actuaciones hasta antes de que fueran emitidos los títulos invalidados.*"), **Exhibit C-92**.

administrative steps taken *before* Economía issued the concession titles; that administrative procedure (which Tecoltemi had *not* challenged) remained valid.

382. With respect to the ordered consultation, the Supreme Court also made clear that consultation does *not* equate to an absolute veto.[1010] Rather, indigenous consultation is a procedural mechanism to ensure meaningful participation, while balancing the State's right to exploit mineral resources with indigenous rights:

> The State is empowered to use the mining resources according to the necessary modalities and mechanisms, provided that the cases in which the rights to use and enjoy the natural resources found in the lands inhabited by the Indigenous communities will be limited by State activities, are legally established; that the causes of public interest that support said modalities are established; and that the right of the referred communities to participate in such concession processes is guaranteed. This is the only way to find a balance and coexistence between both rights.[1011]

383. Most fundamentally, the Supreme Court did *not* require the consent of the indigenous communities as a condition for reissuing the Concessions. Rather, the Court required that the results of the consultations be communicated to the relevant communities, and that "[i]n the event that an agreement is reached between the parties, a plan for follow-up, collaboration and monitoring of the agreements reached should be done."[1012] The Court made clear that free, informed consent is required only "in the event that the exploration and/or exploitation activities could result in the moving, necessary relocation or other similar consequence" in

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1010 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 72 ("It should be noted that in no way was it intended that the Indigenous peoples and communities had a veto right over decisions that could have to do with national development or in relation to the strategic resources and property of the Mexican Nation." Spanish original: "*Se advierte que de ninguna manera se pretendió que los pueblos y comunidades indígenas tuvieran un derecho de veto sobre decisiones que pudieran tener que ver con el desarrollo nacional o con relación a los recursos estratégicos y propiedad de la Nación Mexicana*."), **Exhibit C-92**.

1011 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 196 (Spanish original: "*El Estado se encuentra facultado a aprovechar los recursos mineros conforme a las modalidades y mecanismos necesarios, siempre y cuando se encuentren legalmente previsto los casos en que los derechos de usar y disfrutar los recursos naturales que se encuentren en las tierras habitadas por las comunidades indígenas serán limitados por actividades del Estado; se establezcan las causas de interés público que respalden dichas modalidades; y se garantice el derecho de los referidos pueblos a participar en dichos procesos concesionarios. Sólo así es como puede encontrarse un equilibrio y convivencia entre ambos derechos*."), **Exhibit C-92**.

1012 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 210 (Spanish original: "*Finalmente, se deberán comunicar los resultados a los integrantes de las comunidades indígenas. En caso de que se llegara a un acuerdo entre las partes, deberá realizarse un plan de seguimiento, colaboración y vigilancia de los acuerdos alcanzados*."), **Exhibit C-92**.

relation to the community.[1013] As noted above, no such relocation was necessary,[1014] nor would it ever be solely due to the administrative act of granting a concession. Crucially, this meant that Tecoltemi, and the NGOs supporting it, would not have any veto over the grant of the Concessions.

384. As explained below, Economía never conducted any indigenous consultations with Tecoltemi or with any other affected community. Instead, as shown below, Economía used the Supreme Court's decision as a pretext to cancel the Claimants' Concessions in full on manifestly trivial grounds. These actions not only destroyed the Claimants' investments but undermined the stated purpose of the *amparo* itself – to uphold indigenous rights through consultation.

2.17 In Manifest Disregard of Minera Gorrión's Rights, Economía Ruled That The Concessions It Had Granted Decades Earlier Were "Not Feasible"

2.17.1 In June 2022, Economía suspended the legal effects of the Concessions and ordered indigenous consultations

385. In accordance with the Supreme Court's decision, on 20 June 2022, Economía issued Oficio SE/610/364/2023 (the "**June 2022 *Oficio***"), suspending the legal effects of the Cerro Grande and Cerro Grande 2 Concessions, "until the prior consultation with the Nahua Indigenous Community of Tecoltemi is carried out, in terms of the judgment of merit."[1015]

386. In the June 2022 *Oficio*, Economía made clear that, for purposes of its feasibility determination, *all actions* taken prior to the issuance of the Concessions remained valid – just as the Supreme Court itself had made clear in its ruling.[1016]

> For the issuance of a new pronouncement with respect to the feasibility of the issuance of the concession titles, *everything that was done prior to the granting of the concession titles subsists*, that is, taking into consideration the different actions carried out in terms

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1013 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 210 (Spanish original: "*No obstante, en el supuesto de que las actividades de exploración y/o explotación pudieran llegar a significar el traslado, la reubicación necesaria u otra consecuencia análoga, además de la consulta previa de la comunidad, se requerirá el consentimiento libre e informado de la comunidad*."), **Exhibit C-92**.

1014 Santamaría Tovar WS, at para. 19.

1015 Letter from Economía, Director General of Mines to Minera Gorrión, dated 20 June 2022, at p. 4 (Spanish original: "*Lo anterior hasta en tanto se lleve a cabo la consulta previa a la COMUNIDAD INDÍGENA NAHUA DE TECOLTEMI, en términos de la sentencia de mérito*."), **Exhibit C-95**.

1016 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 207-208, **Exhibit C-92**.

> of Articles 13 of the Mining Law and 16 of its Regulations, in force at the time of the filing of the application, in accordance with number 297 of the ruling of merit.[1017] (Emphasis added.)

387. As Mr. McDonald observes, the June 2022 *Oficio* thus signaled to the Claimants that the concession applications – including the supporting documents and mining expert reports expressly approved by Economía in 2003 and 2009 – remained valid and in good order.[1018]

388. Based on the understanding that Economía had ordered the start of indigenous consultations, Mr. McDonald instructed Mr. Santamaría Tovar to meet with Economía to convey Minera Gorrión's ability and willingness to support the Mexican Government's compliance with its duty to guarantee the human rights of the Tecoltemi community through consultation.[1019] At that time, Ms. Tatiana Clouthier was the Secretary of Economía, and she and her officials were receptive, maintaining an open dialogue with Minera Gorrión and organizing several meetings to discuss the indigenous consultation ordered by the Supreme Court.[1020]

389. As Messrs. McDonald and Santamaría Tovar testify, Minera Gorrión conveyed to Economía in these meetings the Company's eagerness to support the Mexican Government in completing its first-ever indigenous consultation in the mining sector.[1021] Minera Gorrión likewise informed Economía about its success in engaging with the local communities at Ixtaca over many years and in completing the public information meeting during the MIA assessment in June 2019.[1022]

390. As these meetings made clear, Minera Gorrión had nothing to fear from an indigenous consultation. In particular, given that Minera Gorrión (i) had completed the EVIS; (ii) was in the process of preparing its own independent HRIA; and (iii) had built up robust relationships

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1017 Letter from Economía, Director General of Mines to Minera Gorrión dated 20 June 2022 at p. 7 (Spanish original: "*Para la emisión de un nuevo pronunciamiento respecto a la procedencia de la expedición de los títulos de concesión, subsiste todo lo actuado previamente al otorgamiento de los títulos de concesión, es decir, tomando consideración las actuaciones realizadas en términos de los artículos 13 de la Ley Minera y 16 de su Reglamento, vigentes al momento de la presentación de la solicitud, en apego numeral 297 de la ejecutoria de mérito*."), **Exhibit C-95**.

1018 McDonald WS, at para. 106.

1019 McDonald WS, at paras. 107-108.

1020 Email from Mr. Efraín Alba Niño to Mr. Daniel Santamaría Tovar Regarding Proposal for Indigenous Consultation in Ixtaca, dated 4 March 2022, **Exhibit C-384**; Email from Mauricio Heiras to Mr. Douglas J. McDonald Regarding Meeting with the DGM in Mexico City, dated 1 April 2022, **Exhibit C-487**; Santamaría Tovar WS, at paras. 121-122.

1021 Santamaría Tovar WS, at para. 121; McDonald WS, at para. 107-108.

1022 McDonald WS, at para. 108.

with the local communities within the Project's area of influence, it was confident that Mexico's indigenous consultation would reflect the Project's support and the efforts Minera Gorrión had made to address any outstanding concerns.[1023] Moreover, as the Supreme Court had made clear in its ruling, Mexico's indigenous consultation was informative only and did not give Tecoltemi a veto over the grant of the Concessions.[1024]

2.17.2 Economía and the UNECE selected the Ixtaca Project for the UNECE Mining Pilot Project

391. On 20 June 2022, the same day that Economía issued the June 2022 *Oficio*, Minera Gorrión was informed that Economía and the UNECE had officially selected the Ixtaca Project for the UNECE Mining Pilot Project, a global initiative aimed at identifying and promoting best practices in responsible mining.[1025]

392. The selection process for the UNECE Mining Pilot Project was rigorous.[1026] Mexico was the only Latin American country chosen for this global initiative, and Economía was tasked with identifying projects that exemplified best-in-class environmental, social, and governance practices across the three stages of the mining lifecycle.[1027]

393. On 9 August 2021, Mr. Ulises Neri Flores, Vice Chair for Mexico and Latin America at the UNECE Expert Group on Resource Management, advised Secretary Clouthier that, after a site visit to the Ixtaca Project and consultation with UN experts in Geneva, the UNECE Expert Group had identified the Ixtaca Project as a suitable candidate for evaluation under the UN's most advanced sustainability frameworks.[1028]

1023 Santamaría Tovar WS, at para. 121.

1024 *See supra* 2.15.

1025 Official Invitation to Minera Gorrión for Participation in the UNECE Initiative Kickoff Session, dated 20 June 2022, **Exhibit C-390**; Almaden Press Release, *Almaden Announces Selection by United Nations UNECE for Mining Pilot Project in Coordination with Mexican Ministry of the Economy*, dated 6 July 2022, **Exhibit C-392**.

1026 Uzcanga Vergara WS, at paras. 57-58; Santamaría Tovar WS, at para. 44.

1027 Official Invitation to Minera Gorrión for Participation in the UNECE Initiative Kickoff Session, dated 20 June 2022, **Exhibit C-390**.

Official Invitation to the Secretary of Economy of Puebla for Participation in the UNECE Initiative Kickoff Session, dated 22 June 2022, **Exhibit C-390**.

1028 Email from Mr. Ulises Neri Flores to Mr. Daniel Santamaría Tovar Forwarding Correspondence to Secretary of Economy Tatiana Clouthier on Ixtaca Project Visit, dated 9 August 2021, **Exhibit C-546**.

394. The site visit to the Ixtaca Project allowed the UN experts to evaluate in person its technical, economic, legal, social, cultural, indigenous and environmental aspects.[1029] The UN report produced following this visit highlighted the key factors that positioned Minera Gorrión as a best-in-class leader in sustainable mining, including:

- Its human rights impact assessment, the first ever conducted for a mining project in Mexico;[1030]
- Leadership in sustainable water management;[1031]
- Top-tier environmental responsibility;[1032] and
- Over ten years of community engagement.[1033]

395. The UN report concluded that Minera Gorrión's approach to project development could be replicated as the gold standard for responsible and sustainable mining: "This model of project exploration/development could be replicated and become a national and international model of how to do responsible and sustainable mining."[1034]

396. After careful evaluation, Economía and the UNECE selected the Ixtaca Project to represent the exploration phase, alongside Argonaut Gold's La Colorada Project (for active production) and Starcore's San Martin Project (for mine closure).[1035]

1029 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, **Exhibit C-370**.

1030 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 1, **Exhibit C-370**.

1031 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2, **Exhibit C-370**.

1032 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2, **Exhibit C-370**.

1033 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 2, **Exhibit C-370**.

1034 UN Working Visit Report on Minera Gorrión – Assessment for UNECE Sustainable Mining Pilot Program, dated 4 August 2021, at p. 3 (Spanish original: "*Este modelo de exploración/desarrollo de proyecto podría ser replicable y un modelo nacional e internacional de cómo hacer minería responsable y sustentable*."), **Exhibit C-370**.

1035 "*La ONU selecciona a México para un programa piloto de sostenibilidad en minería*," Outlet Minero, dated 28 October 2022, **Exhibit C-402**.

397. As the Claimants' witnesses note, the selection of the Ixtaca Project for the UNECE Mining Pilot Project was a direct acknowledgment and affirmation of Minera Gorrión's commitment to transparency, sustainability, and socially responsible mining.[1036] As Ms. Uzcanga Vergara puts it, "[i]t reinforced our belief that real leadership in responsible mining must come from within."[1037] It set a new benchmark for the industry in Mexico, proving that mining companies can – and should – incorporate transparency, sustainability, and accountability into their operations.[1038]

398. Secretary Clouthier herself publicly championed the UNECE Mining Pilot Project, emphasizing its importance in shaping the future of mining in Mexico:

> It is also important to mention that we have signed an agreement with the UN to carry out three research and study prototypes, in order to achieve coordination and respect for the environment, the community, and their harmonious development. I think this has become very important to know that mining does not work as it did in the past, and that it is undergoing rapid changes worldwide, and that it will play a major role.[1039]

399. In August 2022, Economía hosted a series of technical sessions at its headquarters in Mexico City, where Mr. Santamaría Tovar and Ms. Uzcanga Vergara presented Minera Gorrión's approach, community initiatives, and responsible mining practices.[1040]

1036 Uzcanga Vergara WS, at paras. 57, 59; Santamaría Tovar WS, at para. 43; McDonald WS, at para. 74.

1037 Uzcanga Vergara WS, at para. 59.

1038 Uzcanga Vergara WS, at para. 59.

1039 *TATIANA CLOUTHIER: Una nueva hoja de ruta – Expansión Summit 2021*, Expansión YouTube Channel, dated 6 September 2021, available at https://www.youtube.com/watch?v=Xhx-r89PMlA (last accessed 2 March 2025) (Spanish original: "*También es importante hablar que hemos firmado un convenio con la ONU para hacer tres prototipos de investigación y estudios, para poder llevar una coordinación y un respeto al medio ambiente, a la comunidad y al desarrollo armónico de los mismos. Creo que esto se ha vuelto muy importante para saber que la minería no funciona como en el pasado, y que está sufriendo cambios acelerados en el mundo, y que tendrá un papel preponderante*."), **Exhibit C-371**.

1040 Uzcanga Vergara WS, at para. 58.

400. In October 2022, AMLO replaced Secretary Clouthier with Ms. Raquel Buenrostro as Secretary of Economía.[1041] A close ally of AMLO, Secretary Buenrostro was a vocal critic of the mining industry, particularly Canadian mining investors like the Claimants.[1042] She

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1041 *Correspondence to Secretary of Economy Tatiana Clouthier on Ixtaca Project Visit*, dated 7 October 2022, available at https://www.youtube.com/watch?v=gF7Mex2nvus (last accessed 11 March 2025), **Exhibit C-549**.

1042 El Sol de México, "*¿Quién es Raquel Buenrostro, nueva titular de la Secretaría de la Función Pública?,*" dated 27 June 2024, **Exhibit C-435**.

condemned foreign mining companies for paying "insignificant" taxes and asserted that "those who have the concessions do not comply with their obligations that the concessions have to fulfill."[1043] Consistent with AMLO's anti-mining policy, she expressly argued that it made "no sense to continue granting concessions. *A very strong purge is being carried out, I think it is one of the areas with the greatest problem of corruption in the Ministry of Economy*."[1044] (Emphasis added.)

401. Shortly after Secretary Buenrostro's appointment, Economía abruptly and without explanation discontinued the UNECE Mining Pilot Project.[1045] In addition, once she assumed office, Economía halted all communications and meetings with Minera Gorrión.[1046]

2.17.3 SEMARNAT continued its bad faith campaign to stop the Project

402. Shortly after Economía announced its selection of the Ixtaca Project for the UNECE Mining Pilot Project, SEMARNAT intensified its opposition to the Project by actively collaborating with anti-mining activists and NGOs to discredit it.

403. On 12 July 2022, SEMARNAT issued an official press statement confirming that it had facilitated a dialogue with Atcolhua, an anti-Project NGO, together with Government agencies INPI and PROFEPA, and a spokesperson from AMLO's office.[1047] As the statement reflects, this was not a neutral discussion about environmental oversight, but rather a strategy session designed to ensure that the Ixtaca Project would not go forward. Indeed, in its statement, SEMARNAT directly and forcefully urged AMLO to intervene to ensure that Economía would *not* reissue the Claimants' Concessions:

> On the occasion of the protection granted by the Supreme Court of Justice of the Nation last February to the *ejido* of Tecoltemi. . .
>
> . . .
>
> *Likewise, the residents will ask the President of the Republic, Andrés Manuel López Obrador, for his intervention in the face of said*

1043 SPR Informa, "*Mineras prácticamente no pagan impuestos: Raquel Buenrostro,*" dated 8 December 2022, **Exhibit C-109**.

1044 SPR Informa, "*Mineras prácticamente no pagan impuestos: Raquel Buenrostro,*" dated 8 December 2022, **Exhibit C-109**.

1045 Uzcanga Vergara WS, at para. 59; Santamaría Tovar WS, at para. 50.

1046 McDonald WS, at para. 113.

1047 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**.

> *problem, so he reaffirms his commitment not to grant more mining concessions. . . and consequently intervene so that the Ministry of Economy does not grant new concessions in the municipality of Ixtacamaxtitlán.*
>
> Given the legitimate request, SEMARNAT emphatically declares the historical commitment that it has as part of the Government of Mexico to protect the environment and will do so together with the indigenous and agrarian peoples and communities that inhabit the territory, since nothing is worth as much as life and the dignity of peoples, and the right of this and future generations to live in a healthy environment.[1048] (Emphasis added.)

404. These are not the actions of a neutral regulatory agency. SEMARNAT not only called upon the President for intervention but sought a complete halt to any concessions in the municipality of Ixtacamaxtitlán. Of course, the only relevant mining concessions in Ixtacamaxtitlán were the Claimants' Cerro Grande and Cerro Grande 2 Concessions, which they had held for nearly 20 and 14 years, respectively.

405. As internal Government documents obtained by the Claimants reveal, SEMARNAT's targeted, bad faith actions against the Project went well beyond public press statements calling for Presidential intervention. Specifically, internal SEMARNAT minutes obtained by the Claimants under Mexico's Transparency Act reveal a deliberate strategy orchestrated by SEMARNAT to manufacture a case against the Ixtaca Project and to ensure its cancellation.[1049]

406. As the minutes reflect, on 4 August 2022, SEMARNAT held a private "follow-up" meeting – suggesting that this was not the first of such meetings – with several NGOs, representatives from the National Institute of Ecology and Climate Change (**INECC**), and the Mexican

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1048 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, at pp. 2-3 (Spanish original: "*Con motivo del amparo concedido por la Suprema Corte de Justicia de la Nación el pasado mes de febrero al ejido de Tecoltemi, municipio de Ixtacamaxtitlán,. . .De igual forma, los pobladores solicitarán al Presidente de la República, Andrés Manuel López Obrador, su intervención ante dicha problemática, para que reafirme su compromiso de no otorgar más concesiones mineras. . . y en consecuencia intervenga para que la Secretaría de Economía no otorgue nuevas concesiones en el municipio de Ixtacamaxtitlán. . . la Semarnat declara enfáticamente el compromiso histórico que tiene como parte del Gobierno de México de proteger al medio ambiente, y lo hará junto a los pueblos y comunidades indígenas y agrarias que habitan el territorio, pues nada vale tanto como la vida y la dignidad de los pueblos, y el derecho que tienen esta y futuras generaciones de vivir en un medio ambiente sano*."), **Exhibit C-393**.

1049 *Ley Federal de Transparencia y Acceso a la Información Pública*, dated 9 May 2016, at Articles 121-144, **Exhibit C-551**.

Institute of Water Technology (**IMTA**).[1050] One of the attendees was [redacted], lead counsel for Tecoltemi in the *amparo* proceedings.[1051] Neither the Claimants nor members of the affected local communities were invited to participate.[1052]

407. It is worth pausing here to note that SEMARNAT had no power or authority over the Ixtaca Project at that time. SEMARNAT had already arbitrarily rejected Minera Gorrión's MIA application on pretextual grounds. Without an active submission before it, SEMARNAT had no authority to intervene in or influence the Project. Moreover, SEMARNAT was not a party to the *amparo* proceedings and had no role in implementing the Supreme Court's directives, making its effort to manufacture a case against the Ixtaca Project not only improper but also entirely beyond its jurisdiction.

408. As the minutes record, a senior SEMARNAT official stated that SEMARNAT's objective was to establish a framework for an environmental assessment of the entire Ixtacamaxtitlán region where the Ixtaca Project was located.[1053] He recalled that Secretary Albores had requested an environmental impact assessment of "soil, water, air, and biota in the town of Ixtacamaxtitlán."[1054] While presenting this as a neutral scientific inquiry, he made clear that SEMARNAT's real intent was to undermine the Ixtaca Project in response to the Supreme Court's decision: "The Secretary's mandate is to protect the environment but, above all, to protect the community in view of the avant-garde resolution of the Supreme Court of Justice of the Nation in favor of the community of Tecoltemi."[1055] As noted, the Claimants held the

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1050 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

1051 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1052 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1053 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1054 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1 (Spanish original: "*El Dr. Daniel Quezada abrió la reunión dando el contexto y recordando la petición de la Secretaria para llevar a cabo un peritaje ambiental en suelos, agua, aire y biota en la localidad de Ixtacamaxtitlán*."), **Exhibit C-397**.

1055 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1 (Spanish original: "*El mandato de la Secretaria es el de proteger el medio ambiente, pero sobre todo a la comunidad ante la resolución vanguardista que tuvo la Suprema Corte de Justicia de la Nación a favor de la comunidad de Tecoltemi*."), **Exhibit C-397**.

only mining concessions in Ixtacamaxtitlán, leaving no doubt that the assessment SEMARNAT was preparing was aimed at the Ixtaca Project.

409. The SEMARNAT official noted that this effort faced "problems" because "the company wants to legitimize that it is a sustainable mining project."[1056] In other words, he was concerned that the Claimants' commitment to meeting its environmental and corporate sustainability goals was getting in the way of SEMARNAT's objective of ensuring the cancellation of the Project. He then explicitly outlined the goal of the initiative: "The objective of the aforementioned expert's report is to support with technical and scientific evidence that this mining project affects the environment and, therefore, no more mining concessions can be granted in the region."[1057] This is the definition of arbitrariness – a politicized regulator that did not actually have the Project before it at the time, took a populist, anti-foreign-investment position to shut it down and only then was setting out to accumulate *post hoc* evidence to support its position. So much for "following the science;" here the science followed the politics.

410. The meeting minutes further reveal that SEMARNAT, IMTA, and INECC planned to conduct a tour of the Ixtaca region at the end of August 2022.[1058] Officials laid out a plan to select sampling points, testing water and air quality, and use their findings to reinforce their case against the Ixtaca Project.[1059] They instructed IMTA to evaluate metal presence in water resources and the overall health of regional water bodies.[1060]

411. The targeted and pretextual nature of these "studies" is made clear by FUNDAR's alarming request that the studies "*be sent as soon as possible to the Office of the President . . . so that the President can issue a decision and comply with the mandate of not allowing new concessions to the Ministry of Economy* . . . in order to support that there are no proper

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1056 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1 (Spanish original: "*Tiene bemoles ya que la empresa quiere legitimar que es un proyecto de minería sustentable*."), **Exhibit C-397**.

1057 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1 (Spanish original: "*El objetivo del peritaje mencionado es sustentar con evidencia técnica y científica que este proyecto minero trastoca el medio ambiente y por lo cual no se pueden dar más concesiones en la región*."), **Exhibit C-397**.

1058 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1059 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1060 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 2, **Exhibit C-397**.

conditions for the Ministry of Economy to grant a new concession."[1061] As Fundar's request makes clear, these were not legitimate scientific investigations – they were a calculated effort to discredit the Project and to put political pressure on Economía not to reissue the Ixtaca Concessions. Notably, their language repeatedly refers to "new concessions," when in reality, Minera Gorrión already held the concessions. There was nothing "new" about them – what they were actually pushing for was their cancellation.

412. The minutes also confirm that this meeting was not an isolated event. Indeed, UCPAST – the SEMARNAT division responsible for organizing Minera Gorrión's earlier RPI – undertook to meet with Fundar weekly: "UCPAST and FUNDAR will be working on this document and will meet every week until it is ready."[1062] It is striking that UCPAST, the very entity tasked with ensuring transparency and public engagement on environmental issues at SEMARNAT, was instead holding weekly, closed-door meetings with an anti-mining activist NGO to coordinate efforts against the Project, sidelining both the Company *and* the local communities from the process.

413. The immediate consequence of this bad faith strategy session was a baseless fine imposed by PROFEPA one month later.[1063] Notably, this was the only fine PROFEPA ever issued against Minera Gorrión, and it was not due to any actual environmental violations but rather due to a trivial administrative matter – an outdated registration name on a residues permit, which the Company had already moved to correct.[1064]

414. What makes this fine even more suspect is its timing – the PROFEPA inspection that formed the basis of the fine took place on 4 November 2021, but PROFEPA did not issue the fine until *28 September 2022*, nearly one year later and only weeks after SEMARNAT's 4 August 2022

[1061] Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 2 (Emphasis added.) (Spanish original: "*FUNDAR solicita que lo antes posible se le pueda hacer llegar el soporte técnico a la presidencia de la República para que el Presidente pueda emitir la decisión y cumplir con el mandato de no permitir nuevas concesiones a la Secretaría de Economía. . .esto a fin de sustentar que no hay condiciones para que se vuelva a dar una concesión por parte de dicha Secretaría*."), **Exhibit C-397**.

[1062] Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 2 (Spanish original: "UCPAST y FUNDAR estará trabajando este documento y se reunirá cada semana hasta tenerlo."), **Exhibit C-397**.

[1063] PROFEPA Inspection Ruling Imposing a Sanction on Minera Gorrión, dated 28 September 2022, **Exhibit C-400**; Santamaría Tovar WS, at paras. 68-69.

[1064] Santamaría Tovar WS, at para. 68.

strategy session.[1065] Adding to the irregularity, residues permits fall under SEMARNAT's jurisdiction, not PROFEPA. The fact that SEMARNAT failed to address the Company's name change request, but instead let the issue linger casts doubt on the legitimacy of the fine. Put more plainly, in their haste to target the Project, PROFEPA and its NGO backers got sloppy.

415. In addition to PROFEPA's baseless and belated fine, between August 2022 and January 2023, various Government agencies issued, as planned, a series of purported scientific reports aimed at creating a pretext to cancel the Ixtaca Project. These reports included:

- A Water Study by the IMTA (September – November 2022);[1066]
- A Soil and Air Study by the INECC (29 August – 3 September 2022);[1067]
- A Biodiversity Impact Report by the National Commission for the Knowledge and Use of Biodiversity ("**CONABIO**") (6 December 2022);[1068] and
- A Social, Cultural, and Spiritual Study by the National Institute of Indigenous Peoples ("**INPI**") (1 January 2023).[1069]

416. As Messrs. McDonald and Santamaría Tovar confirm, these agencies never consulted, never involved, and never even informed Minera Gorrión that they were preparing these purported studies, despite the fact that they concerned Minera Gorrión's own Project.[1070] Accordingly, Minera Gorrión had no chance to review and no opportunity to challenge their flawed findings. Indeed, Minera Gorrión did not even know these studies existed until Tecoltemi filed a writ with the District Court on 12 January 2023 demanding that Economía consider them in its

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1065 PROFEPA Inspection Ruling Imposing a Sanction on Minera Gorrión, dated 28 September 2022, at p. 2, **Exhibit C-400**; Santamaría Tovar WS, at para. 68-69.

1066 IMTA Report, "*Informe de Actividades. Municipio de Ixtacamaxtitlán, Puebla, México, 2022*," **Exhibit C-378**.

1067 INECC Report, "*Determinación de las Concentraciones Ambientales y la Exposición Personal a PM2.5 en el Municipio de Ixtacamaxtitlán, Estado de Puebla. Diciembre 2022*," **Exhibit C-403**.

1068 CONABIO Report, "*Informe sobre el Proyecto de Exploración de la Minería Gorrión en el municipio de Ixtacamaxtitlán, estado de Puebla (SE/092/2022)*," **Exhibit C-404**.

1069 INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," **Exhibit C-407**.

1070 Santamaría Tovar WS, at para. 113; McDonald WS, at para. 112.

feasibility reassessment.[1071] According to Tecoltemi, these "[c]onclusive studies . . . provide elements for the Ministry of Economy to fulfill its obligations under the national and conventional framework on Human Rights and Indigenous Peoples' Rights and that must be considered in the feasibility analysis that was ordered to be carried out by the responsible authority" by the Supreme Court.[1072]

417. In other words, the Mexican Government, in collaboration with Tecoltemi's legal counsel and other anti-Project NGOs, prepared and produced in secret "conclusive studies" for Tecoltemi to use in pressuring Economía to cancel the Concessions in its feasibility reassessment. This was not an objective environmental review; it was a coordinated legal ambush.

418. On 13 January 2023, the District Court granted Tecoltemi's request, formally accepting the studies into the case file.[1073] Minera Gorrión took immediate legal action to challenge this misconduct, filing a writ with the District Court on 24 January 2023 and two additional writs with the DGM on 25 January 2023, as well as an *amparo indirecto*.[1074] These legal challenges

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1071 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 12 January 2023, at p. 7, **Exhibit C-410**.

1072 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 12 January 2023, at p. 7 (Spanish original: "*Estudios concluyentes que aportan elementos a [la] Secretaría de Economía para cumplir con las obligaciones del marco nacional y convencional en materia de Derechos Humanos y Derechos de Pueblos Indígenas y que deben ser considerados en el análisis de factibilidad que fue ordenado realizar a la autoridad responsable por la Suprema Corte de Justicia de la Nación*."), **Exhibit C-410**.

1073 Lower Court Ruling Admitting SEMARNAT-Commissioned Reports Against the Ixtaca Project, dated 13 January 2023, at p. 1 ("Likewise, it forwards copies of various studies submitted by the Ministry of the Environment and Natural Resources to the Ministry of Economy. These statements will be taken into consideration at the appropriate procedural momento." Spanish original: "*Asimismo, remite copias de diversos estudios entregados por la Secretaría de Medio Ambiente y Recursos Naturales a la Secretaría de Economía. Manifestaciones que serán tomadas en consideración en su momento procesal oportuno*."), **Exhibit C-552**.

1074 Minera Gorrión Writ to Lower Court Challenging SEMARNAT-Commissioned Reports Submitted to Economía, dated 24 January 2023, **Exhibit C-554**; Minera Gorrión Legal Submission to the DGM Opposing SEMARNAT-Commissioned Reports Regarding Cerro Grande Concession, dated 24 January 2023, **Exhibit C-556;** Minera Gorrión Legal Submission to the DGM Opposing SEMARNAT-Commissioned Reports Regarding Cerro Grande 2 Concession, dated 24 January 2023, **Exhibit C-559**; Minera Gorrión Amparo Submission Against SEMARNAT-Commissioned Reports, dated 2 February 2023, **Exhibit C-557**.

Note that an *amparo indirecto* is a constitutional remedy in Mexico to challenge government acts, laws, or administrative decisions that violate fundamental rights. Filed before a District Court, it prevents or suspends acts before they take full effect. *See* Political Constitution of the United Mexican States, at Articles 103, 107, available at https://www.oas.org/ext/Portals/33/Files/Member-States/Mex_intro_txtfun_eng.pdf, **Exhibit C-439**; *see also* Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos, available at https://www.diputados.gob.mx/LeyesBiblio/pdf/LAmp.pdf, **Exhibit C-507**.

contested the legitimacy of the purported studies and their potential influence on the feasibility determination process.[1075] None of these challenges prevailed.[1076]

419. Instead, as elaborated below, Economía proceeded to reject the "feasibility" of the Concessions it had approved years earlier, consistent with SEMARNAT's bad faith campaign.

2.17.4 Economía's failure to issue a "feasibility" decision

420. In November 2022, while SEMARNAT was coordinating the production of the scientific "studies," Minera Gorrión submitted to Economía requests for adjustment of the perimeter and reduction of surface area for its mining concession applications.[1077] The submissions sought to reduce the initially requested concession areas once again to eliminate any overlap with Tecoltemi's land.[1078] Minera Gorrión attached to these applications a social impact assessment conducted in 2022.[1079] Economía took no action on these applications, despite being required to register the applications on receipt and then either (i) certify their completeness or (ii) request any information that might be missing.[1080]

421. With no response from Economía and no feasibility determination of any kind, Minera Gorrión was forced yet again to take legal action by filing a writ before the District Court in Puebla.[1081]

1075 Minera Gorrión Writ to Lower Court Challenging SEMARNAT-Commissioned Reports Submitted to Economía, dated 24 January 2023, at pp. 2-4 **Exhibit C-554**; *see also* Minera Gorrión Legal Submission to the DGM Opposing SEMARNAT-Commissioned Reports Regarding Cerro Grande Concession, dated 24 January 2023, **Exhibit C-556**; Minera Gorrión Legal Submission to the DGM Opposing SEMARNAT-Commissioned Reports Regarding Cerro Grande 2 Concession, dated 24 January 2023, **Exhibit C-559**; Minera Gorrión Amparo Submission Against SEMARNAT-Commissioned Reports, dated 2 February 2023, at pp. 48-49 ("The truth is that the studies by the INECC, the INPI, the IMTA, and the CONABIO were concluded without notifying the start of the procedure and its consequences, without allowing my client to offer and present evidence, and without allowing my client to make allegations; hence the acts complained of are unconstitutional and not in accordance with the law. . ." Spanish original: "*Lo cierto es que los estudios del INECC, el INPI, el IMTA y la CONABIO se concluyeron sin notificar el inicio del procedimiento y sus consecuencias, sin permitir mi representada ofrecer y desahogar pruebas, y sin permitir a mi representada rendir alegatos; de ahí que los actos reclamados, resulten inconstitucionales y no sean apegados a derecho. . .*"), **Exhibit C-557**.

1076 Lower Court Dismissal of Minera Gorrión Amparo Submission Against SEMARNAT-Commissioned Reports, dated 21 September 2023, **Exhibit C-558**.

1077 Solicitud de Ajuste del Perímetro y Reducción de Superficie CERRO GRANDE, dated 15 November 2022, **Exhibit C-108**; Solicitud de Ajuste del Perímetro y Reducción de Superficie CERRO GRANDE 2, dated 15 November 2022, **Exhibit C-107**.

1078 Solicitud de Ajuste del Perímetro y Reducción de Superficie CERRO GRANDE, dated 15 November 2022, **Exhibit C-108**; Solicitud de Ajuste del Perímetro y Reducción de Superficie CERRO GRANDE 2, dated 15 November 2022, **Exhibit C-107**.

1079 *Información Técnica en Alcance a la Solicitud de Concesión Minera CERRO GRANDE*, dated 9 November 2022; *Información Técnica en Alcance a la Solicitud de Concesión Minera CERRO GRANDE 2*, dated 9 November 2022, **Exhibit C-106**.

1080 Request for Arbitration, para. 3.91.

1081 Minera Gorrión Clarification Request Regarding Economía's Compliance with the Supreme Court's Ruling, dated 6 July 2022, **Exhibit C-581**.

On 5 December 2022, the District Court ruled on that writ. It declared that Economía had complied with the Supreme Court's first directive by declaring the concessions "*insubsistentes*" in June 2022,[1082] but acknowledged that Economía had failed to reassess the feasibility of the Concessions under the Mining Law and Regulations in force at the time of their issuance.[1083] It therefore ordered Economía to conduct that reassessment within *three days*.[1084] Unfortunately, that deadline would come and go with no action.

422. Despite the Court's order, Economía stalled the reassessment. With no response in nearly a month, Minera Gorrión filed another motion on 9 January 2023 with the District Court in Puebla, demanding immediate compliance.[1085] The motion emphasized Economía's systematic

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1082 District Court's Ruling on Compliance with First Effect of Supreme Court Amparo Ruling, dated 5 December 2022, **Exhibit C-553**.

1083 District Court's Ruling on Compliance with First Effect of Supreme Court Amparo Ruling, dated 5 December 2022, at p. 9, **Exhibit C-553**.

1084 District Court's Ruling on Compliance with First Effect of Supreme Court Amparo Ruling, dated 5 December 2022, at p. 9 ("In the aforementioned conditions, since the Ministry of Economy, through its General Directorate of Mining Regulation, now called the General Directorate of Mines, rendered invalid the mining concession titles registered under numbers 219469 and 233434, under the lot names 'Cerro Grande' and 'Cerro Grande 2', issued on March 5, 2003 and February 23, 2009, respectively, it is concluded that the first effect of the ruling of February 16, 2022, handed down by the First Chamber of the Supreme Court of Justice of the Nation, in the appeal for review *amparo* in review 134/2021, is fully complied with... The Director General of Mines of the Ministry of Economy is hereby required, within a period of three days from the date on which the notification of this order takes effect: Taking into account that the procedure was initiated at the request of the third interested party, with various actions being carried out in accordance with Article 13 of the Mining Law and Article 16 of its Regulations, in force at the time of the presentation, the effect of this sentence is to specifically and concretely rule again on the feasibility of issuing the requested titles, by the third interested company. Once the above has been done, the appropriate action will be taken." Spanish original: "*En las relatadas condiciones, toda vez que la Secretaría de Economía, a través de su Dirección General de Regulación Minera, ahora denominada Dirección General de Minas, dejó insubsistentes los títulos de concesión minera registrados con los números 219469 y 233434, bajo los nombres de lotes 'Cerro Grande' y 'Cerro Grande 2', emitidos el cinco de marzo de dos mil tres y el veintitrés de febrero de dos mil nueve, respectivamente, se llega a la conclusión de que el primer efecto de la ejecutoria de dieciséis de febrero de dos mil veintidós, pronunciada por la Primera Sala de la Suprema Corte de Justicia de la Nación, en el recurso de revisión amparo en revisión 134/2021, se encuentra cabalmente cumplido… Requiérase al Director General de Minas de la Secretaría de Economía, para que en el término de tres días contados a partir de que surta efectos la notificación del presente proveído: Tomando en cuenta que el procedimiento inició a solicitud de la tercera interesada, realizándose diversas actuaciones en términos de los artículos 13 de la Ley Minera y 16 de su Reglamento, vigentes al momento de la presentación, el efecto de esta sentencia, especifica y concretamente se pronuncie nuevamente con relación a la factibilidad de expedir los títulos solicitados, por la empresa tercera interesada. Una vez hecho lo anterior, se proveerá lo conducente*."), **Exhibit C-553**.

1085 Submission of Interested Third Party Minera Gorrion, H. Juzgado Segundo de Distrito en Materias de Amparo Civil, Administrativa y de Trabajo, y de Juicios Federales, Ambos, del Estado de Puebla, dated 9 January 2023, **Exhibit C-110**.

non-compliance, unjustifiable delays, and violation of Minera Gorrión's rights to legal certainty and access to justice.[1086]

423. On 26 January 2023, the District Court, recognizing Economía's continued recalcitrance, issued a final, non-extendable five-day deadline for compliance.[1087]

424. Economía again defied the District Court's order, issuing its feasibility decision 14 days later, on 9 February 2023.[1088] As detailed below, that decision on its face was a baseless and pretextual expedient to end the Ixtaca Project, consistent with SEMARNAT's bad faith campaign.

2.17.5 Economía declared the Concessions "not feasible" on the basis of trivial technical errors, thereby cancelling the Ixtaca Project in full

425. On 9 February 2023, nearly nine months after Economía ordered indigenous consultations, Economía issued a second *oficio* (the "**February 2023 *Oficio***"), in which it declared the Ixtaca Concessions "not feasible" under the Mining Law and Regulations,[1089] thereby cancelling the Ixtaca Project and the Claimants' investments therein in full.

426. As the February 2023 *Oficio* reflects, Economía's non-feasibility findings centred *de minimis* technical defects in the expert reports that had supported the original concession applications – approved 20 and 14 years earlier, respectively – including alleged incorrect coordinates, excessive distance between the starting point and the lot's perimeter, and missing land surveys.[1090] To drum up these minor, pretextual technical defects Economía relied on the "*Manual de Servicios al Público en Materia Minera*" (the "**Manual of Public Mining**

1086 Submission of Interested Third Party Minera Gorrion, H. Juzgado Segundo de Distrito en Materias de Amparo Civil, Administrativa y de Trabajo, y de Juicios Federales, Ambos, del Estado de Puebla, dated 9 January 2023, at p. 2, **Exhibit C-110**.

1087 District Court Granting Economía Final Non-Extendable Five-Day Deadline for Feasibility Determination, dated 26 January 2023, at p. 2, ("The authority has to determine whether or not the feasibility conditions and requirements are met in order to issue mining concession titles; in this regard, it is provided that: Based on Article 193 of the Amparo Law, a final period is granted for a non-extendable period of five working days calculated from the time the notification of this order takes effect, so that it may comply with the writ of *amparo* and specifically, the second effect of the ruling." Spanish original: "*La autoridad tiene que determinar si se cumplen con las condiciones y requisitos de factibilidad para expedir o no los títulos de concesión minera; al respecto se provee: Con fundamento en el artículo 193 de la Ley de Amparo, se concede un último plazo por el término improrrogable de cinco días hábiles computados a partir de que surta efectos la notificación del presente proveído, a fin de que se sirva dar cumplimiento a la ejecutoria de amparo y en concreto, al segundo efecto del fallo concesorio.*"), **Exhibit C-413**.

1088 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

1089 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

1090 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

Service") – a document that neither the Supreme Court,[1091] nor Economía,[1092] had referenced in the *amparo* proceedings.

427. Specifically, Economía's findings centered on three alleged defects:

- **Incorrect coordinates**: Economía asserted that the expert report for the Cerro Grande 2 Concession allegedly lacked the necessary coordinate values, particularly those related to the control point, which is necessary for defining the position of the starting point of the mining lot – a lot that had been known for 14 years.[1093] Furthermore, Economía contended that the numerical values provided in the expert report did not represent valid geographical coordinates, making it allegedly impossible to validate the location of the lot.[1094] Additionally, Economía raised concerns about the validity of the control point used in the expert report. The expert report referenced a control point in Toluca, Estado de México, which was located far from the proposed mining site, leading to alleged doubts about the validity of the translocation method used.[1095] Because the geodetic reference point was allegedly unverifiable, Economía determined that the coordinates could not be validated, leading to its rejection.[1096]

- **Excessive distance between the starting point and the lot's perimeter**: Economía also asserted that the configuration of both the Cerro Grande and Cerro Grande 2 mining lots, as presented in the Concession applications, allegedly did not comply with regulatory standards due to the excessive distance between the starting point and the first perimeter point. The expert report referenced a distance of 5,213.625

1091 Amparo 134/2021, SCJN Decision, dated 16 February 2022, **Exhibit C-92**.

1092 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, **Exhibit C-34**; Economia, Revision en Amparo 445/2015, 8 May 2019, at p. 31, **Exhibit C-68**; DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 6, **Exhibit C-528**.

1093 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 10, **Exhibit C-111**.

1094 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 10, **Exhibit C-111**.

1095 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 9, **Exhibit C-111**.

Note that the ***translocation method*** is a surveying technique used to determine the location of a site by referencing an established geodetic control point and applying satellite-based calculations to transfer its coordinates. Instead of conducting independent measurements from scratch, surveyors use Global Positioning System (GPS) readings from a control point and a designated site to determine the precise position.

1096 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 9, **Exhibit C-111**.

Note that a ***geodetic reference point*** is a fixed, officially recognized marker with precise coordinates, serving as a reference for mapping, and land surveying. These points provide a reliable foundation for measurements, ensuring consistency and accuracy in land positioning.

meters,[1097] while the Manual of Public Mining Service establishes a strict maximum limit of 3,000 meters unless specific exceptions apply.[1098] Because these exceptions allegedly did not apply in the case of the concession applications, the 5,213.625-meter distance was non-compliant.[1099]

- **Missing or defective land surveys**: The final alleged deficiency was that the expert land surveys for the Cerro Grande 2 Concession failed to meet the required legal and technical standards. According to Economía, the Mining Regulations and the Manual require that all applications include a precise topographical survey of the lot.[1100] However, Economía found that the land survey allegedly did not meet the necessary technical specifications.[1101] Furthermore, Economía found that the coordinates in the expert reports were allegedly not expressed in the correct geographic format (degrees, minutes, and seconds), further contributing to the determination that the surveys did not meet technical standards.[1102]

428. With respect to the Cerro Grande Concession, Economía therefore concluded that:

> It is concluded from the foregoing, that the issuance of the concession title IS NOT FEASIBLE, since the assumptions referred to in Articles 10, last paragraph, 12 and 13, first paragraph of the Mining Law, and 16, third paragraph 21, first paragraph, as well as the provisions NINETEEN and TWENTY-NINE of the Manual are not fulfilled, that is, the conditions and requirements for the granting of concession title are not met.*[1103]*

429. Similarly, with respect to the Cerro Grande 2 Concession, Economía concluded that:

1097 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1098 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1099 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6, **Exhibit C-111**.

1100 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 11-12, **Exhibit C-111**.

1101 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 11-12, **Exhibit C-111**.

1102 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 9, **Exhibit C-111**.

1103 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 6 (Spanish original: "*De lo anterior se concluye que, NO ES FACTIBLE la emisión del título de concesión, puesto que no se actualizan puntualmente los supuestos referidos en los artículos 10, último párrafo, 12 y 13, primer párrafo de la Ley Minera y 16, tercer párrafo 21, primer párrafo, así como las disposiciones DECIMA NOVENA y VIGESIMA del Manual, es decir, que no se cumple con las condiciones y requisitos para el otorgamiento del mismo.*"), **Exhibit C-111**.

> It is noted that the coordinates of the starting point were not presented in accordance with the indicated technical specifications, in addition to the fact that the expert work in the field was not carried out in accordance with the indicated method and the survey of the terrain is not submitted. Consequently, the legal requirements set forth in the applicable legal framework are not complied with, and therefore, the granting of the concession title IS NOT FEASIBLE.[1104]

430. Following these determinations, Economía included a Section D in its February 2023 *Oficio*, entitled "Considerations regarding the promotion, protection, respect, and guarantee of human rights" ("*Consideraciones respecto de la promoción, protección, respeto y garantía de los derechos humanos*"). In this Section D, Economía referenced the purported scientific "studies" that SEMARNAT had orchestrated behind closed-doors and that Tecoltemi had introduced into the case file.[1105] Notably, however, Economía did not rely upon any of the points in Section D for its conclusion or *dispositif* on feasibility.[1106]

431. Specifically, Section D refers to the reports issued by INPI, IMTA, CONABIO, and INECC, alleging purported risks to local water sources, biodiversity, and indigenous communities, as well as broader arguments against mining in the region.[1107] While not cited as a basis for Economía's feasibility decision, nor formally relied upon in the *dispositif* section of the *Oficio*, these additional, unofficial justifications raise serious concerns about transparency and fairness. As noted above, these purported scientific "studies" were not lawful, objective, or

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1104 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 12 (Spanish original: "*Se denota que no se presentaron las coordenadas del punto de partida conforme a las especificaciones técnicas señaladas, además de que no realizó los trabajos periciales en el terreno de acuerdo al método señalado y no se presenta el levantamiento del terreno. En consecuencia, no se cumplen los requisitos legales establecidos en el marco legal aplicable, por lo que NO ES FACTIBLE el otorgamiento del título de concesión.*"), **C-111**.

1105 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 13-17, **Exhibit C-111**.

1106 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at pp. 13-16, **Exhibit C-111**.

1107 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, at p. 16, **Exhibit C-111**. *See also* INPI Report, "*Estudio de Impacto Social, Cultural y de Espiritualidad Indígena Respecto al Proyecto Minero: 'Explotación y Beneficio de Minerales Ixtaca' en el Municipio de Ixtacamaxtitlán, Sierra Norte de Puebla. Títulos de Concesión Minera: 219469 and 233434 (Cerro Grande and Cerro Grande 2)*," **Exhibit C-407**; IMTA Report, "*Informe de Actividades. Municipio de Ixtacamaxtitlán, Puebla, México, 2022*," **Exhibit C-378**; CONABIO Report, "*Informe sobre el Proyecto de Exploración de la Minería Gorrión en el municipio de Ixtacamaxtitlán, estado de Puebla (SE/092/2022)*," **Exhibit C-404**; INECC Report, "*Determinación de las Concentraciones Ambientales y la Exposición Personal a PM2.5 en el Municipio de Ixtacamaxtitlán, Estado de Puebla. Diciembre 2022*," **Exhibit C-403**.

fair; they were orchestrated by SEMARNAT and the NGOs behind closed-doors for the express purpose of discrediting the Ixtaca Project.[1108] The Claimants had no opportunity to review, correct, or respond to these studies. As intended by SEMARNAT and the NGOs, Economía's feasibility determination nonetheless was influenced by these "studies," further undermining the integrity of its decision.

432. As Mr. McDonald testifies, Economía's decision was shocking for several reasons, one of which was that Economía's own 20 June 2022 *Oficio* had clearly stated that "everything that was done prior to the granting of the concession titles subsists."[1109] That ruling plainly covered the expert reports Minera Gavilán had filed in support of the original concession applications, as well as Economía's express approval of those reports some 14-20 years earlier.[1110] Moreover, during the almost 20 years in which the Claimants had held their Concessions, Economía had never once questioned the feasibility of the Concessions or the validity of the underlying approved expert reports.[1111] Rather, as set forth above, Economía not only affirmed on multiple occasions that the Concessions were valid and in good standing,[1112] but it defended the legality of the Concessions throughout the *amparo* proceedings.[1113]

1108 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, **Exhibit C-397**.

1109 Letter from Economía, Director General of Mines to Minera Gorrión dated 20 June 2022 at p. 7, at **Exhibit C-95**; McDonald WS, at para. 118.

1110 With respect to the Cerro Grande concession, *see* Minera Gavilán, *Solicitud de concesión o de asignación minera for Cerro Grande*, Administrative File 107/00131, 28 October 2002, **Exhibit C-2**; Cerro Grande evaluation assessment by the *Subdirección de Minería de Puebla* for the mining case file No. 107/00131 dated 18 November 2002, **Exhibit C-169**; Official letter No. 120/21/A.4/6.1/2003 from the *Subdirección de Minería* of DGM to the Director of DGM with respect to the Cerro Grande concession application, dated 10 February 2003, **Exhibit C-171**; Requirements list issued for the Cerro Grande concession application on 26 February 2003, **Exhibit C-172**; Cerro Grande 219469 registered in Minutes No. 289 of Volume 335, 5 March 2003, at **Exhibit C-3**.

With respect to the Cerro Grande 2 concession, *see* Minera Gavilán, *Solicitud de concesión de exploración o de asignación minera for Cerro Grande* 2, Administrative File 107/00292, 14 July 2008, at **Exhibit C-7**; Official letter No. 141.8.1.20087 04713 from the *Jefe de Departamento de Concesiones Mineras* of DGM to the Director of DGM with respect to the Cerro Grande 2 concession application, dated 9 December 2008, **Exhibit C-175**; Requirements list issued for the Cerro Grande 2 concession application on 3 February 2009, **Exhibit C-176**; Cerro Grande 2 233,434 registered in Minutes No. 214 of Volume 374, 23 February 2009, at page 4, at **Exhibit C-8**.

1111 McDonald WS, at paras. 118-119; Santamaría Tovar WS, at para. 118.

1112 *See supra* 2.4.

1113 DGM Motion to Dismiss Amparo Lawsuit 506/2015, dated 12 May 2015, **Exhibit C-34**; Economia, Revision en Amparo 445/2015, 8 May 2019, at p. 31, **Exhibit C-68**; DGM, Revision Filed in Amparo 405/2015, dated 17 July 2019, at p. 6, **Exhibit C-528**.

433. In addition, the minor technical defects Economía relied upon were *de minimis* on their face and did not warrant the cancellation of the entire Project. As Mr. McDonald observes, it is unclear how the Claimants' alleged failure to meet minor technical requirements in an (approved) expert report made the Concessions "not feasible."[1114] It is also unclear how this decision could have flowed from the *amparo* proceedings.[1115] This is particularly so given that *none* of the alleged defects Economía relied upon in its *Oficio* had ever been discussed in the *amparo* proceedings.[1116] In Mr. Santamaría Tovar's own words, "Economía's response to these alleged minor, easily correctable errors, was like dynamiting an entire building just to fix a broken window. Rather than allowing Minera Gorrión to resolve these alleged straightforward administrative details . . . Economía chose to terminate the Project altogether."[1117]

434. In declaring the Concessions "not feasible" on the basis of such minor trivial errors, Economía also breached Mexico's Mining Regulations and the Federal Law of Administrative Procedure. As set out above, both of these laws obliged Economía to (i) notify Minera Gorrión of any defects in the concession applications and related expert reports, and (ii) provide Minera Gorrión the opportunity to correct those defects.[1118]

435. Specifically, under Article 22 of the Mining Regulations, if Economía identifies an error or deficiency in an expert report, it must notify the applicant in writing and grant 60 days to make the necessary corrections or submit new expert reports.[1119] Similarly, Article 17A of the Federal Law of Administrative Procedure mandates that administrative authorities, such as Economía and its DGM, must notify applicants of missing or incorrect information and provide an opportunity to correct.[1120] Where the authority fails to do so, it is legally prohibited from rejecting an application on those grounds.[1121]

436. These due process safeguards reflect core principles of Mexican administrative law, ensuring fairness, due process, proportionality, and predictability in Government decision-making.

1114 McDonald WS, at para. 120.

1115 McDonald WS, at para. 120; Santamaría Tovar WS, at para. 118.

1116 Santamaría Tovar WS, at para. 118.

1117 Santamaría Tovar WS, at para. 119.

1118 Federal Law on Administrative Procedure, at Article 17A (published in the official gazette on 24 December 1996), Exhibit **C-160.**

1119 1999 Mining Regulations, at Art. 22, Section III, **C-164**.

1120 Federal Law on Administrative Procedure, at Article 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1121 Federal Law on Administrative Procedure, at Article 17A (published in the official gazette on 24 December 1996), **Exhibit C-160.**

Economía disregarded these legal obligations entirely, depriving Minera Gorrión of its fundamental due process right to correct the minor technical defects Economía identified some 14-20 years after it approved them. In Mr. Santamaría Tovar's own words, "Minera Gorrión was not provided any chance to remedy the alleged deficiencies, further demonstrating that Economía's decision was driven by other factors, rather than genuine technical concerns."[1122]

437. Indeed, even after a concession is granted, Economía has the power and the authority to correct minor technical defects in the concession, rather than revoke the concession outright. Under Article 24 of the Mining Regulations, if a concession contains errors in its data or does not correspond precisely to the land it should legally cover, Economía may modify the concession rather than invalidate it.[1123] This process is governed by Article 31 of the Mining Regulations, which requires Economía to notify the concessionaire of any necessary corrections, thereby allowing for adjustments without undermining its legal rights.[1124] By failing to follow this established legal framework and instead relying on minor technical errors as a pretext for non-feasibility, Economía acted contrary to both the Mining Law and its own regulatory procedures. As explained below, these actions also resulted in a breach of Mexico's Treaty obligations.[1125]

438. Economía's finding of non-feasibility also breached a number of fundamental principles of Mexican administrative law, including "*seguridad jurídica*" (legal certainty) and "*confianza legítima*" (legitimate trust), as well as the principle of "*buena fe administrativa*" (good faith in administrative actions).[1126] These principles require administrative authorities to act with consistency, integrity, and fairness in their dealings.[1127] The Supreme Court itself has ruled that

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1122 Santamaría Tovar WS, at para. 118.

1123 1999 Mining Regulations, at Art. 24, second paragraph, **Exhibit C-164**.

1124 1999 Mining Regulations, at Art. 31, second paragraph, **Exhibit C-164** (establishing that Economía shall inform the concessionaire the reasons to correct the title and allowing the concessionaire to provide a response within 30 days).

1125 *See infra* Section 4.

1126 Federal Law on Administrative Procedure, at Article 13 (published in the official gazette on 24 December 1996), **Exhibit C-160**; *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Arts. 6-8, 16, **Exhibit C-519**; *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, dated 13 March 2002, at Art. 7, **Exhibit C-583**; *Código de Ética de la Administración Pública Federal*, dated 8 May 2022, at Arts. 4, 6, 8-9, 18-19, **Exhibit C-573**.

1127 Suprema Corte de Justicia de la Nación, Primera Sala, Tesis I.9o.A.28 A (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 32, Julio de 2016, Tomo III, página 2184. Registro digital: 2012089 ("Administrative morality. . . as a principle of administrative function, should be understood as the parameter of ethical conduct of public servants and individuals who exercise this function, consisting of an axiological and deontological obligation of functional behavior, according to the postulates of honesty, neatness, rectitude, good faith, primacy of the general interest, and honesty." Spanish original: "*La moralidad administrativa. . . como principio de la función administrativa, debe entenderse como aquel parámetro de conducta ética de los servidores públicos y particulares que ejercen dicha función, consistente en una obligación axiológica y deontológica*

good faith must guide all State actions, especially those that impact legal certainty.[1128] This principle has been reinforced in jurisprudence establishing that authorities act in bad faith when they prevent concession holders from exercising their legally obtained rights:

> If it is objectively demonstrated that an authority lacked loyalty and honesty in legal dealings, since through deliberate schemes and artifices it prevented a concessionaire from exercising a legally obtained concession and tried to induce it to cancel it, such actions infringe the principle of positive law of good faith, provided for in Article 13 of the Federal Law of Administrative Procedure, and its actions must be declared null and void.[1129]

439. Legitimate trust arises when administrative authorities, through their actions, omissions, or explicit approvals over time, create a reasonable expectation that a situation will remain unchanged.[1130] Authorities cannot suddenly disrupt legitimate trust without proper

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del comportamiento funcional, según los postulados de la honradez, pulcritud, rectitud, buena fe, primacía del interés general y honestidad."), **Exhibit C-575**.

[1128] Suprema Corte de Justicia de la Nación, Tesis IV.2o.A.121 A, T.C.C., Semanario Judicial de la Federación y su Gaceta, Novena Época, Enero de 2005, Tomo XXI, página 1724. Registro digital: 179657 ("Good faith must be observed not only by the governed but also by administrative authorities in all their actions; all members of the community must adjust their actions to the demands of good faith, since this can only be applied in their reciprocal relations, in the attitude of one in relation to another, that is to say, that this other person, according to the usual estimation of the people, can expect a certain behavior from one, or certain consequences of their behavior, or that they will not have different or harmful ones." Spanish original: "*La buena fe debe observarse no sólo por los gobernados sino también por las autoridades administrativas en todas sus actuaciones; todos los miembros de la comunidad deben ajustar sus actuaciones a las exigencias de la buena fe, puesto que ésta sólo puede predicarse en sus recíprocas relaciones, de la actitud de uno en relación con otro, es decir, que este otro, según la estimación habitual de la gente, puede esperar determinada conducta de uno, o determinadas consecuencias de su conducta, o que no ha de tener otras distintas o perjudiciales*."), **Exhibit C-577**.

[1129] Suprema Corte de Justicia de la Nación, Tesis IV.2o.A.122 A, T.C.C., Semanario Judicial de la Federación y su Gaceta, Novena Época, Enero de 2005, Tomo XXI, página 1723. Registro digital: 179659 (Spanish original: "*Si se demuestra objetivamente que una autoridad faltó a la lealtad y honradez en el tráfico jurídico, puesto que mediante intencionadas maquinaciones y artificios impidió a un concesionario ejercer la concesión legalmente obtenida y pretendió inducirla a que la cancelara, tales actuaciones infringen el principio de derecho positivo de la buena fe, previsto en el artículo 13 de la Ley Federal de Procedimiento Administrativo, y sus actos deben declararse nulos*."), **Exhibit C-550**.

[1130] Suprema Corte de Justicia de la Nación, Segunda Sala, Tesis 2a. XXXVIII/2017 (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 40, Marzo de 2017, Tomo II, página 1386. Registro digital: 2013882 ("Even when there was no law regulating certain behaviors or circumstances (objective law), the administrative authority had previously issued an act in which it recognized that an individual could enjoy a prerogative or carry out a behavior or, where appropriate, had tolerated it or remained silent. . . for a long time, thus generating confidence that the situation would continue." Spanish original: "*Aun cuando no existiera una norma que regulara determinadas conductas o circunstancias (derecho objetivo) la autoridad administrativa ya había emitido previamente un acto en el que reconocía a un particular la posibilidad de gozar de una prerrogativa o de realizar*

justification, as doing so violates the principle of legal certainty. As stated by the Supreme Court:

> Legitimate trust should be understood as the protection of reasonably created expectations in favour of the governed, based on the hope that the authority itself induced through its actions or omissions, which were persistently maintained over time, in such a way that they generated stability in the individual regarding a certain decision, based on which he adjusted his behavior, but that due to a sudden and unforeseeable change, that expectation is broken.[1131]

440. Moreover, where, as here, an entity has already obtained an official authorization, such as a concession or permit, it develops a legitimate legal expectation that the Government will not arbitrarily revoke it; therefore, public authorities must provide a *heightened justification* if they decide to deny, revoke, or modify previously granted rights. As the Supreme Court has held:

> The principles of good faith and equity that prevail in these cases (permits, concessions, or licenses) in legal relations between individuals and the administration male it possible to establish that whoever finds themselves in this situation (as the holder of a permit) has a legitimate expectation of obtaining its renewal, which, precisely because it is legitimate, requires that the authority, if it is to deny it, give ample reasons(reinforced motivation) for doing so.[1132]

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una conducta o, en su caso, la había tolerado o mantenido un silencio. . . durante un tiempo prolongado, generando con ello la confianza en que la situación se mantendría."), **Exhibit C-578**.

1131 Suprema Corte de Justicia de la Nación, Segunda Sala, Tesis 2a. XXXVIII/2017 (10a.), Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 40, Marzo de 2017, Tomo II, página 1386. Registro digital: 2013882 (Spanish original: "*La confianza legítima debe entenderse como la tutela de las expectativas razonablemente creadas en favor del gobernado, con base en la esperanza que la propia autoridad le indujo a partir de sus acciones u omisiones, las cuales se mantuvieron de manera persistente en el tiempo, de forma que generen en el particular la estabilidad de cierta decisión, con base en la cual haya ajustado su conducta, pero que con motivo de un cambio súbito e imprevisible, esa expectativa se vea quebrantada*."), **Exhibit C-578**.

1132 Suprema Corte de Justicia de la Nación, Tesis I.18o.A.81 A (10a.), T.C.C., Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 56, Julio de 2018, Tomo II, página 1599. Registro digital: 2017384 (Spanish original: "*Los principios de buena fe y equidad que imperan en estos casos (permisos, concesiones o licencias) en las relaciones jurídicas entre particulares y administración permiten establecer que, a quien se ubica en esta situación (de ser permisionario) le asiste una legítima expectativa a obtener la revalidación, misma que, precisamente, por ser legítima, exige que la autoridad, si ha de negarla, motive ampliamente (motivación reforzada) por qué lo hace*."), **Exhibit C-579**.

441. Likewise, the doctrine of "*actos propios*" (estoppel) prevents Government authorities from contradicting their own prior actions to the detriment of entities which have relied on them in good faith:[1133]

> The principle *venire contra factum proprium non valet* (no one can turn against their own acts) means that there is a legal duty, incumbent on people, not to contradict past conduct, since an interpretation of the conduct must be made in accordance with certain standards, such as customs or good faith, with the aim of achieving and demanding from people a minimum of coherence and good faith in their relationships with others.[1134]

442. Here, after spending millions of dollars advancing the Ixtaca Project, paying taxes to the Mexican Government on the Concessions, and investing significant time, effort, and resources into building strong relations with the local communities, minor technical flaws in the expert reports – expressly approved by Economía itself 14-20 years earlier and never identified as a concern by any party during the *amparo* proceedings – did not and could not make the Concessions "not feasible."[1135] Moreover, in using these minor technical flaws as a pretext for non-feasibility after decades of unquestioned validity and without any due process, Economía not only undermined legal certainty, but it shattered the legitimate trust the Claimants had in the validity of their Concessions and in the stability of Mexico's legal and regulatory

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1133 Suprema Corte de Justicia de la Nación, Tesis I.3o.C. J/11 (10a.), T.C.C., Gaceta del Semanario Judicial de la Federación, Décima Época, Libro 17, Abril de 2015, Tomo II, página 1487. Registro digital: 2008952 ("The doctrine or theory of estoppel, which derives from the rule set out in the maxim that reads: *venire contra factum proprium, nulla conceditur*, is based on the inadmissibility of a litigant basing his position on invoking facts that contradict his own statements or adopting an attitude that places him in opposition to his previous conduct and finds its basis on the trust aroused in another subject in good faith, by reason of a first behavior carried out, which would be violated if it were considered admissible to accept and proceed with a subsequent and contradictory claim." Spanish original: "*Doctrina o teoría de los actos propios, que deriva de la regla consignada en el brocardo que reza: venire contra factum proprium, nulla conceditur, se basa en la inadmisibilidad de que un litigante fundamente su postura al invocar hechos que contraríen sus propias afirmaciones o asuma una actitud que lo coloque en oposición con su conducta anterior y encuentra su fundamento en la confianza despertada en otro sujeto de buena fe, en razón de una primera conducta realizada, la cual quedaría vulnerada si se estimara admisible aceptar y dar curso a una pretensión posterior y contradictoria*."), **Exhibit C-586**.

1134 Suprema Corte de Justicia de la Nación, Tesis I.3o.C.16 K (10a.), T.C.C., Semanario Judicial de la Federación y su Gaceta, Décima Época, Libro XIII, Octubre de 2012, Tomo 4, página 2696. Registro digital: 2001999 (Spanish original: "*El principio venire contra factum proprium non valet (nadie puede volverse contra sus propios actos), consiste en que existe el deber jurídico, a cargo de las personas, de no contrariar una conducta pasada, pues se debe realizar una interpretación de la conducta conforme a estándares determinados, como las costumbres o la buena fe, con la finalidad de alcanzar y de exigir de las personas un mínimo de coherencia y de buena fe en sus relaciones con los demás*.") **Exhibit C-587**.

1135 McDonald WS, at para. 120; Santamaría Tovar WS, at para. 118.

environment more generally. Economía's arbitrary reversal is precisely what Mexican law and the Treaty in this case seek to prevent.

443. Economía's bad faith actions are reinforced by its reference to the purported scientific "studies" manufactured by SEMARNAT, without any review or response from Minera Gorrión.[1136] As detailed above, SEMARNAT and these agencies gave Minera Gorrión no opportunity to review, comment, or respond to their flawed findings. By weaving these studies into its *Oficio* – even without formally relying upon them – Economía breached multiple legal provisions governing administrative integrity and due process:

443.1 *First*, Economía breached Article 13 of the Federal Law of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*), which mandated that administrative actions adhere to principles of economy, celerity, effectiveness, legality, publicity, and, most importantly, *good faith*.[1137]

443.2 *Second*, Economía's conduct breached Articles 6 to 8 and 16 of the General Law of Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*), as well as Article 7 of the Federal Law of Administrative Responsibilities (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*), all of which impose obligations on public officials to act with impartiality, legality, loyalty, efficiency, and objectivity in their decision-making.[1138]

443.3 *Third*, Economía failed to uphold the ethical standards set forth in the Code of Ethics of the Federal Public Administration (*Código de Ética de la Administración Pública Federal*), specifically Articles 4, 6, 8-9, and 18-19, which reinforce the duty of public officials to ensure transparency, accountability, and integrity in their administrative functions.[1139]

444. Together, these provisions expressly prohibit arbitrary decision-making, including the manipulation, selective use, or concealment of evidence to justify decisions that undermine

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1136 Tecoltemi Brief Seeking Inclusion of Reports Provided by SEMARNAT and INPI in SCJN Ruling Execution, dated 12 January 2023, at p. 7, **Exhibit C-410**.

1137 Federal Law on Administrative Procedure, at Article 13 (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1138 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Art. 6-8, 16, **Exhibit C-519**; *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, dated 13 March 2002, at Art. 7, **Exhibit C-583**.

1139 *Código de Ética de la Administración Pública Federal*, dated 8 May 2022, at Articles 4, 6, 8-9, 18-19, **Exhibit C-573**.

legal certainty and acquired rights.[1140] Economía's incorporation of the targeted, bad faith "studies" into its *Oficio* – while affording Minera Gorrión no opportunity to address those studies – constitutes a clear violation of these fundamental administrative principles.

445. Furthermore, Economía's feasibility decision had nothing to do with the *amparo* proceedings that gave rise to the Supreme Court's decision in the first instance. The lack of prior consultation was the core grievance in the *amparo* proceedings.[1141] The Supreme Court's decision was meant to correct this failure and uphold Tecoltemi's legally protected right to participate in decisions affecting its land.[1142] Instead, after nearly a decade of litigation, Economía obstructed consultation, violating both domestic and international law. The Supreme Court sought to guarantee indigenous participation; Economía ensured the local communities (which supported the Project) were never consulted at all.

[1140] Federal Law on Administrative Procedure, at Article 13 (published in the official gazette on 24 December 1996), at Articles 6-8, 16, **Exhibit C-160**; *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Art.7, **Exhibit C-519**; *Código de Ética de la Administración Pública Federal*, dated 8 May 2022, at Arts. 4, 6, 8-9, 18-19, **Exhibit C-573**.

[1141] Amparo Indirecto Filing from Comunidad Indigena Nahua de Tecoltemi y el Ejido de Tecoltemi (Sixth Judicial District in the City of San Andres Cholula, Puebla), dated 7 April 2015, at p. 27 ("By approving promulgating and publishing the content of the articles of the Mining Law, as well as by issuing titles 219469 and 233434 with the names of lots 'Cerro grande' and 'Cerro Grande 2' in favor of 'MINERA GAVILAN, S.A. DE C.V.' the authorities failed to comply with the general obligation to consult us prior to the granting of legislative and administrative measures which, as we have stated in the first concept of violation, directly affects us. This consultation took on specific nuances as it concerned a natural resource prospecting project on our land and territory and a law related to such projects." Spanish original: "*Al aprobar, promulgar y publicar el contenido de los artículos de la Ley Minera, así como al expedir los títulos 219469 y 233434 con nombres de lotes 'Cerro grande' y 'Cerro Grande 2' en favor de 'MINERA GAVILAN, S.A. DE C.V.', las autoridades omitieron la obligación general de consultarnos de forma previa al otorgamiento de medidas legislativa y administrativa que, como hemos expuesto en el primer concepto de violación, nos afecta directamente. Dicha consulta, adquiría matices específicos al tratarse de un proyecto de prospección de recursos naturales sobre nuestra tierra y territorio y de una ley relacionada con tal tipo de proyectos.*"), **Exhibit C-32**.

[1142] Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 205-206 ("Effects. This First Chamber rules that it is appropriate to order the Ministry of Economy, through its General Directorate of Mining Regulation, to declare ineffective the mining concession titles. . . Now, taking into account that the proceeding was initiated at the request of the interested third party, carrying out various actions in terms of Articles 13 of the Mining Law and 16 of its Regulations, as in force at the time of filing, the effect of this judgment will be for the responsible authority to rule again in relation to the feasibility of issuing the requested titles, and in the event that it is considered that the conditions and requirements are met, before granting them on land belonging to the indigenous community, shall previously carry out the consultation procedure with the indigenous community. . ." Spanish original: "*Efectos. Esta Primera Sala determina que lo procedente es ordenar a la Secretaría de Economía, a través de su Dirección General de Regulación Minera, dejar insubsistentes los títulos. . . Ahora bien, tomando en cuenta que el procedimiento inició a solicitud de la tercero interesada, realizándose diversas actuaciones en términos de los artículos 13 de la Ley Minera y 16 de su Reglamento, vigentes al momento de la presentación, el efecto de esta sentencia será para que, la autoridad responsable se pronuncie nuevamente con relación a la factibilidad de expedir los títulos solicitados, y en el caso de que se considere que se cumplen las condiciones y requisitos, antes de otorgarlas sobre terrenos de la comunidad indígena, deberá previamente realizar el procedimiento de consulta a la comunidad indígena. . .*"), **Exhibit C-92**.

446. Because Economía had made "feasibility" a prerequisite for consultation,[1143] and because, as noted above, the consultations ordered by the Supreme Court did not grant any veto right,[1144] "feasibility" became the pretext for shutting down the entire process and cancelling the Ixtaca Concessions outright, the outcome that SEMARNAT and the NGOs had agitated towards for years. In other words, Secretary Buenrostro, who had by then assumed office, politicized Economía to align it with AMLO's agenda, ensuring the outright cancellation of the Ixtaca Concessions without any consultation.[1145]

447. Economía's unlawful action destroyed the Claimants' investment. As Mr. Morgan Poliquin emphasizes, "[i]t would be difficult to overstate my disappointment in Mexico's unlawful and pretextual cancellation of our lawfully obtained concessions, which resulted in the total loss of the Ixtaca Project and our investment in Mexico."[1146] It also had a profoundly negative impact on the local communities that had supported the Ixtaca Project for years. In the words of Mr. Santamaría Tovar, "[t]he sense of loss was profound. They watched as everything we had discussed, planned, and worked toward vanished."[1147]

448. The decision was particularly disheartening for the many community members who had openly endorsed the Project, submitting formal letters of support in recognition of its potential

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[1143] Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 206 ("[I]n the event that it is considered that the conditions and requirements are met, before granting them on land belonging to the indigenous community, shall previously carry out the consultation procedure with the indigenous community." Spanish original: "*En el caso de que se considere que se cumplen las condiciones y requisitos, antes de otorgarlas sobre terrenos de la comunidad indígena, deberá previamente realizar el procedimiento de consulta a la comunidad indígena*."), **Exhibit C-92**.

[1144] Amparo 134/2021, SCJN Decision, dated 16 February 2022, at p. 72 ("It should be noted that in no way was it intended that the Indigenous peoples and communities had a veto right over decisions that could have to do with national development or in relation to the strategic resources and property of the Mexican Nation." Spanish original: "*Se advierte que de ninguna manera se pretendió que los pueblos y comunidades indígenas tuvieran un derecho de veto sobre decisiones que pudieran tener que ver con el desarrollo nacional o con relación a los recursos estratégicos y propiedad de la Nación Mexicana*."), **Exhibit C-92**.

[1145] *See Supra* Section 2.13. *See, e.g.*, La Jornada de Oriente YouTube Channel, *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, <https://www.youtube.com/watch?v=oTicTRLrWyQ> dated 19 May 2021 ("Open-pit mining has been prohibited in our country ever since our president announced its ban. As a result, not a single permit has been granted by the Secretariat of Environment [SEMARNAT]." Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

[1146] M. Poliquin WS, at para. 53.

[1147] Santamaría Tovar WS, at para. 126.

benefits.[1148] These communities, having actively advocated for the Project and envisioned a future of economic opportunity and development, felt ignored, frustrated, and betrayed.[1149]

449. As Mr. García Herrera, an elected indigenous representative of Santa María Zotoltepec, testifies, the Government ignored their voices: "We never sat back in silence. We signed letters, attended meetings, and spoke up publicly. But no matter how many times we tried, the Government never acknowledged us."[1150] As he emphasizes, he "never imagined that the Government would cancel the Ixtaca Project without consulting [his] community."[1151] By revoking the concessions without consulting those most affected, Economía abandoned the very communities it was meant to protect, depriving them of a future they had actively fought for.

450. By arbitrarily and retroactively cancelling the Concessions without due process of law, Mexico not only breached fundamental principles of Mexican law, it also breached its obligations under the CPTPP, as explained below.

2.17.6 Minera Gorrión's efforts to seek redress failed

451. Despite repeated attempts to engage with Economía, the Company and affected communities were continually rebuffed. On 27 February 2023, after months of unanswered requests, representatives of Minera Gorrión, accompanied by community leaders from Zacatepec, Santa María Zotoltepec, and San Francisco Ixtacamaxtitlán, travelled to Mexico City to meet with Secretary of Economy Raquel Buenrostro at Economía's headquarters.[1152] Also present were representatives from the Canadian Embassy and the UNECE Mining Pilot Project, hoping to clarify the misinformation surrounding the Ixtaca Project and emphasize the devastating economic impact of its cancellation on local communities.[1153]

452. However, as both Messrs. Santamaría Tovar and García Herrera recall, Secretary Buenrostro was indifferent and dismissive throughout the meeting, refusing to engage in meaningful

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[1148] Letter from Community Members to SEMARNAT dated 25 July 2019, **Exhibit C-77**; Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, **Exhibit C-308**; Letter from Community Members to President Andrés Manuel López Obrador, dated 4 October 2019, **Exhibit C-315**.

[1149] García Herrera WS, at paras. 27-30.

[1150] García Herrera WS, at para. 19.

[1151] García Herrera WS, at para. 20.

[1152] Santamaría Tovar WS, at para. 124; García Herrera WS, at para. 20.

[1153] Santamaría Tovar WS, at para. 124.

dialogue.[1154] The meeting reached a particularly symbolic and revealing moment when [redacted] a lifelong farmer from the community of Zacatepec, presented Secretary Buenrostro with a basket of strawberries cultivated using irrigation from reservoirs built with Minera Gorrión's support.[1155] Rather than acknowledging the tangible benefits the Project had already delivered to local farmers, Buenrostro coldly dismissed the gift, showing no interest in the livelihoods at stake. As Mr. Santamaría Tovar notes, "The tone of the meeting was particularly disappointing, given the genuine goodwill shown by community representatives."[1156]

453. Minera Gorrión and the affected communities also sought legal recourse through the Mexican judiciary.[1157] These efforts too failed.

454. Notably, on 28 March 2023, the local group EJUNDS submitted an *amicus curiae* brief, arguing that Economía's decision violated their right to free, informed consent.[1158] EJUNDS underscored their support for the Ixtaca Project:

> Our Nahua Indigenous Community, and the EJUNDS, have engaged in negotiations and discussions with Minera Gorrión for more than a decade, during which they informed us of their intentions to develop their mining project. We have participated in workshops and discussion meetings where, through our traditional authorities, groups, or the assembly, we have discussed the benefits, impacts, and their mitigation measures. It is important that the Communities are aware of this information, so that they can make informed decisions, seeking the best welfare for the development of our

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1154 Santamaría Tovar WS, at para. 125; García Herrera WS, at paras. 21-22.

1155 Santamaría Tovar WS, at para. 125.

1156 Santamaría Tovar WS, at para. 125.

1157 Amicus Curia de los Eijiditarios Unidos por el Desarollo Sostenible de Santa Maria Zotoltepec (EJUNDS) y Miembros de la Comunidad Indígena Zotoltepec re: Juicio de Amparo 445/2015, dated 28 March 2023, **Exhibit C-116**; Appeal of Minera Gorrión, Interpone Recurso de Inconformidad en Contra del Acuerdo, H. Tribunal Colegiado de Circuito en Turno, dated 11 April 2023, **Exhibit C-118**; Appeal of Ejidatarios Unidos en Favor del Desarollo Sustenable de Santa Maria Zotoltepec, H. Tribunal Colegiado de Circuito en Turno, dated 4 May 2023, **Exhibit C-119**.

1158 García Herrera WS, at para. 24.

> communities and the respect that has been shown for our customs, traditions, and traditional authorities.[1159]

455. EJUNDS criticized the irregularities in Economía's decision and warned that blocking the Ixtaca Project would deprive the communities of critical economic and infrastructure benefits:

> The Supreme Court of Justice of the Nation ordered in its judgment that the free, prior, and informed consultation is our right to inform us, consult us, and see if we give our consent because there is a process underway to issue concessions to Minera Gorrión. What concerns us is that if the consultation is not carried out, we will not know how we could be affected and also the potential benefits of the concession…It is important for us that the Ministry of Economy explains the reasons why it decided to consider the granting of titles to Minera Gorrión infeasible and understand how that decision affects our community rights as an indigenous community. The Ministry of Economy is once again violating our rights to be informed and consulted and to see if we want to give our consent, it is taking away our opportunity to make the decision that corresponds to us as heirs to these lands and it is robbing us of our voice. For this reason, we ask that it be considered, as ordered.[1160]

1159 Amicus Curia de los Eijiditarios Unidos por el Desarollo Sostenible de Santa Maria Zotoltepec (EJUNDS) y Miembros de la Comunidad Indígena Zotoltepec re: Juicio de Amparo 445/2015, dated 28 March 2023, at p. 1, (Spanish original: "*Nuestra Comunidad Indigena Nahua, y el EJUNDS, han mantenido negociaciones y pláticas de más de una década con Minera Gorrión, en éstas nos informaron de sus intenciones de desarrollar su proyecto minero. Hemos participado en talleres y reuniones de discusión donde a través de nuestras autoridades tradicionales, grupos o por la asamblea, hemos discutido los beneficios, impactos y sus medidas de mitigación. Es importante que las Comunidades conozcamos esta información, para poder tomar decisiones pero con conocimiento, buscando el mejor bienestar para el desarrollo de nuestras comunidades y del respeto que se ha dejado ver por nuestros usos y costumbres y autoridades tradicionales*."), **Exhibit C-116**.

1160 Amicus Curia de los Eijiditarios Unidos por el Desarollo Sostenible de Santa Maria Zotoltepec (EJUNDS) y Miembros de la Comunidad Indígena Zotoltepec re: Juicio de Amparo 445/2015, dated 28 March 2023, at p. 2, (Spanish original: "*La Suprema Corte de Justica de la Nación ordenó en su sentencia que la consulta previa, libre e informada es nuestro derecho para informarnos, consultarnos y ver si damos nuestro consentimiento porque se está en proceso de expedir unas concesiones a Minera Gorrión. Lo que nos preocupa es que si no se lleva a cabo la consulta no conoceremos como nos podría afectar y además beneficios de la concesión. . . para nosotros es importante que la Secretaría de Economía nos explique las razones por las que decidió considerar no factible dar los títulos a la Minera Gorrión y entender como esa decisión afecta nuestros derechos comunitarios como comunidad indígena. La Secretaría de Economía vuelve a violar nuestros derechos a ser informados y consultados y ver si queremos dar nuestro consentimiento, nos quita la oportunidad de tomar la decisión que nos corresponde como herederos de estas tierras y nos roba la voz.*"), **Exhibit C-116**.

456. On 11 April 2023, the Second District Court rejected Minera Gorrión's appeal, ruling that Economía had complied with the Supreme Court's February 2022 judgment and that Economía had provided a reasoned justification for denying feasibility.[1161] On 3 May 2023, Minera Gorrión appealed the Second District Court's Decision before the Collegiate Court, calling for a re-evaluation of feasibility and indigenous consultations.[1162]

457. Concurrently, EJUNDS filed an appeal on 4 May 2023, arguing that Economía's decision violated the Supreme Court's consultations directive.[1163] They once again highlighted the long-standing benefits the community had already received from the Ixtaca Project, including employment, agricultural support, and infrastructure improvements, and warned of the severe economic risks resulting from Economía's actions:

> These human rights, squandered by the Ministry of Economy and confirmed by the A Quo, are ignoring the fact that *there are communities like ours that are beneficiaries of the project* that is intended to be carried out, and that prior to obtaining permits and authorizations, *we have had a free, PRIOR, informed and good faith*

1161 Lower Court Ruling on Compliance with SCJN Decision and Feasibility Determination, dated 11 April 2023, at p. 11, **Exhibit C-582**.

1162 Appeal of Minera Gorrión, Interpone Recurso de Inconformidad en Contra del Acuerdo, H. Tribunal Colegiado de Circuito en Turno, dated 11 April 2023, at pp. 3716-3717, ("It should be remembered that the Ministry of the Economy, as the defendant authority, already violated, as demonstrated by the SCJN, the rights of my client to due process and legal certainty, by ordering it to resolve in accordance with the law and the complainants' right to be informed. In the case, the Ministry of the Economy's obligation to carry out the prior consultation is updated until the authorities determine to issue the titles and not their feasibility, which, as has been demonstrated, was ignored, despite this being indicated in the SCJN's final ruling. Therefore, the violation of compliance with the sentence derived from the excess is updated, since the SE, based on a technical study, considered that it could also rule on the CPLI, an issue that went beyond the effects of the ruling, since, as indicated, the feasibility should only have consisted of the compatibility of the mining activity with respect to the mining lots requested and whether the feasibility existed with sufficient information to carry out the CPLI, so that considering this stage of compliance with the ruling in order to comply with the other points of the SCJN ruling results in excess compliance." Spanish original: "*Cabe recordar que la SE como autoridad demandada ya violentó, como lo demostró la SCJN los derechos de mi representada, a un debido proceso y la seguridad jurídica, al ordenarle que resolviera conforme a derecho y el de las quejosas, a ser informadas. En el caso, la obligación de la SE de llevar a cabo la consulta previa se actualiza hasta la determinación de las autoridades de expedir los títulos y no así de la factibilidad de los mismos, lo cual como se ha demostrado fue ignorado, a pesar de así indicarlo la ejecutoria de la SCJN, por lo tanto, se actualiza la violación al cumplimiento de la sentencia derivado del exceso, pues la SE de un estudio técnico consideró que podía pronunciarse también respecto de la CPLI, cuestión que fue más allá de los efectos de la sentencia, pues como se ha indicado la factibilidad solo debía consistir en la compatibilidad de la actividad minera con respecto a los lotes mineros solicitados y si existía la factibilidad con la información suficiente para llevar a cabo la CPLI, por lo que el hecho de considerar esta etapa del cumplimiento de la sentencia para dar cumplimiento a los demás puntos de la sentencia de la SCJN, redunda en un exceso del cumplimiento.*"), **Exhibit C-118**.

1163 García Herrera WS, at paras. 25-26.

> *dialogue with the company* to agree on compensation for the impacts that could arise with the authorization of the mining project and shared benefits in the short, medium and long term, so much so that *as of the date of this writing we have received support for our crops, as we have been provided with fertilizers, machinery and other materials, as well as the construction of rainwater dams that have benefited us enormously*.[1164] (Emphasis added)

458. The Collegiate Court rejected the appeal on 13 October 2023, upholding Economía's February 2023 *Oficio*.[1165] The Court reaffirmed that feasibility determinations were within Economía's discretion and that the Supreme Court's ruling required consultation only if feasibility conditions were met.[1166]

[1164] Appeal of Ejidatarios Unidos en Favor del Desarollo Sustenable de Santa Maria Zotoltepec, H. Tribunal Colegiado de Circuito en Turno, dated 4 May 2023, at pp. 29-30, (Spanish original: "*Estos derechos humanos dilapidados por la SE y confirmados por el A Quo, están dejando de lado que hay comunidades como la nuestra que somos beneficiarios del proyecto que pretende realizarse, y que previo a la obtención de permisos y autorizaciones, hemos tenido un dialogo libre, PREVIO, informado y de buena fe con la empresa para pactar compensaciones por los impactos que pudieran presentarse con la autorización del proyecto minero y beneficios compartidos a corto, mediano y largo plazo, tan es así que a la fecha del presente escrito hemos recibido apoyos para nuestras cosechas, pues se nos han brindado fertilizantes, apoyos de maquinaria y demás materiales así como la construcción de presas de agua de lluvia que nos han beneficiado enormemente.*"), **Exhibit C-119**.

[1165] Collegiate Court Ruling on Compliance with SCJN Decision and Feasibility Determination, dated 13 October 2023, at p. 53, ("The First Chamber of the Nation's Supreme Court of Justice, in resolving the *amparo* in review 134/2021, left the Ministry of Economy, through its General Directorate of Mining Regulation, free of jurisdiction to issue the corresponding ruling; so that if said authority concluded that the feasibility requirements were not met, it is indisputable that it determined this freely." Spanish original: "*La Primera Sala de la Suprema Corte de Justicia de la Nación, al resolver el amparo en revisión 134/2021, dejó a la Secretaría de Economía, a través de su Dirección General de Regulación Minera, en libertad de jurisdicción para que emitiera el dictamen correspondiente; de manera que, si dicha autoridad concluyó que no se cumplieron los requisitos de factibilidad, es inconcuso que eso lo determinó con libertad.*"), **Exhibit C-588**.

[1166] Collegiate Court Ruling on Compliance with SCJN Decision and Feasibility Determination, dated 13 October 2023, at p. 36, ("In fact, as stated previously, in the merits ruling, the First Chamber of the Supreme Court of Justice of the Nation held that the Ministry of Economy . . . should, in the first place, render the mining concession titles invalid . . . in terms of Article 13 of the Mining Law and Article 16 of its Regulations, in force at the time of the presentation, rule again on the feasibility of issuing the requested titles and, only if it is considered that the feasibility conditions and requirements are met, proceed to carry out the consultation procedure with the indigenous community . . . " Spanish original: "*En efecto, como se precisó con antelación, en la ejecutoria de mérito, la Primera Sala de la Suprema Corte de Justicia de la Nación sostuvo que la Secretaría de Economía. . . debía, en primer lugar, dejar insubsistentes los títulos de concesión minera…en términos de los artículos 13 de la Ley Minera y 16 de su Reglamento, vigentes al momento de la presentación, se pronuncie nuevamente en relación con la factibilidad de expedir los títulos solicitados y, sólo en el caso de que se considere que se cumplen las condiciones y requisitos de factibilidad, proceda a realizarse considere que se cumplen las condiciones y requisitos de factibilidad, proceda a realizar el procedimiento de consulta a la comunidad indígena. . .* "), **Exhibit C-588.**

459. Alongside the *amparo* proceedings, Minera Gorrión challenged Economía's February 2023 *Oficio* through nullity proceedings before the Federal Tribunal of Administrative Justice. Specially, on 30 March 2023, Minera Gorrión filed a claim arguing that Economía's ruling was procedurally flawed, legally baseless, and inconsistent with prior government approvals.[1167] Minera Gorrión withdrew this lawsuit in order to pursue this arbitration on 3 June 2024.[1168]

3. THE TRIBUNAL HAS JURISDICTION OVER THE DISPUTE

460. The Claimants have commenced this arbitration on their own behalf pursuant to Article 9.19.1(a) of CPTPP,[1169] and on behalf of Minera Gorrión and Minera Gavilán, pursuant to CPTPP Article 9.19.1(b). Mexico consented to these proceedings under Article 9.20 of the CPTPP. As elaborated below, the Claimants have met the jurisdictional requirements of the CPTPP and the ICSID Convention.

3.1 The Tribunal Has Jurisdiction *Ratione Personae*

3.1.1 The Claimants are covered investors under the CPTPP

461. Article 9.1 of the CPTPP defines a "claimant" as "an investor of a Party that is a party to an investment dispute with another Party" and defines an "investor of a Party" to include "an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party."[1170]

462. Article 9.1 of the CPTPP further defines an "enterprise of a Party" as "an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there."[1171]

463. That same article in turn provides that the term "enterprise" has the meaning given to it in Article 1.3 of the CPTPP, which provides that:

> enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or

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1167 Minera Gorrión, Nullity Claim Against Feasibility Determination, dated 30 March 2023, **Exhibit C-580**.

1168 Court Decree from the Second Regional Chamber of the Federal Tribunal of Administrative Justice, dated 3 June 2024, **Exhibit C-432**.

1169 Article 1.1 of the CPTPP incorporates the TPP by reference. References to Articles of the CPTPP hereafter in this submission are references to the Articles of the TPP as incorporated into the CPTPP. *See* CPTPP, at Art. 1.1, **CL-7**.

1170 CPTPP, at Art. 9.1, **CL-7**.

1171 CPTPP, at Art. 9.1, **CL-7**.

> governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation.[1172]

464. Almaden and Almadex are "enterprises" of Canada, because they are, and at all times have been, Canadian companies organized and existing under the laws of British Columbia, Canada:

464.1 Almaden was incorporated on 1 February 2002, and has its registered office at Suite 210, 1333 Johnston Street, Vancouver, BC, Canada, V6H 3R9.[1173]

464.2 Almadex was incorporated on 26 February 2018, and also has its registered office at Suite 210, 1333 Johnston Street, Vancouver, BC, Canada, V6H 3R9.[1174]

465. As explained below, Almaden and Almadex made multiple investments in Mexico that qualify as investments in the territory of Mexico under Article 9.1 of the CPTPP. The Claimants therefore qualify as investors for purposes of Article 9.1 of the CPTPP.

466. In this arbitration, the Claimants also bring claims on behalf of Mexican enterprises that they own and control, namely, Minera Gorrión and Minera Gavilán, pursuant to CPTPP Article 9.19(b). That article provides that a claimant may submit a claim to arbitration "on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly" that the respondent has breached the CPTPP and the enterprise in question has "incurred loss or damages by reason of, or arising out of, that breach."[1175]

467. All of the requirements of Article 9.19(b) are met with respect to Minera Gorrión and Minera Gavilán. Each qualifies as an "enterprise of the respondent," as they are Mexican companies organized and existing under Mexican law.[1176] They are also "control[ed] directly or indirectly" by Almaden and Almadex, respectively. As set forth above, Almaden holds 99.9 percent of the

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1172 CPTPP, at Arts. 1.3, 9.1, **CL-7**.

1173 Certificate of Amalgamation, No. 641366, dated 1 February 2002, **Exhibit C-167**; Annual Information Form for the fiscal year ended December 31, 2022, dated 24 March 2023, at p. 14, **Exhibit C-115**.

1174 Certificate of Incorporation, No. BC1154229, dated 26 February 2018, **Exhibit C-242**; Certificate of Change of Name, No. BC1154229, dated 18 May 2018, **C-250**. The spinoff entity was originally named "1154229 B.C. Ltd." but later changed its name to "Almadex Minerals Ltd."

1175 CPTPP, at Art. 9.19(b), at **CL-7**.

1176 Minera Gavilán S.A. de C.V., Libro de Registro de Accionistas, at p. 1, **Exhibit C-426**; Minera Gavilán S.A. de C.V. Capital Minimo Fijo, Serie "A" dated 18 September 2002, **Exhibit C-1**; *Escritura 10,470*, dated 4 January 2011, **Exhibit C-178**; *Escritura 7,026*, dated 16 November 2011, **Exhibit C-179**.

shares in Minera Gorrión through Almaden's wholly owned Canadian subsidiary, Puebla Holdings Inc.,[1177] and Almadex holds 99.9 percent of the shares in Minera Gavilán.[1178]

468. As discussed in further detail below, Minera Gorrión and Minera Gavilán have both suffered loss or damage as a result of Mexico's breaches of the CPTPP, as these entities held the rights in the Ixtaca Project. Specifically, Minera Gorrión held the concession rights to the Project, while Minera Gavilán held a two percent net smelter royalty interest in the Project.[1179]

469. The Claimants therefore have met the requirements for bringing a claim on behalf of Minera Gorrión and Minera Gavilán under CPTPP Article 9.19(b).

3.1.2 The Claimants are also covered investors under the ICSID Convention

470. Article 25(1) of the ICSID Convention requires that the non-State party to the dispute be "a national of another Contracting State" to the ICSID Convention.[1180] Article 25(2)(b) defines a "national of another Contracting State" to include "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 . . . arbitration."[1181]

471. This dispute is between Almaden and Almadex, nationals of Canada, on the one hand, and Mexico, on the other hand. In addition, as noted, the Claimants' subsidiaries Minera Gavilán and Minera Gorrión, on whose behalf the Claimants bring the claim, are enterprises of Mexico owned or controlled by Canadian nationals, i.e., the Claimants. As Canada and Mexico are both Contracting States to the ICSID Convention,[1182] the present dispute is "between a

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1177 Puebla Holdings, Inc., Certificate of Incorporation, dated 5 April 2012, **Exhibit C-182**; Certificate of Share Transfer, dated 30 April 2012, **Exhibit C-183**; General Conveyance Agreement between Puebla Holdings Inc and Almaden Minerals Ltd., dated 30 April 2012, **Exhibit C-184**; Minera Gorrión, *Libro de Registro de Accionistas*, **Exhibit C-426**.

1178 Minera Gavilán S.A. de C.V., *Libro de Registro de Accionistas,* at p. 1, **Exhibit C-426**; *Octavo Registro de Accionistas* (Minera Gavilán), dated 10 July 2023, **Exhibit C-489**.

1179 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, **Exhibit C-13**; *see also* Agreement duly filed under number 62 page 33, Volume 32 of the *Libro de Actos, Contratos y Convenios Mineros* of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**; *see also Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión dated 22 Dec. 2012, **Exhibit C-17**.

1180 ICSID Convention, **CL-1**, Art. 25(1).

1181 ICSID Convention, **CL-1**, Art. 25(2)(b).

1182 ICSID, List of Contracting States and Other Signatories of the Convention (as of October 25, 2022), ICSID/3, **Exhibit C-104**.

Contracting State and a National of another Contracting State," as required by ICSID Convention Article 25(1).

3.2 The Tribunal Has Jurisdiction *Ratione Materiae*

3.2.1 The Claimants made covered investments under Article 9.1 of the CPTPP

472. Article 9.1 of the CPTPP defines an "investment" to include the following:

> every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
>
> (a) an enterprise;
>
> (b) shares, stock and other forms of equity participation in an enterprise;
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> (c) bonds, debentures, other debt instruments and loans;
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> (d) futures, options and other derivatives;
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> (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
>
> (f) intellectual property rights;
>
> (g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law; and
>
> (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges, but investment does not mean an order or judgment entered in a judicial or administrative action.[1183]

[1183] CPTPP, Art. 9.1, **CL-7**.

473. The definition of investment is broad and encompasses "every kind of asset" and a non-exhaustive list of types of investment. It also encompasses direct and indirect investments.

474. The Claimants' investments fall squarely within the above definition. The Claimants invested significant financial and other resources in Mexico for the evaluation, acquisition, exploration, and development of the Ixtaca Project. Their investments include:

- the Claimants' shareholdings in Minera Gorrión and Minera Gavilán;
- Almaden's indirect interest in the Project assets and in the rights granted under the Mining Concessions;
- the funds that Almaden provided to Minera Gavilán and Minera Gorrión to finance the development of the Project;
- the net smelter return royalty interest held by Almadex and Minera Gavilán in the Project, which was duly registered with the Mining Public Registry and entitled them to two percent of net revenue (i.e., the gross revenue less certain deductions, including transportation and refining costs of the gold product) from the Project;[1184]
- the surface rights that the Claimants acquired in relation to the Project;[1185] and
- the Project's equipment and infrastructure, including, amongst other things, movable and immovable, as well as tangible and intangible, property.

[1184] *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, dated 13 December 2011, **Exhibit C-13**; *see also* Agreement duly filed under number 62 page 33, Volume 32 of the *Libro de Actos, Contratos y Convenios Mineros* of the Mining Public Registry, dated 29 February 2012, **Exhibit C-14**; *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión dated 22 Dec. 2012, **Exhibit C-17**; *Octavo Registro de Accionistas* (Minera Gavilán), dated 10 July 2023, **Exhibit C-489**.

[1185] Santamaría Tovar WS, paras. 17-20; *see, e.g.*, [redacted]").

475. Article 9.1 of the CPTPP further defines a "covered investment" as "an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter."[1186]

476. The CPTPP entered into force on 30 December 2018.[1187] As detailed in **Section 2** above, the Claimants made their qualifying investments in Mexico between 2001 and 2023, *i.e.*, before and after the CPTPP entered into force. The Claimants, therefore, have made a "covered investment" within the meaning of Article 9.1 of the CPTPP.

3.2.2 The Claimants also made covered investments under ICSID Convention Article 25(1)

477. While the ICSID Convention does not contain any definition of the term "investment," ICSID tribunals have considered various objective criteria in determining whether a particular investment falls within the meaning of ICSID Convention Article 25(1). Such criteria have included the list of typical characteristics of an investment set out by the tribunal in *Salini v. Morocco*, namely, (a) a contribution of money or assets, (b) a certain duration, (c) an element of risk, and (d) contribution to the economic development of the host State.[1188]

478. As numerous ICSID tribunals have observed, these criteria are not mandatory jurisdictional requirements, but rather reflect typical elements that a tribunal "could consider in determining whether the subject matter from which the dispute has arisen is an 'investment' contemplated by the ICSID Convention."[1189] The case law and commentary also confirm that, when examining whether a claimant has made an investment for purposes of an investment treaty

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1186 CPTPP, Art. 9.1, **CL-7**.

1187 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) overview, Agreements or arrangements – International Mobility Program (Ratification Extract), https://www.canada.ca/en/immigration-refugeescitizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/internationalfree-trade-agreements/trans-pacific.html, (last accessed 14 June 2024), **CL-11**.

1188 *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4 ("***Salini v Morocco***"), Decision on Jurisdiction, 16 July 2001, para. 52, **Exhibit C-26**; *see also Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006, para. 91, **Exhibit C-42** ("The ICSID Convention contains no definition of the term 'investment'. The Tribunal concurs with ICSID precedents which, subject to minor variations, have relied on the so-called 'Salini test'. Such test identifies the following elements as indicative of an 'investment' for purposes of the ICSID Convention: (i) a contribution, (ii) a certain duration over which the project is implemented, (iii) a sharing of operational risks, and (iv) a contribution to the host State's development, being understood that these elements may be closely interrelated, should be examined in their totality and will normally depend on the circumstances of each case".).

1189 *Standard Chartered Bank (Hong Kong) Limited v. United Republic of Tanzania II*, ICSID Case No. ARB/15/41, Award of the Tribunal, 11 October 2019, para. 200, **Exhibit C-113**; *see also Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2 ("***Deutsche Bank v Sri Lanka***"), Award, 31 October 2012, **Exhibit C-81**, para. 294.

and the ICSID Convention, a tribunal should analyse the claimant's operation as a whole, rather than parsing the different constituent elements of the investment to analyse whether such elements individually qualify as investments in their own right.[1190] In addition, various tribunals have found that where, as here, an investment satisfies the relevant definition under the BIT, a tribunal would require "compelling reasons" to conclude that it was not an investment under Article 25(1) of the ICSID Convention.[1191]

479. In this case, the Claimants' economic activity and contributions to acquire and develop the Ixtaca Project in Mexico plainly qualify as "investments" under Article 25(1).

480. *First*, the Claimants' investments involved a contribution of money and assets. With respect to Almaden, the Project, as well as the Claimants' shareholding in and contributions to Minera Gorrión, qualify as contributions of value. ICSID tribunals have interpreted contribution broadly to encompass not only payments of money but also other kinds of non-pecuniary contributions such as "materials, works, or services."[1192] As detailed above, Almaden invested millions of dollars and other resources to develop the Project in the territory of Mexico.[1193]

481. With respect to Almadex, it made a contribution when it acquired its shareholding in Minera Gavilán in May 2018 and through it the two per cent net smelter return royalty for the Project. The two per cent net smelter return royalty itself constitutes a contribution of money or assets, as it was acquired by Minera Gavilán in return for the assignment of the Cerro Grande and

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1190 Christoph Schreuer, *The Unity of an Investment*, 19 ICSID Reports 3, 22 November 2021, **CL-107**; *ADC Affiliate Ltd. v. Republic of Hungary*, ICSID Case No. ARB/03/16 ("***ADC v Hungary***"), Award, 2 October 2006, at para. 331, **CL-45**; *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, Award, 8 March 2016, para. 293, **CL-96**.

1191 *See, e.g., Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, at para. 130, **CL-71** (observing that, "in most cases—including, in the Tribunal's view, this one—it will be appropriate to defer to the State parties' articulation in the instrument of consent (e.g. the BIT) of what constitutes an investment. The State parties to a BIT agree to protect certain kinds of economic activity, and when they provide that disputes between investors and States relating to that activity may be resolved through, inter alia, ICSID arbitration, that means that they believe that that activity constitutes an 'investment' within the meaning of the ICSID Convention as well. That judgment, by States that are both Parties to the BIT and Contracting States to the ICSID Convention, should be given considerable weight and deference. A tribunal would have to have compelling reasons to disregard such a mutually agreed definition of investment"); *see also Československá Obchodní Banka, A.S. v. The Slovak Republic*, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction, dated 24 May 1999, para. 66, **CL-20** (noting that "an important element in determining whether a dispute qualifies as an investment under the Convention in any given case is the specific consent given by the Parties. The Parties' acceptance of the Centre's jurisdiction with respect to the rights and obligations arising out of their agreement therefore creates a strong presumption that they considered their transaction to be an investment within the meaning of the ICSID Convention").

1192 *LESI, S.p.A. and Astaldi, S.p.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Decision on Jurisdiction (unofficial translation), dated 12 July 2006, para. 73(i), **CL-43**.

1193 Brattle, at paras. 52, 177.

Cerro Grande 2 Concessions to Minera Gorrión via an amendment to the assignment agreement in 2012.[1194]

482. *Second*, the Claimants' investments in Mexico were long-term, strategic investments. ICSID tribunals have recognized that "[duration] is a very flexible term … [and] could be anything from a couple of months to many years."[1195] Having spent over two decades investing in Mexico to develop the Project, Almaden's investments amply meet the duration characteristic identified by the *Salini* tribunal. Almadex's investments also have the requisite element of duration. Almadex first invested in Mexico in 2018, when it acquired a 99.9 percent interest in Minera Gavilán, and thereby obtained (indirectly) the right to a two percent net smelter return royalty in relation to the Project. As noted, the net smelter return royalty in turn dates back to 2012.

483. *Third*, the Claimants' investments involved substantial risk, as evidenced by this dispute. ICSID tribunals have been clear that an element of risk is inherent in any long-term investment.[1196] The Claimants exposed themselves to financial and market risk to acquire and develop the Project as a sustainable, responsible, efficient, and profitable mine in Mexico over the long term. The Claimants also exposed themselves to considerable geological risk by carrying out exploration works without certainty as to whether such works would lead to the discovery of economically viable resources.[1197] With respect to the two percent net smelter return royalty obtained by Minera Gavilán and held indirectly by Almadex, this is subject to the same risks as the Project, as the amount of such royalty depends on the level of net revenue to be obtained from the Project.

484. *Fourth*, and finally, the Claimants' investments contributed to Mexico's economic and social development. While contribution to the host State's development is arguably implicit in any contribution of value, and therefore need not be established separately,[1198] there can be no

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1194 *Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión, 13 December 2011, at **Exhibit C-13**; *see also* Agreement duly filed under number 62 page 33, Volume 32 of the *Libro de Actos, Contratos y Convenios Mineros* of the Mining Public Registry, dated 29 February 2012, at **Exhibit C-14**; *Convenio modificatorio al Contrato de cesión de derechos* between Minera Gavilán and Minera Gorrión dated 21 Dec. 2012, at **Exhibit C-17**.

1195 *Deutsche Bank v. Sri Lanka*, Award, 31 October 2012, para. 303, **CL-81**.

1196 *See Salini v. Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, 23 July 2001, para. 56, **CL-26**; *Bayındır İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 136, **CL-40**.

1197 M. Poliquin WS, at paras. 26, 29-32.

1198 *See, e.g.*, *Phoenix Action Ltd v. Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, para. 85, **CL-65**.

dispute in this case that the Claimants made substantial contributions to Mexico's economic and social development. Not only did the Claimants create much-needed local employment in and around Santa María Zotoltepec during the exploration phase of the Project,[1199] but Minera Gorrión and Minera Gavilán also contributed to the Mexican economy by paying substantial tax revenue to Mexico.[1200]

3.3 The Tribunal Has Jurisdiction *Ratione Temporis*

485. For a claimant to submit a claim to arbitration under the CPTPP, it must satisfy the following temporal requirement under CPTPP Article 9.21.1:

> [no] more than three years and six months [may] have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage.[1201]

486. Mexico adopted the earliest of the measures that the Claimants challenge in this arbitration on 17 December 2020, when SEMARNAT arbitrarily and without basis denied the MIA.[1202] The Claimants filed their RFA on 14 June 2024, *i.e.*, less than three and a half years after that measure.[1203] The subsequent measures that the Claimants challenge in this case likewise took place within the three and a half year limitation period. These include, among others, the Supreme Court's 16 February 2022 decision granting the Tecoltemic *ejido's amparo* action, and Economía's arbitrary and pretextual 9 February 2023 decision ruling that the original Concessions granted in 2003 and 2009 were allegedly not feasible. There can therefore be no dispute that the measures the Claimants challenge in this case are within the Tribunal's jurisdiction *ratione temporis*.

1199 D. Poliquin WS, at para. 46.

1200 McDonald WS, at paras. 45, 71; D. Poliquin WS, at para. 60.

1201 CPTPP, Art. 9.21.1, **CL-7**.

1202 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at para. XLIV, **Exhibit C-86**.

1203 Request for Arbitration, dated 14 June 2024.

3.4 The Tribunal has jurisdiction *ratione voluntatis*

487. The Claimants consented to the submission of this dispute to the jurisdiction of the Centre by the filing their Request for Arbitration. As noted above, Mexico's consent arises from the text of the CPTPP, and specifically Article 9.19 thereof.

488. In addition, the Claimants have met all of the prerequisites for filing a claim under the CPTPP.

489. The Claimants complied with the obligation to submit a request for consultations under CPTPP Article 9.18.2. The Claimants submitted such Request for Consultations, setting out a brief description of facts regarding the measures at issue, and the request was stamped as received by the Mexican Dirección General de Consultoría Jurídica de Comercio Internacional on 13 December 2023.[1204] On 29 December 2023, Mexico responded to the Claimants and stated that it would propose dates for a consultation meeting in the near future, but Mexico then failed to reply with proposed dates until after the Claimants submitted their Notice of Intent as detailed below.[1205]

490. Furthermore, under Article 9.19.1 of the CPTPP, a claim may be submitted to arbitration only if the "investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation)."[1206] When the Claimants submitted their RFA on 14 June 2024, more than the prescribed period of six months had passed since the Respondent received the Request for Consultations. The Claimants, therefore, duly observed the six-month cooling off period under the CPTPP.

491. The Claimants also complied with the requirement under CPTPP Article 9.19.3 to provide 90 days' notice of their claim. The Claimants submitted a Notice of Intent received by the Mexican Dirección General de Consultoría Jurídica de Comercio Internacional on 14 March 2024.[1207] The Notice of Intent invited Mexico to "engage in discussions and negotiations with a view to achieving an amicable resolution of the dispute" but noted that, "[i]f such consultations with Mexico [were] unsuccessful, the Claimants intend[ed] to submit a claim for arbitration under

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1204 *See* Request for Consultations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership from Almaden and Almadex to Mexico dated 13 December 2023, **Exhibit C-124**.

1205 *See* Letter from Mexico to BSF, dated 29 December 2023, **Exhibit C-125**.

1206 CPTPP, at Art. 9.19.1, **CL-7**.

1207 *See* Notice of Intent under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership from Almaden and Almadex to Mexico, dated 14 March 2024, **Exhibit C-24**.

the Treaty."[1208] On 30 May 2024, the Parties held a consultation meeting at Economía's offices located at Calle Pachuca No. 189, Col. Condesa, Demarcación Territorial Cuauhtémoc, Mexico City, Mexico, C.P. 06140. However, the Parties were unable to reach an agreement to settle the dispute amicably. Accordingly, the Claimants submitted their RFA on 14 June 2024, *i.e.*, more than 90 days after the Claimants delivered their above-described notice of intent to Mexico.

492. Finally, the Claimants have complied with the relevant consent and waiver requirements under Articles 9.21.2 and 9.21.3 of the CPTPP. The Claimants and their Mexican enterprises consented to arbitration by submitting the RFA in accordance with the procedures set out in the CPTPP.[1209] The Claimants also provided unconditional waivers from each of the Claimants and their Mexican enterprises with the RFA.[1210] Before the Claimants and their Mexican enterprises executed and submitted those waivers, Minera Gorrión formally withdrew all local proceedings in Mexico and has taken no action to continue those proceedings.[1211] The Claimants confirm that in accordance with CPTPP Annex 9-J, neither the Claimants nor their Mexican enterprises have made any allegation of a breach of an obligation under CPTPP Section A in any proceedings before a court or administrative tribunal of Mexico or other CPTPP Party.[1212]

4. MEXICO HAS BREACHED ITS OBLIGATIONS UNDER THE CPTPP

493. Mexico has breached its obligations under the CPTPP in relation to the Claimants' protected investments. Specifically, as elaborated below, Mexico unlawfully expropriated the Claimants' protected investments without any compensation (**Section 4.1**); failed to accord the Claimants' protected investments fair and equitable treatment (**Section 4.2**); and unlawfully discriminated against the Claimants and their protected investments (**Section 4.3**).

1208 Notice of Intent under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership from Almaden and Almadex to Mexico dated 14 March 2024, at p. 11, at **Exhibit C-24**.

1209 *See* Request for Arbitration, at para. 4.22.

1210 Consent and Waiver Letter by Almaden dated 13 June 2024, at **Exhibit C-139**; Consent and Waiver Letter by Almadex dated 13 June 2024, at **Exhibit C-140**; Consent and Waiver Letter by Minera Gavilán dated 13 June 2024, at **Exhibit C-141**; Consent and Waiver Letter by Minera Gorrión dated 13 June 2024, at **Exhibit C-142.**

1211 Submission for Withdrawal of Lawsuit by Minera Gorrión and Minera Gavilán, 3 June 2024, **Exhibit C-491**; Attestation of Lawsuit Withdrawal by Minera Gorrión and Minera Gavilán, 12 June 2024, **Exhibit C-492**; Court Recognition of Minera Gorrión's and Minera Gavilán's Withdrawal of Lawsuit, 11 July 2024, **Exhibit C-494**.

1212 CPTPP, at Annex 9-J, **CL-7**.

4.1 Mexico Unlawfully Expropriated The Claimants' Protected Investments

494. Mexico unlawfully expropriated the Claimants' protected investments in breach of Article 9.8 of the CPTPP. Specifically, as elaborated below, Mexico arbitrarily and retroactively cancelled the Claimants' Cerro Grande and Cerro Grande 2 Concessions, thereby depriving the Claimants of their mining concession rights and of the use, enjoyment, and economic benefit of their protected investments in the Ixtaca Project. Mexico's expropriation did not pursue any public purpose, discriminated against the Claimants, was not accompanied by prompt, adequate, and effective compensation, and did not comply with due process of law, as required under CPTPP Article 9.8.

4.1.1 Mexico has directly expropriated the Claimants' protected investments

495. Article 9.8 of the CPTPP provides in relevant part that:

> 1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:
>
> (a) for a public purpose;
>
> (b) in a non-discriminatory manner;
>
> (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and
>
> (d) in accordance with due process of law.[1213]

496. The failure to comply with any of the four cumulative criteria set out in Article 9.8 by a CPTPP Party renders its expropriatory measure or set of measures unlawful under the CPTPP.

497. Further, Annex 9-B of the CPTPP which deals with expropriation provides that "[a]n action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment."[1214] Annex 9-B thus codifies the well-recognized principle that in order to bring a claim for expropriation, an investor must establish that it held a property right or interest in an investment with which the

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1213 CPTPP, at Art. 9.8, **CL-0007**.

1214 CPTPP, at Annex 9-B, Art. 1, **CL-0007**.

State has interfered.[1215] As explained above and reiterated below, the actions of Mexico at issue in this case not only interfered with the Claimants' property rights and interests in the Ixtaca Project, but extinguished them in full. Annex 9-B further provides that a direct expropriation occurs where, as here, "an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure."[1216]

498. In the present case, Mexico cancelled the Claimants' mining concession titles outright, which had the effect of transferring those titles to the State within the meaning of Annex 9-B. This is confirmed by the Public Mining Registry entry for the Cerro Grande Concession, which reflects that the mining concession title was "cancelled:"

DIRECCIÓN GENERAL DE MINAS

ECONOMÍA
SECRETARÍA DE ECONOMÍA

Datos del Título :
Título: 219469 Nombre del Lote : CERRO GRANDE **TITULO CANCELADO**

Datos generales de la Concesión :		Datos del Registro Público de Minería:	
Expediente :	107/00131	Fecha de Expedición :	miércoles, 05 de marzo, de 2003
Fecha de Solicitud :	lunes, 28 de octubre, de 2002	Vigencia del :	jueves, 06 de marzo, de 2003
Tipo de Concesión :	TITULO DE EXPLORACION MINERA	Al :	miércoles, 05 de marzo, de 2053
Superficie :	11,201.5515 Has.	Duración :	50 Años
Ubicación :	TETELA DE OCAMPO, PUEBLA IXTACAMAXTITLAN, PUEBLA AQUIXTLA, PUEBLA	Libro :	CONCE.MIN.
Sustituye al:		Volumen :	335
Subdirección :	PUEBLA, PUEBLA	Foja :	145 Acta : 289

Concesionario(s) Original(es) :	Participación (%)
MINERA GAVILAN, S.A. DE C.V.	100.00

Concesionario(s) Actual(es) :	Participación (%)
MINERA ALBATROS, S.A. DE C.V. AHORA MINERA GORRION, S.A. DE C.V.	100.00

499. As noted above, Article 27 of the Mexican Constitution provides that all minerals found within the territory of Mexico are owned by the Mexican State, and private parties may exploit these minerals through mining concessions granted by the Government.[1217] It is axiomatic that when

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1215 *See, e.g.*, *Emmis International Holding, B.V., Emmis Radio Operating, B.V., MEM Magyar Electronic Media Kereskedelmi és Szolgáltató Kft. v. The Republic of Hungary,* ICSID Case No. ARB/12/2, Award, 16 April 2014, at para. 168, **CL-85**, (observing that "[i]t also follows from the basic notion that an expropriation clause seeks to protect an investor from deprivation of his property that the property right or asset must have vested (directly or indirectly) in the claimant for him to seek redress.").

1216 CPTPP, at Annex 9-B, Art 2, **CL-0007**.

1217 Mexican Constitution, at Art. 27, paras. 4 and 6, **Exhibit C-439**.

the Government cancels a concession, the mineral rights under such concession revert to the State.

500. In *Quiborax v. Bolivia*, for example, the tribunal found that a "Revocation Decree" issued by the President of Bolivia "had the effect of transferring the title of [the claimants'] mining concessions to the State."[1218] In assessing whether the "Revocation Decree" in that case constituted a direct expropriation, the *Quiborax* tribunal adopted the legal standard set out in *Burlington v. Ecuador*, namely, whether "(i) the measure deprives the investor of his investment; (ii) the deprivation is permanent; and (iii) the deprivation finds no justification under the police powers doctrine."[1219] Applying that legal standard, the *Quiborax* tribunal found that "the concessions were annulled and the writs of annulment were definitive" and that "the Revocation Decree was not a legitimate exercise of Bolivia's police powers," including because the revocation of the concessions "did not comply with due process" and "the revocation lacked valid reasons."[1220] The Revocation Decree, the tribunal held, therefore constituted a direct expropriation.[1221]

501. Like the Revocation Decree in *Quiborax*, Economiá's February 2023 *Oficio* in this case constituted a direct expropriation of the Claimants' protected investments in the Ixtaca Project.

502. *First*, there can be no dispute that Economía's February 2023 Oficio cancelled the Claimants' Ixtaca Concessions definitively. As detailed above, the Supreme Court ordered Economía to reassess the feasibility of the Concession titles, before carrying out indigenous consultations and reissuing them under the Mexican Mining Law.[1222] Rather than conduct that reassessment in good faith, Economía instead seized on *de minimis* technical defects that were not at issue before the Supreme Court to rule that the Concessions were "not feasible," thus resulting in their definitive cancellation.[1223] That these *de minimis* technical defects were pretextual is obvious on their face and, as shown below, did not give rise to any basis for the rescission of the Concessions.

1218 *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2 ("***Quiborax v Bolivia***"), Award, 16 September 2015, at para. 229, **CL-94**.

1219 *Burlington Resources Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5* ("***Burlington v Ecuador***"), Decision on Liability, 14 December 2012, at para. 506, **CL-83**.

1220 *Quiborax v Bolivia*, Award, 16 September 2015, at paras 226-227, 229, 233**, CL-94**.

1221 *Quiborax v Bolivia*, Award, 16 September 2015, at para. 256**, CL-94**.

1222 *See supra* Section 2.16.

1223 *See supra* Section 2.17.5.

503. *Second*, there can be no dispute that Economía's cancellation of the Claimants' Ixtaca Concessions was irreversible and permanent, thus depriving the Claimants of the use and enjoyment of their protected investments in the Project, including their rights to explore, exploit, and benefit from the mineral resources in the concession areas. The cancellation of the concession titles is confirmed by Mexico's own Public Mining Registry, shown above.[1224] The Claimants, moreover, have no prospect of regaining title to their mining concessions, as demonstrated by Economía's failure even to consider Minera Gorrión's revised mining concession applications, filed in November 2022.[1225]

504. *Third*, Economía's February 2023 *Oficio* was not a legitimate exercise of the State's police powers. The police powers doctrine applies only to bona fide, proportionate, non-discriminatory regulatory measures taken in the public interest.[1226] As elaborated above, Economía's ruling that the Concessions it had approved and granted years earlier were "not feasible" was not a legitimate or proportionate response to the *de minimis* technical defects identified in the expert reports appended to the original concession applications.[1227] They also had *nothing* to do with the *amparo* proceedings lodged by Tecoltemi that gave rise to the Supreme Court's decision in the first instance. Moreover, in so ruling, Economía gave Minera Gorrión *no* opportunity to correct the de minimis technical defects it had identified, as required under both the Mexican Mining Regulations and the Federal Law of Administrative Procedure.[1228] Economía's ruling was also discriminatory, as its objective was to further AMLO's arbitrary anti-foreign-investment agenda.[1229] Furthermore, as noted above, the Mexican Mining Law and Regulations expressly permit Economía to correct such minor

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1224 Extract from the Public Mining Registry for Concession Title No. 219569, **Exhibit C-3**.

1225 *See supra* Section 2.12.

1226 *See e.g. Mohamed Abdel Raouf Bahgat v. Egypt (I),* PCA Case No. 2012-07, Final Award, 23 December 2019, at para. 230, **CL-115** (observing that "the police power defence is not *carte blanche*; a State's actions must be justified, meet the international standards of due process, and *inter alia* be proportional to the threat to public order to which it purports to respond."); *see also JSC DTEK Krymenergo v. Russian Federation,* PCA Case No. 2018-41, Award, 1 November 2023, at para. 803, **CL-129**. (affirming that police powers doctrine only applies when the state "enacts *bona fide*, non-discriminatory and proportionate regulations in accordance with due process.").

1227 *See supra* Section 2.17.5.

1228 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**; Federal Law on Administrative Procedure, Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1229 *See supra* Sections 2.13, 2.17.5.

technical defects in mining concessions, without cancelling them.[1230] Economía's ruling thus deliberately disregarded its own legal and regulatory framework for purely political purposes.

505. For all of these reasons, Economiá's February 2023 *Oficio* constituted a direct expropriation of the Claimants' protected investments in the Ixtaca Project. That direct expropriation, moreover, was unlawful because it was not taken for a public purpose, was discriminatory in nature, was not accompanied by any compensation, and failed to afford due process of law, as detailed below.

4.1.2 Mexico's direct expropriation was unlawful

4.1.2.1 Mexico's direct expropriation was not taken for a public purpose

506. To qualify as lawful under Article 9.8 of the CPTPP, an expropriation must be for a public purpose. The public purpose must be the actual "reason the investment was expropriated,"[1231] and it must be based on a "legitimate concern."[1232] As a number of investment treaty tribunals have affirmed, a mere assertion of a public purpose is not dispositive.[1233]

507. In *ADC v. Hungary*, for example, the tribunal underscored that "a treaty requirement for "*public interest*" requires some genuine interest of the public."[1234] As the tribunal remarked, "[i]f mere reference to "*public interest*" can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless."[1235] In *ADC*, Hungary had asserted that the expropriation of the claimants' investment to renovate, construct, and operate two airport terminals was "important elements of the harmonization of the Government's transport strategy, laws and regulations with EU law[.]"[1236] The tribunal

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1230 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**; Federal Law on Administrative Procedure, Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1231 *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15 ("***Siag v Egypt***"), Award, 1 June 2009, at para. 431, **CL-66**.

1232 *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8 ("***Siemens v Argentina***"), Award, 17 January 2007, at para. 273, **CL-47**.

1233 *ADC v Hungary*, Award, 2 October 2006, at para. 432, **CL-45**; *Compañiá de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3 ("***Vivendi v Argentina***"), Award, 20 August 2007, **CL-51**, at para. 7.5.21 (observing that "[i]f public purpose automatically immunises the measure from being found to be expropriatory, then there would never be a compensable taking for a public purpose.").

1234 *ADC v. Hungary*, Award, 2 October 2006, at para. 432, **CL-45**.

1235 *ADC v. Hungary*, *ICSID Case No. ARB/03/16*, Award, 2 October 2006, at para. 432, **CL-45**.

1236 *ADC v. Hungary*, *ICSID Case No. ARB/03/16*, Award, 2 October 2006, at para. 392, **CL-45**.

found, however, that Hungary's real motivation was to secure a more lucrative deal for the State, and therefore that the expropriation was not for any genuine public purpose.[1237]

508. Furthermore, as the tribunal in *British Caribbean Bank v. Belize* observed, public purpose requires an explanation of how the expropriation is "reasonably related to the fulfilment of that purpose."[1238] In *British Caribbean Bank*, the tribunal found insufficient evidence of a genuine public interest underlying the nationalization of the claimant's investments in a telecommunications company.[1239] The tribunal instead found that the real motivation of the expropriation was political and commercial, and therefore that the expropriation did not serve any legitimate public purpose.[1240]

509. In the present case, like in *ADC* and in *British Caribbean Bank*, Economía's cancellation of the Claimants' Concessions was not done for any public purpose or in furtherance of any public interest. Rather, as set forth above, Economía's real motivation was to end the Ixtaca Project in line with AMLO's arbitrary anti-foreign investment agenda to stop all new mining projects.[1241] The reasons for this are set out below.

510. *First*, in its February 2023 *Oficio,* Economía did not invoke any public purpose or public interest for its findings of infeasibility.[1242] Notably, Economía did not ground its decision on the indigenous rights that gave rise to the Supreme Court's decision. Nor did Economía explain how the pedantic coordinates issues it invoked would render a mining concession infeasible or how such a finding would serve the public interest, particularly given that Economía is obliged

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1237 *ADC v. Hungary*, *ICSID Case No. ARB/03/16*, Award, 2 October 2006, at para. 433, **CL-45** ("[w]ith the claimed "*public interest*" unproved and the Tribunal's curiosity thereon unsatisfied, the Tribunal must reject the arguments made by the Respondent in this regard. In any event, as the Tribunal has already remarked, the subsequent privatization and the agreement with BAA renders this whole debate somewhat unnecessary.*"*).

1238 *British Caribbean Bank Limited v. Government of Belize (I),* PCA Case No. 2010-18 ("***British Caribbean Bank v Belize***"), Award, 19 December 2014, at para. 241, **CL-90**; *see also Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4 ("***Vestey v Venezuela***"), Award, 15 April 2016, at para. 296, **CL-98** (affirming that the tribunal "must also assess whether the impugned expropriatory measure was "for" the public purpose.").

1239 *British Caribbean Bank v Belize*, Award, 19 December 2014, at paras. 297-299, **CL-90**.

1240 *British Caribbean Bank v Belize*, Award, 19 December 2014, at para. 299, **CL-90**.

1241 *See supra* Sections 2.13, 2.17.5.

1242 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**.

to afford the applicant opportunity to cure such minor issues and is also expressly authorized under the Mining Law and Regulations to correct them.[1243]

511. Moreover, while Economía referred in its February 2023 *Oficio* to the purported "scientific studies" commissioned by SEMARNAT in bad faith and submitted by Tecoltemi to the District Court,[1244] Economía's conclusions on feasibility are based *only* on the Manual of Public Mining Service requirements, and not on these purported studies.[1245] In any event, as demonstrated above, those studies were not neutral or objective scientific inquiries; rather, as SEMARNAT's own minutes make clear, the stated intent of those studies was to undermine the Ixtaca Project in response to the Supreme Court's decision: "The objective of the aforementioned expert's report is to support with technical and scientific evidence that this mining project affects the environment and, therefore, no more mining concessions can be granted in the region."[1246] Furthermore, the goal was that the studies "be sent as soon as possible to the Office of the President . . . *so that the President can issue a decision and comply with the mandate of not allowing new concessions to the Ministry of Economy* . . . in order to support that there are no proper conditions for the Ministry of Economy to grant a new concession."[1247] As such, those studies are neither legitimate nor a reflection of the public interest. They are instead the product of an arbitrary political attack on the Ixtaca Project.

512. *Second,* the Manual of Public Mining Service requirements invoked by Economía – relating to the starting point coordinates, perimeter coordinates, and land survey[1248] – bear no relationship to any conceivable public purpose, let alone a stated one. In particular, those technical requirements have nothing to do with the subject matter of the Supreme Court's ruling, namely, the indigenous rights of the Tecoltemi community.

1243 1999 Mining Regulations, Art. 22, Section III, **Exhibit C-164**; Federal Law on Administrative Procedure, Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1244 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, 9 February 2023, **Exhibit C-111**.

1245 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, 9 February 2023, **Exhibit C-111,** at pp. 6-12.

1246 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1247 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 1, **Exhibit C-397**.

1248 Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, 9 February 2023, pp. 6-12, **Exhibit C-111**.

513. Moreover, Economía could have addressed those minor technicalities without cancellation of the Concessions.[1249] As explained above, Economía not only has the authority to correct such minor defects in a concession under Article 31 of the Mining Regulations,[1250] but Economía cannot reject a mining concession application based on such minor defects, unless it has given the applicant notice and an opportunity to correct.[1251] Here, Economía gave Minera Gorrión no such opportunity. Instead, Economía invoked these minor defects as a pretext to cancel the Concessions outright, without any due process. It threw the baby out with the proverbial bath water. To deprive investors of legal rights that they held for more than 14-20 years – and in reliance on which they invested tens of millions of dollars – based on such trivial and correctable errors and without any due process is plainly not in accordance with any genuine public purpose.

514. *Fourth*, Economía's February 2023 *Oficio* was in fact motivated by the arbitrary political directives of Mexico's President, AMLO, rather than by any genuine public purpose. As explained above, after AMLO took office in 2018, he announced publicly that his administration would not grant any new mining concessions or approve any new mining projects.[1252] To ensure compliance with this political agenda, AMLO appointed regulatory officials who shared his anti-mining ideology and removed those who did not. Key figures such as Secretary of Economía, Raquel Buenrostro exemplified this strategy, ensuring that regulatory decisions were guided by AMLO's political directives, rather than by objective legal criteria. As explained above, once Secretary Buenrostro assumed office, Economía severed all official communications with Minera Gorrión regarding the indigenous consultation process and unilaterally and abruptly cancelled the UNECE Mining Pilot Project.[1253] In line with AMLO's policy, Economía then cancelled the Concessions altogether on spurious ground of "infeasibility" without conducting any consultations at all.[1254]

515. Finally, Economía's cancellation of the Claimants' Concessions was in fact contrary to the public interest. Economía failed to carry out the indigenous consultations ordered by the

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1249 1999 Mining Regulations, Arts. 22, Section III, 31, **Exhibit C-164**; Federal Law on Administrative Procedure, Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1250 1999 Mining Regulations, Art. Art 31, **Exhibit C-164**; *see also supra*, at Sections 2.4 and 2.17.5 above.

1251 Federal Law on Administrative Procedure, Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**; *see also supra*, at Sections 2.4 and 2.17.5.

1252 *See supra* Section 2.13.

1253 *See supra* Section 2.17.2; Uzcanga Vergara WS, at para. 59; Santamaría Tovar WS, at para. 50.

1254 *See supra* Section 2.17.5.

Supreme Court, thereby breaching the human rights of the indigenous communities located in the Project's area of influence. Specifically, as Mr. García Herrera explains in his witness statement, Economía's decision denied the indigenous community of Santa María Zotoltepec its right to consultation regarding the future of the Ixtaca Project, as well as its right to benefit from the use of resources in its territory, as required under Articles 6.1, 7.1 and 15.2 of ILO 169.[1255]

516. Economía's decision also permanently deprived the local communities of the significant public benefits that the Ixtaca Project would have provided. The Project would have provided a fresh water supply and irrigation system for the local communities, which the Mexican Government had failed to provide.[1256] The Project would also have provided critical employment and training for local residents, as well as education, improved healthcare, and other social benefits.[1257] As explained above, given the substantial benefits they stood to gain from the Project, local community members were vocal in their support for the Project, sending signed petitions to the Government in support of the Project and organizing meeting with officials in Mexico City to lobby for its continuation.[1258]

517. In sum, Mexico's direct expropriation of the Claimants' rights in the Ixtaca Project was not for a public purpose, as required under CPTPP Article 9.8. Rather, it pursued the illegitimate purpose of blocking the Ixtaca Project and dismantling the mining sector in Mexico for political reasons.

4.1.2.2 Mexico directly expropriated the Claimants' investments in a discriminatory manner

518. To qualify as lawful under Article 9.8 of the CPTPP, an expropriation must not be discriminatory. This means that similarly situated entities cannot be treated differently by the State without reasonable justification.[1259] By way of example, in *von Pezold v. Zimbabwe*, the tribunal held that Zimbabwe's expropriation of the claimants' farming investments was

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1255 Appeal of Edijitarios Unidos en Favor del Desarollo Sustenable de Santa Maria Zotoltepec, H. Tribunal Colegiado de Circuito en Turno, 11 April 2023, at p. 6, **C-119**; García Herrera WS, at para. 26.

1256 Santamaría Tovar WS, at paras. 51-52.

1257 Santamaría Tovar WS, at para. 16; Uzcanga Vergara WS, at para. 62; García Herrera WS, at para. 26.

1258 Letter from community members to SEMARNAT, 25 July 2019, **C-77**; *see also supra* Section 2.8.

1259 *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2 ("***Crystallex v Venezuela***"), Award, 4 April 2016, at para. 715, **CL-97** (observing that if the claimant proves that "it was subjected to different treatment in similar circumstances without reasonable justification" it would constitute an unlawful expropriation).

discriminatory because Zimbabwe had treated the claimants, who were white farmers, differently from black farmers.[1260] The tribunal found that "the evidence supports a conclusion that the Claimants were targeted as a result of their skin colour and, hence, the taking [of the farms] was discriminatory."[1261]

519. Finding discrimination is an effects-based analysis and is not based on subjective intent.[1262] In other words, if the effect of a State's actions is to treat the investor differently from similarly situated comparators without reasonable justification, then the State's actions are discriminatory, whether or not the State intended to discriminate.

520. On the other hand, if it is shown that the State intended to act in a discriminatory fashion, this is sufficient to evidence a breach. As the tribunal in *Corn Products v. Mexico* observed, "[w]hile the existence of an intention to discriminate is not a requirement for a breach . . . where such an intention is shown, that is sufficient."[1263]

521. A number of tribunals have found that discriminatory intent is sufficient to render an expropriation unlawful. In *Stabil v. Russia*, for example, the tribunal examined expropriatory measures taken by Russia following its annexation of Crimea in 2014.[1264] The claimants, Ukrainian companies, owned and operated petrol stations and related assets in Crimea.[1265] Russian authorities physically seized the claimants' assets and transferred them to State-owned or controlled entities without compensation.[1266] The claimants argued that Russia's conduct was motivated by hostility towards one of the claimants' shareholders.[1267] Assessing Russia's motivation behind the expropriation, the tribunal noted that "the record contains numerous

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1260 *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15 ("***von Pezold v Zimbabwe***"), Award, 28 July 2015, at para. 501, **CL-93**.

1261 *von Pezold v Zimbabwe*, Award, 28 July 2015, at para. 501, **CL-93**.

1262 *Siag v. Egypt*, Award, 1 June 2009, at para. 439, **CL-66** (noting that "there is some difference of opinion as to whether such intent is necessary to show discrimination, or whether a discriminatory effect will suffice" and ultimately concluding that "it is clear that a discriminatory effect must be shown.").

1263 *Corn Products International, Inc. v. United Mexican States*, ICSID Case No. ARB (AF)/04/1 ("***Corn Products v Mexico***"), Decision on Responsibility, 15 January 2008, at para. 138, **CL-55**.

1264 *Stabil LLC and Others v. Russian Federation*, UNCITRAL, PCA Case no. 2015-35 ("***Stabil v Russia***"), Final Award, 12 April 2019, at para. 113, **CL-106**.

1265 *Stabil v Russia*, Final Award, 12 April 2019, at para. 113, **CL-106**.

1266 *Stabil v Russia*, Final Award, 12 April 2019, at para. 134, **CL-106**.

1267 *Stabil v Russia*, Final Award, 12 April 2019, at para. 135, **CL-106**

manifestations of the Respondent's hostility towards Mr. Kolomoisky."[1268] Because "Mr. Kolomoisky [held] a significant share of the Claimants' equity," the tribunal found that "there is no need for further evidence of the Respondent's discriminatory intent[.]"[1269] The tribunal accordingly "ha[d] no hesitation to conclude that the Russian Federation's measures were targeted specifically at the Claimants and their investments, and were therefore by definition discriminatory, which renders the expropriation unlawful under the Treaty."[1270]

522. Similarly, in *Nachingwea v. Tanzania*, Tanzania cancelled the claimants' retention licenses for the Ntaka Hill Nickel Project without compensation in the context of broader legislative changes in Tanzania's mining sector.[1271] The claimants argued that the measures were discriminatory and formed part of Tanzania's "economic war" against foreign mining companies.[1272] The tribunal noted that Tanzania had made various statements demonstrating hostility toward foreign investors, which were cited as part of the context for introducing the new legislation.[1273] Further, Tanzania had variously described foreign mining companies as "looters" and "thieves."[1274] Based on these statements, the tribunal concluded that "the purpose of the Amending Legislation was to target foreign mining companies and was discriminatory."[1275]

523. The same conclusion pertains here. Mexico's expropriation of the Claimants' rights in the Ixtaca Project was plainly discriminatory by design. As noted above, Economía's actions were taken in line with AMLO's arbitrary anti-foreign-investment and anti-mining policy and motivated by hostility towards the Ixtaca Project.

524. Throughout his administration, AMLO repeatedly used his *mañaneras* as a populist megaphone to reinforce his anti-mining stance, vilifying foreign mining companies such as the Claimants. He claimed that previous administrations had recklessly handed over vast tracts of land, amounting to "millions of hectares" for "millions of years" to mining companies purely

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1268 *Stabil v Russia*, Final Award, 12 April 2019, at para. 239, **CL-106**.

1269 *Stabil v Russia*, Final Award, 12 April 2019, at para. 239, **CL-106**.

1270 *Stabil v Russia*, Final Award, 12 April 2019, at paras. 240-241, **CL-106**.

1271 *Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited (Tanzania) v. Tanzania*, ICSID Case No. ARB/20/38 ("***Nachingwea and others v. Tanzania***"), Award, 14 July 2023, at para. 84, **CL-127**.

1272 *Nachingwea and others v. Tanzania*, Award, 14 July 2023, at para. 281, **CL-127**.

1273 *Nachingwea and others v. Tanzania*, Award, 14 July 2023, at para. 287, **CL-127**.

1274 *Nachingwea and others v. Tanzania,* Award, 14 July 2023, at para. 287, **CL-127**.

1275 *Nachingwea and others v. Tanzania*, Award, 14 July 2023, at para. 288, **CL-127**.

for "speculative" purposes.[1276] His inflammatory rhetoric was designed to justify his administration's obstruction of the mining sector and to prepare public opinion for the sweeping legislative changes that would follow with his 2023 Mining Reform Act.[1277] As noted above, that Mining Reform Act codified AMLO's anti-foreign-investment policy, permitting only public agencies and instrumentalities to hold permanent mining concessions[1278] and prohibiting anyone other than the Mexican Geological Service from carrying out mining exploration.[1279]

525. Moreover, the record in this case is replete with examples of Mexico's hostility towards the Ixtaca Project. This includes, among other things, SEMARNAT's multiple press statements calling for the cancellation of the Ixtaca Project;[1280] AMLO's assurance and Secretary Toledo's public promise that "*Ixtaca will not happen*"[1281] and SEMARNAT's secret joint campaign with activist NGOs to collect post-hoc studies to pressurize Economía to cancel the Ixtaca Project outright.[1282] As noted above, such targeted, discriminatory intent is in and of itself sufficient to establish that Mexico breached international law.[1283]

526. Furthermore, the evidence shows that Mexico treated the Claimants differently from similarly situated investors without reasonable justification. While AMLO blocked and then cancelled the Claimants' Ixtaca Project by halting communications, stonewalling regulatory approvals, and ultimately cancelling its concession titles outright, State-affiliated enterprises faced no

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1276 Sin Censura Presenta YouTube Channel, AMLO DESTACA TRABAJO DE MA. LUISA ALBORES AL FRENTE DE LA SEMARNAT, dated 11 June 2024, <https://www.youtube.com/watch?v=wr15-QItWg0>, **Exhibit C-433**; *Entregó Felipe Calderón más a mineras que en Porfiriato – AMLO*, Grupo REFORMA YouTube Channel, dated 11 June 2024, available at https://www.youtube.com/watch?v=M5l09CHzhM8 (last accessed 12 March 2025), **Exhibit C-495**; *see also supra* Section 2.13.

1277 *See supra* Section 2.13.

1278 Ley de Mineria (Ultima reforma publicada DOF 08-05-2023), 26 June 1992, Art. 15 bis, **Exhibit C-158**.

1279 Ley de Mineria (Ultima reforma publicada DOF 08-05-2023), 26 June 1992, Arts. 9 bis and 10 bis, **Exhibit C-158**.

1280 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, **Exhibit C-393**; SEMARNAT Public Statement, "*SEMARNAT hace un llamado para que la Ley Minera priorice la vida de los pueblos y no los intereses de las empresas*," dated 13 January 2022, **Exhibit C-380**; SEMARNAT Public Statement, "*SEMARNAT, INPI y Procuraduría Agraria confían en que la SCJN resuelva a favor del ejido de Tecoltemi, en Puebla*," dated 14 February 2022, **Exhibit C-382**.

1281 "*Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán 'no va a ser'*," Lado B, dated 29 August 2019, at pp. 2-3, **Exhibit C-307**.

1282 *See supra* Section 2.17.3.

1283 *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, at para. 138, **CL-55**.

such barriers. In fact, AMLO promoted Government-controlled mining initiatives under the guise of "resource nationalism" while actively driving foreign companies out of the sector.[1284]

4.1.2.3 Mexico directly expropriated the Claimants' investments without any compensation

527. To qualify as lawful under Article 9.8 of the CPTPP, the expropriation must be accompanied by the payment of prompt, adequate, and effective compensation.[1285] The failure to provide compensation renders the expropriation unlawful, even if it satisfies the other elements of a lawful expropriation under the CPTPP.[1286]

528. Article 9.8.2 of the CPTPP further requires that compensation shall:

> (a) be paid without delay; (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation); (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and (d) be fully realisable and freely transferable.[1287]

529. Under Article 9.8.2, compensation thus shall not take into account the effects of the expropriatory conduct but rather shall be equivalent to the fair market value of the investment immediately before it was expropriated by the State.

530. In the present case, Mexico did not provide any compensation to the Claimants for the loss of their mining concessions, let alone prompt, adequate, and effective compensation equivalent to the fair market value of the Claimants' protected investments immediately before they were expropriated, i.e., 9 February 2023. For this reason alone, Mexico's expropriation of the Claimants' rights in the Ixtaca Project is unlawful under Article 9.8 of the CPTPP.

1284 *See supra* Section 2.13.

1285 CPTPP, at Art. 9.8.1(c), **CL-0007**.

1286 *Burlington v. Ecuador*, Decision on Liability, 14 December 2012, at paras. 543-544, **CL-83** (affirming that "the lack of payment is sufficient for the expropriation to be deemed unlawful.*"); Mondev International Ltd. v. United States of America,* ICSID Case No. ARB(AF)/99/2 ("***Mondev v USA***"), Award, 11 October 2002, at para. 71, **CL-29** (explaining that "[a] *"*taking" of property, not acknowledged as such by the government concerned and not accompanied by any offer of compensation, is not rendered conditionally lawful by the contingency that the aggrieved party may sue in the local courts for conversion or for breach of contract.").

1287 CPTPP, at Art. 9.8, **CL-0007**.

4.1.2.4 Mexico's expropriation of the Claimants' investments did not accord with due process of law

531. Finally, to qualify as lawful under Article 9.8 of the CPTPP, an expropriation must be in accordance with due process of law. Due process requires, at a minimum, that the expropriation accord with a "lawful procedure,"[1288] including "basic legal mechanisms"[1289] which enable an investor to have its claims heard, including notice a fair hearing, and an unbiased and impartial adjudicator to assess the actions in dispute. Absent such legal procedure, "the argument that 'the actions are taken under due process of law' rings hollow." [1290] Due process also requires that the host State act transparently and that it not take decisions with the intent of causing damage to the investment.[1291]

532. The Mexican Mining Regulations likewise establishes certain basic procedural guarantees that must be respected in assessing mining concession applications, including the right to be notified of and to correct within 60 days the very types of minor defects identified by Economía and used as the blatantly pretextual basis to cancel the Claimants' Concessions outright.[1292] Specifically, under Article 22 of the Mining Regulations, if the expert report submitted by the applicant does not comply with the Mining Regulations or Mining Manual, Economía must notify the applicant within 30 days of receiving the expert report, "in writing and only once, to present the pertinent corrections or new expert works, within 60 days" following the date of notification.[1293] The applicant's right to be notified and to correct the application accords with Article 17A of the Federal Law of Administrative Procedure, which further provides that the agency must notify the applicant of the error and afford it the opportunity to cure it.[1294] If the

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1288 *Antoine Goetz and others v. Republic of Burundi (I)*, ICSID Case No. ARB/95/3, Award (Embodying the Parties' Settlement Agreement) (unofficial translation), 10 February 1999, at para. 127, **CL-19**.

1289 *ADC v. Hungary*, Award, 2 October 2006, at para. 435, **CL-45**.

1290 *ADC v. Hungary*, Award, 2 October 2006, at para. 435, **CL-45**.

1291 *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, at para. 602, **CL-57** (where the tribunal observed that "the [FET] standard also implies that the conduct of the State must be transparent."); *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010, at paras. 438, 441, **CL-70** (reiterating that the State's conduct must not "manifestly violate basic requirements of […] transparency.").

1292 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**; Federal Law on Administrative Procedure, Art. 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1293 1999 Mining Regulations, at Art. 22, Section III, **Exhibit C-164**.

1294 Federal Law of Administrative Procedure, at Art. 17A, **Exhibit C-160**.

agency fails to do so, Article 17A mandates that "the application cannot be rejected on the grounds that it is incomplete."[1295]

533. In this case, Mexico did not follow due process of law, whether under international law or Mexican law. As demonstrated above, Economía did not give Minera Gorrión notice or opportunity to correct any of the pretextual minor defects identified by Economía in the expert reports, as required under Article 22 of the Mining Regulations and Article 17A of the Federal Law of Administrative Procedure. The lack of notice and opportunity to be heard is particularly troubling given that DGM, Economía's own mining department, had reviewed and approved without objection or comment both expert reports in 2003 and 2009, respectively.[1296] Likewise, Economía had affirmed the validity and good standing of both Concessions on several occasions, including most recently in 2019.[1297]

534. In such circumstances, Mexico's cancellation of the Claimants' rights in the Ixtaca Project did not comply with minimum standards of due process. It therefore constituted a direct expropriation of the Claimants' protected investments, in breach of CPTPP Article 9.8.

4.2 Mexico Failed to Accord the Claimants' Protected Investments Fair and Equitable Treatment

535. Mexico failed to accord the Claimants' protected investments fair and equitable treatment ("**FET**") in breach of Article 9.6 of the CTPPP. In particular, as set forth above, Mexico's environmental assessment of the Ixtaca Project was riddled with procedural improprieties and an unlawful suspension before it ultimately denied Minera Gorrión's MIA in a manner that did not comport with established SEMARNAT process or reality. Mexico then arbitrarily and retroactively ruled that the Ixtaca Concessions it had granted years earlier were "*not feasible*," also on baseless and pretextual grounds, thus resulting in their cancellation. As the evidence shows, Mexico's conduct was not based on a fair or objective assessment of the Ixtaca Project under the law, but rather was driven by AMLO's anti-foreign-investment and anti-mining agenda. As detailed below, such conduct was arbitrary, non-transparent, inconsistent, discriminatory, disproportionate, and in violation of due process, and therefore breached CPTPP Article 9.6.

1295 Federal Law of Administrative Procedure, at Art. 17A, **Exhibit C-160**.

1296 *See supra* Section 2.4.2.

1297 *See supra* Section 2.4.3.

536. The Claimants provide below general observations on Mexico's obligation to accord FET under CPTPP Article 9.6 (**Section 4.2.1**). The Claimants then comment on the specific obligations that apply under that standard (**Section 4.2.2**) and demonstrate how Mexico breached FET in the present case (**Section 4.2.3).**

4.2.1 General observations regarding the FET standard

537. Article 9.6 of the CPTPP provides that:

> 1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.
>
> 2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. 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 that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:
>
> (a) '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 embodied in the principal legal systems of the world; and
>
> (b) 'full protection and security' requires each Party to provide the level of police protection required under customary international law.[1298]

538. Article 9.6 of the CPTPP thus obliges Mexico to accord covered investments (a) FET and (b) full protection and security, in accordance with the customary international law minimum standard of treatment ("**MST**").[1299] Annex 9-A addresses the interpretation of "the customary

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1298 CPTPP, at Art. 9.6, **CL-0007**.

1299 CPTPP, at Art. 9.6, **CL-0007**. Article 9.6.4 clarifies that "the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result." CPTPP, at Art. 9.6.4, **CL-0007**.

international law minimum standard of treatment of aliens" referred to in Article 9.6 and provides that:

> '[C]ustomary international law' generally and as specifically referenced in Article 9.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.[1300]

539. The content of the MST under customary international law has been addressed extensively by investment treaty tribunals. While, as noted in Annex 9-A, customary international law results from State practice and *opinio juris*, the Tribunal can also be guided in its interpretation by arbitral awards, which constitute "subsidiary means for the determination of rules of law" pursuant to Article 38 of the ICJ Statute.[1301] The tribunal in *IC Power v. Peru* reached precisely this conclusion when examining the FET provision in the Peru-Singapore Free Trade Agreement, which, like CPTPP Article 9.6, is defined by reference to the MST under customary international law.[1302] Similarly, the tribunal in *ADF v. United States* stated that the interpretation of the MST under the NAFTA "must be disciplined by being based upon State practice *and judicial or arbitral caselaw* or other sources of customary or general international law."[1303]

540. Importantly, investment treaty tribunals have also consistently found that the MST has evolved over time.[1304] As the *IC Power* tribunal observed, historical articulations of the standard are of limited relevance, as the MST "has evolved since *Neer*, when it only prohibited 'outrageous'

1300 CPTPP, at Annex 9-A, **CL-0007**.

1301 *See* Michael Wood (Special Rapporteur), Second Report on Identification of Customary International Law, A/CN.4/672, International Law Commission, 22 May 2014, at para. 46, **CL-92**.

1302 *IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru*, ICSID Case No. ARB/19/19 ("***IC Power v Peru***"), Award, 3 October 2023, at para. 288, **CL-128** (observing that "in analyzing [the language of the FET/MST provision], the Tribunal can be guided by investment tribunals awards that have applied similar provisions, as they constitute "subsidiary means for the determination of rules of law" pursuant to Article 38 of the Statute of the ICJ.").

1303 *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1 ("***ADF v USA***"), Award, 9 January 2003, at para. 184 (emphasis added), **CL-60**.

1304 *IC Power v. Peru*, Award, 3 October 2023, at para. 289, **CL-128**; *Mondev v. USA*, Award, 11 October 2002, at para. 116, **CL-29**; *Crompton (Chemtura) Corp. v. Government of Canada*, PCA Case No. 2008-01 ("***Crompton v Canada***"), Award, 2 August 2010, at para. 121, **CL-76**; *Merrill & Ring v. The Government of Canada*, ICSID Case No. UNCT/07/1 ("***Merrill & Ring v Canada***"), Award, 31 March 2010, at para. 193, **CL-72**; *ADF v. USA*, Award, 9 January 2003, at para. 179, **CL-60**.

behavior, and now forbids a wider range of conducts."[1305] Similarly, in *Mondev v. United States*, the tribunal observed with respect to the scope of the minimum standard of FET that, in modern times, "what is unfair or inequitable need not equate with the outrageous or the egregious," and that "a State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith."[1306] The tribunal further noted that each State party to the NAFTA, including Mexico, had accepted that the MST "can evolve" and "has evolved."[1307]

541. As to the content of the minimum standard of FET under customary international law, after reviewing the awards in several NAFTA cases (S*.D. Myers v. Canada*,[1308] *Mondev v. United States*,[1309] *ADF v. United States*,[1310] and *Loewen v. United States*[1311]), the tribunal in *Waste Management (II)* described the minimum standard of FET in the following terms:

> [T]he minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the state and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety – as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process. In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.*[1312]*

1305 *IC Power v. Peru*, Award, 3 October 2023, at para. 289, **CL-128**.

1306 *Mondev v. USA*, Award, 11 October 2002, at para. 116, **CL-29**; *Crompton v. Canada*, Award, 2 August 2010, at para. 121, **CL-76**; *Merrill & Ring v. Canada*, Award, 31 March 2010, at para. 193, **CL-72**.

1307 *Mondev v. USA*, Award, 11 October 2002, at paras. 119, 124, **CL-29**; *see also ADF v. USA*, Award, 9 January 2003, at para. 179, **CL-60** (holding that the MST "is not a static photograph" and that "customary international law and the minimum standard of treatment of aliens it incorporates, are constantly in a process of development").

1308 *S.D. Myers, Inc. v. Government of Canada,* UNCITRAL ("***S.D. Myers v Canada***"), Final Award, 30 December 2002, at paras. 259-267, **CL-32**.

1309 *Mondev v. USA*, Award, 11 October 2002, at paras. 93-125, **CL-29**.

1310 *ADF v. USA*, ICSID Case No. ARB (AF)/00/1, Award, 9 January 2003, at paras. 175-186, **CL-60**.

1311 *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award, 26 June 2003, at paras. 124-137, **CL-34**.

1312 *Waste Management, Inc. v. United Mexican States ("Number 2")*, ICSID Case No. ARB(AF)/00/3 ("***Waste Management v. Mexico (II)"***), Award, 30 April 2004, at para. 98 (emphasis added), **CL-35**.

542. A number of investment treaty tribunals have affirmed this standard.[1313] In *Nelson v. Mexico*, for example, the tribunal agreed that "the *Waste Management* standard has been widely accepted and followed by other NAFTA tribunals that have addressed fair and equitable treatment claims."[1314] Likewise, the tribunal in *TECO v. Guatemala* echoed the language of the *Waste Management II* tribunal, finding that the minimum standard of FET is violated if the State's "conduct is arbitrary, grossly unfair or idiosyncratic, is discriminatory or involves a lack of due process leading to an outcome which offends judicial propriety."[1315] The tribunal in *Merrill & Ring v. Canada* similarly found that "the standard protects against all such acts or behavior that might infringe a sense of fairness, equity and reasonableness."[1316]

543. There is also a growing consensus among investment treaty tribunals that there is no material difference between the FET standard under customary international law and an autonomous FET standard.[1317] The tribunal in *Deutsche Bank v. Sri Lanka*, for example, observed that "the standard of fair and equitable treatment is not materially different from the content of the minimum standard of treatment in customary international law, as recognized by numerous arbitral tribunals and commentators."[1318] The tribunal in *Rusoro Mining v. Venezuela* similarly remarked that "there is no substantive difference in the level of protection afforded by [those] standards."[1319]

544. In *Rumeli v. Kazakhstan*, the tribunal likewise endorsed "the view of several ICSID tribunals that the treaty standard of fair and equitable treatment is not materially different from the

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1313 *Odyssey v Mexico*, Award, Final Award, 17 September 2024, at para. 323, **CL-134** (affirming the decisions of the tribunals in *Waste Management v. Mexico (II)* and *Cargill v. Mexico* "that the infringement of the FET standard "must be 'gross,' 'manifest,' 'complete,' or such as to 'offend judicial propriety,'" "as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process").

1314 *Joshua Dean Nelson and Jorge Blanco v. United Mexican States*, ICSID Case No. UNCT/17/1, Award, 5 June 2020, at para. 322, **CL-117**; *see also William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon of Delaware, Inc. v. Government of Canada,* PCA Case No. 2009-04 ("***Bilcon v Canada***"), Award on Jurisdiction and Liability, 17 March 2015, at paras. 427, 442**,** **CL-91**; *Gami Investments Inc. v. Mexico, UNCITRAL*, Final Award, 15 November 2004, at paras. 95-96, **CL-37**.

1315 *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23 ("***TECO v Guatemala***"), Award, 19 December 2013, at para. 45, **CL-84**.

1316 *Merrill and Ring v. Canada*, Award, 31 March 2010, at para. 210, **CL-72**; *see also Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, at para. 435, **CL-91**.

1317 *See, e.g.*, *Deutsche Bank v Sri Lanka*, Award, 31 October 2012, at para. 419**,** **CL-81**; *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5 ("***Rusoro v Venezuela***"), Award, 22 August 2016, at para. 520, **CL-99**; *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16 ("***Rumeli v Kazakhstan***"), Award, 29 July 2008, at para. 611**,** **CL-58**.

1318 *Deutsche Bank v. Sri Lanka*, Award, 31 October 2012, at para. 419, **CL-81**.

1319 *Rusoro v. Venezuela*, Award, 22 August 2016, at para. 520, **CL-99**.

minimum standard of treatment in customary international law."[1320] The tribunal further noted that both standards encompass four "concrete principles" – first, "the State must act in a transparent manner;" second, "the State is obliged to act in good faith;" third, "the State's conduct cannot be arbitrary, grossly unfair, unjust, idiosyncratic, discriminatory, or lacking in due process;" and fourth, "the State must respect procedural propriety and due process."[1321]

545. In sum, Mexico has a legal obligation under the minimum standard of FET as set forth in CPTPP Article 9.6 to refrain from exercising its regulatory powers arbitrarily; to provide a stable and secure legal environment; to act consistently and in good faith; and to accord the Claimants' covered investments due process of law. The Claimants address these specific categories below.

4.2.2 The arbitrary exercise of regulatory powers is incompatible with FET

546. It is indisputable that a State breaches the minimum standard of FET when it exercises its regulatory powers in an arbitrary or abusive manner.[1322]

547. In *Cargill v. Mexico*, for example, the tribunal observed that a State violates the minimum standard of FET if its regulatory authority takes arbitrary or abusive actions against the investment.[1323] The tribunal agreed with the International Court of Justice in the ELSI case that "[a]rbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law . . . [i]t is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety."[1324] The *Cargill* tribunal held that a State violates the minimum standard of FET if its conduct "constitutes an unexpected and shocking repudiation of a policy's very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive."[1325]

1320 *Rumeli v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008, at para. 611, **CL-58**.

1321 *Rumeli v. Kazakhstan*, Award, 29 July 2008, at para. 583, **CL-58**.

1322 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 333, **CL-134**; *Telefónica, S.A. v. Republic of Colombia*, ICSID Case No. ARB-18-3 ("***Telefónica v. Colombia****")*, Award, 12 November 2024, at para. 456, **CL-137***; Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, Case No. 2018-55, ("***Mason v. Korea****")*, Award, 11 April 2024, at para. 743, **CL-132***; Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican Sta*tes, ICSID Case No. ARB(AF)/04/3 ("***Gemplus v. Mexico***"), Award, 16 June 2010, at para. 7.76, **CL-75**.

1323 *Cargill v. Mexico*, Award, 18 September 2009, at para. 291, **CL-12**.

1324 *Cargill v. Mexico*, Award, 18 September 2009, at para. 291, **CL-12**.

1325 *Cargill v. Mexico*, Award, 18 September 2009, at para. 293 **CL-12**.

548. The tribunal in *TECO* similarly found that there was "no doubt" that the minimum standard of FET is violated when a State acts "arbitrarily" or "show[s] a complete lack of candor or good faith in the regulatory process."[1326] The tribunal underscored that this is a separate concept from the doctrine of legitimate expectations:

> What matters is whether the State's conduct has objectively been arbitrary, not what the investor expected years before the facts. A willful disregard of the law or an arbitrary application of the same by the regulator constitutes a breach of the minimum standard, with no need to resort to the doctrine of legitimate expectations.[1327]

549. The *TECO* tribunal further observed that

> deference to the State's regulatory powers cannot amount to condoning behaviors that are manifestly arbitrary, idiosyncratic, or that show a complete lack of candor in the conduction of the regulatory process.
>
> As a consequence*, although the role of an international tribunal is not to second-guess or to review decisions that have been made genuinely and in good faith by a sovereign in the normal exercise of its powers, it is up to an international arbitral tribunal to sanction decisions that amount to an abuse of power, are arbitrary, or are taken in manifest disregard of the applicable legal rules and in breach of due process in regulatory matters*.[1328]

550. The tribunal in *EDF v. Romania* identified several types of measures that will constitute arbitrary treatment under international law, based on a legal expert report submitted in that case by Professor Christoph Schreuer:

- a measure that inflicts damage on the investor without serving any apparent legitimate purpose;

1326 *TECO v. Guatemala*, Award, 19 December 2013, at para. 465, **CL-84**.

1327 *TECO v. Guatemala*, Award, 19 December 2013, at para. 621, **CL-84**.

1328 *TECO v. Guatemala*, Award, 19 December 2013, at para. 493 (emphasis added), **CL-84**.

- a measure that is not based on legal standards but on discretion, prejudice or personal preference;

- a measure taken for reasons that are different from those put forward by the decision maker;

- a measure taken in wilful disregard of due process and proper procedure.[1329]

551. These examples of arbitrary treatment, while not exhaustive, provide useful guidance for the Tribunal's assessment of Mexico's conduct in this case.

552. Applying the arbitrariness standard set out above, tribunals have held that where, as here, a State arbitrarily revokes or denies a permit or authorization on a pretextual basis, this will violate the minimum standard of FET.[1330] In *Odyssey v. Mexico*, for example, the tribunal found that a department within SEMARMAT, at the request of Mr. Pacchiano, the then Secretary of SEMARNAT, "denied a permit that otherwise would have been granted" and that there was "evidence of arbitrariness, lack of transparency, and violation of administrative due process of such seriousness that the conduct meets the threshold required to establish the alleged breach" of the minimum standard of FET.[1331]

553. In *Odyssey*, like in this case, SEMARNAT rejected the claimant's MIA for its mining project purportedly on the basis of environmental concerns.[1332] The claimant demonstrated, however, that SEMARNAT's decision was not based on genuine environmental concerns, but rather on the "extraneous and personal motives of Mr. Pacchiano, which can only be qualified as seriously arbitrary, lacking in transparency and contrary to the administrative due process."[1333]

554. The *Odyssey* tribunal emphasized that, as a foreign investor protected by the NAFTA, it was reasonable for the claimant to expect that its project would be evaluated fairly and not in an

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1329 *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13 ("***EDF v Romania***"), Award, 8 October 2009, at para. 303, **CL-68**.

1330 *Tecnicas Medioambientales TECMED S.A. v. The United Mexican States,* ICSID Case No. ARB(AF)-00-2, ("***Tecmed v Mexico***") Award, 29 May 2003, at para. 172, **CL-33**; *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 333, **CL-134**; *B-Mex v. Mexico,* Final Award, 21 June 2024, at para. 118, **CL-30**; *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, 29 June 2012, at para. 235, **CL-78**.

1331 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 333, **CL-134**.

1332 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 389, **CL-134**.

1333 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 335, **CL-134**.

arbitrary or idiosyncratic way.[1334] With respect to the MIA specifically, the tribunal found that it was reasonable for the claimant to expect that the "procedure for the approval of its project would be conducted in an objective and reasonable manner, in compliance with SEMARNAT's mandate and with due process requirements, and would not be affected by seriously arbitrary and capricious conduct by the environmental authority."[1335] Finding that "the rejection of the Project was not driven by objective environmental considerations that Mexico sought to enforce, but rather by personal reasons related to Mr. Pacchiano's own interests," the tribunal held that "Mexico's arbitrary and idiosyncratic conduct" constituted a violation of the minimum standard of FET under the NAFTA.[1336]

555. The tribunal in *B-Mex v. Mexico* reached a similar conclusion in relation to Mexico's revocation of the claimant's gaming permits and licenses, finding that such revocation was not based on genuine regulatory considerations, but on political reasons.[1337] The tribunal noted that the Mexican Government, and particularly the Ministry of the Interior, had multiple opportunities to preserve the claimants' business but instead chose to terminate it.[1338] The tribunal ultimately concluded that the Ministry's "decision to bring about the termination of the Claimants' business, driven as it was found to be by political predisposition rather than considerations of public or regulatory policy," was "grossly unfair" and "arbitrary beyond a merely inconsistent or questionable application of administrative or legal policy or procedure." Mexico's conduct thus breached the minimum standard of FET under the NAFTA.[1339]

556. State conduct will also be arbitrary when it is motivated by pressure from political interest groups. Indeed, Mexico itself has acknowledged this, arguing in a recent submission in *PACC Offshore Services Holdings v. Mexico*, that State action breaches FET when it is takes action as a result of "'mass interest group or electoral pressure'" or "'pressure from special or narrow interest groups.'"[1340] In that case, one of the primary measures in question was a detention

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1334 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 441, **CL-134**.

1335 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 441, **CL-134**.

1336 *Odyssey v. Mexico*, Final Award, 17 September 2024, at paras. 442, 447, **CL-134**.

1337 *B-Mex v. Mexico,* Final Award, 21 June 2014, at para. 118, **CL-30**.

1338 *B-Mex v. Mexico,* Final Award, 21 June 2014, at para. 103, **CL-30**.

1339 *B-Mex v. Mexico,* Final Award, 21 June 2014, at para. 80, **CL-30**; *see also RDC v. Guatemala*, 29 June 2012, at paras. 232-235, **CL-78** (finding that Guatemala's declaration of the claimant's investment as "lesivo" or "injurious to the interest of the State" breached the FET standard by being "arbitrary, grossly unfair, [and] unjust" as it " has been used under a cloak of formal correctness allegedly in defense of the rule of law, in fact for exacting concessions unrelated to the finding of lesivo.").

1340 *Pacc Offshore Services Holdings LTD v. United Mexican States*, ICSID Case No. UNCT/18/5 ("***Pacc v Mexico***"), Rejoinder on the Merits, 10 June 2020, at para. 407, **CL-73**.

order issued by the Mexican Tax Administration Service over certain vessels owned by the claimant's Mexican subsidiaries.[1341] The tribunal found that the actual reason for the attachment was not uncertainty as to title to the vessels, as Mexico claimed, but rather to ensure that the vessels remained in service to PEMEX, the State-owned petroleum company.[1342] In light of this, the tribunal found that Mexico's actions regarding the detention order violated FET due to their arbitrary and unjust nature.[1343]

557. In addressing arbitrary or abusive State conduct, tribunals have also referred to the international principle of good faith. In *Merrill & Ring*, for example, the tribunal observed that, even if there were no "stand-alone obligations" under the NAFTA regarding good faith and the prohibition of arbitrariness, "these concepts are to a large extent the expression of general principles of law and hence also a part of international law."[1344] The tribunal further noted the "close connection" between these general principles and the "availability of a secure legal environment."[1345]

558. Similarly, the *TECO* tribunal found that "the minimum standard of treatment is part and parcel of the international principle of good faith."[1346] As the tribunal remarked, "[t]here is no doubt in the eyes of the Arbitral Tribunal that the principle of good faith is part of customary international law as established by Article 38.1(b) of the Statute of the International Court of Justice," observing that "a lack of good faith on the part of the State or of one of its organs should be taken into account in order to assess whether the minimum standard was breached."[1347]

1341 *Pacc v. Mexico*, Rejoinder on the Merits, 10 June 2020, at paras. 244-246, **CL-73**.

1342 *Pacc v. Mexico*, Award, 11 January 2022, at para. 259, **CL-121**.

1343 *Pacc v. Mexico*, Award, 11 January 2022, at para. 259, **CL-121**.

1344 *Merrill and Ring v. Canada*, Award, 31 March 2010, at para. 187, **CL-72**.

1345 *Merrill and Ring v. Canada*, Award, 31 March 2010, at para. 187, **CL-72**.

1346 *TECO v. Guatemala*, Award, 19 December 2013, at para. 456, **CL-84**.

1347 *TECO v. Guatemala*, Award, 19 December 2013, at para. 456, **CL-84**; *see also* F.A. Mann, "British Treaties for the Promotion and Protection of Investments," 52 BYIL 241 (1981), **CL-14**, p. 249 (underscoring that "the paramount duty of States imposed by international law is to observe and act in accordance with the requirements of good faith."); B. Cheng, General Principles of Law as Applied by International Court and Tribunals (2006), **CL-46**, p. 113 (emphasizing that good faith is "an indisputable rule of international law," and observing that, without it, "international law as well as civil law would be a mere mockery.").

4.2.2.1 Inconsistent conduct and retroactive decision-making are incompatible with FET

559. The FET standard requires that the host State act in a consistent manner in its treatment of protected investments. As the tribunal in *En Cana v. Ecuador* remarked, "[o]ne arm of the State cannot finally affirm what another arm denies to the detriment of a foreign investor."[1348]

560. The tribunal in *Tecmed v. Mexico* similarly observed that:

> The foreign investor also expects the host State to act consistently, *i.e.* without arbitrarily revoking any preexisting decisions or permits issued by the state that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities.[1349]

561. A related principle is that of estoppel. In *ADC v. Hungary*, the tribunal noted that such principle is ubiquitous, as "[a]lmost all systems of law prevent parties from blowing hot and cold."[1350] The principle of estoppel "rest[s] on principles of good faith and consistency"[1351] and provides that a party cannot change its position after it has "made or consented to a particular statement upon which another party relies in subsequent activity to its detriment or the other's benefit."[1352] As noted above, in that case, the claimants held a long-term concession to operate and develop Budapest's airport.[1353] Hungary, however, abruptly terminated the concession, asserting that the relevant agreements with the claimants were unlawful.[1354] The tribunal observed that "if any of the suite of Agreements in this case were illegal or unenforceable under Hungarian law one might have expected the Hungarian Government or its entities to have declined to enter into such an agreement."[1355] Therefore, the tribunal found that "it lies ill in

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1348 *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL, Award, 3 February 2006, at para. 158, **CL-41**.

1349 *Tecmed v. Mexico*, Award, 29 May 2003, at para. 154, **CL-33**.

1350 *ADC v. Hungary*, Award, 2 October 2006, at para. 475, **CL-45**.

1351 James Crawford, *Brownlie's Principles of Public International Law (9th ed.)*, at p. 407, **CL-108**.

1352 Shaw, M. N., *International Law (9th ed.),* 2021, Cambridge: Cambridge University Press, at p. 437, **CL-119**.

1353 *ADC v. Hungary* Award, 2 October 2006, at paras. 113-129, **CL-45**.

1354 *ADC v. Hungary*, Award, 2 October 2006, at para. 267, **CL-45**.

1355 *ADC v. Hungary*, Award, 2 October 2006, at para. 475, **CL-45**.

the mouth of Hungary now to challenge the legality and/or enforceability of these Agreements,"[1356] and that Hungary's inconsistent conduct was in violation of FET.[1357]

562. Likewise, in *Telefonica v. Colombia*, the tribunal found that Colombia's inconsistent and contradictory actions regarding the interpretation of reversion clauses in the claimant's telecoms concession violated FET.[1358] In that case, Colombia had passed legislative amendments clarifying that reversion clauses in telecoms concessions such as that held by the claimant would apply only to spectrum rights, and not to the claimant's physical assets.[1359] Colombia's Constitutional Court, however, later invalidated these amendments, ruling that the reversion clauses applied to all assets linked to the claimant's concession, not just the spectrum. Emphasizing "the State's duty *not to act in a contradictory manner*,"[1360] the tribunal found that Colombia's conduct was "fluctuating and inconsistent,"[1361] and that the facts demonstrated "the instability of the regulatory framework and the lack of transparency and consistency of the measures taken by the State."[1362]

563. Retroactive measures, which inherently reflect inconsistent government conduct, can also constitute a violation of the minimum standard of FET. The principle of non-retroactivity stems from the requirement for legal certainty, which is one of the core tenets of the rule of law. As noted by former UK Supreme Court Judge, Lord Bingham, in a passage cited by the Cairn v. India tribunal: "All persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly made, *taking effect (generally) <u>in the future</u>* and publicly administered in the courts.[1363]

1356 *ADC v. Hungary*, Award, 2 October 2006, at para. 475, **CL-45**.

1357 *ADC v. Hungary*, Award, 2 October 2006, at para. 476(d), **CL-45**; *see also Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru,* ICSID Case No. ARB-03-28 ("***Duke Energy v. Peru***"), Award, 18 August 2008, at para. 243, **CL-59** (finding that "in the context of estoppel, the State assumes the risk for the acts of its organs or officials which, by their nature, may reasonably induce reliance in third parties. As such, what is relevant for estoppel is that there has been a declaration, representation, or conduct which has in fact induced reasonable reliance by a third party, which means that the State, even if only implicitly, has committed not to change its course.").

1358 *Telefónica v. Colombia*, Award, 12 November 2024, at para. 456, **CL-137**

1359 *Telefónica v. Colombia*, Award, 12 November 2024, at para. 447, **CL-137**.

1360 *Telefónica v. Colombia*, Award, 12 November 2024, para. 447, **CL-137**.

1361 *Telefónica v. Colombia*, Award, 12 November 2024, para. 447, **CL-137**.

1362 *Telefónica v. Colombia*, Award, 12 November 2024, para. 448, **CL-137**.

1363 *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, PCA Case No. 2016-7 ("***Cairn v India (I)***"), Final Award, 21 December 2020, at para. 1747 (emphasis added), **CL-118**.

564. As observed by the tribunal in *Cairn v. India*, the principle of non-retroactivity forms part of the FET standard.[1364] While the tribunal noted that there is no blanket prohibition on retroactive conduct, it held that retroactive measures will only be permissible in certain narrow circumstances:

> (i) the retroactive application of a new regulation is only justified when the prospective application of that regulation would not achieve the specific public purpose sought, and (ii) the importance of that specific public purpose must manifestly outweigh the prejudice suffered by the individuals affected by the retroactive application of the regulation.[1365]

565. In *Cairn,* the tribunal concluded that India's imposition of retroactive taxation measures violated the FET standard. Specifically, the tribunal found that the legislation "did not have a specific public purpose that would justify applying the [new legislation] to past transactions" and as a result "failed to balance, or at least adequately to balance, the Claimants' protected interest of legal certainty / stability / predictability on the one hand, and the Respondent's power to regulate in the public interest on the other."[1366]

4.2.2.2 Failure to act in a transparent manner and with due process is incompatible with FET

566. The FET standard requires a host State to act in a transparent manner and with due process of law.[1367] As the tribunal in *Metalclad v. Mexico* observed, transparency requires not only that the State make known to the potential investor the relevant legal requirements that apply to its investment, but also that it resolve any misunderstanding or scope for confusion:

> The Tribunal understands [the requirement for transparency] to include the idea that all relevant legal requirements for the purpose

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1364 *Cairn v India (I)*, Final Award, 21 December 2020, at para. 1749, **CL-118**.

1365 *Cairn v. India (I)*, Final Award, 21 December 2020, at para. 1760, **CL-118**.

1366 *Cairn v. India (I)*, Final Award, 21 December 2020, at para. 1816, **CL-118**.

1367 *Cargill, Incorporated v. Republic of Poland*, ICSID Case No. ARB(AF)/04/2 ("***Cargill v Poland***"), Final Award, 29 February 2008, at para. 511, **CL-56** ("[i]t is, however, generally accepted that [transparency] forms part of fair and equitable treatment."); *Tecmed v. Mexico*, 29 May 2003, at para. 154, **CL-33** ("[t]he foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor); *Rumeli v. Kazakhstan,* Award, 29 July 2008*,* at para. 609, **CL-58** ("The parties rightly agree that the fair and equitable treatment standard encompasses inter alia the following concrete principles: […] the State must respect procedural propriety and due process.").

> of initiating, completing and successfully operating investments made, or intended to be made, under the Agreement should be capable of being readily known to all affected investors of another Party. There should be no room for doubt or uncertainty on such matters.
>
> Once the authorities of the central government of any Party (whose international responsibility in such matters has been identified in the preceding section) become aware of any scope for misunderstanding or confusion in this connection, it is their duty to ensure that the correct position is promptly determined and clearly stated so that investors can proceed with all appropriate expedition in the confident belief that they are acting in accordance with all relevant laws.[1368]

567. In that case, the tribunal concluded that Mexico's lack of an established practice or procedure for handling municipal construction permit applications constituted a failure to comply with the transparency obligation under Article 1105 of the NAFTA.[1369]

568. Transparency also requires that a State provide reasons for decisions affecting the investor's investment. In *Nordzucker v. Poland*, for example, the tribunal found that the State's lack of communications with a prospective investor regarding the privatization of two sugar plants and the State's failure to provide reasons for its refusal of consent to sell the plants constituted a violation of the FET standard.[1370]

569. Transparency is closely associated with the principle of due process, which requires that the State provide the investor with notice and the ability to be heard.[1371] In *Metalclad v. Mexico*, the tribunal observed that Metalclad's construction permit "was denied at a meeting of the

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[1368] *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB(AF)-97-1 ("***Metalclad v. Mexico***"), Award, 30 August 2000, at para. 76, **CL-22**.

[1369] *Metalclad v. Mexico,* Award, 30 August 2000, at para. 88, **CL-22**.

[1370] *Nordzucker v. Poland,* UNCITRAL, Second Partial Award (Merits), 28 January 2009, at para. 84, **CL-64**.

[1371] *See e.g., Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia (I)*, ICSID Case No. ARB/16/6 ("***Glencore v Colombia (I)***"), Award, 27 August 2019, at para. 1318, **CL-112** (observing that the obligation to accord due process means that the relevant authority must provide certain procedural guarantees to the investor, and in particular "must give each party a fair opportunity to present its case and to marshal appropriate evidence, and then must assess the submissions and the evidence in a reasoned, even-handed, and unbiased decision.").

Municipal Town Council of which Metalclad received no notice, to which it received no invitation, and at which it was given no opportunity to appear."[1372] This, along with other "procedural and substantive deficiencies"[1373] of the revocation process demonstrated "a lack of orderly process and timely disposition in relation to an investor of a Party acting in the expectation that it would be treated fairly and justly in accordance with the NAFTA."[1374]

570. Likewise, the tribunal in *Odyssey* remarked that "due process is a central element of the FET standard" and that "it applies not only to acts of the judiciary but also to acts of other branches of the government, including administrative decisions."[1375] In that case, the tribunal made clear that "a violation of administrative due process may occur not only when there is "complete lack of transparency and candour," but also specifically when "an investor is denied a permit based on reasons that are unrelated to specific existing requirements for issuing that permit."[1376]

4.2.2.3 Acting in a discriminatory manner is incompatible with FET

571. The FET standard also requires a host State to act in a non-discriminatory manner. As the *Waste Management (II)* tribunal held, that standard is "infringed by conduct attributable to the State and harmful to the claimant if the conduct […] is discriminatory."[1377]

572. This conclusion was recently endorsed by the tribunal in *Orazul v. Argentina*, which confirmed that "the FET standard also protects investors from discrimination by host States."[1378] As the tribunal remarked, "discrimination entails like persons being treated in a different manner in similar circumstances without reasonable or justifiable grounds."[1379]

573. Similarly, the tribunal in *Invesmart v. Czech Republic* ruled that to analyse whether the conduct was discriminatory in the context of FET the tribunal should consider the following three

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1372 *Metalclad v. Mexico*, Award, 30 August 2000, at para. 91, **CL-22**.

1373 *Metalclad v. Mexico*, Award, 30 August 2000, at para. 97, **CL-22**.

1374 *Metalclad v. Mexico*, Award, 30 August 2000, at para. 99, **CL-22**.

1375 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 309, **CL-134***; see also TECO v. Guatemala*, Award, 19 December 2013, at para. 587, **CL-84**.

1376 *Odyssey v. Mexico*, Award, Final Award, 17 September 2024, at para. 310, **CL-134**.

1377 *Waste Management v. Mexico (II),* Award, 30 April 2004, at para. 98, **CL-35**.

1378 *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25 ("***Orazul v Argentina***"), Award, 14 December 2023, at para. 772, **CL-130**.

1379 *Orazul v. Argentina*, Award, 14 December 2023, at para. 773, **CL-130**.

elements: "whether the [investors] were (i) similarly situated to [a national company], yet (ii) treated differently (iii) without reasonable justification."[1380]

574. Notably, discriminatory conduct can arise from political instructions that have discriminatory intent. In *Lemire v. Ukraine (II)*, the claimant sought to secure radio frequencies for broadcasting purposes.[1381] However, the President of Ukraine intervened in the process and instructed the relevant agency to allocate the relevant frequencies to the claimant's competitors.[1382] The tribunal found that the President's political instruction amounted to unlawful interference with the independent and impartial decision-making process of Ukraine's National Council and was discriminatory.[1383] The tribunal observed that "the apparently politically motivated preference for one competitor represents a discrimination against Claimant"[1384] and therefore breached FET.[1385]

4.2.2.4 Failure to act in a proportionate manner is incompatible with FET

575. The FET standard requires a host State to act in a proportionate manner. As the tribunal in *MTD v. Chile* underscored, FET is "a broad and widely-accepted standard encompassing such fundamental standards as good faith, due process, non-discrimination, and proportionality."[1386]

576. As explained by the tribunal in *PL Holdings v. Poland*, the assessment of whether a State's conduct is proportionate entails a three-part test.[1387] *First,* the measure must pursue a legitimate purpose and be suitable to achieve that purpose.[1388] This assessment involves a determination as to whether there is "an appropriate correlation between the policy sought by the State and

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1380 *Invesmart v. Czech Republic*, UNCITRAL, Award, 26 June 2009, at para. 403, **CL-67**.

1381 *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18 ("***Lemire v Ukraine***"), Decision on Jurisdiction and Liability, 14 January 2010, at para. 142, **CL-69**.

1382 *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, 14 January 2010, at para. 356, **CL-69**.

1383 *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, 14 January 2010, at para. 356, **CL-69**.

1384 *Lemire v. Ukraine*, Decision on Jurisdiction and Liability, 14 January 2010, at para. 356, **CL-69**.

1385 *Lemire v. Ukraine* Decision on Jurisdiction and Liability, 14 January 2010, at para. 357, **CL-69**.

1386 *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7 ("***MTD v Chile***"), Award, 25 May 2004, at para. 109 (emphasis added), **CL-36**.

1387 *PL Holdings S.à.r.l. v. Republic of Poland*, SCC Case No. V 2014/163 ("***PL Holdings v Poland***"), Partial Award, 28 June 2017, at para. 328, **CL-103**. *See also Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19 ("***Electrabel v Hungary***"), Award, 25 November 2015, at para. 179, **CL-95** ("The test for proportionality has been developed from certain municipal administrative laws, and requires the measure to be suitable to achieve a legitimate policy objective, necessary for that objective, and not excessive considering the relative weight of each interest involved.").

1388 *PL Holdings v. Poland*, Partial Award, 28 June 2017, at para. 328, **CL-103**.

the measure."[1389] Furthermore, the public interest invoked by the State should be "legitimate and substantial".[1390] When assessing the legitimacy of the public purpose, the tribunal should not allow the State to justify "illegal conduct" by relying on proportionality doctrine.[1391] In *von Pezold v. Zimbabwe*, the tribunal held that carrying out the land reform on the basis of engaging in racial discrimination based on skin colour[1392] could not qualify as a legitimate public purpose.[1393]

577. *Second*, the measure must be "necessary, in the sense that no less drastic measure would have sufficed."[1394] In analysing this factor, the tribunal must be satisfied that the measure "interfere[es] as little as possible with the effective exercise of the affected rights."[1395] The cornerstone of this analysis is that there must be no less restrictive means that would have addressed the public policy objective of the measure in question. As the tribunal in *Cairn* observed, "the measures should not be more burdensome for the individual's rights and interests than required by the pursued public purpose, especially if a less burdensome measure would be available to satisfy the same public purpose."[1396]

578. *Third*, the tribunal must analyze the proportionality of the measure *stricto sensu*, *i.e.,* it must conduct a general balancing exercise and assess whether the measure was "disproportionately severe for the Investor, compared to the purposes meant to be achieved."[1397] Such balancing exercise is aimed to "ensure that the effects of the intended measure remain proportionate in regard to the affected rights and interests."[1398] In undertaking this exercise, the tribunals put

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1389 *Electrabel v. Hungary*, Award, 25 November 2015, at para. 179, **CL-95**; *see also AES Solar and others (PV Investors) v. Spain*, PCA Case No. 2012-14, Final Award, 28 February 2020, at para. 626, **CL-116**.

1390 *PL Holdings v. Poland*, Partial Award, 28 June 2017, at para. 328, **CL-103**.

1391 *von Pezold v. Zimbabwe*, Award, 28 July 2015, at para. 467, **CL-93**.

1392 *von Pezold v. Zimbabwe*, Award, 28 July 2015, at para. 453, **CL-93**.

1393 *von Pezold v. Zimbabwe*, Award, 28 July 2015, at paras. 467-468, **CL-93**.

1394 *PL Holdings v. Poland*, Partial Award, 28 June 2017, at para. 328, **CL-103**.

1395 *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Award, 11 December 2019, at para. 465, **CL-114**.

1396 *Cairn v. India (I),* Final Award, 21 December 2020, at para. 1788, **CL-118**.

1397 *PL Holdings v. Poland*, Partial Award, 28 June 2017, at para. 328, **CL-103**.

1398 *Electrabel v. Hungary*, Award, 25 November 2015, at para. 180, **CL-95**.

particular emphasis on the need for proportionality between "the means employed and the aim sought to be realized."[1399]

579. In *Occidental v. Ecuador*, for example, in assessing Ecuador's decision to terminate an oil production-sharing contract with the claimant, the tribunal held that "any penalty the State chooses to impose must bear a proportionate relationship to the violation which is being addressed and its consequences."[1400] In that case, the tribunal found Ecuador's actions to be disproportionate, as the claimant's contractual violation did not warrant as severe a response as the termination of the contract, especially considering that Occidental had been actively cooperating with Ecuador in the development of the oil fields.[1401]

4.2.3 Mexico's conduct breached the minimum standard of FET

4.2.3.1 SEMARNAT's MIA Denial Decision was arbitrary and pretextual

580. In the present case, Mexico's decision first to suspend and then to reject Minera Gorrión's MIA was arbitrary, discriminatory, non-transparent, inconsistent, disproportionate, and breached due process in violation of the minimum standard of FET under CPTPP Article 9.6.

581. As set forth above, SEMARNAT had an obligation under CPTPP Article 9.6 to conduct its review and assessment of Minera Gorrión's MIA in an objective, fair, and reasonable manner, in compliance with administrative due process, and not in an arbitrary or capricious manner or in wilful disregard of the applicable legal and regulatory framework.[1402] Like in the *Odyssey* case, SEMARNAT failed to do so here.

582. *First*, the evidence demonstrates that SEMARNAT's evaluation of Minera Gorrión's MIA was not conducted in good faith or in accordance with law.[1403] Instead, that evaluation was arbitrarily aimed at identifying pretexts and excuses first to suspend the MIA evaluation process and then to reject the arguments and evidence submitted by Minera Gorrión outright, without an objective regulatory assessment.[1404] As Secretary Albores herself confirmed in 2021, SEMARNAT's actions in doing so were not motivated by good faith or existing Mexican

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1399 *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11 ("***Occidental v Ecuador***"), Award, 5 October 2012, at para. 409, **CL-80**.

1400 *Occidental v. Ecuador*, Award, 5 October 2012, para. 416, **CL-80**.

1401 *Occidental v. Ecuador*, Award, 5 October 2012, para. 450, **CL-80**.

1402 *Odyssey v. Mexico*, Final Award, 17 September 2024, para. 441, **CL-134**.

1403 *See supra* Section 2.14.

1404 *See supra* Section 2.14.

environmental law, but rather were the direct product of AMLO's *de facto* ban on open-pit mining: "[o]pen-pit mining has been prohibited in our country ever since our president announced its ban. As a result, not a single permit has been granted by the Secretariat of Environment [SEMARNAT]."[1405] Simply put, SEMARNAT's MIA Denial Decision was taken in furtherance of AMLO's arbitrary political directive; it was not taken based upon legal, technical, scientific, or objective reasons.[1406]

583. Leaving no doubt that the result of the MIA evaluation had been preordained, Secretary Toledo and AMLO both affirmed – *before* SEMARNAT had even finished its evaluation of the MIA – that SEMARNAT was not going to approve it.[1407] As Secretary Toledo announced, "*with respect to Ixtacamaxtitlán, SEMARNAT is not going to permit it*"[1408] and "*[w]ith SEMARNAT, Ixtaca will not happen*."[1409] Knowing that Secretary Toledo was a man of his word, AMLO allayed any fears that SEMARNAT would approve the MIA in one his daily *mañaneras*, noting with a smile that Secretary Toledo had "participated with the movements that opposed the mining companies in Puebla and he is a consistent man, he is not like others. I have absolute confidence in him."[1410]

584. As these statements demonstrate, SEMARNAT's MIA Denial Decision was not the result of an objective, fair, or reasoned regulatory process – it was a deliberate and predetermined decision to block the Claimants' Ixtaca Project for political reasons.

1405 *Hay mineras que recurrían a métodos ilegales para la explotación, señala titular de la SEMARNAT*, La Jornada de Oriente YouTube Channel, dated 19 May 2021, available at https://www.youtube.com/watch?v=oTicTRLrWyQ (last accessed 2 March 2025) (Spanish original: "*La minería a tajo abierto o cielo abierto, la cual quedo prohibida en nuestro país desde que nuestro presidente comento que se prohibía. Entonces no se ha dado ni un solo permiso por parte de la secretaria de medio ambiente*."), **Exhibit C-365**.

1406 *See supra* Section 2.14.

1407 *See supra* Section 2.14.

1408 *Desarrollo y Medio Ambiente ¿Nuevos Horizontes?* Organized by the Benemérita Universidad Autónoma de Puebla on 23 August 2019 (uploaded to YouTube on 3 September 2020), at 3:01:28 to 3:01:45, available at https://www.youtube.com/watch?v=udbqmCasd7I, last accessed on 8 March 2025, **Exhibit C-309**.

1409 Lado B, 'Titular de la Semarnat asegura que la mina en Ixtacamaxtitlán "no va a ser"', dated 29 August, available on: https://www.ladobe.com.mx/2019/08/titular-de-la-semarnat-asegura-que-la-mina-en-ixtacamaxtitlan-no-va-a-ser/, **Exhibit C-307**.

1410 "Confío en Victor Manuel Toledo (titular de la Semarnat)" indicó López Obrador respecto a otorgar permisos a la minera Canadiense Almaden Minerals en Ixtacamaxtitlán, La Jornada de Oriente, https://www.facebook.com/LaJornadadeOrientePuebla/videos/%EF%B8%8F-conf%C3%ADo-en-victor-manuel-toledo-titular-de-la-semarnat-indic%C3%B3-l%C3%B3pez-obrador-res/1257317074465900/. **Exhibit C324**

585. *Second*, SEMARNAT's suspension of the MIA evaluation process at the eleventh hour was pretextual and had no basis in law. Shortly before SEMARNAT was due to deliver its resolution on the MIA, SEMARANAT sought to justify a prolonged suspension on the purported basis that continuing its evaluation would breach an injunction in the Tecoltemi amparo proceeding – an injunction had been in place for years.[1411] As the Mexican courts themselves confirmed, that suspension had no legal basis – SEMARNAT was not a party to the amparo proceeding, that proceeding had no bearing on the MIA evaluation process, and the injunction applied only to the Tecoltemi *ejido*'s land within the Concessions – it therefore had no impact on the MIA.[1412] Rather, the suspension was merely an excuse to delay the MIA resolution. As Dr. Limon confirms, this was a clear excess of SEMARNAT's powers.[1413]

586. *Third,* the MIA Denial Decision was arbitrary on its face. SEMARNAT purported to justify its decision on the basis that Minera Gorrión had provided insufficient information to approve the MIA. But this was simply another pretext to deny the MIA. Rather than engage with the extensive information and documentation that Minera Gorrión had provided with the MIA and RAI response, SEMARNAT deliberately disregarded such evidence in a series of cut and paste conclusions.[1414] Further, in its quest to identify pretexts and excuses to reject Minera Gorrión's arguments and evidence, SEMARNAT solicited and accepted out-of-time technical opinions, without providing those opinions to Minera Gorrión for its review or comments, as required by law.[1415] It then proceeded to rely on those very opinions to reject Minera Gorrión's MIA.[1416] As Dr. Limon confirms, these actions were highly irregular, in serious breach of the regulatory framework, and violated administrative due process.[1417]

587. In adjudicating the MIA, SEMARNAT also concocted an inapplicable and impossibly high legal standard of "absolute scientific certainty" that the Claimants, and indeed no company in the world, would ever be able to meet.[1418] The imposition of that unachievable standard, which

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1411 *See supra* Section 2.14.

1412 *Supra*, at Section 2.14.

1413 Limón, at para. 129.

1414 Limón, at paras. 44; 76; 102; *see also supra* Section 2.14.

1415 Limón Aguirre, at para. 45.

1416 *See supra* Section 2.14.

1417 Limón Aguirre, at para. 76

1418 SEMARNAT Official Notice No. SGPA/DGIRA/DG/06549, 17 December 2020, at p. 135, point 23, 52-53, 72-73 and 85p. 135, point 23, **Exhibit C-86**; *see also supra* at Section 2.14.

Dr. Limon Aguirre confirms had never before been applied by SEMARNAT,[1419] confirms the pretextual nature of SEMARNAT's decision – in short, SEMARNAT moved the goalposts to ensure that the MIA would be rejected no matter what information Minera Gorrión provided.

588. Moreover, Mexican law required that, if SEMARNAT had genuine concerns about the sufficiency of the information provided by Minera Gorrión, it exercise its discretion to grant conditional approval for the MIA and/or impose additional preventive or mitigating measures.[1420] In deliberate disregard of Mexican law, SEMARNAT rejected the MIA outright.[1421] By wilfully disregarding Mexican law and ignoring the less restrictive means available to it, SEMARNAT acted both arbitrarily and disproportionately.

589. As noted above, a further ground SEMARNAT relied upon to reject the MIA was Minera Gorrión's alleged failure to carry out indigenous consultations.[1422] This finding too was arbitrary and breached Mexico's duty not to act in a contradictory manner.[1423] As elaborated above, there is no legal basis for SEMARNAT to refuse an MIA due to a lack of indigenous consultations.[1424] What is more, here, Mexico itself had repeatedly and consistently confirmed that no indigenous consultations were required for the Ixtaca Project.[1425] In any event, even if there were a requirement for indigenous consultations, it was SEMARNAT, and not Minera Gorrión, which was obliged to conduct such consultations under ILO 169 and the Mexican Constitution.[1426] SEMARNAT thus sought in bad faith to penalise Minera Gorrión for its own failings.

590. The MIA Denial Decision also discriminated against the Claimants. As noted above, the MIA Denial Decision was part of a broader campaign to purge foreign investment from the mining sector and was discriminatory on its face. Moreover, SEMARNAT treated similarly situated projects more favorably than the Claimants' Ixtaca Project, including (i) the Camino Rojo gold and silver project; (ii) the El Boleo copper and zinc project; and (iii) the Huazamota River stone mining project. In each of these cases, SEMARNAT considered that indigenous

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1419 Limón Aguirre, at para. 159.

1420 Limón Aguirre, at paras. 125-142.

1421 *See supra* Section 2.14.

1422 *See supra* Section 2.14.4.4.

1423 *Telefónica v. Colombia*, Award, 12 November 2024, at para. 447, **CL-137**.

1424 *See supra* Section 2.14.4.4; Limón Aguirre, at paras. 190-192.

1425 *See supra* Sections 2.10 and 2.14.

1426 *See supra* Section 2.14.4.4; Limón Aguirre, at para. 191.

consultations might be necessary, but rather than denying the MIA outright, SEMARNAT granted conditional approval pending determination by the competent authorities as to whether indigenous consultations were required.[1427] Here, however, SEMARNAT unilaterally determined on an erroneous and unsupported basis that indigenous consultations were required and then rejected the MIA in full.[1428] There was no reasonable basis for such differential treatment.

591. *Fourth*, SEMARNAT's bad faith motivations and discriminatory intent were further laid bare by its conduct after the MIA Denial Decision. As explained above, following that Decision, SEMARNAT embarked on a vociferous political lobbying campaign, orchestrated through closed-door meetings with anti-mining activist NGOs, to have the Project cancelled using whatever political levers it could find.[1429] Among other hostile actions, it sought to improperly influence the Supreme Court's decision in the Tecoltemi *amparo* proceeding; publicly called for Economía to implement AMLO's political directive by cancelling the Project;[1430] and worked with the NGOs to create fabricated, *post hoc* "studies" to pressurize Economía to find the Concessions "infeasible" and thereby cancel them and the Project outright.[1431] These actions plainly were not motivated by any legitimate regulatory considerations, but by an institutional animus against mining generally and the Claimants' Ixtaca Project specifically.

592. Finally, as noted above, SEMARNAT failed to afford Minera Gorrión due process in accordance with international law. The MIA evaluation process and MIA Denial Decision were marred by a litany of due process failings, which denied the Claimants the right to be heard and the right to receive a timely, fair, and unbiased decision. As set forth above:

- SEMARNAT unreasonably and excessively delayed its decision on the MIA. While the maximum time period for an MIA evaluation is 180 days, SEMARNAT took more than a year (*i.e.*, nearly double that time) to issue its resolution.[1432]

- SEMARNAT twice delayed the RPI on spurious grounds, then conducted it in a biased manner, denying Minera Gorrión sufficient time to present on the Project, restricting

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1427 Limón Aguirre, at paras. 194-217.

1428 *See supra* Section 2.14.4.4.

1429 *See supra* Section 2.17.3.

1430 Press Release from SEMARNAT Expressing Support for Anti-Ixtaca Activists, dated 12 July 2022, at pp. 2-3, **Exhibit C-393.**

1431 *See supra* Section 2.17.3.

1432 *See supra* Section 2.14.

the topics it could address, and providing a platform for anti-mining activists who opposed the Project.[1433]

- SEMARNAT then, at the eleventh hour, unlawfully and pretextually suspended the evaluation process to buy time to conjure up reasons to deny the MIA.[1434]

- SEMARNAT solicited and accepted expert opinions from public agencies outside the mandatory timeframe, and then failed to give Minera Gorrión the opportunity to review or comment on them, despite being required to do so by law.[1435] Rather than rejecting those late-filed opinions, SEMARNAT instead relied upon them extensively to deny the MIA.[1436]

- SEMARNAT deliberately disregarded key evidence in the MIA case file, including (i) the detailed hydrological water balance model compiled by renowned international mining consultants SRK, which confirmed the adequacy of the Project's water management system; and (ii) the extensive mineral sampling carried out by Knight Piésold, which confirmed the low possibility of acid drainage at the Project.[1437]

- Even if SEMARNAT were correct that Minera Gorrión provided insufficient information to support the MIA (*quod non*), it failed to afford Minera Gorrión the opportunity to remedy those alleged deficiencies in the MIA, and thus breached due process.[1438]

593. For all of these reasons, SEMARNAT's conduct was arbitrary, discriminatory, non-transparent, inconsistent, disproportionate, and breached due process in violation of CPTPP Article 9.6.

1433 *See supra* Section 2.14.3.1; Pablo Dorantes WS, at paras. 53-55.

1434 *See supra* Section 2.14.3.4.

1435 *See supra* Section 2.14.3; Pablo-Dorantes WS, paras. 60-61, 69.

1436 *See supra* Section 2.14.4.1.

1437 *See supra* Section 2.14.4.2; *see also* SRK Consulting, FS Site-Wide Water Balance – Ixtaca Project, Executive Summary, at p. 8, Annex A to Minera Gorrión's RAI Response, **Exhibit C-286**; *Respuesta a la Solicitud de Información Adicional de la Manifestación de Impacto Ambiental, modalidad regional,* prepared by CAM in July 2019, p. 39, **Exhibit C-299**.

1438 *See supra* Section 2.14.

4.2.3.2 Mexico's Cancellation of the Claimants' Project Rights under the Concessions breached FET

594. Mexico's decision suspending the legal effects of the Ixtaca Concessions and then refusing to reissue them on baseless and pretextual grounds, thereby cancelling the Ixtaca Project and the Claimants' rights and investments therein in full was arbitrary, contradictory, retroactive, disproportionate, discriminatory, non-transparent, and breached due process in violation of the minimum standard of FET under CPTPP Article 9.6.

595. As set forth above, Economía, like SEMARNAT, had an obligation under CPTPP Article 9.6 to conduct its feasibility reassessment of the Concessions in an objective, fair, and reasonable manner, in compliance with administrative due process, and not in an arbitrary or capricious manner or in wilful disregard of the applicable legal and regulatory framework.[1439] Economía, like SEMARNAT, failed to adhere to that obligation.

(i) Mexico's cancellation of the Claimants' Concessions was contradictory and violated the principle of non-retroactivity

596. By arbitrarily cancelling the Claimants' 20- and 14-year-old mining concessions on the legally undefined basis of "infeasibility," Mexico acted "in breach of the State's duty not to act in a contradictory manner,"[1440] and in violation of principles of legal certainty and non-retroactivity.[1441]

597. Specifically, Mexico's actions contradicted decades of assurances by its own State organs that the Claimants' legal rights under the Ixtaca Concessions were valid and in full force and effect.[1442] As explained in Section 2.4.2 above, Economía granted the Cerro Grande and Cerro Grande 2 Concessions to Minera Gavilán in 2003 and 2009, respectively, for 50-year renewable terms.[1443] When it did so, Economía certified that all of the information Minera Gavilán had provided in support of its Concession applications – including the expert reports that Economía later used as a pretext to find the Concessions "infeasible" – was complete, correct, and complied in full with the requirements of the Mining Law and Regulations.[1444] In

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1439 *Odyssey v. Mexico*, Final Award, 17 September 2024, at para. 441, **CL-134**.

1440 *Telefónica v. Colombia*, Award, 12 November 2024, at para. 447, **CL-137.**

1441 *Cairn v. India (I)*, Final Award, 21 December 2020, at paras. 1740-1741, 1760, **CL-118.**

1442 *See supra* Section 2.4.2.

1443 *See supra* Section 2.4.2.

1444 *See supra* Section 2.4.2.

reliance on those Concessions – and on the legal and regulatory framework that governed them – the Claimants invested more than US$ 50 million to develop the Ixtaca Project and to bring it to the cusp of production.[1445]

598. In the years that followed, Mexico reaffirmed the validity and good standing of the Claimants' Project rights under the Concessions on at least four separate occasions:

- In 2011, when DGM reviewed and formally registered Minera Gavilán's assignment of the Concessions to Minera Gorrión;[1446]
- In 2013, when DGM reviewed and formally registered the amendments to the Assignment Agreement to reflect the NSR Royalty;[1447]
- In 2017, when DGM approved Minera Gorrión's applications to reduce the concession areas;[1448] and
- In 2019, when DGM issued certificates confirming that the Concessions were in force, following a request from Minera Gorrión to clarify the status of the Concessions.[1449]

599. In each and every one of these instances, Economía and its DGM reaffirmed the validity of the Concessions *without* suggesting that any information was incorrect or missing, or that there were any issues with the Concession coordinates or the methods used to determine the Concession areas. Economía also repeatedly and consistently affirmed in multiple pleadings before the Mexican courts the legality of the Concessions – and the lawful manner in which Economía had granted them – when opposing the Tecoltemi *amparo* action.[1450]

600. Mexico likewise gladly assessed and accepted substantial tax revenues from Minera Gorrión and Minera Gavilán corresponding to their interests in the Concessions (and the land they encompassed), again without raising any issues with respect to the coordinates or otherwise.[1451]

1445 Brattle, para. 177.

1446 *See supra* Section 2.4.3.

1447 *See supra* Section 2.4.3.

1448 *See supra* Section 2.4.3.

1449 *See supra* Section 2.4.3.

1450 *See supra* Section 2.17.

1451 *See supra* Section 2.4.

601. By repeatedly validating the Claimants' Project rights under the Concessions in the full knowledge that the Claimants were relying on them to invest in the Project, Mexico created a "climate of confidence" that such rights were valid and in full force and effect and would remain so for their entire 50-year renewable terms.[1452] Mexico's later arbitrary decision to suspend the legal effects of the Concessions and then retroactively declare them "infeasible" – thereby cancelling them outright in line with AMLO's anti-mining policy and SEMARNAT's sustained lobbying campaign[1453] – breached Mexico's duty of consistency and violated the principles of legal certainty, non-retroactivity, and estoppel under international law.[1454]

602. Mexico violated these same principles through its conduct with respect to indigenous consultations. Again, Mexico repeatedly assured the Claimants over a period of decades that no indigenous consultations were required for the Ixtaca Project.[1455] Economía likewise consistently and forcefully argued in multiple submissions in the Tecoltemi *amparo* proceeding that no indigenous consultations were required for the grant of the Concessions.[1456] Notwithstanding the lack of any such requirement, as set forth above, the Claimants developed a comprehensive, thoughtful, and innovative community engagement program that sought to provide a platform for dialogue, education, and opportunity for all local communities in Ixtacamaxtitlán.[1457] As set forth above, these important initiatives led to the selection by Economía and the UN for the UNECE Mining Pilot Project,[1458] as well as industry peer recognition, and acknowledgment from Government officials as a benchmark for responsible mining.[1459]

603. However, decades after granting the Concessions, Mexico reversed position, with catastrophic consequences for the Claimants. The Supreme Court ruled in its February 2022 judgment that Economía should have conducted indigenous consultations with Tecoltemi before granting the

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1452 *Duke Energy v. Peru*, Award, 18 August 2008, at para. 442, **CL-59**.

1453 *See supra* Section 2.17.

1454 *See supra* Section 4.2.2(b).

1455 *See supra* Sections 2.10, 2.14.

1456 Economia, Revision en Amparo 445/2015, 8 May 2019, at pp. 31, 46, **Exhibit C-68**.

1457 *See supra* Section 2.2.

1458 *See supra* Section 2.17.2.

1459 Santamaría Tovar WS, at paras. 34-35.

Concessions years earlier in 2003 and 2009. That ruling contradicted Mexico's multiple prior statements confirming that no such indigenous consultations were required.[1460]

604. The Supreme Court's ruling was rendered all the more absurd by the fact that the Tecoltemi community had self-declared as indigenous only in 2015, years after Economía granted the Concessions in 2003 and 2009, at the exhortation of NGOs who sought to use the community as a vehicle to advance their anti-mining agenda.[1461] In other words, the Supreme Court ruled that it was wrong for Economía to have granted the Concessions without consulting a community that did not even consider itself to be indigenous at the time and that was not officially registered as such. That decision was inconsistent and retroactive, and therefore in breach of Mexico's obligations under CPTPP Article 9.6.

(ii) Mexico's cancellation of the Claimants' Concessions was arbitrary

605. Mexico's retroactive determination that the Concessions it had approved and granted years earlier were "not feasible" due to alleged *de minimis* technical errors was also arbitrary. That decision served no legitimate purpose, willfully disregarded the relevant legal and regulatory framework, and was plainly designed to cancel the Claimants' project rights under the Concessions definitively and for political reasons.

606. As noted above, a State's measures will be arbitrary where, as here, they "inflict [] damage on an investor without serving any apparent legitimate purpose."[1462] They will also be arbitrary where, as here, the State's conduct "show[s] a complete lack of candor or good faith in the regulatory process."[1463] As the *TECO* tribunal aptly observed, "it is up to an international arbitral tribunal to sanction decisions that amount to an abuse of power, are arbitrary, or are taken in manifest disregard of the applicable legal rules and in breach of due process in regulatory matters."[1464] This was plainly the case here.

607. Economía's actions in this case were arbitrary, pretextual, taken in willful disregard of the Mining Law and Regulations, and in breach of administrative due process. As detailed above, while Economía had repeatedly affirmed the validity of the Concessions and defended them vigorously before the Mexican courts, Economía abruptly changed stance following AMLO's

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1460 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 205-206, **Exhibit C-92**.

1461 *See supra* Sections 2.10, 2.14.

1462 *EDF v. Romania*, Award, 8 October 2009, at para. 303, **CL-68**.

1463 *TECO v. Guatemala*, Award, 19 December 2013, at para. 485, **CL-84**.

1464 *TECO v. Guatemala*, Award, 19 December 2013, at para. 439, **CL-84**.

appointment of anti-mining activist Ms. Buenrostro as Secretary of Economía in October 2022. Economía immediately discontinued the UNECE Mining Pilot Project that had designated the Ixtaca Project as a model for responsible mining, and halted all contact and communications with the Claimants regarding indigenous consultation.[1465] Ms. Buenrostro then all but preordained the result of Economía's feasibility determination just a few months before issuing it, asserting that it "*ma[de] no sense to continue granting concessions*."[1466]

608. Meanwhile, SEMARNAT conducted in parallel an aggressive and illegitimate political lobbying campaign, together with anti-mining and anti-Project NGOs, for the express purpose of pressurising Economía to cancel the Project in line with AMLO's political directives.[1467] This culminated in a slew of misleading, *post-hoc* technical "studies" that sought to undermine the Project and provide a trumped-up basis for Economía to cancel the Concessions by finding them "infeasible."[1468] Most alarmingly, the NGO FUNDAR committed to providing these purported studies directly to AMLO so that he could issue a "decision" directing Economía to cancel the Concessions in line with his anti-mining policy.[1469]

609. As planned, shortly after receiving those studies, Economía declared the Concessions "not feasible" based on spurious technical issues in its February 2023 *Oficio*.[1470] Thus, after decades of support for the Project, Economía finally bowed to political pressure and carried out AMLO's marching orders, using *de minimis* technical grounds as a pretext to cancel the Project outright.

610. While Economía rejected the Concessions on grounds of "infeasibility," such concept had no relevant foundation in the Mining Law or Regulations.[1471] As noted above, neither the issue of "feasibility" nor the de minimis technical grounds Economía ultimately relied upon to cancel the Concessions were ever discussed or debated during the seven years of *amparo*

1465 *See supra* Section 2.17.2.

1466 SPR Informa, "*Mineras prácticamente no pagan impuestos: Raquel Buenrostro,*" dated 8 December 2022, available at https://www.sprinforma.mx/noticia/mineras-practicamente-no-pagan-impuestos-raquel-buenrostro# (last accessed 10 March 2025), **Exhibit C-109**.

1467 *See supra* Section 2.17.3.

1468 *See supra* Section 2.17.3.

1469 Minutes of Follow-Up Meeting Between SEMARNAT, INECC, and FUNDAR Obtained Through Request for Access to Public Information, dated 9 August 2022, at p. 2, **Exhibit C-397**.

1470 *See supra* Section 2.17.5.

1471 *See supra* Section 2.16.

proceedings.[1472] In fact, the Supreme Court mentioned the concept of "feasibility" only once in its entire judgment.[1473] The Supreme Court did not explain what that concept meant or how it was to be applied. It therefore left the door open for Economía to invalidate the Claimants' Concessions retroactively on spurious, pretextual grounds – which Economía did in its February 2023 *Oficio*.

611. That the grounds for Economía's infeasibility determination were pretextual is obvious from their face. As set forth above, the alleged defects Economía purported to identify concerned trivial and easily rectifiable coordinates issues that Economía had never raised previously and which bore no relationship to the subject matter of the amparo proceeding, namely, the indigenous rights of the Tecoltemi community. Moreover, by failing to notify the Claimants of the alleged defects in the Concession application materials – or to afford them the opportunity to rectify those alleged defects, as required – Economía acted in bad faith and wilfully disregarded its own legal and regulatory framework, including Articles 22 and 24 of the Mining Regulations and Article 17A of the Federal Law of Administrative Procedure.[1474] Economía also flagrantly disregarded fundamental principles of Mexican administrative law, including Article 13 of the Federal Law of Administrative Procedure, which requires administrative authorities to act in good faith,[1475] Articles 6-8 and 16 of the General Law of Administrative Responsibilities, and Article 7 of the Federal Law of Administrative Responsibilities of Public Officials, which require public officials to act with impartiality, legality, and objectivity.[1476]

612. Furthermore, Economía's determination of "infeasibility" arbitrarily ignored both the Supreme Court's ruling and its own prior position. As explained above, in ordering a reassessment of "feasibility," the Supreme Court made clear that the administrative process that had led to the grant of the Concessions remained valid.[1477] Economía (under Secretary Cloutier) reaffirmed this position, stating in its June 2022 *Oficio* that all actions taken prior to the grant of the

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1472 *See supra* Section 2.16.

1473 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at para. 297, **Exhibit C-92**.

1474 1999 Mining Regulations, at Arts. 22-24, Section III, **Exhibit C-164**; Federal Law on Administrative Procedure, at Article 17A (published in the official gazette on 24 December 1996), **Exhibit C-160**.

1475 Federal Law on Administrative Procedure, at Article 13 (published in the official gazette on 24 December 1996), **C-160**.

1476 *Ley General de Responsabilidades Administrativas* (official English version), dated 18 July 2016, at Articles 6-8, 16, **Exhibit C-519**; *Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*, dated 13 March 2002, at Article 7, **Exhibit C-583**.

1477 Amparo 134/2021, SCJN Decision, dated 16 February 2022, at pp. 207-208, **Exhibit C-92**.

Concessions remained in full force.[1478] As noted above, this plainly included the expert reports, which Economía had reviewed and approved *before* it granted the Concessions.[1479] By using alleged defects in those expert reports as a pretext to declare the Concessions "not feasible," Economía contradicted its own prior position and wilfully disregarded the Supreme Court's decision.[1480]

613. Mexico's arbitrary actions also undermined the rights of the indigenous communities that the Supreme Court's decision was designed to protect.[1481] By cancelling the Claimants' rights without ever carrying out the indigenous consultations that the Supreme Court had ordered, Mexico denied local communities both the right to consultation and the right to benefit from the Ixtaca Project. This further underscores the lack of any legitimate purpose behind Mexico's actions.

614. For all of these reasons, Mexico's cancellation of the Claimants' Project rights under the Concessions was arbitrary and breached CPTPP Article 9.6.

(iii) Mexico's cancellation of the Claimants' Concessions was non-transparent and breached due process

615. Mexico's conduct also breached transparency and due process under international law. Prior to the Supreme Court's decision, it was impossible for the Claimants to have known that any indigenous consultations were required. As explained above, Mexico lacks a coherent legal framework for indigenous consultations – instead, authorities rely on a patchwork of different protocols and non-binding guidance, leading to inconsistent and arbitrary decision-making.[1482] Moreover, as noted, Tecoltemi did not even declare itself indigenous until years after the Concessions were issued, and the Mexican Government consistently confirmed that no indigenous consultations were required. The belated imposition of an indigenous consultation requirement was therefore manifestly non-transparent.

616. Mexico's reliance on the vague and undefined concept of "feasibility" to cancel the Concessions definitively was similarly non-transparent. As noted above, the Supreme Court did not provide any guidance regarding what that term meant, or how it was to be applied.

1478 Letter from Economía, Director General of Mines to Minera Gorrión dated 20 June 2022 at p. 7, **Exhibit C-95**.

1479 *See supra* Section 2.4.

1480 *See supra* Section 2.17.5.

1481 *See supra* Section 4.1.

1482 *See supra* Section 2.10.

Economía then exploited that ambiguity to cancel the Claimants' Concessions on spurious, pretextual grounds.

617. Moreover, as demonstrated above, Mexico failed to inform Minera Gorrión of the alleged errors in the Concession applications or give it the opportunity remedy them, despite being legally required to do so.[1483] Mexico thus deliberately disregarded key administrative law safeguards under Mexican law and prevented Minera Gorrión from being heard.[1484] Such actions constitute a paradigmatic case of non-transparency and failure of due process.

(iv) The cancellation of the Claimants' rights was disproportionate

618. Mexico's actions were also grossly disproportionate. The cancellation of the Claimants' Project rights under the Concessions failed all three limbs of the legal test for proportionality under international law.[1485]

619. *First*, Mexico's actions were not suitable to fulfil a legitimate purpose. Rather, as noted above, Mexico's actions were driven by the illegitimate purpose of enforcing AMLO's arbitrary de facto mining ban.

620. *Second*, even if Mexico's actions had pursued a public purpose (quod non), Mexico failed to apply less restrictive means to achieve that purpose:

- With respect to feasibility, to the extent that Economía was genuinely concerned about the alleged technical "errors" it identified in the Concession application materials, such errors could easily have been rectified by following the legally required procedure to notify them and afford Minera Gorrión the opportunity to rectify them.[1486]

- With respect to indigenous consultations, Mexico unreasonably denied the far less restrictive measure it could have taken to achieve the aim of protecting Tecoltemi's indigenous rights, namely permitting Minera Gorrión to reduce its concession areas to cover a reduced area that did *not* encompass Tecoltemi's ancestral lands.[1487]

1483 *See supra* Sections 2.4 and 2.17.5.

1484 1999 Mining Regulations, Art. 22, Section III, **Exhibit C-164**; Federal Law of Administrative Procedure, at Art. 17A, **Exhibit C-160**; *see also supra* Section 2.17.5.

1485 *PL Holdings v. Poland*, Partial Award, 28 June 2017, at para. 328, **CL-103**; *see also supra*, Section 4.2.2e.

1486 *See supra* Sections 2.4 and 2.17.5.

1487 *See supra* Section 2.12.

621. Third, Mexico's actions were disproportionate *stricto sensu*. The technical errors that Economía identified were plainly *de minimis* and did not warrant the devastating impact that the cancellation of the Concessions had on the Claimants. As Mr. Santamaría Tovar aptly describes, cancelling the Concessions on the basis of such minor issues was "*like dynamiting an entire building just to fix a broken window*."[1488] Nor did the alleged lack of required indigenous consultations justify the permanent cancellation of the Claimants' Project rights. Indeed, the Supreme Court recognized this fact in its judgment – rather than cancelling the Concessions outright, it determined that they should be declared without effect pending: (i) Economía's determination of whether the Concessions were "feasible," and (ii) indigenous consultations. Ultimately, however, no indigenous consultations were ever carried out, as Economía chose instead to put an end to the Project by denying feasibility on a pretextual basis, in line with AMLO's anti-mining policy. Such conduct was plainly disproportionate and breached FET.

(v) Mexico discriminated against the Claimants

622. *Finally*, Mexico's *cancellation* of the Claimants' project rights was discriminatory. As noted above, by declaring the Claimants' Concessions ineffective and then later infeasible, Economía carried through AMLO's discriminatory anti-mining policy, which sought to drive foreign companies out of the mining sector under the guise of "resource nationalism." That policy ultimately favoured State-owned companies, that did not face any of the obstacles or barriers that Mexico placed in the path of legitimate foreign-owned projects such as Ixtaca. Economía's actions in fulfilling that policy were therefore discriminatory and breached FET.

4.3 Mexico Failed to Accord the Claimants' Protected Investments National and Most Favoured Nation Treatment

623. As set forth above, Mexico adopted a *de facto* discriminatory anti-mining policy that targeted foreign mining investors, including the Claimants, to favor State interests and to transfer back to State control large sections of the Mexican mining industry.[1489] Mexico applied this policy to destroy the Claimants' Project by (i) unjustifiably rejecting Minera Gorrión's MIA, including because Minera Gorrión had allegedly failed to carry out indigenous consultations (a legal duty imposed on the Mexican Government, not on private commercial parties), even though Mexico had conditionally approved similar projects in like circumstances; and (ii) by

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[1488] Santamaría Tovar WS, at para. 119.

[1489] *See supra* Section 2.13.

cancelling the Claimants' Concessions in full and without any compensation whatsoever. Mexico's conduct breached Articles 9.4 and 9.5 of the CPTPP, which require national treatment and most favoured nation ("**MFN**") treatment, respectively.

624. The Claimants set out below (i) the relevant legal standard applicable to national treatment and MFN under Articles 9.4 and 9.5 of the CPTPP; and (ii) the ways in which Mexico breached those standards through its conduct in this case.

4.3.1 The applicable legal standards in relation to national treatment and MFN

625. Article 9.4 of the CPTPP requires Mexico to provide national treatment to foreign investors and their investments:

> 1. Each Party shall accord to investors of another 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 in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
>
> 3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.[1490]

626. National treatment obligations, such as Article 9.4 of the CPTPP, protect covered investors and their investments against both *de jure* and *de facto* discrimination with respect to the host

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1490 CPTPP, at Article 9.4, **CL-0007**.

State's investors and their investments. As the NAFTA tribunal in *ADM v. Mexico* stated with respect to the national treatment obligation under Article 1102 of NAFTA:

627. The national treatment obligation under Article 1102 is an application of the general prohibition of discrimination based on nationality, including both *de jure* and *de facto* discrimination. The former refers to measures that on their face treat entities differently, whereas the latter includes measures which are neutral on their face but which result in differential treatment.[1491]

628. Article 9.5 of the CPTPP requires Mexico to provide MFN treatment to foreign investors and their investments:

> 1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any 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 in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.[1492]

629. MFN clauses such as Article 9.5 enshrine the basic principle that a host State should treat covered investors and their investments no less favorably than investors and investments of other foreign States. As Dolzer and Schreuer explain, "The simple goal of MFN clauses in treaties is to ensure that the relevant parties treat each other in a manner at least as favourable as they treat third parties."[1493] As observed by the tribunal in *UP and CD Holding v.*

1491 *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. The United Mexican States*, ICSID Case No. ARB (AF)/04/5 ("***Archer Daniels v Mexico***"), Award, 21 November 2007, at para. 193, **CL-53.**

1492 CPTPP, at Article 9.5, **CL-0007**.

1493 Rudolf Dolzer & Christoph Schreuer, *Principles of international investment law* (2d ed. 2012), at p. 206**, CL-82**.

Hungary,"[t]he purpose of such a clause is to ensure that there will be no discrimination between foreign investors."[1494]

630. The legal standard for breaches of national and MFN treatment is similar. As observed by the tribunal in *Parkerings v. Lithuania*, "[m]ost-favoured-nation (MFN) clauses are by essence very similar to "National Treatment" clauses. They have similar conditions of application and basically afford indirect advantages to their beneficiaries, namely a treatment no less favourable than the one granted to third parties. Tribunals' analyses of the National Treatment standard will therefore also be useful to discuss the alleged violation of the MFN standard."[1495]

631. Both standards require a three-stage analysis, as follows.

632. *First*, the Tribunal must determine whether Mexico accorded to the Claimants or their investments treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."[1496] This is a broad and undemanding requirement, as it encompasses all conceivable measures taken by the State with respect to the investor's investment. As the *Merrill & Ring* tribunal observed:

> This [*i.e.*, treatment] is a broad definition indeed, as it includes almost any conceivable measure that can be with respect to the beginning, development, management and end of an investor's business activity.[1497]

1494 *UP (formerly Le Chèque Déjeuner) and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, at para. 162, **CL-105**.

1495 *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8 ("***Parkerings v Lithuania***"), Award, 11 September 2007, at para. 366, **CL-52**; *see also Cargill v. Mexico*, ICSID Case No. ARB(AF)/05/2, Award, 18 September 2009, at para. 228, **CL-12** ("the requirement for MFN treatment tracks that of the national treatment requirement. Accordingly, it must be demonstrated first that the Claimant, as an investor, is in "like circumstances" with the investor of another Party or of a non Party, or that the Claimant's investment is in "like circumstances" with the investment of an investor of another Party or of a non-Party. And second, it must be shown that the treatment received by Claimant was less favourable than the treatment received by the comparable investor or investment."*)*; *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1 ("***Apotex v USA***"), Award, 25 August 2024, at para. 8.60, **CL-89** (noting that its legal analysis in relation to the national treatment applies "*mutatis mutandis*" to the most-favoured nation treatment).

1496 *United Parcel Service of America, Inc. (UPS) v. Government of Canada*, ICSID Case No. UNCT/02/1 ("***UPS v Canada***"), Award on the Merits, para. 83(a), **CL-49**; *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, para. 117, **CL-55**; *Cargill v. Mexico*, Award, 18 September 2009, para. 189, **CL-55**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, paras. 717-718, **CL-91**.

1497 *Merrill & Ring v. Canada*, Award, 31 March 2010, para. 79, **CL-72**.

633. Accordingly, investment treaty tribunals have held that all that is required to satisfy this prong of the test is that the State's conduct has had a "practical impact" on the investor's investment.[1498]

634. *Second*, the Tribunal must analyze whether the Claimants or their investments were in "like circumstances" with a comparator. For purposes of the national treatment analysis, the relevant comparators will be "local investors or investments," whereas with respect to MFN treatment, the relevant comparators will be investors of a third State or their investments.[1499]

635. The CPTPP requires a holistic enquiry to evaluate this prong of the test, clarifying that: "[f]or greater certainty, whether treatment is accorded in 'like circumstances' under Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives."[1500]

636. Consistent with the above, prior arbitral awards confirm that the determination of "like circumstances" is a fact-driven enquiry. As the *Pope & Talbot v. Canada* tribunal explained:

> The Tribunal must resolve this dispute by defining the meaning of 'like circumstances.' It goes without saying that the meaning of the term will vary according to the facts of a given case. By their very nature, 'circumstances' are context dependent and have no unalterable meaning across the spectrum of fact situations . . . .[1501]

637. Importantly, investment treaty tribunals have found that the concept of "like circumstances" as referred to in Article 9.4 and 9.5 of the CPTPP is flexible and does not require the comparator

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1498 *S.D. Myers v. Canada*, Partial Award, 30 November 2000, para. 254, **CL-23**; *UPS v. Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, 24 May 2007, para. 86, **CL-49**.

1499 *UPS v Canada*, Award on the Merits, 11 June 2007, at para. 83(b), **CL-49**; *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, at para. 117, **CL-55**; *Bilcon v Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015, at paras. 717-718, **CL-91**.

1500 CPTPP, at footnote 14**, CL-0007**.

1501 *Pope & Talbot Inc. v. Government of Canada,* UNCITRAL ("***Pope & Talbot***"), Award on the Merits of Phase 2, 10 April 2001, at para. 75, **CL-25**; *see also Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC v. United Mexican States*, ICSID Case No. ARB/21/25, Decision on Jurisdiction and Liability, 4 November 2024, at para. 541, **CL-136** ("determining whether a domestic investor or investment identified by a claimant is in 'like circumstances' with a claimant or its investment(s) is a fact-specific inquiry.").

investors or investments to be in *identical* circumstances.[1502] Thus, when there are no identical comparators, the tribunal can still identify comparators who, based on the similarity of their circumstances, are in "like circumstances" with that investor. This approach was applied in *ADM v. Mexico*, where the tribunal compared fructose and cane sugar producers, which were similar but not identical. The tribunal held that "when no identical comparators exist, the foreign investor may be compared with less like comparators, if the overall circumstances of the case suggest that they are in like circumstances."[1503]

638. While the range of characteristics that a tribunal may take into account to identify a similarly situated comparator is not fixed, as a practical matter, tribunals have considered the following three factors: (a) whether the entities operate under the same legal regime; (b) whether the entities operate in the same business or economic sector; and (c) whether the entities provide the same or competing products or services.[1504] In principle, a claimant need only identify one comparator which is granted more favorable treatment in order to satisfy this prong of the test.[1505]

639. *Third*, the Tribunal must determine whether Mexico treated the Claimants or their investments less favourably than the relevant comparator(s), *viz.*, the local or foreign investors or investments.[1506] The term "no less favorable" means "equivalent to, not better or worse than, the best treatment accorded to the comparator."[1507] In determining whether the treatment of the claimant or its investments was "less favourable" than the treatment of the comparator, tribunals have assessed the adverse effects of measures imposed on foreign investors and their

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1502 *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, para. 129, **CL-55**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, para. 692, **CL-91**.

1503 *Archer Daniels v. Mexico,* Award. 21 November 2007, para. 202, **CL-53**.

1504 *Grand River Enterprises Six Nations, Ltd., et.al. v. United States of America*, Award, 12 January 2011, paras. 165-167, **CL-77**; *Merrill & Ring v. Canada*, Award, 31 March 2010, para. 89, **CL-72**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, para. 692, **CL-91**; *S.D. Myers v. Canada*, Partial Award, 13 November 2000, para. 250, **CL-23**; *UPS v Canada*, Award on the Merits, paras. 101-104, **CL-49**; *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, paras. 76, 88, **CL-25**; *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, para. 117, **CL-55**; *Cargill v. Mexico*, Award, 18 September 2009, para. 205, **CL-12**.

1505 Andrea K. Bjorklund*, 'National Treatment'*, in August Reinisch (ed.), Standards of Investment Protection (Oxford, 2008, p. 38), **CL-63**.

1506 *UPS v Canada*, Award on the Merits, para. 83(c), **CL-49**; *Cargill v. Mexico*, Award, 18 September 2009, para. 193, **CL-12**; *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, para. 117, **CL-55**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, paras. 717-718, **CL-91**.

1507 *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 118, para. 42, **CL-25**; *Archer Daniels v. Mexico,* Award. 21 November 2007, para. 205, **CL-25**.

investments.[1508] However, the claimant need not have suffered some "disproportionate disadvantage" as a result of the State's treatment;[1509] rather, "a determination of a breach of the national treatment guarantee relies exclusively upon the showing of a difference of treatment irrespective of the magnitude of such difference."[1510]

640. As noted above, discrimination is primarily an effects-based test. It is therefore not necessary to demonstrate discriminatory intent.[1511] Indeed, tribunals have observed that "in some cases, short of a smoking-gun, such proof of discriminatory intent may be impossible to provide."[1512]

641. Importantly, however, as also noted above, where discriminatory intent is proven, there is no need to demonstrate that the measures had a discriminatory effect. This was confirmed by the *Corn Products* tribunal, noting that "[w]hile the existence of an intention to discriminate is not a requirement for a breach . . . where such an intention is shown, that is sufficient." [1513]

642. Once a *prima facie* case is made regarding a breach of national or MFN treatment, the burden shifts to the Respondent to demonstrate that the "State's legitimate objective justifies such different treatment in relation to the specificity of the investment."[1514] As the tribunal in *Bilcon v. Canada* explained:

> [O]nce a prima facie case is made out under [Article 1102 of the NAFTA], the onus is on the host state to show that a measure is still sustainable within the terms of Article 1102. It is the host state that is in a position to identify and substantiate the case, in terms of its own laws, policies and circumstances, that an apparently

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1508 *S.D. Myers v. Canada*, Partial Award, 30 November 2000, para. 254, **CL-23**; *Archer Daniels v. Mexico,* Award, 21 November 2007, para. 209, **CL-53**.

1509 *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, 10 April 2001, at para. 118, paras. 71-72, **CL-25**.

1510 *Cargill v. Poland*, Award, 29 February 2008, at para. 410, **CL-56**.

1511 *Resolute Forest Products Inc. v Government of Canada*, PCA Case No. 2016-13, ("***Resolute v Canada**")*, Award, 25 July 2022, at para. 546, **CL-123**.

1512 *Resolute v Canada*, Award, 25 July 2022, at para. 546, **CL-123**; *see also Marvin Roy Feldman Karpa v. The United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, 16 December 2002, paras. 181-183, **CL-31**; *Pope & Talbot v. Canada*, Award on the Merits of Phase 2, 10 April 2001, para. 79, **CL-25**.

1513 *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, para. 138, **CL-55**.

1514 *Parkerings v. Lithuania*, Award, 11 September 2007**,** para. 371(iii), **CL-52**; *Apotex v. USA*, Award, 25 August 2024, at para. 8.65, **CL-89**.

> discriminatory measure is in fact compliant with the 'national treatment' norm set out in Article 1102.[1515]

643. As observed by the tribunal in *Pope & Talbot*, to demonstrate that the differential treatment was nonetheless compliant with the national treatment standard, the State must demonstrate that such measure has a:

> reasonable nexus to rational government policies that (1) do not distinguish, on their face or de facto, between foreign-owned and domestic companies, and (2) do not otherwise unduly undermine the investment liberalizing objectives of NAFTA.[1516]

644. The same tribunal further explained that the national treatment standard requires that "any difference in treatment . . . be justified by showing that it bears a reasonable relationship to rational policies not motivated by preference of domestic over foreign owned investments."[1517] Several other investment treaty tribunals have reached the same conclusion.[1518]

645. In sum, to prove that its discriminatory measures were justified, Mexico must demonstrate that its actions were reasonably related to a legitimate, non-discriminatory public policy goal. As set forth below, Mexico cannot do so in this case.

4.3.2 Mexico discriminated against the Claimants and their investments in breach of CPTPP Articles 9.4 and 9.5

646. In the present case, Mexico has discriminated against the Claimants and their covered investments and thereby violated Articles 9.4 and 9.5 of the CPTPP.

647. *First*, Mexico arbitrarily and unlawfully denied Minera Gorrión's MIA based on AMLO's political directives, not true environmental considerations.[1519] As set forth above, this is confirmed by public statements made by AMLO and Secretaries Toledo and Albores

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1515 *Bilcon v. Canada,* Award on Jurisdiction and Liability, 17 March 2015, para. 723, **CL-91**; *see also Mercer International, Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award, 6 March 2018, para. 7.16, **CL-104**.

1516 *Pope & Talbot v. Canada,* Award on the Merits of Phase 2, 10 April 2001, at para. 78, **CL-25**; *Archer Daniels v. Mexico*, Award, 21 November 2007, para. 205, **CL-53**.

1517 *Pope & Talbot v. Government*, Award on the Merits of Phase 2, 10 April 2001, para. 79, **CL-25**.

1518 *Resolute v Canada*, Final Award, at para. 575, **CL-123**; *S.D. Myers v. Canada*, Partial Award, 13 November 2000, at para. 246, **CL-23**; *Feldman v. Mexico*, Award, 16 December 2002, at paras. 170, 182, **CL-31**; *GAMI v. Mexico*, Final Award, 15 November 2004, at para. 114, **CL-37**; *Cargill v. Mexico*, Award, 18 September 2009, at paras. 206, 209, **CL-12**.

1519 *See supra* Sections 2.13, 2.14.

themselves.[1520] Such denial undoubtedly had a lasting and adverse impact on the Claimants and their investments, as the Ixtaca Project could not proceed to exploitation without an approved MIA. The first limb of the test for national and MFN treatment, namely, that the Claimants and their protected investments were accorded treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments"[1521] is therefore plainly satisfied.

648. As to the second limb of the test, there are several examples of investors and investments in Mexico that are in "like circumstances" to the Claimants and their investments.[1522] These include: (i) the Camino Rojo gold and silver open-pit mining project, which is owned by the Canada-based Orla Mining Group;[1523] (ii) the El Boleo copper, cobalt and zinc open-pit mining project, which is owned by a consortium of Korean investors;[1524] and (iii) the Huazamota River gravel extraction project, which is owned by Mexican company Comisariado de Bienes Comunales Comunidad Santa Maria Huazamota Mexicana.[1525]

649. The national and foreign investors in these projects, and the mining projects themselves, were in "like circumstances" to the Claimants and their investments in this case. Like Ixtaca, the above projects were all mineral extraction projects that required a MIA prior to exploitation. Moreover, in each case, like the present one, there were indigenous community members in the municipality where the mine was located.

650. However, rather than rejecting the MIAs for these projects outright, in each case SEMARNAT granted conditional approval to the project, pending the determination by the competent local authorities whether indigenous consultations were required.[1526] If the authorities determined that such consultations were not required, the applicant was required to submit to SEMARNAT a certification from the local authorities to that effect. If they determined that consultations were required, the local authorities were to carry out such consultations, and the applicant was

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1520 *See supra* Section 2.14.

1521 *UPS v. Canada*, Award on the Merits, 24 May 2007, at para. 83(a), **CL-49**; *Corn Products v. Mexico*, Decision on Responsibility, 15 January 2008, at para. 117, **CL-55**; *Cargill v. Mexico*, Award, 18 September 2009, at para. 189, **CL-12**; *Bilcon v. Canada*, Award on Jurisdiction and Liability, 17 March 2015, at paras. 717-718, **CL-91**.

1522 Limón Aguirre, at paras. 193-217.

1523 SEMARNAT Official Notice SGPA/DGIRA/DG/03478, 11 August 2020, at page 96, **Exhibit C-84.**

1524 SEMARNAT Official Notice SGPA/DGIRA/DG/03117 dated 24 June 2021, **Exhibit C-366**.

1525 SEMARNAT Official Notice SG/130.2.1.1/2618/18, 26 September 2018, at page 19, **Exhibit C-259.**

1526 *See supra* Section 2.14.4.4.

required to submit to SEMARNAT certification of their completion. In either case, once those steps had been carried out, the project could proceed. Plainly such treatment was significantly more favorable than Mexico's treatment of the Claimants and their investment in this case. Unlike in these cases, here, Mexico did not even contemplate investigating further whether indigenous consultations were required – it simply rejected the Claimants' MIA outright due to the lack of indigenous consultations, meaning that the Project could not proceed at all.

651. There is no reasonable justification for the above differential treatment. On the contrary, as demonstrated above, SEMARNAT's rejection of the MIA was preordained and the grounds invoked to reject it – including indigenous consultations – were mere pretexts designed to halt the Ixtaca Project in its tracks for political purposes.

652. *Second*, Mexico arbitrarily and retroactively cancelled the Claimants' Concessions some 14-20 years after it granted them in furtherance of AMLO's *de facto* discriminatory anti-mining policy. As demonstrated above, the AMLO administration weaponized Mexico's State organs to fulfil his directive not to issue new mining concessions.[1527] Economía's arbitrary cancellation of the Concessions was just one manifestation of his anti-mining and anti-foreign investment vendetta. As set forth above, Economía used the Supreme Court's February 2022 Judgment as a pretext to target the Ixtaca Project and permanently cancel it, under political pressure from SEMARNAT and anti-mining activist NGOs and in line with AMLO's political directives.[1528] In implementing AMLO's *de facto* anti-mining policy, Mexico discriminated against the Claimants by favoring Mexican and State-affiliated enterprises, which now alone are permitted to hold the valuable mining rights that the Claimants had formerly possessed.

653. There is no reasonable justification for these nationalist and protectionist measures. Indeed, as detailed above, the Claimants had invested tens of millions of dollars in geological exploration efforts and had worked tirelessly to benefit local communities and improve their livelihoods. By eviscerating the Claimants' legal rights, Mexico discriminated against the Claimants and their investments and thereby breached Articles 9.4 and 9.5 of the CPTPP.

1527 *See supra* Sections 2.13, 2.17.5.

1528 *See supra* Section 2.17.3-2.17.5.

5. THE CLAIMANTS ARE ENTITLED TO COMPENSATION IN AN AMOUNT NEEDED TO WIPE OUT ALL THE CONSEQUENCES OF MEXICO'S BREACHES OF THE CPTPP

654. Mexico's breaches of the CPTPP, as described above, deprived the Claimants of the entire value of their investments in Mexico. The Claimants therefore seek an award that fully compensates them for the total loss of their investments caused by Mexico's breaches.

655. As detailed below, as a direct result of Mexico's wrongful conduct, Almaden and Almadex suffered damages in the amount of **USD 1,060.1 million**, which amount should be awarded to them to ensure full reparation for Mexico's breaches of the CPTPP.[1529]

5.1 Mexico is under an obligation to make full reparation for the injuries caused by its breaches of the CPTPP

656. The CPTPP does not contain any express language regarding the measure of damages for the breaches pleaded by the Claimants in this case, namely, unlawful expropriation and violations of FET, national treatment, and MFN. While Article 9.8.2 of the CPTPP specifies the measure of damages in cases of lawful expropriation, that provision has no relevance here, as Mexico's expropriation in this case was *un*lawful.[1530] In the absence of specific guidance in the CPTPP as to how to assess damages for Mexico's breaches, the Tribunal should apply principles of customary international law to determine the appropriate standard of compensation.[1531]

657. Under customary international law, a State has an obligation to make "full reparation" for the injuries caused by its internationally wrongful acts.[1532] As the Permanent Court of International Justice underscored in the seminal *Chorzów Factory* case, "[t]he essential principle contained

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1529 Brattle, at para. 137, table 5.

1530 CPTPP, at Art. 9.8.2, **CL-0007**.

1531 *See e.g., S.D. Myers v. Canada*, Partial Award, 13 November 2000, at para. 310, **CL-23**, ("There being no relevant [damages] provisions of the NAFTA other than those contained in Article 1110 [concerning expropriation] the Tribunal turns for guidance to international law."); *Archer Daniels v. Mexico*, Award, 21 November 2007, at paras. 277-278, **CL-53** ("The NAFTA provides no further guidance as to the proper principles to measure damages and compensation . . . In the instant case, the principles upon which compensation should be awarded derive from the applicable international law rules."); *ADC v. Hungary*, 2 October 2006, Award, at para. 483, at **CL-45** ("Since the BIT does not contain any *lex specialis* rules that govern the issue of the standard for assessing damages in the case of an unlawful expropriation, the Tribunal is required to apply the default standard contained in customary international law in the present case").

1532 *See* International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts ("***ILC Articles***") ("The responsible State is under an obligation to make a full reparation for the injury caused by the internationally wrongful act.") **CL-139**.

in the actual notion of an illegal act . . . is that reparation must, as far as possible, *wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if the act had not been committed*."[1533]

658. Investment tribunals have consistently affirmed this principle and held that regardless of the nature of the treaty breach, compensation for damage caused must be at a level that provides full reparation such that it "wipes out" the consequences of the wrongful act.[1534] As the tribunal in *AAPL v. Sri Lanka* underscored, "the amount of the compensation due has to be calculated in a manner that adequately reflects the full value of the investment lost as a result of said destruction and the damages incurred as a result thereof."[1535] The principle of full reparation thus requires Mexico to place Almaden and Almadex, and Minera Gorrión and Minera Gavilán, in the financial position they would have been in had the wrongful acts never occurred.[1536]

5.1.1 When the injury includes the loss of the investment, full reparation must compensate for its fair market value

659. Investment treaty tribunals have routinely held that where, as here, the investor has lost its investment, the full reparation standard requires compensation for its full market value. In *Crystallex v. Venezuela*, for example, the tribunal found both an unlawful expropriation and a breach of the FET standard, which had caused the investments "to become worthless."[1537] The *Crystallex* tribunal adopted the fair market value standard for the valuation of the damage caused by both treaty breaches, noting that:

> it is well-accepted that reparation should reflect the 'fair market value' of the investment. Appraising the investment in accordance with the fair market value methodology indeed ensures that the consequences of the breach are wiped out and that the situation

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1533 *Case Concerning the Factory at Chorzów*, PCIJ, Claim for Indemnity – Merits, Judgment No 13, 13 September 1928 ("***Chorzów Factory, Judgment No. 13 (Merits)***"), at p. 47 (emphasis added), **CL-13**.

1534 *See, e.g.*, *S.D. Myers v. Canada*, Partial Award, 13 November 2000, at para. 311, **C-23**; *Gemplus v. Mexico*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010, at para. 13.81, **CL-75**.

1535 *Asian Agricultural Prods. Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/87/3 ("***AAPL v Sri Lanka***"), Award, 27 June 1990, at para. 88, **CL-17**.

1536 *See, e.g.*, *Petrobart Limited v. The Kyrgyz Republic* (SCC Arbitration Case No 126/2003) Arbitral Award, 29 March 2005, at pp. 77-78, **CL-38** (ruling that the claimant "shall so far as possible be placed financially in the position in which it would have found itself, had the [respondent's] breaches not occurred").

1537 *Crystallex v. Venezuela,* ICSID Case No. ARB(AF)/11/2, Award of 4 April 2016, at para. 850, **CL-97**.

> which would, in all probability, have existed if the wrongful acts had not been committed is re-established.[1538]

660. Fair market value in this context is understood as "the price that a willing buyer would buy given goods at and the price at which a willing seller would sell it at on condition that none of the two parties [is] under any kind of duress and that both parties have good information about all relevant circumstances involved in the purchase."[1539] A number of tribunals have adopted similar formulations of fair market value in assessing compensation due for treaty breaches.[1540]

661. Investment treaty tribunals have also consistently held that claimants need not prove with absolute certainty what the fair market value of an investment would have been but for the State's unlawful measures. As the tribunal in *Vivendi v. Argentina* remarked, "the fact that damages cannot be fixed with certainty is no reason not to award damages when a loss has been incurred. In such cases, approximations are inevitable; the settling of damages is not an exact science."[1541] The tribunal in *Tecmed v. Mexico* put it more succinctly, noting that "any difficulty in determining the compensation does not prevent the assessment of such compensation where the existence of damage is certain."[1542] This reflects a pragmatic approach to damages, ensuring that claimants are not denied compensation simply because their losses cannot be measured with mathematical precision.

5.1.2 Valuation approaches for mineral resource properties

662. As Brattle explains in its expert report, under the CIMVAL Code for the Valuation of Mineral Properties ("**CIMVAL Code**") – which sets out the commonly-used Canadian industry standard for valuing mining projects – there are three standard approaches that may be

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1538 *Crystallex v. Venezuela,* ICSID Case No. ARB(AF)/11/2, Award of 4 April 2016, at para. 850, **CL-97**.

1539 *Starrett Housing Corp v. The Government of the Islamic Republic of Iran*, Interlocutory Award No ITL 32-24-1, 19 December 1983, 23 ILM 1090, at para. 18, **CL-15**; *see also Gemplus v. Mexico*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010, at para. 12.11, **CL-75**; *Talsud, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/04/4, Award, 16 June 2010, at para. 12.11, **CL-74**.

1540 *See, e.g., Vivendi v. Argentina (I)*, Award, 20 August 2007, at para. 8.3.12, **CL-51**; *BG Group Plc v. The Republic of Argentina*, Final Award, 24 December 2007, at paras 422, 426-427, **CL-54**; *National Grid PLC v. The Argentine Republic*, Award, 3 November 2008, at para. 275, **CL-62**; *Azurix Corp. v. The Argentine Republic,* ICSID Case No. ARB-01-12 ("***Azurix v Argentina***"), Award, 14 July 2006, at para. 424, **CL-44**; *CMS Gas Transmission Company v. The Argentine Republic,* ARB-01-8 ("***CMS v Argentina***"), Award, 12 May 2005, at paras. 402, 410, **CL-39**; *MTD v. Chile*, Award, 25 May 2004, at para. 238, **CL-36**; *CME v. Czech Republic*, Partial Award, 13 September 2001, at para. 618, **CL-27**; *AAPL v. Sri Lanka*, ICSID Case No. ARB/87/3, Award, at paras. 87-88, **CL-17**.

1541 *Vivendi v. Argentina (I),* Award II, 20 August 2007, at para. 8.3.16, **CL-51**.

1542 *Tecmed v. Mexico*, Award, 29 May 2003, at para. 190, **CL-33**.

appropriate for valuing a mineral resource property: (i) the income approach, which values an asset based on its ability to generate cash flows for its owner; (ii) the market approach, which values an asset based on observed transaction prices for similar assets; (iii) and the cost approach, which is based on the principle of contribution to value.[1543]

663. In this case, the Ixtaca Project had significant income-generating capacity and would have produced gold and silver but for Mexico's breaches of the CPTPP. As Mr. Morgan Poliquin explains in his witness statement, following the discovery of the Ixtaca deposit in 2010, the Claimants devoted nearly 10 years and substantial resources to expanding the mineral resource and establishing the economic viability of the Project.[1544] Building on these efforts, between 2014 and 2019, the Claimants undertook several steps to increase confidence in the resource estimate, culminating in a final feasibility study filed with the Canadian Securities Administrators in 2019 and prepared in accordance with the standards set out in National Instrument 43-101.[1545] That feasibility study concluded that the "Ixtaca deposit [was] well suited for a potential mining operation" with "robust economics" for an 11-year mine plan.[1546]

664. As elaborated above, but for Mexico's breaches of the CPTPP, the Ixtaca Project would, in all probability, have been built and started commercial operation.[1547] Brattle concludes aptly that at the Valuation Date the Ixtaca Project would be considered in the but-for world a "Production Property" under the CIMVAL Code,[1548] defined as "a Mineral Property with an operating mine, with or without a processing plant, which has been fully commissioned and is in production."[1549] Accordingly, Brattle concludes that the DCF method of valuation is appropriate and aligned with the Code of Valuation because there is sufficient information to

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1543 Brattle, at para. 57.

1544 M. Poliquin WS, at para. 31.

1545 Canada's National Instrument 43-101 is a Canadian regulatory standard published by the Canadian Securities Administrators that outlines the requirements for disclosing scientific and technical information on mineral projects by companies that are publicly traded on Canadian stock exchanges. Brattle, at para. 12; *see also* McDonald WS, at para. 41.

1546 Ixtaca Feasibility Study filed with SEDAR updated on 3 October 2019, Sections 16 and 18, at pages 196-224; 238-252, **Exhibit C-314**; *see also* McDonald WS, at para. 41.

1547 Brattle, at para. 59(a); *see also* McDonald WS, at para. 56.

1548 Brattle, at para. 59(a).

1549 Special Committee of the Canadian Institute of Mining, Metallurgy and Petroleum on the Valuation of Mineral Properties (CIMVAL), The CIMVAL Code for the Valuation of Mineral Properties, adopted 29 November 2019, at 39. **Exhibit DC-0024.**

develop reliable projections of cash flows and quantify risks in connection with the Ixtaca Project.[1550]

665. The DCF method is widely recognized in international investment arbitration as the preferred approach for valuing income-generating businesses and has been consistently applied by tribunals to ensure full reparation under customary international law. The tribunal in *CMS v. Argentina*, for example, recognized that "DCF techniques have been universally adopted, including by numerous arbitral tribunals, as an appropriate method for valuing business assets."[1551] Similarly, the tribunal in *Enron v. Argentina* confirmed that "[the DCF method] has also been constantly used by tribunals in establishing the fair market value of assets to determine compensation of breaches of international law."[1552] As these cases reflect, there is consistent arbitral practice favoring the DCF method for determining fair market value, particularly where, as here, the investment has demonstrated an income-generating capacity.

666. The Claimants' DCF model prepared by Brattle is summarized in Section 5.2 below.

667. In the alternative, if the Tribunal were not to accept the DCF method, it should apply the cost approach to calculate the Claimants' damages. It bears noting that the cost approach, while appropriate in early-stage projects, is not considered an appropriate method under the CIMVAL Code for projects like Ixtaca that have advanced past the feasibility stage.[1553] In addition, as Brattle explains, the cost approach does not take into account the increase in value associated with changes in the market environment, such as the sustained increase in the price of gold and silver since Almaden incurred the majority of the Project costs in this case.[1554] The cost approach therefore does not wipe out the effects of the State's breaches, because it does not put the claimant in the position it would have been absent the breaches.

668. For the foregoing reasons, notwithstanding its primary position that the DCF method is the appropriate fair market value measure for the Ixtaca Project, the Claimants provide the Tribunal with a calculation based on the costs incurred by the Claimants adjusted with a multiplier of exploration expenditure. Claimant's cost approach calculation is set out in Section 5.2.3 below.

1550 Brattle, at para. 61.

1551 *CMS v. Argentina*, ICSID Case No. ARB/01/8, Award, 12 May 2005, at para. 416, **CL-39**.

1552 *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic,* ICSID Case No. ARB/01/3, Award, 22 May 2007, at para. 385, **CL-48**.

1553 Brattle, at para. 65.

1554 Brattle, at para. 176.

5.1.3 Any measure of damages should take into account *ex post* information

669. It is well established that in certain circumstances taking into account *ex post* information in assessing damages aligns with the standard of full reparation under international law.[1555] In this case, restricting the valuation exercise to *ex ante* information would risk undercompensating the Claimants by disconnecting the assessment of damages from the reality of the circumstances that would have affected the Claimant's investment in the "but for" world.

670. The Claimants demonstrate below that the Tribunal should use an *ex post* approach in this case, using the date of the award as the valuation date. For present purposes, Brattle has calculated damages as of 31 January 2025 ("**2025 Proxy Valuation Date**") as a proxy for the date of the award and stands ready to update its valuation once the date of the award is known. In the alternative, if an *ex ante* approach were adopted, the valuation date should be 9 February 2023 (the "**2023 Valuation Date**") (collectively, the "**Valuation Dates**").

5.1.3.1 The Tribunal should use the ex post approach to quantify the damages

671. An *ex post* approach should be adopted in this case because it is more consistent with the principle of full reparation established in *Chorzów Factory*, as described above.

672. In *Chorzów Factory*, the Permanent Court of International Justice ("**PCIJ**") specifically endorsed the valuation of an enterprise at the time of award or judgment (*i.e.*, on an *ex post* basis), recognizing that damages are "not necessarily limited to the value of the undertaking at the moment of dispossession."[1556] Furthermore, the PCIJ emphasized that the obligation to make reparation under international law includes "the obligation to restore the undertaking and, if this be not possible, to pay its *value at the time of the indemnification*, which value is designed to take the place of restitution which has become impossible."[1557] The PCIJ also emphasized that full reparation aims to "reestablish the situation which would, *in all probability*, have

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1555 *See Quiborax v. Bolivia,* Award, 16 September 2015, at para. 379, **CL-94** ("In the majority's opinion, assessing the value of the investment on the date of the award (taking the date of the most recent valuation as a proxy) allows the Tribunal to take into consideration ex post data, i.e., information available after the date of the expropriation. Its task is to compensate the Claimants' actual loss on the date of the award. What matters is that the victim of the harm is placed in the situation in which it would have been in real life, not more, not less. Using actual information is better suited for this purpose than projections based on information available on the date of the expropriation, as it allows to better reflect reality (including market fluctuations) when attempting to "re-establish the situation which would, in all probability, have existed if that act had not been committed.").

1556 *Chorzów Factory, Judgment No. 13 (Merits)*, at p. 47, **CL-13**.

1557 *Chorzów Factory, Judgment No. 13 (Merits)*, at p. 48 (emphasis added), **CL-13**.

existed if that act had not been committed."[1558] These acknowledgments reflect the fundamental principle that compensation should ensure that the injured party is placed in the position it would have been in had the breach not occurred.

673. Professor Marboe, commenting on *Chorzów Factory*, endorsed the use of an *ex post* approach:

> Under the premise of 'restitution' it seems logical that, as a matter of principle, the valuation date should be the date of the award. Schwarzenberger pointed this out in his analysis of the *Chorzów Factory* case. The choice of a valuation date as late as possible ensures that all information available until that date may and can be used in order to arrive as closely as possible at full reparation.[1559]

674. Using an *ex post* approach therefore better achieves the purpose of full reparation because it takes into account all circumstances that the investor would, in all probability, have been exposed to absent the State's wrongful conduct. As stated in the Commentary to Article 36 of the ICL Articles, "the function of compensation is to address the *actual losses* incurred as a result of the internationally wrongful act."[1560]

675. By contrast, the use of an *ex ante* approach excludes artificially the impact of events following the relevant breach which would have affected the Claimant's investment in the "but for" world. As the tribunal in *Glencore v. Colombia (II)* observed, using the *ex ante* approach to calculate damages "may not align precisely with reality."[1561] In that case, the tribunal rejected the use of the *ex ante* approach in assessing damages resulting from tariffs imposed by Colombia in relation to a port access channel and instead applied an *ex post* approach.[1562]

676. Furthermore, using an *ex post* approach removes potential uncertainty that can result from the use of an *ex ante* analysis as it allows the tribunal to take into account the circumstances as they actually transpired, rather than as forecasted at an earlier date. This benefit of the *ex post*

1558 *Chorzów Factory, Judgment No. 13 (Merits)*, at p. 47 (emphasis added), **CL-13**.

1559 Irmgard Marboe, *"Chapter 7: Conclusions"* in Calculation of Compensation and Damages in International Law, (2nd ed. 2017), ("***Marboe on Compensation and Damages***") at para. 3.324, **CL-102**.

1560 ILC Articles, Commentary to Article 36, page 245, **CL-138** (emphasis added).

1561 *Glencore International A.G., C. I. Prodeco S.A., and Sociedad Portuaria Puerto Nuevo S.A. v. Republic of Colombia (II)*, ICSID Case No. ARB/19/22 *("**Glencore v Colombia (II)**")*, Award, 19 April 2024, at para. 333, **CL-133**.

1562 *Glencore v Colombia (II)*, Award, 19 April 2024, at para. 333, **CL-133**.

approach was expressly noted by the tribunal in *Eurus v. Spain* in the context of analyzing the claimant's DCF model:

> [t]his approach better reflects reality as it takes into account relevant facts that have occurred since the date of the breach. It also reduces the amount of speculation inherent in a damage calculation by way of DCF by reducing by several years the period over which it is necessary to project estimated future cash-flows.[1563]

677. The same *rationale* was adopted in *Burlington v. Ecuador*, where the tribunal noted that:

> The Tribunal's task is to place Burlington in the situation it would have been had Ecuador not expropriated the PSCs. For this, the Tribunal must assess what the PSC's value would have been in real life on the date of the award. *Such a valuation will obviously be more accurate and reliable if actual information is used in respect of relevant facts that have occurred between the expropriation and the award, rather than projections based on information available on the date of the expropriation.* The valuation will be closer to reality if the Tribunal decides with 'maximum information' rather than 'maximum ignorance.'[1564]

678. The Claimants request this Tribunal to follow the approach of "maximum information" here to assess damages in a way that would most accurately align with the principle of full reparation.

679. Case law also establishes that where, as here, the value of the investment has risen after the date of the breach, customary international law requires use of an *ex post* approach.[1565] This view is rooted in the principle that "the financial consequences for the host State of an unlawful expropriation can only be more onerous than those flowing from a lawful expropriation."[1566] As Professor Marboe has explained, "an increase in value between the date of the expropriation and the date of the judgment or award should not be to the benefit of the expropriating state in

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1563 *Eurus Energy Holdings Corporation v. Kingdom of Spain*, ICSID Case No. ARB/16/4 ("***Eurus Energy v Spain***"), Award, 14 November 2022, at para. 117, **CL-125**.

1564 *Burlington v. Ecuador*, Decision on Reconsideration and Award, 7 February 2017, at para. 332 (emphasis added), **CL-101**.

1565 *Marboe on Compensation and Damages*, at para. 3.107, **CL-102**.

1566 Ziegler, P., & Gallorini, The Case for the Ex-Post Valuation of Damages Under International Investment Law. The Journal of World Investment & Trade, 24(1), 2023, at p. 137, **CL-131**.

cases of unlawful expropriation."[1567] In such circumstances, it is therefore "necessary to compare two values of the expropriated property and award the higher one in cases of unlawful expropriations."[1568] This reasoning reflects the fundamental principle that a State should not be permitted to profit from its own wrongful conduct. If the expropriated asset appreciates in value, as it did in this case, the investor should be entitled to the benefit of that increase, ensuring that compensation restores the investor to the financial position it would have been in had the expropriation not occurred. A number of tribunals have confirmed and adopted this approach.[1569]

680. As noted above, the *Burlington* tribunal adopted an *ex post* approach with respect to an unlawful expropriation, finding that this approach better reflected the principle of full reparation.[1570] The tribunal in *Hulley Enterprises v. Russia*, likewise endorsed the principle, finding that "in the event of an illegal expropriation an investor is entitled to choose between a valuation as of the expropriation date and as of the date of the award."[1571]

681. With respect to non-expropriatory breaches, such as a violation of FET or MFN, tribunals have likewise taken *ex post* information into account in assessing damages.[1572] For example, in *Eurus Energy v. Spain*, the tribunal used *ex post* information when valuing the claimant's losses for an FET breach resulting from the retroactive claw back of the claimant's profits on the basis of a subsequent judgment that they were "excessive."[1573] In so doing, the tribunal noted that using an *ex ante* approach "would not result in full reparation of the damages suffered,"[1574] while an

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1567 *Marboe on Compensation and Damages*, at para. 3.107, **CL-102**.

1568 *Marboe on Compensation and Damages*, at para. 3.108, **CL-102**.

1569 *Hulley Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-03/AA226 ("***Hulley v Russia***"), Final Award, 18 July 2014, at para. 1769, **CL-86**; *Yukos Universal Limited (Isle of Man) v. Russian Federation,* UNCITRAL, PCA Case No. 2005-04/AA227 ("***Yukos v Russia***"), at para. 1769, **CL-88**; *Veteran Petroleum Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-05/AA228 ("***Veteran Petroleum v Russia***"), Final Award, 18 July 2014, at para. 1769, **CL-87**.

1570 *Burlington v. Ecuador*, Decision on Reconsideration and Award, 7 February 2017, at para. 332, **CL-101**.

1571 *Hulley v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-86**; *Yukos v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-88**; *Veteran Petroleum v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-87**.

1572 *LSG Building Solutions GmbH and others v. Romania*, ICSID Case No. ARB/18/19, Decision on Jurisdiction, Liability and Principles of Reparation, 11 July 2022, at para. 1326, **CL-122**; *Eurus Energy v. Spain*, Award, 14 November 2022, at para. 114, **CL-125**; *Glencore v. Colombia (II)*, Award, 19 April 2024, at para. 333, **CL-133**.

1573 *Eurus Energy v. Spain*, Award, 14 November 2022, at para. 117, **CL-125**.

1574 *Eurus Energy v. Spain*, Award, 14 November 2022, at para. 114, **CL-125**.

ex post approach "would also permit to calculate damages on the basis of more reliable data."[1575]

682. As explained below, the Tribunal should follow an *ex post* approach to the valuation of damages in this case. Such an approach better reflects the position the Claimants would, in all probability, have been in absent Mexico's breaches.

5.1.3.2 Alternatively, if the Tribunal prefers an ex ante approach, the valuation date should be 9 February 2023

683. In the event the Tribunal decides to use an *ex ante* approach for the calculation of damages in this case, the relevant valuation date should be 9 February 2023,[1576] *i.e.*, the date on which Economía declared the Ixtaca Concessions "not feasible," thereby cancelling the Ixtaca Project and the Claimants' rights and investments therein definitively and in full.[1577]

684. As explained in Section 4.1 above, this is the date on which Mexico's unlawful expropriation of the Claimants' investments took place.[1578] In the event that an *ex ante* approach is adopted, it is the appropriate date for purposes of valuation.[1579]

5.1.4 Compensation must include compound interest at an appropriate commercial rate on the principal sum due running to the date of payment of the award

685. Awards of interest are universally accepted by investment tribunals as an integral component of full reparation for internationally wrongful conduct, as recognized in Article 38 of the ILC Articles on State Responsibility.[1580] This is because the State's obligation to make full

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1575 *Eurus Energy v. Spain*, Award, 14 November 2022, at para. 117, **CL-125**; *see also LSG v. Romania*, Decision on Jurisdiction, Liability and Principles of Reparation, 11 July 2022, at para. 1326, **CL-122** ("that "using actual information is better suited to place the investor in the situation it would have been in but for the breach.").

1576 Brattle, at para. 33.

1577 *See supra* Section 4.1. Economía, Amparo Filing, Of. Letter No. 110.03.1430.2023, dated 9 February 2023, **Exhibit C-111**. Brattle, at para. 29.

1578 *See supra* Section 4.1. Brattle, at paras. 29, 33.

1579 *ADC v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, at para. 517, **CL-45**; *Siemens v. Argentina*, ICSID Case No. ARB/02/8, Award, 17 January 2007, at para. 352, **CL-47**; *Yukos v. Russia*, Final Award, 18 July 2014, at para. 1767, **CL-88**.

1580 *See* ILC Articles, at Art. 38, **CL-139** ("1. Interest on any principal sum . . . shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result. 2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled."); *AAPL v Sri Lanka*, Award, 27 June 1990, **CL-17**, at para. 114 (holding that "interest becomes an integral part of the compensation itself, and should run consequently from the date when the State's international responsibility became engaged"); *Tethyan Copper Company Pty Limited v. Islamic Republic*

reparation arises from the date on which the State's international responsibility is engaged. To the extent payment is delayed, the claimant loses the opportunity to reinvest the compensation owed.[1581] Interest is thus not an award *in addition* to reparation; rather, it is a component of full reparation which gives effect to that principle.[1582] Consistent with the principle, Article 9.29(1)(a) of the CPTPP expressly provides for "an award of monetary damages and any applicable interest."[1583]

686. Modern economic reality, as well as equity, further demands the award of interest on a compound basis. The appropriateness of awarding compound interest as a measure of compensation due under principles of international law was first discussed in *Santa Elena v. Costa Rica*, in which the tribunal observed:

> [W]here an owner of property has at some earlier time lost the value of his asset but has not received the monetary equivalent that then became due to him, the amount of compensation should reflect, at least in part, the additional sum that his money would have earned, had it, and the income generated by it, been reinvested each year at generally prevailing rates of interest. *It is not the purpose of compound interest to attribute blame to, or to punish, anybody for the delay in the payment made to the expropriated owner; it is a mechanism to ensure that the compensation awarded the Claimant is appropriate in the circumstances*.[1584]

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of Pakistan, ICSID Case No. ARB/12/1 ("***Tethyan v Pakistan***"), Award, 12 July 2019, **CL-109**, para. 1784; *Stans Energy Corp. and Kutisay Mining LLC v. Kyrgyz Republic (II)*, PCA Case No. 2015-32, Award, 20 August 2019, **CL-111**, para. 849.

1581 *Metalclad v. Mexico*, Award, 30 August 2000, **C-22**, para. 128; *see also* C*airn v. India*, PCA Case No. 2016-07, Final Award, 21 December 2020, **CL-118**, para. 1944; *Vestey v. Venezuela*, ICSID Case No. ARB/06/4, Award, 15 April 2016, **CL-98**, para. 440; *Cube Infrastructure Fund SICAV and others v. Kingdom of Spain*, ICSID Case No. ARB/15/20, Decision on Jurisdiction, Liability and a Partial Decision on Quantum, 19 February 2019, **CL-110**, para. 537; *Tethyan v. Pakistan*, Award, 12 July 2019, **CL-109**, para. 1783.

1582 *See AAPL v Sri Lanka*, Award, 27 June 1990, **CL-17**, para. 114 (observing that "the case-law elaborated by international arbitral tribunals strongly suggests that in assessing the liability due for losses incurred the interest becomes an integral part of the compensation itself"); *Metalclad v. Mexico*, Award, 30 August 2000, **CL-22**, para. 128; *Middle East Cement Shipping and Handling Co. v. Arab Republic of Egypt,* ICSID Case No. ARB/99/6 ("***Middle East Cement v Egypt***"), Award, 12 April 2002, **C-28**, para. 174 ("Regarding such claims for expropriation, international jurisprudence and literature have recently, after detailed consideration, concluded that interest is an integral part of the compensation due[.]").

1583 CPTPP, Art. 9.29, **CL-0007**.

1584 *Compañia del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, 17 February 2000, at para. 104, **CL-21** (emphasis added).

687. Consistent with the above, the overwhelming majority of investment treaty tribunals award interest on a compound basis.[1585] This is because, as the tribunal in *Wena Hotels v. Egypt* observed, "it is neither logical nor equitable to award the claimant only simple interest."[1586] Any interest awarded to the Claimants therefore should be awarded on a compound basis.

5.2 The Claimants' claim for compensation

688. Taking into consideration the principles of reparation under international law discussed above, the Claimants' claim for compensation is presented below. The Claimants seek compensation based on the income approach and the DCF method in particular. This method reflects the Ixtaca Project's valuation as an asset capable of generating cash flows as of the 2025 Proxy Valuation Date or the 2023 Valuation Date. Based on the right to "choose between a valuation as of the expropriation date and as of the date of the award,"[1587] the Claimants reserve their right to amend the Valuation Date, as appropriate.

689. If the Tribunal disagrees with the DCF method, which the Claimants maintain is the most appropriate valuation approach in this case, the Claimants are entitled at least to the costs incurred in connection with the exploration and development of the Ixtaca Project as of the valuation date, with an appropriate multiplier that reflects the value resulting from the Claimants' investments, as described below.[1588] The Claimants' damages, and thus its claim for compensation, is supported by Brattle's expert report.[1589]

1585 *See e.g. Azurix v. Argentina*, ICSID Case No. ARB/01/12, Award, 14 July 2006, at para. 440, **CL-44** (observing that "compound interest reflects the reality of financial transactions, and best approximates the value lost by an investor."); *Rumeli v. Kazakhstan*, Award, 29 July 2008, at paras. 769, 818, **CL-58** (finding that compound interest reflects "the recent practice of ICSID tribunals"); *LG&E Energy Corp, LG&E Capital Corp, LG&E International Inc v. Argentine Republic*, ICSID Case No. ARB/02/1, Award, 25 July 2007, at para. 103, **CL-50** (observing that "compound interest would better compensate the Claimants for the actual damages suffered since it better reflects contemporary financial practice.").

1586 *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, at para. 129, **CL-24**; *see also Middle East Cement v. Egypt,* Award, 12 April 2002, at para. 174, **CL-28** (observing that "[I]nternational jurisprudence and literature have recently, after detailed consideration, concluded that interest is an integral part of the compensation due after the award and that compound (as opposed to simple) interest is at present deemed appropriate as the standard of international law in such expropriation cases."); *Continental Casualty Company v. The Argentine Republic,* ICSID Case No. ARB/03/9, Award, 5 September 2008, at para. 309, **CL-61** (finding that "[t]he time value of money in free market economies is measured in compound interest; simple interest cannot be relied upon to produce full reparation for a claimant's loss occasioned by delay in payment.").

1587 *Hulley v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-86**; *Yukos v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-88**; *Veteran Petroleum v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-87**.

1588 Brattle, at Section VII, at paras. 175-182.

1589 Brattle, at para. 137, table 5.

5.2.1 The Ixtaca Project's claim for compensation under the DCF method

690. Brattle's DCF model assumes two threshold premises, namely:

- Absent Mexico's breaches, the Claimants would have advanced the Ixtaca Project to construction and commercial operation, generating cash flows from this operation.[1590] In developing its DCF model, Brattle has relied on the input of the expert mining consultancy SLR, which have assessed, *inter alia*, the production schedule, mining methodologies, and costs inputs for the Project.[1591] SLR concludes that, absent Mexico's breaches, the Ixtaca Project would have reasonably commenced production in January 2022.[1592]

- Because certain development risks affecting the Project's entry into operation still existed when Mexico's breaches occurred, Brattle discounts the valuation to account for these risks from the Project's projected cash flows.[1593] To account for the risk of construction delays, Brattle's DCF model also adjusts the Project's commercial operation start date to 1 January 2023.[1594]

691. Brattle's DCF model calculates the Project's cash flows by distinguishing them at two points in time: (i) cash flows up to and including the 2025 Proxy Valuation Date (or the alternative 2023 Valuation Date), and (ii) future cash flows beyond the Valuation Date over the remaining life of the Ixtaca Project, based on SLR's Expert Report.[1595]

692. Brattle's DCF model calculates the Project's cash flows using the life-of-mine production schedule compiled by SLR in its expert report. To compile this updated schedule, SLR independently evaluated the feasibility study for the Ixtaca Project and updated its key inputs, including: (i) the total direct and indirect initial capital and operating costs associated with the

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1590 Brattle, at para. 61.

1591 SLR, at paras. 31-41.

1592 SLR, at para. 31.

1593 Brattle, at Section V.G, at paras. 102-109.

1594 Brattle, at para. 110.

1595 Brattle, at Section V.H, at paras. 130-131; *see also* SLR, at Section 8.0, Subsection 8.6, Table 28.

Project, (ii) the life-of-mine schedule, and (iii) the expected quantities of gold and silver doré[1596] the Ixtaca Project could reasonably produce.[1597]

693. Brattle uses the updated life-of-mine schedule compiled by SLR to calculate cash flows based on the prices the Claimants would have received from selling doré bars to refiners. Brattle distinguishes these prices across two time periods:[1598]

- For sales up to and including the Valuation Dates, Brattle relies on observed market prices. As noted in Mr. McDonald's witness statement, international gold and silver prices have steadily increased since the feasibility study was compiled and filed in 2019.[1599] Brattle's analysis confirms this observation.[1600]

- For future sales, Brattle bases its calculations on the gold and silver futures market. Futures are financial instruments that obligate the seller to sell and the buyer to buy a standard amount of gold or silver, at a price agreed upon today, but for delivery at a specified future date.[1601] These futures markets have proven to be reliable predictors of actual spot prices, and also reflect the upward trend in gold and silver prices.[1602]

694. After calculating the Project's cash flows resulting from past and future sales of gold and silver, Brattle deducts the total capital expenditures, operating expenditures, taxes and payment of royalties, and closure costs at the end of mine life, which the Claimants would have incurred to generate the calculated cash flows.[1603] Brattle calculated these capital and operating expenditures based on the feasibility study and the updated costs assessed independently by SLR.[1604]

1596 An intermediate precious metals product that the Project intended to produce on site using its process plant. The doré could then be sent to metal refineries for conversion into the high-purity gold and silver that is commercially traded in the global market for precious metals. Brattle, at para. 16.

1597 SLR, at Section 8.0, Subsection 8.6, Table 28.

1598 Brattle, at Section V.B, at paras. 79-85.

1599 McDonald WS, at para. 45.

1600 Brattle, at para. 137.

1601 Brattle, at Section V.B, at paras. 80-85.

1602 Brattle, at Section V.B, at paras. 61(a); 80-85.

1603 Brattle, at Sections V.C-V.F, at paras. 86-101.

1604 SLR, at Section 8.3, paras. 324-348; *see also* Ixtaca Feasibility Study, at Section 21, pp. 273-283, **C-61**.

695. Brattle further discounts from the calculated but-for cash flows a reasonable value assigned to the risks associated with the Project's *actual* entry into operation, including:

- Project-related risks, namely (i) the possibility that the Project would fail to receive the necessary approvals for reasons that do not involve a Treaty breach by Mexico; (ii) the risk of potential cost overruns in connection with construction costs; and (iii) the risk of schedule delays.[1605]

- Political and social risks, including factors such as opposition from local NGOs, court decisions, and Government regulators. The Claimants instructed Brattle to assume that absent Mexico's breaches, the social and environmental factors that were the focus of the NGOs' opposition and the *amparo*-related proceedings would not have resulted in the Project's failure. This is supported by the overwhelming evidence related to the proactive and robust social engagement programs described in the witness evidence of Ms. Uzcanga Vergara and Messrs. Santamaría Tovar and McDonald.[1606] It is also supported by the witness evidence of Mr. García Herrera, as well as by the several letters community members prepared and sent to the Mexican Government demonstrating their support for Project development.[1607] Moreover, Mr. Riehm from SLR assessed independently the impacts of the anti-mining activities with respect to the Ixtaca Project given the Claimants' social responsibility policy and community engagement. Mr. Riehm concludes that:

> My review of the available documentation indicates that—notwithstanding a sustained anti-mining legal and communication campaign by external non-governmental organizations (NGOs)—*the Ixtaca Project was feasible from an E&S [environmental & social] perspective*. Project development would not have caused unprecedented adverse environmental impacts and the Company did appropriate planning to address its impacts and risks including the key risk which was related to water supply in potentially affected

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1605 Brattle, at Section V.G, at paras. 102-109.

1606 Santamaría Tovar WS, at paras. 21-37; McDonald WS, at paras 59-65. Uzcanga Vergara WS, at paras 13-55.

1607 García Herrera WS, at paras. 12-13. Letter from community members to SEMARNAT, dated 25 July 2019, **Exhibit C-77**. Letter from Community Members to President Andrés Manuel López Obrador, dated 30 August 2019, **Exhibit C-308**

> communities. . . *[I]t is my opinion that the Project would have been developed as planned and would be in operation today.*[1608]

696. Finally, Brattle calculates damages by deducting from the total but-for cash flows (*i.e.*, the "But-For Scenario") the Project's actual cash flows realized to date (*i.e.*, the "Actual Scenario"). Brattle calculates that the Project in the Actual Scenario has very little value, with only some limited assets and cash flows to be deducted from the but-for cash flows.[1609] For the reasons explained throughout this Memorial, it was Mexico's unlawful conduct that deprived the Project of its value in the Actual Scenario.

697. By subtracting the Actual Scenario cash flows from the But-For value of the Ixtaca Project, Brattle determines that the damages to which the Claimants are entitled using the 2025 Proxy Valuation Date, are **USD 1,060.1 million**. The Claimants' damages using the 2023 Valuation Date are **USD 416.8 million**, including pre-award interest up to Brattle's report date (i.e., 20 March 2025).[1610] According to Brattle, the difference between the damages figure

> arises primarily from two sources: (i) the increase in the price of gold and silver over the past two years, which translates into higher But-For cash flows during 2023 and 2024 and higher price forecasts for the remaining Project life; and (ii) a decline in mining industry costs, which as of 2023 were still affected by the rapid rise experienced after the COVID-19 pandemic.*[1611]*

698. As explained above, "in the event of an illegal expropriation an investor is entitled to choose between a valuation as of the expropriation date and as of the date of the award."[1612] This principle applies equally to other treaty breaches, such as FET, as also explained above.[1613]

699. The Claimants therefore respectfully request that the Tribunal award damages based on the valuation as of the date of the award. Mexico should not benefit from a windfall resulting from its own wrongful conduct. Awarding damages on this basis ensures that compensation fully

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1608 SLR, at para. 206 (emphasis added).

1609 Brattle, Section V.I, paras. 132-135.

1610 Brattle, at para. 137, table 5.

1611 Brattle, at para. 137, table 5 (internal citations omitted)

1612 *Hulley v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-86**; *Yukos v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-88**; *Veteran Petroleum v. Russia*, Final Award, 18 July 2014, at para. 1769, **CL-87**.

1613 *See supra* Section 5.1.3.1

restores the Claimants to the financial position they would, in all probability, have attained had Mexico's breaches not occurred.

5.2.2 The market valuation approach

700. Brattle relies on the market approach only to test the reasonableness of its DCF analysis. Brattle does not rely on the market approach substantively to calculate the Ixtaca Project's value in the but-for scenario for reasons that include:

- The CIMVAL Code suggests that projects with Mineral Reserves, like Ixtaca, are better valued using the income approach;[1614]
- The Ixtaca Project has sufficient reliable information to assess the future cash flows it would have generated and is well-suited to make projections in the but-for scenario;[1615] and
- The market approach requires the identification of projects with similar or near identical characteristics as the assessed project. As shown below, Brattle could not identify such similar or near identical comparators to carry out a market-approach valuation.[1616]

701. To identify suitable comparators, Brattle considered factors such as the potential comparator project's focus on gold and silver, the quantity of gold and silver in its mineral reserve, the expected life of the mine, its location in Mexico, and the project's observable market value.[1617] The identified comparators' value is then adjusted using multiples to account for the project's size and mineral reserves and resources – to be able to compare "apples to apples."[1618]

702. *First*, Brattle identified traded potential comparators filtering publicly listed companies with at least one producing project in Mexico.[1619] Brattle also sought to identify comparable transactions in mining projects close to the Valuation Dates (*i.e.*, six months before and after

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1614 Brattle, at paras. 61-63.

1615 Brattle, at paras. 61-63.

1616 Brattle, at para. 63.

1617 Brattle, at para. 140.

1618 Brattle, at paras. 142-144.

1619 Brattle, at paras. 145-149.

the Valuation Dates). After applying the criteria set forth above, Brattle did not find any traded comparators or transactions meeting their criteria as discussed in Appendix G of its report.[1620]

703. *Second*, Brattle relaxed some selection criteria to allow the identification of similar companies which, while not sufficiently comparable to provide an independent value indicator, could serve as a check on the reasonableness of Ixtaca's DCF valuation.[1621] Brattle identified four comparators among the public companies and transactions, namely:

- First Majestic Silver's Cerro Los Gatos Silver silver-gold-zin-lead project located in Chihuaha State;
- Mag Silver's Juanicipio gold-silver (and zinc) project located in the Fresnillo Silver Trend;
- Silver Crest's Las Chispas gold-silver project in Sonora State; and
- Torex's Morelos Complex in Guerrero State, which contains the El Limón Guajes gold (and some silver) project and the Media Luna gold project.[1622]

704. Brattle then compared key elements of these projects, such as mining costs and sustaining capital costs, among other factors.[1623] Overall, Brattle concludes that the but-for Ixtaca Project value absent Mexico's breaches was more profitable than the compared examples.[1624] Brattle then calculates the multiples and contrasts the DCF method with the market value of the comparators.[1625] Brattle concludes that the DCF valuation is near the lower end of the range of the observable market evidence from these similar companies.[1626] However, Brattle finds the market approach to be insufficient as a basis for an affirmative valuation.[1627]

1620 Brattle, at paras. 145-149 and Appendix G.

1621 Brattle, at paras. 151-152.

1622 Brattle, at paras. 153-158.

1623 Brattle, at para. 161.

1624 Brattle, at para. 162.

1625 Brattle, at paras. 162-167.

1626 Brattle, at para. 168.

1627 Brattle, at para. 168.

5.2.3 Damages under the cost approach

705. Brattle notes that the positive outcomes of the Claimants' activities indicate that the "FMV of the Project [would] [] exceed, likely by a substantial margin, the historical costs Almaden incurred to acquire and develop it."[1628] Accordingly, Brattle opines that the cost approach is not appropriate for valuing the Ixtaca Project.[1629] In any event, to provide the Tribunal with a clear understanding of the Ixtaca Project's value, the Claimants have instructed Brattle to calculate the value of the Project under the cost approach.[1630]

706. Brattle's cost approach uses the Multiple of Exploration Expenditure ("**MEE**") method recognized by CIMVAL.[1631] This method "starts with identifying the relevant expenditures for the Ixtaca Project."[1632] Brattle opines that Almaden's exploration expenditures are reasonable and relevant to the development of the Ixtaca Project because "[t]he company's historical financial statements explicitly segregate these expenditures for the Ixtaca Project from any other projects that Almaden was pursuing prior to limiting its focus on Ixtaca starting in 2015," and the expenditures are segregated from Almaden's general company expenses.[1633]

707. Brattle then adjusts these expenditures for inflation until the Valuation Date and applies a "prospectivity enhancement multiplier" ("**PEM**"), which is intended "to adjust the historical costs for the results of the exploration activity, which can make the property more or less valuable than amounts already spent."[1634] Because "Ixtaca had Indicated and Measured Resources, and Almaden had prepared multiple rounds of studies assessing the economic parameters of the Project," including the feasibility study in 2019, Brattle applies a PEM multiplier of four to five times the historical costs.[1635]

708. As a result of this operation, Brattle calculates the Ixtaca Project's MEE value as follows:

- MEE approach utilizing the 2025 Proxy Valuation Date:

1628 Brattle, at para. 176.

1629 Brattle, at para. 175.

1630 Brattle, at para. 175.

1631 Brattle, at para. 177.

1632 Brattle, at para. 177.

1633 Brattle, at para. 177.

1634 Brattle, at para. 178.

1635 Brattle, at para. 180.

(i) **USD 253,700,078** using a four-times multiplier, and

(ii) **USD 317,125,097** using a five-times multiplier.[1636]

- MEE approach utilizing the 2023 Valuation Date:

(iii) **USD 271,135,800** using a four-times multiplier and

(iv) **USD 338,919,751** using a five-times multiplier.[1637]

5.2.4 Pre-Award Interest

709. Brattle's starting point to calculate interest is the one-month yield on US Treasury Bills because damages are calculated in US dollars.[1638] Then, because the Claimants have effectively become forced lenders due to Mexico's breaches, Brattle adjusts the risk-free one-month yield on US Treasury Bills to include the Government of Mexico's default risk.[1639] This application of default risk aligns with commercial practice because that adjusted rate is observable in the market where independent parties are transacting. Finally, because the credit-default swap market is generally more liquid than the market for sovereign bonds, Brattle relies on the rates reflected in these swaps for a period of over one year.[1640]

710. As of the date of this Memorial, the rate applied by Brattle to calculate pre-award interest is 4.8%.[1641] Brattle applies this interest rate to the cash flows generated depending on the DCF approach and the Valuation Date.[1642] The resulting interest is incorporated in the total damages described below.

5.2.5 Post-Award Interest

711. As of the date of the award, Mexico should also be ordered to pay post-award interest. Brattle calculates this interest rate to be the same as the pre-award interest.[1643]

1636 Brattle, at para. 181, table 12.

1637 Brattle, at para. 182, table 13.

1638 Brattle, at paras. 184-185.

1639 Brattle, at paras. 186-187.

1640 Brattle, at paras. 186-187.

1641 Brattle, at para. 187, figure 12.

1642 Brattle, at paras. 137, table 5; 187.

1643 Brattle, at para. 188.

5.3 Summary of the Claimants' damages

712. The Claimants' damages are as follows:

- DCF model (income approach) utilizing the 2025 Proxy Valuation Date: **USD 1,060.1 million**.[1644]

- DCF model (income approach) utilizing the 2023 Valuation Date: **USD 416.8 million**.[1645]

5.4 The Claimants' damages must be net of all Mexican taxes

713. The valuation in Brattle's Expert Report has been prepared net of Mexican tax because the calculation of cash flows already factored in the taxes that the Claimants would have paid if the Project would have entered into commercial operation.[1646] Any taxation by Mexico of the eventual award in this arbitration would result in the Claimants effectively being taxed twice for the same income. This would subvert the purpose of the award – *i.e.*, to place the Claimants in the financial position they would have been in had Mexico not breached the CPTPP. As other tribunals have recognized, in this circumstance "any additional taxes applying the amount granted . . . would undermine the principle of full compensation of the damage incurred."[1647]

714. To secure the finality of the Tribunal's award in this arbitration, the Claimants therefore respectfully request that the Tribunal declare:

- Its award is net of all Mexican taxes; and

- Mexico may not tax or attempt to tax the award.

715. Additionally, the Claimants seek an indemnity from Mexico in respect of any adverse consequences that may result from the imposition of double taxation liability by the Canadian tax authorities if the declaration in the Tribunal's award recognizing that the award is net of

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1644 Brattle, at para. 137, table 5.

1645 Brattle, at para. 137, table 5.

1646 Brattle Expert, at para. 98.

1647 *See Phillips Petroleum Company Venezuela Ltd and ConocoPhillips Petrozuata B.V. v Petroleos de Venezuela, S.A.*, ICC Case No. 16848/JRF/CA, ("***ConocoPhillips v Venezuela***"), Final Award, 24 April 2018, at para. 1124, **CL-79**; *see also Eco Oro v. Colombia*, Decision on Jurisdiction, Liability and Directions on Quantum, 9 September 2021, at para. 916, **CL-120**; *Tenaris S.A. and Talta - Trading e Marketing ade Unipessoal Lda. v. Bolivarian Republic of Venezuela II*, ICSID Case No. ARB/12/23, Award, 12 December 2016, at paras. 788-792, **CL-100**; *Cairn v. India*, Final Award, 21 December 2020, at para. 1936, **CL-118**; *Rusoro v. Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016, at paras. 853, 855, **CL-99**.

Mexican tax is not accepted as the equivalent of evidence of payment. This will ensure "that the amount effectively received by Claimants after deduction of all applicable taxes corresponds to the full amount (including interest) granted" to the Claimants in the award.[1648]

6. REQUEST FOR RELIEF

716. The Claimants respectfully request the Tribunal to:

716.1 **DECLARE** that Mexico has breached its obligation not to expropriate the Claimants' investments under Article 9.8 of the CPTPP;

716.2 **DECLARE** that Mexico has breached its obligation to accord fair and equitable treatment to the Claimants' investments under Article 9.6 of the CPTPP;

716.3 **DECLARE** that Mexico has breached its obligation to accord national treatment to the Claimants and their investments under Article 9.4 of the CPTPP,

716.4 **DECLARE** that Mexico has breached its obligation to accord most-favoured nation treatment to the Claimants and their investments under Article 9.5 of the CPTPP;

716.5 **ORDER** Mexico to pay compensation for the loss and damage sustained by the Claimants, Minera Gorrión and Minera Gavilán as a result of Mexico's breaches of its obligations under the CPTPP, in an amount of not less than **US$ 1,060.1 million**, or such other amount quantified during the course of this proceeding;

716.6 **ORDER** Mexico to pay post-award interest on the amount of the award compounded at a rate equal to one-year US Treasury yields plus one-year credit default swap rates on Mexican sovereign debt as of the date of the Award;

716.7 **ORDER** Mexico to bear the costs of the arbitration and compensate the Claimants for all their costs and expenses incurred in relation to this proceeding, including the fees and expenses of their counsel, in-house counsel, witnesses and experts and reasonable funding costs, the fees and expenses of the Tribunal, and ICSID's other costs and fees;

716.8 **DECLARE** that the award is net of all Mexican taxes;

[1648] *ConocoPhillips v Venezuela*, Final Award, 24 April 2018, **CL-79**, at para. 1163(xiii); *see also Gardabani Holdings B.V., Inter RAO UES PJSC and Telasi JSC v. Government of Georgia, Ministry of Economy and Sustainable Development of Georgia, State Service Bureau Ltd*, ICSID Case No. ADM/18/1 and SCC Case No. V2018/039, Final Award, 9 September 2022, at para. 125.g, **CL-124**; *Glencore v. Colombia (I)*, Award, 27 August 2019, at paras. 1625-1627, 1630, **CL-112**.

716.9 **DECLARE** that Mexico may not tax or attempt to tax the award;

716.10 **ORDER** Mexico to indemnify the Claimants in respect of any adverse consequences that may result from the imposition of double taxation liability by the Canadian tax authorities; and

716.11 **AWARD** such other and further relief as the Tribunal deems appropriate.

717. The Claimants reserve their rights further to amend, develop, and quantify their claims and requests for relief, assert additional claims and requests for relief, and to present further argument and evidence in the course of the arbitration, in accordance with the ICSID Convention and the ICSID Arbitration Rules.

Respectfully submitted,

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20 March 2025