

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Silver Bull Resources, Inc.
(Claimant)

v.

United Mexican States
(Respondent)

(ICSID Case No. ARB/23/24)

PROCEDURAL ORDER NO. 6
Concerning the Application of a non-disputing party for
permission to file a written submission in the proceedings

Members of the Tribunal

Mr. Ian Glick KC, President of the Tribunal
Mr. Stephen L. Drymer, Arbitrator
Prof. Philippe Sands KC, Arbitrator

Secretary of the Tribunal

Ms. C. E. Salinas Quero

22 September 2025

I. Introduction

1. On 5 September 2025, pursuant to ICSID Arbitration Rule 67(1), Proyecto de Derechos Económicos, Sociales y Culturales, AC (the Applicant) applied for permission to file a written submission in these proceedings (the Application).
2. The grounds for the Application were stated to be as follows.

“[The Applicant] is an intersectional feminist human rights defense organization with a transnational reach and an intersectional approach. Founded in 2005, its main goal is to defend and promote economic, social, and cultural rights, in order to contribute to their enforcement, justiciability and claimability, thus constructing a more just and equitable society. Among its main goals [the Applicant] focuses on three fundamental rights: i) Right to land and territory; ii) Human rights and work; and iii) Right to defend rights. [The Applicant] has experienced and specialized knowledge in human rights issues, and carries out promotion, protection, and defense actions or processes in communities and collectives at both the national and international levels. In the instant case, our organization has an interest in the present arbitration in so far as it seeks to provide the Tribunal with a relevant perspective and to incorporate into the arbitral analysis considerations related to human rights and corporate due diligence, in accordance with widely recognized international standards.

The Submission addresses various factual and legal issues that fall within the scope of the dispute and has been prepared solely for the purpose of assisting the Tribunal in its resolution, based on [the Applicant’s] institutional expertise in legal advocacy, community engagement, studies and research activities aligned with its foundational mission.

From this perspective, the Submission presents factual and legal elements of particular importance to corporate due diligence, which are essential not only for understanding the context of the case but also for assessing the regularity or lawfulness of the claims and allegations. Specifically, it seeks to:

- (i) offer a set of standards on due diligence;*
- (ii) provide a perspective of local communities, beyond that of Cooperativa Mineros Norteños; and*
- (iii) assess the lawfulness and reasonableness of the business conduct.”*

[Tribunal’s translation]

3. In accordance with Rule 67(3), the Parties were invited to make observations on the Application, which they did on 12 September 2025.

II. Parties' observations

4. The Claimant objected to the Application in summary on the following grounds.
 - (a) The Application fails to meet the formal requirements set out in the Rules: it does not include the address and other contact details of the Applicant; it fails to disclose any direct or indirect affiliation with the Parties, any third party ownership interest, or whether the Applicant has received financial or other assistance to file its submission; and the Application itself does not address any of the factors in Section B(6) of the Statement of the Free Trade Commission on non-disputing party participation (the FTC Statement) and ICSID Arbitration Rule 67(2) as to why the Tribunal should accept the submission.
 - (b) The Application falls outside the scope of the present dispute: it simply recites platitudes that do not meet the requirements of Rule 67(2)(a) or Section 6(b) of the FTC Statement. It offers only vague, general assertions without explaining how the Applicant's arguments would assist the Tribunal or address the Parties' legal submissions. The Applicant's overbroad policy discussions about social responsibility, due diligence in extractive industries, and the purported interactions of these principles with the Treaty at issue in this arbitration are outside the scope of the dispute. Moreover, the Respondent has not pleaded that its defences are supported by the interactions of international standards of due diligence with NAFTA, and thus the Application fails to deal with an issue in dispute.
 - (c) The Applicant has not demonstrated any "Significant interest in the Proceedings". This requires more than a general interest; and there is no evidence that the Applicant has any relationship or mandate from Mineros

Norteños or any of the municipalities in the Sierra Mojada district in the State of Coahuila.

- (d) Nothing suggests that the Applicant takes a different position from the one advanced by the Respondent. Because the evidence on the record is not subject to publication, the Applicant knows no more than it has been able to discover from the Parties' pleadings. It simply advances the Respondent's position and does not bring a different perspective to the arbitration. The Applicant has shown no particular knowledge or expertise regarding the issues raised in these proceedings. Moreover, the Applicant seeks to address legal issues which are the sole province of the Tribunal.
- (e) There is no public interest in the subject matter of these proceedings. The Applicant must identify such an interest beyond a mere interest of the public in the dispute. It argues that the case will have "legal consequences" in cases in which "a claimant of obligations, damages, losses or risks whose claim derives (directly or indirectly) from their own actions without due diligence", but this statement is so generic as to be virtually meaningless as almost any investment treaty dispute can be construed as implicating issues of an investor's due diligence.
- (f) The admission of the submission would impose a significant and disproportionate burden on the Claimant. It would force the Claimant to divert significant time and resources from its hearing preparation to comment on the Applicant's submission. The hearing is due to take shortly, and the Claimant would be burdened to prepare a response submission by 26 September 2025, 10 days before the hearing starts. It would be unjustifiable to divert valuable resources to address such a submission which has only limited utility for resolving the issues in dispute.

5. The Respondent supported the Application in summary on the following grounds.

- (a) The Application (and the accompanying submission) are proper since they meet the requirements for admission.

- (b) This is a case in which Mineros Norteños actually exercised its right to protest, and the Application recognises the importance of international human rights law and Mexico's obligations in this area.
- (c) The outcome of this dispute will have a significant impact on the field of human rights, "both from the perspective of Mineros Norteños and from the perspective of a sovereign State regarding their protection".
- (d) Admission of the Applicant's submission will assist the Tribunal in determining the issues of fact or law and provide a distinct perspective, knowledge or particular insight: the Application notes that the protection of human rights and the impact of investment arbitration on them is an issue of increasing international debate, and the proposed submission will assist the Tribunal in determining the disputed issues of fact or law and will provide it with a different, internationally recognised, perspective by addressing corporate due diligence considerations from a human rights perspective.
- (e) The Applicant has demonstrated a broader interest in arbitration than just a general one: see its description of itself and its claim to have specific experience and knowledge in human rights issues and to carry out actions or processes of promotion, protection and defence carried out in communities and collectives both nationally and internationally. The Applicant has demonstrated that it has limited objectives focused on the defence and protection of human rights, as opposed to a general academic interest in the topic.
- (f) There is no indication that the Applicant is directly or indirectly related to any of the Parties or to a non-disputing Party. It publicly discloses its funding and there is no indication of any other type of funding.
- (g) The Applicant recognises the growing importance in public international law of corporate responsibility, mainly in the field of extractive industries, particularly mining, and megaprojects.

- (h) The award in this arbitration will affect individuals beyond the disputing parties. The interpretation the Tribunal gives to issues related to human rights and their impact will have a significant impact on how States, particularly the Respondent, approach the protection of these rights, *vis-à-vis* the protection of investments.

III. Analysis

6. In addressing this Application the Tribunal is fully conscious of the potential utility and significance of a non-disputing party submission, and has an open mind to any application to file one. In this regard, it must however pay particular attention to the requirements of Arbitration Rule 67(2), which provides as follows.

“In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:

- (a) whether the submission would address the matter within the scope of the dispute; and whether*
- (b) how the submission would assist the Tribunal to determine a factual legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;*
- (c) whether the non-disputing party has any significant interest in the proceeding;*
- (d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and*
- (e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.”*

7. Paragraph 28.1 of Procedural Order No.1 in this arbitration provides, so far as material, as follows.

“If a request for the submission of an amicus curiae brief is filed ... the Tribunal will give the appropriate directions in the

exercise of its powers under Arbitration Rules 67 and take into consideration the recommendation of the North American Free Trade Commission on Non-Disputing Party participation of 7 October 2003.”

8. The FTC Statement, at paragraph B2, recommends that an application for leave to file a non-disputing party submission should, amongst other things:

“(g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;

(h) explain, by reference to the factors specified in paragraph 6, why the Tribunal should accept the submission.”

9. At paragraph B6, the Statement recommends that, in determining whether to grant leave to file a non-disputing party submission, the Tribunal should consider, amongst other things, the extent to which:

“(a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;

...

(c) the non-disputing party has a significant interest in the arbitration.”

10. Paragraph 2 above sets out in full the Applicant’s grounds for filing a submission in the proceedings. In the Tribunal’s judgment, the Application alone, on its face, cannot be said to provide an adequate basis for permitting the Applicant to file such a submission

11. Insofar as the Application addresses the factual issues related to the proceedings, it is entirely generic. Any individual or organization can assert an interest in defending and promoting economic, social and cultural rights. What is required is some indication of the ability to provide material assistance to the Tribunal in relation to some specific issue or issues that arise in the dispute.

12. The present Application contains only generalities, and there is nothing to suggest that the Applicant brings a perspective to the dispute, or any particular knowledge or insight, that are different from those of the Parties, in particular that of the Respondent. The Application does not disclose any significant interest the Applicant may have in the proceedings. Nor does it disclose whether the Applicant has any direct or indirect affiliation with a Party, or with a non-disputing Treaty Party.
13. Likewise, there is nothing in the Application, beyond a bare general assertion, to suggest that the Applicant has the knowledge or experience to be able to assist the Tribunal on any relevant matter of law (in particular, human rights law) or to add any knowledge or expertise that is not available to the Parties themselves. For example, the Applicant gives no details of work it has previously done or factual or legal knowledge it has acquired relevant to any specific issue or issues that arise in this arbitration.
14. Assuming it is legitimate for the Tribunal to look at the proposed Submission itself, which in accordance with paragraph B1 of the FTC Statement is attached to the Application, it appears that the Applicant does have experience of intervening or participating in other disputes and legal proceedings relating to mining and other projects. However, it also appears that:
 - (a) the Applicant has not demonstrated that it has any knowledge of the facts of the instant dispute other than it has gleaned from its reading of the pleadings;
 - (b) it has chosen to base some of its comments on factual conclusions it has drawn that are vigorously disputed between the Parties and which may turn out to be false; and
 - (c) its observations relating to due diligence, human rights, and environmental law are no doubt significant, but they have been presented in a manner that is generic, indeed boilerplate, in nature, and refer to matters, such as well-known authorities, opinions and publications, well within the knowledge and expertise of the Parties and their lawyers.

IV. Decision

15. Accordingly, considering all the relevant circumstances, in particular those referred to in Rule 67(2) and in Part B of the FTC Statement, the Tribunal is not – on the basis of the material submitted – able to be satisfied that admitting the proposed Submission would assist the Tribunal in determining any aspect of this dispute. For this reason the Application is rejected.

[Signed]

Mr. Stephen L. Drymer
Arbitrator
22 September 2025

[Signed]

Prof. Philippe Sands KC
Arbitrator
22 September 2025

[Signed]

Mr. Ian Glick KC
President of the Tribunal
22 September 2025