

PCA Case No. 2013-15

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE
PROMOTION AND PROTECTION OF INVESTMENTS, DATED MAY 24, 1988**

- and -

THE UNCITRAL ARBITRATION RULES (AS REVISED IN 2010)

- between -

SOUTH AMERICAN SILVER LIMITED (BERMUDA)

(the “Claimant”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

(the “Respondent”, and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 13

Tribunal

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)
Prof. Francisco Orrego Vicuña
Mr. Osvaldo César Guglielmino

March 21, 2016

I. Background

1. By letter dated March 16, 2016 (the “**Request**”), the Plurinational State of Bolivia (“**Bolivia**” or “**Respondent**”) indicated that it would present a witness who, according to the Respondent, would confirm that CMMK and its employees committed unlawful actions that caused confrontations among the Indigenous Communities that, ultimately, would have forced the intervention of the State to pacify the area via the Reversion.¹ According to Bolivia, the witness in question fears that reprisals may result from his or her testimony.
2. In the Request, Bolivia requests the Tribunal to: (i) adopt, with respect to the witness in question and his or her testimony, the Protective Order enclosed to the Request; (ii) order the Claimant to execute a Confidentiality Undertaking also enclosed to the Request, as an indispensable condition to receive a copy of the witness statement; and (iii) order the Claimant to keep confidential the identity of the witness as well as the witness statement in the terms and conditions provided for in the Protective Order and the Confidentiality Undertaking.² To this effect, Bolivia invokes the Tribunal’s authority under Article 17(1) of the UNCITRAL Arbitration Rules 2010 (the “**UNCITRAL Rules**”), and Rule 9(4) of the IBA Rules on the Taking of Evidence in International Arbitration.³
3. By letter dated March 17, 2016, the Claimant requested the Tribunal to reject the Protective Order proposed by Bolivia and order the Respondent to submit its Rejoinder together with all un-redacted witness statements and additional evidence by March 21, 2016.⁴ According to the Claimant, the order proposed by Bolivia would deprive the Claimant from its due process rights by granting extraordinary protections to an unknown individual that has yet to provide testimony in this arbitration.⁵

II. Tribunal’s Analysis

4. Pursuant to Article 17(1) of the UNCITRAL Rules, applicable to these arbitral proceedings, the Tribunal has the authority to conduct the arbitration in such a manner that it considers appropriate, provided that the Parties are treated with equality and that at an appropriate stage of the proceedings each Party is given a reasonable opportunity of presenting its case.
5. The Tribunal considers that, based on the information provided by the Parties in their submissions, it is not in a position to make a decision on whether the witness or his/her testimony require the protection and confidentiality sought by Bolivia and, if so, what would be the scope thereof.
6. Therefore, the Tribunal requests that Bolivia submit, only to the Tribunal, on the date set forth for the submission of its Rejoinder, a complete un-redacted version of the witness statement. Once the Tribunal has reviewed the witness statement, it will issue its decision on the Request.
7. Noting in this Procedural Order may imply or be interpreted as an admission or acceptance of the witness statement in question or its content, or a modification of the burden or standard of proof in these arbitral proceedings, or in the sense of impeding any subsequent request from either Party or any determination by the Tribunal concerning the admissibility, relevance, materiality or

¹ Bolivia’s letter to the Tribunal of March 16, 2016, p. 1.

² Bolivia’s letter to the Tribunal of March 16, 2016, p. 4.

³ Bolivia’s letter to the Tribunal of March 16, 2016, p. 2.

⁴ SAS’s letter to the Tribunal of March 17, 2016, p. 3.

⁵ SAS’s letter to the Tribunal of March 17, 2016, p. 1.

weight of the information submitted in this arbitration as evidence in accordance with Article 27(4) of the UNCITRAL Rules.

Place of the Arbitration: The Hague, the Netherlands



Dr. Eduardo Zuleta Jaramillo
(Presiding Arbitrator)

On behalf of the Tribunal