
INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

**GABRIEL RESOURCES LTD.
AND GABRIEL RESOURCES (JERSEY) LTD.**

Claimants

v.

ROMANIA

Respondent

ICSID CASE No. ARB/15/31

**CLAIMANTS' COMMENTS ON
NON-DISPUTING PARTIES' SUBMISSION**

February 28, 2019

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CLAIMANTS' COMMENTS ON
NON-DISPUTING PARTIES' SUBMISSION

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1. In accordance with Procedural Order No. 1 § 24.5 and the procedural calendar set out in Procedural Order No. 21 Annex A, Claimants hereby submit their comments on the submission dated November 2, 2018 (the “Submission”) presented by the Center for International Environmental Law (“CIEL”), ClientEarth, and the European Center for Constitutional and Human Rights (“ECCHR”) on behalf of Alburnus Maior, Greenpeace Romania, and the Independent Center for the Development of Environmental Resources (“ICDER”) (together the “non-disputing parties” or “NDPs”).

A. The NDPs’ Submission Is a Biased Anti-Project Screeed Riddled with False or Misleading Statements, Innuendo, and Speculation

2. In Procedural Order No. 19 (“PO19”), the Tribunal observed that the NDPs failed to demonstrate anything more than a general interest in the proceeding and indicated there may be concerns whether the NDPs have a significant interest, as they claim, in representing the interests of the local community of Roșia Montană.¹ The Tribunal also expressed serious doubts about whether the Submission would assist the Tribunal in relation to legal issues with a perspective, knowledge, or insight different from the disputing parties.² The Tribunal was prepared, however, to accept the possibility that the NDPs had a particular knowledge of factual issues relevant to the dispute that may assist the Tribunal, and on that basis accepted the Submission in part.³

3. Upon examination and as discussed in these comments, the NDPs’ Submission consists of spurious arguments (generally parroting Respondent), innuendo, speculation, and unsupported, demonstrably false, or misleading allegations about RMGC, Claimants, and the Project. The Submission as a whole is so demonstrably unreliable and inaccurate as to be bereft of evidentiary value.⁴

¹ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 63-64 (finding that the NDPs had “not proven a ‘more than ‘a general’ interest in the proceeding’ . . . let alone a significant interest in representing or protecting those they claim to be representing”).

² *Id.* ¶ 60.

³ *Id.* ¶¶ 60, 75.

⁴ *See, e.g., EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Procedural Order No. 3 dated Aug. 29, 2008 (CL-27) ¶ 35 (excluding evidence that was unreliable and holding that “[a]n obvious condition for the admissibility of evidence is its reliability and authenticity”).

4. In reality, the NDPs represent a small number of zealous activists motivated by self-interest, not the local community of Roșia Montană. In their singular goal to derail the Project, they for years spread what today would be called “fake news” about the Project, RMGC, and Gabriel as a tactic in their campaign to generate opposition. Claimants were forced to expend considerable time, effort, and resources over more than a decade trying to correct the record in response to this constant barrage of misinformation. The “facts” set forth in the Submission are based on anti-Project campaign content recycled for this arbitration, and largely rely on the NDPs’ own prior unsupported accusations as “evidence.”

5. Now that the Project has been rejected by Romania, the NDPs have turned their attention to a new project – this arbitration – and have joined forces with three organizations (CIEL, ClientEarth, and ECCHR) who do not recognize the legitimacy of these proceedings or the Tribunal’s authority, and who are openly hostile to the very notion of investor-State arbitration.⁵ These activist groups have announced both publicly and in the Submission that they are trying to help Respondent win this case. It is evident that State officials colluded with the NDPs to provide documents and “testimony” to support the Submission.⁶ Indeed, Respondent’s arbitration counsel invited Alburnus Maior to a meeting to coordinate with regard to the arbitration prior to the NDPs filing their application to make the Submission.⁷ Not surprisingly, this alliance has produced a Submission that simply repeats the legal arguments made by Respondent in its Counter-Memorial.

6. Claimants note that in PO19 the Tribunal excluded the NDPs’ legal arguments, factual issues not within the NDPs’ specific knowledge or relating to interests they claim should

⁵ Claimants’ Comments on Non-Disputing Parties’ Application ¶¶ 39-41.

⁶ Claimants’ Comments on Non-Disputing Parties’ Application ¶¶ 30-38. *See also, e.g.*, Submission at 5 n.29 (citing “testimony” of Senator Mihai Goșiu), 13 n.88 (citing a purported letter from the Romanian Intelligence Service to Senator Alexandrescu).

⁷ Claimants’ Comments on Non-Disputing Parties’ Application ¶ 33; Letter from Respondent’s counsel to Eugen David dated Oct. 4, 2018 (Exh. R-382) (showing that, prior to the NDPs filing their application, counsel for Respondent invited Alburnus Maior President Eugen David and “other persons whom you know” to coordinate with regard to the arbitration); Open Letter from Alburnus Maior to Leaua & Associates posted to Facebook, dated Sept. 12, 2018 (Exh. C-2874) (Mr. David thanking Respondent’s arbitration counsel Ms. Crenguța Leaua for “inviting me to participate in a meeting on the international arbitration process” between Gabriel and Romania and for “your interest as a law firm designated to represent the interest of the Romanian Government in the above-mentioned process of finding out the position of the Alburnus Maior organization regarding the issues that will be the subject of the debates in the arbitration procedure”).

be protected, and references to or reliance on their inadmissible “testimonies.”⁸ With those aspects excluded, little remains of the Submission to be considered. In view of the fact that the Submission has been presented to the Tribunal and remains in the record, however, Claimants are constrained to identify those aspects of the Submission that are wrong and that would be prejudicial to Claimants if accepted as presented. Because the false and/or misleading statements in the Submission are so pervasive, Claimants summarize below only illustrative examples.

7. First, throughout the Submission, the NDPs falsely assert without basis that they represent hundreds of local families who fiercely resisted the Project. In reality, the NDPs represent at most the interests of a very few individuals from in and around Roșia Montană. Indeed, the evidence shows that the local community overwhelmingly supported the Project and rejected the self-interested views of Alburnus Maior and other outside groups and individuals purportedly trying to “save Roșia Montană.”

8. Second, and relatedly, the NDPs wrongly speculate that Claimants failed to conduct due diligence and that RMGC would not have acquired necessary surface rights because many local residents allegedly were unwilling to sell their properties. In fact, before the State’s unlawful suspension of the EIA procedure forced RMGC to suspend its land acquisition program in early 2008, RMGC already had acquired nearly 80% of the properties needed. The vast majority of the remaining property owners were eager to sell, and the properties of the few actual hold-outs, if any, could have been obtained through expropriation, if needed.

9. Third, after claiming that RMGC failed to or could not acquire enough property, the NDPs pivot and accuse RMGC of intentionally violating the fundamental human rights of Roșia Montană residents. The NDPs allege that RMGC coerced families into selling and attacked the pillars of the community to destroy its social fabric and to render it uninhabitable so people would have no choice but to sell. These allegations are false, have no basis in reality, and reflect the NDPs’ outrageous and reckless disregard for truth. Contrary to the NDPs’ attempted character assassination, RMGC purchased all of the properties it acquired on a “willing buyer / willing seller” basis at above-market prices without any coercion. The vast majority of residents who sold their properties said their standard of living improved after they relocated out of the

⁸ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

area or resettled in the new and modern residential neighborhood that RMGC built. RMGC was itself a pillar of the community that organized, promoted, and sponsored important cultural and social events and invested in partnerships for the local schools, hospitals, and churches to enhance the social fabric of the community and to improve living conditions.

10. Fourth, in a variation on the previous theme, the NDPs falsely claim RMGC failed to obtain the “social license” it purportedly needed to operate because it allegedly refused to engage with the local community and disregarded its legitimate concerns. This claim is wrong in multiple respects: a social license is not a legal requirement to obtain any permit needed to operate a mine; RMGC engaged extensively with the local community and a wide range of stakeholders across Romania and, in response to stakeholder feedback, made numerous changes to the Project design to minimize potential impacts; and RMGC in fact earned a “social license” both locally and nationally.

11. Fifth, the NDPs claim RMGC failed to fulfill various alleged legal requirements to obtain the Environmental Permit and move forward to implement the Project. These legal arguments exceed the scope of the NDPs’ alleged expertise, repeat and cite to Respondent’s description of the applicable legal framework, and were excluded by the Tribunal in PO19. They also are uniformly wrong. Thus, for example, the NDPs argue repeatedly that RMGC was attempting to transform Roșia Montană into a “mono-industrial” zone in furtherance of a scheme to coerce residents to sell their property. This argument is fundamentally misguided because, under Romanian law, once the Government issues a mining license as it did for the Project, the competent local authorities must zone the area within the license perimeter to permit mining and to prohibit any other industrial activities. The zoning of the area accordingly was determined by and a consequence of the State’s issuance of the Roșia Montană License, not as a result of any action taken by RMGC. Moreover, the Project did not re-zone all or most of the area – the Project’s industrial area was to cover only 25% of Roșia Montană and non-mining activities could take place in the rest of the area. The local community in fact supported the zoning plans and believed that the only realistic long term solution to develop the area sustainably was through implementation of the Project.

12. Sixth, the NDPs falsely claim RMGC did not obtain an archaeological discharge certificate (“ADC”) for Cârnic, and suggest RMGC is to blame for not having obtained an ADC for Orlea. In fact, RMGC did obtain the requisite ADCs for Cârnic. If the Government had not rejected the Project, there is no reasonable basis to conclude that an ADC would not also have been issued in due course for Orlea, where RMGC did not plan to begin mining until year 7 of operations.

13. Contradicting their own false assertion that RMGC never obtained an ADC for Cârnic, the NDPs raise various baseless arguments seeking to impugn the validity of the Cârnic ADC. For example, the NDPs falsely suggest that the ADC was issued contrary to the findings of the archaeological research conducted in the area. The opposite is true. Following intensive and rigorous archaeological research supervised by the Ministry of Culture over a six-year period, the team of world-leading experts prepared reports recommending the issuance of ADCs for Cârnic and the decision to reissue the ADC for Cârnic in 2011 was endorsed by a unanimous decision taken by 13 experts from the National Archaeology Commission.

14. Seventh, the NDPs also falsely claim RMGC did not meet the requirements to obtain the Environmental Permit and failed to consult the public as required. Claimants have shown through cogent expert legal opinions and numerous public and recorded contemporaneous statements of the competent State authorities that RMGC met the applicable requirements and that the law required that a decision to issue the Environmental Permit be taken after the environmental impact assessment (“EIA”) for the Project was completed in November 2011 and again in July 2013. The record also shows that RMGC engaged in a comprehensive public consultation procedure and answered all of the thousands of questions and comments from the public culled from that procedure by the Ministry of Environment. Moreover, while the NDPs refer to various EU regulations and note that the EU environmental authorities were closely monitoring the Project’s implementation, they fail to mention that the EU Commissioner for Environment confirmed on multiple occasions that no breaches of EU requirements were found.

15. Eighth, the NDPs claim that Romania’s National Audiovisual Council sanctioned RMGC and directed it to end its advertising due to misleading content. That is false. In response to NGO complaints, the National Audiovisual Council and Romania’s Advertising

Council both found that RMGC's advertisements were proper and not misleading and neither council ever sanctioned RMGC. Notably, Respondent makes the same false allegation in its Counter-Memorial.

16. Finally, while the NDPs correctly observe that the mass street protests in late 2013 were a reaction to the "special law" that the Government submitted to Parliament (and not to the Project as such), their other observations related to the Draft Law are demonstrably false. For example, to raise the specter of some kind of cover-up, the NDPs falsely assert that the Draft Agreement accompanying the Draft Law (which they wrongly describe as an agreement with the Prime Minister) was not made public. In fact, the agreement was published contemporaneously in 2013 both on the website of the Senate and on the website of the Department of Infrastructure Projects, as well as in the media. It is not credible that the NDPs were not aware of this fact.

17. The NDPs also falsely speculate that RMGC asked for a special law to circumvent applicable legal requirements and "save" the Project. In fact, the contemporaneous records of RMGC's meetings with the Government show RMGC did not want or need a special law and instead urged the Government to issue the Environmental Permit through the applicable administrative procedures. The Government, however, rejected RMGC's approach and insisted on its unlawful and arbitrary parliamentary path, which resulted in the political rejection of the Project.

18. For these reasons, as elaborated more fully below, apart from the fact that much of the Submission was excluded by PO19, Claimants submit that the Submission is essentially unreliable, devoid of evidentiary value, and other than its observation that mass protests erupted in the fall of 2013 in response to the Government's Draft Law, offers nothing that could reliably assist the Tribunal in its work.

B. Contrary to the NDPs’ Speculation, Claimants Conducted Adequate Due Diligence Regarding Surface Rights Acquisition, and RMGC Would Have Been Able to Acquire the Necessary Surface Rights

19. The NDPs argue without foundation that Claimants failed to conduct adequate Project due diligence and “unreasonably assumed” RMGC could acquire the requisite surface rights.⁹ The NDPs’ groundless speculation about the Claimants’ due diligence is wrong and their arguments regarding RMGC’s acquisition of surface rights are inaccurate. Indeed, for the reasons discussed more fully in Claimants’ submissions, the expert legal opinions of Professor Bîrsan and Professor Podaru, and the witness statements of RMGC’s Community Relations Director, Ms. Elena Lorincz, RMGC would have been able to acquire the surface rights needed for the Project.¹⁰

20. The NDPs’ assertions that Claimants failed to conduct adequate due diligence with respect to surface rights should be rejected for multiple reasons.

21. First, to the extent that the NDPs purport to present a legal argument regarding the relevance of Claimants’ due diligence,¹¹ it is clearly outside the scope of the NDPs’ alleged expertise and, moreover, was excluded by the Tribunal in PO19.¹²

22. Second, the NDPs do not have – and do not even claim to have – any knowledge regarding the due diligence actually carried out by Claimants. The NDPs’ assertions regarding the due diligence conducted by Claimants with respect to surface rights acquisition are pure conjecture and, as such, also were excluded by the Tribunal in PO19.¹³

⁹ Submission at 2.

¹⁰ Memorial ¶¶ 170-180; Reply ¶¶ 651-666; Bîrsan ¶¶ 238-243; Bîrsan II § III; Podaru § III.B; Lorincz ¶¶ 46-58; Lorincz II ¶¶ 121-141.

¹¹ Submission at 1-2.

¹² Procedural Order No. 19 ¶¶ 60, 66, 75(b) dated Dec. 7, 2018 (“The Tribunal agrees with Claimants that the Applicants have failed to show that they have particular expertise on the legal matters that they wish to address or that, more generally, they would offer expertise that is not already available to Respondent on these issues.”); *id.* ¶¶ 66, 75(1)(b) (ordering that legal arguments are excluded from the Submission).

¹³ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 66, 75(1)(b) (granting the Application “but only with respect to the parts of the Submission that do not deal with,” among other things, “matters outside the competence of the Applicants,” and ordering that Sections I, II, and III of the Submission “are admitted, but only to the extent

23. Third, the NDPs purport to present various legal arguments based on Romanian law relating to the acquisition of surface rights that also were excluded by the Tribunal in PO19.¹⁴

24. Fourth, assuming for the sake of argument that Romanian legal issues could be considered a “factual issue,” the NDPs’ submission on this subject adds nothing because it merely relies on and cites to Respondent’s description of the applicable legal framework.¹⁵ The NDPs thus fail to proffer any particular expertise on these matters and their submissions were excluded in PO19 on this basis as well.¹⁶

25. Fifth, the NDPs’ assertion that Claimants should have proposed “downsizing” the Project and instead “doubled-down on [their] vision – that the whole area would be entirely depopulated and dedicated solely to its mining project,” which allegedly “led to the impossibility of realizing the Project,”¹⁷ is misguided and wrong.

26. As Professor Bîrsan explains, when the Government issues a mining license such as the Roşia Montană License, it necessarily takes a decision in the public interest to permit mining in that area, subject to conditions that may be imposed to mitigate environmental impact set forth in an environmental permit, and subject to exceptions for land subject to special protection, such as archaeological sites on which mining is permitted only if the site is discharged.¹⁸

27. Accordingly, when a mining license is issued, the urbanism plans for the license area must be updated to permit mining in accordance with the license and to prohibit

that they refer to factual issues within the specific knowledge of the Applicants and in relation to the interests the Applicants claim should be protected”).

¹⁴ See, e.g., Submission at 2 (raising legal arguments about the possibility of, and requirements for, expropriation). See also Procedural Order No. 19 ¶¶ 60, 66, 75(1)(b).

¹⁵ See, e.g., Submission at 2, n.6 (citing Respondent’s Counter-Memorial and claiming it provides “information on the legal framework and the possibility to expropriate”).

¹⁶ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

¹⁷ Submission at 2-3.

¹⁸ Reply ¶ 654; Bîrsan II § III.A.

construction of anything other than what is needed for mining exploitation and processing.¹⁹ Thus, the zoning in the area became “mono-industrial” to accommodate mining and to restrict any other use by operation of law as a result of the Government’s issuance of the Roșia Montană License to RMGC, not as a result of Claimants’ purported “vision” as the NDPs wrongly assert.²⁰ The local communities also repeatedly conveyed their view that Roșia Montană is a mining community and that the only path to revitalize and lay the foundation for the sustainable development of the area was through mining.²¹

28. Relatedly, the NDPs also wrongly contend that Claimants considered that the only future for the area was mining and that “most” of Roșia Montană was “re-zoned into an industrial area reserved exclusively for mining.”²² From the beginning and at all relevant times until 2006, the State-owned mining company Minvest was still operating; part of the Roșia Montană commune accordingly already had an industrial purpose, namely mining.²³ The Project did not re-zone all or most of Roșia Montană. In fact, the Project’s industrial area covered only 25% of Roșia Montană, and non-mining activities thus could take place in the rest of that area.²⁴ Far from blocking such other activities, RMGC actively encouraged them by providing loans to residents to develop or expand small businesses.²⁵ In addition, as explained at length in Claimants’ submissions, by among other things enhancing infrastructure, preserving cultural

¹⁹ Reply ¶ 655; Podaru § III.B; Bîrsan II § III.A.1.

²⁰ Reply ¶ 655; Podaru § III.B; Bîrsan II § III.A.1.

²¹ Lorincz ¶¶ 6-11, 72-83 (noting that the cultural, social, and economic fabric of Roșia Montană and the surrounding communities has for many generations been based nearly entirely on mining); 72-83; Lorincz ¶¶ 40, 63-74, 85, 96-105; Planning Alliance, Gold and Cold - Traits of the Communities in the Impacted Area dated Dec. 2002 (Exh. C-725) at 3 (finding based on surveys conducted with the local community that “the raison d’être of [the Roșia Montană] area is ‘gold’ mining”); Impact Monitoring of Mineral Resources Exploitation, Report on the Study of Mining and Society and Its Implications, dated Apr. 2011 (Exh. C-2045) at 56 (finding that over 95% of survey respondents in Roșia Montană felt positive about mining, the highest percentage of the seven European mines surveyed); “Munții Apuseni” Association for Socio-Economic Research and Development Center, Report regarding the impact of economic development on the quality of life in Zlatna, Baia de Arieș, Abrud, and Roșia Montană, dated Dec. 2011 (Exh. C-2050) at 10 (observing that 86.9% of respondents in Roșia Montană “almost exclusively associate economic development with mining” and believe that “Without mining, there’s nothing!”).

²² Submission at 3, 8.

²³ Szentesy ¶ 15; Lorincz II ¶¶ 37, 41-42.

²⁴ Lorincz II ¶ 37.

²⁵ Memorial ¶ 172; Lorincz ¶ 61; Lorincz II ¶ 38.

32. As Professor Bîrsan explains, although the holder of a mining license does not obtain surface rights directly, the law contemplates that the license holder will obtain the necessary surface rights.³² That is because, as discussed above, the law imposes a legal regime over the land that contemplates access by the titleholder. The Roșia Montană License accordingly provides RMGC the right to access and use the lands needed to conduct its mining activities in the License perimeter, under the conditions set forth in Article 6 of the Mining Law, which lists the means of acquiring such access, including by expropriation.³³

33. Further, while expropriation may be carried out only for public utility works, the Expropriation Law expressly establishes that mining projects involving exploitation and mineral processing are public utility works.³⁴ Because the Roșia Montană Project is such a mining project, it is by definition a public utility work. RMGC therefore had a right under the Roșia Montană License and Romanian law to obtain the surface rights needed for the Project, including by expropriation, if necessary.

34. Seventh, even if one were to assume that an additional declaration of public utility were necessary, it is not credible to suggest that this declaration would not be made.³⁵ Dozens of local Mayors endorsed the Project in view of its social, economic, and environmental benefits for their communities and for Alba County more broadly.³⁶ At the request of the Mayors of Roșia Montană, Abrud, Cămpeni, and Abrud, the Alba County Council declared, in an analogous but

³² Reply ¶ 655; Bîrsan ¶¶ 238-241; Bîrsan II § III.A.1.

³³ Reply ¶ 656; Bîrsan ¶¶ 239, 241-242; Bîrsan II § III.B. *See also* Roșia Montană License (Exh. C-403-C) § 8.1.1

Mining Law 85/2003 (Exh. C-11) Art. 6 (“The right to use the lands necessary for carrying out mining activities, as located within the exploration/exploitation perimeter, is obtained in compliance with the law as follows: . . . d) expropriation for public utility, in compliance with the law. . .”).

³⁴ Reply ¶¶ 658-660; Bîrsan § IV.C.1; Bîrsan II §§ III.A.1, III.B; Expropriation Law 33/1994 (Exh. C-1628) Art. 6 (listing public utility works as including “the extraction and processing of useful mineral substances”). *See also* Bîrsan II ¶¶ 102-111; Romanian Government Point of view dated June 16, 2010 (Exh. C-2298) at 3 (stating that a proposal to amend the Mining Law in 2009 to declare mining works for the exploitation of mineral resources to be of public utility was “not necessary,” since the Expropriation Law already provided such a declaration); Romanian Government Exposition of Reasons for Draft Law dated Aug. 27, 2013 (Exh. C-817) at 2, 6 (observing that “[t]he activities of exploitation and processing of mineral resources are already defined by Law No. 33/1994 on expropriation for public utility, as republished, as public utility activities”).

³⁵ Reply ¶ 662.

³⁶ Lorincz II ¶ 96; Support Group for the Roșia Montană Mining Project Brochure (Exh. C-806) at 22-101.

different context, that the Project was of “outstanding public interest.”³⁷ In addition, the Government itself pledged to support the Project as a joint venture,³⁸ and repeatedly indicated that a declaration of public utility and outstanding national public interest was warranted.³⁹

35. Eighth, the NDPs falsely claim that Alburnus Maior represents 350 families comprising “local property owners” who “had strong reservations about the Project and [were] against selling the property necessary for the development of the mine.”⁴⁰ The NDPs’ assertions are supported only by Alburnus Maior’s own self-serving press releases⁴¹ and an undated and unverified purported “chronology” prepared by the NDPs that is inadmissible in view of the page limits established by Annex C of the Canada BIT.⁴²

³⁷ Lorincz II ¶¶ 97; Letter from Mayor Bucium to Alba County Council dated Aug. 9, 2011 (Exh. C-839); Letter from Mayor of Câmpeni to Alba County Council dated Aug. 9, 2011 (Exh. C-840); Letter from Mayor of Roșia Montană to Alba County Council dated Sept. 9, 2011 (Exh. C-889); Letter from Mayor Abrud to Alba County Council dated Sept. 9, 2011 (Exh. C-838); Alba County Council Decision on the Application of Certain Provisions of the Waters Law No. 107/1996 dated Sept. 29, 2011 (Exh. C-632).

³⁸ Szentesy II ¶¶ 4-6. *See also, e.g.*, Romanian Government Official Press Release, “Romanian Government Reiterates its Support of the Mining Industry” dated Mar. 2000 (Exh. C-2177) (stating that the Government had adopted a “western-based mining law” “to encourage foreign investment in the mining sector,” which was “a testimony to the government’s commitment to the mining sector,” that “the development of new mining projects such as Roșia Montană . . . will be fully supported by the Romanian Government,” and that RMGC was “a joint venture” between the State-owned Minvest and Gabriel).

³⁹ *See, e.g.*, Government Memorandum from Minister of Economy Ariton to Prime Minister Boc dated Sept. 21, 2011 (Exh. C-2156) at 1-3 (stating that the Project is “a mining operation financially advantageous and environmentally sustainable - project of outstanding public interest,” describing “the major economic and social benefits generated by the implementation of the Project,” and concluding that “due to the medium- and long-term economic and social benefits envisaged, the Project is of outstanding public interest” and that “the completion of the Project evaluation and authorization is a strategic priority for the Government of Romania”); Government Memorandum from Minister of Economy Ariton to Prime Minister Boc dated Oct. 25, 2011 (Exh. C-2157) at 1, 5 (same); Government Memorandum from Minister of Economy Ariton to Prime Minister Boc dated Nov. 10, 2011 (Exh. C-2159) at 5-6 (same); Memorandum on the Roșia Montană Project from Minister Delegate Șova to Prime Minister Ponta dated Mar. 6, 2013 (Exh. C-1903) at 42, 45 (“[r]ecognizing the public utility and the outstanding public interest of the Roșia Montană mining project,” and that it is “of national interest”); Government National Plan for Strategic Investments and Job Creation dated July 11, 2013 (Exh. C-910) at 11 (including the Project); Draft Law dated Aug. 27, 2013 (Exh. C-519.1) Art. 3 (declaring the Project to be of public utility and outstanding national public interest); Government Exposition of Reasons (Exh. C-2461) at 3-5, 20-24 (same, and signed by all of the responsible Ministers).

⁴⁰ Submission at 2. *See also* Application at 4.

⁴¹ For example, while the NDPs purport to quote a member of a European Parliament delegation in November 2003, the source of the quote is an Alburnus Maior press release from December 2003, not any official statement or report of the European Parliament. *See* Submission at 2, n.8.

⁴² Canada BIT (Exh. C-1) Annex C § IV ¶ 2 (requiring that a non-disputing party’s submission must “be concise, and in no case longer than 20 typed pages, including any appendices”).

36. As Claimants have shown in their prior submissions, Alburnus Maior's claim that it has the support of hundreds of families from the local communities is both unsubstantiated and false.⁴³ Local residents and organizations repeatedly denied Alburnus Maior's self-proclaimed representative status, and challenged it to provide evidence that it represents hundreds of local families, which Alburnus Maior consistently refused to do and has never done.⁴⁴

37. Contrary to the NDPs' assertions, the evidence in this arbitration demonstrates that the overwhelming majority of Roșia Montană residents who would be impacted by the Project supported its implementation and rejected the views of Alburnus Maior and other foreign-led groups that opposed the Project.⁴⁵ There is no evidence that Alburnus Maior represents the interests of anyone from the local community other than a small number of individuals such as Alburnus Maior's President, Mr. Eugen David, who declared in an interview in April 2012, "I don't care about the community or the so-called benefits for Romania, I care about myself."⁴⁶ Accordingly, the Tribunal determined in PO19 that the NDPs have not proven more than a general interest in the proceeding, "let alone a significant interest in representing or protecting those they claim to be representing."⁴⁷

38. Finally, the NDPs falsely contend that RMGC's acquisition of surface rights was an insurmountable "struggle."⁴⁸ RMGC worked diligently and responsibly with the aid of external consultants to acquire property on a voluntary willing seller/willing buyer basis.⁴⁹ Within a few years, RMGC successfully acquired the properties of 78% of the households within the impacted area and lands amounting to approximately 990 hectares.⁵⁰

⁴³ Claimants' Comments on Non-Disputing Parties' Application dated Nov. 23, 2018 ¶¶ 81-87.

⁴⁴ Claimants' Comments on Non-Disputing Parties' Application dated Nov. 23, 2018 ¶ 81; [REDACTED].

⁴⁵ See *infra* § C; Reply § IV.A.

⁴⁶ Claimants' Comments on Non-Disputing Parties' Application dated Nov. 23, 2018 ¶ 81; [REDACTED]. See also *The opposition in Roșia Montană admits being paid by Soros. Eugen David: "I don't care about the community or Romania. I piss on the crisis!"*, Ziaristionline.ro, dated Apr. 11, 2012 (Exh. C-2887).

⁴⁷ Procedural Order No. 19 dated Dec. 7, 2018 ¶ 63. *Id.* ¶ 64 (finding that "there may be concerns as to whether the Applicants have a significant interest in the proceedings").

⁴⁸ See Submission at 3.

⁴⁹ Reply ¶ 663; Lorincz ¶¶ 15-27; Lorincz II ¶¶ 25-33, 135-136.

⁵⁰ Lorincz ¶¶ 49-50; Lorincz II ¶ 121.

39. The NDPs' assertion that the number of properties acquired by RMGC "had not significantly risen" by March 2016⁵¹ is misleading. After acquiring properties from 2002-2004 and 2006-2007, RMGC announced in December 2007 that it would stop acquiring additional surface rights due to the uncertainty resulting from the Ministry of Environment's unlawful suspension of the EIA review process.⁵² Although RMGC had not resumed its land acquisition program before Claimants commenced this arbitration, the evidence shows that the vast majority of remaining property owners were eager to sell to RMGC.⁵³ For example, surveys conducted in 2011 and 2013 at the residences of all of the households with properties still to be acquired found that over 83% and 92%, respectively, wanted RMGC to resume purchasing properties.⁵⁴ Based on its extensive community engagement and monitoring, RMGC was reasonably confident it ultimately would have reached agreement even with the few remaining vocal opponents.⁵⁵

40. In any event, as Claimants' submissions show, even if a few landowners such as Mr. David refused to sell their properties, the process of acquiring those properties through expropriation would not have blocked or materially delayed implementation of the Project.⁵⁶

⁵¹ Submission at 3.

⁵² Memorial ¶¶ 280-285; [REDACTED].

⁵³ Reply ¶ 663; [REDACTED].

⁵⁴ Lorincz II ¶ 123. *See also, e.g.*, RMGC Monitoring Report on Unpurchased Households dated July 2011 (Exh. C-2048) at 2-3, 29, 32 (finding that only 11.18% did not want RMGC to resume purchasing properties and 5.92% did not know or did not answer); RMGC Monitoring Report on Non-Purchased Households dated Mar. 2013 (Exh. C-2762) at 23, 25, 28 (finding that only 1.54% did not want RMGC to resume purchasing properties and 6.15% did not know or did not answer).

⁵⁵ Reply ¶ 663; [REDACTED] (describing discussions and agreements with Alburnus Maior members who publicly claimed they would never sell their properties, but who privately confirmed to RMGC that they were willing to negotiate a sale if the Project moved forward).

⁵⁶ Bîrsan II ¶¶ 137-138 (explaining that "the existence of only a few owners that refuse to sell could not actually stand in the way of the Company obtaining in due time access to the properties required to implement the Project," and the "decision by the public authorities to deny expropriation in such cases would be unreasonable and unjustified under the law"). Moreover, as Claimants have shown, the acquisition of surface rights was not a requirement for the Environmental Permit, but for the construction permits, and as the Project was to be developed in phases, it was not necessary to obtain all surface rights before construction could begin. Rather, construction permits would be obtained as needed in phases over time allowing surface rights to be obtained in parallel with Project development. *See* Reply ¶ 664; Podaru ¶¶ 48-50; [REDACTED] (demonstrating that the properties owned by Mr. David's family were variously not needed, situated in Orlea, where construction was not planned until year 8 of the Project, or consisted of a single 2.2 hectare property on which no one lived that included several micro 1 sqm "protest plots").

C. Claimants Engaged Extensively with the Local Community and Obtained a Social License at Both the Local and National Levels

41. The NDPs wrongly claim that RMGC failed to obtain a “social license” because it allegedly did not engage meaningfully with the local community and instead tried to silence and discredit Project critics.⁵⁷ These allegations are false. RMGC engaged extensively and meaningfully with the local community and a wide range of stakeholders and also overcame unlawful measures taken by the Government and a barrage of misinformation and false accusations raised by anti-mining/anti-Project zealots, as well as by certain Romanian politicians, to succeed in earning a social license both locally and nationally.⁵⁸ In fact, the vast majority of people who would be most affected by the Project unquestionably supported it.⁵⁹

42. Like Respondent, the NDPs wrongly contend Claimants had an obligation to obtain a social license in view of the dissenting opinion in *Bear Creek v. Peru* and guidelines that purportedly reflect international standards for corporate social responsibility.⁶⁰ The NDPs’ legal arguments regarding “other arbitral disputes” and these alleged standards exceed the scope of their alleged expertise and were excluded by the Tribunal in PO19.⁶¹

43. Moreover, contrary to the NDPs’ assertions, a “social license” is merely a sociological concept and a metaphor for the level of social support among a set of stakeholders; it is not a legal requirement.⁶² Thus, while the EIA process requires public consultation (a requirement RMGC fully satisfied as discussed further below), Romanian law neither recognizes the concept of a social license nor requires an applicant for an Environmental Permit, or any permit necessary to implement a mining project, to have a social license.⁶³ The Government

⁵⁷ Submission at 3-7.

⁵⁸ Reply § IV.A; Boutilier §§ 2-5; Henisz ¶¶ 8-43; [REDACTED]; [REDACTED]; Henry ¶¶ 8-9, 66-70; Henry II ¶¶ 36, 38, 63, 77-81.

⁵⁹ Reply ¶ 139; Memorial ¶¶ 395-401.

⁶⁰ Submission at 3-6. *See also, e.g.*, Counter-Memorial ¶ 574 n.954.

⁶¹ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

⁶² Reply ¶¶ 113, 142-145; Boutilier ¶¶ 1, 9. *See generally* Boutilier § 2.

⁶³ Reply ¶¶ 113-115; Mihai II § V.G.

therefore could not, and did not, refuse to issue the Environmental Permit or any permit based on its assessment of RMGC's level of social license.⁶⁴

44. Although there was no legal requirement for RMGC to have a social license, as a result of its community engagement and the benefits that would have flowed to the Roșia Montană community and to Romania as a whole from the Project, RMGC continuously held a social license at both the local and national levels.⁶⁵ Based on his analysis of extensive surveys, polling data, and other contemporaneous records, Dr. Robert Boutilier determined that RMGC achieved a level of social license by late 2011 that he describes as “high approval” in Roșia Montană and as “approval” more broadly in Alba County, both of which surpass the mean social license level found in his database of 59 studies of mining and infrastructure projects.⁶⁶ Dr. Boutilier further determined that RMGC also had a national social license that it enhanced over time.⁶⁷ Consistent with Dr. Boutilier's analysis, Professor Witold Henisz conducted dozens of interviews with a broad range of stakeholders across Romania in both July 2007 and December 2011 and independently concluded, long before this arbitration commenced, that RMGC demonstrably expanded its base of support during that time and earned a social license to operate.⁶⁸

45. Lacking any “social license” expertise and simply repeating Respondent's argument that RMGC lacked one, the NDPs attempt to support their erroneous assertion that RMGC lacked a social license with the equally erroneous claim that RMGC's engagement with the local community was “limited.”⁶⁹ In fact, in an external survey funded by the European Commission of seven mining projects in Europe, the University of Exeter's Camborne School of

⁶⁴ Reply ¶ 113; Mihai II ¶¶ 249-251, 253-255.

⁶⁵ Reply ¶¶ 147-149; Boutilier ¶¶ 3.e-f, 32-78, 117.j.iv. The only possible exception is 2008, when the Government's unlawful suspension of the EIA procedure forced RMGC to lay off workers and suspend its land acquisition program. These events predictably impaired the level of RMGC's social license and may have caused it to dip into the “red zone” at the national level. Reply ¶ 148 n.356; Boutilier ¶¶ 58, 117.e.iv.

⁶⁶ Reply ¶ 147; Boutilier ¶¶ 71, 117.j.iv.

⁶⁷ Reply ¶ 148; Boutilier ¶¶ 3.e-g, 41, 117.j.iv, Figure 3-2. *See also* Tănase III ¶¶ 88, 106-128 (discussing support for the Project at the national level).

⁶⁸ Reply ¶ 149; Henisz ¶¶ 8-42 (discussing his interviews and concluding “with confidence” in December 2011 that RMGC “had earned the social license to operate”).

⁶⁹ Submission at 4.

Mines determined in April 2011 that RMGC had achieved a higher level of community engagement than any of the other mines surveyed: “Out of all of the demo sites, it is only in Roşia Montană where the majority of survey respondents felt sufficiently engaged by their local mining company / the local government. This reflects the high level of consultation that Roşia Montană Gold Corporation (RMGC) have had with stakeholders and in particular with the local community.”⁷⁰

46. As Ms. Lorincz discusses more fully, RMGC worked with external specialists and consultants at an early stage to develop socially responsible policies and to guide the company through extensive and meaningful consultations with the local community.⁷¹ Thus, from 2000-2002 alone RMGC:

- established five community relations and information centers with permanent staff in Roşia Montană, Corna, Abrud, and Bucium;
- conducted a face-to-face opinion survey of 110 Roşia Montană residents in August 2000;
- invited local residents to visit and comment on the “model house” designed for the resettlement sites;
- arranged for 483 local residents to take all-day trips with RMGC staff from January to March 2001 to visit the site of a resettled village;
- conducted door-to-door consultations with 755 local households from May to June 2001;
- organized numerous workshops, public meetings, and consultations with local residents, local Government officials, community religious leaders, and NGOs, including Alburnus Maior, in relation to the resettlement sites, land acquisition, and the urbanism plans (the PUZ and PUG);

⁷⁰ Impact Monitoring of Mineral Resources Exploitation, Report on the Study of Mining and Society and Its Implications, Apr. 2011 (Exh. C-2045) at 4; *id.* at 59 (“Nearly 80% of survey respondents in Roşia Montană feel sufficiently engaged by mining companies and / or the local government regarding potential mine developments o[r] expansions (Figure 19). The other sites have very low levels of people feeling they are ‘sufficiently’ engaged (Figure 19).”).

⁷¹ Reply ¶¶ 161-162; Lorincz II ¶¶ 6-44, 50-62.

- organized numerous social and cultural activities and events for the local community; and
- provided financial support to the local municipalities, churches, sports teams, and environmental, youth, and educational partnerships.⁷²

47. By any objective assessment, these efforts were far from “limited.” Despite their purported knowledge of the local community, the NDPs choose not to discuss or acknowledge the full scope of this broad-based community outreach and engagement as doing so would not support their false narrative about RMGC’s alleged “limited” community engagement. They do grudgingly acknowledge that RMGC’s meeting with families and establishment of a community development department were “generally promising,” but then repeat their baseless contention that RMGC “aggravated community relations” by “calling . . . upon” the local authorities to approve urbanism plans that purportedly “defined the future of the region as a mono-industrial zone” and “asphyxiated Roșia Montană by preventing new economic activities. . . .”⁷³ This legal argument about the alleged effects of the PUZ is quoted directly from Respondent’s Counter-Memorial and was excluded by the Tribunal in PO19.⁷⁴ It also is fundamentally wrong because, as explained above, Roșia Montană became a mono-industrial zone by operation of law upon the Government’s issuance of the Roșia Montană License to RMGC, not as a result of any action taken by RMGC.⁷⁵ Moreover, Roșia Montană has always been a mining town,⁷⁶ the Government itself recognized the reality that Roșia Montană was already a mono-industrial area in the 1990s,⁷⁷ and at all relevant times until 2006, the State-owned mining company Mininvest was still operating in Roșia Montană.⁷⁸ As further explained above, moreover, the Project also did not re-zone all or most of Roșia Montană, as the Project’s industrial area in fact covered only

⁷² Reply ¶ 161; Lorincz II ¶¶ 6-44. *See also* Boutilier ¶ 117.d.ii.

⁷³ Submission at 4-5 (quoting Respondent’s Counter-Memorial ¶ 129).

⁷⁴ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

⁷⁵ *See supra* § B; Podaru § III.B; Bîrsan § III.A.

⁷⁶ *See supra* ¶¶ 27-28; Memorial § II.B (explaining that Roșia Montană is a historic mining town ravaged by unemployment and poverty, and by pollution from decades of State-run mining).

⁷⁷ EIA Report, Ch. 9 (Exh. C-239) § 10.5 (noting that mining accounted in 2004 for 90% of income to residents of Roșia Montană and that in order to attract investment to the area, the State declared the mining area of Apuseni, Alba County a “depressed area” in accordance with Government Decision No. 24/1998, which applied to mono-industrial areas, where 25% of the workforce has been made redundant, unemployment exceeds the national average by more than 30%, and/or that are isolated and under-developed).

⁷⁸ *See supra* ¶ 28; Szentesy ¶ 15; Lorincz II ¶¶ 37, 41-42.

25% of Roșia Montană, and non-mining activities could take place in the rest of that area.⁷⁹ RMGC actively encouraged such other activities by providing loans to residents to develop or expand small businesses,⁸⁰ and the Project would have provided the basis for the future sustainable development of the area.⁸¹ The local community also strongly supported both the Project and the corresponding urbanism plans.⁸²

48. The NDPs next falsely assert that RMGC “acted as if a relevant part of the local community did not exist” (apparently the NDPs and/or their few supporters), and did nothing “to accommodate their concerns.”⁸³ This characterization is demonstrably false.

49. Contrary to the NDPs’ mischaracterizations, RMGC tried to engage in dialogue with Project opponents, including Alburnus Maior. Alburnus Maior generally refused RMGC’s invitations to learn about the Project or to discuss a path forward, preferring instead to attack RMGC and the Project in the media with the same type of groundless accusations made in this Submission.⁸⁴

50. Moreover, it is undeniable (and Respondent’s social license expert, Dr. Ian Thomson, in fact acknowledges) that RMGC adjusted and improved its approach over time in response to what the company was learning from its engagement with the community.⁸⁵ As discussed further below, following consultations with the local community, RMGC also made 39 substantive changes to the Project design that reduced the Project’s potential impact and decreased the reserves by 500,000 ounces of gold.⁸⁶ The NDPs acknowledge this “re-thinking”

⁷⁹ See *supra* ¶ 28; Lorincz II ¶ 37.

⁸⁰ See *supra* ¶ 28; Memorial ¶ 172; Lorincz ¶ 61; Lorincz II ¶ 38.

⁸¹ See *supra* ¶ 28; Memorial ¶¶ 11, 16, 82-87, 236-243.

⁸² Lorincz II ¶¶ 34-44, 63-71 (explaining that the Roșia Montană and Abrud Local Councils approved the 2002 urbanism plans following consultation and with the strong support of the local communities).

⁸³ Submission at 5.

⁸⁴ Reply ¶ 145 n.349; [REDACTED].

⁸⁵ Reply ¶¶ 163-164; Lorincz II ¶¶ 6, 33, 50-62 (describing changes in company approach and strategy in view of community feedback); Boutilier ¶ 117.j.iii (observing that “RMGC improved its approach to stakeholder engagement later, particularly from about 2006 onward”). See also Thomson ¶¶ 62, 64-65, 108 (acknowledging that “the company revised its strategies and, from 2006 onward,” implemented initiatives that included “extensive support for the local communities and ongoing engagement with the population”).

⁸⁶ See *infra* § E.4; Reply ¶ 116.

of the Project design by RMGC but, intent on criticizing RMGC and the Project, claim paradoxically that such an accommodation shows how RMGC ignored the community's concerns.⁸⁷

51. In addition to re-designing the Project, RMGC took further action to respond to feedback received from the community regarding concerns about the perceived foreign exploitation of Romanian resources, environmental protection and treatment, cultural heritage preservation, resettlement, job creation, and tourism.⁸⁸ Thus, for example, RMGC:

- changed its management structure so that the General Manager and each department head was Romanian rather than Canadian;⁸⁹
- hired hundreds of workers and became the largest employer in the region;⁹⁰
- constructed the new and modern Recea residential neighborhood in Alba Iulia;⁹¹
- restored and repaired numerous historical buildings in Roşia Montană's town center, including a new permanent mining exhibition opened to the public;⁹²
- rehabilitated and made accessible to the public more than 200 meters of underground Roman mining galleries at Cătălina-Monuleşti, which RMGC still maintains even today;⁹³
- built a pilot water treatment facility at the outlet of the main adit to the Roşia River, which showed that, if the Project were implemented, polluted water flowing from the old mining area and any wastewater generated by the Project would be successfully cleaned and treated;⁹⁴

⁸⁷ Submission at 5 (claiming that RMGC ignored Project opponents "despite the fact that it was this group's opposition that necessitated a re-thinking of its initial project design in order to accommodate their concerns").

⁸⁸ Reply ¶¶ 167-169; Tănase III ¶¶ 88-92; Lorincz II ¶¶ 2-14, 34-44, 63-71, 84-120; Henisz ¶¶ 25-34.

⁸⁹ Reply ¶ 167; Tănase III ¶ 91.a; Henisz ¶ 33.

⁹⁰ Reply ¶ 167; Tănase III ¶ 91; Lorincz II ¶¶ 45-50; Henisz ¶ 29.

⁹¹ Reply ¶ 167; Tănase III ¶ 91.b; Henisz ¶¶ 24, 27; Lorincz II ¶¶ 79-83.

⁹² Reply ¶ 167; Henisz ¶¶ 24, 29; Tănase III ¶ 91.c; Gligor ¶¶ 56-60; Gligor II ¶ 40.

⁹³ Reply ¶ 167; Henisz ¶ 30; Tănase III ¶ 91.d; Gligor ¶ 56.

⁹⁴ Reply ¶ 167; Henisz ¶ 28; Tănase III ¶ 91.e.

- restored the “Old City Hall” and renovated the “Old School” to accommodate the only 4 star hotel in the Apuseni Mountains and another 3 star hotel;⁹⁵ and
- opened a modern canteen restaurant that was a popular local attraction.⁹⁶

52. Through these various efforts, as Professor Henisz observed during his broad-based stakeholder interviews conducted in December 2011, RMGC “succeeded in systematically addressing the key issues of concern raised by the opposition” and won “the support of numerous external stakeholders of high status and credibility who recounted to us a process of effective engagement by the company that demonstrated respect, understanding and a desire to help the stakeholders achieve their desired goals for themselves and their constituents.”⁹⁷

53. Professor Henisz’s contemporaneous observations are consistent with numerous other contemporaneous studies and polls that found very strong support for the Project by 2011, particularly at the local and regional (but also national) levels. For example:

- RMGC conducted several comprehensive surveys and found that local and regional support for the Project increased steadily in 2010-2011 to 90% among residents of Roșia Montană and to 79% among residents of the surrounding communities of Abrud, Bucium, Cămpeni, Lupșa, Bistra, Sohodol, and Ciuruleasa.⁹⁸
- In their external survey of seven European mining projects in April 2011,⁹⁹ the University of Exeter researchers determined that Roșia Montană “had a very strong level of support for mining to restart in the area,” and that most residents of Roșia Montană “thought 90 - 95% of the population supported the project.”¹⁰⁰ In stark contrast to the NDPs’ assertions, the researchers further

⁹⁵ Reply ¶ 167; Tănase III ¶ 91.f.

⁹⁶ Reply ¶ 167; Tănase III ¶ 91.f.

⁹⁷ Henisz ¶¶ 38-40, 42 (observing that RMGC “did this not only with words and emotions,” but also by investing “time and resources to produce observable, tangible developments on the ground”).

⁹⁸ Lorincz II ¶¶ 92-94; RMGC Participatory Diagnosis of Community Relations, Community Relations Barometer No. 3, dated May-June 2011 (Exh. C-2047) at 4, 88.

⁹⁹ See *supra* ¶ 45; Reply ¶ 170; Boutilier ¶¶ 44-49; Lorincz II ¶¶ 98-102; Tănase III ¶¶ 96-97.

¹⁰⁰ Impact Monitoring of Mineral Resources Exploitation, Report on the Study of Mining and Its Implications, Apr. 2011 (Exh. C-2045) at 23, 25; *id.* at 56, 85, 87 (finding “that much of the opposition against the mine reopening comes from outside of the community and even outside of Romania”).

determined that the Project outperformed all of the other mining projects surveyed in terms of local support, trust, and engagement.¹⁰¹

- In December 2011, the “Munții Apuseni” Association for Socio-Economic Research and Development Center conducted an external survey and determined that an “overwhelming majority” (~ 85%) of Roșia Montană residents and over 75% of those surveyed in four traditional Romanian mining towns, Zlatna, Baia de Arieș, Abrud, and Roșia Montană, supported development of the Project.¹⁰²
- In the December 2012 referendum on the Project, 79% of the voters in Roșia Montană, 71% of the voters in areas with mining traditions, *i.e.*, Abrud, Baia de Arieș, Bucium, Roșia Montană, and Zlatna, and 63% of the total voters in all 35 referendum communities in Alba County, voted to restart mining in the area and to implement the Project.¹⁰³

54. Against this overwhelming contemporaneous record, the NDPs refer to three alleged events that purportedly demonstrate a lack of social license. First, the NDPs claim that in 2004 Greenpeace CE collected 27,000 signatures against the Project.¹⁰⁴ The sole basis for this assertion is the NDPs’ own undated and unverified “chronology,” which is inadmissible and has no evidentiary value,¹⁰⁵ and a media article that does not indicate who the 27,000 alleged signatories are, where they reside, what they purportedly signed, or whether any attempt was made to verify the authenticity of their alleged signatures.

55. Second, the NDPs assert that 96% of the participants in “an opinion poll initiated by the Romanian Parliament in 2007 . . . voted against the project.”¹⁰⁶ The NDPs refer here to an

¹⁰¹ Impact Monitoring of Mineral Resources Exploitation, Report on the Study of Mining and Society and Its Implications, Apr. 2011 (Exh. C-2045) at 76 (“Roșia Montană has the highest percentage of respondents who had positive views about mining compared to all the other sites (Figure 16). Roșia Montană also stands out compared to other demo sites, as they had the highest percentage of respondents saying mining companies were meeting public expectations (Figure 17), the highest percentage of respondents feeling mining was an important part of their identity / heritage / tradition (Figure 18) and the highest number of responses indicating that people perceived that RMGC and the local government were sufficiently engaging local people (Figure 19).”). *See also id.* at 4, 58-59.

¹⁰² Reply ¶¶ 152, 171; Boutilier ¶¶ 66, 117.e.vii; Lorincz II ¶¶ 104-105; “Munții Apuseni” Association for Socio-Economic Research and Development Center, Report regarding the impact of economic development on the quality of life in Zlatna, Baia de Arieș, Abrud, and Roșia Montană, dated Dec. 2011 (Exh. C-2050) at 86.

¹⁰³ Memorial ¶ 400; Reply ¶ 172; Boutilier ¶¶ 67-68, 117.i.; Lorincz II ¶¶ 106-116; Tănase III ¶¶ 101-105.

¹⁰⁴ Submission at 5.

¹⁰⁵ *See supra* ¶ 35.

¹⁰⁶ Submission at 5.

informal online poll in a comment forum on the Chamber of Deputies' website, which apparently allowed users to submit "votes" and comments from October 2006 to February 2009. The opinions expressed in that online forum are not a reliable measure of support for the Project and were never represented as such by the Romanian Government or Parliament. In fact, participants could "vote" without providing any information about themselves, and there evidently were no restrictions to prevent the same person or a "bot" from voting over and over again.¹⁰⁷

56. Third, the NDPs claim that "only about 27 percent" of the voters in the December 2012 referendum voted for the Project, while "[t]he rest explicitly voted no or expressed their rejection by boycotting the referendum altogether."¹⁰⁸ The NDPs thoroughly distort the referendum results. As noted above, a strong majority of the voters in Roşia Montană (79%) and the areas with mining traditions (71%), and nearly two-thirds of the total voters in the referendum, voted to restart mining and to implement the Project.¹⁰⁹ The referendum thus demonstrated strong local and regional support for the Project as the Government itself acknowledged.¹¹⁰

57. The NDPs' claims regarding an alleged boycott of the referendum are based entirely on Romanian Senator Mihai Goşiu's "testimony,"¹¹¹ which the Tribunal excluded in PO19.¹¹² As Dr. Boutilier demonstrated in a point-by-point rebuttal to Senator Goşiu's public statements, which also were submitted by Respondent, there is no evidence of any alleged boycott.¹¹³ On the contrary, the turnout in the referendum exceeded the turnout in the national parliamentary elections held that same day, and national TV stations reported that the highest

¹⁰⁷ According to the website referenced by the NDPs, votes were cast by individuals who identified themselves simply as, e.g., "A realist..." or "Godfather" or "Local" or "I." See Submission at 5 n.28 (citing to the website of the comment forum for the online opinion poll).

¹⁰⁸ Submission at 5.

¹⁰⁹ Memorial ¶ 400; Reply ¶ 172.

¹¹⁰ Reply ¶ 175; Boutilier ¶¶ 67-68, 75-78, 117.i, Table 3-2; Lorincz II ¶¶ 113-115; Tănase III ¶ 105.

¹¹¹ Submission at 5 n.29.

¹¹² Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

¹¹³ Boutilier ¶ 117.i. See also Lorincz II ¶ 116. Rather than indicative of a lack of social license as the NDPs claim, not voting is more consistent with the indecision and ambivalence characteristic of the "acceptance" level of social license found at most operating mines. See Boutilier ¶¶ 3(b), 11, 53-54 117.e.ii.

voting percentage in the country that morning was in Roșia Montană.¹¹⁴ The Mayors of the 35 communities that held the referendum also explained in a memorandum endorsed by the Alba County Council that a massive snowstorm and outdated and overstated voter registration rolls reduced the turnout and did not reflect the actual level of support for the Project, and that the turnout and the percentage of votes cast in favor of the Project both would have been much higher in normal conditions.¹¹⁵

58. Thus, far from a “rejection” of the Project as the NDPs allege, the Mayor of Roșia Montană, Eugen Furdui, stated publicly that the referendum results reflected “overwhelming” support and “ended the lie” that the local community opposed the Project.¹¹⁶ The Alba County Council endorsed the view unanimously held by the Mayors of the 35 referendum communities that “the results of the referendum and the vote of the people from these communities provide a decisive argument for the restart of mining and for the start of the Roșia Montană mining project.”¹¹⁷ The Government acknowledged that “the vast majority” of voters in the referendum voted “yes,” and concluded that a “decision on the Roșia Montană project and other mining projects in the country is extremely important for local communities.”¹¹⁸ And the Prime Minister declared publicly that “you know very well in Alba County, there is strong support for the project.”¹¹⁹

¹¹⁴ Reply ¶ 172 n.417; Lorincz II ¶¶ 112-115; Tănase III ¶¶ 102-103.

¹¹⁵ Reply ¶ 172 n.417; Boutilier ¶ 117.i.xi-xiv; Lorincz II ¶¶ 114-115; Tănase III ¶¶ 102-103; Memorandum on Job Creation by the Restart of Mining in the Apuseni Mountains and Especially in Roșia Montană adopted by local mayors, endorsed by the Alba County Council, and submitted to the President of Romania, Parliament of Romania, and Government of Romania on Dec. 28, 2012 (Exh. C-794) at 5-6 (determining that “the real participation in the referendum exceeded 85% of the total number of electors actually living in those areas and who were not caught in the snows that day,” that “the areas which were most affected by the bad weather were the most favorable to mining,” and that “in normal conditions, the participation in the referendum could have easily reached around 60%, and the YES votes would have represented over 70%”).

¹¹⁶ Reply ¶ 175; Lorincz II ¶ 113. Further reflecting the local community’s support for the Project, Mayor Furdui, who openly and repeatedly advocated for implementation of the Project, was reelected in 2012 in a landslide with 71.29% of the vote; the former Mayor Virgil Narița, who also supported the Project, received 20.22% of the vote; and the leading anti-Project candidate, Alburnus Maior Vice President Ștefan Cosma, received only 2.35% of the vote. Tănase III ¶ 98.

¹¹⁷ Reply ¶ 175; Lorincz II ¶¶ 114-115. *See also* Tănase III ¶ 102.

¹¹⁸ Reply ¶ 175; Lorincz II ¶ 115; Tănase III ¶ 105.

¹¹⁹ Reply ¶ 175; Tănase III ¶ 105.

59. For these reasons, the evidence conclusively shows that RMGC obtained a social license. While the NDPs say nothing else in support of their baseless assertions to the contrary, they conclude this section of their Submission with an array of purported anecdotes to accuse RMGC of seeking to “subdue,” “silence,” and “intimidate” Project opponents.¹²⁰ These allegations are unsubstantiated, false, not relevant to any disputed issue in this arbitration, and clearly intended to malign Claimants and undermine their credibility with the Tribunal. Claimants respond briefly to each of these allegations below.

60. First, the NDPs assert that RMGC initiated a large-scale media campaign that sought to influence public opinion and was intended to “silence” Project opponents.¹²¹ In reality, French-Swiss activist Stephanie Roth, Alburnus Maior’s self-proclaimed “strategist,” began coordinating a sophisticated PR campaign against the Project in both the national and international media and on social media as early as 2002.¹²² Over the years, RMGC accordingly carried out its own media and PR campaigns to fight back against this anti-Project propaganda machine fueled by lies and misinformation and to present accurate information about the Project.¹²³ The record of this arbitration makes it abundantly clear that Alburnus Maior was not silenced by that campaign and that it still had full access to media, social media, the courts, and the streets.¹²⁴ In fact, when Professor Henisz conducted his first round of interviews in July

¹²⁰ Submission at 6-7.

¹²¹ Submission at 6.

¹²² Henisz ¶¶ 15-16; Thomson ¶ 88. *See also, e.g.*, Email from B. Marsh dated Sept. 18, 2002 attaching RMGC memo on Alburnus Maior (C-2001) at 4 (noting Alburnus Maior’s “national media coverage,” that it was “very visible on the Internet,” and that Ms. Roth had connections to “international media and organisations”).

¹²³ [REDACTED] *See also, e.g.*, Alina Pop, Roşia Montană: Social representations around an environmental controversy in Romania, 2014 (Thomson Exh. 2), at 7-8, 41-43 (explaining that Ms. Roth began coordinating a massive anti-Project campaign in 2002 using social media, internet forums, mailing lists, online broadcasts, websites, blogs, banners, posters, press releases, publicity spots, traditional media, and public demonstrations, and that RMGC “deemed it necessary to redirect their PR strategy, which until then had been mainly focused locally,” in order to “counteract[]” her activities).

¹²⁴ *See, e.g.*, Alburnus Maior Press Releases and Open Letters (Exhs. R-190, R-237, R-235, R-236, R-242, R-243, R-240, R-244, R-241, R-264); Alburnus Maior Pleadings in Romanian Court (Exhs. R-178, R-337, R-159, R-209, R-249, R-250).

2007, he observed that the public discourse for years “had been defined and dominated by the opposition.”¹²⁵

61. Second, the NDPs also wrongly claim RMGC “tried to silence the media” by bringing legal action against Ion Popescu, who published repeated false diatribes against the Project in the Romanian publication *Formula AS* that RMGC considered libelous.¹²⁶ While the court held that Mr. Popescu’s statements were opinions and thus protected by freedom of expression, it did not rule that RMGC’s claims were frivolous. Nor does filing one claim objecting to the false assertions of one “journalist” reflect an attempt to silence the media.¹²⁷

62. Third, the NDPs falsely claim Romania’s National Audiovisual Council decided in 2013 “to end the company’s ability to air advertisements on all media channels due to the misleading information it included in them.”¹²⁸ As Mr. Tănase discusses in response to the same assertion made by Respondent, the National Audiovisual Council and the Romanian Advertising Council both repeatedly found that RMGC’s advertisements were proper and not misleading, and neither council ever sanctioned RMGC or blocked it from advertising.¹²⁹ On the one occasion mentioned by the NDPs, the National Audiovisual Council directed the mining trade union – not

¹²⁵ Henisz ¶ 17. *See also* Henisz, Witold J. (2009) “Rosia Montana: Political and Social Risk Management in the Land of Dracula (B)” The Wharton School, University of Pennsylvania Case 27 (Thomson Exh. 20), at 5-6 (noting that in the early stages, Gabriel mainly opted to respond to media inquiries, whereas, according to former Gabriel Vice President John Aston, “The NGOs put together their version of the process, and the press bought it. . . . We could have paid for an ad campaign then. We could have run an information campaign then. Instead, only one side of the story appeared in the press.”).

¹²⁶ Submission at 6.

¹²⁷ The NDPs also claim the court “held that the Project . . . had not benefited from a public debate prior to its implementation.” Submission at 6. This claim is misleading because the Project was not implemented and because the court issued its decision in December 2004, before the EIA process began. As discussed more fully in Claimants’ submissions and summarized below, RMGC applied for the Environmental Permit in December 2004 (the same month as the court’s decision), prepared its EIA Report pursuant to Terms of Reference issued by the Ministry of Environment in May 2005, submitted its EIA Report in May 2006, and then participated in extensive public consultations in 14 locations in Romania and two in Hungary in July and August 2006. *See infra* § E.4; Memorial §§ IV.A, IV.B; Avram ¶¶ 31-52; Mihai §§ V.B, V.C.

¹²⁸ Submission at 6.

¹²⁹ Tănase III ¶ 114 n.327.

RMGC – to make certain changes to one series of commercials, and after the union made those changes, the commercials later re-aired without objection.¹³⁰

63. Fourth, the NDPs allege that RMGC “threatened the communications channels” of Alburnus Maior and the so-called “Save Roșia Montană” group by requesting a court to prohibit their use of the website rosiamontana.org, which RMGC considered was part of its intellectual property.¹³¹ It is absurd to suggest that RMGC “threatened” Alburnus Maior’s ability to communicate by asking a court to order Alburnus Maior to change the domain name of its then relatively new website.

64. Fifth, the NDPs also falsely claim RMGC harassed and intimidated Project opponents “through verbal aggression such as anonymous phone calls, live threats, and insults, and through physical violence from the locals and police force.”¹³² Claimants categorically deny these baseless accusations, which the NDPs make with reference to one unverified media article and “testimonies” that the Tribunal excluded in PO19.¹³³ RMGC did not threaten or physically attack Project opponents or ask anyone to do so on its behalf. Indeed, the only threats and violence for which there is evidence were perpetrated by activist extremists like the NDPs.¹³⁴

65. Sixth, the NDPs allege that RMGC’s former employee, Cătălin Hosu, “carried out a smear campaign” against protesters and Project opponents on his personal blog.¹³⁵ Mr. Hosu’s blog contains his own personal views, not those of RMGC.¹³⁶ The NDPs also fail to identify any statement Mr. Hosu made on his blog that they consider false or misleading.

66. Finally, the NDPs wrongly claim RMGC “attempted to silence” two architects from OPUS Architecture Studio Ltd. (“Opus”).¹³⁷ Contrary to the NDPs’ contention that Opus

¹³⁰ Tănase III ¶ 114 n.327.

¹³¹ Submission at 6.

¹³² Submission at 6.

¹³³ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75.1.b.

¹³⁴ Memorial ¶¶ 477, 502; [REDACTED].

¹³⁵ Submission at 6.

¹³⁶ Cătălin Hosu blog, *About the Blog*, catalinhosu.ro, last accessed Feb. 28, 2019 (Exh. C-2892) (stating that the blog “is not a company blog” and “is mine”).

¹³⁷ Submission at 7. *See also id.* at 15.

“drafted the management plan” on cultural heritage for the EIA Report,¹³⁸ RMGC retained the National History Museum of Romania (“NHMR”) to prepare the Cultural Heritage Management Plan for the EIA Report.¹³⁹ NHMR then subcontracted Opus to prepare a report for a discrete sub-section of that management plan relating to the Roșia Montană historical center.¹⁴⁰ The team of EIA-certified experts edited Opus’s report in accordance with their professional judgments and in order to conform the final Cultural Heritage Management Plan to the requirements set by the Ministry of Environment in its Terms of Reference for the EIA Report, and RMGC transparently submitted a comparison of those minor changes to the Ministry of Environment as part of its responses to the questions and comments received during the public consultations.¹⁴¹

D. The NDPs’ Arguments Regarding Alleged Human Rights Violations Are Inadmissible and Without Merit

67. The NDPs argue that, in acquiring surface rights, Claimants violated the local community’s human rights, in particular the purported right to adequate housing and living conditions.¹⁴² Their arguments are both inadmissible under PO19 and utterly meritless. As discussed below and more fully in Claimants’ submissions, particularly in the witness statements of Ms. Lorincz, RMGC acquired surface rights on a willing seller/willing buyer basis and in accordance with the recommendations of highly-qualified independent experts and Romanian and international standards and guidelines.¹⁴³

68. The NDPs first argue with reference to an arbitral decision and various international human rights instruments that human rights are recognized in international law as

¹³⁸ Submission at 7.

¹³⁹ 2007 Update to EIA Report, Public Consultations Vol. 64 (Exh. C-349) at 23. The Ministry of Culture previously had empowered NHMR to organize the team of expert Romanian and international specialists that conducted the Alburnus Maior National Research Program of archaeological research from 2001-2006. Reply ¶¶ 238-240.

¹⁴⁰ 2007 Update to EIA Report, Public Consultations Vol. 64 (Exh. C-349) at 23-24.

¹⁴¹ 2007 Update to EIA Report, Public Consultations Vol. 64 (Exh. C-349) at 22-40.

¹⁴² Submission at 7-10.

¹⁴³ Memorial ¶¶ 170-184; Reply ¶¶ 651-666; Lorincz ¶¶ 21-58; Lorincz II ¶¶ 121-140.

binding on public and private parties.¹⁴⁴ This legal argument exceeds the scope of the NDPs' alleged expertise and was excluded by the Tribunal in PO19.¹⁴⁵

69. The NDPs attempt to conjure a human rights case (inspired by ECCHR, which is not an NDP in this case) to make false accusations about Claimants' development of the Project. There is, however, no basis whatsoever for such claims.

70. Contrary to the numerous falsehoods peddled by the NDPs, RMGC at all relevant times acted in accordance with applicable standards based on the advice and guidance of qualified independent experts and consultations with the local community.¹⁴⁶ RMGC's purchases of properties were made on a willing seller/willing buyer basis and set out in contracts concluded with local property owners.¹⁴⁷ There is not a single case of an involuntary sale and, in fact, the sales took place at above-market prices.¹⁴⁸ Studies have confirmed that families in the Project-impacted area improved their standard of living by selling their properties to RMGC.¹⁴⁹ RMGC also continuously monitored the residents that resettled in Recea and relocated elsewhere in Romania, and both groups reported high levels of satisfaction.¹⁵⁰

¹⁴⁴ Submission at 7 (referencing *Urbaser v. Argentina*, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social, and Cultural Rights to support their arguments).

¹⁴⁵ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

¹⁴⁶ Lorincz ¶¶ 15-32.

¹⁴⁷ Lorincz ¶¶ 21-26; Lorincz II ¶¶ 25-33, 121; List of RMGC Contracts for Acquisition of Private Property Surface Rights (Exh. C-2750).

¹⁴⁸ Memorial ¶ 178.

¹⁴⁹ See, e.g., University 'December 1, 1918' of Alba Iulia – Economic and Social Impact of the Roșia Montană Project, dated 2007 (Exh. C-749) at 11, 82; Resettlement and Relocation Action Plan Vol. 2 (Exh. C-464) Annex 26, § 26.8.

¹⁵⁰ Lorincz II ¶¶ 79-83. As Ms. Lorincz describes, RMGC made it a priority to offer preferential employment to residents of the Project-impacted area. Lorincz ¶ 60; Lorincz II ¶ 48. The NDPs wrongly suggest, relying on "testimonies" excluded by the Tribunal in PO19, that RMGC's offer was not always honored. Submission at 8. See also Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 66, 75(b) (ordering that "references to or reliances on testimonies are excluded"). The NDPs' suggestion is false. RMGC hired as many people as it could in the early phases of the Project and brought hundreds of jobs into the surrounding community, even after the suspension of the EIA procedure. Lorincz ¶ 60; Lorincz II ¶¶ 50, n.109, 80, 88. Had the Project been permitted to move forward, the local communities would have benefitted from a significant number of jobs created in the Roșia Montană area. See Lorincz ¶ 70; University 'December 1, 1918' of Alba Iulia – Economic and Social Impact of the Roșia Montană Project dated 2007 (Exh. C-749) at 87-90, 128.

71. The NDPs also contend that Claimants “contraven[ed] . . . international norms embodied in the International Finance Corporation’s (IFC) Performance Standard 5” by “working to acquire the surface rights well in advance of the application for the environmental permit or corresponding impact assessments.”¹⁵¹ Reference to this Performance Standard is both inadmissible and irrelevant. To the extent the NDPs argue that this finance guideline forms part of Claimants’ legal obligations, this argument exceeds the scope of the NDPs’ alleged expertise and was excluded by the Tribunal in PO19.¹⁵²

72. In any case, Claimants did not begin relocation and resettlement earlier than recommended by independent expert consultants guided by applicable international standards. RMGC developed its resettlement strategy in parallel with its impact assessment and other Project development activities.¹⁵³ When the property acquisition process started in 2002, RMGC’s independent experts already had been studying for years the socio-economic and environmental baseline conditions that would form the basis of the EIA Report, the Ministry of Culture had initiated the Alburnus Maior National Research Program of archaeological research for the Project in 2001, and RMGC had published in 2001 the first version of the Resettlement and Relocation Action Plan (“RRAP”) prepared by Planning Alliance, which set out RMGC’s resettlement strategy.¹⁵⁴ Moreover, as discussed by Ms. Lorincz, RMGC continued to assess its approach to acquiring properties and retained leading specialists such as Kerry Connor (an international social development expert who co-authored the IFC Resettlement Manual) to ensure it remained fair and responsive to the needs of the community.¹⁵⁵

73. Even though the majority of properties were acquired or remained to be acquired after RMGC applied for the Environmental Permit (an inconvenient fact the NDPs simply ignore), RMGC agreed to acquire some properties in the early stages of the Project at the request

¹⁵¹ Submission at 7.

¹⁵² Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

¹⁵³ Lorincz II ¶ 135.

¹⁵⁴ Memorial ¶ 144-154, 171-179; Lorincz II ¶ 135; Gligor ¶¶ 25-34. *See also* Resettlement Action Plan dated Apr. 2001 (Thomson Exh. 22).

¹⁵⁵ Lorincz ¶¶ 23-26; Lorincz II ¶ 33.

of members of the local community.¹⁵⁶ A survey conducted by representatives of RMGC and the Roşia Montană Mayor's Office in 2001 shows that 88% of the households surveyed agreed with the negotiations to sell their properties.¹⁵⁷ As discussed by Ms. Lorincz, local community leaders urged RMGC to negotiate property acquisitions privately with each affected household. RMGC therefore began meeting individually with hundreds of residents to negotiate with each household directly.¹⁵⁸ The IFC Performance Standard 5 Guidance Note confirms that “[i]ndividuals and communities directly affected by resettlement should have the opportunity to participate in the negotiation of . . . timing of resettlement activities.”¹⁵⁹ Thus, RMGC's approach, which was responsive to the preferences of the local community, was fully in line with IFC Performance Standard 5.

74. The NDPs next rely on a combination of their own anti-Project propaganda and so-called “testimonies” excluded by PO19 to make various baseless assertions that RMGC forced the sale of properties by “using various tactics to pressure residents to move.”¹⁶⁰ None of these assertions is true.

¹⁵⁶ Lorincz II ¶¶ 28, 135. Comments from the local residents' visit to the “model house” designed for the resettlement sites show the local community's eagerness to move from the beginning. *See* Resettlement Action Plan dated Apr. 2001 (Thomson Exh. 22) Attachment 9: Comments from Visitors to Casa Model (see, for example, ██████████, Nanului Valley - Everything seems to be a dream. She prays to be included in this reality.”; ██████████, Piata Street - Everything is beautiful, I hope that one day I'll have a house like this one.”; ██████████ “It is a dream. God give you health, so you can build for us because we deserve that.”; ██████████ Rosia Montana - Alba County.” “It is extraordinary! A world of dreams! We'll be very happy if we can get a house of our dreams. It seems to be unreal.”; “Com. Rosia Montana, Alba. ██████████. We've been impressed of this beautiful house. We have never dreamed to have something like that in this village which was forgotten about the rest of the world. We'd be delighted to have such a modern house. Thank you for your coming here and for your trying to modernize our lives. All our respect, ██████████.”; ██████████ - Everything is very beautiful. She wants parquet in the rooms and she is dreaming to be the first one who will be moved in a house like this. She visits ‘Model House’ very often.”; ██████████ - He likes everything and this investment makes him to hope for a better life for his family. He agrees with relocation of the village and he hopes that he will be relocated first.”; ██████████ - Very beautiful. He is impatient to be moved.”).

¹⁵⁷ Resettlement Action Plan dated Apr. 2001 (Thomson Exh. 22), Attachment 15. *See also* Lorincz II ¶ 13.

¹⁵⁸ Lorincz II ¶ 28.

¹⁵⁹ IFC Guidance Note 5: Land Acquisition and Involuntary Resettlement dated July 31, 2007 (Exh. C-2895) at G16.

¹⁶⁰ Submission at 8.

75. First, the NDPs repeat like a mantra their claim that RMGC pressured residents to move by having most of Roșia Montană rezoned into an industrial area.¹⁶¹ This claim is baseless for the reasons already stated above.¹⁶² Because it is so clear that the zoning treatment of the mining area is determined by and a consequence of the State’s issuance of a mining license, and not by the whim or wish of the license holder, one must seriously question the *bona fides* and motivation of those propagating this myth contemporaneously and in the context of this arbitration.

76. Relying on their own purported case study, which in turn refers to a media article no longer available at the link referenced,¹⁶³ the NDPs next contend that Gabriel’s former CEO Alan Hill presented the community with a choice between “forced unemployment or forced expropriation.”¹⁶⁴ The dubious provenance of this attributed statement aside, RMGC strongly believed the Project would create new jobs during Project construction and operation that would not otherwise be available in Roșia Montană, and that it would pave the way for the sustainable development of the area.¹⁶⁵ RMGC did not acquire properties by presenting owners with the Hobson’s choice the NDPs claim, but as noted above did so on a negotiated willing seller/willing buyer basis.

77. The NDPs next assert that RMGC sought to “undermine the peace and security of Roșia Montană” by purchasing properties in the historical center and then not maintaining them, as well as by demolishing homes and leaving debris unattended.¹⁶⁶ This assertion also is not true. RMGC undertook to revitalize the historic center of Roșia Montană by maintaining and restoring hundreds of buildings within the historic protected area.¹⁶⁷

¹⁶¹ Submission at 8.

¹⁶² See *supra* § B; *id.* § C.

¹⁶³ Submission at 8, n.49.

¹⁶⁴ Submission at 8.

¹⁶⁵ Memorial ¶¶ 11, 85, 349, 462.

¹⁶⁶ Submission at 8.

¹⁶⁷ Lorincz ¶ 64 (showing before and after photos of restored buildings in the Roșia Montană historical center); Gligor ¶¶ 55, 58-60, Annex A, Slides 6-9 (same).

78. The NDPs' related assertion that RMGC "helped" certain properties deteriorate that were "listed (or ha[d] the potential to be listed) as historical monuments of national importance . . . in order to justify their de-listing/de-classification" is both speculative and wrong.¹⁶⁸ To Claimants' knowledge, the only house in the historical area "declassified" as an historical monument was not owned by RMGC and was included only in the 1992 Draft List of Historical Monuments ("LHM"), which was without legal effect,¹⁶⁹ but was not in the 2004 LHM or any subsequent updates to the LHM.¹⁷⁰ Moreover, RMGC's acquisition of houses in the historical center was supported by the local community,¹⁷¹ and any demolitions were made in order to ensure access to the land necessary to implement the Project and with the approval of Romanian authorities, including the Ministry of Culture.¹⁷² The NDPs' own purported evidence acknowledges that "the demolitions were authorized by town halls."¹⁷³ If any property had the "potential" to be classified (i.e., was undergoing a classification procedure), the competent authorities would not have approved its demolition.

79. Finally, the NDPs argue that RMGC "took steps to attack pillars of the community" such as teachers, doctors, and clergy, which "undermin[ed] the social fabric" of the

¹⁶⁸ Submission at 8. The NDPs incorrectly assert that the classified houses in Roşia Montană were "historical monuments of national importance." Submission at 8. This characterization is incorrect. Only archaeological monuments are considered historical monuments of national interest (A class); the classified houses in Roşia Montană were of local interest (B class). See Schiau ¶¶ 35, 222.

¹⁶⁹ Memorial ¶ 158(d), n.236.

¹⁷⁰ Draft 1992 List of Historical Monuments (Exh. C-1273) (including house number 203 in draft list of historical monuments); 2004 List of Historical Monuments (Exh. C-1265) (not including house number 203 in list of historical monuments); 2010 List of Historical Monuments (Exh. C-1266) (same); 2015 List of Historical Monuments (Exh. C-1267) (same). See also ICOMOS Report for the World Heritage Committee 42nd Session, Evaluations of Nominations of Cultural and Mixed Properties, Working Document No. WHC-18/42.COM/INF.8B1 dated Apr. 2018 (Exh. C-1919) (observing that the "only houses that have been demolished in the historic centre of the town (the protected area) were in very poor condition, essentially ruins").

¹⁷¹ See Memorandum signed by 135 Roşia Montană residents and sent to the Ministry of Culture and Religious Affairs dated Oct. 18, 2002 (Exh. C-2732) (asking for support in the process of selling houses classified as historical monuments and noting the poor condition of these buildings). See also Lorincz ¶ 49 (noting that, of the 794 households acquired by RMGC, "143 households already had left the area earlier and their properties were uninhabited when sold to RMGC, reflecting the general depopulation trend driven by economic migration").

¹⁷² Moreover, any debris left over would have occurred during the normal course of the demolition process and only for a short period of time, and any stripping of materials would have occurred as part of RMGC's agreement with owners to recover functional elements of the properties for reuse.

¹⁷³ Submission at 8, n.51 (attorney translation).

community and led to the depopulation of Roșia Montană.¹⁷⁴ These false allegations rest almost entirely on so-called “testimonies” proffered by the NDPs, which the Tribunal excluded in PO19, and which are nothing more than bare assertions in any event.¹⁷⁵ Contrary to the NDPs’ claims, RMGC in fact worked with the local community, including the clergy, community leaders, and local officials, to develop social, economic, and sustainability policies, and to enhance the social fabric of the community, including through renovating and/or supporting schools and hospitals.¹⁷⁶ RMGC also invested significantly in partnerships and sponsorships of job training and education through its Community Sustainable Development Program.¹⁷⁷ Even Respondent’s social license expert, Dr. Thomson, acknowledges that RMGC’s Community Sustainable Development Program “include[d] extensive support for the local communities and ongoing engagement with the population.”¹⁷⁸

80. The NDPs’ attempt to blame Claimants for the depopulation of Roșia Montană also fails. Decades before RMGC ever bought its first property in Roșia Montană or Claimants even considered investing in Romania, residents of the Project area and the surrounding Apuseni Mountains were migrating out of the region, resulting in a negative depopulation trend that was accelerated by the State’s closure of uneconomical and heavily subsidized mining operations.¹⁷⁹

¹⁷⁴ Submission at 8-9.

¹⁷⁵ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

¹⁷⁶ Lorincz ¶¶ 15-43, 61; Lorincz II ¶¶ 6, n.12, 64, 88. *See also* Open Letter from 19 Mayors of the local community to Romanian authorities dated Mar. 31, 2010 (Exh. C-1491) (noting that RMGC “helped schools and hospitals in the area and provided support to elderly, patients and those in need” and “allocated funds for the traditional manifestations specific to the area and never refused when asked for help”).

¹⁷⁷ Lorincz ¶¶ 10, 59-71, 82 (discussing numerous programs designed to improve the long-term living standards of those in the community, including education, job training, community life, and providing assistance to the elderly); Lorincz II ¶¶ 51-60 (explaining that RMGC sponsored social and cultural programs aimed at preserving community traditions and values and strengthening cultural identity).

¹⁷⁸ Thomson ¶¶ 62, 64. The NDPs wrongly assert that the purchase of property “gradually slowed due to members of AM [Alburnus Maior] and the Orthodox, Catholic, Protestant, and Unitarian Churches, which were large land and property owners, refusing to surrender their property to the company.” Submission at 9. The NDPs do not offer any support for this statement. As described above, RMGC announced in December 2007 that it would suspend its land acquisition program in view of the Ministry of Environment’s unlawful suspension of the EIA process. *See supra* § B. Moreover, [REDACTED], RMGC had reached agreement with local church authorities to acquire land rights, “reflecting the evident and strong wishes of the local congregations for the Project to proceed.” [REDACTED]

¹⁷⁹ *See, e.g.*, Research Institute on Quality of Life, Socio-Economic Baseline Report dated 2002 (Exh. C-726) at 12 (describing depopulation of Roșia Montană during the inter-census period from 1992-2002 and observing that “this negative demographic trend has affected Roșia Montană locality for the whole 20th century”); Roșia

Indeed, this depopulation tracks a nation-wide trend that has affected Romania since 1990.¹⁸⁰ Far from causing this depopulation, the Project was and still is the only realistic solution to create new jobs and revitalize the area now and for the future, which could have reversed this historic trend of depopulation plaguing the area.¹⁸¹

E. RMGC Complied with the Applicable Laws and Met the Legal Requirements to Obtain the Environmental Permit and Move Forward with Project Implementation

81. Under a heading asserting, without any basis, that RMGC “failed to comply with domestic and EU laws,” the NDPs argue that the Canada BIT and “[i]nternational investment law jurisprudence” require compliance with applicable laws, prohibit “any unlawful conduct such as fraud, corruption, or deceitful conduct,” and discourage States from “relaxing domestic health, safety, or environmental measures.”¹⁸² The NDPs’ legal arguments about the BIT and other investor-State decisions must be disregarded as they clearly exceed the scope of the NDPs’ alleged expertise and were excluded by PO19.¹⁸³

Montană Ethnological Study, *Anthropos*, *Alburnus Maior* Series dated 2004 (Exh. C-2525) at 23 (observing that “the number of inhabitants drastically dropped” in 1956 after nationalization of the mining industry and that the “depopulation of settlements is a process that still goes on”); The Independent Group for Monitoring the Cultural Heritage at Roșia Montană, *The Cultural Heritage at Roșia Montană – Current Situation and Real Perspectives* dated 2011 (Exh. C-587) at 99 (noting that the “postrevolutionary period was marked by the collapse of the extraction industry, which caused at Roșia Montană a massive depopulation”); Government Note from Minister Delegate of Infrastructure Projects D. Șova dated Mar. 6, 2013 (Exh. C-1903) (“As mines have been shut down or downsized, the entire area entered an unprecedented economic and social decline, marked by an alarming rate of unemployment, declining living standards, poverty and depopulation.”); Transcript of Special Commission hearing dated Sept. 23, 2013 (Exh. C-929) (Minister of Culture Daniel Barbu: “The [Roșia Montană] area, as you know, is depopulated and it was endemically depopulated long before this public debate appeared at the beginning of the 2000s.”). *See also* Lorincz ¶ 8; Lorincz II ¶ 85.

¹⁸⁰ *See* Community Sustainable Development Programme (Exh. C-221) at 39; World Bank, *Romania Systematic Country Diagnostic Background Note on Migration* dated June 2018 (Exh C-2896) at 7.

¹⁸¹ *See, e.g.*, Government Note from Minister Delegate of Infrastructure Projects D. Șova dated Mar. 6, 2013 (Exh. C-1903) (finding that Roșia Montană was “suffering from constant depopulation” and that the Project was “the only solution for revival”); Victor Ponta’s statements regarding Roșia Montană, B1 TV, dated Sept. 15, 2013 (Exh. C-1516) at 6-7 (Prime Minister Victor Ponta: “So without the mining activities, those people will probably end just like the other mining areas did with depopulation and bankruptcy, some way or the other.”).

¹⁸² Submission at 10.

¹⁸³ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

82. Moreover, the NDPs' insinuations of fraud, corruption, and illegality are baseless and defamatory; indeed the NDPs' argument has no substance and they fail even to describe any actual alleged violation of law. Rather, the NDPs contend that RMGC "never fulfilled the legal conditions" relating to various aspects of the Project and, consequently, "never obtained the permits necessary to realize the Project."¹⁸⁴ Not only are such contentions excluded by PO19, but for the reasons set forth below, they are groundless in any event.

1. The Local Authorities Were Obligated to Zone the Area for Mining, Which, However, Became Legally Impossible With the State's Adoption of the 2015 LHM and Its UNESCO Application

83. The NDPs assert that RMGC "never fulfilled the legal conditions to successfully conclude the urban zoning and planning procedures."¹⁸⁵ The NDPs do not have – or claim to have – any expertise regarding the "legal conditions" for urbanism plans and do not add anything on this subject, but instead merely repeat and cite to Respondent's description of the applicable legal framework.¹⁸⁶ The NDPs' submissions on the "legal conditions" relating to the urbanism plans therefore were excluded by PO19.¹⁸⁷

84. In any event, the NDPs' assertion that RMGC failed to complete zoning procedures is misguided and their description of the legal status of the urbanism plans in the area is incomplete, misleading, and false as demonstrated by the following several observations.

85. First, the NDPs wrongly describe the urbanism plans as "permits" that RMGC had to obtain.¹⁸⁸ As explained above and in the expert legal opinions of Professor Podaru and Professor Bîrsan, once the Government issued the Roşia Montană License, the local authorities were required by law to update the urbanism plans for the industrial area within the License perimeter to accommodate the licensed activities.¹⁸⁹ As the Government itself acknowledged,

¹⁸⁴ Submission at 10-16.

¹⁸⁵ Submission at 11.

¹⁸⁶ Submission at 11 n.68 (citing Counter-Memorial ¶¶ 58-69 for "the applicable laws to obtain a PUG, PUZ and PUD").

¹⁸⁷ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

¹⁸⁸ Submission at 10-11.

¹⁸⁹ *Supra* ¶¶ 26-27, 47; Reply ¶ 655; Podaru § III.B; Bîrsan II § III.A.1.

the legal responsibility for developing and adopting the urbanism plans belonged solely to the competent local authorities, not to RMGC.¹⁹⁰

86. Second, while urbanism plans updated to take account of the License would have to be in place before construction permits could be issued, updated urbanism plans were not a prerequisite for the Government to issue the Environmental Permit for the Project.¹⁹¹

87. Third, the NDPs purport to describe litigation relating to urbanism plans adopted for Roșia Montană; however, not only is their description misleading and incorrect, it also focuses on issues that are demonstrably irrelevant to the dispute presented in this arbitration. The NDPs refer to the fact that in July 2002 the Roșia Montană Local Council approved both a general urbanism plan (PUG) for Roșia Montană and the zonal urbanism plan (PUZ) for the industrial area, both by a vote of 10-1.¹⁹² While the NDPs state that two members of the Local Council had relatives employed by RMGC,¹⁹³ the Government did not consider that the Local Council members had a conflict of interest¹⁹⁴ and, in any event, the vote was nearly unanimous and took place following public consultations that demonstrated strong community support for both the Project and the urbanism plans.¹⁹⁵

¹⁹⁰ Podaru ¶¶ 183, 192-193; Bîrsan II ¶¶ 39-40, 44(ii). *See also* Roșia Montană Local Council Statement of Defense dated Sept. 4, 2006 (Exh. C-2288) at 2 (acknowledging that “local authorities are obligated to amend and/or update existing land management plans and urbanism plans, so as to allow the execution of all operations necessary to conduct mining activities,” and have no discretion in this regard); Ministry of Environment Written Conclusions to the Alba Tribunal dated June 6, 2007 (Exh. C-2414) at 3 (confirming the “obligation of the local authorities to amend the land management plans within 90 days from receipt of the notification regarding the entry into force of the exploitation licenses, with a view to allow the execution of all operations necessary to carrying out the mining activity granted under concession”).

¹⁹¹ Reply ¶¶ 79-80, 645-646; Mihai II § V.D; Podaru § II.B.3.

¹⁹² Submission at 11. *See also* Lorincz II ¶ 34; Roșia Montană Local Council Decision No. 45 dated July 19, 2002 (Exh. C-1414); Roșia Montană Local Council Decision No. 46 dated July 19, 2002 (Exh. C-1419); Alba Court of Appeal Judgment dated Apr. 4, 2012 (Exh. R-207) at 19 (noting the vote was 10-1 in favor). The Abrud Local Council also approved the PUZ for the industrial area and a PUG for Abrud, by a vote of 12-2 with 1 abstention. *See* Lorincz II ¶ 34; Abrud Local Council Decision No. 43/2002 dated July 18, 2002 (Exh. C-1418); Abrud Local Council Meeting Minutes dated July 18, 2002 (Exh. C-2894) at 2.

¹⁹³ Submission at 11.

¹⁹⁴ *See, e.g.*, Ministry of Environment Written Conclusions to the Alba Tribunal dated June 6, 2007 (Exh. C-2414) at 3-5 (observing that it was “absurd” to contend the council members had a conflict of interest).

¹⁹⁵ Lorincz II ¶¶ 34-44 (describing public consultations and support for the PUGs and PUZ).

88. Contrary to the NDPs' description, a Romanian court did not "void" the Local Council's 2002 decisions in January 2008.¹⁹⁶ As Professor Podaru explains, the court's holding was limited in scope and effect.¹⁹⁷ Nevertheless, in 2009 the Local Council voted to re-approve the same PUG and PUZ by another vote of 9-1, with the allegedly conflicted members abstaining.¹⁹⁸ Thus, in fact, the PUG and the PUZ that were approved in 2002 remained legally valid and in effect until after Claimants commenced this arbitration.¹⁹⁹

89. The NDPs incorrectly assert that, in annulling the Local Council's 2009 decision to re-approve the 2002 PUG and PUZ, the court had found that RMGC "did not provide the necessary documentation to justify it and, in particular, did not take into account legislative changes since 2002."²⁰⁰ In fact, the court held that the Local Council's July 2002 decisions approving the PUG and PUZ remained valid and that the Local Council lacked a legal basis to re-confirm those decisions in 2009, but instead should have issued new urbanism plans based on new procedures implemented since 2002 that required, among other things, a Strategic Environmental Assessment ("SEA") endorsement.²⁰¹

90. In parallel with the events described above and in view of changes to the Project reflected in the Feasibility Study and the EIA Report submitted in 2006, an updated 2006 PUG and PUZ were prepared and the local authorities began administering an SEA procedure.²⁰² The SEA procedure is the process for obtaining an environmental endorsement of the urbanism plans. The SEA procedure required the local and regional Government authorities to review and assess an expert report prepared by an independent expert authorized by the Ministry of Environment, to organize public consultations, which was done in Roşia Montană, Bucium, Abrud, and

¹⁹⁶ Submission at 11.

¹⁹⁷ Podaru ¶¶ 243 & nn.394, 396-397 (explaining that the 2008 court decision held that the 2002 Local Council decisions were invalid but only in the context of the litigation in which the objection to the 2002 decisions was raised and did not operate to annul the 2002 decisions).

¹⁹⁸ Podaru ¶ 243; Roşia Montană Local Council Decision No. 1/2009 dated Jan. 29, 2009 (Exh. C-2486).

¹⁹⁹ Podaru ¶ 243 (describing that in May 2016 the Cluj Court of Appeal annulled the Local Council decisions authorizing the 2002 PUG and PUZ with the result that as of May 2016 the local authorities are required to adopt new urbanism plans for the area). *See also* Tănase III ¶ 78.

²⁰⁰ Submission at 11.

²⁰¹ Podaru ¶¶ 243, 256; Alba Court of Appeal Judgment dated Apr. 4, 2012 (Exh. R-207) at 22-25.

²⁰² Memorial ¶¶ 187, 306-307; Podaru ¶¶ 133, 244-252, 256-259. *See also* Avram ¶ 78.

Câmpeni, and to hold transboundary consultations with Hungary.²⁰³ After completing this process in March 2011, the competent authority, the Sibiu EPA, issued the SEA endorsement for the 2006 PUZ industrial area.²⁰⁴

91. After the commencement of this arbitration, in March 2016, the SEA endorsement was annulled. The NDPs wrongly assert that was because RMGC failed to “comply with the domestic law.”²⁰⁵ In reality, the court annulled the SEA endorsement because it concluded that the competent authority, the Sibiu EPA, failed to take account of the historical monuments in the area as described in the 2010 LHM.²⁰⁶ As Professor Podaru explains, however, the culture authorities responsible for the LHM had issued their endorsement of the SEA in April 2010, including its description of the historical monuments in the area, and further corresponded with the environmental authorities regarding the SEA without any indication that the authorities should take account of changes to the listed historical monuments.²⁰⁷ As Professor Podaru concludes, it is evident that the culture authorities did not initially consider that the 2010 LHM introduced material changes to the description of the historical monuments in the area, but rather only took that revisionist position for the first time in January 2015 following the political rejection of the Roșia Montană Project.²⁰⁸

92. Indeed, the competent authorities within the Ministry of Culture, the Alba County Culture Directorate and the National Institute of Heritage (“NIH”), previously had admitted repeatedly that the 2010 LHM contained errors and requested to correct them.²⁰⁹ It was not until January 2015, however, when, in a blatant about-face reflecting the Government’s political rejection of the Project, the NIH introduced the argument in court proceedings that the 2010

²⁰³ Memorial ¶ 306; Avram ¶¶ 78-84. *See also* Podaru ¶ 257.

²⁰⁴ Memorial ¶ 307; Avram ¶ 84 (observing that the SEA procedure lasted nearly five years, which was far longer than it should have in view of what is typical in similar industrial projects). *See also* Podaru ¶¶ 258-259 (observing that “[t]he SEA Procedure conducted in respect of the 2006 PUZ was a lengthy process that required more than 4 years to be completed, principally to accommodate public consultations and a transboundary procedure”).

²⁰⁵ Submission at 11.

²⁰⁶ *See* Podaru ¶¶ 269, 274.

²⁰⁷ Podaru ¶¶ 276-279.

²⁰⁸ Podaru ¶¶ 279, 291-293. *See also* Reply ¶ 646 n.1237; *id.* § V.B.3; *infra* § E.3.

²⁰⁹ Reply ¶¶ 260-261; Podaru ¶¶ 280-287, 290.

LHM did not contain errors but had been issued to correct the purportedly “abusive” 2004 LHM.²¹⁰ The courts accepted the NIH’s bad faith submission ruling to uphold the 2010 LHM and thereafter to annul the SEA endorsement of the 2006 PUZ on the same basis.²¹¹

93. The fact that in May 2016 the Local Council decisions adopting the 2002 PUG and PUZ were annulled and that in March 2016 the SEA endorsement of the 2006 PUZ for Roșia Montană was annulled due to a failure to take account of the listed historical monuments means that it remains for the local authorities to adopt new urbanism plans.²¹²

94. As Professor Podaru explains, however, once the Ministry of Culture and the NIH took the position in January 2015 that the 2010 LHM was correct notwithstanding that it stood contrary to the Ministry of Culture’s prior archaeological research and discharge decisions, issued the 2015 LHM listing the entirety of Roșia Montană as an historical monument, and the State applied to list the Roșia Montană “mining cultural landscape” as a UNESCO World Heritage Site, it became legally impossible for the local authorities to approve any urbanism plan that would be consistent with implementation of the Project.²¹³

95. Thus, it is clear that the litigation that delayed adoption of urbanism plans in the area of the Project, which the NDPs describe inaccurately, was due mostly to the bad faith conduct of the Ministry of Culture and the NIH in relation to the 2010 LHM,²¹⁴ and in any event became entirely moot when in January 2015 the State made any zoning for the Project legally impossible.

²¹⁰ Reply ¶¶ 263-268; Podaru ¶¶ 288-313.

²¹¹ Reply § V.B.4; Podaru ¶¶ 267-269, 292-293, 298-299, 328.

²¹² See Podaru ¶¶ 243, 269, 274.

²¹³ Reply § V.B; *id.* ¶ 647; Podaru § IV.C.

²¹⁴ See Reply §§ V.B.1-V.B.3.

2. An Urbanism Certificate Was Not Needed to Continue the EIA Procedure Once Commenced or to Issue the Environmental Permit

96. The NDPs argue incorrectly that it is “necessary” to maintain a valid urbanism certificate throughout the EIA procedure.²¹⁵ Here again, the NDPs do not have – or claim to have – any expertise on the legislative framework relating either to urbanism certificates or the EIA procedure and merely repeat and cite to Respondent’s description of that framework.²¹⁶ Thus, these legal arguments were excluded by PO19.²¹⁷ In any event, the NDPs’ several arguments on this subject are incorrect as detailed below.

97. Professor Mihai and Professor Podaru cogently demonstrate – and the Government’s Inter-Ministerial Commission affirmed in March 2013 – that an urbanism certificate is not required throughout the EIA procedure or to obtain the Environmental Permit.²¹⁸ An urbanism certificate is an informative document issued by the local authorities that describes the steps needed to obtain a construction permit in a given area in view of the urbanism rules and regulations in force.²¹⁹

98. Referring to the suspension of the EIA procedure from 2007-2010, the NDPs argue that RMGC’s “inability to obtain a valid UC” led to a *de jure* suspension of the EIA procedure,²²⁰ and that RMGC “failed to submit the necessary documentation to allow for the continuation of the process.”²²¹ As noted, this legal argument is inadmissible, and is wrong in any event.

²¹⁵ Submission at 11, 15.

²¹⁶ Submission at 11 n.74 (citing to Counter-Memorial ¶¶ 70-77 “[f]or legal framework applying to the urbanism certificate”).

²¹⁷ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

²¹⁸ Memorial ¶ 263; Reply ¶ 645; Mihai § VII.C.1; Mihai II § V.C; Podaru § II.B.1. *See also* Tănase III ¶ 74.c, 84 n.262; Final Informative Note on the Activity of the Inter-Ministerial Working Group Convened for the Roșia Montană mining project dated Mar. 26, 2013 (Exh. C-2162) at 7 (Inter-Ministerial Commission determining that “the maintaining of a valid urbanism certificate for the entire duration of the procedure is not necessary for conducting the [EIA] procedure”).

²¹⁹ *See* Memorial ¶ 263; Mihai ¶ 312; Podaru ¶¶ 59-60, 67.

²²⁰ Submission at 15.

²²¹ Submission at 11.

99. As the record shows, the Minister of Environment in 2007, Attila Korodi, was a leader of the influential minority political party of ethnic Hungarians, UDMR, which opposed the Project consistent with Hungary's views.²²² As Minister of Environment in 2007-2008, 2012, and 2014, Mr. Korodi acted repeatedly to block the Project.²²³ In early 2007, Minister Korodi openly called upon NGOs to lobby for a legislative ban on cyanide use for gold and silver mining projects, which was designed to block the Project and which NAMR opposed and Parliament rejected.²²⁴ When shortly thereafter the urbanism certificate issued to RMGC (UC 78/2006) was suspended by a court, the Ministry of Environment, led by Minister Korodi, notified RMGC that the EIA procedure therefore would be suspended.²²⁵

100. RMGC objected, but promptly submitted a new urbanism certificate (UC 105/2007) issued by the local authorities, *i.e.*, the Alba County Council.²²⁶ Minister Korodi however refused to restart the EIA procedure and publicly announced its suspension, claiming that UC 105/2007 was itself suspended *ipso jure* because it allegedly had the same content as UC 78/2006, which had been suspended by court decision.²²⁷ In so doing, Minister Korodi purported to apply retroactively a new legislative amendment that took effect after UC 105/2007 had been issued and to arrogate to himself the authority to pronounce that an act of the Alba County Council was invalid despite the absence of any court ruling to that effect.²²⁸

101. RMGC therefore filed a complaint against the Ministry of Environment, Minister Korodi, and State Secretary Silviu Stoica, requesting the resumption of the EIA procedure and an

²²² Memorial ¶ 258; Tănase II ¶¶ 23-24; Avram ¶¶ 55-57.

²²³ Memorial ¶¶ 257-279, 386, 417, 522-534; Reply ¶¶ 52 n.107, 73, 216-230, 576 n.1117.

²²⁴ Memorial ¶¶ 259-261.

²²⁵ Memorial ¶ 262; Mihai ¶ 309.

²²⁶ Memorial ¶ 264; Letter from Gabriel and RMGC to Ministry of Environment dated July 30, 2007 enclosing Urbanism Certificate No. 105/2007 dated July 27, 2007 (Exh. C-1764); Mihai ¶ 317.

²²⁷ Memorial ¶¶ 266-268; Mihai ¶¶ 322-323.

²²⁸ Memorial ¶ 269; Mihai § VII.C.2; Mihai II § V.C.4. *See also* Podaru ¶¶ 99-104, 118.2.c. Notably, while suspending the EIA procedure without legal basis, at the same time, Minister Korodi also unlawfully blocked the issuance of Dam Safety Permits to RMGC even though documents produced by Respondent show the Ministry of Environment's legal department advised him he had no basis to do so. Reply ¶¶ 51 n.107, 572; [REDACTED]. *See also* Memorial ¶¶ 273-279.

award of damages against the defendants jointly to compensate for damages incurred by RMGC as a result of the illegal suspension.²²⁹

102. While the EIA procedure was recommenced in September 2010, the NDPs wrongly claim that “it took the company more than a year and a half, until May 2010, to produce the necessary documents,” *i.e.*, a new urbanism certificate (UC 87/2010), and that “[o]nly then was the Ministry for Environment able to reconvene and continue the environmental impact evaluation procedure.”²³⁰ The NDPs also falsely assert that RMGC’s complaint regarding the suspension “proved unsuccessful as the courts agreed with the Ministry’s approach and dismissed the case on the merits.”²³¹

103. In reality, after Minister Korodi left office, senior Government officials [REDACTED], [REDACTED], acknowledged that the State had inappropriately delayed taking a decision on the Project, and agreed to restart the EIA procedure if RMGC submitted a new urbanism certificate.²³² Prior to that meeting, it would have served no purpose to present another new urbanism certificate given the view that had been taken by the Ministry of Environment that a new urbanism certificate with the same content as the earlier suspended one would be *ipso jure* suspended as well.²³³

104. Although RMGC maintained throughout that an urbanism certificate was not legally required to continue the EIA procedure, following the meeting, RMGC submitted a new urbanism certificate (UC 87/2010) issued by the Alba County Council as it was keen to resume

²²⁹ Memorial ¶ 270; Tănase II ¶¶ 25-26; Avram ¶ 60.

²³⁰ Submission at 11. *See also id.* at 15.

²³¹ Submission at 15.

²³² [REDACTED]

²³³ The NDPs also wrongly claim that a 2009 court decision had suspended UC 105/2007 “due to the company’s [sic] negligence in compiling the necessary documentation.” Submission at 11. The court did not make any such finding, but rather held that UC 105/2007 was suspended *ipso jure* because it had the same content as UC 78/2006. Podaru ¶ 102; Timisoara Court of Appeal Decision No. 398 in case file No.3779/117/2007 dated Mar. 12, 2009 (Exh. C-2468). Professor Mihai submits that this ruling was “manifestly wrong.” Mihai ¶ 331 n.224. Indeed, in a ruling that is final and mandatory for all courts of law in Romania, Romania’s highest court later ruled definitively that an urbanism certificate is not an administrative deed subject to challenge under the administrative law, thereby establishing clearly for the future that such challenges against an urbanism certificate are inadmissible. *See* Podaru ¶¶ 65-66; Mihai II ¶ 154. Other court decisions also confirmed that an urbanism certificate is not an administrative deed. *See* Podaru ¶¶ 106-107; Mihai II ¶¶ 137-138.

the EIA procedure.²³⁴ Although the circumstance in 2010 was the same as in 2007 (a new urbanism certificate was issued while the prior urbanism certificate was suspended), the Ministry of Environment in 2010 did not claim that UC 87/2010 was invalid or that it was suspended *ipso jure*, demonstrating the arbitrariness of Minister Korodi's earlier decisions.²³⁵

105. As a further condition to restarting the EIA procedure, the Ministry of Environment also demanded that RMGC withdraw its claims for damages against the Ministry and Messrs. Korodi and Stoica, which RMGC agreed to do.²³⁶ It was then that the Ministry of Environment recommenced the EIA procedure, ending the three-year suspension.²³⁷

106. In view of the recommencement of the EIA procedure, RMGC's then still-pending request for a court to order the resumption of that procedure was rendered moot.²³⁸ For that reason, the NDPs are wrong when they state that the courts "agreed with the Ministry's approach" and dismissed RMGC's case "on the merits;"²³⁹ the court did not rule on the merits, rather the court's decision was taken with RMGC's agreement as the subject of the claims had become moot.²⁴⁰

107. Finally, the NDPs' assertion that RMGC "has never possessed a valid UC"²⁴¹ is demonstrably false. In fact, as Professor Podaru explains, RMGC held a valid urbanism certificate continuously without interruption between 2010 and 2018.²⁴²

²³⁴ Memorial ¶ 297; Tănase II ¶ 46.

²³⁵ Memorial ¶ 271; Mihai ¶¶ 311, 336-338. *See also* Mihai II ¶¶ 134-142; Podaru ¶¶ 105-111.

²³⁶ Memorial ¶¶ 272, 297; [REDACTED]. The Ministry of Environment acted abusively by requiring RMGC to give up its legal rights in relation to its claims regarding the unlawful EIA suspension as a condition for recommencing the EIA procedure in 2010. Memorial 272 n. 483.

²³⁷ Memorial ¶ 298; Tănase II ¶ 50; Avram ¶¶ 60-63.

²³⁸ Memorial ¶ 272 n.483; Mihai ¶ 310.

²³⁹ Submission at 15 n.107.

²⁴⁰ Mihai ¶ 310; Mihai II ¶ 178.

²⁴¹ Submission at 12.

²⁴² Podaru § II.B.1.4. *See also* Mihai II § V.C.1; Reply ¶ 645. The NDPs' argument is also internally inconsistent with their own incorrect assertion that the Ministry of Environment recommenced the EIA procedure in 2010 when RMGC submitted "the necessary documents," namely UC 87/2010, "valid until April 30, 2013." Submission at 11.

3. The Ministry of Culture Issued ADCs in the Project Area on the Basis of Extensive Archaeological Research Conducted by the State

108. The NDPs claim that RMGC could not implement the Project because it “never obtained” ADCs for Cârnic and Orlea.²⁴³ As elaborated below, the NDPs are wrong because the Ministry of Culture in fact did issue the ADC for Cârnic (twice) and there is no reason to question that an ADC also would have been issued for Orlea if the Project had been permitted to proceed.

109. Following issuance of the Roşia Montană License, the Ministry of Culture empowered the NHMR to organize archaeological research within the area of the License in accord with applicable legal requirements.²⁴⁴ Such research was needed because chance archaeological discoveries had been made in the area over the years so that the area was designated as an archeological site,²⁴⁵ although no archaeological research had been conducted and the State through Minvest had been mining continuously in the area for decades without regard for the archaeological heritage.²⁴⁶ NHMR organized an expert team of Romanian and international specialists, led by one of the world’s leading experts in mining archaeology, Dr. Béatrice Cauuet of Toulouse University in France, to conduct intensive and rigorous archaeological research from 2000-2006, which the Ministry of Culture supervised and RMGC, as required by law, funded.²⁴⁷

110. Based on its research and findings, the NHMR expert team recommended to the Ministry of Culture to preserve several specific sites *in situ*, and RMGC adjusted its mine plan accordingly.²⁴⁸ For other areas, the NHMR team collected and preserved any relevant artifacts from the field and prepared a report recommending to the Ministry of Culture that the area may be discharged.²⁴⁹ Based on these expert recommendations and with the additional endorsements

²⁴³ Submission at 12. *Id.* at 10-11 (claiming Project could not be realized due to lack of ADCs).

²⁴⁴ Reply ¶¶ 236-239; Gligor ¶¶ 8-41; Gligor II ¶¶ 4-45; Schiau § II; Schiau II §§ III.B, III.D; Jennings ¶¶ 4-8, 43-62; Jennings II ¶¶ 19-53.

²⁴⁵ Memorial ¶¶ 141-143; Schiau II ¶¶ 66-70; Gligor ¶¶ 8-10; Jennings ¶¶ 3-6.

²⁴⁶ Reply ¶ 236; [REDACTED].

²⁴⁷ Memorial ¶¶ 144-151; Gligor ¶¶ 17-34; Gligor II ¶ 12; Jennings ¶¶ 7, 46-55; Jennings II ¶¶ 19-32.

²⁴⁸ Memorial ¶ 152; Reply ¶ 240; Gligor ¶ 34, 40-41; Jennings ¶¶ 56-57, 60-61, 145.

²⁴⁹ Memorial ¶ 153; Reply ¶ 241; Gligor ¶ 34; Jennings ¶¶ 58-59. *See also* Schiau §§ III.C, III.D.

of the National Archaeological Commission (“NAC”) as scientific coordinator, the Ministry of Culture issued ADCs covering approximately 90% of the Project footprint, including for Cârnic’s surface as well as for its underground area.²⁵⁰

111. An ADC was not issued for Orlea because the Ministry of Culture arbitrarily refused to authorize the preventive archaeological research of Orlea needed to assess its discharge.²⁵¹ This was not an impediment to Project development, however, as ADCs are not required to conduct the EIA procedure or to issue the Environmental Permit,²⁵² and while an ADC does have to be in place for a construction permit to be issued for the area, RMGC’s mine plan did not contemplate mining at Orlea until year 7 of mining operations, leaving ample time to complete the required preventive archaeological research of Orlea.²⁵³ In view of the significant research that the Ministry of Culture had permitted in Orlea and knowledge thereby acquired, there is no reasonable basis in fact to question that an ADC in due course would have been obtained for Orlea had the Government not rejected the Project.²⁵⁴

112. The NDPs seek to impugn the validity of the ADC issued for the Cârnic underground through an array of unfounded arguments addressed below.

113. The NDPs assert that the ADCs for Cârnic were issued contrary to the results of the archaeological research and “[d]espite the [Toulouse University] team’s confirmation that unique Roman vestiges within Carnic were unearthed.”²⁵⁵ In fact, while the expert NHMR team led by Dr. Cauuet recommended *in situ* preservation of a few specific sites, including the Roman

²⁵⁰ Memorial ¶¶ 156-161; Reply ¶¶ 241-242; Gligor ¶¶ 38-41; Gligor II ¶ 14; Schiau § III.D; ADC No. 1231/2002 (Exh. C-670) (Cârnic surface and other areas); ADC No. 4/2004 (Exh. C-672) (Cârnic underground).

²⁵¹ Memorial § III.C.2; [REDACTED].

²⁵² Reply ¶ 66; Mihai II § V.E; Schiau II § VI.A.2; Podaru § II.B.2. *See also* Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2012/69) dated May 22, 2013 (Exh. C-2907) at 9 (confirming that “archaeological discharge certificates are neither required for the purpose of the environmental impact assessment procedure, nor for the issuance of an environmental permit,” but rather “are necessary solely for the issuance of a building permit”).

²⁵³ Memorial ¶ 169; Podaru ¶¶ 48, 50; Gligor ¶ 78; Reply ¶¶ 66 n.139, 648 n.1244; Lorincz II ¶¶ 137-138.

²⁵⁴ [REDACTED]; Jennings II ¶ 31; Reply ¶ 648. *See also* Memorial ¶ 168; [REDACTED].

²⁵⁵ Submission at 12.

mining areas at a specific location in Cârnic called Piatra Corbului, the team otherwise recommended discharging both the surface and underground of Cârnic.²⁵⁶

114. Moreover, following the annulment of the first ADC for the Cârnic underground in a court decision Professor Schiau considers was an excess of powers and wrong,²⁵⁷ the NHMR expert team prepared another report to the Ministry of Culture recommending to discharge the area and Dr. Cauuet of Toulouse University and Dr. Paul Damian of the NHMR both explained their recommendation at a meeting of the NAC.²⁵⁸ The NAC thereafter unanimously endorsed that expert recommendation, following which the Ministry of Culture issued the second ADC for the Cârnic underground, which remains valid.²⁵⁹

115. The NDPs claim that the decision to issue the second ADC for Cârnic was contrary to law, including because the Cârnic Massif “has been classified as a monument of national interest on Romania’s List of Historic Monuments (LHM) since 1992.”²⁶⁰ This inadmissible legal argument exceeds the scope of the NDPs’ alleged expertise and was excluded by PO19.²⁶¹ It is incorrect in any event as Cârnic as a whole was first classified as an historical monument in 2010, although without any legal basis, not in 1992.

116. As Professor Schiau explains, the “1992 Draft LHM” was a draft list that was never approved and therefore did not classify sites as historical monuments or produce any legally binding effects.²⁶² There were no “historical monuments” classified as such until 2004, as the State first introduced the concept of an “historical monument” into law through Law

²⁵⁶ Memorial ¶¶ 152-153; Gligor ¶¶ 31-34, 38-39; Gligor II ¶¶ 14, 33-34. *See also* Jennings ¶¶ 56-59.

²⁵⁷ Schiau ¶ 331; Schiau II § IV.D.2.

²⁵⁸ Memorial ¶ 322; Gligor ¶ 100; Gligor II ¶¶ 38-39, 74, 77-78; Tănase III ¶¶ 6-7. *See also* Béatrice Cauuet, Roșia Montană: Due Diligence Review of the Mining Archaeology Research Works in Roșia Montană (undated) (Exh. C-1926); Béatrice Cauuet, Preventive Archaeological Research Report, Cârnic Massif: Final Executive Summary Vol. I dated 2009 (Exh. C-1898).

²⁵⁹ Schiau ¶ 93; Schiau II ¶ 203; Gligor ¶¶ 39, 102; Gligor II ¶¶ 39, 77-78; Meeting Minutes of the NAC dated July 12, 2011 (Exh. C-1377); ADC No. 9/2011 (Exh. C-680) (Cârnic underground).

²⁶⁰ Submission at 12.

²⁶¹ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b). The NDPs again cite to the Counter-Memorial for “information on the applicable legal framework.” Submission at 12 n.82 (citing Counter-Memorial ¶¶ 91-92).

²⁶² Schiau § V.A.1; Schiau II § IV.B. Nor does the 1992 Draft LHM mention Cârnic. Schiau ¶ 297, § V.A.2.

422/2001, which required the Ministry of Culture to approve within three years the first list of historical monuments recognized by law, and established procedures to classify (add) or declassify (remove) an immovable asset from that list.²⁶³ The 2004 LHM was elaborated and approved in accordance with Law 422/2001 and was the first legally effective LHM.²⁶⁴

117. Moreover, the 2004 LHM did not simply adopt the draft 1992 list, but rather took into account both the definition of historical monument in Law 422/2001 and the knowledge acquired since 1992, which for the sites in and around Roșia Montană was extensive due to the archaeological research that the Ministry of Culture had directed and the ADCs that it had by then issued.

118. Thus the historical monuments listed in the 2004 LHM for Roșia Montană were precisely defined, consistent with the Ministry of Culture’s archaeological research and discharge decisions.²⁶⁵ Specifically with respect to Cârnic, the 2004 LHM did not classify Cârnic Massif as an historical monument, as the NDPs wrongly claim. Rather, consistent with the recommendations of the NHMR expert team to preserve *in situ* the Roman mining area at Piatra Corbului, the 2004 LHM listed the “Roman galleries of Cârnic Massif, ‘Piatra Corbului’ Point” and identified its location or “address” by reference to the geographical “STEREO” coordinates of the monument.²⁶⁶

119. As part of their inadmissible legal argument about the legal framework relating to historical monuments, the NDPs seek to raise the specter of an issue where there is none stating “[c]ontrary to the claimant’s assertion,” the Ministry of Culture had a “legal obligation to update Romania’s LHM every 5 years.”²⁶⁷ Claimants never claimed otherwise and, in fact, clearly explained that Law 422/2001 provides the LHM was to be “updated every five years.”²⁶⁸

²⁶³ Reply ¶¶ 247-248; Schiau ¶¶ 23-28, §§ IV, V.B.2.

²⁶⁴ Reply ¶¶ 249-250; Schiau ¶ 204, § V.B.2; Schiau II § IV.C.

²⁶⁵ Reply ¶ 251; Schiau § V.B.1; Gligor ¶¶ 43-44.

²⁶⁶ Memorial ¶¶ 152, 317; Schiau ¶¶ 206, 215-216; Gligor ¶¶ 43-44; Jennings ¶ 57 n.22.

²⁶⁷ Submission at 12.

²⁶⁸ Memorial ¶ 158(e). *See also* Reply ¶ 247 (explaining that Law 422/2001 “provided that the Ministry of Culture is to inventory and approve a List of Historical Monuments (‘LHM’) to be updated every five years.”).

120. When the Ministry of Culture issued the 2010 LHM, it replaced “Roman galleries of Cârnic Massif, ‘Piatra Corbului’ Point” as listed in the 2004 LHM with a more general reference to Cârnic, effectively describing the entire Cârnic Massif as an historical monument.²⁶⁹ Although the first ADC for Cârnic underground by then had been annulled,²⁷⁰ there was no basis in fact or law, without any additional research and without any classification procedure, to enlarge the Cârnic historical monument from its 2004 description to encompass the entire massif.²⁷¹

121. The NDPs do not address the arbitrary changes in the 2010 LHM. The NDPs instead fault RMGC for waiting until December 2014 to bring a legal action contesting the validity of the 2010 LHM, which they observe “was unsuccessful.”²⁷²

122. As RMGC’s Director of Patrimony and Sustainable Development, Adrian Gligor, explains, when the 2010 LHM first was issued, RMGC considered that the changes therein were the result of oversight or drafting error.²⁷³ In July 2011, the Ministry of Culture reissued the ADC for Cârnic which required the Ministry to remove Cârnic from the LHM because a site cannot at the same time be both archaeologically discharged based on the results of archaeological research and listed as an historical monument based on recognized remarkable cultural significance.²⁷⁴ The Ministry of Culture also endorsed the issuance of the Environmental Permit to RMGC in both December 2011 and April 2013, which shows it supported implementation of the Project consistent with the ADCs issued to RMGC, including for Cârnic.²⁷⁵ And, as described above, the competent authorities within the Ministry of Culture,

²⁶⁹ Reply ¶ 254; Schiau ¶¶ 249, 256-257; Podaru ¶ 273.

²⁷⁰ Schiau ¶ 331.

²⁷¹ Schiau ¶¶ 183-184 (explaining that the annulment of ADC 4/2004 reinstated the legal regime previously governing the discharged area at Cârnic, i.e., that of a protected archaeological site and not that of an historical monument); *id.*, ¶¶ 27-28, 258-259, 262, 289, 294-300, 388-389 (showing that the enlargement of the Cârnic historical monument by the 2010 LHM was not supported by the required archaeological research or classification procedure); Schiau II ¶¶ 183-184; Memorial ¶¶ 316, 319; Reply ¶¶ 253-254, 256; [REDACTED].

²⁷² Submission at 12.

²⁷³ Gligor ¶ 97.

²⁷⁴ Schiau ¶¶ 31-32, 300, 389.

²⁷⁵ Memorial ¶¶ 365, 370-374, 417; Reply ¶¶ 63-71; Mihai ¶¶ 366-370, 385-386; Mihai II ¶¶ 264-269; Schiau II ¶¶ 267-270.

the Alba County Culture Directorate and the NIH, repeatedly admitted that the 2010 LHM contained errors and should be updated to remove the Cârnic Massif, also in view of the reissued ADC.²⁷⁶

123. As the Ministry of Culture did not take any action to correct the errors in the 2010 LHM, however, a number of anti-Project activists including Alburnus Maior seized on the overbroad descriptions in the 2010 LHM to support legal challenges to various administrative decisions, including the reissued Cârnic ADC.²⁷⁷ In time, it became clear that the requests to correct errors in the 2010 LHM were being blocked politically,²⁷⁸ the culture authorities would not notify the courts of the errors in the context of litigations,²⁷⁹ and although it was becoming increasingly clear that the Government would not take any action that would appear to support the Project, RMGC took steps starting in June 2014 first administratively and thereafter judicially to contest the legality of the 2010 LHM and to request its rectification.²⁸⁰

124. In January 2015, in response, and contrary to numerous prior acknowledgements that the 2010 LHM was in error, the NIH and the Ministry of Culture took the position before the courts that the 2010 LHM had been issued to correct the purportedly “abusive” 2004 LHM, and that the soon-to-be-issued 2015 LHM would “reinstate” the 1992 Draft LHM.²⁸¹ The NIH and the Ministry of Culture in their submissions to the court also falsely accused RMGC, without any basis, of trying to obtain the right to mine in the area without obtaining ADCs.²⁸² The court accepted these blatantly bad faith submissions as proffered by the competent State authorities and in reliance thereon dismissed RMGC’s challenge to the 2010 LHM.²⁸³ The court did not reach a decision on the request for rectification of the 2010 LHM because the issue became moot

²⁷⁶ See *supra* § E.1; Gligor ¶¶ 116-121; Reply ¶¶ 260-261.

²⁷⁷ Reply ¶ 259; Gligor ¶ 97; Schiau § VI.A.

²⁷⁸ Indeed, following the decision to reissue the Cârnic ADC, then Minister of Culture Kelemen Hunor stated that this would be followed by removal of the Cârnic massif from the LHM, but, after the State demanded to renegotiate the economic terms of the Project, he said in August 2011 that he would not authorize the removal of Cârnic from the LHM until the economic renegotiation with Gabriel was resolved. Reply ¶¶ 258-261.

²⁷⁹ Schiau § VI.B.1; Schiau II § IV.D.3.

²⁸⁰ Reply ¶ 262; Gligor ¶¶ 157-160; Schiau ¶¶ 327, 360-365; Podaru ¶¶ 290-291.

²⁸¹ See *supra* § E.1; Reply ¶¶ 264-268.

²⁸² Reply ¶ 265.

²⁸³ Reply ¶ 268; Schiau II ¶¶ 220-223. RMGC did not appeal from that judgment. Henry ¶ 146 n.173.

upon the issuance of the 2015 LHM, which arbitrarily and without legal basis declared that the entirety of Roșia Montană was an historical monument, making it legally impossible to implement the Project.²⁸⁴

125. Thus, RMGC's efforts to challenge and correct the 2010 LHM did not succeed because the NIH and the Ministry of Culture, consistent with the Government's political rejection of the Project, took steps to frustrate the Project, including by making erroneous bad faith submissions to the courts.²⁸⁵

126. The NDPs refer to the litigation against the reissued ADC for Cârnic observing that the ADC was suspended in April 2014 "following new evidence produced by the undersigned organizations, in particular the statement of significance written by scholars from Oxford."²⁸⁶ The NDPs also note that they are seeking the annulment of the ADC and that the case remains pending,²⁸⁷ evidently trying to suggest that the court reviewing the reissued Cârnic ADC is likely to be influenced by the so-called "statement of significance" to which the NDPs refer.

127. In this proceeding, Respondent's arbitration expert relies on and exhibits the same "statement of significance" (prepared by two professors, only one of whom is affiliated with Oxford)²⁸⁸ to attack the Ministry of Culture's decision to reissue the Cârnic ADC.²⁸⁹ The statement contends that the archaeological research conducted by the State's team of experts was insufficient to support issuing the ADC. As Mr. David Jennings observes in his expert report, the statement of significance has many factual inaccuracies, including with regard to the alleged insufficiency of the State's archaeological research.²⁹⁰ In any event, it is clear that the mining

²⁸⁴ Reply ¶¶ 269-272; Podaru ¶ 291. *See also* Reply § V.B.5 (discussing 2015 LHM).

²⁸⁵ Reply § V.B.4; Schiau II § IV.D.3.

²⁸⁶ Submission at 12. *See also id.* n.78 (citing statement of significance).

²⁸⁷ Submission at 12.

²⁸⁸ *See* CMA Report, Appendix D - Cultural Heritage, by Dr. Peter Cloughton, dated Feb. 19, 2018 ("Cloughton") (relying generally on Wilson, Mattingly, and Dawson statement of significance for Cârnic Massif (Exh. CMA-54)).

²⁸⁹ *See* Gligor II ¶¶ 75-78; Cloughton ¶¶ 45-46, 52-53, 58, 68, 85.

archaeology experts who actually conducted the research in Cârnic recommended discharge, as did 13 members of the NAC who voted unanimously to endorse the discharge decision.²⁹¹

128. Professor Schiau discusses the on-going action in which the NDPs are seeking annulment of the reissued Cârnic ADC and the Alba County Culture Department is the defendant.²⁹² It is at best doubtful that the culture authority will take steps to defend its prior decision meaningfully in view of the NIH's brazen and wholly unsubstantiated position before the courts that the 2004 LHM was "abusive,"²⁹³ and the fact that the Ministry of Culture has since declared the entirety of Roșia Montană an historical monument and seeks its nomination as a UNESCO World Heritage site without any regard to the several other existing ADCs issued in the Project area.²⁹⁴ Indeed, in establishing the protection area based on the descriptions in the 2015 LHM, the Ministry of Culture in December 2016 endorsed the statement that "one of the certificates [ADCs] has been annulled in court," an apparent reference to the Cârnic ADC.²⁹⁵ While that statement is wrong as the proceedings are still ongoing, Professor Schiau observes

²⁹⁰ Jennings ¶¶ 127-133; Jennings II ¶¶ 33-47. Moreover, the authors of the statement of significance based their assessment on a brief site visit and did not have access to the supplemental report that was prepared in 2009 by the team of archaeologists who conducted the research in Cârnic and that was the basis for the decision to issue ADC 9/2011 for Cârnic. Gligor II ¶ 21 n.41.

²⁹¹ See Gligor II ¶ 38 (*citing* Dr. Cauuet's report recommending discharge), ¶ 77 (*citing* Meeting Minutes of the National Archaeology Commission dated Jul. 12, 2011 (Exh. C-1377) (noting unanimous endorsement of decision to issue the Cârnic ADC by all 13 members present)).

²⁹² Schiau ¶¶ 331-337. Professor Schiau also discusses the action for the suspension of ADC 9/2011. Schiau ¶¶ 338-343 (noting that although the court considered significant the fact that the ADC 9/2011 for Cârnic was issued after the 2010 LHM listed the entire Cârnic massif as an historical monument, the Alba County Culture Department as defendant did not advise the court that the 2010 LHM listing was in error notwithstanding contemporaneous correspondence from the Alba County Culture Department to the NIH underscoring that error and advising of the need to correct it). Notably, in his Supplemental Opinion, Professor Schiau observes that whereas the court annulled the first Cârnic ADC on mostly procedural grounds, including certain errors in the topographical coordinates indicated for discharge, the court exceeded its authority to the extent that it substituted its own judgment as to the advisability of the discharge decision for that of the experts within and directed by the Ministry of Culture. Schiau II § IV.D.2.

²⁹³ Schiau ¶¶ 352-354, 364.

²⁹⁴ See Reply §§ V.B.6-V.B.7.

²⁹⁵ Schiau II ¶ 239 n.357.

that “the Ministry of Culture’s pronouncement here that its annulment is a *fait accompli* is telling.”²⁹⁶

129. The NDPs go on recklessly to accuse RMGC of trying to obtain the reissued Cârnic ADC in violation of the Canada BIT and arbitral “jurisprudence” that “prohibit any corrupt or deceitful practices.”²⁹⁷ In particular, the NDPs claim RMGC concluded a Cooperation Protocol with NIH “[t]o try and secure complete permitting” of the mine by agreeing to invest in preserving cultural patrimony “in return for the Ministry’s support” to issue its “highly controversial ADC,” which allegedly was “unsuccessful” because the Protocol “was leaked unleashing significant public outcry that made it impossible for the contract and its changes to be realized.”²⁹⁸ The NDPs further claim the Romanian Intelligence Service (“SRI”) confirmed in a letter to Senator Vlad Alexandrescu that the Protocol was “an example . . . of how the company attempted to influence various government decisions in pursuit of its objective.”²⁹⁹ And, finally, the NDPs refer to the so-called RISE Project website to accuse RMGC of paying “influential Romanian politicians” who “are now either facing or have been sentenced on multiple corruption charges.”³⁰⁰

130. Not only are the NDPs’ legal arguments regarding the BIT and arbitral decisions beyond the scope of their alleged expertise and excluded by PO19,³⁰¹ but their innuendo and speculative insinuations of bribery and corruption are baseless, false, do not constitute facts, and thus also were excluded by PO19. Claimants categorically deny trying to obtain permits through corruption or “deceitful practices.” Contrary to the RISE Project’s innuendo and the purported

²⁹⁶ Schiau II ¶ 239 n.357. See also *id.* ¶ 203. See *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award dated Aug. 22, 2017 (CL-250) ¶¶ 550-551 (citing the decision in the *Diallo* case before the International Court of Justice, and observing that, “[e]xceptionally, where a State puts forward a manifestly incorrect interpretation of its domestic law, particularly for the purpose of gaining an advantage in a pending case, it is for the Court to adopt what it finds to be the proper interpretation”).

²⁹⁷ Submission at 13.

²⁹⁸ Submission at 13.

²⁹⁹ Submission at 13.

³⁰⁰ Submission at 13.

³⁰¹ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

letter referenced by the NDPs,³⁰² the Romanian National Anticorruption Directorate twice investigated alleged illegality in relation to the Project in 2010 and again in 2015 and in both instances dismissed the investigations finding a lack of evidence of any wrongdoing.³⁰³ The Director of the SRI also testified to Parliament that SRI had closely monitored actions aimed at influencing the decision-making of public officials and had not referred any cases of alleged corruption by RMGC.³⁰⁴ In fact, despite years of abusive and retaliatory investigations, neither RMGC nor any of its representatives has been charged with any wrongdoing.³⁰⁵

131. As to the Cooperation Protocol, the fact is the Ministry of Culture issued the Cârnic ADCs in 2004 and again in 2011 because discharge of the area was amply supported by the reports and recommendations of the expert team led by Dr. Cauuet based on the results of their rigorous and intensive archaeological research and the consideration of the NAC.³⁰⁶ In 2011, although the Ministry of Culture accepted that an ADC for Cârnic was supported on the merits, [REDACTED] the Minister of Culture and other senior officials blocked the NAC from holding its endorsement meeting and stated plainly that the Ministry would not unblock the process or issue the ADC unless Gabriel and RMGC would agree to make a much larger financial contribution to preserve cultural heritage, not only in and around Roșia Montană, but also nationally.³⁰⁷ In view of highly critical comments made by State officials in reaction to legal proceedings previously brought by RMGC against the Ministry of Environment and certain State officials, Gabriel and RMGC concluded that suing the State was a “nuclear” option of last resort that would destroy any hope of permitting the Project.³⁰⁸ Gabriel therefore

³⁰² The referenced “letter” from SRI to Senator Alexandrescu is not actually a letter at all, but rather is a document labeled “Annex 1” whose provenance cannot be authenticated. All it shows is collusion between organs of the State and the NDPs to support Respondent’s arbitration defense. *See* Claimants’ Comments on Non-Disputing Parties’ Application dated Nov. 23, 2018, § III.A.1 (providing examples of collusion). [REDACTED]

³⁰³ [REDACTED]

³⁰⁴ Tănase III ¶ 186 & n.492.

³⁰⁵ [REDACTED]

³⁰⁶ Memorial §§ III.C.1, VI.A.3-VI.B.1; Reply § V.B.1.

³⁰⁷ Memorial § VI.A.3; [REDACTED].

³⁰⁸ Memorial ¶ 325; Henry ¶ 25; Tănase II ¶ 62.

authorized RMGC to try to accommodate the Government's demands, and, following negotiations, to conclude the Cooperation Protocol, which provided for RMGC to invest a total of nearly US\$ 140 million to preserve cultural heritage, including nearly US\$ 70 million in the Project area and US\$ 70 million nationally.³⁰⁹

132. In sum, contrary to the NDPs' assertions, RMGC did not seek to procure an administrative decision to which it was not entitled by offering to make illicit payments in violation of law. On the contrary, the State held up issuing an ADC to which RMGC was entitled in order to coerce additional investment from Gabriel.

133. In addition, while it is true that the Cooperation Protocol did not take effect, it is not because it was "leaked" as the NDPs wrongly claim. The NDPs provide no support for their contention that the Protocol leaked or that such alleged leak made it "impossible" to implement the Protocol. In fact, while the NDPs now refer to a copy of the Protocol made public by a court decision in October 2013,³¹⁰ the Minister of Culture himself publicly touted the Protocol terms in late July 2011 declaring that he was "victorious" in the negotiations with RMGC and that the amount of RMGC's US\$ 70 million investment in and around Roşia Montana was "almost five times more" than Romania's entire budget for cultural preservation nationally.³¹¹

134. The Protocol did not ultimately take effect because the national patrimony contribution was subject to the conclusion of a subsequent agreement that was never concluded as the process was overtaken and superseded by subsequent events, including by the Government's unlawful and coercive demands beginning on August 1, 2011 to renegotiate and

³⁰⁹ Memorial ¶¶ 325-326; Henry ¶ 26; Henry II ¶¶ 7, 10; Tănase II ¶¶ 62-63; Tănase III ¶¶ 3, 8-9.

³¹⁰ Submission at 13 n.87 (linking to activewatch.ro). The referenced website published the protocol in October 2013 after obtaining it through the court pursuant to an information request made in 2012. See <https://activewatch.ro/ro/buna-guvernare/evenimente-si-activitati/executare-in-stil-ongist-azi-am-obtinut-protocolul-de-cooperare-intre-institutul-national-al-patrimoniului-si-rmgc/>.

³¹¹ Memorial ¶ 330; Tănase II ¶ 65; *INTERVIEW: Kelemen: If Roşia Montană Gold Corporation does not invest US\$ 70 million in heritage I can stop the Project*, Mediafax.ro, dated July 28, 2011 (Exh. C-893) at 1-2.

increase the State's financial stake in the Project (shareholding and royalty) as a condition for issuing the critical Environmental Permit and more generally allowing the Project to proceed.³¹²

135. Finally, the NDPs note that the State applied to include Roşia Montană on the list of UNESCO World Heritage Sites, but later requested to postpone consideration of its application pending completion of the arbitration, and that “it is clear that this was done out of fear that a UNESCO listing may negatively influence the present proceedings.”³¹³ Claimants agree with this observation as the State's issuance of the 2015 LHM and its application to UNESCO reflect and confirm the political rejection of the Project with legal effect because these acts are entirely incompatible with Claimants' acquired rights in the Project and the still-valid License and ADCs.³¹⁴

4. Contrary to the NDPs' Assertions, the EIA Procedure Benefited from Extensive Public Consultations and All Legal Requirements to Issue the Environmental Permit Were Met

136. The NDPs raise a number of unfounded complaints about the EIA procedure, including with regard to the alleged failure to “fulfil [sic] the requirements to obtain the environmental permit” and to “provide access to information and public participation.”³¹⁵ The NDPs' submissions on this subject consist of legal argument that has been excluded by PO19 and references to alleged expert reports that also are inadmissible. As demonstrated in Claimants' submissions and particularly in the witness statements of Mr. Horea Avram and the legal opinions of Professor Lucian Mihai, the EIA procedure included extensive public consultations and all of the requirements to obtain the Environmental Permit were met.³¹⁶

137. The NDPs assert that RMGC “never managed to procure all the relevant documentation and planning to satisfy applicable legislation” and that, for this reason, “the

³¹² Memorial ¶ 327 n.602; [REDACTED]; Henry ¶ 26; Protocol of Cooperation between NIH and RMGC dated July 15, 2011 (Exh. C-695) Arts. 2.1 & 2.3. *See also* Memorial § VII (describing the State's coercive economic demands and blocking of permitting); Reply § II (same).

³¹³ Submission at 13.

³¹⁴ Reply §§ V.B.6-V.B.7.

³¹⁵ Submission at 13-16.

³¹⁶ Memorial ¶¶ 251-253; Reply § III; Avram ¶¶ 48-52; Avram II ¶¶ 13-133; Mihai § VIII; Mihai II § VI.

environmental permitting procedure is still not concluded.”³¹⁷ That is excluded legal argument and also incorrect. The evidence demonstrates that RMGC met all requirements to obtain the Environmental Permit and that the Government unlawfully blocked the permitting process to coerce a better economic deal and then unlawfully failed to issue the Environmental Permit abdicating its decision-making role to Parliament.

138. By way of summary, the evidence submitted with Claimants’ submissions shows:

- In December 2004, RMGC submitted an application for the Environmental Permit, which included a nearly 200-page Project Presentation Report detailing the Project’s engineering plans and designs.³¹⁸
- In May 2005, the Ministry of Environment constituted the Technical Assessment Committee (“TAC”) and, based on the TAC’s recommendations and the information contained in RMGC’s application for the Environmental Permit, issued the Terms of Reference for the EIA Report.³¹⁹
- RMGC retained a team of leading Romanian and international experts to prepare a comprehensive, rigorous EIA Report in accordance with the Terms of Reference, which RMGC submitted to the Ministry of Environment in May 2006.³²⁰
- In July and August 2006, RMGC in coordination with the Ministry of Environment and in accordance with an approved Public Consultation and Disclosure Plan participated in 14 public consultations in Romania and 2 in Hungary with respect to the EIA Report.³²¹
- In May 2007, RMGC submitted a 91-volume EIA Report Annex totaling more than 25,000 pages addressing all of the questions and comments received in the public consultations as provided by the Ministry of Environment.³²²
- In 2007 and, following an unlawful three-year suspension of the EIA process, again from 2010-2011, the Ministry of Environment in consultation with the

³¹⁷ Submission at 16.

³¹⁸ Memorial ¶ 188; Avram ¶ 32. *See also* Project Presentation Report dated Nov. 2004 (Exh. C-525.3).

³¹⁹ Memorial ¶ 201; Avram ¶¶ 35-36.

³²⁰ Memorial ¶¶ 201-205; Avram ¶¶ 35-38.

³²¹ Memorial ¶¶ 251-253; Avram ¶¶ 48-52.

³²² Memorial ¶ 252; Avram ¶ 52. *See also* Avram ¶ 51 (explaining that, at the request of the Ministry of Environment, RMGC addressed all questions and comments received from the public in a supplement to the EIA Report without any limitations).

TAC members administered a technical review of the EIA Report and of the Project.³²³

- In October 2011, RMGC submitted its answers to the Ministry of Environment's final questions, and many of the TAC members visited Roșia Montană.³²⁴ Based on statements made during the site visit and leading up to the November 29, 2011 TAC meeting, it was clear that the Ministry of Environment and the TAC members were convinced that the Environmental Permit should be issued and the Project should be implemented.³²⁵
- At the TAC meeting on November 29, 2011, the TAC members commented favorably on the EIA Report and made numerous statements that supported issuance of the Environmental Permit.³²⁶ After obtaining the TAC members' views, TAC President Marin Anton announced that "the technical discussions about the Roșia Montană Project [have] come to an end," that "[t]hings are finalized in the TAC," and that he would "convene another TAC meeting for a final decision."³²⁷

139. As Professor Mihai explains, upon completing the technical review of the EIA Report, the Ministry of Environment was legally obligated to take a decision on whether to issue the Environmental Permit and to submit its proposal to the Government to issue the Permit through a Government Decision.³²⁸ Yet the Government failed to issue any decision on the Environmental Permit and kept the permitting process open by demanding a 25% shareholding and 6% royalty and by refusing to acknowledge that the Ministry of Culture's December 7, 2011

³²³ Memorial ¶¶ 254-256, 303; [REDACTED].

³²⁴ Memorial ¶ 353; Avram II ¶¶ 10-11.

³²⁵ Reply ¶ 41(f); Avram II ¶¶ 2, 11, 16.

³²⁶ Memorial ¶¶ 352-365; Reply ¶¶ 36, 41(g)-(k); Avram II ¶¶ 13-37.

³²⁷ Transcript of TAC meeting dated Nov. 29, 2011 (Exh. C-486) at 47-48, 51 (TAC President Marin Anton). *See also* Government Note on the Roșia Montană Mining Project from Minister Delegate Dan Șova dated Mar. 6, 2013 (Exh. C-1903) at 4 ("In the last TAC meeting, which took place in November 2011, TAC members concluded that all technical issues were clarified and that there were no further questions. Consequently, according to the procedure, the final meeting of TAC must be held for the adoption of the recommendation for the issuance of the Environmental Permit, which is the last step in the procedure before TAC."); Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2012/69) dated May 22, 2013 (Exh. C-2907) at 3 (observing that in November 2011 "members of the Technical Analysis Committee confirm[ed] that no questions with regard to technical aspects are outstanding") (the original Word file of exhibit C-2907 has a hyperlinked date, which reflects the last date the document was opened; the correct document date is May 22, 2013). As discussed in Claimants' submissions, the four issues raised at the November 29, 2011 TAC meeting were promptly addressed by December 9, 2011. Memorial ¶ 365; Reply ¶ 50; Avram ¶¶ 100-104; Avram II ¶ 38.

³²⁸ Memorial ¶¶ 190-200, 366, 390; Reply ¶ 36; Mihai §§ IV, VIII.

written “point of view” regarding permitting conditions satisfied the legal requirement of an “endorsement” to support issuance of the Environmental Permit.³²⁹ While the Ministry of Environment refused to take any action on the Project in 2012,³³⁰ following elections, the Ministry of Environment completed the technical assessment of the EIA Report again and reconfirmed in 2013 that RMGC met the requirements to obtain the Environmental Permit.³³¹

140. As summarized below, the contemporaneous evidence shows that the Ministry of Environment was legally obligated to take its decision and again in 2013 failed to do so:

- In March 2013, the Inter-Ministerial Commission confirmed that “there are no impediments or significant obstacles, legislative or institutional to hinder a possible future development of the Roșia Montană mining project.”³³² The Romanian Government also confirmed in a Note on the Project that “all the information required by the Government” for the “issuance of a decision regarding the Roșia Montană Project . . . has been provided.”³³³
- In April 2013, the Ministry of Culture issued again its endorsement for the Environmental Permit.³³⁴
- In May 2013, the Ministry of Environment held two further TAC meetings, where it confirmed the approval of RMGC’s Waste Management Plan³³⁵ and also that the analysis of the EIA Report was completed and that the EIA Report complied with applicable requirements.³³⁶

³²⁹ Memorial ¶¶ 366-380; Reply ¶ 30.

³³⁰ Memorial ¶¶ 381-390.

³³¹ Reply ¶¶ 88-91.

³³² Informative Note on the Activity of the Inter-Ministerial Working Group Convened for the Roșia Montană Mining Project dated Mar. 26, 2013 (Exh. C-2162) at 3, 9-10.

³³³ Government Note on the Roșia Montană Mining Project from Minister Delegate Dan Șova dated Mar. 6, 2013 (Exh. C-1903) at 37.

³³⁴ Memorial ¶ 417; Reply § III.A; Letter No. 750 from Ministry of Culture to Ministry of Environment dated Apr. 10, 2013 (Exh. C-644).

³³⁵ Transcript of TAC meeting dated May 10, 2013 (C-484) at 10-12 (Ministry of Environment Waste and Hazardous Substances Management Department representative Ana Nistorescu: “The Waste Management Department considers that RMGC complied with all our requests as regards the preparation of the Waste Management Plan for the wastes in the Roșia Montană mining perimeter.”); Transcript of TAC meeting dated May 31, 2013 (Exh. C-485) at 20 (Waste and Hazardous Substances Management Department representative Mihai Bizomescu confirming that the meeting “clarified the last issues that could have been discussed with respect to the Wastes Management Plan”).

³³⁶ Memorial ¶¶ 426, 430-431; Reply ¶ 90(d)-(e); Transcript of TAC meeting dated May 10, 2013 (Exh. C-484) at 3-4, 9 (acting TAC President Octavian Pătrașcu “remind[ing] the Technical Assessment Committee

- In July 2013, the Ministry of Environment published for public comment the “conditions and measures which need to be included in the Environmental Permit for Roșia Montană Project.”³³⁷
- The Ministry of Environment prepared a draft Decision on the Environmental Permit, which “ACCEPTS” the EIA Report submitted by RMGC “and PROPOSES the issuance by the Government of Romania of the environmental permit.”³³⁸ The draft Decision also sets out the reasons justifying the Ministry’s decision and includes the proposed Environmental Permit conditions and measures that previously had been published by the Ministry of Environment for public comment.³³⁹
- The Ministry of Environment convened a TAC conciliation meeting, where the TAC President concluded again that “the analysis on the quality and conclusions of the EIA Report has been finalized during all these TAC meeting[s] this year” and notified the TAC members “that you will be informed in due time about the meeting for the taking of the decision.”³⁴⁰
- Prior to and during the proceedings in Parliament relating to the Draft Law, Minister of Environment Rovana Plumb stated publicly and testified in both oral and written answers to the Special Commission that the Project met all applicable requirements and would be “the safest project of Europe.”³⁴¹ Numerous other Government officials including Prime Minister Victor Ponta, Minister of Culture Daniel Barbu, and Minister Delegate Dan Șova similarly

that the last meeting took place on November 29, 2011, and the conclusion of the representative was that the Environmental Impact Assessment Report complies with the requirements from a technical point of view,” and repeating later in the meeting that in November 2011 the TAC “analyzed the last chapters of the EIA Report” and, “as I told you from the start, the [TAC] concluded that, from a technical point of view, the EIA Report complies with the substantial and structural requirements”); Transcript of TAC meeting dated May 10, 2013 (Exh. C-485) at 18-19 (acting TAC President Octavian Pătrașcu confirming again that the TAC had analyzed “each and every point from . . . all the chapters in the Environmental Impact Assessment Report” and therefore had achieved its “objectives,” that the technical assessment of the EIA Report was “completed,” and that “each chapter was endorsed by a Romanian institution, so professionalism is not in question here”).

³³⁷ Memorial ¶¶ 436-437; Reply ¶ 90(g). *See also* Ministry of Environment Note for Public Consultation dated July 11, 2013 (Exh. C-555).

³³⁸ Ministry of Environment Draft Decision Concerning the Request for Issuance of the Environmental Permit (Exh. C-2075) at 2.

³³⁹ Ministry of Environment Draft Decision Concerning the Request for Issuance of the Environmental Permit (Exh. C-2075).

³⁴⁰ Transcript of TAC meeting dated July 26, 2013 (Exh. C-480) at 15 (acting TAC President Octavian Pătrașcu).

³⁴¹ Memorial ¶¶ 447, 479, 483, 503, 509; Reply ¶¶ 110-111; Tănase III ¶¶ 173-174, 197; Avram II ¶ 71.

stated publicly and/or testified that the Project met all applicable requirements for issuance of the Environmental Permit.³⁴²

141. Against these facts, the NDPs' overall contention that Claimants failed to meet permitting requirements, and each of their supporting allegations, manifestly lacks any basis and is meritless.

142. The NDPs first raise a number of arguments regarding EU law in view of Romania's accession to the EU.³⁴³ These legal arguments exceed the scope of the NDPs' alleged expertise and were excluded by PO19.³⁴⁴ Moreover, the NDPs' assertion that RMGC "was not prepared to comply with the regulatory environment and even less so to adapt to the changing regulatory landscape" is baseless and false.³⁴⁵ It is also outside of any purported knowledge or expertise of the NDPs and so is excluded. In any event, as Mr. Avram describes, in preparing the EIA Report in 2006, RMGC took into account new and emerging standards, such as the EU Mining Waste Directive and Reference Document on Best Available Techniques for Management and Waste-Rock in Mining Activities, even before they were adopted to ensure that the Project would comply with the then-developing standards.³⁴⁶ Indeed, Minister of Environment Plumb repeatedly confirmed that the Project met all applicable European and international standards.³⁴⁷

143. The NDPs refer to statements made by EU Parliament officials in 2003 and 2004 and suggest that the Project needed to be "carefully monitored" by the EU.³⁴⁸ In the context of discussing the Draft Law that the Government submitted to Parliament in 2013,³⁴⁹ the NDPs also refer to a memorandum on the Project prepared by the EU Commissioner of Environment, Janez

³⁴² Memorial ¶¶ 478, 483, 503; Reply ¶¶ 110-111; Tănase III ¶¶ 173-174, 190, 197; Avram II ¶ 71.

³⁴³ Submission at 13-14.

³⁴⁴ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

³⁴⁵ Submission at 13-14.

³⁴⁶ Avram ¶ 37.

³⁴⁷ Memorial ¶¶ 447, 479, 483, 503, 509; Reply ¶¶ 110-111.

³⁴⁸ Submission at 14.

³⁴⁹ See *infra* § F.

Potočnik.³⁵⁰ What the NDPs leave out is that, in the referenced memorandum, Commissioner Potočnik confirmed that the European Commission asked “precise questions” of the Romanian authorities in December 2010, and based on the answers provided, “it seemed that all measures had been taken to ensure the full application of European Union legislation and no breach of European Union legislation could be identified.”³⁵¹ Commissioner Potočnik also publicly confirmed in 2013 that the European Commission was closely following the Project and found “no breach of the EU legislation.”³⁵² And, while the NDPs note Commission Potočnik’s questions about whether the Draft Law would derogate from applicable Romanian legislation transposing EU law,³⁵³ they fail to mention Minister Plumb’s answers that both the Environmental Permit and the authorization to operate “are still to be issued according to the relevant applicable environmental legislation,” that “the draft law does not involve derogations from the EU Environmental legislation,” and that the Ministry of Environment “ensured that all environmental *acquis* is well taken account of and that no accidents as in Baia Mare will occur.”³⁵⁴

144. The NDPs also refer to Minister Plumb’s statement that the reason for proposing the Draft Law was to meet the Water Framework Directive requirement to declare the Project of “overriding public interest,” which she apparently believed Parliament had to do.³⁵⁵ In fact, Romanian law does not indicate which authority is responsible for making a declaration of “outstanding public interest,” the term used in the applicable Romanian legislation.³⁵⁶ RMGC thus obtained the “outstanding public interest” declaration from the Alba County Council as the

³⁵⁰ Submission at 16-17, ns. 114, 115.

³⁵¹ Commission Janez Potočnik Memorandum dated Oct. 3, 2013 (Exh. C-2909) at 3.

³⁵² *EC says no breach of EU legislation so far by Roșia Montană mining project*, Nineoclock.ro, dated Sept. 6, 2013 (Exh. C-515). See also Gabriel Resources, 2013 Annual Information Form, dated March 12, 2014 (Exh. C-1811) at 35 (noting that “the European Commission has, as of November 2013, no information relating to any potential breaches of EU legislation as concerns the Project”).

³⁵³ Submission at 16.

³⁵⁴ Commission Janez Potočnik Memorandum dated Oct. 3, 2013 (Exh. C-2909) at 10.

³⁵⁵ Submission at 16-17. See also Commission Janez Potočnik Memorandum dated Oct. 3, 2013 (Exh. C-2909) at 10 (noting Minister of Environment Plumb’s statement that “[i]n Romania declaring a project of overriding public interest is done by Law, hence the involvement of the Parliament”).

³⁵⁶ Mihai II ¶ 292. See also Reply ¶ 76 n.163 (discussing the difference in terminology between the Water Framework Directive and the applicable law, Waters Law No. 107/1996).

Ministry of Environment and the national water authority (ANAR) had requested.³⁵⁷ Ministry of Environment and ANAR representatives in the TAC repeatedly confirmed contemporaneously in both 2011 and 2013 that the Alba County Council declaration was sufficient, and the Government's Inter-Ministerial Commission agreed.³⁵⁸ Notwithstanding Minister Plumb's apparently personal viewpoint, the Ministry of Environment also acknowledged in its draft Decision on the Environmental Permit that the Project met the applicable legal requirements of both the Romanian Waters Law and the Water Framework Directive.³⁵⁹

145. The NDPs now claim that in order to satisfy these requirements, the Project also should have been included in the River Basin Management Plan and subject to further public consultation, and that a Water Management Permit "was necessary under the Water Framework Directive to obtain the environmental permit."³⁶⁰ The NDPs' legal arguments about the applicable legal requirements once again were excluded in PO19 and in any event are wrong.

146. The Ministry of Environment and ANAR did not contemporaneously raise the River Basin Management Plan or the lack of a Water Management Permit as reasons for not issuing the Environmental Permit. On the contrary, as noted above, the competent authorities and numerous Government officials repeatedly affirmed that RMGC met the applicable requirements to obtain the Environmental Permit and, moreover, complied with both the Waters Law and the Water Framework Directive. Professor Mihai also explains, and the Government likewise acknowledged, that while the Water Management Permit is required for issuance of a construction permit, it is not required for issuance of the Environmental Permit.³⁶¹ Similarly, while the NDPs seize on Commissioner Potočnik's observation that the Project was not included

³⁵⁷ Memorial ¶ 353; Reply ¶ 77.

³⁵⁸ Memorial ¶ 417; Reply ¶¶ 77-78; Avram II ¶¶ 43-48, 53; Tanase III ¶¶ 54, 56, 74.b, 84 n.262.

³⁵⁹ Reply ¶ 78; Avram II ¶ 53; Ministry of Environment Draft Decision concerning the Request for Issuance of the Environmental Permit (Exh. C-2075) at 3 ("The mining Project observes the provisions of the Waters Law no. 107/1996 and the Waters Framework Directive (Directive 2000/60/EC).").

³⁶⁰ Submission at 17.

³⁶¹ Mihai II ¶ 117, n.130. *See also* Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2012/69) dated May 22, 2013 (Exh. C-2907) at 6 (explaining that the Water Management Permit is required to obtain a construction permit, not the Environmental Permit, and that "chronology is not imposed under Romanian legislation"). The Ministry of Environment letter referenced by the NDPs does not state otherwise. *See* Submission at 17, n.116.

in the River Basin Management Plans adopted in 2009, he did not describe the need for such inclusion as a requirement to obtain the Environmental Permit. Commissioner Potočnik instead said the Project “[o]f course . . . could be included in the next River Basin Management Plan,” or the River Basin Basement Plan could be “revised.”³⁶² Indeed, amendment of the River Basin Management Plan is not a prerequisite even for project implementation, but rather is a reporting obligation incumbent on the State that may be fulfilled even after commencement of activities on bodies of water.³⁶³

147. The NDPs also raise various misguided arguments with respect to the Project Presentation Report submitted by RMGC in December 2004 in support of its Environmental Permit application.³⁶⁴ The NDPs claim that the Project Presentation Report had various “shortcomings . . . related to lack of documentation and lack of information related to specific risks.”³⁶⁵ That claim has no basis in fact and conflates the requirements for the Project Presentation Report with those for the EIA Report. The purpose of the Project Presentation Report is not to analyze all relevant environmental factors, but to provide a basis for the Ministry of Environment’s decision as to whether the Project requires an EIA procedure.³⁶⁶ Thus, as the Ministry of Environment contemporaneously explained:

Alburnus Maior requested the suspension of the EIA procedure on the grounds that the project presentation Report (PPR) for the Roșia Montană project ‘did not contain all the necessary information on its environmental impact . . . and is in the contradiction of the very definition of the evaluation of the environmental impact.’ In other words, Alburnus Maior considered that the PPR is equal to the environmental impact assessment report (EIA Report). . . . The Project Presentation Report does not

³⁶² Commission Janez Potočnik Memorandum dated Oct. 3, 2013 (Exh. C-2909) at 5.

³⁶³ See Common Implementation Strategy for the Water Framework Directive (2000/60/EC), Guidance Document No. 20: Guidance Document on Exceptions to Environmental Objectives dated 2009 (Exh. C-2893) at 29 (noting that “under article 4.7 (b), there is a general provision that ‘the reasons for those modifications and alterations are specifically set out and explained in the river basin management plan’” and that “[t]his is a reporting obligation and does not mean that Member States must wait until the publication of the River Basin Management Plan before allowing a new physical modification . . . to proceed”).

³⁶⁴ Submission at 14.

³⁶⁵ Submission at 14. While the NDPs argue that RMGC failed to address the concerns raised by the public in response to its Project Presentation Report, they fail to identify any concern that was not adequately addressed in the context of the EIA procedure. Submission at 5.

³⁶⁶ Mihai § IV.C.3.1.

represent the EIA Report which represents the bases for issuing the environmental agreement. The EIA Report is a document required later in the EIA procedure. . . . The PPR is a technical presentation of a project. It contains only basic information about the developer. . . .³⁶⁷

148. The NDPs argue with reference to “applicable legislation and the EU PHARE guidelines, as well as international law,” that the scoping phase of the EIA procedure required public consultations.³⁶⁸ This legal argument, like the others advanced by the NDPs, is excluded by PO19.³⁶⁹ It is also unsupported.

149. The purpose of the scoping phase is for the Ministry of Environment and TAC members to define the scope of the EIA and to establish the Terms of Reference for preparing the EIA Report.³⁷⁰ Alburnus Maior contemporaneously acknowledged that there was no legal requirement under Romanian law for public consultations during the scoping phase.³⁷¹ Moreover, the Romanian Government has maintained that its laws fully comply with Aarhus Convention³⁷² requirements in this regard, and indeed, there is no basis to conclude otherwise.³⁷³

³⁶⁷ Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated Mar. 20, 2006 (Exh. C-2902) at 5-6. To the extent the NDPs intend to show that alleged shortcomings in the Project Presentation Report resulted in low acceptance of the Project from the beginning, that claim is incorrect. Available polling data shows that as early as 2005 the Project had support typical of mining projects, which only increased over time. *See* Boutillier § 3.2.2.

³⁶⁸ Submission at 14. *See also id.* at 5 (contending that, “[o]n the first formal occasion to consult the public during the scoping phase,” RMGC failed to carry out the “required consultations”).

³⁶⁹ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

³⁷⁰ Mihai § C.3.2. *See also* Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated May 25, 2007 (Exh. C-2904) at 4 (observing that the PHARE guidelines “have no legal status” and that “the guidelines represent the consultant’s opinion and is not of a binding nature”).

³⁷¹ *See* Alburnus Maior, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated May 15, 2006 (Exh. C-2901) at 1-2 (noting that “Romanian environmental legislation on the assessment of public and private projects with a significant environmental impact does not provide [for] public participation in the scoping procedure”).

³⁷² The Parties to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the “Aarhus Convention”) undertake to promote opportunities for public participation in government decision-making that impacts the environment. The Aarhus Convention and the complaints presented by Alburnus Maior in relation to Romania’s compliance with the Aarhus Convention are discussed further below.

³⁷³ Romanian Government, Response to Information Request by Aarhus Compliance Committee (ACCC/C/2005/15) dated Mar. 20, 2006 (Exh. C-2902) at 9-10 (confirming that the scoping phase is “not a decision-making stage,” that the Terms of Reference are more akin to a “request for information,” and that therefore “consultation of the public is not mandatory”); Romanian Government, Response to Information

In any event, regardless of whether consultations were conducted, it is obvious that the public was aware of developments during that time as even the NDPs acknowledge that the public submitted thousands of comments in response to the Project Presentation Report.³⁷⁴

150. The NDPs' related contention that the permitting procedure was not transparent is also at odds with the NDPs' acknowledgement that thousands of comments were submitted to the Ministry of Environment in response to the Project Presentation Report and the EIA Report.³⁷⁵ The number of comments received confirms beyond doubt that the public was well informed about the EIA process and had the opportunity to comment and did inform the Government of its views regarding the Project.³⁷⁶

151. The NDPs claim that the Terms of Reference prepared by the Ministry of Environment in May 2005 were "finalized without taking into account any of the public comments or recommendations."³⁷⁷ This contention is speculative and misguided. The NDPs offer no basis for their statement that the Terms of Reference, which were established by the Ministry of Environment, did not take into account the public's comments or recommendations. Moreover, the NDPs fail to identify any alleged deficiency in the forty-two pages of guidelines submitted to RMGC as Terms of Reference.³⁷⁸ For its part, in response to comments received

Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated June 12, 2006 (Exh. C-2903) at 2 (observing that "the scoping list is only a request for information and it is not a decision; in other words, public consultation (i.e., a public hearing) is not required, according to the Romanian legislation, when drawing up the scoping list"). During the Aarhus Convention Compliance Committee proceedings, the Romanian Government confirmed that "Romanian legislation is in line with the requirements of the . . . provisions of [the] Aarhus Convention" with respect to public participation in the decision-making process. Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated Mar. 20, 2006 (Exh. C-2902) at 12. The Committee did not inform Romania of any non-compliance due to the alleged absence of public participation during the scoping phase.

³⁷⁴ Submission at 5, 14 (noting that the Project Presentation Report "triggered 7,000 comments").

³⁷⁵ Submission at 5, 14.

³⁷⁶ See Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated May 25, 2007 (Exh. C-2904) at 4 ("Alburnus Maior recognizes that approximately 7,000 people sent contestations, comments and observations on [the Project Presentation Report]. How did they know to send all these contestations, comments and observation[s] in just 2 weeks after the PPR was submitted to the competent authority if the information of the public would not have been appropriate? It is amazing, indeed!").

³⁷⁷ Submission at 5, 14.

³⁷⁸ Letter from Ministry of Environment to RMGC dated May 24, 2005 (Exh. C-534).

during extensive stakeholder consultations, RMGC made significant changes to the Project design during the period between 2005-2006. As noted above, RMGC made 39 design modifications that mitigated and reduced the Project's impact and resulted in a reduction of gold reserves by approximately 500,000 ounces,³⁷⁹ including:

- Reconfiguring the Cârnic, Orlea, and Jig pits to enlarge the protection of Roșia Montană's historical center and certain historical monument buildings;
- Re-designing the TMF to store two Probable Maximum Precipitation ("PMP") events;
- Increasing the rehabilitated forest and agricultural surface areas to develop a multifunctional ecological compensatory network;
- Changing the blasting technology to better protect historical monuments and Roșia Montană's historical center; and
- Increasing protected areas and eliminating the northern access road in response to community requests.³⁸⁰

152. The NDPs next raise various objections to the content of the EIA Report. These observations are either entirely unsupported or rely on a so-called 203-page "Independent Expert Evaluation of the Environmental Impact Assessment Report for the Roșia Montană Mine Proposal" prepared in August 2006. That expert report is inadmissible evidence. For the same reasons the NDPs' "testimonies" are inadmissible, the NDPs' expert report is inadmissible because the NDPs purport to rely on testimonial evidence that is not subject to cross-examination. PO19 provides that testimonies that cannot be "test[ed] *via* the possibility for cross-examination . . . cannot form part of the evidence or facts of the arbitration."³⁸¹

³⁷⁹ See *supra* § C.

³⁸⁰ Summary of Changes to Roșia Montană Project Design (Exh. C-467). See also Szentesy ¶¶ 48-49; Szentesy II ¶ 22, n.41.

³⁸¹ Procedural Order No. 19 dated Dec. 7, 2018 ¶ 60 (considering that, "if the Submission is admitted, the testimonies referred to or relied on therein or any such documents themselves as they appear to be publicly available cannot be considered or admitted to the present proceedings. This is because such testimonies cannot be considered or evaluated as 'witness statements,' which would require, as Claimants correctly submit, their testing *via* the possibility for cross-examination. Therefore, if the Application is granted, they cannot form part of the evidence or facts of the arbitration.").

153. In any event, the NDPs' alleged expert report was submitted during the EIA procedure to the Ministry of Environment and was considered as part of the public consultation process.³⁸² In fact, RMGC provided detailed responses to each of the expert reports in the EIA Report Annex submitted to the Ministry of Environment.³⁸³ Thus, the observations contained in the report were taken into consideration by the competent authorities in the context of the EIA procedure.

154. The NDPs' observations, which are all based on that earlier compiled expert report, just repeat concerns expressed in 2006, before the extensive public consultations that followed and before the EIA Report was updated in 2010. While Claimants comment on each of the NDPs' "concerns" briefly below, it would be prejudicial and unfair for Claimants to have to address the full content of the expert reports again in this arbitration.

155. First, the NDPs argue that "the EIA was illegal due to lack of an UC."³⁸⁴ This legal argument is outside the scope of the NDPs' expertise and is excluded by PO19.³⁸⁵ In any event, it is wrong; as discussed above, there is no requirement to have a valid urbanism certificate at all times during the EIA procedure.³⁸⁶

³⁸² Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated May 25, 2007 (Exh. C-2904) at 4-5 (noting that, in August 2006, Alburnus Maior submitted the compilation of expert reports to the Ministry of Environment, which the Ministry forwarded to RMGC along with the other questions and comments received from the public).

³⁸³ See, e.g., Answer to Romanian Academy Petition (Exh. C-353) at 240-246 (responding to a report on the legality of the EIA Report by the Romanian Academy Legal Science Research Institute); Answer to Mr. József Szabo's Study (Exh. C-353) at 118-122 (responding to a report on biodiversity issues by József Szabó); Roşia Montană Case: Protection and Not Destruction (Exh. C-336) at 7-14 (responding to a report on biodiversity issues by John Akeroyd and Andrew Jones); Contestation No. 3230 (Dr. Laszlo Rakosy) (Exh. C-358) at 71-72 (responding to a statement on the EIA Report by Dr. Laszlo Rakosy); Answer to the Contestation by Dr. Horia Ion Ciugudean (Exh. C-353) at 184-193 (responding to a report on archeological and cultural patrimony issues by Dr. Horia Ion Ciugudean); Answer to the Contestation by OPUS Architecture Studio Ltd. (Exh. C-349) at 22-40 (responding to a letter from Opus to the Ministry of Environment dated August 12, 2006); Response to Sorana Olaru Contestation dated 2007 (Exh. C-353) at 207-218 (responding to a report on socio-economic and community issues by Sorana Olaru – Zainescu); Response to the Contestation by Sorana Toma (Exh. C-353) at 226-232 (responding to a report on the RRAP by Sorana Toma); Response to the Review by Dr. Robert E. Moran (Exh. 352) at 114-207 (responding to a report on water-related issues by Dr. Robert E. Moran).

³⁸⁴ Submission at 14.

³⁸⁵ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

³⁸⁶ See *supra* § E.2. See also Final Informative Note on the Activity of the Inter-Ministerial Working Group Convened for the Roşia Montană mining project dated Mar. 26, 2013 (Exh. C-2162) at 7 (Inter-Ministerial

156. Second, the NDPs argue that “the waste management legislation was ignored.”³⁸⁷ This too is inadmissible legal argument.³⁸⁸ It is also incorrect. As described in Mr. Avram’s witness statement, RMGC submitted as part of its EIA Report a Waste Management Plan designed to comply with the EU Mining Waste Directive even before the Directive was implemented in Romania.³⁸⁹ After unlawfully blocking formal approval of the amended Waste Management Plan in 2012, the Plan was approved in 2013 by NAMR, as well as by the Ministry of Environment.³⁹⁰ Both NAMR and the Ministry of Environment confirmed that the Waste Management Plan complied with national legislation and best available techniques.³⁹¹ At the TAC meeting on May 10, 2013, the representative from the Ministry of Environment’s Waste and Hazardous Substances Management Department, Ana Nistorescu, also confirmed that the Waste Management Plan “covered all [the Ministry’s] requirements.”³⁹²

157. Third, the NDPs argue that “impacts on biodiversity were poorly researched and contradictory.”³⁹³ That is not true. The assessment on biodiversity for the Project commenced in 1999 with extensive study of baseline conditions and continued until 2011 (five years after the NDPs’ submission of “expert” reports), with several updates to the biodiversity chapter of the

Commission determining that “the maintaining of a valid urbanism certificate for the entire duration of the procedure is not necessary for conducting the [EIA] procedure”).

³⁸⁷ Submission at 14.

³⁸⁸ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(b).

³⁸⁹ Avram II ¶ 55.

³⁹⁰ Memorial ¶¶ 392, 427-428; Reply ¶¶ 81-82; [REDACTED].

³⁹¹ *See, e.g.*, NAMR Endorsement No. 4320, Apr. 11, 2013 (Exh. C-657) (observing that “the activity of S.C. Roşia Montană Gold Corporation S.A. is going to be developed under corresponding conditions, in compliance with the national legislation and with BAT requirements with respect to Extractive Wastes Management Plan”); Letter from Ministry of Environment to RMGC, May 7, 2013 (Exh. C-658) (finding that the Waste Management Plan complies with applicable requirements and “includes the classification of the storage facilities, gold mining and processing methods, hydro-transportation methods and extractive waste storage according to the provisions of the Best Available Techniques”).

³⁹² Transcript of TAC meeting dated May 10, 2013 (Exh. C-484) at 10-12. *See also* Informative Note on the Activity of the Inter-Ministerial Working Group Convened for the Roşia Montană mining project dated Mar. 26, 2013 (Exh. C-2162) at 5 (observing that RMGC’s waste management plans would be carried out in compliance with European legislation and best available techniques)

³⁹³ Submission at 14.

EIA Report.³⁹⁴ At the November 29, 2011 TAC meeting, Ms. Alina Frim, the TAC member representing the Biodiversity Department of the Ministry of Environment, confirmed that “all supplements to the Biodiversity chapter, what we requested, are sufficient; we don’t have further observations beyond what we have received.”³⁹⁵ The Ministry of Environment also acknowledged in its draft Decision proposing the issuance of the Environmental Permit that the Project complied with legislation on conservation of natural habitats and of wild fauna and flora.³⁹⁶

158. Fourth, the NDPs argue that “adequate strategies for community development were lacking.”³⁹⁷ This also is not true. As noted above, RMGC developed a Community Sustainable Development Program (“CSDP”), which was submitted as part of the EIA Report.³⁹⁸ The United Nations Development Programme concluded in July 2006 that “[t]he CSDP as proposed by the RMGC . . . constitute[s] a model of corporate social responsibility in Romania.”³⁹⁹ Respondent’s expert, Dr. Thomson, agrees.⁴⁰⁰

159. Fifth, the NDPs argue that “negative impacts on water sources were poorly researched and understated.”⁴⁰¹ That is wrong. Impacts on water sources are discussed extensively in the EIA Report, as well as in supplemental studies conducted by leading water modeling experts.⁴⁰² These experts concluded that, even in the unlikely risk of an accident, “the

³⁹⁴ See, e.g., Biodiversity Baseline Report (Exh. C-217); Biodiversity Management Plan (Exh. C-218); EIA Report Ch. 4.6: Biodiversity dated 2006 (Exh. C-219); Explanatory Note to EIA Report Ch. 4.6 dated 2010: Biodiversity dated 2010 (Exh. C-385); EIA Report Ch. 4.6: Biodiversity dated 2011 (Exh. C-332).

³⁹⁵ Transcript of TAC meeting dated Nov. 29, 2011 (Exh. C-486) at 28.

³⁹⁶ Ministry of Environment Draft Decision Concerning the Request for Issuance of the Environmental Permit (Exh. C-2075) at 3.

³⁹⁷ Submission at 14.

³⁹⁸ See *supra* § D.

³⁹⁹ UNDP/BRC Draft Fact Finding Mission Report on Sustainable Development Pathways for Roşia Montană dated July 2006 (Exh. C-503) at 25-26.

⁴⁰⁰ Thomson ¶¶ 62, 64.

⁴⁰¹ Submission at 14.

⁴⁰² See, e.g., Prof. Paul Whitehead, Dr. Suzanne Lacasse, and Patrick Corser, Clean-up Strategy, Risk Assessment and Analysis of Accidental Pollution at Roşia Montană dated Apr. 2009 (Exh. C-394.3); The Assessment of the Cumulated Impact for Roşia Montană and Certej Projects, and the Consequences of a Simultaneous Accident Having Likely Transboundary Effects dated Nov. 2010 (Exh. C-589); Reading University Water Modeling Study dated Apr. 2007 (Exh. C-339); Hazard Assessment of Corna Dam in

river water quality remains superior to both surface and drinking water standards even at the point of discharge into the river” and, in all cases, “safe conditions are re-established hundreds of kilometres before the discharged water reaches the Hungarian border.”⁴⁰³

160. Sixth, the NDPs allege that “resettlement and relocation plans were ill-designed and . . . contravened World Bank Group Standards.”⁴⁰⁴ As Ms. Lorincz describes, RMGC undertook to support the relocation and resettlement of households in line with all relevant Romanian and EU requirements and international recognized best practices, including World Bank guidelines.⁴⁰⁵ Three versions of the RRAP were developed in 2001, 2002, and 2006, and all were prepared by leading specialists in the field in consultation with the community over many years.⁴⁰⁶ Moreover, as discussed above, monitoring of those who resettled and relocated shows that, for the vast majority of these families, RMGC’s impact was positive.⁴⁰⁷

161. Seventh, the NDPs claim that RMGC retained Arheoterra Consult, a company allegedly lacking the necessary professional credentials, to conduct a study of archaeology and cultural patrimony and that therefore the methods applied “lacked scientific rigor and showed that further research was necessary to comprehensively assess the cultural and archeological patrimony of all affected areas, including Orlea and Corna.”⁴⁰⁸ This claim is incorrect. Arheoterra Consult did not produce any study for RMGC or perform any archaeological or cultural heritage research in Roşia Montană. As discussed above and more fully by Mr. Gligor, Romanian State institutions performed all of the preventive archaeological research according to an intensive program organized by the Ministry of Culture. All of the Ministry of Culture’s

Tailings Management Facility by Norwegian Geotechnical Institute dated May 18, 2009 (Exh. C-392.2). *See also* Memorial ¶¶ 226, 249; Avram ¶¶ 25, 68-69; Avram II ¶ 124.

⁴⁰³ Prof. Paul Whitehead, Dr. Suzanne Lacasse, and Patrick Corser, Clean-up Strategy, Risk Assessment and Analysis of Accidental Pollution at Roşia Montană dated Apr. 2009 (Exh. C-394.3) at 1.

⁴⁰⁴ Submission at 14.

⁴⁰⁵ Lorincz ¶ 14.

⁴⁰⁶ Resettlement Action Plan dated Apr. 2001 (Thomson Exh. 22); RMGC and Planning Alliance Inc., Roşia Montană Project Resettlement Action Plan, Vol. 1: Main Report dated July 24, 2002 (Exh. C-1996); RMGC and Planning Alliance Inc., Roşia Montană Project Resettlement Action Plan, Vol. 2: Annexes, July 24, 2002 (Exh. C-1997); Resettlement and Relocation Action Plan Vol. 1 dated Feb. 2006 (Exh. C-463); Resettlement and Relocation Action Plan Vol. 2 dated Feb. 2006 (Exh. C-464). *See also* Lorincz ¶¶ 21-27.

⁴⁰⁷ *See supra* § D.

⁴⁰⁸ Submission at 14-15.

decisions to discharge various areas were based on the reports and recommendations of the experts selected by the Ministry of Culture, including the world-leading expert in mining archaeology, Dr. Cauuet.⁴⁰⁹

162. Eighth, the NDPs claim that, in preparing the EIA Report, RMGC relied on a management plan on cultural heritage prepared by the architecture firm Opus that was subsequently challenged by the authors as missing and/or distorting key conclusions.⁴¹⁰ This claim lacks any basis for the reasons stated above.⁴¹¹ Opus did not draft the Cultural Heritage Management Plan for the EIA Report, but rather was subcontracted by NHMR to prepare a discrete sub-section of that management plan relating to Roșia Montană's historical center, which was incorporated into the final Cultural Heritage Management Plan by the EIA-certified experts responsible for assembling the EIA Report.⁴¹² RMGC explained contemporaneously the reasons for the minor changes made during the editing process.⁴¹³ In any event, the Ministry of Culture twice endorsed the issuance of the Environmental Permit and therefore agreed with RMGC's approach.⁴¹⁴

163. Ninth, the NDPs blame the "area's status as a mono-industrial zone" for the lack of alternative economic activities in the area such as agriculture and tourism.⁴¹⁵ The NDPs acknowledge that the viability of an agriculture-based industry has not been proven.⁴¹⁶ Moreover, the area is not suitable for large-scale agriculture due to the harsh cold climate.⁴¹⁷ A tourism-based industry also is unlikely to be viable in the short term due to a lack of

⁴⁰⁹ See *supra* § E.3; Gligor ¶¶ 25-34; Gligor II ¶ 18.

⁴¹⁰ Submission at 7, 15.

⁴¹¹ See *supra* § C.

⁴¹² 2007 Update to EIA Report, Public Consultations Vol. 64 (Exh. C-349) at 23-24.

⁴¹³ 2007 Update to EIA Report, Public Consultations Vol. 64 (Exh. C-349) at 22-40.

⁴¹⁴ Reply ¶¶ 63-71, 90.b.

⁴¹⁵ Submission at 15.

⁴¹⁶ Submission at 15. See also Avram ¶¶ 10-17 (discussing the historical pollution at Roșia Montană and the Government's repeated acknowledgement that it was unwilling to make the investments necessary to remediate the environmental damage it caused in the area).

⁴¹⁷ See, e.g., Planning Alliance, Gold and Cold - Traits of the Communities in the Impacted Areas dated Dec. 2002 (Exh. C-725) at 3 (observing that, "while the affected communities have sometimes been mistakenly portrayed as significantly agricultural, in reality the harsh cold climate, altitude, mountain relief and acidic soils preclude this"). See also Lorincz ¶ 9 (noting that the area is not suitable for larger-scale agriculture).

infrastructure and the prevalence of environmental pollution in and around Roșia Montană.⁴¹⁸ Among the many benefits of the Project, RMGC would have contributed significantly to remediate historic pollution in the area and would have financed the creation of new infrastructure, which would have helped create conditions for sustainable long-term economic development through tourism.⁴¹⁹

164. The NDPs next repeat their claim that Alburnus Maior’s membership “demonstrates that resistance to the Project cuts through all ages, sexes, and professional occupations.”⁴²⁰ That claim is unsubstantiated and demonstrably false. As discussed above, there is no evidence that Alburnus Maior represents the interests of anyone other than its President, Mr. Eugen David, and, at best, a small number of additional individuals.⁴²¹

165. The NDPs also repeat various complaints first made in 2005 by Alburnus Maior President Eugen David under the Aarhus Convention to the Aarhus Convention Compliance Committee (“Aarhus Compliance Committee” or “Committee”).⁴²² The Aarhus Compliance Committee, established under Article 15 of the Aarhus Convention, is a consensual body of a “non-confrontational, non-judicial and consultative nature” to review and assess compliance with

⁴¹⁸ See, e.g., UNDP/BRC Draft Fact Finding Mission Report on Sustainable Development Pathways for Roșia Montană dated July 2006 (Exh. C-503) at 20 (noting that “more significant tourism activity can only be expected to take place in the long term given the poor state of the infrastructure, the lack of tourism facilities and the lack of appropriate skills”).

⁴¹⁹ Memorial ¶¶ 82-87.

⁴²⁰ Submission at 15. The NDPs assert that Alburnus Maior’s members do not recall certain discussions referenced in the EIA Report that were held by an “independent organization . . . with the various interest groups in Roșia Montană.” Submission at 15. The discussions are described in a study conducted in 2002 by Institutul de Cercetare a Calitatii Vietii (“ICCV”). Research Institute on Quality of Life, Socio-Economic Baseline Report dated 2002 (Exh. C-726). See also Lorincz II ¶¶ 45-46 (noting that “ICCV interviewed 30 households in Roșia Montană and Corna and conducted focus group discussions with residents in Gura Roșiei, Dăroaia, Abrud, Câmpeni, and Alba Iulia”).

⁴²¹ See *supra* § B.

⁴²² Submission at 15. See also Report of the Aarhus Convention Compliance Committee dated June 11-13, 2008 (Exh. C-2905) ¶ 1.

the provisions of the Convention.⁴²³ The Romanian Government responded fully before the Committee to Alburnus Maior's various complaints.⁴²⁴

166. Claimants have no obligations under the Aarhus Convention, and RMGC is bound only by applicable Romanian law. Any consultative finding or recommendation with regard to Romania's legal framework to ensure compliance with the provisions of the Aarhus Convention is thus solely directed to the Romanian State. Claimants therefore limit their observations regarding Alburnus Maior's Aarhus Convention complaints to a few points below.

167. First, the NDPs complain about the locations of public hearings during the EIA process. The Public Consultation and Disclosure Plan for the EIA procedure was prepared in consultation with and approved by the Ministry of Environment.⁴²⁵ The Plan provided for extensive consultations that even Respondent's expert Dr. Thomson acknowledges exceeded Romanian regulatory requirements.⁴²⁶ Given that RMGC participated in 14 public hearings in locations in and around Roșia Montană, as well as in Bucharest, and 2 public hearings in Hungary (when the EIA Rules of Procedure contemplate only one public hearing⁴²⁷), it is not credible to claim that the locations selected were inadequate.

168. Second, the NDPs complain that the public did not have sufficient opportunity to provide comments on the EIA Report and that RMGC's responses at the public hearings were inadequate. Notably, however, the NDPs acknowledge that each member of the public was

⁴²³ UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters dated June 25, 1998 (Exh. C-2897) Art. 15; UNECE, Background on Aarhus Convention Compliance Committee (Exh. C-2898).

⁴²⁴ Various submissions of Alburnus Maior and the Romanian Government to the Committee are available online. See Aarhus Convention Compliance Committee, Romania Communication ACC/C/2005/15 website (Exh. C-2899), available at <https://www.unece.org/env/pp/compliance/Compliancecommittee/15TableRomania.html>; Aarhus Convention Compliance Committee, Romania Communication ACCC/C/2012/69 website (Exh. C-2900), available at <https://www.unece.org/env/pp/compliance/compliancecommittee/69tableromania.html>.

⁴²⁵ Avram ¶¶ 48-52; Avram II ¶¶ 129-133.

⁴²⁶ Thomson ¶ 69.

⁴²⁷ Mihai ¶ 182 (noting that, "[a]s the EIA Rules of Procedure expressly contemplate only one public debate session . . . it may be stated that the public consultations carried out in the EIA Process exceeded the legal requirements").

provided time during the public hearings to present comments.⁴²⁸ The public also had the opportunity to submit written questions and comments.⁴²⁹ As noted above, RMGC provided answers to all of the questions and comments received from the public in a 25,000-page EIA Report Annex submitted to the Ministry of Environment.⁴³⁰

169. Third, with respect to alleged deficiencies in the list of the public's questions and comments and alleged inaccessibility of the EIA Report at the places indicated by the Ministry of Environment, it is the Ministry of Environment that records the participants' opinions and forwards the well-grounded proposals and comments to RMGC.⁴³¹ In any event, the Romanian Government contemporaneously confirmed that the allegations made by Alburnus Maior are "not substantiated," that the "list of questions drawn up by [the Ministry of Environment] contains all concerns raised by the public," that the EIA "documentation was made available to the public in [as] many as possible locations," and that "[i]n these conditions one cannot imagine that a certain natural or legal person from the concerned public didn't access the documentation."⁴³²

170. Fourth, there is no truth to the allegation that RMGC had security personnel intimidating the public and preventing them from expressing grievances.⁴³³ Indeed, the sheer number of questions and comments received during the public consultations belies the notion that questions were discouraged. As the Romanian Government's response to this complaint notes, officials called on the police and the National Environmental Guard and RMGC retained

⁴²⁸ Submission at 15.

⁴²⁹ Order No. 860/2002 of the Ministry of Water and Environmental Protection on the approval of the environmental impact assessment procedure and the issuance of the environmental permit (Exh. C-1774) Art. 40.

⁴³⁰ Avram II ¶ 132 (recalling "meetings in Cluj and Bucharest where RMGC met with the public from four in the afternoon until five in the morning so that RMGC could answer each and every question"). *See also* Lorincz ¶¶ 59-64 (discussing generally the extensive outreach conducted by the company).

⁴³¹ Order No. 860/2002 of the Ministry of Water and Environmental Protection on the approval of the environmental impact assessment procedure and the issuance of the environmental permit (Exh. C-1774) Art. 42.

⁴³² Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated May 25, 2007 (Exh. C-2904) at 9, 18. *See also id.* at 9-10 (listing the various locations where the EIA Report was available in electronic format, including Gabriel's and RMGC's websites).

⁴³³ Submission at 15.

security because at the public hearings some members of the public were “rather aggressive with the representatives of the Minister of Environment and Water Management and even with other members of the public.”⁴³⁴

171. Finally, the NDPs wrongly suggest that the Aarhus Compliance Committee first deferred and then later accepted their views about the EIA process.⁴³⁵ In 2007, the Committee invited the Romanian Government and Alburnus Maior to comment on restrictions on access to EIA documentation.⁴³⁶ However, the Committee thereafter found the issue was moot as an earlier instruction exempting EIA studies from public disclosure that would not have been compliant with the Aarhus Convention in the Committee’s view was subsequently changed, and the EIA Report for the Project had been made public in any event.⁴³⁷

172. The NDPs also erroneously suggest that the Committee “postponed” its consideration of other issues raised.⁴³⁸ Although the Aarhus Compliance Committee issued an early decision deferring other aspects of the NDPs’ complaint until after the EIA procedure concluded,⁴³⁹ the Committee closed the compliance proceedings in 2009, finding that “there was no need to keep the file on communication ACCC/C/2005/15 open,” agreeing “to conclude its considerations and close the case,” and noting “that if in the future there were any new

⁴³⁴ Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2005/15) dated May 25, 2007 (Exh. C-2904) at 17.

⁴³⁵ Submission at 15.

⁴³⁶ Report of the Aarhus Convention Compliance Committee dated June 11-13, 2008 (Exh. C-2905) ¶¶ 8-13. *See also id.* ¶ 26 (noting “the uncertainty surrounding the timetable for the completion of the decision-making procedure in question” and that “decision I/7 does not require it to address all facts and/or allegations raised in a communication,” and deciding “only to consider the issue of the public accessibility of EIA studies in these findings”).

⁴³⁷ Report of the Aarhus Convention Compliance Committee dated June 11-13, 2008 (Exh. C-2905) ¶¶ 23, 33-34. *See also* Findings and Recommendations with Regard to Communication ACCC/C/2012/69 Concerning Compliance by Romania dated June 26, 2015 (Exh. C-2908) ¶ 3 (noting that “the Committee did not find the Party to be in non-compliance because, prior to the adoption of its findings, the situation was remedied at the national level and the law exempting EIA studies from disclosure was amended”).

⁴³⁸ Submission at 15 (claiming that “[s]ince the EIA procedure was not completed at the time (and still isn’t), the Aarhus Committee postponed its consideration of the concerns raised and has yet to take a final decision on it”).

⁴³⁹ *See* Report of the Aarhus Convention Compliance Committee dated June 11-13, 2008 (Exh. C-2905) ¶¶ 7-14 (noting that in 2006 and 2007 the Committee agreed not to proceed with the development of findings and recommendations on Alburnus Maior’s communication until after the EIA procedure had concluded).

developments in relation to the subject matter of the communication that in the opinion of [Alburnus Maior] constitute[d] non-compliance, [it] would be free at any stage to submit a new communication.”⁴⁴⁰ The Committee’s decision to close the proceedings after four years of communications between Alburnus Maior and the Romanian Government shows that any alleged “shortcomings” related to public consultations on the EIA Report did not provide a sufficient basis for a finding of non-compliance with the Aarhus Convention.

173. In 2012, Greenpeace CEE Romania, the Center for Legal Resources, and Justice and Environment (a network of environmental law NGOs) submitted another complaint to the Aarhus Compliance Committee. The NDPs wrongly claim that the Committee’s findings in relation to that complaint “underscore the fact that the company, and Romania by not ensuring compliance, violated the communities’ rights to public participation and access to information.”⁴⁴¹ In fact, the Committee’s findings had nothing to do with RMGC. Instead, the Committee found among other things that Romania’s failure to provide access to mining licenses and opportunities for public participation during the ADC process was not compliant with the Aarhus Convention.⁴⁴² Romania disputed the Committee’s view.⁴⁴³ As detailed in the Provisional Measures phase of this proceeding, certain documents are considered confidential and classified as work secret under Romanian law and are subject to numerous restrictions.⁴⁴⁴ To the extent Romanian laws are considered inadequate to implement provisions of the Aarhus

⁴⁴⁰ Letter from Aarhus Convention Compliance Committee to Eugen David dated July 27, 2009 (Exh. C-2906).

⁴⁴¹ Submission at 16.

⁴⁴² Findings and Recommendations with Regard to Communication ACCC/C/2012/69 Concerning Compliance by Romania dated June 26, 2015 (Exh. C-2908) ¶ 92.

⁴⁴³ *See, e.g.*, Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2012/69) dated May 22, 2013 (Exh. C-2907) at 10 (observing that “there is no ground under the Convention to qualify the archeological discharge as an environmental decision subject to public consultation” and that “archeological discharge is a procedure conducted by the representatives of the Ministry of Culture, and decisions are taken only on the basis of recommendations issued by the Archeology National Commission”). *See also* Findings and Recommendations with Regard to Communication ACCC/C/2012/69 Concerning Compliance by Romania dated June 26, 2015 (Exh. C-2908) ¶ 38 (noting that Romania “argues that the archeological discharge certificate is an administrative act and claims that no public participation is required by law to issue one”).

⁴⁴⁴ *See generally* Claimants’ Request for Provisional Measures dated June 16, 2016.

Convention, that is an issue for the Romanian State to address in view of the consultative recommendations of the Aarhus Compliance Committee.⁴⁴⁵

174. In any event, with respect to the EIA procedure, the Romanian Government confirmed that “all relevant archaeological information has been included in the environmental impact assessment report (EIA Report), as requested by the relevant Romanian legal provisions” and that “[s]uch documentation was made fully available to the public during the EIA process, and the public had the possibility to comment.”⁴⁴⁶

F. The NDPs’ Arguments About the Government’s Proposed Draft Law Are Various Speculative, Meritless, or Excluded, But They Correctly Attribute the Protests That Followed to the Government’s Proposing the Draft Law to Parliament

175. The NDPs allege without basis that RMGC sought a “special law” in order “to save the Project.”⁴⁴⁷ Both components of this allegation – that RMGC asked for a special law and that the law was necessary to implement the Project – are speculative and wrong.

176. As demonstrated in detail in Claimants’ submissions and witness statements, while RMGC supported long-pending proposals to improve the legislative framework applicable to all mining projects (as had been done for other industries), RMGC did not ask for a special law relating to the Project. Gabriel and RMGC also made clear they did not want issuance of the Environmental Permit to turn on any action by Parliament but wanted the Permit to be issued by Government Decision according to the applicable administrative procedure.⁴⁴⁸ The Government rejected that position and imposed parliamentary approval of a special law (eventually the “Draft Law”) on RMGC as an arbitrary and unlawful pre-condition to the Government’s issuance of the

⁴⁴⁵ Findings and Recommendations with Regard to Communication ACCC/C/2012/69 Concerning Compliance by Romania dated June 26, 2015 (Exh. C-2908) ¶¶ 92-93 (recommending that Romania “[r]eview its legal framework” and “[t]ake the necessary legislative, regulatory, or administrative measures” to ensure the correct implementation of the Convention’s provisions).

⁴⁴⁶ Romanian Government, Response to Information Request by Aarhus Convention Compliance Committee (ACCC/C/2012/69) dated May 22, 2013 (Exh. C-2907) at 7, 9. *See also id.* (observing that the EIA Report contains “a detailed description of all archaeological patrimony existing in the relevant area and presents in detail the measures undertaken by the developer for the protection thereof”).

⁴⁴⁷ Submission at 16-17.

⁴⁴⁸ Reply ¶¶ 179-188; Memorial ¶¶ 402-413, 449-465; [REDACTED].

Environmental Permit even though numerous Romanian officials repeatedly confirmed that the Project met all environmental permitting requirements.⁴⁴⁹ In so doing, the Government blatantly derogated from and disregarded the lawful administrative process that should have governed and resulted in issuance of the Environmental Permit.

177. In addition to RMGC not asking for a special law, for the reasons explained in Claimants' submissions and witness statements, RMGC also did not need the Draft Law to implement the Project.⁴⁵⁰ As Respondent itself admits and as Professor Mihai concludes, RMGC could have implemented the Project under the then-existing legal framework.⁴⁵¹ The NDPs thus are wrong to assert that the Draft Law was needed to "save" the Project.

178. The NDPs also describe the Draft Agreement attached to the Draft Law sent to Parliament incorrectly as being between "the company [RMGC] and Prime Minister Ponta," and further claim incorrectly that the Draft Agreement was "never published."⁴⁵² In fact, the parties to the Draft Agreement, the origin and effect of which is discussed at length in Claimants' submissions and witness statements, were RMGC and the Government of Romania.⁴⁵³ Also, the Draft Agreement was made public by both the Government and the Senate and was readily available online.⁴⁵⁴

⁴⁴⁹ Reply ¶¶ 109-111, 182-184; Memorial ¶¶ 402-413, 449-465, 468, 474, 478-479, 483, 503; [REDACTED]. The NDPs' various inadmissible legal arguments that RMGC did not meet the legal requirements to obtain the Environmental Permit, including with respect to the Water Framework Directive issues raised in this section of the Submission, are rebutted above. *See supra* § E.4.

⁴⁵⁰ Reply ¶ 185; Memorial ¶ 508; Tănase III ¶¶ 130, 144-145; Henry II ¶¶ 43-52.

⁴⁵¹ Reply ¶ 185 n.446; Counter-Memorial ¶ 369 (acknowledging that the Project could be implemented "pursuant to the existing legal framework"); Mihai II § VII.C (explaining that neither the Draft Law nor the attached Draft Agreement was necessary to implement the Project).

⁴⁵² Submission at 16.

⁴⁵³ Reply ¶ 186; Memorial ¶¶ 453-465; Tănase III ¶¶ 139-142; Henry II ¶ 44; Draft Law on Certain Measures Regarding the Mining of Gold and Silver Ores in the Roșia Montană Perimeter and on Stimulating and Facilitating the Development of Mining Activities in Romania and Draft Agreement on Certain Measures Regarding the Mining of Gold-Silver Ores in the Roșia Montană Perimeter dated Aug. 27, 2013 (Exh. C-519).

⁴⁵⁴ *See, e.g.*, <https://senat.ro/legis/PDF/2013/13L475FG.pdf> (official Senate website linking to copies of Draft Law with the Draft Agreement attached); *The government has made public the draft law concerning the Roșia Montană mine*, Hotnews.ro, dated Sept. 3, 2013 (Exh. C-2910) (linking to copies of Draft Agreement and Draft Law that had been posted to the website of the Department of Infrastructure Projects of National Interest and Foreign Investments).

179. Although wrong about much else, the NDPs correctly characterize the street protests in September 2013 as a reaction by members of the public to the Government's presenting the Draft Law to Parliament.⁴⁵⁵ Indeed, this is consistent with the position of Claimants,⁴⁵⁶ the opinion of Dr. Boutilier,⁴⁵⁷ and the contemporaneous statements of leading Romanian officials.⁴⁵⁸ As Dr. Boutilier explains at length, the mass protests were triggered, magnified, and sustained by a powerful underlying societal distrust of, and lack of confidence in, the Government itself, rather than by opposition to the Project as such.⁴⁵⁹

180. That the Government's arbitrary and illegal decision to condition issuance of the Environmental Permit on Parliament's passage of the Draft Law and to present that law to Parliament was the catalyst for the protests in September 2013 is demonstrably correct. Mass protests did not erupt, for example, following the November 2011 TAC meeting when Government officials and Project opponents alike recognized the Project was ready to be permitted.⁴⁶⁰ Nor did mass protests follow publication for public comment of the draft Environmental Permit in July 2013, which was a significant milestone in the history of the Project, or inclusion of the Project in the National Plan of Strategic Investment and Job Creation, also in July 2013.⁴⁶¹ Not until the Government presented the Draft Law to Parliament in late August 2013 did mass protests follow.

181. Drawing on a purported legal analysis allegedly prepared by counsel for Project opponents, the NDPs offer a potpourri of reasons to argue that provisions of the Draft Law were unconstitutional on numerous grounds.⁴⁶² As with the NDPs' other legal arguments, these too are excluded by PO19 and require no response here.⁴⁶³ In brief, however, as discussed in

⁴⁵⁵ Submission at 16.

⁴⁵⁶ Reply ¶¶ 189-203; Memorial ¶¶ 475-476; [REDACTED].

⁴⁵⁷ Boutilier ¶¶ 3.h, 91-92.

⁴⁵⁸ Reply ¶¶ 198-200.

⁴⁵⁹ Boutilier ¶ 3(h), 79-115; Reply ¶¶ 2(u)-(w), 189-203.

⁴⁶⁰ Reply ¶¶ 2(w), 201, 638; Tănase III ¶¶ 127-128, 183; Henry ¶¶ 37-38; Boutilier ¶ 92.

⁴⁶¹ Reply ¶ 2(w); Boutilier ¶¶ 91-92.

⁴⁶² Submission at 17.

⁴⁶³ Procedural Order No. 19 dated Dec. 7, 2018 ¶¶ 60, 66, 75(1)(b).

Claimants' submissions and the statements of [REDACTED], and as Minister Delegate Şova broadly confirmed in his testimony to the Special Commission, the Government not only insisted on submitting a special law to Parliament, but presented RMGC with near final drafts of the Draft Law and the Draft Agreement with little room for negotiation.⁴⁶⁴ While any alleged constitutional infirmities accordingly are due to the path dictated by the State, Professor Mihai disagrees with the notion that the Draft Law risked being declared unconstitutional.⁴⁶⁵

182. Finally, the NDPs relatedly argue that Parliament voted to reject the Draft Law because of what the NDPs claim were legal infirmities in the law.⁴⁶⁶ This argument is not only speculative, but is beyond the alleged expertise of the NDPs and in any event contradicted by the evidence. As Claimants demonstrated, the Senate Committees and the Special Commission that considered the Draft Law, and eventually Parliament as a whole, voted to reject the Draft Law along party lines for political reasons because they were instructed to do so by Government and political party leaders, notably including the leaders of the ruling coalition, Senator (and Senate President) Antonescu and Prime Minister Ponta.⁴⁶⁷

⁴⁶⁴ Memorial ¶¶ 453-460, 465; Reply ¶ 186; [REDACTED]. *See also* Transcript of Parliamentary Special Commission hearing dated Sept. 30, 2013 (Exh. C-507) at 23 (Minister Delegate Şova testifying that “[t]he representatives of [RMGC] were not called to a negotiation, they were called to be informed that they have to give these things to the Romanian State”).

⁴⁶⁵ Mihai II ¶¶ 351, 356-360.

⁴⁶⁶ Submission at 17.

⁴⁶⁷ Reply ¶¶ 204-213; Memorial ¶¶ 475-485, 500-521; [REDACTED].

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February 28, 2019

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