

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Sarama Resources Ltd

v.

Burkina Faso

(ICSID Case No. ARB/24/51)

PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality

Members of the Tribunal

Prof. Albert Jan van den Berg, President of the Tribunal

Mr. John Beechey CBE, Arbitrator

Prof. Nassib G. Ziadé, Arbitrator

Secretary of the Tribunal

Dr. Jonathan Chevry

18 September 2025

I. INTRODUCTION

1. On 17 July 2025, the Tribunal circulated a draft of this order (“**Draft PO 2**”) for discussion between the parties.
2. On 23 July 2025, the parties provided their comments on Draft PO 2, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.
3. On 25 July 2025, the first session of the Tribunal was held by video conference via zoom (“**First Session**”). During the First Session, the parties and the Tribunal discussed the parties’ comments on Draft PO 2 and the draft Procedural Order No. 1.
4. On 22 August 2025, the Tribunal circulated a revised Draft PO 2 to the parties for their comments. The parties provided their comments on the revised Draft PO 2 on 2 September 2025.
5. On 8 September 2025, the Tribunal invited Claimant to provide its comments on Respondent’s observations on the revised Draft PO 2 referred to in paragraph 4 above. Claimant provided its comments on 9 September 2025.
6. Having considered the parties’ views, the Tribunal now issues the present Order.

II. LEGAL FRAMEWORK

7. The legal framework applicable to the transparency and confidentiality of these proceedings is determined by the instruments mentioned in this Section.

A. Canada-Burkina Faso BIT

8. The Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments signed on 20 April 2015 and entered into force on 11 October 2017 (the “**Canada-Burkina Faso BIT**”) applies to the dispute between the parties:
 - (a) Article 32 of the Canada-Burkina Faso BIT pertains to the transparency and confidentiality of the arbitration and states as follows:

1. A Tribunal award under this Section shall be publicly available, including via the internet, subject to the redaction of

confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available unless the disputing parties otherwise agree, subject to the redaction of confidential information.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential information.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in those documents.

4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Section, but they shall ensure that those persons protect the confidential information in those documents.

5. If a Tribunal's order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information prevails. However, the Party should try to apply its law on access to information so as to protect information that the Tribunal's order has designated as confidential.

- (b) Article 1 of the Canada-Burkina Faso BIT sets forth the definition of "confidential information", which is further addressed in Section IV below.

B. The ICSID Convention

9. The ICSID Convention applies pursuant to Article 25(1)(a) of the Canada-Burkina Faso BIT.
10. Article 48(5) of the ICSID Convention states that the Centre shall not publish the award without the consent of the parties.

C. The ICSID Arbitration Rules 2022

11. The ICSID Arbitration Rules 2022 apply pursuant to Article 44 of the ICSID Convention:

- (a) ICSID Arbitration Rules 62-65 set forth provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings and open hearings.
- (b) ICSID Arbitration Rule 66 sets forth the definition of confidential or protected information, which is further addressed in Section IV below.

III. TRANSPARENCY

A. Publication of the Award

- 12. In accordance with Article 32(1) of the Canada-Burkina Faso BIT, the Award shall be publicly available on ICSID's website, subject to the redaction of confidential or protected information as defined in Section IV below.

B. Publication of Other Documents Issued by the Tribunal

- 13. In accordance with Article 32(1) of the Canada-Burkina Faso BIT and ICSID Arbitration Rule 63, and as agreed by the parties, ICSID shall publish on its website, all orders and decisions of the Tribunal, subject to the redaction of confidential or protected information defined in Section IV below.

C. Publication of Documents Submitted by the Parties

- 14. In accordance with Article 32(1) of the Canada-Burkina Faso BIT and ICSID Arbitration Rule 64, and as agreed by the parties, ICSID shall publish on its website, the parties' written submissions, subject to the redaction of confidential or protected information defined in Section IV below. Publication shall be limited to the parties' submissions referred to in ICSID Arbitration Rule 30, i.e., Memorial, Counter-Memorial, Reply and Rejoinder.
- 15. As agreed by the parties, ICSID shall not publish any supporting documents to the parties' written submissions, including exhibits, legal authorities, witness statements and expert reports.

D. Publication of the Hearing Transcripts

16. In accordance with Article 32(1) of the Canada-Burkina Faso BIT and ICSID Arbitration Rule 65(3), as agreed by the parties, ICSID shall publish on its website, the transcripts or recordings of hearings, subject to the redaction of confidential or protected information defined in Section IV below.

E. Hearings

17. In accordance with Article 32(2) of the Canada-Burkina Faso BIT and ICSID Arbitration Rule 65(1) and (2), hearings in the proceeding shall be open to the public.
18. The Tribunal shall establish a protocol governing public access to a hearing and the non-disclosure of confidential and protected information addressed during the hearing at the latest at the pre-hearing organizational meeting.
19. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential or protected information as defined in Section IV below.

IV. CONFIDENTIAL AND PROTECTED INFORMATION

20. Article 1 of the Canada-Burkina Faso BIT defines “confidential information” to mean “confidential business information or information that is privileged or otherwise protected from disclosure under the law of a Party”.
21. In addition, ICSID Arbitration Rule 66 defines confidential or protected information as information which is protected from public disclosure:
- (a) by the instrument of consent to arbitration;
 - (b) by the applicable law or applicable rules;
 - (c) in the case of information of a State party to the dispute, by the law of that State;
 - (d) in accordance with the orders and decisions of the Tribunal;
 - (e) by agreement of the parties;

- (f) because it constitutes confidential business information or protected personal information;
- (g) because public disclosure would impede law enforcement;
- (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

V. PROCEDURE FOR REDACTIONS

- 22. With respect to the publication of documents set out in Section III, any confidential or protected information defined in Section IV above, that is submitted to the Tribunal, shall be protected from disclosure and publication in accordance with the procedure set forth below.
- 23. Being mindful of the need to protect the personal data of individuals and the provisions of Section 24 of Procedural Order No. 1, when identifying protected information in accordance with paragraph 24 below, the Tribunal recommends that the parties redact, to the extent possible, the names of individuals, possible identifiers (such as position, title, nationalities) and information that can be considered sensitive regarding any individuals mentioned in any document to be published.
- 24. Within 45 days from the date of a decision or order, a written submission, or the date of transmittal of a final transcript or recording, a party shall give written notice to the Tribunal and the other party that it requests the non-disclosure of certain information it considers confidential or protected. Absent such a notice within the 45-day timeline, the Tribunal will authorize ICSID to publish the document or recording without redactions from the parties.
- 25. Within 21 days of receipt of the notice referred to in paragraph 24 above, the other party may raise objections to the proposed redactions.

26. If no objections are raised within the deadline established in paragraph 25 above, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
27. If objections are raised within the deadline established in paragraph 25 above, the parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
28. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in Annex A to this Order. The Tribunal shall resolve the disputed redaction requests and communicate its decision to the parties.
29. If information is to be redacted from a document or recording pursuant to the preceding paragraphs in this Section, the parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will authorize ICSID to publish the document.
30. As agreed by the parties, in the event of a dispute regarding proposed redactions to the Award, the power to decide shall reside with the former Members of the Tribunal, even if such Tribunal is at that time *functus officio*.
31. The former Members of the Tribunal will be compensated for time spent in the resolution of any disputes in connection with redaction of confidential information in the Award in accordance with Section 3 of Procedural Order No. 1, with their claims being paid from the case fund administered by ICSID for this proceeding pursuant to the ICSID Administrative and Financial Regulations.¹

¹ As the proceeding will conclude upon dispatch of the Tribunal's Award, any costs incurred after the dispatch of the Award (e.g., arbitrator fees for time spent addressing disputed redactions) will not be considered part of the costs of the proceeding. To ensure the payment of such costs incurred in connection with disputes over redactions of the Award, the parties agree that ICSID will keep the case trust fund open after the proceeding is concluded and debit the trust fund for any incurred costs. ICSID will close the case trust fund once the arbitrators have submitted their claims for fees relating to the resolution of disputes over redactions of the Award, if any.

On behalf of the Tribunal,

[signature]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: 18 September 2025

ANNEX A

TRANSPARENCY SCHEDULE

[insert party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing party	
Decision	