

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Glencore International A.G.

v.

Republic of Colombia

(ICSID Case No. ARB/21/30)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Ms. Sabina Sacco, President of the Tribunal

Prof. Bernard Hanotiau, Arbitrator

Prof. Donald M. McRae, Arbitrator

Secretary of the Tribunal

Ms. Alicia Martín Blanco

26 January 2024

TABLE OF CONTENTS

I.	SCOPE OF THIS ORDER.....	3
II.	PROCEDURAL BACKGROUND	3
III.	THE PARTIES' POSITIONS.....	4
	A. THE RESPONDENT'S POSITION.....	4
	B. THE CLAIMANT'S POSITION.....	6
IV.	THE TRIBUNAL'S ANALYSIS	8
	A. THE TRIBUNAL'S TASK.....	8
	B. THE TRIBUNAL'S POWERS UNDER THE APPLICABLE LAW	9
	C. APPROPRIATE REGIME FOR TRANSPARENCY	10
V.	ORDER	13
	ANNEX A.....	14
	ANNEX B	16

I. SCOPE OF THIS ORDER

1. This Procedural Order No. 2 (“**PO2**”) addresses the transparency regime applicable to these proceedings.

II. PROCEDURAL BACKGROUND

2. On 9 October 2023, the Tribunal circulated to the Parties a draft Procedural Order No. 1 (“**PO1**”) for their review and comments.
3. On 23 October 2023, the Parties submitted their consolidated comments to the draft PO1.
4. On 24 October 2023, the Tribunal and the Parties held the First Session and Preliminary Procedural Consultation, where they discussed the draft PO1. During the session, the Parties indicated that they consented to publication by ICSID of the award, as well as any decision on jurisdiction and/or liability. However, they disagreed on the publication of other documents in the case record. The Tribunal invited the Parties to submit their positions on the transparency regime for this arbitration in writing.
5. On 2 November 2023, the Parties filed their respective submissions on transparency.
6. On 13 November 2023, the Claimant requested an opportunity to respond to the factual allegations made by the Respondent in its submission on transparency.
7. On 17 November 2023, the Respondent submitted its comments on the Claimant’s request dated 13 November 2023.
8. On 21 November 2023, the Tribunal granted the Claimant’s request, subject to some limitations concerning the scope of the additional submission, and allowed the Respondent to submit a response.
9. On 28 November 2023, the Claimant filed its additional submission.
10. On 5 December 2023, the Respondent filed its response to the Claimant’s additional submission.
11. On 11 December 2023, the Parties informed the Tribunal of their agreement regarding the procedure concerning redactions, if any, of portions of the award and any decisions on jurisdiction and/or liability.

III. THE PARTIES' POSITIONS

12. The Respondent requests a broader transparency regime than the one agreed upon by the Parties. Therefore, the Tribunal will first address the Respondent's position, and will then summarize the Claimant's position.

A. The Respondent's position

13. The Respondent requests that, in addition to publishing any decision on jurisdiction and award issued in the present arbitration, as per the Parties' agreement, ICSID should also publish the following three categories of documents:

- a. "[A]ll pleadings, expert opinions, and witness statements (but not exhibits, legal authorities and annexes) submitted to the Tribunal";
- b. "[A]ll procedural orders"; and
- c. "[T]he hearing transcripts, subject to the redaction of confidential information" ("**Colombia's Proposal**" or "**Proposal**").¹

14. The Respondent advances two main arguments in support of its Proposal:

15. *First*, the Respondent alleges that its Proposal "seeks to protect legitimate public interests"² and is, therefore, consistent with "[t]he global trend towards increased transparency in ISDS [...] reflected in the adoption of numerous international instruments", such as the 2013 UNCITRAL Transparency Rules, the 2014 United Nations Convention on Transparency in Treaty-Based Investor-State Arbitration (the "**UN Convention on Transparency**"), and the 2006 and 2022 ICSID Arbitration Rules.³

16. According to the Respondent, this global trend aims at, *inter alia*, (i) "hold[ing] governments and private actors accountable for their conduct in ISDS proceedings"; (ii) "enhanc[ing] the legitimacy of [ISDS]"; (iii) "establish[ing] a harmonized legal framework of a fair and efficient settlement of international investment disputes"; and (iv) "promot[ing] good governance".⁴

17. The Respondent contends that, in the present arbitration, the requested level of transparency is justified by the environmental and human rights allegedly at stake in the underlying

¹ Respondent's Transparency Submission dated 2 November 2023, ¶ 1.

² Respondent's Transparency Submission dated 2 November 2023, Section I.

³ Respondent's Transparency Submission dated 2 November 2023, ¶ 4.

⁴ Respondent's Transparency Submission dated 2 November 2023, ¶¶ 3-4.

dispute.⁵ “Crucially”, according to the Respondent, the transparency regime of its Proposal “would provide information to affected and interested third parties about the proceeding and the arguments raised therein, without which their right to file *amicus curia* pursuant to ICSID Arbitration Rule 37.2 would be curtailed”.⁶

18. *Second*, the Respondent argues that its Proposal “is consistent with the applicable rules”.⁷
19. The Respondent submits that the ICSID Convention (the “**Convention**”), the 2006 ICSID Arbitration Rules (the “**2006 Arbitration Rules**”) and the Agreement between Colombia and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments (the “**Treaty**”) do not contain confidentiality rules or obligations.⁸ Thus, “neither party in the present proceeding is precluded from publishing the materials identified in the Proposal”.⁹ However, “the publication of those materials *by the Centre*, per Colombia’s proposal, would contribute to an orderly conduct of this arbitration, as it would (i) ensure that publication is not portrayed by either party as an aggravation of the dispute, (ii) avoid procedural disputes regarding publication, (iii) allow for appropriate redaction of confidential information prior to publication, and (iv) contribute to transparency in, and the legitimacy of, ISDS”.¹⁰
20. The Respondent notes that Regulation 25(b) of the 2022 ICSID Administrative and Financial Regulations (the “**2022 A&F Regulations**”), which also apply in this case, provides that, “[w]ith a view to furthering the development of international law in relation to investment, the Centre shall publish: [...] documents generated in proceedings, in accordance with the rules applicable to the individual proceeding”. According to the Respondent, this provision is “not limited to awards and procedural orders” and, as opposed to the 2006 version of the A&F Regulations,¹¹ it does not require both Parties’ consent to the publication of case materials.¹²

⁵ Respondent’s Transparency Submission dated 2 November 2023, ¶¶ 5-8.

⁶ Respondent’s Transparency Submission dated 2 November 2023, ¶ 8.

⁷ Respondent’s Transparency Submission dated 2 November 2023, Section II.

⁸ Respondent’s Transparency Submission dated 2 November 2023, ¶ 9.

⁹ Respondent’s Transparency Submission dated 2 November 2023, ¶ 10.

¹⁰ Respondent’s Transparency Submission dated 2 November 2023, ¶ 10.

¹¹ Regulation 22 of the 2006 A&F Regulations provides that, “[i]f both parties to a proceeding consent to the publication of [...] (b) arbitral awards; or (c) the minutes and other records of proceedings, the Secretary-General shall arrange for the publication thereof, in an appropriate form with a view to furthering the development of international law in relation to investments”.

¹² Respondent’s Transparency Submission dated 2 November 2023, ¶ 11.

21. Finally, the Respondent notes that, pursuant to Article 44 of the Convention, in the absence of an agreement between the Parties on the publication of case materials, “the Tribunal shall decide the question”. The Respondent alleges that “there is no evidence that publication of the materials identified in the Proposal would endanger the safety of witnesses, undermine the integrity of the proceeding, or raise national security concerns”, or that “such publication would aggravate the dispute or cause prejudice to Claimant”.¹³ The Respondent thus submits that the Tribunal should adopt its Proposal.

B. The Claimant’s position

22. The Claimant requests that the Tribunal dismiss Colombia’s Proposal.¹⁴

23. With respect to the hearing transcripts, the Claimant argues that ICSID should not publish them for two reasons:

a. *First*, because the Parties have agreed at paragraph 24.7 of PO1 that, “[i]n accordance with Arbitration Rule 32(2), hearings shall be closed to the public”. Therefore, “[i]t would be inconsistent with Rule 32(2) and with the parties’ agreement if the entire contents of a closed hearing could be disseminated by way of publication of verbatim transcripts of that hearing”.¹⁵

b. *Second*, because, as ICSID tribunals have expressed, “the prospect of dissemination of hearing records could prevent witnesses and experts from being candid while answering questions at the hearing”. According to the Claimant, “[f]ear of harassment or reputational harm is a genuine concern for witnesses testifying against the State, particularly witnesses who reside in the Respondent State (which is the case of Claimant’s witnesses)”.¹⁶

24. The Claimant alleges that its position is consistent with the new 2022 Arbitration Rules (which do not apply to this case), pursuant to which transcripts cannot be published if a party objects.¹⁷

¹³ Respondent’s Transparency Submission dated 2 November 2023, ¶¶ 13-14.

¹⁴ Claimant’s Transparency Submission dated 2 November 2023, p. 1.

¹⁵ Claimant’s Transparency Submission dated 2 November 2023, p. 2.

¹⁶ Claimant’s Transparency Submission dated 2 November 2023, p. 2.

¹⁷ Claimant’s Transparency Submission dated 2 November 2023, p. 2. Claimant quotes Rule 65(3) of the 2022 Arbitration Rules, which provides that, “[u]pon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects”.

25. As to pleadings, witness statements, expert reports and procedural orders, the Claimant argues that ICSID should not publish them for the following four reasons:
- a. *First*, because “[t]he applicable Rules and Regulations do not allow ICSID to publish these documents without the parties’ consent”.¹⁸ According to the Claimant:
 - i. The 2006 Arbitration Rules only provide for ICSID’s publication of the award, and only insofar as the parties consent;
 - ii. “[A]rbitrators are required to keep information relating to the proceedings confidential pursuant to ICSID Arbitration Rule 6”; and
 - iii. Regulation 25 of the 2022 A&F Regulations, which allows ICSID to publish “documents generated in the proceedings [...] with a view to furthering the development of international law in relation to investment”, “is aimed at publishing decisions containing legal reasoning that are relevant to the development of international law”. The Claimant alleges that documents such as party pleadings and witness testimony “are not meant to promote the development of international law”.¹⁹
 - b. *Second*, the Claimant argues that ICSID tribunals have refused publication of documents relating to a case because (i) “they could aggravate the dispute and have negative repercussions on the integrity of the arbitral process”, and (ii) “witnesses should be able to submit testimony to the tribunal in the knowledge that what they say is confidential, and will not be made public, as otherwise, witnesses may be reticent to answer questions candidly”.²⁰
 - c. *Third*, the Claimant notes that, “even under the 2022 ICSID Arbitration Rules (which do not apply here), ICSID cannot publish a party’s pleadings insofar as it objects, and it cannot publish witness statements or expert reports unless both parties agree (Rule 64)”.²¹
 - d. *Fourth*, the Claimant asserts that the Tribunal’s “exposition of both parties’ view presented and analyzed in an objective manner” in its eventual Award or Decision on Jurisdiction “will serve the interests of transparency”.²²

¹⁸ Claimant’s Transparency Submission dated 2 November 2023, p. 3.

¹⁹ Claimant’s Transparency Submission dated 2 November 2023, p. 3.

²⁰ Claimant’s Transparency Submission dated 2 November 2023, pp. 3-4.

²¹ Claimant’s Transparency Submission dated 2 November 2023, p. 4.

²² Claimant’s Transparency Submission dated 2 November 2023, p. 5.

26. That being said, the Claimant states that it would not object to the publication of procedural orders once an award is rendered and subject to redacting any confidential information.²³

IV. THE TRIBUNAL’S ANALYSIS

A. The Tribunal’s task

27. The Parties “consent to publication by ICSID of the final award, as well as any decision on jurisdiction or partial award”, and have agreed on a procedure to determine what redactions, if any, must be made to such documents prior to publication.²⁴ Annex A to this PO2 contains the procedure for redactions agreed upon by the Parties. As in the ICSID Convention system there is only one award, and any other decisions on liability or jurisdiction take the name of decisions, the Tribunal has adjusted the Parties’ language to reflect this.
28. The Parties’ disagreement concerns the publication by ICSID of:
- a. “[A]ll pleadings, expert opinions, and witness statements (but not exhibits, legal authorities and annexes) submitted to the Tribunal”;
 - b. “[A]ll procedural orders”; and
 - c. “[T]he hearing transcripts, subject to the redaction of confidential information”.²⁵
29. The Respondent requests the publication of the documents listed above and the Claimant objects.²⁶ The Claimant, however, does not object to the publication of procedural orders by ICSID “once an award is rendered (subject to redacting any confidential information)”.²⁷

²³ Claimant’s Transparency Submission dated 2 November 2023, p. 4.

²⁴ Claimant’s email dated 11 December 2023. The Respondent confirmed its agreement to the content of the Claimant’s communication by separate email of the same date.

²⁵ Respondent’s Transparency Submission dated 2 November 2023, ¶ 1.

²⁶ The Parties have requested the Tribunal to determine whether ICSID can publish certain documents of these proceedings. The Tribunal notes that the Parties’ submissions also contain some references to confidentiality and to their ability to publish information from this arbitration (see, *e.g.*, Claimant’s Transparency Submission dated 2 November 2023, p. 5: “Claimant notes at the outset that the confidentiality of party submissions, and ICSID’s ability to publish such submissions, are distinct issues”; see, also, Respondent’s Transparency Submission dated 2 November 2023, ¶ 10: “It is therefore undeniable that neither party in the present proceeding is precluded from publishing the materials identified in the Proposal”). However, the Parties have not requested any decision from the Tribunal with respect to their confidentiality duties. Consequently, the Tribunal will not render any decision on the confidentiality of this arbitration and the documents submitted or produced therein at this stage of the proceedings.

²⁷ Claimant’s Transparency Submission dated 2 November 2023, p. 4.

30. The Tribunal must thus decide the matter and, to that effect, it will start by determining the scope of its powers under the relevant applicable law.

B. The Tribunal’s powers under the applicable law

31. The Parties agree that the relevant applicable rules for this decision are (i) the Treaty; (ii) the Convention; (iii) the 2006 Arbitration Rules; and (iv) the 2022 A&F Regulations.²⁸ The Respondent also refers to other “international instruments” – such as the 2013 UNCITRAL Transparency Rules and the UN Convention on Transparency – as examples of “the global trend towards increased transparency in ISDS”,²⁹ although it admits that they do not apply in these proceedings.³⁰
32. Article 44 of the Convention provides that “[a]ny arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question”.³¹
33. In the Tribunal’s view, whether or not ICSID may publish the documents identified in Colombia’s Proposal is a “question of procedure” in the sense of Article 44.³² Accordingly, if this question is not covered by the applicable rules, the Tribunal – like other ICSID tribunals in the past³³ – shall set out the publication/transparency rules.
34. The Treaty is silent on transparency. Similarly, as already pointed out by several ICSID tribunals, the Convention and the 2006 Arbitration Rules do not contain any provisions

²⁸ Claimant’s Transparency Submission dated 2 November 2023, p. 1; Respondent’s Transparency Submission dated 2 November 2023, ¶¶ 9 and 11.

²⁹ Respondent’s Transparency Submission dated 2 November 2023, ¶ 4.

³⁰ Audio of the first session held on 24 October 2023, 01:52:04-01:52:15.

³¹ Emphasis added.

³² This has also been the view of other ICSID tribunals (see, e.g., *Rand Investments Ltd. and others v. Republic of Serbia* (ICSID Case No. ARB/18/8), Procedural Order No. 5 dated 29 August 2019 (“**Rand**”), ¶ 27: “Absent an agreement between the disputing parties, matters of procedure are within the powers of the Tribunal pursuant to Article 44 of the ICSID Convention, and there is no doubt that issues of transparency and confidentiality are matters of procedure”).

³³ See, e.g., *Rand*, ¶ 27 quoted above. See, also, *Abaclat and others v. The Argentine Republic (formerly Giovanna a Beccara and others v. The Argentine Republic)* (ICSID Case No. ARB/07/05), Procedural Order No. 3 dated 27 January 2010 (“**Abaclat**”), ¶ 73 and *Huawei Technologies Co., Ltd. V. Kingdom of Sweden* (ICSID Case No. ARB/22/2), Procedural Order No. 3 dated 26 September 2022 (“**Huawei**”), ¶ 6.

expressly regulating the transparency of the proceedings.³⁴ They do contain, however, some relevant provisions that will be addressed in the next section as they may provide some guidance for the Tribunal’s analysis.

35. The Tribunal will also consider in its analysis below the 2022 A&F Regulations, pursuant to which ICSID shall publish “documents generated in proceedings, in accordance with the rules applicable to the individual proceeding”.³⁵ This provision should not be read as imposing a regime of full transparency to the parties to ICSID arbitrations, but rather as instructing the Centre to publish case materials if this is permitted by the rules applicable to the arbitration, including those set out by the relevant tribunal.
36. In summary, the applicable rules do not cover the question of whether the documents identified in Colombia’s Proposal may be published by ICSID. The Tribunal has therefore the discretion to order the transparency regime that it finds appropriate. The Tribunal will exercise this discretion in the next section.

C. Appropriate regime for transparency

37. As noted above, the Parties agree that ICSID shall publish any decision on jurisdiction and/or liability, as well as the award issued in the present arbitration. The Respondent requests that ICSID also publish all procedural orders, hearing transcripts, Parties’ submissions, witness statements, and expert reports, while the Claimant objects to this request.
38. The Tribunal acknowledges that there is a general trend in investment arbitration for more transparency. Transparency in this context serves mainly two purposes: (i) facilitating the “establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes”,³⁶ on the one hand; and (ii) giving access to information

³⁴ See, e.g., *BiwaterGauf (Tanzania) Ltd v. United Republic of Tanzania* (ICSID Case No. ARB/05/22), Procedural Order No. 3 of 29 September 2006 (“**Biwater**”), ¶ 121 (“there is no provision imposing a general duty of transparency [in the ICSID Convention and the 2006 Arbitration Rules]”). See, also, *Abaclat*, ¶ 73 (“the Tribunal deems that the ICSID Convention and Arbitration Rules do not comprehensively cover the question of the confidentiality/transparency of the proceedings”), and *Rand*, ¶ 26 (“there only remains a disagreement on the disclosure of the record of the proceedings. As just mentioned, there are no rules governing this issue in the relevant treaties and arbitration rules, namely the Cyprus-Serbia BIT and ICSID Convention and Rules”). Article 48(5) of the Convention authorizes the publication of arbitral awards by ICSID if the Parties so consent, but this provision does not resolve the dispute over Colombia’s Proposal given that both Parties agree to the publication by ICSID of the arbitral award and decisions on jurisdiction and/or liability.

³⁵ Regulation 25(b) of the 2022 A&F Regulations (“With a view to furthering the development of international law in relation to investment, the Centre shall publish: [...] documents generated in proceedings, in accordance with the rules applicable to the individual proceeding”).

³⁶ Resolution adopted by the United Nations General Assembly on 16 December 2013.

to those who may have an interest in the proceedings (including nationals of the State participating in the arbitration or third parties interested in acting as *amicus curiae*), on the other.

39. However, as the Claimant has pointed out, certain forms of transparency could jeopardize the integrity of the proceedings. The Tribunal must therefore balance these two interests.³⁷
40. Having considered both Parties' positions, the applicable rules and the competing interests at stake, the Tribunal has concluded that the appropriate regime for transparency in this arbitration is the following:
41. **Pleadings, expert opinions and witness statements**. The Tribunal has come to the conclusion that these documents should not be published on the ICSID website. While these documents may interest the public, their publication does not necessarily promote the development of the law.³⁸ More importantly, such publication could affect the integrity of the proceedings. Indeed, as pointed out by an investment tribunal, "present[ing] to the public the parties' one-sided views of the facts and arguments, sometimes months away from the other party's pleading" may allow "public opinion to escalate on the basis of lawyers' attempts to persuade the Tribunal". This may, therefore, "risk[] aggravating the dispute and imposing an additional burden on the parties, who must sometimes also defend themselves on the public and political arena".³⁹ Moreover, "the prospect of publication may arguably induce parties, witnesses and experts to be less candid in their submissions or statements", thus "compromis[ing] the Parties' possibility of fully presenting their case".⁴⁰
42. **Hearing transcripts**. The Tribunal has also concluded that these documents should not be published. Even though the 2006 Arbitration Rules do not prohibit their publication, the Tribunal agrees with the *Huawei* tribunal that, in light of the Parties' agreement to hold closed hearings,⁴¹ "[i]t would [] be inconsistent to disseminate information about the content of closed hearings by way of the publication of transcripts or recordings".⁴² In addition, the Tribunal notes that even the recent 2022 Arbitration Rules, which are not applicable to this arbitration but have been issued in the context of the above-mentioned

³⁷ This "balancing test" is "well established" in this kind of decisions, as noted in *Huawei*, ¶ 10.

³⁸ In the same vein, see *Huawei*, ¶ 11.iii.

³⁹ *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Government of India* (PCA Case No. 2016-7), Procedural Order No. 2 ("**Cairn**"), ¶ 50. Although the *Cairn* proceedings were administered by the PCA, the tribunal's conclusions on transparency are relevant for all kind of investment arbitration proceedings. See, also, in the ICSID context, *Biwater*, ¶¶ 136, 158 and 159; and *Abaclat*, ¶¶ 102 and 104.

⁴⁰ *Cairn*, ¶ 50.

⁴¹ PO1, ¶ 24.7.

⁴² *Huawei*, ¶ 11(iv).

global trend towards transparency, do not allow the publication of hearing transcripts if either party objects.⁴³ This provision reflects a principle of consent to publication of hearing transcripts with which the Tribunal agrees, precisely because, as noted above, such publication may affect the candidness of the parties, witnesses and experts' statements during the hearings.

43. **Procedural orders.** By contrast, the Tribunal finds it appropriate for procedural orders to be published in the ICSID website shortly after their publication. *In limine*, the Tribunal notes that the Claimant does not object to the publication of procedural orders “once an award is rendered”.⁴⁴ Publication of procedural orders *before* the award is rendered, however, will grant interested third parties access to relevant procedural information of this arbitration presented in an objective manner, allowing them to monitor the progress of these proceedings. It may also serve the interest of contributing towards “the development of international law in relation to investment”, as provided for in Regulation 25(b) of the 2022 A&F Regulations.⁴⁵ The publication of procedural orders shall follow the same procedure agreed by the Parties for the publication of the award and any decisions on jurisdiction or decisions on liability, which is set forth in Annex A of this Order.
44. That being said, the Tribunal finds that ICSID’s publication of procedural orders will not suffice to provide the public with the necessary degree of information regarding the issues in dispute and the Parties’ stances in this arbitration (*i.e.*, one of the two main purposes of transparency). Indeed, procedural orders typically deal with procedural incidents and thus rarely identify the Parties’ main claims and defenses or the key facts, which are only summarized and made available to the public once the award and other main decisions are rendered.
45. The Tribunal is of the view that the public should have access, from an early stage of these proceedings, to an accurate summarized account of the key facts, the issues in dispute and the Parties’ positions. In the absence of such an account, the public would be forced to rely on other sources (*e.g.*, general news articles), which might provide inaccurate or unreliable information. This might cause interested third parties to have a misleading view of the dispute, which in turn undermines the legitimacy of investor-state arbitration.
46. For this reason, the Tribunal determines that the Parties shall submit to ICSID, for its publication, summaries of their respective positions on the merits and on any objection to

⁴³ 2022 Arbitration Rules, Rule 65(3) (“Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects”).

⁴⁴ Claimant’s Transparency Submission dated 2 November 2023, p. 4.

⁴⁵ In the same vein, see *Cairn*, ¶ 54 (“The publication of these orders, decisions and awards may also contribute to the harmonization of investment treaty practice and case law”). Likewise, *Huawei*, ¶¶ 11.i and 11.ii.

the Tribunal's jurisdiction. The content of these summaries and the procedure for their publication is addressed at Annex B to this PO2.

V. ORDER

47. For the reasons set out above, the Tribunal:

- a. **ORDERS** the publication by ICSID of all procedural orders, of all decisions on jurisdiction and/or liability and of the award rendered by this Tribunal, in accordance with the procedure set forth in Annex A to this PO2;
- b. **ORDERS** the Parties to submit to ICSID, for their publication, summaries of their respective positions and requests for relief in relation to (i) the merits and (ii) any objection to the Tribunal's jurisdiction, in accordance with the content and procedure set forth in the Annex B to this PO2;
- c. **DENIES** the Respondent's request that ICSID publish all pleadings, expert opinions, and witness statements submitted to the Tribunal; and
- d. **DENIES** the Respondent's request that ICSID publish the hearing transcripts of this arbitration.

On behalf of the Tribunal,

[Signed]

Sabina Sacco
President of the Tribunal

Date: 26 January 2024

ANNEX A

Procedure for the publication of the Tribunal’s procedural orders, decisions on jurisdiction and/or liability and the award

1. Prior to publication of the Tribunal’s procedural orders, decisions on jurisdiction and/or liability and the award (the “**Tribunal’s Decisions**”), the Parties will attempt to agree which, if any, portions of the Tribunal’s Decision should be redacted on the basis that they contain confidential or business confidential information. The Parties agree to resolve any disagreements that may arise pursuant to the following procedure:
 - a. Within 14 calendar days of the issuance of the Tribunal’s Decision,⁴⁶ each Party shall indicate to the other Party (without copying ICSID or the Tribunal) which portions of the Tribunal’s Decision it proposes to redact on the basis that they contain confidential or business confidential information.
 - b. If a Party objects to any redaction, it shall promptly inform the other Party, with a view to resolving or narrowing the disagreement.
 - c. No later than 21 calendar days from the issuance of the Tribunal’s Decision, the Parties shall submit to the Tribunal a version of the Tribunal’s Decision that reflects any redactions on which both Parties agree, as well as any disagreement between the Parties concerning other proposed redactions. The Tribunal shall decide any disagreement between the Parties concerning the proposed redactions.
2. Insofar as a dispute with respect to redactions arises after the issuance of the award, the Parties agree that the members of the (*functus officio*) Tribunal have the power to decide on said proposed redactions. As the proceeding will conclude upon dispatch of the Tribunal’s award, any costs incurred after the dispatch of the award will not be considered part of the costs of the proceeding. Each Party shall bear their post-award costs relating to the redaction of the award. The fees and costs of the members of the Tribunal and ICSID in relation to the redaction procedure will be paid from the trust account for the case, which shall be maintained following the issuance of the award for this purpose. The three arbitrators will be able to submit claims for such fees and expenses at the same hourly rate and through the same process used during the proceeding, and the claims will be paid from the advance payments made by the Parties. 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.

⁴⁶ For PO1, the 14-day time-limit will start running from the issuance of this PO2.

3. ICSID will prepare and publish a copy of the Tribunal's Decisions reflecting any redactions agreed by the Parties, as well as any redactions decided by the members of the Tribunal. Absent a submission from the Parties pursuant to paragraph 1(c) above within 21 days from the date of the dispatch of the award, the award will be published unredacted by the ICSID Secretariat.

ANNEX B

Procedure for the publication of summaries jointly prepared by the Parties

1. No later than 14 calendar days from the submission of the Respondent's Counter-Memorial on the Merits, each Party shall prepare and send to the other a draft 3,000-word summary of its position on the merits, including its account of the key facts and issues in dispute, as well as its request for relief.
2. No later than 14 calendar days from the submission of the Claimant's Counter-Memorial on Jurisdiction, each Party shall prepare and send to the other a 1,500-word summary of its position in relation to any objection to the Tribunal's jurisdiction, including that Party's account of the key facts and issues in dispute, as well as its request for relief.
3. The summaries indicated above shall accurately reflect that Party's respective position as set out in the first round of pleadings on the merits or jurisdiction and may not contain new arguments or information. The Parties shall draft these summaries as objectively as possible and shall refrain from using inflammatory language.
4. Within 7 calendar days from its receipt, each Party may object to the contents of the other's summary on the basis that it does not comply with paragraph 3 above. On that same date, the objecting Party shall file the summary and its objection with the Tribunal.
5. If an objection is filed, the Tribunal shall decide on the objection after hearing the other Party. The Tribunal will determine the final content of the relevant summary and shall forward it to ICSID for publication.
6. If there is no objection to a Party's summary, within 3 calendar days after the time limit at paragraph 4 has elapsed, that Party shall submit its summary to the Secretary of the Tribunal for publication by ICSID.
7. ICSID shall publish both Parties' summaries jointly, shortly after their receipt. If an objection to a summary has been filed, ICSID shall refrain from publishing any summary until the objection has been resolved.