

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Aqua Power and Catalysis Capital Ltd

v.

United Republic of Tanzania

(ICSID Case No. ARB/24/42)

PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality

Members of the Tribunal

Prof. Jan Paulsson, President of the Tribunal
Mr. Brooks Daly, Arbitrator
Mr. Makhdoom Ali Khan, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

24 April 2025

I. PROCEDURAL BACKGROUND

1. On 22 January 2025, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On 17 February, 2025, the Parties commented on Draft PO2.
3. On 6 March 2025, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the Draft Procedural Order No. 1.
4. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

II. LEGAL FRAMEWORK

5. The legal framework applicable to these proceedings is determined by the Agreement on Promotion and Reciprocal Protection of Investment between the Government of the Republic of Mauritius and the Government of the United Republic of Tanzania concluded in 2009 (the “**BIT**”), the ICSID Convention, and the 2022 ICSID Arbitration Rules.
6. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding.
7. In this case, the BIT is silent with respect to transparency/confidentiality. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66 as amended by Section III of this Order.
8. In accordance with ICSID Arbitration Rule 66 confidential or protected information is 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.

III. TRANSPARENCY RULES

9. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

A. AWARD (ICSID ARBITRATION RULE 62)

10. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, the Parties do not consent to publication of the Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.
11. In accordance with ICSID Arbitration Rule 62(4), absent consent of the parties pursuant to ICSID Arbitration Rule 62(1)-(3), ICSID shall publish excerpts of the Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment, to be proposed to the parties within 60 days after the date on which either party objects to publication. The Parties may comment on the proposed excerpts within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected. ICSID shall consider any comments received on the proposed excerpts and publish the excerpts within 30 days after the expiry of the time limit for the Parties' comments on the proposed excerpts.

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

12. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section G below.

C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)

13. ICSID shall not publish the Parties' written submissions unless the Parties agree otherwise.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)

14. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.

E. OPEN HEARINGS (ICSID ARBITRATION RULE 65(1)-(2))

15. Unless the Parties agree otherwise, hearings shall not be open to the public.

F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (ICSID ARBITRATION RULE 65(3))

16. Transcripts and recordings of hearings shall not be published by ICSID, unless both Parties agree otherwise.

G. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66) AND DATA PRIVACY

17. With respect to publication pursuant to Section B above, any confidential or protected information as defined in ICSID Arbitration Rule 66 that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
18. The Tribunal is mindful of the need to protect the personal data of individuals and draws the Parties' attention to Section 24 of Procedural Order No. 1. When identifying protected

information in accordance with paragraph 19 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.

19. Within 21 days from the date of a decision or order, 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 21-day timeline, the Tribunal will authorize ICSID to publish the document or recording without redactions from the Parties.
20. Within 14 days of receipt of the notice referred to in paragraph 19, the other Party may raise objections to the proposed redactions.
21. If no objections are raised within the deadline established in paragraph 20, the Tribunal will authorize ICSID to publish the document or recording at issue with the requested redactions.
22. If objections are raised within the deadline established in paragraph 20, 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.
23. 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 redactions requests and communicate its decision to the Parties.
24. If information is to be redacted from a document in accordance with paragraphs 17-22, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.

On behalf of the Tribunal,

_____[Signature]_____

Prof. Jan Paulsson
President of the Tribunal
Date: 24 April 2025

ANNEX TO PROCEDURAL ORDER NO. 2
TRANSPARENCY SCHEDULE

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