

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

LUPAKA GOLD CORP.

Claimant

v.

REPUBLIC OF PERU

Respondent

(ICSID Case No. ARB/20/46)

PROCEDURAL ORDER No. 3

Members of the Tribunal

Prof. John R. Crook, President of the Tribunal

Mr. Jonathan D. Schiller, Arbitrator

Dr. Gavan Griffith QC, Arbitrator

Secretary of the Tribunal

Ms. Luisa Fernanda Torres

9 November 2021

1. This order relates to the Claimant's application of October 13, 2021, requesting certain measures for protection of the identity of a witness and of the witness's testimony, and to the Parties subsequent correspondence, including the Respondent's letters of October 22 and November 3, 2021 and the Claimant's letter of October 27, 2021.
2. The Tribunal finds that the circumstances, as presently understood by the Tribunal in light of the existing partial record in the case, justify protecting the witness's identity and the contents of the witness's statement as confidential information within the meaning of Procedural Order No. 2.
3. The Tribunal finds that proposed redactions to the Claimant's Memorial and to the witness statement of a second witness, as set out in the redacted Memorial accompanying the Claimant's letter of October 27 and in Annex A to that letter, are warranted in the circumstances. They are approved by the Tribunal.
4. In this connection, the Tribunal has carefully reviewed each of the Claimant's proposed redactions and the Respondent's proposed alternatives. The Tribunal assesses that the abbreviated alternatives proposed by the Respondent would in many instances leave context that, either standing alone or read in conjunction with other provisions, could well reveal the identity of the witness.
5. The Tribunal is mindful of the Respondent's concerns regarding the potential impact on its ability to investigate and prepare its defense of limits on disclosure of confidential information going beyond the agreed framework of Procedural Order No. 2. The Tribunal also takes note of the Claimant's concerns regarding the risks of possible disclosure. The Tribunal regards it as appropriate to incline towards caution having regard to the matters sought to be protected.
6. The Tribunal is confident that the Respondent fully appreciates the need to assure that no witness in these proceedings is exposed to threats, violence, or any other inappropriate influence. The Tribunal thus expects that in the course of their preparations, both Parties will exercise particular discretion and care to assure that the identity of the witness and the witness's evidence are not disclosed in any circumstances that might result in adverse consequences for the witness.

7. Further, should confidential information be disclosed to any persons pursuant to paragraph 9(d) or other provisions of Procedural Order No. 2, the persons concerned will be bound by the confidentiality obligations under the Order. As required by paragraph 10, the Parties shall notify all such persons of their obligations under the Order.
8. Both Parties are directed to maintain a log of all persons to whom confidential information is disclosed pursuant to paragraph 9(d). The logs will briefly record the persons involved, the nature of the confidential information disclosed, and confirm that the persons involved were informed of their non-disclosure obligations.
9. The Tribunal will remain open to assess this situation again later in the proceedings should circumstances warrant.
10. The Tribunal makes this Order as a matter of prudence given that issues of safety have been raised. This Order does not reflect any pre-judgment by the Tribunal of any matters related to the merits of the case.

For and on behalf of the Tribunal,

[Signed]

Prof. John R. Crook
President of the Tribunal
Date: 9 November 2021