INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Tayeb Benabderrahmane

v.

State of Qatar

(ICSID Case No. ARB/22/23)

PROCEDURAL ORDER NO. 8
Confidentiality Matters

Members of the Tribunal
Ms. Lucinda Low, President of the Tribunal
Prof. Andreas Bucher, Arbitrator
Mr. Makhdoom Ali Khan, Arbitrator

Secretary of the Tribunal
Dr. Jonathan Chevry

June 13, 2025

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I. INTRODUCTION

1. The present dispute has been submitted to arbitration under the auspices of the International Centre for Settlement of Investment Disputes ("**ICSID**" or the "**Centre**") on the basis of the Agreement between the Government of the French Republic and the Government of the State of Qatar on the reciprocal encouragement and protection of investments (the "**BIT**" or the "**Treaty**")[1] and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**").

2. The Claimant is Mr. Tayeb Benabderrahmane, a national of Algeria and France (the "**Claimant**"), and the Respondent is the State of Qatar ("**Qatar**" or the "**Respondent**"). The Claimant and the Respondent are collectively referred to as the "**Parties**."

II. PROCEDURAL HISTORY

3. On December 16, 2024, counsel to the Respondent wrote to the Centre raising concerns regarding Claimant's asserted conduct in making public certain documents that had been disclosed to Claimant by Respondent in this arbitration, and seeking an order from the Tribunal providing that:

> "a. this arbitration proceeding is confidential;
>
> b. all documents provided by either side in this arbitration, and evidence given and submissions made therein, are to remain confidential and be kept confidential by the parties to the arbitration and their legal representatives, and may only be used for purposes of this arbitration; [and]
>
> c. the Parties be at liberty to apply for variation of the Order."

4. On January 6, 2025, Claimant submitted to the Tribunal a document entitled "Claimant's Observations on the Respondent's Request on Confidentiality". In this submission, the

[1] Signed at Doha on July 8, 1996.

Claimant denied any public release of documents disclosed to him by the Respondent in this arbitration and further denied any violation of confidentiality obligations or misuse of ICSID procedures. The Claimant disputed the need for any order of the Tribunal and denied that there was any basis for a blanket confidentiality order from the Tribunal.

5. On March 13, 2025, the Respondent submitted to the Tribunal a document entitled "Respondent's Response to the Claimant's Observations". In this document, the Respondent denied it was seeking to impose a blanket restriction on public discussion by the Claimant of his claims and allegations against the Respondent, disputed the Claimant's position that it had not made any documents from these proceedings publicly available, and contended that the response of the Claimant established a heightened need for an order on confidentiality for reasons of procedural integrity.

6. On March 21, 2025, the Secretary to the Tribunal sent a communication to the Parties stating in part as follows:

> The Tribunal has reviewed the Respondent's communication of March 19, 2025, and has considered its request for an opportunity to make submissions on unresolved issues of confidentiality.
>
> The Tribunal continues to encourage the Parties to make efforts to resolve the outstanding issues between themselves, and to narrow the issues, on which the Tribunal needs to rule, as much as possible. If the Parties are unable to reach agreement on the unresolved issues by March 25, 2025, they are invited to submit to the Tribunal, by no later than Thursday, March 27, 2025, a joint list of such issues, together with any draft order the parties have exchanged between themselves for the Tribunal's information.
>
> Thereafter, the Tribunal will set a briefing schedule for submissions by both parties.

7. Having heard from the Parties on March 27, 2025, in response to that message, which indicated, inter alia, that the Parties had made significant progress in narrowing the areas of disagreement regarding a confidentiality order, the Tribunal Secretary sent a further email to the Parties on behalf of the Tribunal on March 31, acknowledging those emails and accepting the Parties' proposal that each party file simultaneous submissions on

April 8, 2025 limited to any remaining points in dispute, with the possibility of reply submissions to be made on April 10, 2025.

8. On April 8, 2025, the Respondent apprised the Tribunal Secretary of the current state of the Parties' discussions and transmitted a mark-up of a proposed order on confidentiality. Likewise on April 8, 2025, the Claimant communicated by email with the Tribunal Secretary indicating that the points of divergence between the parties were now limited and provided a further mark-up of the proposed Order.

9. On April 10, 2025, the Tribunal received a communication from Respondent transmitting further comments on the proposed Order on confidentiality, which it indicated had been agreed by the Parties other than one open point, relating to the treatment of expert reports or witness statements filed in these proceedings.

III. ANALYSIS

10. The Tribunal has carefully considered the form of the proposed Order submitted by the Parties and the one unresolved issue.

11. The Tribunal is not wholly convinced that this matter requires the issuance of an order. Moreover, it considers that the form of proposed Order submitted by the Parties requires clarification and refinement. This would include meshing the transparency and confidentiality provisions already applicable to these proceedings, while reflecting matters agreed between them. Accordingly, the Tribunal will first review the relevant provision of its earlier procedural order and the provisions it incorporates by reference. It will then discuss the Parties' proposed procedural order before setting forth its order.

12. In considering what the terms of any confidentiality order should be, the Tribunal is mindful of the unusual context of this case, namely the criminal proceedings in the Respondent which resulted in the Claimant having been sentenced to death. The

Respondent itself acknowledges the "unusual sensitivity" of this matter in its submissions.[2] The Tribunal has endeavored to craft its order considering these unusual sensitivities. These are addressed more fully below. The Tribunal also considers that the Rules applicable to these proceedings, *i.e.*, the ICSID 2022 Arbitration Rules, not only do not apply a blanket rule of confidentiality but are intended to promote transparency, subject to the need to protect certain categories of information as discussed further below.

13. In its Procedural Order No. 2, Section 23.1, the Tribunal addressed the issue of confidentiality in these proceedings, in terms of transparency, stating that:

> 23. Transparency matters
> *Convention Article 48(5), Arbitration Rules 62-66*
>
> 23.1. The parties shall comply with the transparency regime established in Arbitration Rules 62 to 66.

14. Rules 62-66 provide as follows:

> **Chapter X: Publication, Access to Proceedings and Non-Disputing Party Submissions**
> **Rule 62: Publication of Awards and Decisions on Annulment**
>
> (1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.
>
> (2) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).
>
> (3) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the dispatch of the document.
>
> (4) Absent consent of the parties pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the documents referred to in paragraph (1). The following procedure shall apply to publication of excerpts:

[2] *E.g.*, Letter from Respondent to the Tribunal Secretary, dated December 16, 2024.

(a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which either party objects to publication or notifies the Secretary-General that the parties disagree on redaction of the document;

(b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and

(c) the Secretary-General shall consider any comments received on the proposed excerpts and publish such excerpts within 30 days after the expiry of the time limit referred to in paragraph (4)(b).

Rule 63: Publication of Orders and Decisions

(1) The Centre shall publish orders and decisions, with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order or decision is issued.

(2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph

(1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order or decision to the Tribunal to decide any disputed redactions. The Centre shall publish the order or decision in accordance with the decision of the Tribunal.

(3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

Rule 64: Publication of Documents Filed in the Proceeding

(1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.

(2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any disputed redactions and the Centre shall publish the written submission in accordance with the decision of the Tribunal.

(3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

Rule 65: Observation of Hearings

(1) The Tribunal shall allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, unless either party objects.

(2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 66 to persons observing the hearings.

(3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.

Rule 66: Confidential or Protected Information

For the purposes of Rules 62-65, 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.

15. The text of these Rules suggests favoring transparency, while at the same time shielding public disclosure documents and information considered confidential and protected. Within this framework, the agreement of the disputing parties on matters of transparency can affect the scope of the operation of the Rules. Rule 62 makes the extent of publication

of awards and decisions on annulment subject to the consent of the parties, with each of its subparagraphs referring to consent. The scope of publication of orders and decisions under Rule 63 is determined by the extent of redactions agreed by the parties, while it falls to the Tribunal to decide on any disputed redactions, subject to the overriding obligation not to disclose any confidential or protected information as defined in Rule 66. Rule 64, governing the publication of documents filed in the proceeding, operates such that whether and to what extent such documents are published are dependent on the parties and their agreement on any redactions, with any disputes being resolved in the same manner as under Rule 63. Rule 65 gives the parties the ability to object to having "persons in addition to the parties, their representatives, witnesses, and experts, and persons assisting the Tribunal," as observers at hearings. Rule 66 is definitional as noted above but also reflects (in subparagraph (e)) scope for agreement of the disputing parties. It also treats orders and decisions of the Tribunal as confidential (subparagraph (d)). It does not expressly deal with situations where the interests reflected in those subparagraphs may cut in different directions or be in conflict.

16. The proposed Order submitted by the Parties, which reflects their agreement on confidential treatment with one exception:

(a) Reaffirms the parties' agreement as to the confidentiality of orders, awards and recordings of hearings under Rules 62, 63, and 65 except to the extent published by the Centre; [3]

(b) States that disclosure of "directions" of the Tribunal by a Party is subject to prior permission of the Tribunal;[4]

(c) Reflects that the Parties should refrain from disclosing to "third parties" (not defined)

i. any correspondence between the parties and/or the Arbitral Tribunal exchanged in respect of the arbitral proceedings; and

[3] Proposed Order, para. (d).

[4] Proposed Order, para. (c).

ii. any of the documents produced in the arbitral proceedings by the opposing party whether pursuant to a disclosure exercise or otherwise;[5]

(d) Permits disclosure of:

i. The "undertakings signed by [redacted] and [redacted], the statement signed by [redacted], and any document that the Respondent may issue to protect the interests of the Claimant in relation to the enforcement of the judgment rendered on 31 May 2023 if and to the extent necessary to protect such interests";[6] and

ii. documents that would otherwise be subject to the above confidentiality restrictions to their relevant experts or witnesses for the purpose of preparing, respectively, expert reports or witness statements, provided such reports or statements are to be produced in these proceeding and subject to the prospective witness or expert undertaking in writing in advance to keep the materials confidential and to use them only for the purposes of giving evidence in this arbitration.[7]

Further envisions that the Parties may "engage in general discussion about the case in public, provided no disclosure of confidential material shall take place".[8]

(e) Provides that each Party is at liberty to apply to the Tribunal "in justified cases for the lifting or variation of these restrictions on a case-by-case basis. [9]

17. The Parties were unable to reach agreement on the treatment of witness statements and expert reports.[10] That disagreement affected both subparagraphs (a)(i) and (a)(iv) of the proposed Order, which in the latter case would also treat as confidential "any document, including any witness statement or expert report, that includes in part or in whole, the confidential materials detailed above under [subparagraph (a)(i) of the proposed Order as well as subparagraphs (c)(i) and (ii) of the preceding paragraph].

5 Subparagraphs (a)(ii), (iii), and (iv) of the proposed Order.

6 Paragraph (f) of the proposed Order. This language reflects the Tribunal's understanding that the Respondent, in its submission of April 10, 2025, agreed to the language proposed by the Claimant.

7 Paragraph (g) of the proposed Order.

8 Paragraph (e) of the proposed Order.

9 Paragraph (b) of the proposed Order.

10 Paragraph (a)(1) of the proposed Order.

18. In its submission of April 10, 2025, the Respondent proposed treating witness statements and expert reports at par with pleadings and written memorials (*i.e.*, as wholly confidential) but as an alternative suggested adopting the approach of certain other tribunals[11] and treating as confidential only the other party's witness statement or expert reports. It submitted that this approach had been accepted by the Claimant in its letter of March 26, 2025, which was included with its submission. This has not been subsequently negated by the Claimant.[12]

19. The Tribunal considers this approach to be a sensible one, with the caveat that it would obviously be necessary to redact any portions of a party's own witness statement or expert reports that incorporates material from the other party's witness statement or expert reports.

20. With respect to the agreements reached by the parties on confidentiality, the Tribunal is of the view that the concept of "third parties", used in paragraph (a) of the proposed Order, is not clear and should be replaced with the concept of "public disclosure" as provided in Rule 66. The Tribunal also observes that the meaning of the term "directions of the Tribunal" is not clear and does not correspond to terminology in the Rules. That, however, is not of much consequence given the Parties' agreement to treat as confidential correspondence between the Parties and/or the Tribunal. The reference to "orders, awards and recordings of hearings" should accordingly include "decisions".

21. The Tribunal also considers, as noted at the outset, that it is necessary to ensure that any order issued by the Tribunal, on confidentiality, is consistent with and fits within the framework established by the applicable Rules. It also considers that provisions should be added to deal with the possibility that information may be in the public domain (other than

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11 *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5, Procedural Order No. 3 (March 18, 2010), para 153(a)(v); and *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3 (Sept 29, 2006), para. para (a)iii of the dispositive.

12 The Claimant's email of April 8, 2025, to the Tribunal Secretary states that "The confidentiality of expert reports and witness statements produced by a party in support of its written submissions, in respect of which the claimant considers that that party should only be required to treat them as confidential if they include or refer to confidential material" [emphasis added by the Tribunal] represents the last submission of the Claimant on this issue; it addresses only a party's own submissions and not the other party's submissions, but may be seen by implication to support the Respondent's assertion. The Claimant did not make any further submission in response to the Respondent's April 10, 2025, submission.

as the result of a breach by a Party), or certain other circumstances specified below. Moreover, in light of the judgment of the courts of the Respondent rendered on May 31, 2023, imposing a sentence of death on the Claimant (the "May 2023 Judgment" or "Judgment"), the Tribunal considers that it would be inappropriate for it to enforce an order of confidentiality with respect to measures that may be taken in relation to that Judgment or its enforcement. Thus, notwithstanding the Parties' apparent agreement in paragraph (e) of the Proposed Order, set forth in paragraph 16 above, the Tribunal considers that an exception to confidentiality is warranted where matters related to the Judgment or its enforcement are concerned.

IV. DECISION

22. Accordingly, the Tribunal decides that the confidentiality order should read as follows:

(a) Unless otherwise agreed by the Parties, orders, decisions, documents filed in the proceedings, and recordings of hearings, covered by ICSID Rules 62-66, shall be treated by the Parties as confidential and protected information within the meaning of Rule 66(e) and not publicly disclosed unless and until published by the Centre and then only insofar as published. The Tribunal will decide on any disputed redactions consistent with the provisions of the Rules.

(b) Unless otherwise agreed by the Parties, pleadings, written memorials, witness statements and expert reports submitted in these proceedings by a Party shall be treated as confidential and protected information within the meaning of Rule 66 by the other Party and must not be publicly disclosed without the permission of the submitting Party.

(c) As agreed by the Parties, correspondence (i) between the Parties and (ii) between the Parties and the Tribunal, exchanged in relation to the proceedings, shall be treated as confidential and protected information within the meaning of Rule 66(e), and shall not be publicly disclosed.

(d) Unless otherwise agreed by the Parties, any documents produced in these proceedings by a Party, whether pursuant to a disclosure exercise or otherwise, shall be treated as confidential and protected information within the meaning of Rule 66 by the other Party and not publicly disclosed without the permission of the submitting Party.

(e) Notwithstanding the foregoing, the following documents are not to be treated as confidential or protected information and may be publicly disclosed:

i. The undertakings signed by [redacted] and [redacted], the statement signed by [redacted], and any document that the Respondent may hereafter issue to protect the interests of the Claimant in relation to the enforcement of the May 2023 Judgment if and to the extent necessary to protect such interests;[13]

ii. Documents that would otherwise be treated as confidential and protected information and restricted from public disclosure, to their relevant experts or witnesses for the purpose of preparing, respectively, expert reports or witness statements, provided such reports or statements are to be produced in these proceedings and subject to the prospective witness or expert undertaking in writing in advance to the Party for which he is giving evidence to keep the materials confidential and to use them only for the purposes of giving evidence in this arbitration;

iii. Any document or information that is in the public domain other than as a result of a breach by a Party of this Order ;

iv. Any document to be produced before a national or international tribunal, an international organization or organ thereof, as well as in respect of the operation of diplomatic activity of the country of the Claimant's nationality, in relation to the May 2023 Judgment ; and

v. Any subsequent order that the Tribunal may issue on application of a Party, and after hearing from the other Party, to avoid aggravation of the dispute, prevent undue pressure on a Party, render the resolution of this dispute more difficult, threaten the integrity of these proceedings, or circumvent the terms of this Order or any other order of the Tribunal dealing with matters of confidentiality, disclosure, or transparency.

(f) For the avoidance of doubt, nothing in this Order shall limit or prohibit:

i. The Parties from engaging in discussion about the case in public or public disclosure of the May 2023 Judgment, including its reasoning and any actions or undertakings relating to it; and

ii. The administration of the proceedings by the Centre.

[13] Paragraph (f) of the proposed Order. This language reflects the Tribunal's understanding that the Respondent, in its submission of April 10, 2025, agreed to the language proposed by Claimant.

V. ORDER

23. For the foregoing reasons, it is so ordered. The provisions of this Order shall apply to all documents in this proceeding, regardless of when submitted or produced.

On behalf of the Tribunal,

[Signature]

Ms. Lucinda Low
President of the Tribunal
Date: June 13, 2025