

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Esewedy Electric for Transmission and Distribution of Energy S.A.E.

v.

Republic of South Sudan

(ICSID Case No. ARB/23/44)

**PROCEDURAL ORDER NO.
ON THE PROCEDURAL CALENDAR**

Members of the Tribunal

Mr. Baiju S. Vasani, President of the Tribunal
Prof. Jan Paulsson, Arbitrator
Prof. Dorothy U. Ufot SAN, Arbitrator

Secretary of the Tribunal

Ms. Aïssatou Diop

October 10, 2024

I. PROCEDURAL BACKGROUND

1. The Tribunal issued its Procedural Order No. 1 (“PO1”) on August 13, 2024.
2. Paragraph 1.2 of PO1 provides:

[O]nce the Respondent appoints legal representation, the Tribunal will convene a case management conference with the Parties to modify provisions of this Order as appropriate and / or discuss the items of the agenda that the Parties were not able to discuss during the first session, including the procedural schedule, due to the Respondent not having legal representation. If the Respondent does not appoint legal representation, the Tribunal will proceed with a case management conference to set the procedural schedule. Following the case management conference, the Tribunal will issue a procedural order pursuant to the 2022 ICSID Arbitration Rules.
3. On August 15, 2024, the Tribunal proposed to hold the case management conference (“CMC”) referenced above on either September 25 or September 27, 2024, and invited the parties to confirm their availability by August 21, 2024. Thereafter, the following unfolded:
 - i. On August 18, 2024, the Claimant confirmed its availability for the CMC to be held on September 25, 2024.
 - ii. On August 26, 2024, ICSID reminded the Respondent to indicate its availability as soon as possible.
 - iii. On August 30, 2024, the Embassy of South Sudan in Washington, D.C. indicated that it had transmitted ICSID’s message to the relevant authorities and was awaiting official feedback. However, nothing further was heard from the Respondent or its representative in this regard.
 - iv. On September 19, 2024, the Claimant requested the Tribunal to confirm that the CMC would be held on September 25, 2024.
 - v. On September 20, 2024, the Tribunal confirmed the CMC for September 25, 2024.
 - vi. On September 25, 2024, before the starting time of the CMC, the Tribunal informed the parties that, in view of the fact that it had not received an input from the Respondent with respect to the CMC, the Tribunal had decided to vacate its meeting with the parties because the Tribunal preferred to meet with both parties. In lieu of the CMC, the Tribunal would hold a deliberation meeting after which it would issue an order with the procedural schedule. The Tribunal added that if the Claimant or the Respondent wished to submit

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any brief input on the procedural schedule, they could do so by close of business on September 26, 2024, and the Tribunal would consider it.

- vii. For the purposes of its deliberation, the Tribunal used the Zoom session that was originally created for the CMC. When the Tribunal Members joined the session, a representative of the Respondent from its Embassy in Washington, D.C. was already present in the waiting room. Thus, the Tribunal decided to invite the Claimant also to join the session. The Claimant did, and the Tribunal proceeded to hold the CMC with the parties after all.

II. CASE MANAGEMENT CONFERENCE

4. In addition to the Members of the Tribunal and the Secretary of the Tribunal, the following persons attended the CMC:

On behalf of the Claimant:

Dr. Ahmed Mohamed Allam, Ms. Nabila Khaled Eldesouky, and Mr. Karim Elkhalifa

On behalf of the Respondent:

Ms. Nyeil Kuol

5. During the CMC, the Tribunal discussed the following items with the parties:

Due date of the Respondent's Counter-Memorial

6. The Respondent had indicated at the first session that it was at the stage of final negotiations in the process of obtaining legal counsel. On the back of that, the Tribunal had hoped, the Respondent would give a date when it would file its Counter-Memorial. The Tribunal urged the Respondent to give such a date and added that while it wishes to give the Respondent full due process rights, if the Respondent was unable to provide a date for its Counter-Memorial, the Tribunal was in a position to impose a due date for the submission and dates for the rest of the procedural schedule in view of its duty to run the proceeding as expeditiously and efficiently as possible. The Tribunal stated that, nevertheless, it preferred not to set a date for the Counter-Memorial and to give the Respondent an opportunity to provide its own date.
7. The Respondent's representative stated that she was unable to indicate the Respondent's position in this regard and asked for an extension of time until September 30, 2024, for the Respondent to provide its position.
8. The Tribunal granted until close of business Washington, D.C. on September 30, 2024, for the Respondent to give a date certain for the filing of its Counter-Memorial.

Rebuttal Submissions

9. The Tribunal recalled the Claimant's position that it did not require a rebuttal to the Respondent's Counter-Memorial.
10. The Claimant confirmed that its position has not changed on this point.
11. The Tribunal indicated to the Respondent's representative the question of rebuttal submissions is another point on which the Tribunal needed the Respondent's position by close of business Washington, D.C. on September 30, 2024. The Tribunal added that if the Claimant did not wish to have a rebuttal submission, it would be strange for the Tribunal to impose one on the Claimant. However, the Tribunal could address questions to the parties after the filing of their respective written submissions.

Jurisdictional objections

12. The Tribunal indicated, in reference to Arbitration Rule 41, that the Respondent has until the filing of its Counter-Memorial to raise jurisdictional objections. For the purposes of setting the procedural schedule, it would be helpful to the Tribunal to know whether the Respondent intends to raise jurisdictional objections. The Tribunal requested that the Respondent indicate its position in this regard by close of business Washington, D.C. on September 30, 2024.

Document discovery

13. The Claimant stated that it did not require any document discovery.
14. The Respondent's representative requested to add the issue of document discovery to the items on which the Respondent needed to indicate its position by close of business Washington, D.C. on September 30, 2024.

Hearing

15. The Tribunal noted that the Claimant's Memorial is limited, without witness statements or expert reports. The Tribunal then asked the parties the number of hearing days that they would require and whether they envisaged an in-person or virtual hearing.
16. The Claimant stated that it only required two days for the hearing and would prefer to have the hearing in person at a place to which it may travel without impediments.
17. The Respondent's representative indicated that had no objections and agreed with the Claimant on this point.
18. As to the place of the hearing, the Tribunal proposes that the hearing take place in Kigali, Rwanda; Nairobi, Kenya; or Manama, Bahrain. As the parties need to agree on the place if it is not at the Centre, and to facilitate discussions, the Tribunal suggests to hold a short CMC with the parties on October 31, 2024 at 10 a.m.

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Washington, D.C. The Secretariat will circulate the Zoom details for the meeting in due course.

Concluding remarks

19. The Tribunal reminded the Respondent's representative of the September 30, 2024, deadline in respect of the items discussed. The Tribunal emphasized to the Respondent's representative that the Tribunal must establish a procedural schedule and urged that the Respondent indicate its position as requested beforehand.
20. The Tribunal also informed the parties that after receiving the Respondent's input on the items discussed, it would deliberate among its Members and set a procedural schedule. It would propose hearing dates to the parties and one or more places where an in-person hearing could be held which would allow both parties to attend without much difficulty.
21. After the conclusion of the CMC, ICSID uploaded the audio recording on Box and notified both parties and the Tribunal.
22. As of the date of this order, the Respondent's position, which was due by the close of business Washington, D.C. on September 30, 2024, regarding the items discussed during the CMC has not been received.

III. DECISION

23. Having considered the positions indicated by each side during the CMC and further deliberated, the Tribunal decides as follows:
 - i. The Respondent's Counter-Memorial is due on November 15, 2024.
 - ii. The hearing will take place from February 3 to February 4, 2025.

On behalf of the Tribunal,

[signed]

Mr. Baiju S. Vasani
President of the Tribunal
Date: October 10, 2024