ARBITRATION UNDER THE RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/20/25

WINSHEAR GOLD CORP. (CANADA)

Claimant

VS.

UNITED REPUBLIC OF TANZANIA

Respondent

ANNEX A

CLAIMANT'S REQUESTS FOR DOCUMENT PRODUCTION

21 February 2022

Before:

Prof Gabrielle Kaufmann-Kohler (President)
Judge O. Thomas Johnson
Mr Edward William Fashole Luke II

LALIVE

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1 INTRODUCTION

1 These Requests to Produce Documents (the "**Claimant's Requests**" or the "**Requests**") are made pursuant to paragraph 16 of the Tribunal's Procedural Order No. 1 dated 17 March 2021 ("**PO1**").

2 As required by paragraphs 16.1 and 16.2 of PO1, the Claimant's Requests are presented in accordance with Annex B of PO1 with a description of each document or category of documents sufficient to identify it and the reasons for the request, including a description of how the documents requested are relevant and material to the outcome of the arbitration and which issue they concern.

3 In each case, the requested documents are not in the Claimant's possession, custody or control.

4 The Claimant's Requests exclude those documents which have been produced in this arbitration or otherwise provided to the Claimant, except to the extent that documents already produced or provided are incomplete or impossible to locate.

2 DEFINITIONS

5 Unless stated otherwise, all terms defined in the Parties' previous written submissions maintain the same definition in the Claimant's Requests.

6 For the purposes of the Claimant's Requests, the term "Ministry of Minerals" shall refer generally to any and all officials and administrative authorities vested with powers to regulate mining activities in Tanzania whether as part of the central government or local government, including but not limited to the Ministry of Minerals itself, the Mining Commission, and relevant local authorities in charge of overseeing mining activities in their respective municipalities (*e.g.*, Zonal and Resident Mines officers).

7 "Document" shall have the meaning set out in the IBA Rules on the Taking of Evidence in International Arbitration (2020) ("**IBA Rules**"), namely a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.

8 In addition, for the purpose of the Claimant's Requests, "document" shall include all parts of a series of communications with respect to the same or related subject matter where, on email or facsimiles, the initiating communication is visible at the bottom of the chain of communications, and the responses to the initiating communication, or responses to those responses (*etc*.), are visible above the initiating communication. Communications need not be addressed to the same recipient(s) and the phrase "responses to" includes communications forwarding previous communications in the same series of communications.

9 The term "concerning" means having any connection, association, or concern with, or any relevance, relation, pertinence or applicability to, or any implication for or bearing upon the subject matter of the request.

10 The phrase "including" means "including without limitation" and "including but not limited to".

11 Correspondence "to or from" a person or party, or "between" a person or party and another, shall include documents copied ("cc'd") or blind copied ("bcc'd") to a person or party.

3 PRODUCTION OF RESPONSIVE DOCUMENTS

12 The Claimant requests that all documents that are responsive to its Requests be produced by the Respondent in the manner in which they are found in records and in their entirety, along with any attachments, exhibits, enclosures, cover letters and copies with notations on or attached to them, regardless of whether the Respondent considers the entire document to be relevant or responsive to the relevant request.

13 The Claimant requests that all documents that are responsive to the Claimant's Requests be produced by the Respondent in the order of the Claimant's Requests, and any further request to which the Respondent considers the produced document to be responsive.

14 Each of the Claimant's Requests constitutes a continuing request, which requires supplemental production by the Respondent in the event that documents responsive to the Claimant's Requests are located, updated or

created after the deadline for production of documents, but before commencement of the hearing in this arbitration.

4 THE CLAIMANT'S REQUESTS

15 In accordance with the foregoing, the Claimant submitted the Requests set out in the appended Redfern Schedule in **Section 6** below to the Respondent on 14 January 2022.

5 THE RESPONDENT'S OBJECTIONS TO THE CLAIMANT'S REQUESTS

16 On 31 January 2022, as envisioned under paragraph 16.4 of PO1, the Respondent submitted to the Claimant an amended and re-formatted version of the Claimant's Redfern Schedule, entitled "Respondent's Response/Objections on the Claimant's Requests for Document Production" (the "**Respondent's Objections**"). The Respondent's Objections are attached hereto as **Annex 1**.

17 The Respondent's Objections contained an introductory Section A, including references to provisions of the IBA Rules. The Claimant notes that the Respondent misquotes PO1 at paragraph 2 of Section A to its Objections. For the avoidance of doubt, paragraph 16.1 of PO1 provides: "The Tribunal shall be guided by Articles 3 and 9 of the [IBA Rules]." Other than this observation, the Claimant has no comments on Section A to the Respondent's Objections.

18 The Respondent's Objections also contained a Section B containing a list of "General Objections". Each of them is a blanket objection which fails to identify the Requests to which it applies or the specific categories of documents the Respondent objects to producing. Accordingly, the Respondent's "General Objections" should all be disregarded.

19 Nevertheless, the Claimant responds to each of the Respondent's "General Objections" (a) to (k) as follows:

a) The Respondent's General Objection (a) alleges that the documents responsive to the Claimant's Requests are publicly available. This is simply false. None of the documents the Claimant requests are publicly available, whether through online depositories or registries or otherwise. If they were, the Claimant would not have requested them.

b) In its General Objection (b) and in its specific objections to several of the Claimant's Requests,[1] the Respondent objects on the grounds that the responsive documents would be protected by privilege. These objections are misconceived.

Tanzania seeks to rely on "public interest immunity", "Executive privilege" or other governmental privilege as embodied in various provisions of its domestic law, namely Article 54(5) of its Constitution, Tanzania's National Security Act and section 8 of Tanzania's Presidential Affairs Act. In each instance, the Respondent makes a blanket assertion of privilege based on its own domestic law without identifying any specific documents or explaining the reasons why the documents in question, or parts thereof, may validly be withheld. These objections are misguided and should be dismissed in their entirety.

Article 43 of the ICSID Convention confers on the Tribunal broad powers to order a party to produce documents. This power is not restrained by the domestic laws or principles of privilege of any municipal legal system, including public interest privilege or other governmental privilege as claimed by Tanzania. Arbitral tribunals have consistently held that any claim of privilege has to be determined by reference to international law, and not the laws of the respondent state.[2] In application of the fundamental principle of international law enshrined in Article 27 of the Vienna Convention on the Law of Treaties, a State party to the ICSID Convention, and to arbitration proceedings governed by it, may not rely on its domestic law to evade its obligation to produce documents as may be ordered by the Tribunal – which forms an integral part of its consent to arbitration under the ICSID Convention and the BIT. In this regard, in *Biwater v Tanzania*, the Respondent made the same blanket objection to several document

[1] See Claimant's Requests No. 5, 6 and 9.

[2] *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, Procedural Order No. 2, ICSID Case No. ARB/05/22 dated 24 May 2006, at **Exhibit CL-100**, p. 8; *United Parcel Service of America Inc. v. Government of Canada*, Decision of the Tribunal Relating to Canada's Claim of Cabinet Privilege, ICSID Case No. UNCT/02/1 dated 8 October 2004, at **Exhibit CL-101**, p. 5 (para. 12).

production requests on the basis of the same provisions of its domestic law, and the tribunal swiftly dismissed it, observing that:

> "[I]f a State were permitted to deploy its own national law in this way, it would, in effect, be avoiding its obligation to produce documents in so far as called upon to do so by this Tribunal. This, in itself, is an international legal obligation arising from the State's consent by way of the BIT to ICSID arbitration. It may also thereby stifle the evaluation of its own conduct and responsibility. As such, this would be to undermine the well established rule that no State may have recourse to its own internal law as a means of avoiding its international responsibilities." [3]

For these reasons, the Respondent cannot object to the Claimant's Requests on the basis of provisions of its own domestic law.

In accordance with paragraph 16.1 of the PO1, the relevant standard to be applied by the Tribunal is that set forth in Article 9.2(f) of the IBA Rules according to which the Tribunal may exclude from production a document on "grounds of special political or institutional sensitivity" to the extent the Tribunal finds these grounds "compelling". In this respect, the Respondent bears to burden to assert a particular claim of privilege in respect of specific documents and prove that such ground is compelling.[4] In order to discharge this burden, the party asserting privilege must identify with particularity specific passages of documents which would be subject to privilege, provide a short description of those documents' contents and explain on what basis it claims the relevant information can be withheld. The party asserting a claim of privilege will usually be required to provide this justification

[3] *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, Procedural Order No. 2, ICSID Case No. ARB/05/22 dated 24 May 2006, at **Exhibit CL-100**, p. 8 *et seq.*

[4] See *e.g.*, *ADF Group Inc. v. United States of America*, Procedural Order No. 3 concerning the Production of Documents, ICSID Case No. ARB(AF)/00/1 dated 4 October 2001, at **Exhibit CL-99**, p. 9 (para. 18). For the avoidance of doubt, Article 41(2) ICSID (AF) Rules reproduces *verbatim* the rule in Article 43(a) of the ICSID Convention.

by way of a privilege log.[5] Here, the Respondent has made no attempt to provide any such justification and therefore, its objections should be dismissed.

Finally, it should be noted that the passing of time is a key consideration when assessing whether a claim of deliberative governmental privilege is compelling.[6] In circumstances, as is the case here, where several years have passed and both the President and the relevant Ministers are no longer in office, the claim of governmental privilege carries much less weight and the information concerned is unlikely to be considered "of special political sensitivity" within the meaning of Article 9.2(f) of the IBA Rules.

In its General Objection, Tanzania also seeks to object on the grounds that responsive documents are "attorney Work documents or documents prepared in anticipation of litigation or otherwise protected by any other discovery privilege recognized under (…) the international laws." Since the Respondent has not specified to which Requests this objection relates, nor which responsive documents would fall under such classification, this objection is irrelevant to the Tribunal's decisions whether to order the Claimant's Requests.

c) The Respondent's General Objection (c) on grounds that the Claimant's Requests seek confidential information and or "public secrets" from the Respondent is misguided.

First, the Respondent's blanket objection is inappropriate as it does not specify which of the documents responsive to the Claimant's Requests are allegedly confidential or "public secrets".

[5] See *e.g.*, *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, Procedural Order on the Parties' respective requests for document production, ICSID Case No. ARB(AF)/12/1 dated 29 March 2013, at **Exhibit CL-98**, p. 24 (para. L); *ACP Axos Capital GmbH v. Republic of Kosovo*, Procedural Order No. 2, ICSID Case No. ARB/15/22, dated 6 March 2017, at **Exhibit CL-97**.

[6] *United Parcel Service of America Inc. v. Government of Canada*, Decision of the Tribunal Relating to Canada's Claim of Cabinet Privilege, ICSID Case No. UNCT/02/1 dated 8 October 2004, at **Exhibit CL-101**, p. 5 (para. 12).

Second, to the extent the Respondent objects to producing documents out of a concern that sensitive information may be disclosed to third parties, such concern is unfounded. The Tribunal has, in accordance with Articles 28, 30 and 31 of the BIT, issued Procedural Order No. 2 dated 14 April 2021 ("**PO2**"), upon which the Parties were given the opportunity to, and did, offer comments. Section VII of PO2 provides a procedure for the protection of confidential information filed in the present proceedings, which the Respondent may use to protect any confidential information from publication to the public. Should the Respondent's concern be that the Claimant would itself publish confidential documents, it can apply to the Tribunal for specific relief. However, it is not appropriate to object to the production of relevant and material documents on grounds of confidentiality alone.

Third, to the extent the Respondent seeks to assert any kind of legal privilege or confidentiality under its own domestic law, such objection is unfounded for the reasons explained above in paragraph (b).

d) The Respondent's General Objection (d) that the Claimant's Requests are "vague, ambiguous, overly broad, unduly burdensome, oppressive, or impossible to answer fully" is meaningless in the abstract. To the extent the Respondent alleges this is the case in any of the individual Requests, the Claimant responds in Section 6 below. The Claimant maintains that its Requests concern specific, identifiable documents or narrow and specific categories of documents, in accordance with Article 3.3(a) of the IBA Rules.

e) The Respondent's General Objection (e) to producing any documents "kept in the ordinary course of Government business" is a patent and illegitimate attempt to avoid having to produce any documents at all. None of the Claimant's Requests will require "unduly burdensome" production of documents by the Respondent. They all pertain to documents relating to specific subject matters, within a narrow timeframe, which ought to be readily obtainable via the relevant Government department or team.

f) The Respondent's General Objection (f) on grounds of confidentiality is misguided for the same reasons explained at paragraph c) above. Its General Objection to producing documents for which the "relevancy or

materiality to the outcome of this dispute has not been well substantiated" also misses the mark. The Claimant agrees that document production requests should not be ordered to the extent the relevance and materiality of the requested documents is not established. However, the Claimant has explained with each Request the relevance and materiality of the documents requested. The Respondent's blanket objection offers no meaningful rebuttal. If the Respondent took issue with any particular Request, it had the opportunity to explain why it considers the relevance and materiality of those particular documents is not established.

g) The Respondent's General Objection (g) to producing information that "is the subject of on-going criminal investigation" should be disregarded. The Respondent has not explained why such information should not be produced, nor has it identified which, if any, of the documents responsive to the Claimant's Requests contain such information.

h) As for the Respondent's General Objection (h), the Claimant agrees that document production requests should be rejected to the extent they call for disclosure of "information outside the scope of the time, place, subject matter, and circumstances of the occurrences mentioned or complained of" in either of the Parties' memorials. However, this does not apply to any of the Claimant's Requests. For each Request, the Claimant has explained the relevance and materiality of the documents requested by reference to the Parties' memorials.

i) The Respondent's General Objection (i) to Requests that "[do] not describe the documents to be produced by item or category […] with reasonable particularity" should be disregarded. The Claimant has described clearly and precisely all of the documents or categories of documents it requests.

j) The Respondent's General Objection (j) on grounds of public interest immunity and/or presidential immunity is misguided for the same reasons explained at paragraph b) above.

k) The Respondent's General Objection (k) on grounds of executive privilege and other deliberative governmental privilege is misguided for the same reasons explained at paragraph b) above.

20 After Section B of the Respondent's Objections, the Respondent provided individual objections to each of the Claimant's Requests separately, although not in the same format of Redfern Schedule prepared by the Claimant and prescribed by Annex B to PO1. The Respondent notably omitted in its version of the Redfern Schedule the justification set out by the Claimant for each request. For the Tribunal's ease of review, the Claimant has copied each of the Respondent's individual Objections *verbatim* into the original Redfern Schedule format of the Claimant's Requests, in accordance with Annex B of PO1, below in **Section 6**. Should the Tribunal wish to review the Respondent's Objections in their original format, they are attached as **Annex 1** hereto.

6 THE CLAIMANT'S REPLIES TO THE RESPONDENT'S OBJECTIONS AND REQUEST FOR RELIEF

21 The Claimant submits its replies to the Respondent's individual Objections in the appended Redfern Schedule below, in accordance with paragraph 16.5 of PO1.

22 In light of the foregoing and the Claimant's replies below, the Claimant respectfully requests that the Tribunal order the Respondent to produce the requested documents in accordance with each of the Claimant's Requests.

23 The Claimant reserves its right to request that the Tribunal draw adverse inferences from the Respondent's failure or refusal to provide documents responsive to the Claimant's Requests.[7]

[7] Investment arbitration tribunals have notably drawn such adverse inferences in cases where the respondent State sought to rely on governmental privilege to withhold documents which may have been relevant and material to the outcome of the case. See *e.g.*, *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, Award, ICSID Case No. ARB(AF)/12/1 dated 25 August 2014, at **Exhibit CL-102**, Part VIII., p. 19 *et seq.* (paras. 8.66-8.68).

6.1 Respondent's enactment of the Amending Legislation in July 2017	
Document Request No.	**1**
Identification of documents or category of documents requested	The "universal public notice" referred to by the Respondent in its Counter-Memorial ("**CM**") at p. 67 in para. 193 allegedly issued in connection with "participation and formation of [a] Consolidated Committee" to review the Government's proposed reforms to Tanzania's mining framework in 2017. Date range: on or about 29 June 2017 (see R-015).
Relevance and materiality according to requesting party, including reference to submissions	The Respondent refers to this so-called "universal public notice" in various places in its CM (CM, p. 58, para. 161; p. 67, para. 193). On that basis, the Respondent claims that "the Amending Legislation [was] formulated in [c]onsultation […] with all [s]takeholders in [the] [m]ineral sector" (CM, p. 66, para. 190) as the notice ensured "broader stakeholders and general public participation" in the legislative process (CM, p. 67, para. 193). However, the Respondent has not submitted this "universal public notice". This document is relevant and material to the issues in dispute in the arbitration as to whether Tanzania gave sufficient advance notice to all stakeholders in the mining sector and provided them with a meaningful opportunity to engage with the legislative process.

Responses and/or Objections by disputing party to production of requested documents	The Universal Public Notice was attached in the Respondent's Counter Memorial as R-041

Reply to objections	The Respondent did not submit the "universal public notice" with its CM, whether as Exhibit R-041 or otherwise. The Respondent's objection is disingenuous in circumstances where it failed to submit R-041 entirely, in breach of PO1. In its initial List of Exhibits filed with the CM on 21 December 2021, the Respondent included the "universal public notice" as R-041. However, as the Claimant explained in its email dated 29 December 2021, in breach of PO1, the Respondent failed to submit some exhibits supporting its CM, including R-041, to the ICSID Box platform. The Respondent responded by email on 30 December 2021 that R-041 would be "processed for submission". However, in its email to the Tribunal Secretary dated 7 January 2022, the Respondent stated that R-041 was "expunged from the list of exhibits" as it claimed the "referred part" (which the Respondent has not identified) was contained within R-016A. There is no "universal public notice" document contained within R-016A. The result is that the Respondent has not submitted R-041. The Respondent does not dispute the relevance or materiality of the "universal public notice", nor does it offer any other specific objection to the Claimant's Request. Apart from the present document production process, the Respondent has now revealed it intends to rely on R-041, despite having "expunged" it from its exhibits. Even outside any document production exercise, it must, therefore, submit R-041 in accordance with its obligation under paragraph 14.2 of PO1 to submit all documentation supporting its CM. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent (i) to produce the requested document in accordance with the Claimant's Request and (ii) to submit R-041 to the Claimant and the Tribunal, in accordance with the Respondent's obligation under paragraph 14.2 of PO1.
Decision of the Tribunal	**GRANTED** The Tribunal notes that the record does not contain an exhibit R-41. Considering that the Counter-Memorial makes reference to a "universal public notice for participation", the Tribunal orders production of the requested document.

Document Request No.	**2**
Identification of documents or category of documents requested	Any policy papers (including white papers, green papers, *etc*.), impact assessment studies, risk assessments, reports or exchanges issued by the Ministry of Minerals, the Ministry of Environment, Parliamentary Committees, and any other governmental bodies setting out new goals and objectives for a reform of Tanzania's mining sector between 1 June 2016 and 10 July 2017. Date range: 1 June 2016 to 10 July 2017.

Relevance and materiality according to requesting party, including reference to submissions	As explained in the Claimant's Memorial (the "**Memorial**"), until 2017, significant amendments to Tanzania's mining law were preceded by policy papers (*e.g.*, the Mineral Policy 1997 for the Mining Act 1998 and the Mineral Policy 2009 for the Mining Act 2010) setting out the reasons for and objectives of the upcoming changes (Memorial, p. 18-19, paras. 40-43). These policy papers emphasised the need for transparency and proportionality in implementing new legislation (Memorial, p. 114-116, paras. 296-300). As also explained in the Memorial, despite the attractive investment environment existing at the beginning of the Project, from July 2017 onwards, Tanzania drastically and arbitrarily altered its regulatory framework for mining (Memorial, p. 70, para. 179). However, to the Claimant's knowledge, no such policy papers were published prior to the Amending Legislation. In its CM, the Respondent alleges that "the Mineral Policy 2009 was adopted as a result of an evaluation that was conducted during ten years of implementation of the Mineral [P]olicy 1997" (CM, p. 124, para. 386). Considering that the implementation of the Mineral Policy 1997 and the Mineral Policy 2009 consisted mainly of the Mining Act 1998 and the Mining Act 2010 respectively, if it had acted consistently, Tanzania would have proceeded to some form of evaluation of the seven years of implementation of the Mining Act 2010 in the form of the documents requested before implementing the Amending Legislation in 2017. This request is relevant and material to the outcome of the arbitration as the documents requested will shed light on whether the changes contemplated in the Amending Legislation resulted from a proper evaluation of the existing legislation and were in line with previous policy papers, transparently advertised and reasonably related to a rational public policy objective. The level of publicity of the requested documents will also show whether stakeholders were properly informed about the extent of the changes contemplated in the Amending Legislation. These documents are also relevant, as they will reveal whether Tanzania took into consideration the legal consequences of the Amending Legislation on foreign investors, and in particular in relation to the abrogation of the retention licence classification.

Responses and/or Objections by disputing party to production of requested documents	The Policy statement towards enactment of the alleged 2017 laws are well set out in the relevant Bills for the law which is already provided with the Respondent's Counter Memorial. The policy used by the Respondent in enacting the Mining Act, 2017 and promulgating the 2018 Regulations was the Mineral policy 2009, which had set a goal to develop the mineral sector in the next 25 years. There is no any new policy between 1 June 2016 and 10 July 2017. The same Mineral Policy 2009 was used for the enactment of Mining Act, 2017 and its Regulations of 2018 with the main objective of increasing the mineral sector's contribution to the Government Development Planning (GDP) and alleviate poverty by integrating the mining industry with the rest of the economy.
Reply to objections	The Claimant notes the Respondent's confirmation that there were no new policy papers produced between the Mineral Policy 2009 and the Amending Legislation in July 2017. The Claimant, accordingly, narrows its request to exclude policy papers. However, the Respondent has not addressed the other documents requested: namely, "impact assessment studies, risk assessments, reports or exchanges (…) setting out new goals and objectives for a reform of Tanzania's mining sector". The Respondent does not deny that such documents, if they exist, would be relevant and material to the outcome of the dispute. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request, albeit narrowed so as to exclude "policy papers (including white papers, green papers, *etc*.)".
Decision of the Tribunal	**GRANTED AS NARROWED DOWN** The Tribunal notes that the Claimant has narrowed its request to exclude policy papers, which the Respondent alleges did not exist. The remaining requested documents appear *prima facie* relevant and the Respondent, whose responses focused on policy statements, has not denied that such documents exist.

Document Request No.	**3**
Identification of documents or category of documents requested	Any studies, memoranda, reports or exchanges containing advice – written or oral – submitted by domestic and international institutions (including amongst others, the TCME) and any other stakeholders which may have been consulted with respect to the new mining legislation enacted in July 2017 and any correspondence with governmental authorities regarding the same between 1 June 2016 and 10 July 2017. For the avoidance of doubt, this request includes the 10 written submissions and 27 oral submissions made by various stakeholders in the course of the parliamentary process, as described by the Respondent at p. 67 in para. 193 of its CM, and the related correspondence with government officials. This request also includes Appendix 1 to the TCME's letter dated 1 July 2017, Exhibit R-015. To the extent that Exhibits R-016A and R-016B, for which the Respondent only recently produced partial English translations, are partially responsive this request, the Respondent is invited to confirm the same and provide the relevant page numbers. Date range: 1 June 2016 to 10 July 2017.

Relevance and materiality according to requesting party, including reference to submissions	To the Claimant's knowledge and based on the evidence available, in contrast to the implementation of the Mining Act 1998 and the Mining Act 2010, the complete overhaul by Tanzania of its mining regime from July 2017 forward through the Amending Legislation and the 2018 Regulations, was carried out without proper consultation of the relevant stakeholders and international institutions (Memorial, p. 75, para. 191; p. 126, paras. 329-330). By contrast, the Respondent argues in its CM that "the Amending Legislation [was] formulated in [c]onsultation […] with all [s]takeholders in [the] [m]ineral sector" (CM, p. 66, para. 190) and that "all stakeholders were informed and participated in changing mining laws" (CM, p. 94, para. 276). The requested documents are relevant and material to the issues in dispute in the arbitration of whether Tanzania gave sufficient notice to all stakeholders in the mining sector and provided them with a meaningful opportunity to engage with the legislative process. Furthermore, these documents will show the extent to which Tanzania took into consideration the views expressed by stakeholders, especially in respect of the legal consequences of abolishing a whole category of mining rights – namely retention licences.
Responses and/or Objections by disputing party to production of requested documents	The request is too vague. However, the Respondent stated that the requested oral and written submissions are in the Hansards of the Parliament submitted by the Respondent to the Tribunal as Factual Exhibit R-**016A** and **R-016B**.

Reply to objections	The Respondent's assertion that the Request is "too vague" is unexplained and patently meritless. The Request is targeted at specific and clearly identifiable documents: submissions by stakeholders consulted with respect to the Amending Legislation and related correspondence between the Government of Tanzania and those stakeholders, within the requested time period. The Request needs no further clarification. In fact, the Respondent itself has submitted in evidence one partially responsive document as Exhibit R-015: a cover letter dated 1 July 2017 from the Tanzania Chamber of Energy and Minerals (TCME) which was unfortunately produced without its Appendix 1 containing the TCME's written submission on the Amending Legislation. The Respondent's assertion that the requested oral and written submissions are "in the Hansards of the Parliament submitted (…) as Factual Exhibit R-016A and R-016B" is misleading. The names of some stakeholders that, according to Hansard, made direct and indirect contributions are indeed listed in Exhibits R-016A and R-016B (see R-016A, pp. 105-108, 121-123; R-016B, pp. 179, 192-193). However, the substance of the contributions of those stakeholders, and how they were considered and reflected in the draft legislation, if at all, is not identifiable from the Hansard extracts. Therefore, the requested documents themselves are necessary to determine (i) whether Tanzania gave sufficient notice to stakeholders, (ii) whether it provided them with a meaningful opportunity to engage with the legislative process and (iii) the extent to which Tanzania took into consideration their views. The Respondent itself relies on the fact that "stakeholders were informed and participated in changing mining laws" (CM, p. 93 *et seq.*, para. 276). It is thus unsurprising that it does not dispute the relevance or materiality of the documents or put forward any other reasonable objection to producing them. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.

Decision of the Tribunal	**GRANTED** The Tribunal notes the Respondent's statement that the requested submissions are contained in R-016A and R-016B. It also notes that, but for the partial translations mentioned by the Claimant, these exhibits are drafted in Swahili. Therefore, it invites the Respondent to (i) either state on which pages of R-016A and R-016B each relevant submission is found or (ii) produce the submissions as such. Indeed, the request is sufficiently specific and the Respondent does not deny that the requested documents are relevant.

Document Request No.	**4**
Identification of documents or category of documents requested	All drafts prepared between 1 June 2016 and 10 July 2017 of the Amending Legislation introduced by Tanzania in the summer of 2017, namely The Natural Wealth and Resources (Permanent Sovereignty) Act, 2017; The Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act, 2017; and The Written Laws (Miscellaneous Amendments) Act, 2017 and all related comments (including comments exchanged through internal emails, memoranda, tracked changes in Word documents, *etc*.). Date range: 1 June 2016 to 10 July 2017.
Relevance and materiality according to requesting party, including reference to submissions	In its CM, the Respondent asserts that "the Amending Legislation [was] formulated in [c]onsultation with all […] [s]takeholders in [the] [m]ineral sector" (CM, p. 66, para. 190) and that "all stakeholders were informed and participated in changing mining laws" (CM, p. 94, para. 276). However, the Respondent has not provided detail regarding the drafting history behind the Amending Legislation (timeline of successive drafts, invitations to stakeholders, publication of first drafts for consultation and comments, *etc*.). The requested documents are relevant to this case and material to its outcome as they will shed light on whether the Amending Legislation was driven by identifiable and rational public policy objectives, and whether Tanzania (i) gave stakeholders a proper opportunity to contribute to the legislative process, and (ii) if it did, whether it took into account any of the views expressed by such stakeholders. These documents are also likely to indicate the genesis of Tanzania's decision to abolish retention licences and confirm that the same did not pursue any rational policy objective (Memorial, p. 104, para. 274; p. 124, para. 323).

Responses and/or Objections by disputing party to production of requested documents	Drafts Bills for the July 2017 of the Amending Legislation introduced to the Parliament are in the Parliament website (Parliament of Tanzania) and the said Bills can be assessed from the following links: https://www.parliament.go.tz/polis/uploads/bills/1498722623-PERMANENT%20SOVEREIGNTY.pdf https://www.parliament.go.tz/polis/uploads/bills/1498722379-THE%20NATURAL%20RESOURCES%20CONTRACT.pdf https://www.parliament.go.tz/polis/uploads/bills/1498723111-EXTRACTIVE%20INDUSTRY%20AND%20FINANCIAL%20LAWS-4.pdf https://www.parliament.go.tz/polis/uploads/bills/1505223613-THE%20WRITTEN%20LAWS%20(MISCELLANEOUS%20AMENDMENTS)%20ACT%20(NO.3)%202017.pdf All comments on the Bills are on the Hansard already provided with Respondent's Counter Memorial.

Reply to objections	The Respondent's objection that the draft Bills for the Amending Legislation are available on the Parliament website is patently meritless. The Claimant's Request is clearly not targeted at the publicly available, published versions of the Bills which were put before the Tanzanian Parliament on 29 June 2017. As stated, the Request targets the successive iterations of, and comments on, the draft Bills before and during the legislative process, which are not publicly available. It is these drafts and comments that will shed light on whether the Amending Legislation was driven by identifiable and rational public policy objectives and whether Tanzania engaged with stakeholders and took their views into account. Further, only these drafts will indicate the genesis of Tanzania's decision to abolish retention licences, not the Bill presented before Parliament, which does not shed light on that decision. Indeed, the Respondent does not contest any of the foregoing in its Objection. It does not provide any objection, founded in the IBA Rules or otherwise, as to why the Request should not be ordered. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED** The Tribunal notes that the Respondent has provided links to the Draft Bills put before the Tanzanian Parliament on 29 June 2017, but that it has not otherwise objected to this request.

Document Request No.	**5**
Identification of documents or category of documents requested	Documents concerning the investigations and reports of the "investigating committee" commissioned by President Magufuli in June 2017 (Exhibit C-284; Memorial, p. 72 *et seq*., para. 184). Date range: 1 January 2017 (or at least from the date this investigating committee was formed) to 10 July 2017.

Relevance and materiality according to requesting party, including reference to submissions	As explained by the Claimant in the Memorial, "[i]n June 2017, news reports stated that President Magufuli had commissioned an "investigating committee" in relation to the mining sector. This committee is reported to have concluded that several mining companies, including Acacia, had evaded tax payments to the State treasury amounting to USD 84 billion since 1998." (Memorial, p. 72 *et seq*., para. 184; Exhibit C-284). The Claimant further notes that following the investigations conducted by the "investigating committee", the committee reportedly recommended a revision of the mining legislation (Memorial, p. 73, para. 185; Exhibit C-284). However, the committee did not make its findings public (Memorial, p. 73, para. 185; Exhibit C-284). In its CM, the Respondent issues a bare denial of the Claimant's allegations with respect to President Magufuli's "investigating committee" (CM, p. 127, para. 393). The requested documents are relevant to the arbitration and material to its outcome as the results of these investigations of the "investigating committee" commissioned by President Magufuli may have had an impact on the Tanzanian authorities' decision to introduce legislative changes to the mining regime. Thus, these documents may reveal the scope of these investigations and the full findings of the "investigating committee" and whether they influenced Tanzania's decision to introduce changes to its mining regime. They may also explain why the Tanzanian authorities considered amendments to the mining legislation, including the cancellation of the existing retention licences, to be necessary and whether this change was driven by rational policy objectives or sought to target specific actors in the mining sector.

Responses and/or Objections by disputing party to production of requested documents	The Despondent objects to the Request as follow: a. Documents concerning the investigations and reports of the "investigating committee" commissioned by President are irrelevant to this dispute and the requested information are of privilege and protected nature under relevant laws regulated by security and law enforcement Departments of the Government hence of public interest immunity under both Tanzanian's and international laws. Therefore, cannot be disclosure; b. The Claimant's request relates to communications involve the President which under section 8 (2) and (3) of the Presidential Affairs Act Cap. 9 of the Laws of Tanzania which restrict appearance of the President as a witness or requiring or compelling the President to produce anything in the court or other person or authority including the Arbitral Tribunal[8]. (a) The Request calls for the production of documents whose disclosure is prohibited by Tanzanian law regarding public interest immunity, which is consistent with general principles of law observed by other jurisdictions. Article 54(5) of the Tanzanian Constitution 1977 prohibits disclosure of any information relating to any advice that the President has received or may receive from the Ministers or members of the Cabinet. Inasmuch as the document involved the President as the Head of State and Chairperson of the Cabinet are one of the ways by which the President is advised, disclosure of such information would contravene the Constitutional provision and other applicable laws of the Executive privilege. The said Requests call for documents that reflect the internal deliberations and decision-making processes of Government organs and are thus subject to this immunity. Cases from various jurisdictions are instructive on this point[9].

[8] The provisions of the Presidential Affairs Act Cap. 9 R. E 2002 read as follows:

" 8 (2) Subject to the provisions of subsection (3), no process shall be issued by any court or other person or authority empowered to issue process in that behalf–

(a) requiring or compelling the personal appearance or attendance of the President in any capacity; or

(b) requiring or compelling the President to produce any person or thing.

(3) Where a party to any proceedings in any court or before some other person or authority empowered to issue process in that behalf, applies for any process requiring **or compelling the appearance of the President as a witness or requiring or compelling the President to produce any person or thing**, the court or other person or authority may if, but for this section, it would have issued such process, notify the President of the application, but shall not make any other order or issue any other process on such application.

[9] See, e.g., ***Conway v Rimmer, [1968] AC 910 (House of Lords)*** ("The business of government is difficult enough as it is, and no government could contemplate with equanimity the inner workings of the government machine being exposed to the gaze of those ready to criticize without adequate knowledge of the background and perhaps with some axe to grind

Reply to objections	As for the Respondent's argument that the documents requested would be protected by executive privilege, public interest immunity or other governmental privilege, the Claimant refers to its observations above at Section 5, paragraph 19 b) and c). The Respondent does not adduce any specific reasons for its blanket assertion of privilege, and thus, this objection should be dismissed. In any event, neither Article 54(5) of the Tanzanian Constitution,[10] nor section 8 of Tanzania's Presidential Affairs Act[11] apply to arbitral tribunals established under the ICSID Convention. The Respondent's assertion that the "documents concerning the investigations and reports of the 'investigating committee' commissioned by President are irrelevant to this dispute" is unsubstantiated and does not offer any substantive rebuttal to the reasons for the Request. The Respondent does, however, concede that the requested documents in fact "reflect the internal deliberations and decision-making processes of Government organs". The Respondent, therefore, appears to acknowledge that these documents informed the government's decision to pass the Amending Legislation, and more specifically its decision to repeal sections 38 and 39 of the Mining Act 2010 and later cancel existing retention licences, confirming that they are relevant and material to the outcome of this arbitration. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.

[10] Article 54(5) of the Tanzanian Constitution only applies to a "court" – as defined in section 151(1) of the Tanzanian Constitution as a "court having jurisdiction in the United Republic" – and not ICSID tribunals. See also *Biwater Gauff (Tanzania) Limited v. United Republic of Tanzania*, Procedural Order No. 2, ICSID Case No. ARB/05/22 dated 24 May 2006, at **Exhibit CL-100**, p. 8.

[11] Section 8 of Tanzania's Presidential Affairs Act only applies to a "court or other person or authority empowered to **issue process**" (emphasis added) and thus, does not apply to arbitral tribunals established under the ICSID Convention and relevant bilateral investment treaties.

Decision of the Tribunal	**GRANTED** The requested documents appear to be *prima facie* relevant. The Tribunal understands that the Respondent invokes grounds of special political or institutional sensitivity pursuant to Article 9(2)(f) of the IBA Rules, which includes "evidence that has been classified as secret by a government or a public international law institution", when asserting public interest immunity, executive or other governmental privilege to justify non-production. In the Tribunal's opinion, a ground for protection against disclosure provided in Article 9(2)(f) may be grounded in national law if it is shown that such privilege is generally accepted as worthy of protection. Under Article 9(2)(f), protection is also conditioned on the Tribunal finding the ground invoked to be compelling. On their face, Sections 8(2) and (3) of the Presidential Affairs Act apply to domestic courts seated in Tanzania and the Respondent has not sufficiently explained why these provisions should apply in ICSID proceedings. Regarding Article 54(5) of the Tanzanian Constitution, which prohibits disclosure in a court of law of any advice given by the Cabinet to the President, the Respondent also failed to explain why this provides a compelling ground to refuse production in ICSID proceedings. In any event, the Tribunal notes that the request does not relate to any advice given by the Cabinet to the President, but to documents concerning the investigations and reports of the "investigating committee". To the extent that any responsive documents contain advice from the Cabinet to the President, the Respondent may redact any such information where necessary when producing the documents.

Document Request No.	**6**
Identification of documents or category of documents requested	Any communication between the Ministry of Minerals and the President's office, the Mining Commission or other governmental bodies including the Tanzanian Parliament concerning the cancellation of the retention licences between the enactment of the Amending Legislation and the issuance of the 2018 Regulations. Date range: 1 July 2017 to 10 January 2018.

Relevance and materiality according to requesting party, including reference to submissions	Throughout the implementation of the Amending Legislation, Tanzania did not provide any information as to the status of existing retention licences. For instance, in his letter dated 16 October 2017 in response to the Claimant's letter dated 7 September 2017 enquiring about the "Status of the Retention Licences", the Commissioner for Minerals assured the Claimant that "the Ministry of Minerals […] [was] working on the matter and [that the Claimant would] be informed of the status in due course" (Exhibit C-192). However, the Ministry of Minerals never informed the Claimant of the steps it took, if any, to clarify the status of the Retention Licences after the repeal of sections 37 and 38 of the Mining Act 2010, before it promulgated the 2018 Regulations. The Claimant has adduced evidence that the Ministry of Minerals itself was taken by surprise by the magnitude of the change to the mining regime (Memorial, p. 75, para. 191; WS Richard Williams, p. 38, para. 120). The Respondent asserts the contrary (CM, p. 68, para. 195). The Respondent asserts that the Commissioner for Minerals' letter dated 16 October 2017 constituted a "meaningful answer" to the Claimant's query about the status of retention licences (CM, p. 102, para. 304). The requested documents are relevant to the arbitration and material to its outcome as they may shed light on the rationale, if any, behind the Tanzanian authorities' decision to introduce such drastic changes in the mining regime. These documents may also show whether the Ministry of Minerals was indeed taken by surprise by the Amending Legislation, and its efforts, if any, to clarify the status of the existing retention licences before the 2018 Regulations.

Responses and/or Objections by disputing party to production of requested documents	The Respondent objects to the Claimants request for the following reasons: (a) The Request has no relevance to the Respondent's case or materiality to the outcome of the case. (b) Claimants' Request has failed to meet the requirement of the Document Production Protocol and rules 3 of the IBA Rules on the Taking of Evidence in International Arbitration (2010) (the "IBA Rules") for the following: (i) The request is overly broad and unduly burdensome in so far as the request concern "any Document" communications"; "Any communications between the Ministry of Minerals and the President's office, the Mining Commission or other governmental bodies including the Tanzanian Parliament concerning the cancellation of the retention licences. (ii) The request lacks a description of each requested Document sufficient to identify it including specific requested category of Documents that are reasonably believed to exist. (iii) Claimant's request includes unspecified communications involving the President of the United Republic. The Claimant's request includes unspecified communications involving the President. Section 8(2) and (3) of the Presidential Affairs Act Cap. 9 of the Laws of Tanzania restricts appearance of the President as a witness or requiring or compelling the President to produce anything in the court or other person or authority including the Arbitral Tribunal[12].

[12] The provisions of the Presidential Affairs Act Cap. 9 R. E 2002 read as follows:

"8 (2) Subject to the provisions of subsection (3), no process shall be issued by any court or other person or authority empowered to issue process in that behalf–
(a) requiring or compelling the personal appearance or attendance of the President in any capacity; or
(b) requiring or compelling the President to produce any person or thing.

(1) Where a party to any proceedings in any court or before some other person or authority empowered to issue process in that behalf, applies for any process requiring **or compelling the appearance of the President as a witness or requiring or compelling the President to produce any person or thing**, the court or other person or authority may if, but for this section, it would have issued such process, notify the President of the application, but shall not make any other order or issue any other process on such application.

Reply to objections	The Respondent's objection is baseless for the following reasons. First, the Respondent avers that the Request "has no relevance to the Respondent's case or materiality to the outcome of the case" without any attempt to engage with the Claimant's justification for this Request. Moreover, the Respondent's assertion fact that certain responsive documents have "no relevance to the **Respondent's** case" is not a valid ground for objecting to the Claimant's Request under the IBA Rules. The relevant test is whether the requested documents are "relevant to the case" (IBA Rules, Article 3.3(b)). In this instance, the Claimant has argued in its Memorial that Tanzania's decision to cancel existing retention licences reflected in the 2018 Regulations was not justified by any rational public policy objective (see *e.g.*, Memorial, p. 81 *et seq.*, Sections 2.9.3.1 and 2.9.3.2; p. 104, para. 270). Therefore, for these reasons and the reasons explained in the Request, the documents requested are relevant to this arbitration and material to its outcome. Second, the Respondent's assertions that the Request is "overly broad and unduly burdensome" and "lacks a description of each requested Document sufficient to identify it" are false. To the contrary, in accordance with Article 3.3(a)(ii) of the IBA Rules, the Request identifies "a narrow and specific category of […] Documents that are reasonably believed to exist". In the reasons for its Request, the Claimant refers to correspondence from the Ministry of Minerals stating that they were "working" on the issue of the "Status of Retention Licences" in September 2017. Therefore, it is reasonable to believe that communications regarding this issue exist between the Ministry of Minerals and other governmental bodies during the relevant period. Moreover, the Claimant's Request is strictly limited in time and subject-matter: it covers a six-month period and relates exclusively to communications concerning the cancellation of existing retention licences. The Claimant's Request clearly concerns a narrow and specific category of documents, and it would not be unduly burdensome for the Respondent to disclose these documents. Third and finally, insofar as the Respondent seeks to object on the basis of presidential immunity under Tanzania's Constitution, the Claimant refers to its observations above at Section 5, paragraph 19 b) and c). The Respondent does not adduce any specific reasons for its blanket assertion of privilege, and thus, this objection should be dismissed. In any event,

	section 8 of Tanzania's Presidential Affairs Act[13] does not apply to arbitral tribunals established under the ICSID Convention. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED** The requested documents appear to be *prima facie* relevant. Moreover, the request is sufficiently specific and not unduly burdensome, since it exclusively relates to communications concerning the cancellation of existing retention licences over a six-month period. Finally, for the same reasons as above regarding Request No. 5, the Tribunal rejects the Respondent's assertion of public interest or presidential immunity, since it does not appear that any responsive document relates to advice given by the Cabinet to the President. However, to the extent that any responsive document contains such advice, the Respondent may redact any such information where necessary.

[13] Section 8 of Tanzania's Presidential Affairs Act only applies to a "court or other person or authority empowered to **issue process**" (emphasis added) and thus, does not apply to arbitral tribunals established under the ICSID Convention and relevant bilateral investment treaties.

6.2 Respondent's issuance of the 2018 Regulations	
Document Request No.	**7**
Identification of documents or category of documents requested	Any policy papers (white papers, green papers, *etc*.), impact assessment studies, risk assessments, memoranda, reports or advice prepared by the Ministry of Minerals during the drafting of the 2018 Regulations concerning the retention licences and particularly, the status of the existing retention licences. Date range: 10 July 2017 to 10 January 2018.

Relevance and materiality according to requesting party, including reference to submissions	The Claimant explains in the Memorial that, in contrast to the attractive investment environment existing at the beginning of the Project, from July 2017 onwards Tanzania drastically and arbitrarily changed its regulatory framework for mining when implementing the Amending Legislation (Memorial, p. 70, para. 179). Specifically, on 10 January 2018, Tanzania passed the 2018 Regulations, which cancelled all existing retention licences altogether and reverted the land thereunder to the government (Memorial, p. 84, paras. 214-216; WS Richard Williams, p. 41, para. 129; Exhibit C-194). However, to the Claimant's knowledge, Tanzania never provided any reason for its decision to cancel all existing retention licences retroactively. In its CM, the Respondent asserts that the 2018 Regulations, including the cancellation of retention licences and reversion of land thereunder to the government, were implemented in pursuit of various policy aims, including: "to improve the management and operations of [the] [m]ineral sector in Tanzania" (CM, p. 95, para. 279); to "protect its natural resources for the benefit of its citizens" (*Ibid*.; see also CM, p. 114 *et seq*., para. 351) and "to address challenges to the mineral sector by strengthening the administrative structure and reviewing the fiscal regime relating to this sector" (CM, p. 100 *et seq*., para. 299). The requested documents are relevant to the case and material to the issue of fact of whether the Tanzanian authorities undertook risk assessments and specific studies on the topic of retention licences before deciding to cancel all existing retention licences altogether and revert the right to those areas to the government. They will also reveal whether the 2018 Regulations (particularly those relating to retention licences) were indeed prepared and implemented in pursuit of the policy aims cited by the Respondent in its CM.

Responses and/or Objections by disputing party to production of requested documents	The Respondent objects the production of the document for the following ground: i. The Claimant has failed to establish the existence of such documents in the custody of the Respondent. ii. The 2018 Mining Regulations were drafted on the basis of the 2017 Amending Legislation and Mining Policy 2009 with the main objective of increasing the mineral sector's contribution to the Government Development Planning (GDP) and alleviate poverty by integrating the mining industry with the rest of the economy. (a) Documents requested under category (a) of the Request are too general and contrary to rule 3 of the IBA Rules on the Taking of Evidence in International Arbitration (2010) (the "IBA Rules"). The Claimant request is overly broad and unduly burdensome in so far as it request for "*any communication*". (b) The Respondent has failed to identify the documents which particularly are in need by the Claimant. (c) In any event, the Regulations provides for the details on the information background for the said subsidiary legislation.

Reply to objections	Each of the objections the Respondent raises to the Claimant's Request is meritless. It is not clear from paragraph (i) of the Respondent's Objection whether it contends that the requested documents do not exist or whether they do exist and are not in its custody. To the extent the requested documents do not exist, the Respondent is invited to confirm. To the extent the requested documents do exist, they would obviously be in the possession, custody or control of the Respondent, having been prepared by the Ministry of Minerals. However, it is reasonable to assume that at least some of the requested documents do exist. Clearly, the 2018 Regulations were not drafted in a vacuum. Indeed, the Respondent itself confirms in paragraph (ii) of its Objection that "[t]he 2018 Mining Regulations were drafted on the basis of the 2017 Amending Legislation and Mining Policy 2009". At the very least, some memoranda, reports or advice papers must have been prepared within the Ministry of Minerals addressing how to implement the 2017 Amending Legislation and Mineral Policy 2009 in the form of the 2018 Regulations. In paragraph (a) of its Objection, it is not clear to what the Respondent refers by "category (a) of the Request" and its (mis)quotation of "any communication", neither of which appear in the Request or its justification. In any event, to the extent the Respondent alleges the Request is overly broad or unduly burdensome, it is disputed. The Request is targeted at a narrow and specific category of identifiable documents in accordance with Article 3.3(a) of the IBA Rules. As for paragraph (b) of the Respondent's Objection, the Claimant has explained why all of the requested documents would be relevant and material to the outcome of the dispute. The Respondent offers no substantive rebuttal to that explanation. Finally, paragraph (c) of the Respondent's Objection is incorrect. The 2018 Regulations (Exhibit C-194) do not contain any "details on the information background", other than that they are issued under powers conferred under the Mining Act 2010, as amended by the 2017 Act. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.

Decision of the Tribunal	**GRANTED AS SPECIFIED BELOW** The Respondent shall (i) either state that the requested documents do not exist if that is the situation or (ii) produce the requested documents, and in particular documents, if any, on which it bases its statement in para. (ii) of its responses and/or paras. 279, 299 and 351 of its Counter Memorial. More generally, the requested documents appear *prima facie* relevant and the request is sufficiently specific and not unduly burdensome.

Document Request No.	**8**
Identification of documents or category of documents requested	To the extent not covered by Request 7 above, all the successive drafts of the 2018 Regulations and all related comments (including comments exchanged through internal emails, memoranda, tracked changes in Word documents, *etc*.), including those relating to the removal of retention licences, prepared between 10 July 2017 and 10 January 2018. Date range: 10 July 2017 (or from the date of the first such draft, whichever is earlier) to 10 January 2018.

Relevance and materiality according to requesting party, including reference to submissions	As the Claimant explains in the Memorial, retention licence holders were unclear as to what section 16 of the 2017 Act meant in practice for existing retention licences, since the 2017 Act did not discuss what rights, if any, the existing retention licence holders had in the wake of the removal of sections 37 and 38 of the Mining Act 2010 (Memorial, p. 81 *et seq*., paras. 206-208). It only became clear with the publication of the 2018 Regulations that Tanzania had cancelled all existing retention licences retroactively (Memorial, p. 84, paras. 214-216; WS Richard Williams, p. 41, para. 129; Exhibit C-194). In its CM, the Respondent asserts that the 2018 Regulations, including the cancellation of retention licences and the reversion of land thereunder to the government, were implemented in pursuit of various policy aims, including: "to improve the management and operations of [the] [m]ineral sector in Tanzania" (CM, p. 95, para. 279); to "protect its natural resources for the benefit of its citizens" (*Ibid*.; see also CM, p. 114 *et seq*., para. 351) and "to address challenges to the mineral sector by strengthening the administrative structure and reviewing the fiscal regime relating to this sector" (CM, p. 100 *et seq*., para. 299). The requested documents are relevant to the arbitration and material to its outcome as they may shed light on the rationale, if any, behind the Tanzanian authorities' decision to repeal sections 37 and 38 of the Mining Act 2010 and thereafter the need to implement the 2018 Regulations so as to confirm the cancellation of all existing retention licences and reversion of the licence areas to the State. The requested documents may also indicate whether the 2018 Regulations (particularly those relating to retention licences) were indeed prepared and implemented in pursuit of the policy aims cited by the Respondent in its CM. They will also show whether Tanzania considered the need – and possibly, various ways – to compensate or otherwise mitigate the damage caused to existing retention licence holders by the cancellation of their licences.

Responses and/or Objections by disputing party to production of requested documents	The Respondent objects the production of the requested documents on the following grounds: (a) The Claimant's Request relates to all the successive drafts of the 2018 Regulations and all related comments (including comments exchanged through internal emails, memoranda, tracked changes in Word documents, *etc*.), including those relating to the removal of retention licences, prepared between 10 July 2017 and 10 January 2018. The request is overly broad and unduly burdensome in so far as the request concern "any internal communication within the Government" without considering that the Government has several entities, in more than fifteen ministries, and over a hundred Institutions. (b) The 2018 Mining Regulations were drafted on the basis of the 2017 Amending Legislation and Mining Policy 2009 with the main objective of increasing the mineral sector's contribution to the Government Development Planning (GDP) and alleviate poverty by integrating the mining industry with the rest of the *economy*; (c) The request lacks a description of each requested Document *sufficient* to identify it including specific requested category of Documents that are reasonably believed to exist. (d) This is also a request not within the requirements of Article 3.3 of *IBA* Rules, as it is so broad to understand and, in any case, the Respondent is not in possession of such requested documents or communications. (e) Under the IBA rule 3(c) (i) of the IBA Rules, the requesting *party* has to state that the Documents requested are not in the possession, custody or control of the requesting Party. In this case, the Claimants' own words prove that the requested 2018 Regulations are in the Claimants' possession.

Reply to objections	Each of the objections the Respondent raises to the Claimant's Request is meritless. Contrary to paragraphs (a) and (d) of the Objection, the Request is not overly broad, unduly burdensome or "so broad to understand". It is targeted at a narrow and specific category of identifiable documents in accordance with Article 3.3(a) of the IBA Rules: namely, the successive iterations of the draft regulations and related comments. The Respondent's assertion that it concerns "any internal communication within Government" is a distortion of the Request, which contains no such language. The Respondent's reference to the numerous entities, ministries and institutions of which the Government is comprised is misplaced considering the Request targets drafts and related comments, all of which would likely have been prepared by a specific drafting team. In any event, the fact that Tanzania may have to consult several government agencies to identify responsive documents is not a valid basis for refusing to comply with its obligations under the BIT which includes its duty to produce documents as may be ordered by the Tribunal. As for paragraph (b) of the Objection, the Respondent's position that the objectives of the 2018 Regulations were to "increas[e] the mineral sector's contribution to the Government Development Planning (GDP) and alleviate poverty by integrating the mining industry with the rest of the *economy*" is noted. However, this assertion is irrelevant as a ground for objection and does not obviate the need for testing the veracity of that assertion. Paragraph (c) of the Objection can be disregarded outright. It is self-evident from the Request the category of documents sought from the Respondent. As for paragraph (d) of the Objection, it is not credible that the requested documents are not in the Respondent's possession: even more so that they are not in its custody or control. "Possession, custody or control" encompasses all documents which the Respondent can, in practice, obtain.[14] The 2018 Regulations must have been drafted by employees or agents of the Government of Tanzania. The successive drafts and related comments must have been communicated between members of the drafting team by physical and/or electronic means. In practice, it will not be difficult, let alone impossible, for the Respondent to make enquiries with the team that drafted the 2018 Regulations to locate the requested documents. The

	requested documents, therefore, fall squarely within the definition of "possession, custody or control". In contrast, contrary to paragraph (e) of the Objection, the requested documents are not in the Claimant's possession, custody or control. It is not clear on what basis the Respondent asserts this to be the case. Of course, the Claimant possesses a copy of the final, promulgated 2018 Regulations, as they are publicly available. However, the Request self-evidently targets the drafts of those regulations and related comments, not the final version. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED IN PART** The Tribunal notes that this request only seeks documents not already targeted by request no. 7. To that extent, the requested documents appear *prima facie* relevant and should be within the possession, custody and control of the Respondent. However, the request appears overly broad and burdensome in that it covers "all related comments", including comments exchanged through internal emails as well a track changes in Word documents, etc. The Tribunal thus limits production to the drafts, if any, of the 2018 Regulations and any memoranda prepared in relation thereto.

[14] Excerpt, A Guide to the IBA Rules on the Taking of Evidence in International Arbitration, Chapter 6, at **Exhibit CL-96**, p. 27 (para. 6.168).

6.3 Tanzania's interactions with other mining companies following the overhaul of its mining regulatory framework	
Document Request No.	**9**
Identification of documents or category of documents requested	Correspondence, minutes of meetings and any other communications between the Ministry of Minerals and other mining companies holding retention licences concerning the status of their licences following the Amending Legislation and 2018 Regulations, between July 2017 and 19 December 2019. Date range: 10 July 2017 to 19 December 2019.

Relevance and materiality according to requesting party, including reference to submissions	The Claimant explains in the Memorial that the Respondent cancelled all existing retention licences altogether and reverted the land thereunder to the government (Memorial, p. 84, paras. 214-216; WS Richard Williams, p. 41, para. 129; Exhibit C-194). In its CM, the Respondent alleges that the Amending Legislation and the ensuing Regulations applied to all retention licence holders equally (CM, p. 116, paras. 354-355, p. 129, paras. 397-398). The Respondent also alleges "[t]here is no […] proof" that the Amending Legislation took interested parties by surprise (CM, p. 68, para. 195). Further, the Respondent claims that it has been able to reach various agreements with mining companies to continue their operations under the Amending Legislation, including other former retention licence holders (CM, p. 101 *et seq*., para. 302). The requested documents are relevant to the arbitration and material to its outcome as these documents would reveal how the other retention licence holders were treated after Tanzania introduced the Amending Legislation and the 2018 Regulations, and whether the Ministry of Minerals' treatment was discriminatory. They would also demonstrate that, as well as the Claimant, other mining companies perceived the Amending Legislation and 2018 Regulations as an unexpected, radical change to Tanzania's mining regulatory environment.

Responses and/or Objections by disputing party to production of requested documents	The letter from the Ministry of Minerals to the Companies holding retention licences requesting the companies holding retention Licences to apply for Special Mining Licence (SML) will be provided. Otherwise, the Respondent object to some of the Requested documents on the following grounds: (a) The request is vague and make the exercise of identifying the documents very difficult contrary to article 3(3)(a) of the IBA Rules on the Taking of Evidence in International Arbitration Rules, 2010. (b) The request is overly broad and unduly burdensome insofar as it covers "correspondences" "meetings" "any communications", "any Documents" (c) The information requested may include those are privileged and protected communications under Tanzanian's and International laws for public interest immunity and legal privilege.

Reply to objections	The Claimant welcomes the Respondent's agreement to provide the letter from the Ministry of Minerals to each of the former retention licence holders inviting them to apply for SMLs. However, each of the objections the Respondent raises to the remainder of the Claimant's Request is groundless. As for paragraph (a), the Respondent's assertion that the Request is "vague" is unexplained and meritless. The Request is targeted at specific and clearly identifiable documents: namely, communications between the Ministry of Minerals and other former retention licence holders concerning the status of their licences, after the Amending Legislation. That description is self-explanatory, and therefore identifying whether documents are responsive should not be difficult. As for paragraph (b), the Respondent misquotes the Request, which does not contain the phrase "any Documents". In any event, the Respondent's assertion that the Request is "overly broad and unduly burdensome" is false. To the contrary, in accordance with Article 3.3(a)(ii) of the IBA Rules, the Request identifies "a narrow and specific category of […] Documents that are reasonably believed to exist". The Respondent does not contest that communications between the Ministry of Minerals and former retention licence holders exist. Moreover, the Claimant's Request is strictly limited in time and subject-matter: it covers only the period from the Amending Legislation to the Invitation to Tender and relates exclusively to communications concerning retention licences. It is worth emphasising that, to the Claimant's knowledge, there were only twelve retention licences at the time of the Amending Legislation, including four granted to the Claimant's local subsidiary, BTL. Therefore, Tanzania would have had communications and meetings to which this Request relates with approximately eight mining companies. It would not be unduly burdensome for the Respondent to produce those documents. As for paragraph (c) and the Respondent's assertion of "public interest immunity" under Tanzanian law, the Claimant refers to its observations above at Section 5, paragraph 19 b) and c). The Respondent does not adduce any specific explanation as to how responsive documents are privileged, and thus, this objection should be dismissed. To the extent the Respondent relies on "legal privilege", the scope of such privilege is clearly set out in Article 9.3 of the IBA Rules and extends solely to communications "made in connection with and for the purpose of providing or obtaining legal advice" or documents made

	"in connection with and for the purpose of settlement negotiations". The Respondent has not offered, however, any plausible explanation as to how "communications between the Ministry of Minerals and other mining companies holding retention licences concerning the status of their licences" may fall within the ambit of any definition of legal privilege, let alone Article 9.3 of the IBA Rules. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED IN PART** The Tribunal notes that the Respondent agreed to produce the letter from the Ministry of Minerals to the Companies holding retention licences requesting those companies to apply for a Special Mining Licence. The request is otherwise sufficiently specific as regards correspondence and minutes of meetings between the Ministry of Minerals and other mining companies, but is overly broad and unduly burdensome as regards "any other communications". For the same reasons as above regarding Request No. 5, the Tribunal rejects the Respondent's assertion of public interest or presidential immunity since none of the requested documents appear to contain advice from the Cabinet to the President. To the extent that any responsive document contains such information, the Respondent may redact such information where necessary. The Tribunal also rejects as unsubstantiated the assertion of legal privilege, since the Respondent has not explained the extent to which any responsive documents include communications made "in connection with and for the purpose of providing or obtaining legal advice" or "in connection with and for the purpose of settlement negotiations" in the sense of Article 9(2)(b) and 9(4)(a)-(b) of the IBA Rules. To the extent responsive documents fall within the ambit of legal privilege in the sense of Article 9(4)(a)-(b) of the IBA Rules, the Respondent shall provide a privilege log setting forth for each non produced responsive document the (i) author(s), (ii) recipient(s), (iii) date, (iv) subject matter of the document or portion thereof claimed to be privileged, and (v) the basis for the claim of privilege.

Document Request No.	**10**
Identification of documents or category of documents requested	To the extent not covered by Request 9 above, any agreements reached between Tanzania and other mining companies operating in Tanzania following the enactment of the Amending Legislation, including the settlement agreement between Tanzania and Barrick Gold Corp. ("**Barrick**") and/or Acacia Mining plc ("**Acacia**") dated 24 January 2020 (the "**Barrick Settlement**"). Date range: 10 July 2017 to date.

Relevance and materiality according to requesting party, including reference to submissions	The Claimant explained in the Memorial that, from 2016, Tanzania began demonstrating hostility towards foreign mining investors (Memorial, p. 66-67, paras. 166-168). In early 2017, it began enacting measures targeting Acacia, though these measures also affected other foreign mining investors (Memorial, pp. 71-72, paras. 181-182; WS Richard Williams, p. 32, para. 102). The Respondent admits in its CM that an export ban on mineral concentrates was targeted at Acacia, explaining that it was later lifted upon Tanzania and Barrick agreeing on the Barrick Settlement (CM, p. 97, para. 284). The Claimant explained that the aforementioned measures culminated in the Amending Legislation (Memorial, p. 74 *et seq.*, Section 2.9.2). The Respondent denies that the Amending Legislation was targeted at foreign mining investors or at Acacia (CM, p. 55, para. 146; p. 96, para. 282). It relies on the fact that a dispute between Tanzania and Barrick/Acacia was resolved by way of settlement dated 24 January 2020 as evidence that other mining companies were content to continue operating in Tanzania under the new regulatory framework (CM, p. 10 *et seq*., para. 25; p. 90-91, paras. 265 and 267; p. 96-97, paras. 283-284). The Respondent also refers to and relies on "some of the [other] mining companies" having settled disputes with Tanzania following the Amending Legislation (CM, p. 90, para. 265). Despite the Respondent relying heavily on its agreements with mining companies, including the Barrick Settlement, and referring to it as "open evidence" that the Amending Legislation was "justifiable" (CM, p. 91, para. 267), the Respondent has not produced any of those agreements in evidence. The requested documents are relevant to the arbitration and material to its outcome, as they will shed light on whether Tanzania was motivated by targeting foreign mining investors when enacting the Amending Legislation. In particular, since it appears to be common ground that Acacia's relationship with the government was sufficient to cause a mineral export ban (Memorial, p. 72, para. 182; CM, p. 97, para. 284), the Barrick Settlement may reveal whether other measures arising from the Amending Legislation were also targeted at Barrick. The requested documents would also indicate Barrick's and other mining companies' incentives for continuing to operate in Tanzania (including any concessions offered by Tanzania). Tanzania relies on the requested documents' existence as evidence that those companies did not consider the new regulatory framework to infringe their rights. The requested documents themselves are necessary to verify whether these companies'

	decisions to continue operating in Tanzania were motivated by exemptions or other concessions offered by Tanzania (as the execution of settlement agreements would suggest) or whether they were motivated to continue operating simply by complying with the Amending Legislation, as Tanzania claims.
Responses and/or Objections by disputing party to production of requested documents	The Respondent objects to the Requests to produce documents or communications identified as "any' or "all" reached between Tanzania and other mining companies operating in Tanzania following the enactment of the Amending Legislation, including the settlement agreement on the following grounds: a. The Request has no relevance to the case or materiality to the outcome of the case. b. The requested documents are confidential and privileged between the parties to the Agreements hence disclosing the same to the third party (The Claimant, ICSID and the Tribunal) will amount to the breach of terms and conditions of the said Agreement particularly "confidentiality clause" which might end up creating another dispute; c. The documents requested are documents for the third party not in this arbitration. Under Article 9(e) of the IBA Rules the documents are protected for Commercial or technical confidentiality. d. The request is overly broad and unduly burdensome in so far as the request concerns "any agreement"

Reply to objections	Each of the objections the Respondent raises to the Claimant's Request is meritless. As for paragraph (a), the Claimant explained in the justification for its Request why all of the requested documents would be relevant and material to the outcome of the dispute. The Respondent's bare assertion to the contrary does not offer any substantive rebuttal to that explanation. As for paragraph (b), the Respondent's assertion that the requested documents are "confidential" is unsubstantiated. The burden lies with the party raising an objection on grounds of commercial or technical confidentiality not only to produce evidence of the confidentiality undertaking with the third party in question, but also offer "compelling" reasons for withholding this information, as required under Article 9.2(e) of the IBA Rules. In this respect, the existence of such confidentiality agreement would not in itself constitute a compelling reason to withhold otherwise responsive documents. As explained in the reasons for this Request, the documents requested are necessary to assess whether Tanzania granted preferential treatment to certain mining companies which would explain their decision to continue operating in the country – which is at least plausible in light of the various agreements mentioned by Tanzania. As such, commercial or technical confidentiality is not a compelling reason in this case and it is outweighed by the need for the Claimant and the Tribunal to assess the treatment afforded by Tanzania to all affected mining companies. Further, as noted above in Section 5, paragraph19 c), the Tribunal may adopt specific confidentiality measures to allay the Respondent's concerns, including appropriate redactions of commercially sensitive information where necessary. Finally, there is no legal basis, nor does the Respondent put one forward, for its assertion that the agreements with other mining companies are "privileged between the parties". As for paragraph (c), the Respondent's objection that "[t]he documents requested are documents for the third party not in this arbitration" is not understood. To the extent the Respondent asserts the requested documents are not in its possession, custody or control, this is obviously false: the Government of Tanzania would have copies of the agreements it reached with other mining companies to which it is party. For the same reasons as paragraph (b) above, the Respondent's contention that

	the "documents are protected for Commercial or technical confidentiality" is misconceived. Finally, as for paragraph (d), the Request clearly is not broad or at all burdensome, let alone unduly so. The Request concerns a limited number of specific documents: namely, agreements Tanzania reached with other mining companies operating in Tanzania following the enactment of the Amending Legislation. There is conceivably only a limited number of mining companies operating in Tanzania with whom the Respondent reached an agreement; the Respondent itself only refers specifically to two such agreements: one with Barrick/Acacia on 24 January 2020 (CM, p. 90, para. 265) and one with Kabanga on 19 January 2021 (CM, p. 101 *et seq.*, para. 302). It should not be difficult to identify the requested documents or burdensome to produce them. Indeed, Tanzania has clearly already identified at least some of the agreements since it refers to specific information contained therein, including a "confidentiality clause". For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED IN PART AND AS SPECIFIED** The requested documents, insofar as they relate to the so-called "Barrick Settlement" dated 24 January 2020, appear to be *prima facie* relevant and the request is not overly broad or unduly burdensome. By contrast, the *prima facie* relevance of other responsive documents has not been sufficiently established. The Tribunal deems that the inclusion of a confidentiality clause, to the extent that the Barrick Settlement contains such a clause, is a compelling reason under Article 9(2)(e) of the IBA Rules, but it also deems that the Claimants are entitled to find out whether Barrick and/or Acacia obtained from the Respondent exemptions and other concessions, or preferential treatment to continue operating in Tanzania. The Tribunal therefore decides that the Respondent may redact any commercially sensitive information where necessary, but that it must disclose any exemptions or other concessions granted to Barrick and/or Acacia.

Document Request No.	**11**
Identification of documents or category of documents requested	To the extent not covered by Request 10 above, correspondence and other documents exchanged between the Respondent, Kabanga Nickel Limited ("**Kabanga**"), Barrick, Glencore and/or Tembo Nickel Corporation Limited concerning the enactment of the Amending Legislation, the 2018 Regulations or the Mining Commission's tender of December 2019, culminating in the framework agreement signed on 19 January 2021 (the "**Kabanga Settlement**") and the mining licence granted to Kabanga on 27 October 2021 (the "**Kabanga SML**"). Date range: 10 July 2017 to 27 October 2021.

Relevance and materiality according to requesting party, including reference to submissions	In its CM, the Respondent explains that "[s]ome of the companies who had Retention Licences, including Kabanga Nickel, managed to re-negotiate with the Government of Tanzania and reached a framework agreement with the Government […]" (CM, p. 101 *et seq*., para. 302; Exhibits R-040 and R-042). It also asserts that "all owners of Retention Licence[s] were requested to apply for mining or special mining licences including the Claimant" (CM, p. 101, para. 302). The Respondent relies on these facts to assert that Tanzania did not expropriate the Claimant's investment, as it "did not negate efforts made by other Retention Licence holders […] to acquire rights under the reverted Licences" (CM, p. 106, para. 318; p. 113, para. 346). Further, the Respondent relies on the fact that it later granted the Kabanga SML (Exhibit R-043) and that Kabanga is still operating in Tanzania to assert that its overhaul of its mining regime was "fair and proportionate" (CM, p. 130, para. 402). It also implies that "Barrick and Glencore" are still operating in Tanzania through Kabanga (CM, p. 83, para. 248), despite one of its own exhibits appearing to contradict that statement (Exhibit R-040, pp. 2-3). However, despite its reliance on the fact that it reached the Kabanga Settlement and granted the Kabanga SML, the Respondent has adduced no evidence of how the situation was resolved. Simultaneously, the Respondent also asserts that the cancellation of retention licence was "non-discriminatory in nature and was not targeted to the Claimant alone but rather was of general application to all Retention Licence Holders" (CM, p. 116, para. 354). The Respondent denies that it expropriated the Claimant's investment in part on the grounds that it offered all former retention licence holders equal compensation. The requested documents are relevant to the arbitration and material to its outcome, as they should indicate whether the Respondent treated all retention holders equally, as it claims. The requested documents would also indicate Kabanga's incentives for continuing to operate in Tanzania (including any concessions offered by Tanzania). Tanzania relies on the Kabanga Settlement and the Kabanga SML as evidence that the new regulatory framework is "fair and proportionate" and it is necessary to review the documents themselves to verify that assertion. Finally, the requested documents may also reveal whether Barrick and Glencore are indeed still operating through Kabanga, as the

	Respondent implies in its CM: a fact the Claimant disputes.
Responses and/or Objections by disputing party to production of requested documents	As stated on Item No. 10 above, the requested correspondences and other documents are confidential between the parties to the Agreements themselves hence disclosing the same to the third party (The Claimant, ICSID and the Tribunal) will amount to the breach of terms and conditions of the said Agreement particularly "confidentiality clause" which might end up creating another dispute.
Reply to objections	As explained above in relation to the Respondent's objection (b) to Claimant's Request No. 10, the Respondent has not submitted any confidentiality agreement in evidence, nor provided compelling reasons to withhold the requested documents as required under Article 9.2(e) of the IBA Rules. Moreover, as stated in the reasons for this Request, unless the Respondent is ordered to produce these documents, the Claimant and the Tribunal would be unable to assess Tanzania's assertion that all retention licences were treated on an equal basis (CM, p. 116, para. 354). Further, as noted above in Section 5, paragraph 19 c), nor has the Respondent explained why such concerns could not be appropriately addressed through specific confidentiality measures (*e.g.*, appropriate redactions of commercially sensitive information). Finally, the Claimant notes the Respondent's acknowledgment that there was in fact a dispute with Kabanga that resulted in the signing of the framework agreement referred to above on 19 January 2021.

Decision of the Tribunal	**GRANTED AS SPECIFIED** The Tribunal notes that the Claimant is not asking for documents covered by Request No. 10. It further notes that the Respondent does not object to this request on the grounds of relevance or specificity. To the extent, the requested documents are covered by confidentiality, for the same reasons as for Request No. 10, the Respondent may redact any commercially sensitive information where necessary.

6.4 Tanzania's position vis-à-vis the Claimant's rights over the SMP Gold Project area	
Document Request No.	**12**
Identification of documents or category of documents requested	Any internal assessments carried out by the Ministry of Minerals concerning the Claimant's rights over the SMP Gold Project area between the Amending Legislation and Tanzania's decision to offer the Claimant to apply for a SML. Date range: 10 July 2017 to 17 February 2021.

Relevance and materiality according to requesting party, including reference to submissions	As the Claimant explains in the Memorial, retention licence holders were left in the dark for two years as to the status of their rights over the land previously held under the SMP Retention Licences following the cancellation of the retention licences (Memorial, p. 84-87, paras. 217-224). In its CM, the Respondent claims that it was "well explained" at the time to "all stakeholders", including the Claimant, that the purpose of the measures that had removed the legislative basis for the SMP retention licences was "not to expropriate its asset but to grant it an alternative mineral right over the Project area" (CM, p. 11, para. 26). The Respondent argues that this is confirmed by its letter to BTL dated 17 February 2021 asking it to apply for a Special Mining Licence (Exhibit R-017). The requested documents are relevant to the arbitration and material to its outcome as the new mining legislation wrote the Claimant's SMP Retention Licences out of existence without any explanation. These documents should shed light on Tanzania's plans (if any) for replacing retention licences with another type of tenure during the period following the 2017 Act, or whether Tanzania considered the need to offer some form of compensation to BTL and/or to allow BTL to apply for other licences (prospecting licences, special mining licences, *etc*.). These documents may also show the reasoning of the Tanzanian authorities for removing the retention licence classification in the first place. The requested documents are also relevant to the factual issue of whether, as Tanzania claims, the series of measures that targeted retention licence holders was always aimed at granting them "alternative mineral right[s]", or whether Tanzania always intended to expropriate the Claimant's rights under the SMP Gold Project by ultimately putting them to tender in accordance with the two Invitations to Tender on 19 December and 20 December 2019.

Responses and/or Objections by disputing party to production of requested documents	The Mining Act, 2010 at Section 39(1) (a) and (b) provided that any Prospecting Licence holder or Retention Licence holder is an entitled applicant for a Special Mining Licence or a Mining Licence for the mining within the prospecting area or the retention area of minerals to which the prospecting licence, or the retention licence, applies. Since this provision was never amended by the Written Laws (Miscellaneous Amendment) Act, 2017, the Claimants as holders of a prospecting licence over the area that was held under a Retention Licence were entitled applicants thus the request to apply for a Special Mining Licence or Mining Licence.
Reply to objections	It is not clear whether or not the Respondent objects to the Claimant's Request. To the extent it does, it has not put forward any recognised objection to the Request, founded in the IBA Rules or otherwise. The Claimant reiterates the justifications it provided for its Request and requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request. It is also necessary to correct the Respondent's misleading statement that "the Claimants as holders of a prospecting licence over the area that was held under a Retention Licence were entitled applicants thus the request to apply for a Special Mining Licence or Mining Licence." The Claimant did not hold a prospecting licence over the SMP Retention Licence areas at the time Tanzania offered the Claimant to apply for a SML on 17 February 2021. The Claimant has held no mineral rights over the SMP Retention Licence areas since the 2018 Regulations confirmed the cancellation of the SMP Retention Licences and reverted the rights thereunder to the State.[15]
Decision of the Tribunal	**GRANTED** The Tribunal notes that the requested documents appear to be *prima facie* relevant, the request is sufficiently specific and not unduly burdensome or overly broad.

[15] The Claimant held prospecting licences over areas adjacent to the SMP Retention Licence areas, but these licences became useless as a result of the Respondent's decision to expropriate the SMP Retention Licences which encompassed the core, and most valuable part, of the Project (Memorial, p. 41 *et seq.*, map shown at para. 105).

Document Request No.	**13**
Identification of documents or category of documents requested	All documents and correspondence between the Ministry of Minerals and Kabanga Nickel Company Limited and National Mineral Development Corporation Limited relating to their applications for renewal of their retention licences made under s. 38(4) of the Mining Act 2010 in the course of 2014. For the avoidance of doubt, the scope of this Request includes (i) retention licence renewal applications; (ii) correspondence concerning such applications between applicants and the Ministry of Minerals; (iii) internal assessments carried out by the Ministry of Minerals concerning these applications; and (iv) interim or final decisions the Ministry of Minerals issued concerning such applications. Date range: 1 June 2013 (or the date on which these applications were made, whichever is the earlier) to 31 December 2014 (or the date on which these applications were granted, whichever is the later).
Relevance and materiality according to requesting party, including reference to submissions	In its CM, the Respondent claims that there was no automatic right to renew the retention licence, and it was "under the discretion of the Minister to either renew the Retention Licence or not" (CM, p. 123, para. 383). As noted in the Memorial, the evidence available suggests that the Ministry of Minerals' practice was to renew retention licences as a matter of course (Memorial, p. 24, para. 55 and footnote 67 citing Exhibit C-221). These documents are relevant to the case and material to its outcome, especially the value of the alleged investment, as they will indicate whether that, had one been required, it would have been possible for the Claimant to obtain a five-year renewal of its retention licence, subject to complying with the requirements of s. 38(4) of the Mining Act 2010.

Responses and/or Objections by disputing party to production of requested documents	The Respondent objects to the Requests to produce documents or communications identified as "any' or "all" reached between Tanzania and other mining companies operating in Tanzania following the enactment of the Amending Legislation, including the settlement agreement on the following grounds: a. The Request has no relevance to the Respondent's case or materiality to the outcome of the case. b. The requested documents are confidential and privileged between the parties to the Agreements hence disclosing the same to the third party (The Claimant, ICSID and the Tribunal) will amount to the breach of terms and conditions of the said Agreement particularly "confidentiality clause" which might end up creating another dispute; c. The documents requested are documents for the third party not in this arbitration. Under Article 9(e) of the IBA Rules the documents are protected for Commercial or technical confidentiality. d. The request is overly broad and unduly burdensome in so far as the request concerns "any agreement"

Reply to objections	Each of the objections the Respondent raises to the Claimant's Request is meritless. As for paragraph (a), the Claimant explained in the justification for its Request why all of the requested documents would be relevant and material to the outcome of the dispute. The Respondent's bare assertion to the contrary does not offer any substantive rebuttal to that explanation. As for paragraph (b), the Respondent's assertion that the requested documents are "confidential" is unsubstantiated. The burden lies with the party raising an objection on grounds of commercial or technical confidentiality not only to produce evidence of the confidentiality undertaking with the third party in question, but also offer "compelling" reasons for withholding this information, as required under Article 9.2(e) of the IBA Rules. In this respect, the existence of such confidentiality agreement would not in itself constitute a compelling reason to withhold otherwise responsive documents. Further, as noted above in Section 5, paragraph 19 c), the Tribunal may adopt specific confidentiality measures to allay the Respondent's concerns, including appropriate redactions of commercially sensitive information where necessary. There is no legal basis, nor does the Respondent put one forward, for its assertion that documents and communications concerning applications for renewal of retention licences are "privileged between the parties". As for paragraph (c), the Respondent's objection that "[t]he documents requested are documents for the third party not in this arbitration" is not understood. To the extent the Respondent asserts the requested documents are not in its possession, custody or control, this is obviously false. Documents and communications concerning applications for renewal of retention licences are (or at least ought to be) squarely in the possession, custody and control of the Ministry of Minerals. For the same reasons as paragraph (b) above, the Respondent's contention that the "documents are protected for Commercial or technical confidentiality" is misconceived. Finally, as for paragraph (d), the Request is not overly broad or unduly burdensome. The Request concerns documents and communications between the Ministry of Minerals and two specific mining companies: namely, Kabanga Nickel Company Limited and National Mineral Development Corporation Limited. It is also limited in temporal scope to the period those

	companies applied for and were granted the respective retention licence renewals. It should not be difficult for the Respondent to search for and identify the requested documents. It is likely they are all located in the same files at the Ministry of Minerals. Indeed, Tanzania has clearly already identified at least some of the documents since it refers to specific information contained therein, including agreements containing a "confidentiality clause". For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED IN PART AND AS SPECIFIED** The requested documents appear *prima facie* relevant. However, the request is overly broad and the Tribunal will limit production to (i) retention licence renewal applications of Kabanga Nickel Company Limited and National Mineral Development Corporation Limited in the relevant period; (ii) correspondence concerning such applications between the abovementioned applicants and the Ministry of Minerals; (iii) internal assessments carried out by the Ministry of Minerals concerning these applications; and (iv) interim or final decisions the Ministry of Minerals issued concerning such applications. To the extent that the responsive documents contain commercial or technical information of third parties that is confidential, and for the same reasons as for Request No. 10, the Respondent may redact any commercially sensitive information where necessary.

Document Request No.	**14**
Identification of documents or category of documents requested	Minutes prepared by the Ministry of Minerals regarding the meeting dated 14 November 2017 held between the High Commissioner, Anita Kundy (Trade Commissioner of Canada) and Angellah Kairuki, the former Minister of Minerals. Date range: on or about 14 November 2017.
Relevance and materiality according to requesting party, including reference to submissions	In the Memorial, the Claimant relied on an email sent by Anita Kundy, Canada's Trade Commissioner in Tanzania, to Richard Williams (Exhibit C-193) in which she referred to a meeting she had with Angellah Kairuki, the then Minister of Minerals, on 14 November 2017 (Memorial, p. 83, para. 213). In this email, Ms Kundy explained that the then Minister was still unsure about the fate of the retention licences and in any case, "the issue of retention licences would be dealt with on a case by case basis" (Exhibit C-193). In its CM, the Respondent challenges Ms Kundy's account of the meeting and argues that this email is not "the minutes evidencing the meeting" (CM, p. 103, para. 306). To the extent that such document exists, this document is relevant to this case and material to its outcome as it would confirm that Ms Kundy's account of the meeting is accurate and further confirm that the then Minister herself had no clarity as to the status of existing retention licences.

Responses and/or Objections by disputing party to production of requested documents	There are no such minutes in the Respondent possession.
Reply to objections	In light of the Respondent's confirmation that there are no responsive documents in its possession, the Claimant withdraws its Request 14.
Decision of the Tribunal	**NO DECISION REQUIRED** The Tribunal notes that the Claimant has withdrawn its Request No. 14.

6.5 Respondent's Invitation to Tender of December 2019	
Document Request No.	**15**
Identification of documents or category of documents requested	Communications and correspondence between the Ministry of Minerals and mining companies concerning the Invitation to Tender dated 19 December 2019 and the Revised Invitation to Tender dated 20 December 2019 for the former SMP Retention Licences areas and the other former retention licence areas (Exhibit C-11). Date range: 1 December 2019 to date.
Relevance and materiality according to requesting party, including reference to submissions	In its CM, the Respondent claims that it was "well explained" at the time to "all stakeholders", including the Claimant, that the purpose of the measures that had removed the legislative basis for the SMP retention licences was "not to expropriate its asset but to grant it an alternative mineral right over the Project area" (CM, p. 11, para. 26). The Respondent argues that this is confirmed by its letter to BTL dated 17 February 2021 asking it to apply for a Special Mining Licence (Exhibit R-017). The requested documents are relevant to the case and material to the factual issue of whether, as Tanzania claims, the series of measures that targeted retention licence holders were always aimed at granting them "alternative mineral right[s]", or whether Tanzania always intended to expropriate the Claimant's rights under the SMP Gold Project by ultimately putting them to tender in accordance with the two Invitations to Tender on 19 December and 20 December 2019.

Responses and/or Objections by disputing party to production of requested documents	The Respondent objects to the Requests to produce documents or communications on the following grounds: a. The Respondent objects to this Request, and this Request should be refused. The Request has no relevance to the case or materiality to the outcome of the case. a. The requested documents are confidential and privileged between the parties to the Agreements hence disclosing the same to the third party (The Claimant, ICSID and the Tribunal) will amount to the breach of terms and conditions of the said Agreement particularly "confidentiality clause" which might end up creating another dispute; b. The documents requested are documents for the third party not in this arbitration. Under Article 9(e) of the IBA Rules the documents are protected for Commercial or technical confidentiality. c. The request is overly broad and unduly burdensome in so far as the request concerns "general communications" . d. There are no such communications or correspondences to the specified timeline.

Reply to objections	Each of the objections the Respondent raises to the Claimant's Request is meritless. As for the first paragraph (a), the Claimant explained in the justification for its Request why all of the requested documents would be relevant and material to the outcome of the dispute. The Respondent's bare assertion to the contrary does not offer any substantive rebuttal to that explanation. As for the second paragraph (a), the Respondent's assertion that the requested documents are "confidential" is unsubstantiated. The burden lies with the party raising an objection on grounds of commercial or technical confidentiality not only to produce evidence of the confidentiality undertaking with the third party in question, but also offer "compelling" reasons for withholding this information, as required under Article 9.2(e) of the IBA Rules. In this respect, the existence of such confidentiality agreement would not in itself constitute a compelling reason to withhold otherwise responsive documents. Further, as noted above in Section 5, paragraph 19 c), the Tribunal may adopt specific confidentiality measures to allay the Respondent's concerns, including appropriate redactions of commercially sensitive information where necessary. Finally, there is no legal basis, nor does the Respondent put one forward, for its assertion that documents and communications concerning applications for renewal of retention licences are "privileged between the parties". As for paragraph (b), the Respondent's objection that "[t]he documents requested are documents for the third party not in this arbitration" is not understood. To the extent the Respondent asserts the requested documents are not in its possession, custody or control, this is false. Communications and correspondence to which the Ministry of Minerals was privy are clearly within the Respondent's possession, custody or control. For the same reasons as the second paragraph (a) above, the Respondent's contention that the "documents are protected for Commercial or technical confidentiality" is misconceived. As for paragraph (c), the Respondent misquotes the Request, which does not contain the phrase "general communications". In any event, the Request is not overly broad or unduly burdensome. The Request concerns communications and correspondence between the Ministry of Minerals mining companies regarding a narrow and specific subject matter: the Invitation to Tender and Revised Invitation to Tender for the former retention licence areas. The mining companies privy to

	such communications or correspondence can only have been the six other former retention licence holders themselves or companies that responded to the tender, which presumably are also limited in number. It is also limited in temporal scope to the period since December 2019, which is not only a limited timeframe but also very recent. Accordingly, it should not be burdensome for the Respondent to locate and produce any responsive documents. To the contrary, it should be straightforward. The Claimant notified the Respondent of its intention to commence the present proceedings because of and very shortly after the Invitation to Tender (Exhibit C-13). It is, therefore, likely that the Respondent would have taken extra care to save communications with other mining companies regarding the Invitation to Tender, in anticipation that they would be relevant to its dispute with the Claimant. Finally, the Respondent's assertion in paragraph (d) that "there are no such communications or correspondences to the specified timeline" is not credible. The Respondent already acknowledged in its CM that it eventually decided to postpone the tender and "communicated in writing to all bidders, for example Mantra (T) Ltd been one of them" that it had done so (CM, para. 198). The Respondent has therefore already admitted that there were "bidders", meaning there must have been responses to the Invitation to Tender (or Revised Invitation to Tender). Its position is, furthermore, undermined by its objections (b) and (c), which presuppose the existence of responsive documents. Accordingly, the Respondent's assertion that no responsive documents exist has no foundation. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.

Decision of the Tribunal	**GRANTED** The requested documents appear *prima facie* relevant. Moreover, the request is sufficiently specific and not overly broad or unduly burdensome. Since the request relates to communications and correspondence between the Ministry of Minerals and mining companies concerning the Invitation to Tender and Revised Invitation to Tender for the former retention licence areas, not any agreement between the Respondent and those mining companies, the Respondent has neither sufficiently established the existence of any confidentiality clauses, nor that the requested documents contain commercially or technically confidential information. However, to the extent that responsive documents contain commercial or technical information, for the same reasons as for Request No. 10, the Respondent may redact any commercially sensitive information where necessary. Finally, the Respondent's argument that no responsive documents exist is belied by the Respondent's assertion that it "communicated in writing to all bidders" its decision to postpone the Invitation to Tender (cf. Counter-Memorial, para. 198), as well as the Respondent's affirmation above that responsive documents are confidential and privileged (*quod non*).

Document Request No.	**16**
Identification of documents or category of documents requested	Any documents, internal reports, or assessments prepared by Tanzania (including the Ministry of Minerals and any other relevant authorities) in connection with its decisions to (i) withdraw the initial Invitation to Tender from its website and replace it with the Revised Invitation to Tender on 20 December 2019 and (ii) postpone the Tender process "until further notice" on or about 19 August 2020 (Exhibit R-018). Date range: 1 December 2019 to date.
Relevance and materiality according to requesting party, including reference to submissions	In its CM, the Respondent claims that it was "well explained" at the time to "all stakeholders", including Winshear, that the purpose of the measures that had removed the legislative basis for the SMP retention licences was "not to expropriate its asset but to grant it an alternative mineral right over the Project area" (CM, p. 11, para. 26). The Respondent argues that this is confirmed by its letter to BTL dated 17 February 2021 asking it to apply for a Special Mining Licence (Exhibit R-017). In its CM, the Respondent reveals that it decided to postpone the tender process "until further notice" by 20 August 2020, *i.e.*, more than a month after it had received the Claimant's Request for Arbitration (CM, p. 69, para. 198; Exhibit R-018). The Respondent has not explained why it suspended the tender process, other than suggesting that the tender was not valid because it would have been issued contrary to the Public Procurement Act and s. 15 of the Mining Act 2010 (CM, p. 105, paras. 314 and 316). The requested documents are relevant to the case and material to its outcome as they will shed light on the reasons why Tanzania, acting through the Mining Commission, first decided to withdraw the initial Invitation to Tender on 20 December 2019 (and issue the Revised Invitation to Tender removing the condition that successful bidders compensate former retention licence holders) and then decided by August 2020 to postpone indefinitely the tender process altogether.

Responses and/or Objections by disputing party to production of requested documents	The Respondent objects to the Requests to produce documents or communications on the following grounds: b. The Respondent objects to this Request, and this Request should be refused. The Request has no relevance to the case or materiality to the outcome of the case. c. The documents requested are documents for the third party not in this arbitration. Under Article 9(e) of the IBA Rules the documents are protected for Commercial or technical confidentiality. d. The request is overly broad and unduly burdensome in so far as the request concerns "general communications" e. There are no such communications or correspondences to the specified timeline. e. There are no internal reports or assessments prepared in connection with the decision to withdraw the initial invitation to Tender. f. There are no internal reports or assessments prepared in connection with the decision to postpone the invitation to Tender.

Reply to objections	Each of the objections the Respondent raises to the Claimant's Request is meritless. As for paragraph (b), the Claimant explained in the justification for its Request why all of the requested documents would be relevant and material to the outcome of the dispute. The Respondent's bare assertion to the contrary does not offer any substantive rebuttal to that explanation. As for paragraph (c), the Respondent's objection that "[t]he documents requested are documents for the third party not in this arbitration" is not understood. To the extent the Respondent asserts the requested documents are not in its possession, custody or control, this is false. The Request concerns documents prepared by Tanzania and that are, therefore, in its possession, custody or control by definition. The Respondent's contention that the "documents are protected for Commercial or technical confidentiality" is also misconceived for the reasons explained in Section 5, paragraph 19c)19 c) above and in relation to the Claimant's Requests Nos. 10, 11, 13 and 15 above. The points made therein are repeated here *mutatis mutandis*. As for paragraph (d), the Respondent misquotes the Request, which does not contain the phrase "general communications". In any event, the Request is not overly broad or unduly burdensome. The Request concerns documents concerning two narrow and specific subject matters: (i) the decision to withdraw the Invitation to Tender and replace it with the Revised Invitation to Tender and (ii) the later decision to postpone the tender. It is also limited in temporal scope to the period since 1 December 2019, which is not only is a limited timeframe but also very recent. Accordingly, it should not be burdensome for the Respondent to locate and produce any responsive documents. To the contrary, it should be straightforward. The Claimant notified the Respondent of its intention to commence the present proceedings because of and very shortly after the Invitation to Tender (Exhibit C-13). It is, therefore, likely that the Respondent would have taken extra care to save documents concerning the Invitation to Tender, in anticipation that they would be relevant to its dispute with the Claimant. At paragraphs (e) to (f), the Respondent contends that none of the requested documents exist. This is not credible. The

	decisions to replace the Invitation to Tender with the Revised Invitation to Tender and eventually to postpone the tender cannot have taken place in a documentary vacuum. It is inconceivable that there were no documents prepared internally within the Ministry of Minerals (or other relevant authorities) concerning those decisions before or after they were implemented. Accordingly, the Respondent's assertions that the requested documents do not exist must be rejected. For these reasons and the reasons explained in the Request, the Claimant requests respectfully that the Tribunal order the Respondent to produce the requested documents in accordance with the Claimant's Request.
Decision of the Tribunal	**GRANTED AS SPECIFIED** The requested documents appear *prima facie* relevant and the request is not overly broad or unduly burdensome. Since the request relates to internal documents of the government, the Respondent has not sufficiently established that they contain commercial or technical information that would be confidential in the sense of Article 9(2)(e) of the IBA Rules. The Tribunal notes the Respondent's affirmation that no responsive documents exist, but the overall circumstances surrounding the decisions to withdraw the initial Invitation to Tender, replace it with the Revised Invitation to Tender, and ultimately postpone the Tender process, suggest that responsive documents should exist. The Tribunal therefore invites the Respondent to renew its effort to locate, identify, and produce responsive documents, or else confirm anew after its search that no responsive documents exist.