

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Winshear Gold Corp.

v.

United Republic of Tanzania

(ICSID Case No. ARB/20/25)

PROCEDURAL ORDER NO. 5

Hearing Organization

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Judge O. Thomas Johnson, Arbitrator

Mr. Edward William Fashole Luke II, Arbitrator

Secretary of the Tribunal

Ms. Ella Rosenberg

Assistant to the Tribunal

Dr. Magnus Jesko Langer

12 January 2023

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I. PROCEDURAL BACKGROUND

1. Pursuant to paragraph 20.1 of Procedural Order No. 1 (“PO1”), the pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 12 January 2023 from 16:30 to 17:30 CET (the “Pre-Hearing Conference”), to discuss procedural, administrative, and logistical matters in preparation for the forthcoming hearing (the “Hearing”).

2. The following participants joined the conference:

Members of the Tribunal:

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Judge O. Thomas Johnson, Arbitrator

Mr. Edward William Fashole Luke II, Arbitrator

Assistant to the Tribunal:

Dr. Magnus Jesko Langer

ICSID Secretariat:

Ms. Ella Rosenberg

Mr. Shay Lakhter

Participating on behalf of the Claimants:

Dr. Marc D. Veit, LALIVE

Mr. Augustin Barrier, LALIVE

Mr. Robert Denison, LALIVE

Ms. Eden Jardine, LALIVE

Mr. Timothy L. Foden, Boies Schiller Flexner LLP

Mr. Richard Williams, Winshear Gold Corp.

Mr. Mark Sander, Winshear Gold Corp.

Mr. Andrew Thomson, Winshear Gold Corp.

Participating on behalf of the Respondent:

Dr. Boniphace Luhende, Office of the Solicitor General

Mr. George N. Mandepo, Office of the Solicitor General

Ms. Salome S. Magesa, Office of the Solicitor General

Mr. Andrew A. Rugarabamu, Office of the Solicitor General

Ms. Consesa Kahendaguza, Office of the Solicitor General

Ms. Lydia Thomas, Office of the Solicitor General

3. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft of this Procedural Order that had been circulated to the Parties on 21 December 2022 and the

Parties' comments on the draft.

4. A recording of the Pre-Hearing Conference was deposited in the archives of ICSID. It was made available to the Members of the Tribunal and the Parties on 12 January 2023.
5. In the present Order, the Tribunal sets out the procedural rules on which the Parties have agreed or the Tribunal has ruled to govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

6. The Hearing will be held in person in Washington D.C. from 13 to 16 February 2023, with 17 February 2023 being held as a reserve day.
7. The ICSID Secretariat has reserved a hearing room and break out rooms for each Party and the Tribunal at the World Bank premises in Washington D.C. The Centre shall make the hearing room and break-out rooms available to the Parties two days before the hearing.

B. REMOTE AND IN-PERSON ARRANGEMENTS

8. All participants shall abide by the sanitary protocol attached to the present Order (Annex A) and any other applicable COVID-19 related restrictions communicated by the ICSID Secretariat regarding in-person attendance at the Hearing. The ICSID Secretariat will liaise with the Parties in this respect. The Tribunal expects that all individuals who will be attending the Hearing in-person will be fully vaccinated against COVID-19, and asks that the Parties inform it and the ICSID Secretariat as soon as possible should this not be correct.
9. Given the exceptional circumstances created by COVID-19 pandemic, the ICSID Secretariat will set up a Zoom session to facilitate the participation of the attendees connecting to the Hearing remotely ("Hearing Platform"). The Parties acknowledge that they have made their own investigation as to the suitability of the Hearing Platform and of any risks associated with using the same, including any risks regarding security, privacy or confidentiality.
10. The details and link to the Zoom session shall be provided to the remote participants prior to the commencement of the Hearing. Hearing participants shall not forward or share the Hearing link or password.
11. The organization of a virtual hearing is subject to a protocol attached to this Order

(Annex B).

C. ORDER OF PROCEEDINGS AND SCHEDULE

12. The Hearing shall normally commence each day at 9:30 hrs and proceed until approximately 17:30 hrs, subject to any adjustment required by the course of the examinations, with a one-hour lunch break and at least two 15-minute breaks.
13. The order of proceedings and structure of the Hearing will follow the schedule set out in Annex C (the “Hearing Schedule”).
14. The Hearing Schedule shall be subject to any such modifications as the Tribunal may deem necessary or appropriate in the course of the Hearing, in particular, on account of any delay or interruption due to technical difficulties.
15. The Parties are expected to use the Hearing days efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or, in exceptional circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

D. ORAL STATEMENTS

16. The Parties may present opening statements of up to 3 hours each. At the end of the Hearing, the Parties will have one hour each to answer questions, if any, put by the Tribunal at the close of the previous day or on the spot. The Tribunal will determine whether any further oral submissions are necessary.
17. The Parties may use slide presentations during their opening statements. They shall send electronic copies of such presentations before the start of each presentation to the opposing Party, the Tribunal Members, the Secretary, the Assistant, interpreters and court reporters.

E. TIME ALLOCATION

18. Each Party will have a total time allocation to be used over the entire Hearing (including opening statements) of 9.5 hours each. If the circumstances so require and the remaining time until the end of the hearing so permits, the Tribunal may grant short extensions.¹
19. Time spent on direct and re-direct examination (including expert presentations) shall be counted toward the time of the Party presenting the witness or expert. Time spent on cross-examination shall be counted toward the time of the Party conducting the cross-

¹ Sitting hours will be 9:30 to 17:30, with total time available per Party (after deductions of breaks, Tribunal questions, procedural and logistical/technical issues) of 4d x 5 h/d = 20 h minus 1h reserve time = 19 hours : 2 = 9.5 h each).

examination. The allocation of time in the Hearing Schedule is an estimate, except that the opening statements shall not exceed 3 hours. The Parties are permitted to spend less or more time on a particular item than envisaged in the Hearing Schedule, subject to the Parties' respective total time allocation.

20. Time spent on questions from the Tribunal, answers to those questions, and procedural interventions by the Tribunal shall not be counted against a Party's time, except for the one hour time slot allocated to each Party at the end of the Hearing (see paragraph. Time spent dealing with objections from a Party shall not be counted against that Party's time unless the Tribunal determines otherwise. Time used for housekeeping or to resolve technical difficulties shall not be counted against any Party's time unless the Tribunal determines otherwise.
21. The Secretary of the Tribunal shall keep a record of each Party's use of time in accordance with the chess clock method and report at the end of each Hearing day about the total daily time used.

F. ATTENDANCE

22. The List of Hearing Participants is reflected in Annex D (the "List of Participants"). Each Party shall provide the Tribunal and the ICSID Secretariat by **27 January 2023** with its List of Participants, indicating for each participant who will attend virtually and in person and may amend it later only by agreement of the Parties or with permission from the Tribunal.

G. DOCUMENTATION

23. The use of documents during the Hearing is governed by paragraph 17.7 of PO1, subject to any different rule in this Order.
24. The Parties shall jointly prepare a single Electronic Hearing Bundle. The Electronic Hearing Bundle shall contain all pleadings, witness statements, expert reports, exhibits, legal authorities, Tribunal's orders or decisions, and correspondence, with a consolidated hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle:

01. Pleadings

- A. Claimant
- B. Respondent

02. Witness Statements

- A. Claimant

B. Respondent

03. Expert Reports

A. Claimant

B. Respondent

04. Exhibits

A. Claimant

B. Respondent

05. Legal Authorities

A. Claimant

B. Respondent

06. Tribunal's Rulings

07. Correspondence

25. The Electronic Hearing Bundle shall be uploaded to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Electronic Hearing Bundle shall be uploaded to a designated sub-folder on to the BOX filesharing platform, in a sub-folder using the structure indicated at paragraph 24 *supra*, including a consolidated (non-hyperlinked) index.
26. At the start of each cross-examination, the cross-examiner shall provide a cross-examination bundle (i) in electronic format to the opposing Party, each member of the Tribunal, the Secretary, the Assistant, and the court reporter(s) via the BOX filesharing platform, and (ii) in paper copy to the witness or expert (if testifying in person) and the interpreter(s). Witnesses and experts testifying remotely, if any, will only receive an electronic version of the cross-examination bundle.
27. The Parties may use PowerPoint slides and demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record.
28. An electronic copy of each demonstrative exhibit, other than PowerPoint slides, shall be distributed by the Party intending to use it via an electronic mail sent to the entire case email distribution for each Party, the Members of the Tribunal, the Secretary, the Assistant, to the court reporter(s) and to the interpreter(s) as necessary an hour before their use at the latest.
29. In addition, promptly after the conclusion of the Hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-___ or

RD-___ number.

30. Documents that do not form part of the record may not be presented at the Hearing, unless otherwise agreed by the Parties or authorized by the Tribunal.

H. WITNESS AND EXPERT EXAMINATION

31. Witness and expert examinations shall be governed by sections 18 and 19 of PO1, subject to any different rule in this Order.
32. In lieu of direct examination, experts may make a presentation of no more than 20 minutes to summarize their methodology and conclusions, and for which they may use PowerPoint slides and demonstrative exhibits if useful.
33. During cross-examination, the Parties will refer only to documents that already form part of the record of the case.
34. Specific arrangements to ensure the integrity of testimony given by witnesses and experts testifying remotely are included in the remote hearing protocol attached to this Order (Annex B).
35. The witnesses and experts shall appear in the following general order:
- (i) Claimant's fact witnesses: Messrs. Richard Williams and Christopher MacKenzie
 - (ii) Respondent's fact witnesses: Prof. Abdulkarim Hamis Mruma and Mr. Edwin Simon Igenge
 - (iii) Claimant's quantum expert: Ms. Vikki Wall
 - (iv) Respondent's quantum witness: Mr. Andrew Mwangakala
36. In principle, witnesses and experts will have to be available one-half day before and after the time they are scheduled to be examined.
37. In accordance with paragraph 19.8 of Procedural Order No. 1, fact or quantum witnesses shall not be present in the hearing room (or be connected to the Hearing) during oral testimony and arguments, or read transcripts of oral testimony or argument, prior to his or her examination. This limitation shall not apply to expert witnesses or to a fact witness who is also a party or a party representative. Parties and party representatives appearing as fact witness shall be heard first out of the relevant Party's witnesses.
38. Experts may attend the Hearing at any time. As an exception to paragraph 37 above, the Respondent's quantum witness, Mr. Mwangakala, may attend the Claimant's expert's

testimony.

III. LOGISTICS

A. INTERPRETATION

39. The Parties confirm that no interpretation services will be required.

B. TRANSCRIPTS AND SOUND RECORDING

40. Transcripts and sound recording shall be governed by section 22 of PO1.

41. Subject to paragraph 37 above, the Hearing Participants shall have real-time access to the transcripts through an online connection provided by the court reporter(s). The court reporter(s) shall, to the extent possible, attend the Hearing in person.

42. The ICSID Secretariat shall arrange for sound recording and for court reporting services and shall liaise with the Parties accordingly.

43. Except for the court reporter(s), who will make their own recording of the Hearing for purposes of preparing the transcript, Hearing Participants will not record the Hearing or any part of it, including via audio, video or screenshot methods of recording.

C. TRANSPARENCY AND VIDEO RECORDINGS

44. In accordance with Procedural Order No. 2, the Hearing shall be public. To facilitate public access to the Hearing:

- (i) An audio-video recording will be made of the Hearing and uploaded onto the ICSID website. The Tribunal will determine at the end of the Hearing, in consultation with the Parties, the date for uploading the recording on the ICSID website.
- (ii) At any time during the Hearing, a disputing Party may request that a part of the hearing be held in private, that the recording of the Hearing be temporarily suspended or that confidential information be excluded. To the extent possible, a disputing Party shall inform the Tribunal before raising topics where confidential information could reasonably be expected to arise. The Tribunal will then consult the Parties. Such consultations shall be held *in camera* and the transcript shall be marked “confidential”. After consultation with the Parties, the Tribunal will decide whether to exclude the information in question from the recording and the relevant portion of the transcript shall be marked “confidential”.
- (iii) The non-disputing State party may attend the Hearing in person and the ICSID Secretariat will invite the Government of Canada to notify its intention to attend the

Hearing in person or by videolink. For logistical reasons, physical attendance at the Hearing by third parties will not be permitted.

- (iv) The ICSID Secretariat will make the necessary technical arrangements to record the Hearing and upload the recording onto the ICSID website as set out above.

D. TECHNICAL TESTING

45. In accordance with the provisions in Annex B, the ICSID Secretariat will conduct technical tests in advance of the Hearing with the legal teams and the witnesses and experts connecting to the Hearing remotely to test connectivity to the Hearing Platform. For the efficient conduct of these tests, remote participants are advised to replicate the technical conditions in which they will participate in the Hearing (location and equipment).

E. OTHER LOGISTICAL ASPECTS

46. The ICSID Secretariat will liaise with the Parties on other logistical aspects (set up, catering, etc.).

F. POST-HEARING MEMORIALS AND STATEMENTS OF COSTS

47. Pursuant to section 23 of PO1, the number, sequence and length of post-hearing memorials (if any) and statements of costs shall be determined by the Tribunal at the end of the Hearing, after consulting with the Parties.

G. DATA PRIVACY

48. The List of Participants will contain personal data provided to ICSID, including names and contact information, such as business email addresses and telephone numbers. This data will be processed for the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Hearing Participants.

[signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal

Date: 12 January 2023

ANNEX A

Sanitary Protocol

1. The individuals who will be attending the Hearing in person (the “Hearing Participants”) shall abide by the access conditions of the premises of the World Bank.
2. It is highly recommended that Hearing Participants be fully vaccinated against COVID-19. Counsel for each Party should convey this requirement to all intended Hearing participants as soon as possible, and shall, by 27 January 2023, advise the Tribunal that they have confirmed all intended in-person participants are in compliance with this recommendation or specify which participants are not in compliance.
3. The Hearing Participants shall respect protective measures and maintain a distance of at least 2 meters at all time, except for the members of the same counsel team who may adopt an alternative organization. The Tribunal’s members, assistant and secretary may follow the same practice.
4. Counsel shall keep their own documents and folders and not share or exchange them with other Participants.
5. The witnesses and experts appearing in-person shall receive their own set of hard-copy documents for the Hearing.
6. The Hearing room shall contain sufficient antibacterial gel for all Participants to use, in particular prior to the eventual distribution of documents during the Hearing.
7. The Hearing room shall be regularly disinfected, as well as the break-out rooms, and shall be ventilated during each break.
8. Any participant who experiences signs of a cold, shortness of breath, temperature or other COVID-19 symptoms is asked to refrain from coming to the Hearing until having obtained a negative rapid antigen test. A participant who has already been in attendance at the Hearing and experiences such symptoms during the course of the Hearing is asked immediately to inform the ICSID Secretariat of this development, pending the results of its test. Persons receiving a positive result cannot enter the World Bank premises.
9. The Tribunal reserves the right to limit the number of persons in the Hearing room at any one time.

ANNEX B

Remote Hearing Arrangements

1. The following provisions only apply to those that connect to the Hearing remotely, it being understood that it is expected that the Hearing will in principle be held in person.

A. Videoconferencing Platform

2. The remote Hearing will take place on a Zoom platform (the “Hearing Platform”).
3. The ICSID Secretariat shall serve as administrator of the platform and “host” of the videoconference during the Hearing. The permissions of the administrator of the platform are defined in the present annex. If necessary, they may be adapted to the needs of the Hearing if the Parties agree.
4. The connection details to the Zoom sessions shall be transmitted by the ICSID Secretariat prior to the Hearing. The connection link to the videoconference shall be communicated by the ICSID Secretariat to the members of the Tribunal, the Assistant to the Tribunal, counsel and Party representatives, the experts, the court reporters, and the interpreters (collectively, the “Hearing Participants”) at the latest on the eve of the first Hearing day. The Hearing Participants shall neither transmit nor communicate the connection link of the Hearing.
5. Once connected to the videoconference, the Hearing Participants shall stay connected the entirety of each Hearing day, subject to technical difficulties or other exceptional circumstances. The Hearing Participants shall disconnect the audio when they do not actively participate. For the avoidance of doubt, the experts are not obliged to stay connected except for the duration of their examination.
6. The Hearing Participants shall use the *break-out room* function on the Hearing Platform during the Hearing breaks. The ICSID Secretariat shall assign each Hearing Participant to his or her corresponding *break-out room*.
7. In accordance with paragraph 10.1 of Procedural Order No. 1, the costs incurred in relation with the Hearing, including the administrative fees of the Hearing Platform, shall initially be shared in equal parts between the Parties, without prejudice to the Tribunal’s decision on the costs of the arbitration.
8. Each Party shall adopt the necessary steps to allow communication between its representatives during the Hearing, by instant messenger or any other appropriate means.

B. Technical Testing

9. The ICSID Secretariat will conduct technical tests in the week of **6 February 2023** on a date to be confirmed by ICSID with the Hearing Participants in order to test connectivity to the Hearing Platform.
10. During the technical test, the Hearing Participants shall replicate the technical conditions in which they will participate in the Hearing:
 - a. To the extent possible, one Participant at least for each equipment or connection used during the Hearing shall participate in the technical test;
 - b. The Participants shall participate in the technical test by using the installation and the internet connection they will use during the Hearing and the location where they will be during the Hearing, being specified that, if needed and on condition that the quality of the connection allows it, the experts may connect from their office or residence;
 - c. If a connection used during the Hearing cannot be tested during the technical test above, the Party or Parties shall coordinate with the ICSID Secretariat to conduct another test;
 - d. The Participants shall join the technical test through the *waiting room* of the platform and shall follow the same identification procedure as for the Hearing;
 - e. The technical test shall include a test of each function of the Zoom software used during the Hearing (screen sharing, breakout rooms, interpretation) and of the sufficient quality of the camera, microphone and speaker;
 - f. The technical test shall include a test of the separate platform used for the transcription of the Hearing.
11. During the technical test, the Parties shall refrain from raising any issue to be discussed during the Hearing. The Parties may, however, raise any procedural issue relating to the technical organization of the Hearing.
12. At the end of the technical test, the ICSID Secretariat will, if necessary, propose measures to remediate to any technical difficulties, including additional tests. It will liaise directly with the Parties and the Tribunal members about such measures.

C. Participants

13. The List of Participants shall designate those participants that will have an active speaking role (“Active Participants”), and those who will be passive attendees (“Passive

Participants”). The Parties should also indicate if several Hearing Participants will be connecting to the Hearing from the same location (in such circumstances, Hearing Participants shall continue to follow applicable social distancing guidelines).

14. For ease of identification, the Hearing Participants shall join the videoconference using the naming convention indicated in the format in Annex D, namely, first and last name preceded by [T] (for Members of the Tribunal), [C] (for Hearing Participants for Claimant), [R] (for Hearing Participants for Respondent), [E] (for experts), or [W] (for witnesses). Should there be Hearing Participants joining from a common conference room, the conference room connection may be identified as “[C or R] Conference #” as appropriate.
15. A person not listed in the List of Participants will not be allowed to connect and attend the videoconference, save for a different decision by the Tribunal upon a request by a Party, it being specified that the technical support personnel working with the Participants will be allowed to assist the Participants during the Hearing without figuring on the List of Participants. All Hearing Participants bear on ongoing duty to warn the Secretary of the presence of any other person on the Hearing Platform.
16. All Hearing Participants shall connect to the videoconference 30 minutes before the start of each Hearing day to facilitate the identification of Hearing Participants and to address any technical contingencies.
17. The Hearing Participants shall join the videoconference through the *waiting room* that will be managed by the ICSID Secretariat.

D. Internet Connection and Equipment

18. Each Party shall ensure that its Hearing Participants connect to the Hearing Platform by using a stable internet connection with sufficient bandwidth (a minimum bandwidth of 8 Mbps download and 1.5 Mbps upload speed is recommended), and using a camera, microphone and speaker of good quality. It is recommended that the Hearing Participants use a high quality microphone, separate from the one of their computer.
19. An audio connection by telephone will be available for the Hearing Participants that encounter difficulties with their internet connection, as an alternative solution.
20. It is recommended that the Hearing Participants use an Ethernet connection rather than a Wifi connection and that they also have available throughout the Hearing a device with 4G connection and a mobile *hotspot* function, to be used as an alternative solution if necessary.
21. The Hearing Participants are also invited to have at least two devices during the Hearing, the first to connect to the videoconference and the second for the transcript.

E. Online Behavioral Rules and Respect of the Adversarial Principle

22. The Hearing Participants shall abide by the following general rules to achieve the level of cooperation and coordination necessary for the orderly conduct of the Hearing:
 - a. Identify the speaker(s);
 - b. Abstain from interrupting any speaker;
 - c. Use in a reasonable and responsible manner the videoconferencing services;
 - d. Avoid using equipment that interferes with the connection;
 - e. Abstain from any non-authorized recording;
 - f. Avoid losing time during the Hearing;
 - g. Deactivate the microphones when the speaker(s) do not speak;
 - h. Take all necessary measures to guarantee procedural efficiency during the Hearing.
23. The following rules shall also be respected by the Hearing Participants during the videoconference:
 - a. In case various Hearing Participants attend the Hearing from a same room, when one Participant intervenes actively during the Hearing, he or she may use an individual camera during his or her intervention, on condition that another camera providing a complete or reasonably complete view of the room is simultaneously active (the proper functioning of the installation being verified during the technical test);
 - b. The Hearing Participants shall strive to speak one after the other and not to interrupt the Participant actively speaking, save in case of necessity to object to a question asked or to alert the other Participants about a technical problem;
 - c. The Hearing Participants that do not intervene actively during the Hearing, except for the Tribunal members, shall deactivate their microphone. To the extent possible, they shall keep their camera activated. The Tribunal and the ICSID Secretariat will have the possibility to activate and deactivate the microphones of Hearing Participants if necessary. If it deems it necessary, the Tribunal may at any time ask that Hearing Participants reactivate their individual camera;
 - d. The Hearing Participants shall not use virtual backgrounds and the room in which they are shall be visible;

e. The Hearing Participants shall participate in the Hearing from a location without sound disruptions and containing adequate lighting.

24. The Tribunal may modify or supplement the preceding rules in consultation with the Parties, during the Hearing or the technical tests.

F. Examination of Witnesses and Experts

25. The witnesses and experts will be connected to the virtual waiting room of the Hearing Platform 30 minutes before the beginning of their examination to ensure that they are available in time to be brought into the virtual Hearing room. During the breaks, they will be placed in a virtual waiting room.

26. The witnesses/experts shall use a computer set-up on which no programs other than the Hearing Platform and the real-time transcript are open and running. Except for a non-annotated version of their written witness statement(s)/expert report(s) and the documents which will be shown on the screen during the examination, the witness/expert shall not be aided by any other documents, notes or otherwise, unless permitted by the Tribunal upon application of a Party. The witness/expert shall switch his/her mobile phone to flight mode and shall have no access to emails, chat programs, or other means of communication.

27. Witnesses/Experts are to be alone in the room from where they participate except that one technician may be in the same room. The Tribunal may ask at any time that the witness/expert orientate his/her camera to show a 360-degree view of the room in which he/she is located. Each witness and expert shall affirm at the start of the examination that he or she is the only person present in the room and will not receive or make communications of any sort during the course of his or her examination.

28. During the examination, the witness/expert shall testify by being seated at an empty desk or table and a camera shall be placed in such a way that the face of the witness/expert is clearly visible on the screen. The witness/expert shall speak facing the camera during his/her examination and avoid any sudden movements.

29. The Party cross-examining the witness/expert may project on the screen (by using the screen sharing function) the exhibits used during the cross-examination.

30. Any *off the record* communication between a Party and its witness/expert is prohibited during the examination of the witness/expert.

31. The Parties shall (i) provide their respective witnesses/experts with the contact details of the Secretary and technical operator to be contacted in the event of a disconnection or other technical failure, and (ii) instruct their witnesses/experts that it is impermissible to record

the examination and to allow unauthorized observers, i.e., persons who are not Hearing Participants, to attend.

32. The Hearing Platform will also offer a dial-in telephone audio connection as a backup option should a witness/expert experience a temporary technical difficulty with a computer online connection.
33. Witnesses/Experts testifying remotely are encouraged to have two screens to facilitate simultaneous viewing of the video connection and documents.

G. Technical Difficulties

34. Each Party shall designate, in its List of Participants, one of its representatives to act as videoconferencing emergency contact person (“VC Emergency Contact Person”) for purposes of addressing any technical incidents that might arise during the videoconference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the Secretary if an essential Hearing Participant on his/her side is disconnected or is otherwise unable to participate. In all other cases, the VC Emergency Contact Person shall notify and address technical issues with the Secretary.
35. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the Hearing Platform to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available to them, mitigating any potential prejudice arising from the failure of any given Hearing Participant to be able to follow the entire Hearing live on the Hearing Platform.

ANNEX C

Hearing Agenda

Day 1: Monday, 13 February 2023

TIME	PROCEDURAL STEP
9:30-	Tribunal's opening remarks, procedural / housekeeping matters
-	Claimant's Opening Statement (3 hours maximum)
-	
-	Respondent's Opening Statement (3 hours maximum)
-	
- 17:30	Examination of Claimant's first witness

Day 2: Tuesday, 14 February 2023

TIME	PROCEDURAL STEP
9:30-	If necessary, continuation of examination of Claimant's first witness
	Examination of Claimant's second witness
-17:30	Examination of Respondent's first witness

Day 3: Wednesday, 15 February 2023

TIME	PROCEDURAL STEP
9:30-	If necessary, continuation of examination of Respondent's first witness
	Examination of Respondent's second witness
-17:30	Examination of Claimant's quantum expert

Day 4: Thursday, 16 February 2023

TIME	PROCEDURAL STEP
9:30-	If necessary, continuation of examination of Claimant's quantum expert
	Examination of Mr. Andrew Abraham Mwangakala

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	Questions by Tribunal to counsel
	Procedural discussion
-17:30	Conclusion of hearing

Day 5: Friday, 17 February 2023

TIME	PROCEDURAL STEP
9:30-	Reserve Day
-18:00	

ANNEX D

List of Participants

TRIBUNALS					
Room	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact (Optional)
T	[T] – Gabrielle Kaufmann-Kohler	A	President		Email: gabrielle.kaufmann-kohler@lk-k.com
T	[T] – Mr. Tom Johnson	A	Co-arbitrator		Email: otjohnson.arb@gmail.com
T	[T] – Mr. Edward Luke	A	Co-arbitrator		Email: edwardwilliamluke11@gmail.com

SECRETARY OF THE ICSID TRIBUNAL					
Room	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Ms. Ella Rosenberg	A	Secretary of the ICSID Tribunal		Email: erosenberg@worldbank.org Phone:202-473-7756

ASSISTANT TO THE ICSID TRIBUNAL					
Room	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Magnus Jesko Langer	A	Assistant to the ICSID Tribunal		Email: magnusjesko.langer@lk-k.com

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CLAIMANTS					
Room²	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>				
C	[C] – Name Last Name	A	Claimant’s counsel		Email:
	<i>Party Representative:</i>				
C	[C] – Name Last Name	P			Email:
	<i>Witnesses:</i>				
W	[W] – Mr. Richard Williams	A	Claimant’s witness		
W	[W] – Mr. Christopher MacKenzie	A	Claimant’s witness		Email:
	<i>Experts:</i>				
C	E	[E] – Ms. Vikki Wall	A	Claimant’s expert	Email:

RESPONDENT					
Room³	Name	Role	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>				
R	[R] – Name Last Name	A	Respondent’s Counsel		Email:

² Witnesses [W] and Experts [E] called to testify will be assigned to the waiting room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [C] if they are present during any other time.

³ Witnesses [W] and Experts [E] called to testify will be assigned to Waiting Room W/E during their cross-examination. Experts [E] will be assigned to Waiting Room [R] if they are present during any other time.

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R	[R] – Name Last Name Dr. Boniphace Luhende	A	Respondent’s Counsel		Email: boniphace.luhende@osg.go.tz
R	Mr. George Mandepo	A	Respondent’s Counsel		Email: george.mandepo@osg.go.tz
	Ms. Sarah Mwaipopo	A	Respondent’s Counsel		Email: sarah.waipopo@osg.go.tz
R	Salome S. Magesa	A	Respondent’s Counsel		Email: salome.magesa@osg.go.tz
R	Mr. Andrew A. Rugarabamu	A	Respondent’s Counsel		Email: andrew.rugarabamu@osg.go.tz
R	Consesa Kahendaguza	A	Respondent’s Counsel		Consesa.kahendaguza@osg.go.tz
R	Lydia Thomas	A	Respondent’s Counsel		lydia.thomas@osg.go.tz
R	Angelina Ruhumbika	A	Respondent’s Counsel		angelina.ruhumbika@osg.go.tz
	<i>Party Representatives:</i>				
R	[R] – Name Last Name Dr. Eliezer Mbuki Feleshi	P	Respondent’s Observer		Email: eliezer.feleshi@agctz.go.tz
R	Dr. Evaristo Longopa		Respondent’s Observer		Email: evaristo.longopa@agctz.go.tz
	<i>Witnesses:</i>				
W	[W] – Prof. Abdulkarim Hamis Mruma	A	Respondent’s witness		Email:
W	[W] – Mr. Edwin Simon Igenge	A	Respondent’s witness		Email:
W	[W] – Mr. Andrew Mwangakala	A	Respondent’s witness		Email:

COURT REPORTER

Room	Name and Contact	Role	Affiliation	Location of Connection
N/A	[TRA] – Name Last Name	P		Email:

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TECHNICAL SUPPORT STAFF				
Room	Name	Role	Affiliation to Case	Location of Connection
N/A	[IT] – Name Last Name	P		Email: Phone:
N/A	[IT] – Name Last Name	P	IT from the Claimant’s Counsel	Email: Phone:
N/A	[IT] – Name Last Name	P	IT from the Respondent’s Counsel	Email: Phone: