

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Rand Investments Ltd., William Archibald Rand, Kathleen Elizabeth Rand, Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited

v.

Republic of Serbia

(ICSID Case No. ARB/18/8)

PROCEDURAL ORDER NO. 6

DECLARATION OF PROFESSOR MARCELO G. KOHEN

13 January 2020

I have already expressed my serious concerns about the manner in which the decision on transparency was adopted.¹ Even though the case is well advanced, the Parties and the Tribunal are still discussing issues of transparency and the decision of rendering the written procedure public has not been made effective yet. In my view, these matters could have been decided at the end of the proceeding, with the entire picture of the case at hand. Up until now, the only consequences I see is that the costs of the proceedings are higher and that the Respondent is put in the uncomfortable stance of deciding to render public documents that it does not consider to be public or to withdraw them. At the end of the day, this only produces inequality of arms and a more expensive procedure. Quite the opposite of the alleged efficiency that was meant to result from deciding not to bifurcate or from applying the transparency rules of a BIT to another that does not contain them.

[signed]

Professor Marcelo Kohen

¹ PO N° 5, statement of dissent.