

IN THE MATTER OF AN ARBITRATION

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

ICSID CASE No. ARB/14/22

BETWEEN:

(1) BSG RESOURCES LIMITED (IN ADMINISTRATION)

(2) BSG RESOURCES (GUINEA) LIMITED

(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

- v -

THE REPUBLIC OF GUINEA

Respondent

CLAIMANTS' REPLY POST-HEARING BRIEF

**Karel Daele
James Libson
Mishcon de Reya LLP
Africa House
70 Kingsway
WC2B 6AH
London
Tel: +44 (0) 203 321 7060
Fax: +44 (0) 203 761 1856**

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I. INTRODUCTION

1.1 Preliminaries

1. In accordance with Procedural Order No. 18, the Claimants herewith submit their reply ("**BSGR's Reply PHB**") to Guinea's Post Hearing Brief ("**Guinea's PHB**").¹ BSGR's Reply PHB is limited to (i) responding to allegations as well as evidence that have not already been dealt with in its PHB; and (ii) addressing the numerous misrepresentations of evidence and misstatements made by Guinea in its PHB. The format of the following sections is to refer the Tribunal by paragraph number to the relevant parts of BSGR's PHB, followed by BSGR's additional comments in response to Guinea's PHB.

1.2 Opening Remarks

2. Guinea's PHB is evidence of its total failure to meet the evidential or legal thresholds to defend BSGR's claims. It fails on its face – even before the details are analysed. Where, for example, are the submissions about the corruption of a Government official (the legal threshold Guinea needs to reach)? They are tucked away in three paragraphs (462-464) at the back of its PHB and do not refer to a single piece of direct evidence (there is none) to support Guinea's position. Faced with overwhelming evidence in these proceedings that there was no corruption or undue influence of Mamadie Touré or anyone else (let alone a Government official), where does Guinea turn to on 74 separate occasions? To evidence not given in these proceedings at all, but elsewhere: untested and not cross-examined.
3. That is Guinea's PHB on its face. Worse though is the position when it is read carefully, such are the distortions of the record employed by Guinea to try to salvage its wretched position. This reply addresses many of those distortions but, given their number and regularity, the Tribunal is urged to undertake the tedious but necessary task of checking the source for all of Guinea's assertions. Guinea has failed to prove its case on the evidence at the Merits Hearing and Expert Hearing (together "**Hearings**"), so it has had to use a combination of evidence not presented at the Hearings, together with an unreliable version of the evidence at the Hearings to retro fit a strained – but, ultimately, hopeless - narrative of its case.
4. In addition, Guinea has got the law wrong. Simply put (and the legal arguments are relatively straightforward), Guinean law applies (there is no lacuna in the law to be applied) and the *Kim* principles (which are insuperable for Guinea) are binding.

¹ BSGR's Reply PHB is based on the attached English translation of Guinea's PHB.

5. Parties do not always have an opportunity to reply to Post Hearing Briefs. BSGR is grateful to the Tribunal, on this occasion, for its indulgence. Guinea's threadbare arguments would have been seen through by the Tribunal, but, given the admirable stance on transparency that this Tribunal has adopted, it is an important step in upholding the principle of open justice to have allowed BSGR to expose the fallaciousness of Guinea's PHB that, otherwise, would have been Guinea's final word.

1.3 Guinea has distorted evidence and has defied the Tribunal's instructions

6. Guinea's approach to its PHB demonstrates its lack of conviction in its own position. The Parties were instructed to use the PHB to address the evidence gathered at the Hearings.² Instead, Guinea has indulged in far-fetched allegations, which it has supported with arguments and documents, but not – as instructed – with evidence from the Hearings. Where Guinea has purportedly found evidence, it regularly distorts it in a bid to mislead this Tribunal. The following summary will demonstrate a few (of the many) examples of Guinea's approach:

i. Allegations for which Guinea offers no evidence from the Hearings

7. Guinea's PHB repeats a large number of allegations for which it has been unable to find evidence from the Hearings, mainly because the evidence contradicts, rather than supports its case. Instead Guinea relies on previous submissions and the same documentary evidence it has relied on before. A few of these examples can be found in paras 70,³ 89,⁴ 260,⁵ 321-337,⁶ and 487-500.⁷
8. A cursory analysis of the footnotes in the first round of the Parties' PHBs graphically illustrates the two Parties' approaches. Over 30% of Guinea's references are to its previous submissions, and around 30% are to the Hearings. For BSGR, the figures are 13% and 55% respectively.

ii. Instances where Guinea has distorted the evidence from the Hearings

² Procedural Order No. 18.

³ Guinea's PHB, para. 70; Guinea alleges that Pentler purportedly granted Mamadie Touré a 5% shareholding in BSGR's mining project; see BSGR's PHB, para. 261 in reply to this unfounded allegation.

⁴ Guinea's PHB, para. 89; Guinea suggests that compensation was paid to IST, Bah and Daou for introducing BSGR to Mamadie Touré; see BSGR's PHB, paras 179-180 and 204 in reply to this unfounded allegation.

⁵ Guinea's PHB, para. 260; Guinea alleges that Kanté was dismissed due to BSGR's interferences; see BSGR's PHB, para. 112 and Fn 237; and below in para. 63 in reply to this unfounded allegation.

⁶ Guinea's PHB, paras 321-337; Guinea alleges that BSGR paid Mamadie Touré USD 9.5 million; see BSGR's PHB, section 4.1 in reply to this unfounded allegation, and below, paras 97-100.

⁷ Guinea's PHB, paras 487 – 500; Guinea alleges that the Technical Committee process was lawful; see BSGR's PHB para. 361 and section 7.1 below on the Technical Committee.

9. Examples of manipulating the testimony of BSGR's witnesses: **para. 64:**⁸ in the quote from Ferreira, Guinea omits the crucial explanation, which Ferreira offered as to a free-carry being standard practice; **para. 161 and Fn 161:** Guinea omits what Radley said immediately after, specifically that "*there are a number of features which are not in keeping with the genuine items*";⁹ **paras 190-192:** Struik is not a liar. First, Struik did not place great emphasis on this dot; indeed it was the Tribunal which first drew attention to it.¹⁰ Second, Guinea ignores the context in which Struik's testimony developed. He offered an explanation of what his signature normally looked like. When the signature was enlarged, he acknowledged that a dot could be present, although the image was blurry;¹¹ **para. 318:**¹² Guinea has selectively taken Tchelet's words, ignoring his explanation for why payments were required urgently.
10. Examples of Guinea's misrepresentation of the testimony of both the Tribunal-Appointed Experts and its own witnesses:¹³ **para. 130 and Fn 130:** Guinea suggests that the Tribunal-Appointed Experts claimed there "*is no evidence of fraud*" in the Disputed Documents during the Expert Hearing. The Tribunal-Appointed Experts were, however, forced to acknowledge that "*no evidence of fraud*" in fact meant "*no evidence of alteration*";¹⁴ **paras 239-241:** Guinea suggests that Souaré testified to the loan of the presidential helicopter being approved by the President. Yet the opposite is true; Souaré denies saying that the President ordered and approved the mission;¹⁵ **para. 263:** Guinea attempts to use Nabé's evidence to demonstrate that he was "*under heavy pressure from Mrs. Touré and her brother.*" In selecting a quote to purportedly support their statement, Guinea completely ignores what Nabé says just moments later, where he states that Mamadie Touré did not interfere during the meeting.¹⁶
11. Examples of Guinea's attempt to bury evidence: Guinea tried to bury evidence in vague transcript references in the footnotes when many such references in fact support BSGR's

⁸ Guinea's PHB, Fn 51 quotes 5/22/20-23. At 5/22/23 to 5/23/7 Ferreira elaborates ("*Let me tell you what the practice was in a number of projects that I was involved with at the time, and certainly I would impute, given the facts here, that it was the same. Services were rendered, and for those services fees were paid to parties or partners in country. They had incurred costs and so they were remunerated based on actual work done. Over and above that, there were awards -- usually for free -- of shareholdings. At the time of the award, there was no value in these projects.*").

⁹ Expert Hearing/Radley/2/66/1-2.

¹⁰ Struik/4/206/7-9 ("*Q. I'm not trying to play forensic expert here, but when you sign at the end of your signature, below it, there was always a dot, or is this...*").

¹¹ Struik/4/208/6-10 ("*Q. No, we understood you to tell us that the dot may be there on the "M" of "MATERIELLE" in the stamp? A. Yes, it could be. But normally I have -- I do have a dot there somewhere.*").

¹² Guinea's PHB, Fn 354. The quote omits: **PROTECTED**

¹³ These are only a few examples, there are more which are specifically addressed in the other paragraphs in this Reply PHB.
¹⁴ Expert Hearing/LaPorte/1/250/23-24.

¹⁵ Souaré/6/52/10-13.

¹⁶ Nabé/8/137/17-18 ("*A. No, she didn't interfere in the debate. She was seated, sitting upright, very self-confident.*").

case, not Guinea's: **para. 403**: Guinea seeks to draw attention to the sitting allowance paid to the Base Convention Committee. Whilst it references Struik, it does not include the full quote. If it had, it would be clear that the request for the payment came from the chairman of the committee;¹⁷ **para. 459 and Fn 521**: rather than supporting the proposition that Mamadie Touré took "key actions" and exerted pressure, Souaré's testimony supports BSGR's proposition that President Conté's involvement in the award of the mining rights was limited;¹⁸ **para. 457 and Fn 522**: the reference Guinea includes makes it clear that President Conté prevented Mamadie Touré from interfering; this quote cannot therefore be evidence of her influence.¹⁹

12. These examples (of many) demonstrate Guinea's disingenuous attempts to appear to rely on evidence from the Hearings when in fact the evidence cited, misconstrued or manipulated proves the opposite point. The reason it has done this is clear. There was not and never has been any evidence of corruption.

II. THERE IS NO EVIDENCE THAT BSGR OBTAINED THE MINING RIGHTS THROUGH CORRUPTION

13. BSGR has dealt with Pentler's role and its agreements and contracts in detail in its PHB, Section V, paras 199 to 230 and Section VI, paras 327-336. In addition:

2.1 PROTECTED

14. PROTECTED

15. Paras 51 to 62: Guinea speculates that the mining opportunities in Simandou were already generally known in the mining community. Yet this ignores the documentary and witness evidence. First, Ferreira confirmed that there would have been "*chit-chat*" in the industry about Simandou's potential, but "*any serious investor wouldn't take much notice of that. Because this was the talk around town about many projects, whether it was Simandou, or*

¹⁷ Guinea's PHB, Fn 465, which references Struik/4/247/22 to 4/248/4.

¹⁸ Souaré/6/40/15 to 6/43/10.

¹⁹ Avidan/9/192/23 to 9/195/8.

²⁰ Guinea's PHB, para. 68.

²¹ Guinea's PHB (paras 51 to 52) includes quotations from Steinmetz, Avidan and Struik which are all entirely consistent in relation to Pentler's role.

Sundance...".²² Second, Struik has confirmed that he "*had not heard about Simandou by October 2005*".²³ PROTECTED

16. Para. 61: Guinea quotes from Ferreira's testimony to suggest that Pentler – given its principals' lack of mining knowledge – would not have been able to understand the information from the CPDM. This is a misleading account of Ferreira's testimony. Following the section quoted by Guinea,²⁵ Guinea asked Ferreira: "*So BSGR had access to this knowledge; it didn't need Pentler, right*", to which Ferreira replied: "*No, why? That's not what I said*".²⁶ In any event, it was irrelevant whether Pentler understood the information it passed to BSGR from the CPDM: BSGR employed Struik as its technical expert to review the material to consider whether or not to invest in the country.²⁷
17. Para. 63: PROTECTED
18. Para. 64: As to the purchase price for Pentler's shareholding in 2008, Guinea again mischaracterises Ferreira's evidence. Contrary to Guinea's account, Ferreira did not assert in his expert report that USD 22 million was legitimate given the "*services*" Pentler had rendered. Despite this, on five separate occasions, counsel for Guinea asked Ferreira what "*services*" Pentler had performed in return for the USD 22 million.²⁸ On each occasion, Ferreira responded patiently that the USD 22 million did not relate to services, but was the valuation of Pentler's shares at that time and was a legitimate price. Guinea ignores this, and instead based its PHB on its now unproven case theory.
19. Paras 66 and 67: Contrary to the quotation included in Guinea's PHB, Ferreira commented on multiple occasions that the granting of the free-carry to Pentler was "*not surprising*".²⁹ Ferreira's reference to the local partner contributing is entirely in line with Steinmetz's

²² Ferreira/5/30/15-18.

²³ CWS-2, para. 12.

²⁴ BSGR's PHB, para. 200; PROTECTED BSGR Reply, Annex 1, paras 116 and 117; PROTECTED CWS-2, paras 15-17.

²⁵ Guinea's PHB, para. 61, quoting from Ferreira/5/30/7-10.

²⁶ Ferreira/5/30/21-23.

²⁷ Struik/4/60/5-11 (as quoted in BSGR's PHB, para. 200).

²⁸ Ferreira/5/22/13-19 ("*Q. So in your expert opinion you examine the price paid by BSGR, but have you examined the services rendered by Pentler for this price? A. I don't believe though that this price was payable for services rendered. I understand that this was a price paid for acquiring the shares back from Pentler*"). See also the four further questions and responses on this same point at 5/22/20 – 5/23/13; 5/24/15-19; 5/27/5-10 PROTECTED See also BSGR's PHB, para. 230.

²⁹ See BSGR's PHB, paras 200 and 227.

explanation that Pentler's shareholding was repurchased after it refused to make a capital contribution to the project in 2008.³⁰ As to whether Pentler was a "local partner" as defined by Ferreira, the Pentler principals clearly had knowledge of the local language (French) and the country, having already conducted business there.³¹

2.2 The Milestone Agreement was not a front for illegitimate payments to Pentler's associates

20. Paras 71 to 79: BSGR has addressed the Milestone Agreement in its PHB, paras 201 to 216. It is clear from the evidence at the Hearing that (i) the Pentler principals did not contribute to the achievement of the milestones, regardless of what was envisaged in 2006. [REDACTED]

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and (iii)

the Shareholders Agreement with Pentler signed in 19 July 2007 cancelled any previous agreements with Pentler, including the Milestone Agreement.³⁴ Guinea provides no explanation for its position in para. 76 that Steinmetz's explanation that the Milestone Agreement was cancelled is "doubtful".

21. Paras 80 to 86: Guinea's repeated references to Struik's negligence in relation to the Milestone Agreement and the apparent "opaque" conditions in which it was negotiated are rejected entirely. Struik did not state that the agreement was negotiated "in the dark", but that Oron orally negotiated its terms with Noy. As to due diligence conducted on the Pentler principals, Struik was clear and consistent that "[t]hese people introduced the project in Guinea to us. They came through the connections that Mr Oron had with Mr Noy. I was not there to check that or disbelieve or verify that. He was my boss; these were his connections".³⁵ Guinea's leap of logic that the fact this agreement was orally negotiated means that it was a contract for corruption is false and unsupported by evidence. Finally, despite Guinea's misleading use of quotation marks in para. 83 of its PHB, Struik never described the agreement as "embarrassing".

³⁰ Steinmetz/3/105/11 to 3/106/11.

³¹ Struik/4/127/8-16; CWS-2, paras 15 and 17.

³² PROTECTED

Avidan/9/46/9-14: "Q. And the way you describe his [Cilins'] role... was that he was dealing with the formalities and practicalities on the ground? A. Yes. I would say so. Before I came.",

³³ PROTECTED

³⁴ Steinmetz/3/31/8-11 ("And this is a full shareholding which probably – not only probably – cancelled everything else which was concerning that, as far as my memory, if not mistaken."); Exhibit C-0271, clause 12.5.1.

³⁵ Struik/4/118/4-8.

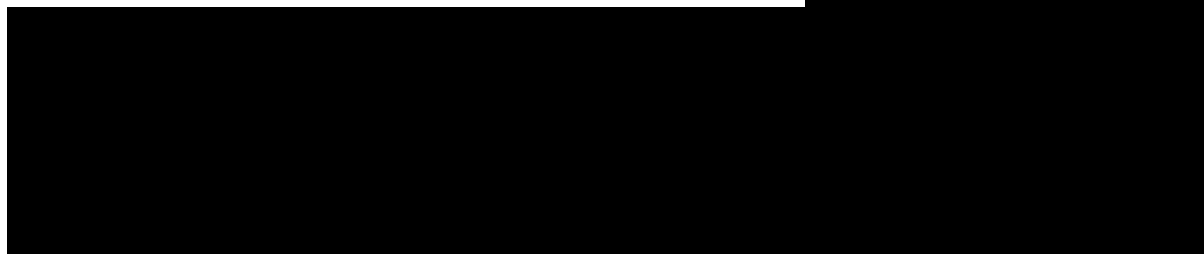
2.3 The contracts purportedly dated 20 February 2006 between Pentler and Bah, Daou and IST are not evidence of corruption

22. BSGR has addressed these contracts in detail in paras 212-216, 260 and 262-264 of its PHB. In addition:

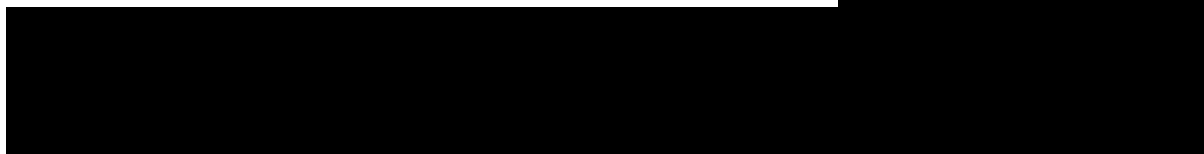
23. Para. 88: Guinea states that BSGR does not dispute the authenticity of these agreements, relying in part on the fact that they are not included in the list of "Disputed Documents" in PO11 (see Fn 74 of Guinea's PHB). Guinea seems to have forgotten that it was Guinea that prepared the list of Disputed Documents, and during the Merits Hearing its Counsel explained that "*So what we've done for this is only contracts and memos that are signed by Mamadie Touré. So on this table you will not find any agreements between Pentler, Bah, Touré, because obviously these originals would not have been in the possession of the party*" (emphasis added).³⁶

24. Continuing this theme of misrepresentation, Guinea states in para. 90 that the Hearings "*fully reinforced*" the position that these agreements were directly related to the Milestone Agreement and signed by Pentler at the instruction of BSGR. This is false.

25. First, Guinea claims that the Hearings established that Merloni-Hormans had full knowledge of the Milestone Agreement – and therefore will have compared its terms with the Bah/IST agreement she received. Yet, the transcript reference in the footnote makes **no** reference to Merloni-Horemans reviewing the Milestone Agreement.³⁷ **PROTECTED**



Reviewing the transcript of Merloni-Horemans's testimony as a whole, it is clear that Guinea did not ask Merloni-Horemans about the Milestone Agreement. **PROTECTED**



³⁶ Ostrove/4/18/3-7. See also BSGR's PHB, paras 242 to 244 in which BSGR explains that it now cannot take a position on the authenticity of these agreements.

³⁷ Guinea's PHB, para. 102, and Fn 89.

³⁸ **PROTECTED**

³⁹ **PROTECTED**

⁴⁰ **PROTECTED**

⁴¹ **PROTECTED**

⁴² Guinea's PHB, para. 103.

PROTECTED Guinea has not made this clear. The picture we are left with from the actual evidence in the Hearings is that (i) Merloni-Horemans did not see the Milestone Agreement; (ii) she therefore would not have been in a position to compare the milestones with those in the Bah/IST agreement she did receive; and (iii) **PROTECTED**

26. Second, it was equally clear during the Merits Hearing that Struik had no knowledge of the Bah/IST/Daou agreements. He was not lying, and BSGR has explained in its PHB⁴⁴ **PROTECTED** **PROTECTED** As to Guinea's suggestion (in para. 97) that Struik admitted the document could not have been prepared by Pentler, this again is false. **PROTECTED**

27. Third, Pentler was not a conduit for BSGR to make payments to Bah, IST and Daou. Guinea has consistently refused to look at the terms of the Milestone Agreement and the Bah/IST/Daou agreements and consider whether they are, in fact, the same. The reality is that they are not: see BSGR's PHB, paras 212 to 216.

2.4 The Agreements concluded with Mamadie Touré are not evidence of corruption

28. Guinea relies on a "*mere listing*" of the apparent agreements concluded with Mamadie Touré to conclude (falsely) that BSGR granted Mamadie Touré compensation in return for its rights. Yet again, Guinea fails to engage with the terms of those agreements. As BSGR has set out in detail in its PHB (paras 256 to 284), these contracts do not support Guinea's narrative.

29. Instead of relying on the Hearing, Guinea's position as to these contracts is based almost entirely on Mamadie Touré's untested Swiss transcripts, during which time she was not cross-examined, was being paid by Guinea, and was presented with the ICSID Merits Hearing transcripts in a partial manner to assist her with answering questions. **PROTECTED**

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43 **PROTECTED**
44 BSGR's PHB, paras 206-207.
45 **PROTECTED**

PROTECTED

Yet, it is unclear whether later parts of Souaré's testimony were put to Mamadie Touré, in which he clarified that President Conté did not give specific instructions to grant Blocks 1 and 2 to BSGR; that his position on BSGR was part of a general policy of promoting investments; and that Mamadie Touré did not speak during the meeting.⁴⁷ This exposes the partial basis for Mamadie Touré's Swiss testimony. Her belated, inconsistent and false recollection of events has no probative or evidential value.

30. BSGR's position on the credibility of Mamadie Touré, and BSGR's knowledge of agreements apparently entered into with her, is set out in Sections 3.3 and 5.1 of its PHB. As previously set out, what the Hearings did, in fact, establish was that not one of Guinea's witnesses had heard of Pentler, Noy, Lev Ran and Cilins. Not one of them had been contacted by Messrs. Daou and Bah. None of them could provide direct evidence that Mamadie Touré or IST had exerted undue pressure on them on behalf of BSGR and/or that BSGR had obtained exploration permits and a mining concession through corruption.⁴⁸

2.5 The Authenticity of the Disputed Documents is not established

31. Guinea's approach to the Expert evidence⁴⁹ is deficient in several respects.
32. First, it does not engage to any degree whatsoever with the credibility issues of the experts. It does not address: (i) LaPorte's and Welch's failure to answer BSGR's questions; (ii) LaPorte's and Welch's conduct in relation to what they told Mr Garel on the eve of the hearing; (iii) LaPorte's "no evidence" errors; (iv) LaPorte's misleading "stamps" evidence; (v) LaPorte's unsafe assumptions; (vi) Welch's failure to apply the correct methodology to handwriting analysis; (vii) Pichiocchi's and Aginsky's admissions that they had not read the Final Report when they allowed their views on it to be expressed by Guinea; and (viii) their

⁴⁶

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⁴⁷

Souaré/3/43/2-16.

⁴⁸

BSGR's PHB, Section III.

⁴⁹

Guinea's PHB, paras 119-184

agreement in relation to the meaninglessness of their "every indication" opinion.⁵⁰

33. Second, Guinea's PHB displays an utter disregard for the required technical approach to the expert exercise. BSGR's submissions deal with the various shortcomings in the approach of the Experts (both Tribunal and Guinea appointed) using the technical standards and language of the industry to point out the deficiencies in the various conclusions. Guinea does not. Instead it has fallen into the same traps that the Tribunal-appointed Experts did. For example:

- (i) Para. 129 simply repeats the severely discredited "no evidence of fraud" mantra of LaPorte when even he agreed it was not a satisfactory formulation of his conclusion. LaPorte agreed that the correct conclusion was "*indeterminate*"⁵¹ and that the correct expression should have related to "*no evidence of alterations*" rather than "fraud".⁵² For Guinea to repeat the discredited phrase LaPorte used in the Final Report and to describe it as a "categorical" conclusion is to ignore the entirety of the cross-examination. It is notable that Guinea provides no reference for this conclusion. This is because it would have to point to the Final Report rather than the transcript of the Expert Hearing because of LaPorte's concessions at the hearing.
- (ii) In fact, some of Guinea's submissions make it seem as if they were not even present at the Expert Hearing. Take para. 146 of Guinea's PHB for example. Falling once again into the "*no evidence of fraudulent creation*" formulation, Guinea argues the documents "*must be considered to be authentic*". That is logical nonsense; at odds with what all the Experts said; and is a fundamental misapplication of the principles that Guinea, by now, ought to have been schooled in. It is even at odds with what Guinea's own expert said, when he agreed that the "*no evidence*" conclusion should have included the alternative of "*no evidence that would show that the documents are **not** backdated fraud*".⁵³ This cannot be reconciled with Guinea's position in its PHB that the documents somehow can now be considered authentic, or that the Tribunal-appointed Experts' analysis was "*corroborated*" by Guinea's experts.⁵⁴
- (iii) Guinea criticises Radley for his "indeterminate" conclusion (para. 141) which is

⁵⁰ BSGR's PHB: (i) paras 292-293; (ii) para. 295; (iii) paras 299-303; (iv) paras 309-312; (v) paras 305-308 and 313-315; (vi) paras 317-320; (vii) para. 326 and (viii) para. 327.

⁵¹ BSGR's PHB, para. 304.

⁵² BSGR's PHB, paras 299 to 303.

⁵³ Expert Hearing/Aginsky/2/139/2-3.

⁵⁴ Guinea's PHB, para. 135.

exactly what LaPorte – and Guinea's own experts – accepted. Guinea also falsely suggests that (i) Radley only identified two differences in R-27, when he identified six: none of which could be properly explained away by either Welch or Pichiocchi;⁵⁵ (ii) Radley did not identify differences in the signature of Avidan on R-28 and R-29, when he did;⁵⁶ and (iii) Radley did not go further in the Hearing than his "*weak to moderate*" conclusion in relation to R-27,⁵⁷ when he in fact added that "*I think I've probably been very conservative in saying 'weak to moderate', and I think some examiners would probably go a lot heavier on it, personally. But that number of features leads me to a positive opinion... of it not being genuine*".⁵⁸ Guinea ignores this, and instead refers to Radley's report, rather than Hearing evidence.

- (iv) There is no engagement whatsoever in Guinea's PHB with the precise terminology of the industry. There is, for example, not even a mention of the SWGDOC definitions and only a single citation of Osborn. That leads to a fundamental misunderstanding of the entire process. In particular, in relation to handwriting, Guinea adopts Welch's imprecise and unexplained use of the term "*variation*". Contrary to Guinea's suggestion in para. 156, Radley's precise approach does not exclude any possibility of variation in a signature: it excludes those differences which fall *outside* the range of variations established by the comparator documents. Guinea does not explain the basis for Welch's approach that the elements of difference identified by Radley in R-27 were "*variations, and not differences*", because Welch was unable to explain it, and unable to point to a single academic text which supported his non-technical and subjective approach.⁵⁹

34. Third, and most egregiously, Guinea, probably recognising the parlous state of its submissions on the expert evidence, is forced utterly to mischaracterise the factual evidence. The most alarming example of this is contained in paras 190-192 in relation to what Struik said about the dot over his signature at the Merits Hearing. This is dealt with at para. 269(i) of BSGR's PHB. What Guinea describes as "*an attempt to hide*" is exactly the opposite. When the possibility of a dot being on the document was pointed out to Struik by Madam

⁵⁵ Guinea's PHB, para. 152; BSGR's PHB, paras 321 and 328(iv).

⁵⁶ Guinea's PHB, para. 147; BSGR's PHB, para. 322 and Radley Report, paras 290 to 303.

⁵⁷ Guinea's PHB, para. 148.

⁵⁸ Expert Hearing/Radley/2/81/16-22. See also Expert Hearing/Radley/2/65/3-5, in which Radley explains that "*So you've got to have a substantial volume of evidence before you can offer even a weak opinion.*". Guinea also falsely suggests at para 166 that BSGR's first expert, Mr Dennis Ryan, did not support BSGR's defence. This, again, is false, as set out in a letter from Mr Dennis Ryan submitted to the Tribunal (Exhibit C-0376).

⁵⁹ BSGR's PHB, paras 317 – 320, 323 and 325.

President, his answer was "yes, it could be".⁶⁰ He did not deny its existence, he said he always placed a dot on his signature and accepted it appeared on the disputed document. As to Avidan's evidence on his location on 27/28 February 2008, see para. 274(iii) of BSGR's PHB.

35. The attempt to portray Struik's evidence as the precise opposite of what it was is discreditable in the extreme but is an indication of the bind in which Guinea finds itself. Left with discredited experts, Guinea has endorsed and echoed their mistakes (even those accepted by the Tribunal-appointed Experts), ignored the scientific standards and then manipulated the factual record. The Tribunal is urged to adopt the approach set out in BSGR's PHB. That approach does the opposite. BSGR's PHB sets out what the expert evidence actually said, it does so using the industry standards and terminology and then accurately applies the factual matrix to that testimony.
36. Guinea's submissions dedicate 18 paragraphs to the Master Forger theory. It is not clear why as this is not part of BSGR's case.⁶¹

III. THERE IS NO EVIDENCE THAT BSGR USED MAMADIE TOURÉ OR IST TO INFLUENCE PRESIDENT CONTÉ

37. BSGR did not purchase Mamadie Touré's or IST's influence over President Conté or any other Government officials in charge of allocating mineral rights.⁶² This was clearly established at the Merits Hearing and is set out in detail in Section II and III of BSGR's PHB. To argue the opposite Guinea again seems to have no compunction in manipulating the evidence – whether its own or BSGR's – to fit its hollowed out case.

3.1 No evidence that Mamadie Touré was President Conté's wife

38. BSGR's position as to Mamadie Touré's personal status is discussed in BSGR's PHB, Section II para. 157 and Reply, paras 40 and 42. In addition: Para. 209: **PROTECTED**

PROTECTED
First, anything she said in front of a public prosecutor is self-serving and untested evidence.⁶³ Second, there are inconsistencies with respect to her memory of her wedding day in every statement. **PROTECTED**

⁶⁰ Struik/4/208/9.

⁶¹ BSGR's PHB, para. 308.

⁶² Guinea's PHB, para. 203.

⁶³ See BSGR's PHB about Mamadie Touré's evidence Section III, paras 132-144.

⁶⁴ **PROTECTED**

PROTECTED

39. The presence of the red berets at BSGR's reception was not because of Mamadie Touré.⁶⁸ It was conclusively established during the Merits Hearing that the red berets were present before Mamadie Touré's arrival with her bodyguard in order to protect high ranking officials. Guinea has once again ignored the evidence of their own witness, Souaré, who explained that the reception had not been a big event, it was an ordinary reception in which people had little interest.⁶⁹
40. Finally and most importantly, even if she was the wife of President Conté, she is not a public official as per the definition of "public official" under Guinean law.⁷⁰

3.2 No evidence that Mamadie Touré or IST exerted pressure on behalf of BSGR on President Conté, the Minister of Mines or any other Government official

41. This is addressed in Section 3.2 of BSGR's PHB. In addition:

- i. There is no evidence that IST exerted pressure on the President or the ministers*

42. Guinea's "evidence" to prove that IST exerted pressure on ministers and the President is summarised in only three paragraphs (231 – 233 in Guinea's PHB):

- (i) Para. 231: PROTECTED
– for the reasons as set out in BSGR's PHB, Section III paras 132-144 – unreliable and should be disregarded by this Tribunal.
- (ii) Para. 232: Guinea has taken Avidan's statement that IST was with him in 80% of the meetings with ministers out of context. While Avidan confirmed that IST was well connected to people on the ground, this did not apply to "*the people we*

65 PROTECTED
66 PROTECTED
67 PROTECTED

68 BSGR's PHB, para. 103; Struik/4/185/16-18; Avidan/9/92/2; Struik/4/185/21-25. See also the video of the opening, showing the presence of the red berets before Mamadie Touré's arrival, Exhibit R-0207, time stamps: 14:02, 14:22, 14:30, 14:34, 16:11, 18:20.

69 BSGR's PHB, para. 103, Souaré/6/101/23-25.

70 Article 192 (1) of the Guinea Criminal Code ("*l° étant investi d'un mandat électif, fonctionnaire public de l'ordre administratif ou judiciaire, militaire ou assimilé, agent ou préposé d'une administration publique ou citoyen chargé d'un ministère de service public, faire ou s'abstenir de faire un acte de ses fonctions ou de son emploi, juste ou non, mais non sujet à salaire [...]*").

were in touch with in the ministry".⁷¹ Indeed, both Souaré and Kanté stated that they were not initially aware of the relationship between IST and President Conté and that the connection itself was irrelevant, particularly in light of the cold relations between IST and the President.⁷² Avidan did not deny that IST helped to promote BSGR, but he did the same as any other BSGR employee. He went to meetings to support the "white businessman" in front of the ministers and he was well organised, intelligent and knowledgeable – "he knew the Mining Code, he knew the law, the local law, since he was also a jurist in the place."⁷³ This is the real context within which Avidan made the statement Guinea now tries to distort.

- (iii) Para. 233: Guinea relies on evidence from Sylla, which does not support its case: First, the uranium permits are not in dispute in these proceedings. Second, Sylla did not know IST before he came to promote BSGR,⁷⁴ which confirms what Avidan says about IST not knowing any ministers when IST started working for BSGR. Third, while Sylla stated that IST allegedly intervened on behalf of BSGR, he simply managed to accelerate the process of granting the permits.⁷⁵ On the merits, BSGR would have been granted the permits anyway. Most importantly, Sylla confirmed that iron ore was never discussed with him.⁷⁶

ii. *There is no evidence that Mamadie Touré exerted pressure on the President or the Ministers of Mines*

43. What is Guinea's main evidence to prove that Mamadie Touré exerted pressure on the President to support BSGR's cause? It is her self-serving statements which are not credible

⁷¹ Avidan/9/68/22 to 9/69/10 ("Q: Could we look at paragraph 11 of your first witness statement. In the middle of that paragraph, paragraph 11, you say: "Mr Touré was a journalist. He had very good contacts on the ground throughout Guinea and knew lots of people in business, politics and mining. A. Yes, but not people that we were in touch with in the ministry. Like, you can ask Dr Sylla if he has ever met Mr Touré before we came to him, and he wasn't; so was Ahmed Kanté and so was Louceny Nabé. He knew people, of course, because he lives in Guinea, and he was a journalist and he knew much better than me. Each company has and internal – external relationships guy.").

⁷² Souaré/6/93/15-20 ("Q. So it's not at that time that you realised that he was the brother? A. It was at that time. Q. At the time of the ceremony? A. At the time of the ceremony. Before that, I didn't know.") Kanté/7/92/6-11 ("Do you recall whether Mr Sory Touré mentioned during this meeting that he was linked in any way to the President's family? A. No. Q. Was Mamadie Touré present at this meeting? A. No.") and Kanté/7/112/1-7 ("Q. We heard on several occasions that he was part of the President's family, right? During that meeting, were there warm contacts between Ibrahima and the President -- A. Not at all. Q. -- since he belongs to the family? A. No, not at all. "); Kanté/7/106/9-12 ("He was the brother of which wife, since there were several? A. Well, look, as far as I was concerned, this was of no importance whatsoever; none.").

⁷³ Avidan/9/71/21-25.

⁷⁴ Sylla, RWS-1, para. 19 ("It was also at this meeting that I encountered Ibrahima Sory Touré for the first time as a BSGR executive. I had known him when I was the Rector of Gammal Abdel Nasser University in Conakry, where he was a student. It was only when I became Guinean Minister of Mines that I learned that he was the half-brother of the President's fourth wife.").

⁷⁵ BSGR's PHB, Section III, para. 100.

⁷⁶ BSGR's PHB, Section III, para. 101.

for the reasons set out in BSGR's PHB Section 3.1, paras 132 – 151. Guinea cannot on the one hand heavily rely on her written statements but on the other hand not present her in these proceedings. None of Guinea's excuses can make up for this procedural deficiency,⁷⁷ in particular as she is under Guinea's control.⁷⁸ Her written statements are untested, inconsistent with one another⁷⁹ and in contradiction with direct evidence on the record.⁸⁰ Furthermore, Guinea's own witnesses do not corroborate her story of having had an influence on the granting of the exploration rights in North and South Simandou and the exploration rights in Simandou Blocks 1 and 2.⁸¹

44. Para. 219: Guinea relies heavily on **PROTECTED** but once it is put into context, it proves the opposite of what Guinea tries to suggest.
45. **PROTECTED** but in line with Avidan's prior description of Mamadie Touré's difficult personality, which he was exposed to from his arrival in Guinea.⁸⁵ Avidan's statement that he visited Mamadie Touré in Dubreka⁸⁶ is not an admission of her "*unquestionable power*". In fact, on the same page of the transcript referred to by Guinea, Avidan explains that he complained to the President about her being pushy, who in turn, told him to ignore her.⁸⁷ The President's attitude towards Mamadie Touré, which Avidan here describes, is in line with what other people have witnessed. President Conté reprimanded her more than once in front Government officials and others during meetings and he told her that she should stop interfering with his business.⁸⁸
46. Second, **PROTECTED** in the context of Kanté's evidence, the importance of Mamadie Touré diminishes substantially:
- (i) Kanté testified that there was one meeting with the President in September 2007 in which BSGR was discussed, but she was not present. During this meeting he

⁷⁷ BSGR's PHB, Section 3.3, paras 133-139.

⁷⁸ BSGR's PHB, Section 3.3, para. 135 .

⁷⁹ See examples for Mamadie Touré's inconsistent statements in Swiss, Guinean and US proceedings in BSGR PHB, Section 3.3, para. 141 (i) – (iv).

⁸⁰ See examples for Mamadie Touré's contradictory statements in BSGR PHB, Section 3.3, para. 142 (i) – (xi).

⁸¹ Para. 142 of BSGR's PHB outlines how Souaré, Sylla and Kanté contradict Mamadie Touré's statements.

⁸² Guinea's PHB, para. 219.

⁸³ **PROTECTED**

⁸⁴ Guinea's PHB, para. 222.

⁸⁵ Avidan/9/193/11 to 9/194/25.

⁸⁶ Guinea's PHB, para. 222.

⁸⁷ Avidan/9/193/23 to 9/194/4; Avidan, CWS-3, para. 121.

⁸⁸ BSGR's PHB, para 142 (ix).

was instructed by the President to do what was in the nation's interest, which he considered to be perfectly normal.⁸⁹ He cannot remember any other instructions being given to him.⁹⁰

- (ii) The only time he had seen Mamadie Touré she was told by the President not to intervene in this business.⁹¹ Kanté did not receive any specific instructions with respect to BSGR.⁹² Whether Mamadie Touré had any influence on the President he "*personally could not pass judgment on that at all.*"⁹³ This was the last time Kanté heard from the President, Mamadie Touré or any other people acting on behalf of BSGR until he left office on 27 August 2008 – one month after Rio Tinto's rights had been suspended.⁹⁴

47. Guinea's references in footnote 229 do not provide any evidence that Mamadie Touré was present at several meetings with Avidan and the President.⁹⁵ In any case, the mere presence of her in meetings is not evidence of her influence on the President.⁹⁶ Guinea further suggests that Nabé confirmed he had been under heavy pressure.⁹⁷ Yet Guinea ignores Nabé's account of the meeting in question, in which he clearly states that Mamadie Touré did not intervene and that he did not receive any instructions.⁹⁸
48. Guinea also asserts that Mamadie Touré allegedly gave "orders" to Guinean ministers to favour BSGR and that they did not have a choice but to follow such orders.⁹⁹ Neither Sylla nor Souaré nor any other Minister of Mines ever received (or followed) any of her purported "orders".¹⁰⁰

⁸⁹ BSGR's PHB, para. 106.

⁹⁰ BSGR's PHB, para. 107, Fn 224.

⁹¹ BSGR's PHB, para. 107.

⁹² BSGR's PHB, para 107; Kanté/7/123/18-21; Kanté/7/124/9-14; Kanté/7/129/15-17 ("*Q: Did the Prime Minister indicate that he had received instructions from the President? A: No.*").

⁹³ Kanté/7/125/1-14.

⁹⁴ BSGR's PHB, para. 107; Kanté/7/130/10-19.

⁹⁵ Guinea relies on its previous submissions (CMRG, paras 271-273 and Rejoinder, 357-359). The only evidence it relies on is RWS-4 (Kanté), paras 30-37. There is no mention of Avidan being present in the meetings in Kanté's witness statement. Kanté only met with President Conté twice in relation to BSGR: one meeting at which Mamadie Touré was not present, and BSGR was (Kanté/7/108/3-4: "*Q: Was Mamadie Touré present at this meeting? A: No*"). There was a second meeting in December 2007 at which BSGR was not present (Kanté/120/24-25: "*Q. Was BSGR present at that meeting? A. No.*"). See BSGR's PHB paras 106-107.

⁹⁶ Avidan/9/97/20-98/1; Avidan/9/194/18-25 ("*But until 2007, each time I told the President, 'You know, Mamadie is a little bit pushing', and he was telling me, 'You don't pay attention to her. You don't pay attention to her. She is doing me the massage in the foot' -- he didn't feel the bottom legs because of diabetes that he had -- 'and that's all. You don't pay attention to her, you don't pay attention to her'. That's exactly it.*"); Kanté/7/120/21-23 ("*Q: Did that lady speak in the course of the meeting? A: No.*"); see also Avidan, CWS-3, para. 135 ("*At some point Ms Touré spoke up and interrupted him and he got really angry. He shouted at her to shut up and he was so aggressive with her that I thought he might slap her in front of us.*"); Struik, CWS-2, para. 106.

⁹⁷ Guinea's PHB, para. 263.

⁹⁸ Nabé/8/137/17-18 ("*A. No, she didn't interfere in the debate. She was seated, sitting upright, very self-confident.*").

⁹⁹ Guinea's PHB, para. 229.

¹⁰⁰ BSGR, PHB, Section III, paras 88-91 on Souaré; para. 101 on Sylla.

49.

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she seems to be alone in her belief of her immense power over the President.¹⁰² If she were that powerful, why was she silent in meetings with the President?¹⁰³ Why did he reprimand her in front of others?¹⁰⁴ How is it possible that not one of Guinea's witnesses testified that she exerted pressure on the President or themselves?¹⁰⁵ In fact, Souaré did not even trust that her intellectual ability was sufficient for her to advise the President on political or technical matters.¹⁰⁶

3.3 Simandou North and South exploration permits dated 6 February 2006 were awarded to BSGR in compliance with the Mining Code and without the intervention of President Conté, Mamadie Touré, IST, or any other intermediary

50. This is addressed Section II paras 12 – 18 and Section III paras 85 – 91 of BSGR's PHB (and paras 356-372 of its Reply and 351-352 and 358-370 of its Memorial). In addition:

51. Guinea's attempt to distort Souaré's evidence is striking. Contrary to Guinea's submissions,¹⁰⁷ he did not provide any evidence that he was under presidential pressure to grant BSGR exploration permits in Simandou North and South.

52. Para. 237: First, Souaré did not provide any evidence that the exploration permits in Simandou North and South were awarded because of presidential favours. Guinea's reliance on his Swiss statement instead of his testimony during the Merits Hearing is telling. During the Merits Hearing, Souaré considered the President's instructions to be "*perfectly normal*"¹⁰⁸ and in accordance with the general policy to promote the mining sector.¹⁰⁹ This was "*what the country wanted.*"¹¹⁰ Cilins' statement of 2011 does not suggest otherwise.¹¹¹ Even Guinea is forced to accept that Souaré explained that he ensured the correct allocation

¹⁰¹ Guinea's PHB, paras 226-227.

¹⁰² Guinea's PHB, para. 226.

¹⁰³ Souaré/6/43/14-16; Kanté/7/129/13-14.

¹⁰⁴ Souaré/6/105/17-19 ("*She didn't get anywhere because the President dismissed her altogether.*"); Souaré/6/105/23 to 6/106/2 (*Q: But you say that in the course of that meeting with the President and with Mamadie Touré concerning the Hyperdynamics dossier, the President was rather firm and he said "Don't talk about that, you leave here. A: Yes."*); Kanté/7/123/24 to 7/124/1 ("*A. Well the President actually spoke to the lady, not to me, saying "Don't get involved in these mining – in this mining business."*").

¹⁰⁵ BSGR's PHB, Section III. Souaré's evidence is limited to the assumption that Mamadie Touré instigated one meeting and a helicopter visit. His evidence regarding both was contradictory. See BSGR's PHB para. 88; Souaré/6/25/10-15; Souaré/6/43/16.

¹⁰⁶ BSGR's PHB, para. 142; Souaré/6/65/21-25; Souaré/6/66/1-6.

¹⁰⁷ Guinea's PHB, paras 244-245.

¹⁰⁸ BSGR's PHB, para. 87; Souaré/6/22/6-10.

¹⁰⁹ BSGR's PHB, para. 86; Souaré/6/18/21-25; Souaré/6/58/25 to 6/59/1; Souaré/6/177/6-9; BSGR's PHB, para. 87, Fn 170 Souaré/6/22/6-10.

¹¹⁰ BSGR's PHB, para. 88, Fn 170, Souaré/6/42/24 to 6/43/12.

¹¹¹ Exhibit R-0165; BSGR's PHB, para. 237.

procedure was followed.¹¹²

53. Para. 238: Second, Souaré's evidence did not "confirm" that Mamadie Touré had initiated the meeting with the President: Souaré assumed so because of her presence at this meeting.¹¹³ He did not know what she did.¹¹⁴ (see BSGR's PHB, Section III, para. 88(i))
54. Para. 239: Third, regarding the use of the presidential helicopter, Souaré again assumed that Mamadie Touré was behind this.¹¹⁵ His statements were, however, confusing: according to him, Mamadie Touré could not give instructions and he never said that it was the President who ordered the use of the helicopter.¹¹⁶
55. Para. 243: Fourth, Guinea's allegations that Souaré was "*forced*" to favour BSGR's application "*to the detriment of four other applicants from the mining industry although much more qualified than BSGR*" is another attempt to distort the facts. When interrogated during the Merits Hearing, Souaré confirmed that there were no other promoters interested in these areas.¹¹⁷
56. On the basis of a single meeting with the President (in which Souaré had received general instructions) and the alleged helicopter incident, Guinea concludes that "*it is clear that BSGR benefited from President Conté's favours from their first meeting with him and that the granting of these favours apparently conveyed "a very strong message" to Souaré*".¹¹⁸ Not only is it not "clear", the conclusion is wholly unsupported by the evidence, let alone by the evidence from Souaré.

3.4 No illegitimate pressure was applied on Guinea to sign the Memorandum of Understanding

57. Souaré was under no pressure to grant BSGR a "right of first refusal" in the MoU.¹¹⁹ Guinea has to rely on Souaré's written witness statement,¹²⁰ its own submissions¹²¹ **PROTECTED** **[REDACTED]** to argue the opposite. Why does Guinea ignore the evidence of the Merits Hearing? Because, Souaré, once cross-examined during the Merits Hearing,

¹¹² Guinea's PHB, para. 244.

¹¹³ BSGR's PHB, para. 88(i), Fn 173, Souaré/6/44/22 to 6/45/1.

¹¹⁴ Guinea's PHB, para. 267. Guinea's own quote from Souaré confirms that he (as well as the others) "*did not know what she did [...]*".

¹¹⁵ BSGR's PHB, para. 88(ii).

¹¹⁶ BSGR's PHB, para. 88(ii) Souaré/6/26/6-9.

¹¹⁷ BSGR's PHB, para. 17 Fn 14; Souaré/6/70/22-24.

¹¹⁸ Guinea's PHB, para. 242.

¹¹⁹ BSGR's PHB, paras 19 -24, 92 - 96.

¹²⁰ Guinea's PHB, para. 247 and Fn 258.

¹²¹ Guinea's PHB, para. 246 and Fn 256.

¹²² Guinea's PHB, para. 248.

had to confirm that the MoU was a "*good deal*"¹²³ for the country of which he was "*proud*"¹²⁴ because it was in compliance with the Mining Code,¹²⁵ which is far from being a "*disguise*".¹²⁶ As with Mamadie Touré, so with Souaré. Where there is no evidence in these proceedings, Guinea looks for it elsewhere, stringing together a series of random and untested statements to try to make its case.

3.5 There is no evidence of pressure from President Conté, Mamadie Touré, IST, or any other intermediary resulting in the withdrawal of Blocks 1 and 2 from Rio Tinto and the granting of exploration permits to BSGR

58. This topic is addressed in detail in BSGR's PHB in Section II paras 25 – 57 and Section III paras 104 – 119. In addition:

i. There is no evidence that Rio Tinto lost its rights because of BSGR

59. Guinea desperately tries to make it BSGR's doing that Rio Tinto lost its mining rights. Avidan's statement that he had the President's ear¹²⁷ does nothing to change the overwhelming evidentiary record that Rio Tinto's rights were validly withdrawn without any interventions from President Conté, Mamadie Touré and IST.¹²⁸

60. Every minister interrogated during the Merits Hearing – including Kanté, who Guinea cites so prominently – confirmed that the Government's actions were appropriate and lawful.¹²⁹ The same holds true with Nabé – whatever he assumed the President's goal was – he considered the decision to withdraw the two blocks as legal and legitimate.¹³⁰ He confirmed, when asked by Prof Van den Berg, that Rio Tinto would have lost its mining rights even without BSGR's application.¹³¹

61. There was no room for any interventions by the President or Mamadie Touré as the ultimate decision was rendered by the Council of Ministers on the basis of a detailed review by various technical and legal committees consisting of high ranking officials.¹³² Furthermore, Guinea itself acknowledges in para. 618 of its PHB that the withdrawal of Rio Tinto's rights

¹²³ BSGR's PHB, para. 92; Souaré/6/92/1-4.

¹²⁴ BSGR's PHB, para. 23; Souaré/6/91/24 to 6/92/4.

¹²⁵ BSGR's PHB, para. 117, Fn 254; BSGR's PHB, para. 112, Fn 236; Kanté/7/148/2-9; Souaré/6/42/24-6/43/4.

¹²⁶ Guinea's PHB para. 248.

¹²⁷ Guinea's PHB, para. 255.

¹²⁸ BSGR's PHB, para. 257.

¹²⁹ BSGR's PHB, paras 47, 112 and 257.

¹³⁰ BSGR's PHB, para. 47(iii).

¹³¹ Nabé/8/193/21-25.

¹³² BSGR's PHB, para. 35.

was justified.¹³³

ii. *Simandou Blocks 1 and 2 exploration permits were granted without pressure from the President, Mamadie Touré and IST*

62. As set out in paras 85-131 of BSGR's PHB, paras 356-372 of its Reply, and paras 351-352 and 358-370 of its Memorial, the exploration permits for Blocks 1 and 2 were granted without pressure from the President, Mamadie Touré or IST.

- (i) Kanté's resistance to the granting to BSGR of the exploration permits in Simandou Blocks 1 and 2¹³⁴ confirms that he was not subject to any pressure from President Conté, Mamadie Touré or IST. Even if he was, he did not bow to it, which he strongly emphasised during the Merits Hearing.¹³⁵
- (ii) Neither Kanté, Nabé nor Souaré could testify to any specific actions or pressure from the President (apart from general instructions to support BSGR as an investor to the benefit of the country), Mamadie Touré or IST.¹³⁶
- (iii) Not only is it unbelievable that Guinea can seriously sustain its allegation that President Conté, who was very ill during this period and had delegated most of his powers to the Prime Minister – as confirmed by Nabé and other ministers¹³⁷ – and died two weeks after BSGR was granted the exploration rights, could exert "*unrelenting pressure*" on members of the government, it is also not based on any evidence.

63. Kanté was not removed from office because he refused to give BSGR the exploration rights in Simandou Blocks 1 and 2:¹³⁸

- (i) Avidan's email dated 17 September 2007 (and Guinea's submissions)¹³⁹ is not proof for this statement (discussed above in paras 44-46). This email was written in September 2007 and Kanté was removed on 27 August 2008. If his removal was indeed a reaction to the President's anger, it took him almost a year to act upon it.
- (ii) Kanté himself does not think that he was removed from office by the

¹³³ Guinea's PHB, para. 618.

¹³⁴ Guinea's PHB, para. 249.

¹³⁵ BSGR's PHB, Section II para. 35, and Section III para. 108, Kanté/7/136/20 to 7/137/3.

¹³⁶ As to the alleged influence of IST see BSGR's PHB, paras 108, 109, 115 and 116.

¹³⁷ BSGR's PHB, para. 113, Fn 238.

¹³⁸ Guinea's PHB, para. 249 repeated in para. 260 – it relies on its own submissions and Kanté's written witness statement instead of the evidence provided in the Merits Hearing.

¹³⁹ Guinea's PHB, paras 259 – 260.

President.¹⁴⁰ **PROTECTED**

- (iii) The President never expressed any dissatisfaction towards Kanté when he explained that Rio Tinto was holding the mining permits and that research permits could not be granted to any other company.¹⁴² He encouraged Kanté to do what was in the nation's interest and never instructed him to grant Blocks 1 and 2 to BSGR.¹⁴³
- (iv) Finally, the removal of Kanté after 1.5 years in office is not an indication of any irregularities given that Ministers of Mines in Guinea generally have very short tenures in office.¹⁴⁴

64. BSGR's expression of interest in Simandou on 12 July 2007 and its application for Blocks 1 and 2 in early August 2008 was not illegal. Yet again, this is an assertion made without evidence. Kanté's testimony in the Merits Hearing does not support this allegation¹⁴⁵ as he was – when questioned on this point – unable to point to the specific provision of the Mining Code which would render this illegal. His successor, Nabé, firmly disagreed with Kanté's legal assessment.¹⁴⁶

65. As to the Council of Ministers' involvement, BSGR corrects the following of Guinea's misstatements:

- (i) Para. 266: **PROTECTED**

PROTECTED This was not supported by Nabé in the Merits Hearing: when cross-examined he could not remember having received any instructions, let alone illegitimate ones.¹⁴⁷ The reason why the Council of Ministers took this decision (instead of the Minister of Mines) was that the permits were of strategic importance to the country.¹⁴⁸

- (ii) Nabé confirmed that the ultimate decision to grant BSGR the exploration rights

¹⁴⁰ BSGR's PHB, para. 112; Kanté/7/166/1-7; Nabé/8/121/4-7.

¹⁴¹ **PROTECTED**

¹⁴² BSGR's PHB, para. 106.

¹⁴³ BSGR's PHB, paras 106 and 107.

¹⁴⁴ BSGR's Reply, para. 57.

¹⁴⁵ Guinea's PHB, para. 254.

¹⁴⁶ BSGR's PHB, para. 52; Nabé/8/123/12-25 and 8/124/18-23 ("[...] *the application may be considered to be exorbitant by the party receiving it, but it's normal for the applicant to put it forward.*").

¹⁴⁷ BSGR's PHB, para. 114.

¹⁴⁸ Nabé/8/180/8-17.

in Blocks 1 and 2 was rendered by the Council of Ministers,¹⁴⁹ comprising 36 members, and that the decision complied with the Mining Code.¹⁵⁰

- (iii) Guinea relies again on Nabé's untested statement **PROTECTED**
Why?
Because he did not confirm this during the Merits Hearing¹⁵¹ and neither did Souaré.¹⁵² This is yet another example of Guinea's desperate attempt where there is no evidence in these proceedings for its case to look for it elsewhere – even, amazingly, where the evidence in these proceedings directly contradicts the purported evidence from the very same witness that Guinea seeks to rely upon.

iii. *BSGR had the technical and financial capability to explore Simandou North and South and Blocks 1 and 2*

66. Guinea's allegation that BSGR was not granted Blocks 1 and 2 on the basis of technical and financial capabilities but through undue pressure is not supported by evidence (Guinea's PHB, paras 271-277). BSGR has responded to this allegation already in prior submissions.¹⁵³ This is to put the record straight.
67. In the Merits Hearing, Struik was questioned on whether BSGR had experience with the exploration of iron ore. Guinea, for obvious reasons, omits to refer to his answers as he comprehensively explains a very similar project in Macedonia.¹⁵⁴ Despite Guinea's attempts to undermine Struik's credibility, he clearly demonstrated on several occasions during the Merits Hearing that he had the technical expertise to explore and develop iron ore mines.¹⁵⁵ Guinea's reliance on BSGR's own geologist report (para. 591) in which the discovery of the unexpected iron ore deposits are set out, confirms that BSGR had the required technical and financial capabilities otherwise this discovery would not have been made.
68. Para. 273: Souaré's evidence – and not just the short extract Guinea relies upon¹⁵⁶ – does not support Guinea's allegation that BSGR got the exploration rights because of presidential

¹⁴⁹ Nabé/8/185/18-20.

¹⁵⁰ BSGR's PHB, para. 117.

¹⁵¹ Guinea's PHB, para. 268 – Guinea quotes from Nabé's cross-examination during the Merits Hearing. He, however, does not at any point suggest that the President gave instructions to the Council of Ministers. See also BSGR's PHB, para. 46, Fn 76: Nabé/8/185/14-17 ("*The decision to withdraw Blocks 1 and 2 from Rio Tinto, was this decision taken by the Council of Ministers; yes or no? A. Yes. I said yes.*").

¹⁵² BSGR's PHB, para. 46, Fn 79: Souaré/6/146/15-19.

¹⁵³ See para. 12 of BSGR's PHB, paras 361 and 398 of its Reply, and paras 43, and 416-417 of its Memorial.

¹⁵⁴ Struik/4/66/6-25 to 4/67/15 (*Q. (...) With respect to the natural resources project examples, you agree that none of those issues mentioned under the natural resources are iron ore mining projects; is that correct? A. No, that is not correct. (...) Feni Industries. Because Feni Industries in Macedonia – it's in a village called Kavardaci: I've been there many, many times. (...) Of course, the geology is different. That doesn't mean the mining method is different. (...)*).

¹⁵⁵ Struik/4/67/23to 6/70/18.

¹⁵⁶ Guinea's PHB, para. 273, Fn. 288.

favours. When Struik presented BSGR's financial and technical capabilities in 2006,¹⁵⁷ Souaré was impressed by the company's capacities.¹⁵⁸ If Souaré had not been convinced that BSGR had sufficient technical and financial capabilities, he would not have granted the exploration permits in Simandou North and South, nor would he have praised the MoU as a "good deal" of which he was "proud".¹⁵⁹

69. Para. 274: Kanté's statement,¹⁶⁰ – which Guinea heavily relies upon – is absolute nonsense and was taken out of context. How is "*stumbling over 23 permits*" "*evidence that [BSGR] lacked the technical and financial capacity for the successful execution of research on all of these permits*"? The opposite is true: First, BSGR had spent a lot of money on Simandou South, in particular after having discovered Zogota. Second, the 4 uranium permits were returned because BSGR did not want them. The 13 bauxite permits were exposed to a serious bauxite drilling programme completed by Geoprospect (that later drilled Simandou South for BSGR together with Foraco) and BSGR completed a scoping study for which it had engaged HATCH, a reputable independent consulting firm.¹⁶¹ The outcome of the study showed that due to the lack of serious infrastructure and a sustainable power grid, the bauxite project was not viable, which is why the 13 bauxite permits were returned. BSGR wrote to Kanté in April 2008 to inform him that it had returned the permits and to show that it had more potential to invest in the exploration permits in Simandou Blocks 1 and 2.¹⁶² This is deliberately omitted by Guinea.
70. Para. 277: The Council of Ministers was convinced that BSGR had the technical and financial means to explore the iron ore deposits in Simandou Blocks 1 and 2, otherwise it would not have awarded the exploration permits to BSGR. It was also in the interests of the country to award these rights quickly, after they had been frozen by Rio Tinto for so many years. The decision was taken by the Council of Ministers comprising 36 members who were ministers of various departments.¹⁶³
71. Once BSGR had been awarded the exploration permits it started its research while working at the same time on the Feasibility Study in Zogota in which it had invested USD 130 million. BSGR submitted its Feasibility Study on 14 September 2011 (prior to its joint venture with Vale), thereby confirming that in fact BSGR did have the necessary technical and financial expertise.

¹⁵⁷ Exhibit C-0002; BSGR's Memorial, para. 43, Struik, CWS-2, para. 22.

¹⁵⁸ BSGR's PHB, para. 12, Souaré/6/77/16-20.

¹⁵⁹ BSGR's PHB, para. 23, Souaré/6/91/24 to 6/92/4

¹⁶⁰ Guinea's PHB, para. 274.

¹⁶¹ Struik, CWS-2, paras 42 - 44.

¹⁶² BSGR's PHB, para. 51(ii); Exhibit C-0195.

¹⁶³ BSGR's PHB, para. 46; Souaré/6/146/20-21 ("*How many members in the council? A. Well, if no one is absent, 36.*").

3.6 The Base Convention and the Zogota Mining Concession were not awarded through corruption

72. This topic is addressed in detail in BSGR's prior submissions, Section II paras 58-77 and Section III paras 120-131 of its PHB and its Reply, paras 373-416. In addition:
73. Paras 348 - 365: This seems to be a summary of Guinea's argument that Thiam was bribed by BSGR. The evidence set out in BSGR's PHB proves that BSGR did not corrupt Thiam.
74. Para. 353: Guinea refers to payments of USD 100,000 and USD 80,000 to a former minister and politician – without mentioning his name. These allegations were previously made by Guinea in relation to Fofana.¹⁶⁴ It is telling that Guinea now chooses not to mention his name, presumably, because it has no wish to draw attention to the fact that Fofana is now Guinea's Prime Minister. If he was the recipient of corrupt payments by BSGR, why is he now leading Guinea? These payments have been addressed in paras 181-184 of BSGR's PHB. Guinea did not confront Avidan or Steinmetz (who gave the payment instructions) with this question, but Tchelet. In any case, it is not clear what point Guinea is trying to make. If it is trying to connect these payments to alleged bribery of Thiam, it has failed to do so.
75. Para. 356: as to Guinea's allegation that there was an amicable relationship between BSGR and Thiam and the fact that he openly favoured BSGR– this is addressed in Section IV, para. 409 of its Reply, Section III, para. 125 of BSGR's PHB. Guinea's misstatement that these points were proven during the Merits Hearing is addressed as follows:
- (i) Para. 357: Guinea refers to the informal and unusual character of an email sent to Thiam by Avidan. Again, Guinea distorts B. Sylla's evidence by omitting the first part of the quote, in which B. Sylla explained that ministers tended to use a formal address, "[s]ince we don't speak very good English."¹⁶⁵ The simple reality is that Thiam was a naturalised American ex-banker, fluent in English and more used to an informal way of communicating, to which BSGR responded in the same informal way.
 - (ii) Para. 359: There were no bribes given to Thiam – this is what Struik says in his statement quoted by Guinea. To reimburse travel expenses for Government officials – in particular in countries where the budget is tight – is not unusual. These were

¹⁶⁴ Rejoinder, para. 499.

¹⁶⁵ B. Sylla/8/93/5.

legitimate payments.¹⁶⁶ It is odd that Guinea has chosen to take issue with these travel expenses given that Guinea has deployed exactly the same argument to defend Mebiame who, Guinea admits, paid for President Condé's use of a private jet.¹⁶⁷

(iii) As regards Thiam's invitation to Steinmetz's daughter's wedding, this has already been addressed.¹⁶⁸ In any event, if this is such an important piece of evidence, why was Steinmetz not asked in cross-examination about the reasons for inviting Thiam to his daughter's wedding?

76. Paras 360 - 363: In relation to Thiam's conviction in the US, see Section III, para. 129 of BSGR's PHB. The following points are to rectify Guinea's misrepresentation of the facts:

(i) Guinea seems to imply that Struik was lying in his witness statement about Thiam. This is nonsense. When Struik wrote the witness statement in 2015, Thiam was not subject to any criminal prosecutions in the US. Struik's statement confirms that BSGR did not know about his corrupt dealings, thus, to him he was a straightforward guy. This is consistent with his surprise expressed during the Merits Hearing and his statement that, given what he **now** knows, he must have mischaracterised Thiam.

(ii) Steinmetz's testimony was not "*abusive*": he was simply summarising facts. The Thiam investigation delivered no proof of corrupt dealings with BSGR, because there is none.

77. In paras 366 – 374 Guinea repeats its allegation that BSGR bribed the Members of the Base Convention Commission. See BSGR's PHB, Section III at paras. 121-124. In addition:

(i) Guinea failed to produce one witness from the Base Convention Committee that could testify that (i) the sitting allowance was considered a bribe; (ii) they were under pressure to take a decision they would otherwise not have taken; and (iii) they were put under pressure by Thiam.¹⁶⁹ **PROTECTED**

The

¹⁶⁶ BSGR's PHB, Section IV, paras 185-187; Reply, Section IV, para. 408.

¹⁶⁷ Rejoinder, para. 843.

¹⁶⁸ Thiam, CWS-5, para. 123 ("*In respect of Mr Steinmetz's daughter's wedding, I did attend the event. However, this was not on account of any personal relationship between me and Mr Steinmetz. Mr Steinmetz invited the President of Guinea to his daughter's wedding as a courtesy. The President could not travel and instructed me to go to the wedding to represent him. On his instruction, I attended the wedding and brought a local artefact as a gift.*").

¹⁶⁹ BSGR's PHB, paras 122-125.

¹⁷⁰ BSGR's PHB, Section III, para. 123; **PROTECTED**

sitting allowance did not affect their impartiality and neutrality – as Souaré (who was not present) seems to be concerned.¹⁷¹

- (ii) Guinea heavily relies on the evidence of the only "member" who refused to participate in the Base Convention Commission. His evidence is worthless.¹⁷²
- (iii) Struik considered sitting allowances to be standard practice as he had experienced this before.¹⁷³ PROTECTED
[REDACTED] How can it be an act of bribery when the chair of an official commission determines the amount of the sitting allowance the investor has to pay at USD 1,000 for every member for an unspecified period of time? Nobody knew at the time how long the negotiations would take – given previous experiences and listening to B. Sylla it could have taken between three weeks and a few months. This puts the "significance"¹⁷⁵ and "unusual character" of the amount paid in perspective: a negotiation of 11 days leaves the member with under USD 100 per day. If the negotiations take 30 days this leaves the member with about USD 33 per day and if it takes 90 days the daily payment would be just over USD 11. Working faster and harder was certainly in the interests of the members of the Base Convention Commission.
- (iv) Tchelet not knowing about these payments does not in any way make them suspicious or even illegal.¹⁷⁶ These were official payments made upon an official request.

78. Guinea argues again that BSGR did not have the technical and financial capacities to be granted a Base Convention and a Mining Concession.¹⁷⁷ BSGR has addressed this baseless allegation in previous submissions, in particular in para. 12 of BSGR's PHB, paras 361 and 398 of its Reply, and paras 43, and 416-417 of its Memorial. In addition:

- (i) Para. 377: BSGR proved its financial and technical capacities when it applied for the research permits in Simandou North and South and Blocks 1 and 2. See above para.

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[REDACTED]

¹⁷¹ Guinea's PHB, para. 370 quoting Souaré.

¹⁷² BSGR's PHB, Section III, para. 123.

¹⁷³ BSGR's PHB, Section III para. 124.

¹⁷⁴ BSGR's PHB, Section III, para. 123; PROTECTED
[REDACTED]

¹⁷⁵ Guinea heavily relies on statements from Souaré and Sylla that the amounts were too high for Guinean standards.

¹⁷⁶ Guinea's PHB, paras 373-374.

¹⁷⁷ Guinea's PHB, paras 375-383.

66 to 71;

- (ii) Para. 378: Guinea recycles Kanté's quote (see para. 69 above).
- (iii) Para. 379: Guinea's allegation that BSGR did not satisfy the legal conditions to be granted exploration permits is contradicted by the same ministers who granted these permits: Souaré confirmed that the research permits in Simandou North and South were granted in compliance with the law. The same applied to the permits in Blocks 1 and 2 as confirmed by Souaré, Nabé and Kanté.¹⁷⁸

79. Para. 381: not a single one of these allegations was established during the Merits Hearing:

- (i) Guinea's first point: Kanté's untested evidence purportedly establishes that BSGR did not comply with Article 31 of the Mining Code. Again, **PROTECTED** this was not confirmed by Kanté during his cross-examination in these proceedings.
- (ii) Guinea's second point: The Base Convention Commission which reviewed the Feasibility Study confirmed that it complied with the Mining Code.¹⁷⁹ Guinea's arguments to the contrary are an attempt to mislead this Tribunal. Whatever argument Guinea wants to make here, it was not put to any witness in the Merits Hearing.
- (iii) Guinea's third point: BSGR's Feasibility Study took into account social and environmental considerations. Guinea's reference to the Base Convention Commission's report to prove that BSGR did not comply with the social and environmental obligations is plain wrong. In Section b on page 3, the Commission listed the points that were discussed between BSGR and the commission. In relation to the environmental protection and social development, it acknowledges that "*two companies had been hired to do the studies.*" If these studies had been essential, it would not have recommended the start of the negotiations of the Base Convention with BSGR.¹⁸⁰ It also confirmed that the Feasibility Study complied with the

¹⁷⁸ BSGR's PHB, para. 117, Fn 254: Nabé/8/187/19-22 ("*Q. The decision to grant Blocks 1 and 2 to BSGR, was that decision compliant with Mining Law? A. In compliance with the Mining Law in the absolute, I don't see any violation.*"); BSGR's PHB, para. 112, Fn 236: Kanté/7/148/2-9 ("*A. In fact I think that the directives that he gave complied with his responsibilities. Q. And did your government take decisions that it would not have taken had it not been under the pressure of Mamadie Touré? A. I think that the decisions that were taken by the government complied with the law and regulations that were in force at the time.*"); Souaré/6/42/24-6/43/4 ("*Q. Did [the President] instruct you to give BSGR permits on Blocks 1 or 2? A. He didn't go into detail. Q. So he did not give specifying directions to grant Blocks 1 or 2 to BSGR? A. No, he did not say that.*").

¹⁷⁹ Exhibit R-0268, last para. on page 1.

¹⁸⁰ Exhibit R-0268, page 6.

provisions of the Mining Code.¹⁸¹

- (iv) Guinea's last point: Struik's evidence confirmed how much work was performed, together with numerous technical consultants to produce the Feasibility Study.¹⁸² The Feasibility Study itself, which comprised 454 pages plus thousands of pages of annexes, is sufficient evidence to prove this point.¹⁸³ Furthermore, it was on the basis of this Feasibility Study that Vale decided to form a joint venture partnership with BSGR. If BSGR had not been a strong partner in the eyes of Vale, it would not have committed to a project of such size and complexity. Having a joint venture partner to share the financial commitments is not in the least bit unusual as Guinea suggests in para. 383. Even Rio Tinto entered into a joint venture with Chinalco in 2010, which finally enabled it to submit a feasibility study with respect to Blocks 3 and 4 in 2016, over 19 years after it acquired its exploration permits (in contrast with the 3 years it took BSGR).

80. In paras 384 – 396 Guinea tries to establish that the negotiation of the Base Convention was a set up and that the short procedure was suspicious. See Section III, paras 125 – 126 of BSGR's PHB. In addition:

- (i) As to the political situation surrounding the shooting of Dadis Camara: see Section III para. 127 of BSGR's PHB. It is not suspicious that the commission continued its work. To the contrary, the members of the commission were impressed that BSGR did not abandon the country like other foreign companies did.
- (ii) B. Sylla's testimony in this respect is of no value. He was not part of the Commission, thus, does not know why the commission did not interrupt its work after the shooting. It is irrelevant how this looked from the outside and Guinea did not produce – in contrast to BSGR with Struik and Avidan – one witness that was a member of the Base Convention Commission.
- (iii) Para. 390: Guinea tries to twist Struik's evidence again: he set out in his witness statement that the Feasibility Study was completed at the end of October 2009 and was officially delivered to the Ministry of Mines on 16 November 2009.¹⁸⁴ He never said that he delivered the Feasibility Study on 12 December 2009. **PROTECTED**

¹⁸¹ Exhibit R-0268, last para. on page 1.

¹⁸² Struik, CWS-2, para.75.

¹⁸³ BSGR's PHB, para. 58, Exhibit C-0014.

¹⁸⁴ Struik, CWS-2, para. 78.

PROTECTED

- (iv) Para. 391: Struik is obviously referring to the duration of the entire procedure – from the submission of the Feasibility Study until the signing of the Base Convention on 16 December 2009.

3.7 BSGR did not try to conceal traces of alleged corruption

81. PROTECTED

82. PROTECTED

Nevertheless, Guinea tries to conceal this procedural inadequacy by randomly picking statements¹⁸⁸ from the Merits Hearing PROTECTED

83. As to the second allegation, that BSGR undertook internal restructuring in order to conceal its relationships with consultants such as Pentler and Sylla, this is plain wrong.¹⁹⁰

PROTECTED

Merloni-Horemans' testimony¹⁹² is

¹⁸⁵ BSGR's PHB, para. 62, Fn 124: PROTECTED

¹⁸⁶ PROTECTED
¹⁸⁷ PROTECTED

¹⁸⁸ See Fn 465, Fn 467 and Fn 469.

¹⁸⁹ PROTECTED Reply, Annex 1, paras 133-144.

¹⁹⁰ Guinea's PHB, paras 407-427. As to Sylla's consultancy services see BSGR's PHB, Section 3.2, para. 102.

¹⁹¹ PROTECTED

¹⁹² Merloni-Horemans/2/197/18-20 ("A. As I recall, this was at the request of the buyers of the company. They didn't like BVI companies, they didn't want to have an offshore company."). See also BSGR's PHB, para. 231.

in line with Tchelet's statement, although she made clear that she could not recall the exact details. In whatever way Guinea tries to twist her statements, the restructuring, was not "*a fraudulent manoeuvre*", and Merloni-Horemans did not try to conceal it.¹⁹³

84. The restructuring was not hidden from Vale and it is telling that Guinea did not put this question to Tchelet. In any case, Tchelet was honest with Alex Monteiro during the negotiations with Vale in 2009.¹⁹⁴ He volunteered the information regarding the restructure in his first witness statement in the LCIA proceedings¹⁹⁵ – it was not given in response to any allegations made in Vale's Statement of Case. Guinea's attempt to characterise the internal restructure as deceitful is therefore entirely refuted by the evidence produced in the LCIA proceedings.

3.8 BSGR did not seek to buy Mamadie Touré's silence

85. BSGR has addressed Guinea's allegations in relation to apparent attempts to buy Mamadie Touré's silence in paragraphs 282 -283 and 335 of its PHB. Guinea's position on this aspect of its case is a combination of pure invention and Mamadie Touré's flawed testimony.

86. Para. 429: BSGR did not need to re-purchase Mamadie Touré's apparent shareholding in BSGR in order to assign shares to a partner. There is no evidence (because it did not happen) that shares in any BSGR company were assigned to Mamadie Touré. Contrast this with the formal process by which Pentler's shareholding was transferred.

87. Paras 430 to 433: **PROTECTED**
PROTECTED
PROTECTED
Her testimony is false, and it is unsurprising that it supports Guinea's narrative given that it was paying her legal fees at the time she gave her evidence.¹⁹⁶ The true position as to the extortion attempt was that explained by BSGR's witnesses.¹⁹⁷

88. Paras 434 to 437: It is unclear on what Guinea bases its assessment that BSGR's witnesses were embarrassed by Mamadie Touré's extortion attempt. It is Guinea which appears to be embarrassed, given its reluctance to acknowledge that Mamadie Touré enclosed with her extortion attempt different versions of the contracts she purportedly signed with BSGR, to

¹⁹³ Guinea PHB, para. 421.

¹⁹⁴ Exhibit R-0197, para. 86 ("*The focus of the questions Mr Monteiro asked me, was why there had been a change in the company structure in April 2009. I explained that previously there was a minority shareholder in BSGR Guinea BVI and that subsequently there was a buy out of the minority partner in 2008 and that in accordance with the corporate governance and accounting policy of BSGR, the structure was amended such that the subsidiary BSGR Guernsey was incorporated and managed in Guernsey under the auspices of the BSGR Head Office in Guernsey.*").

¹⁹⁵ Exhibit R-0197.

¹⁹⁶ BSGR's PHB, paras. 135 and 341; **PROTECTED**

¹⁹⁷ Avidan/9/118/2-11; Struik, CWS-2, para. 110; Avidan, CWS-3, paras. 138 to 149.

those now in the FBI's possession.¹⁹⁸ On the one hand, Guinea criticises BSGR for not taking the extortion attempt seriously, but on the other, Guinea also criticises BSGR for keeping evidence of that attempt in a safe. Guinea cannot have it both ways.

89. Paras 441 to 443: Guinea claims that Avidan's testimony in relation to Hennig's blackmail attempt is not credible, as BSGR chose not to report it to authorities. Guinea has chosen to illustrate this point by reference to Avidan's testimony in which he could not remember the name of the barrister BSGR instructed on this issue. Yet, Guinea fails to acknowledge the later part of Avidan's testimony, in which he recalled that BSGR did seek advice on the Hennig blackmail attempt from a leading criminal barrister in the UK, Ken Macdonald QC.¹⁹⁹ Guinea also chooses to ignore that BSGR has submitted transcripts of the meetings between Avidan and Hennig which support Avidan's recollection of the blackmail attempt, and of course the conviction of Mebiame who has admitted to the DoJ that he worked on behalf of Hennig to acquire mining titles in Guinea (see Section 8.3 below).
90. Paras 444 to 450: BSGR has addressed the actions of Cilins in 2013 in paras 232 to 236 of its PHB. Contrary to Guinea's suggestion, there was no discrepancy between the written and oral evidence of BSGR's witnesses. While Guinea claims that Steinmetz's evidence was that he was unaware of Cilins' trip to the United States, in the very transcript reference relied upon by Guinea,²⁰⁰ he in fact confirms that he was aware the Pentler principals were intending to seek a declaration from Mamadie Touré, but not the exact details of how they were seeking to do this. As Madam President stated on this very point "*...your evidence is clear on this. You were aware of their intent to try and get her to state that her allegations were false. You were not aware ... of how they would do it, who exactly would do it, when they would do it.*" To which Steinmetz replied, "*Exactly*".²⁰¹ Furthermore, contrary to Guinea's PHB, Steinmetz categorically did not acknowledge that he had received a "*draft false attestation*" that Cilins was to put to Mamadie Touré. To BSGR's knowledge, the draft attestation was true.²⁰² Guinea's multiple misstatements on this issue expose the flawed basis for its position that BSGR instructed Cilins to pay Mamadie Touré to destroy certain documents.

¹⁹⁸ BSGR's PHB, paras. 269(ii) and 274(ii).

¹⁹⁹ Avidan/9/156/12-19; see also Cramer, CWS-7, para 20.

²⁰⁰ Guinea's PHB, para 448 and Fn 505.

²⁰¹ Kaufmann-Kohler/3/86/1-6; Steinmetz/3/86/7.

²⁰² Avidan/9/62/1-9 ("*Q. Yes, a statement saying that she never signed any contracts with BSGR, right? A. Exactly. Q. Okay. And he even asked her to sign a statement saying she was not the wife of the President, right? A. I don't know if he made her; I think she wrote it down, for sure. For us it was – I don't want to take you to this part of the story – but for us it's quite obvious: she is not the wife of the President, that's – period.*").

IV. BSGR DID NOT PAY MAMADIE TOURÉ AND IST UNDER A CORRUPTION SCHEME

4.1 No evidence of accounting irregularities

91. Guinea has manipulated Tchelet's evidence to inflate its allegations regarding what it perceives as a failure to adhere to accounting standards.²⁰³ Guinea fails to point out what accounting standards he should have applied. In any case, Tchelet answered every question honestly and in accordance with professional standards. He was the accountant in the back office who followed instructions, and when he requested explanations he relied upon them. It was not his job to investigate every single payment or meet every business partner on site. He trusted his colleagues. There was nothing untoward with the payments he released.

92. **PROTECTED**

93. Para. 287: As said above, it was not for Tchelet to meet business partners. He asked about Sidibe and was reassured by the financial manager in Guinea that he was the business partner of Boutros.²⁰⁵ Guinea could have put these questions to Avidan instead of Tchelet. He was the person on the ground and had the contact with Sidibe and Boutros. Guinea chose not to do so, and instead, asked the accountant who followed instructions. Guinea could have also produced Sidibe or Boutros as witnesses if they had any doubts about their relationship to BSGR. Boutros' statement in the Swiss proceedings cannot substitute for this failure. It remains untested.

94. Para. 293: Guinea suggests that Tchelet could not provide a credible justification for why payments to Pentler or Boutros were labelled as "consulting fees". This completely ignores

²⁰³ Guinea's PHB, paras 282-320.

²⁰⁴ **PROTECTED**

²⁰⁵ See BSGR's PHB, para. 189 and Fn 403.

the clear explanation Tchelet provided on this point.²⁰⁶ Guinea seems now to pin its case almost entirely on Tchelet's evidence. Yet as Tchelet clearly explained, BSGR's practices provided for accountability and adhered to good practice at all levels.²⁰⁷ The system depended on a chain of communication and on trust existing amongst the team.²⁰⁸ Tchelet was in the back office, but rather than asking Avidan, Struik or Steinmetz about the payments, each of whom may have had direct knowledge of the relationship in question, Guinea did not. For example, Tchelet was asked about Boutros, despite Guinea being aware that Avidan dealt with Boutros and LMS.²⁰⁹ Guinea cannot now seek to draw inferences regarding so-called accounting irregularities when it failed to properly question BSGR's witnesses.

4.2 Payments

95. Regarding alleged payments, BSGR reiterates its position as set out in BSGR's PHB and previous submissions.²¹⁰ In addition:
96. Para. 296: As to the 5% stake allegedly transferred to Mamadie Touré in August 2009 see para. 168 of BSGR's PHB.
97. Paras 297, 299-320: As to the alleged USD 4 million payment to Mamadie Touré through Boutros: see para. 169 of BSGR's PHB. Guinea has once again distorted the evidence.²¹¹ Struik's testimony that the roadworks at Blocks 1 and 2 had been completed by the time of the Vale negotiations corroborates the purchase of caterpillars in August 2009. This does not mean that no further machinery would have been required in the lead-up to the Joint Venture agreement. Indeed both Avidan and Struik confirmed that investment geared up in 2010.²¹²

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²⁰⁶ See BSGR's PHB, para. 192 and Fn 410; Tchelet/3/205/17-23.

²⁰⁷ Tchelet/3/132/8-16 ("In that sense, it was not my place to approve the payment in the sense of: is this a payment for the project, to take the project forward in its investment? My role was essentially to ensure that the person in charge in a specific project -- in the case of Guinea, that country manager, or many other projects that I was involved with -- had valid explanations, documentation, and to provide that for Mr Oron's comfort. He would take the decision whether to approve the payment or not.").

²⁰⁸ Tchelet/3/181/15-20 ("Yes, but we were not forensically checking payments that our own project managers were requesting in accordance with board-approved projects, board-approved investments. There wasn't an element of that, or internal suspicion of each other. We were working within an element of team and trust.").

²⁰⁹ Tchelet/3/161/4-8 ("Q. The reference to the agreement is paragraph 15. You say: "BSGR and LMS entered into an outsourcing and services agreement in 2008 ..." Have you seen this agreement? A. Mr Avidan had sent me this agreement.").

²¹⁰ BSGR's PHB, Section IV; Reply, Annex 1, paras 1-154.

²¹¹ Guinea's PHB, para. 312.

²¹² Struik/4/254/2-18 ("We had drilling teams there. We employed -- for Blocks 1 and 2, we employed three drilling companies. Q. What I'm wondering is: did you have to make expenses for new heavy equipment right at the beginning of 2010, or was the equipment already there and you were doing -- A. The equipment -- the heavy equipment was not our equipment. We had the -- I mean, we engaged drilling contractors. It was their equipment: their trucks, their this, their everything. Q. Did you need tractors and bulldozers? A. Oh yes, because we had roadworks to do.); See also Struik, CWS-2 para. 91 and CWS-3, para. 64.

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Even if these deposits were made, any such payments had nothing to do with BSGR.

98. Paras 321-337: Guinea alleges that BSGR paid about USD 5.5 million to Mamadie Touré on the basis of the 3 August 2010 agreement between Pentler and Matinda.²¹⁴ Guinea desperately tries link BSGR to these payment by relying on an **PROTECTED** **PROTECTED** which mentions the name "Yossi" together with a list of payments.²¹⁵ The payments listed under "Yossi" seem to be payments from BSGR to Pentler. These were legitimate as explained in BSGR's PHB, para. 197. The mentioning of Yossi's name **PROTECTED** is not evidence that BSGR used Pentler to make separate payments to Mamadie Touré.
99. Furthermore, this entire section (paras 321 – 337) is utterly confusing: various alleged payments are spread over 16 paragraphs without any specific conclusion, which makes it very difficult to piece together how much was effectively paid to Mamadie Touré. The structure of this section appears to be a deliberate attempt to deviate this Tribunal from the fact that these alleged payments, when added together, do not correspond to the USD 5.5 million allegedly promised to Mamadie Touré. For example: in para. 328 Guinea refers to a "second amount" of "1,900 GUI" (which Guinea simply assumes means USD 1,900,000) that was allegedly credited to Mamadie Touré's bank account in Guinea. However, **PROTECTED** **PROTECTED** Mamadie Touré does not seem to have had any knowledge as to the basis on which this payment was made. She refers to CISSE who allegedly told her that Avidan had paid USD 2 million into their bank account, and wanted CISSE to immediately withdraw USD 100,000. If this was a payment according to the 3 August 2010 agreement, why is it paid to CISSE and why does she not know anything about it? Where is the evidence that Avidan paid USD 1.9 million to her bank account? If Avidan made this payment, why is this not written down in Noy's detailed e-mail to Cilins? Furthermore, there is not a shred of evidence that Avidan kept the USD 100,000 as Guinea tries to allege.
100. Guinea concludes that there is no doubt that BSGR made these payments to Mamadie Touré. Looking at Guinea's submission in this respect, there is every doubt that BSGR had anything to do with these payments. Guinea provides a confusing and inconsistent picture, and the payments do not add up to USD 5.5 million.

²¹³ Guinea's PHB, para. 315.

²¹⁴ Exhibit R-0031. See BSGR's PHB, paras 176, 197 and 282.

²¹⁵ **PROTECTED**

101. Para. 339: As to the alleged payment of USD 425,000 to IST in February 2006 see paras 173-174 of BSGR's PHB.
102. Paras 338, 340-347: As to the bonus payment of USD 450,000 to IST see para. 180 of BSGR's PHB. Guinea goes to great pains to stress the significance of IST's remuneration.²¹⁶ IST was treated no differently to his foreign colleagues when the bonus payments were made. Guinea's argument appears to be that, because IST was Guinean, he should have received less money for his contribution than his foreign counterparts. It is astonishing and frankly a discriminatory argument to be made. IST did a good job and was paid accordingly and comparably to the ex-patriates. Had he been paid less there would have been proper cause for complaint.
103. Paras 351-364: As to alleged payments to Thiam, see paras 185-187 of BSGR's PHB and above.
104. Para. 353: As to the alleged payments to Fofana, see paras 181-184 of BSGR's PHB and above.
105. Paras 366-374: As to the alleged payment of the sitting allowance to the Base Convention Commission, see paras 122-127 of BSGR's PHB and above para. 77.
106. Para. 324: Guinea alleges that Pentler paid **PROTECTED**

These allegations are based purely on previous submissions. Guinea chose not to put any question regarding Olympia to any of BSGR's witnesses. BSGR's position remains that it cannot comment on payments made by Pentler or Olympia since any payment made by either company had nothing to do with BSGR. Certainly no payment to Mamadie Touré was made on behalf of BSGR.
107. In any case, even if these payments have been made to Mamadie Touré, there is no evidence that any of these payments were passed on to a Government official. In fact, Mamadie Touré confirms that she never paid President Conté or any other public official anything.²¹⁷ Even if these payments were made, Guinea has failed to provide any evidence to link these payments to Mamadie Touré's actions in relation to the granting of the exploration and mining permits to BSGR. The reason for this is that she did not do anything.

²¹⁶ Guinea's PHB, para. 340.

²¹⁷ BSGR's PHB, para. 84, Fn 167.

V. LEGAL SECTION

108. *Kim v. Uzbekistan* ("*Kim*") is of utmost relevance to this case, despite Guinea's desperate attempt to undermine its importance.²¹⁸ BSGR has stressed the similarities with this case in the Opening Statement²¹⁹ and in its PHB, Section VII. In addition:

5.1 Applicable law

109. BSGR has – even before *Kim* – argued that the Tribunal should apply Guinean law over international public law.²²⁰ International public law should only be applied if there is a lacuna in Guinean law or if it is in conflict with international public law.²²¹ Guinea's legal position is, in contrast, confusing.²²² It admits that Guinean law is applicable to the merits of the case (including criminal law). It, however, seems also to be relying on Guinean administrative and civil law without providing any specific provisions this Tribunal would be able to apply.²²³ And it argues that the Tribunal is bound by international principles of law.²²⁴

110. Guinea is wrong that *Kim* and this case cannot be compared due to "*several major distinctions*":²²⁵

- (i) Guinea is wrong to state that BSGR is relying on *Kim* to "artificially" limit the applicable law and to restrict the application of international public policy to exclude the prohibition of influence peddling.²²⁶ In fact, influence peddling is covered under Guinean criminal law, however, only in its passive form. It was obviously the legislator's deliberate decision not to criminalise active peddling of influence. Thus, if it is anyone who is "artificially" tinkering with the applicable law, it is Guinea by trying to change the legal situation and incorporate a provision from international public law, even if there is no lacuna to fill.²²⁷ It is strange for Guinea to argue that its legislators were not sophisticated enough when setting the law on corruption, so the Tribunal must compensate by

²¹⁸ Guinea's PHB, para. 18.

²¹⁹ Libson/1/14/10 to 1/19/12.

²²⁰ As there is disagreement between the Parties as to the applicable law, the Tribunal is requested to follow Article 42(1) of the ICSID Convention. BSGR does not object to the application of international rules of law, where there is a lacuna in the law that needs to be filled. See Reply, paras 274-285.

²²¹ Reply, paras 272-285.

²²² Guinea's PHB, para. 13.

²²³ CMRG, paras 735-738.

²²⁴ Guinea's PHB, para. 12.

²²⁵ Guinea's PHB, para. 18.

²²⁶ Guinea's PHB, para. 13.

²²⁷ It appears that Guinea has dropped its reliance on other international legal sources (see CMRG, para. 727, Rejoinder, paras 17-28) and only relies on the ECOWAS Protocol.

supplementing the existing applicable law with random principles from international law.

- (ii) Para. 19: It is not clear what point Guinea is trying to make. BSGR does not ask this Tribunal to apply Uzbek law. BSGR refers to the *Kim* Tribunal as it applied specific provisions of criminal law to a very similar set of facts.
- (iii) Para. 20: It is wrong that Uzbekistan based its objections to the admissibility of the Claimant's claim on domestic criminal law only. Uzbekistan also (like Guinea) relied on international public policy to support its claim.²²⁸ The *Kim* Tribunal analysed this position but expressly pointed out that "*international public policy is not defined with the specificity found in the Uzbek Criminal Code. This is because of the uncodified nature of international public policy despite the seriousness of both the allegation and the consequence.*"²²⁹ The *Kim* Tribunal looked into various international legal instruments²³⁰ and concluded that the focus of international public policy is the bribery and corruption of Government officials, thus, is in line with Article 211 of the Uzbek Criminal Code. It further concluded that there is "*no clear consensus that the scope of prohibition on bribery in international public policy at present extends beyond those circumstance that aim at the corruption of government officials.*"²³¹ Following the *Kim* approach, it is clear that where there are specific provisions under domestic law, these should override international public policy because of its "uncodified nature".
- (iv) BSGR never suggested that this Tribunal should decide BSGR's criminal liability as it is obvious that this Tribunal is not vested with such powers. This does not mean that the Guinean criminal code cannot be applied – which is demonstrated by the *Kim* Tribunal.

5.2 "Direct evidence" or "red flags"

111. Unlike Guinea, BSGR is not manipulating the applicable law.²³² Guinea's case against BSGR is based on two allegations (i) that Government officials were directly bribed by BSGR in order to grant BSGR the disputed exploration and mining rights; and (ii) that

²²⁸ Exhibit CL-0060, para. 592 ("*Respondent argues that the factual case put forward in the previous section as regard Article 211 of the Criminal Code is also such as to violate not only the Uzbekistan law regarding corruption, but also international public policy regarding corruption there rendering the claim inadmissible*").

²²⁹ Exhibit CL-0060, para. 593.

²³⁰ Exhibit CL-0060, paras 595-596.

²³¹ Exhibit CL-0060, para. 598.

²³² Guinea's PHB, para. 26.

BSGR gave Mamadie Touré benefits and/or payments in order to exert influence on President Conté and Ministers of Mines to grant BSGR exploration and mining rights. Even though both allegations could be put under the heading of "corruption", it is misleading to merge them into one legal provision,²³³ in particular, as Guinean law does not recognise active trading of influence.

112. Article 194 of the Guinean Criminal Code is clear as to what constitutes corruption of a public official. This does not differ – as also confirmed by the *Kim* Tribunal – if international public law is applied. It essentially involves the (i) making of a payment of benefit (ii) to a public official (iii) to obtain a favourable decision. Guinea suggests that the second criterion is a payment "*to a public official or a third party with apparent influence over that public official*"²³⁴ – but this is pure invention and not based on Guinean law. As set out Guinea has not complied with its burden of proof on the basis of the correct legal position (or at all) (see below Section 5.3).
113. As active trading of influence does not exist under Guinean law, any of the alleged contracts with and payments to Mamadie Touré cannot be qualified (as Guinea wrongly does) as direct evidence, but "circumstantial evidence" or "red flags" only. This is confirmed by the *Kim* Tribunal.²³⁵ It is in this context that Guinea tries to mislead this Tribunal. It quotes a sentence from the Claimant's pleading in *Kim*, thereby implying that BSGR's counsel had referred to the Claimant's pleading instead of the Tribunal's decision in its Opening Statement.²³⁶ This is false. BSGR referred to the Tribunal's decision.²³⁷
114. Even if this Tribunal decided to import the active form of influence trading into Guinean law, it will nevertheless find that Guinea has failed to prove that BSGR (i) has made payments of benefits to Mamadie Touré (ii) in order to exert pressure on public officials (iii) with the intention that this official grants BSGR exploration and mining rights. BSGR's objective is not – as insinuated by Guinea²³⁸ – to persuade this Tribunal to ignore the crucial role of Mamadie Touré. BSGR's objective is the opposite: to have the Tribunal look at the facts established during the Merits Hearing and to see that she had no role in assisting BSGR to obtain the exploration and mining rights (see BSGR's PHB, section 3.2, Sections III and IV above, and summary of evidence in Section VI below).

²³³ Guinea's PHB, para. 27.

²³⁴ Guinea's PHB, para. 453.

²³⁵ Exhibit CL-0060, para. 548.

²³⁶ Guinea's PHB, para. 37.

²³⁷ Libson, 1/15/18-19 ("*First, red flags may be helpful in the analysis but are not proof in themselves. (...)*").

²³⁸ Guinea's PHB, para. 14.

5.3 Standard of proof

115. As to the standard of proof, BSGR has previously submitted that for serious allegations of corruption, the standard of proof is "beyond reasonable doubt" or "clear and convincing evidence".²³⁹ The position of the *Kim* Tribunal is that the standard of proof is determined by the applicable law. In its absence, like in *Kim*, the Tribunal applied a higher standard.²⁴⁰ As Guinean law does not provide a specific provision as to the standard of proof, the Tribunal must look at international arbitral practice as set out in BSGR's previous submissions,²⁴¹ which reflects the tendency to apply a higher standard of proof.

5.4 Guinea seems to ignore the causal link argument

116. BSGR has argued in its Reply and on the basis of the *Kim* decision that there has to be a link between the corruption allegations and the procurement of the investment. This argument was raised by BSGR during the Merits Hearing²⁴² and has not been specifically addressed by Guinea. This is telling. BSGR invites this Tribunal to apply the *Kim* Tribunal's approach as to the existence of a causal link:

"In conclusion, the Tribunal notes the statement of this tribunal in Sistem v. Kyrgyz Republic. In its award the tribunal held that an "important element of the concept of bribery or corruption is the link between the advantage bestowed and the improper advantage obtained." This Tribunal agrees. Proof of bribery or corruption may be difficult but it is fundamental that the severe consequences that follow a finding of corruption justify the need for such linkage. The casting of doubt or probity of a transaction is not sufficient. (...)"²⁴³

117. BSGR requests that this Tribunal assesses the evidence before it (see also summary below) through the *Kim* prism. It will – on the basis of the witness evidence summarised in BSGR's PHB – be convinced that there is no link between any of the corruption acts alleged by Guinea and the obtaining of BSGR's investment in Guinea.

VI. SUMMARY OF EVIDENCE

118. Guinea's summary of evidence in Section IV is a smokescreen designed to conceal the gaping hole at the heart of its case: there is not a single piece of direct evidence of President Conté being corrupted, nor evidence of Mamadie Touré or IST exerting any influence on

²³⁹ Reply, para. 312.

²⁴⁰ Exhibit CL-0060, para. 614.

²⁴¹ Reply, paras 316-332.

²⁴² Libson/1/18/1-4.

²⁴³ Exhibit CL-0060, para. 589.

Government officials. It must be difficult for Guinea to accept that its own witnesses have so severely damaged its case with their honest testimony. Guinea's summary of evidence does not meet the applicable legal standards as set out above and previously²⁴⁴ in the following ways:

6.1 No evidence that President Conté was bribed

119. Guinea has summarised its evidence with respect to corruption of President Conté - after 4 years of litigation - in 3 paragraphs (462-4). It must be out of desperation that Guinea uses the contracts with Mamadie Touré as direct proof that President Conté was bribed. Other than the worthless model car (not diamond encrusted), this Tribunal neither heard nor saw a single piece of evidence that the “payments” listed in these paragraphs went to President Conté or, in fact, went from BSGR even to Mamadie Touré. That is because they did not (see BSGR's PHB, Section III, para. 82 and Section IV, paras 162-177).
120. There is no evidence of the payments and, *a fortiori*, there is no evidence, let alone “unimpeachable” evidence of the intent behind them. In fact, the evidence is clear (“unimpeachable”, if you will) that President Conté did not exert his influence and the ministers undertook their work diligently and properly. The President was not corrupted and there is no evidence at all, let alone evidence that meets the applicable standard of proof, that he was.

6.2 No evidence that BSGR purchased Mamadie Touré's influence

121. Mamadie Touré's self-serving statements in the US and Swiss proceedings do not have probative value (BSGR's PHB, Section III, paras 132- 144). The contracts on which most of Guinea's case rests do not make sense, have never been acted upon (see BSGR's PHB, Section VI, paras 256 – 284) and (at least in relation to those purportedly signed by BSGR) are forgeries. Boutros' self-serving evidence in the Swiss proceedings is of no help either (see BSGR's PHB, Section IV, paras 169-170, Reply, paras 77-78). None of these is evidence that BSGR paid Mamadie Touré to act on behalf of BSGR. Even if any of these payments were made, Guinea has failed to provide any evidence that Mamadie Touré exerted pressure on Government officials to grant BSGR exploration and mining permits (see below Section 6.3)

²⁴⁴ Reply, Section 3.4.2.

6.3 No evidence that Mamadie Touré had influence over President Conté or Government officials

122. The Ministers of Mines' testimony Guinea refers to in its footnotes, in reality, supports BSGR's case.²⁴⁵ BSGR's witness testimony is taken out of context as explained above (see paras 9-12) and the only documentary evidence Guinea has, which is **PROTECTED** is not proof of Mamadie Touré's influence for the reasons set out above (see paras 44-46). Guinea is left with Mamadie Touré's untested and self-serving statements in the US and Swiss proceedings to rely upon (BSGR's PHB, Section III, paras 132-144). Guinea has not provided evidence that Mamadie Touré exerted pressure on Government officials to obtain mining titles for BSGR.

6.4 No evidence that BSGR bought IST's influence

123. This is yet another of Guinea's attempts to distort the evidence in these proceedings. The alleged contract with Pentler and any payments (of which IST states he did not receive even USD 1) have nothing to do with BSGR (see BSGR, PHB Section IV, paras 172-174). He was employed by BSGR and received a salary for the reasons explained by Avidan and consistently ignored by Guinea in these proceedings (see above paras 101-102). The bonus payment of USD 450,000 was a legitimate payment for the hard work he had performed like any other BSGR employee (BSGR PHB, Section IV, paras 179-180) to make the Vale deal happen. Not one of these alleged payments – if made at all – is direct evidence of corruption. Guinea failed to provide any evidence that IST exerted pressure on Government officials (see Section 6.5 below).

6.5 No evidence that BSGR made payments to IST to influence the President or other Government officials

124. BSGR did not make any of these payments to use IST to exert influence over the President, Mamadie Touré or any other members of the mining administration. The Ministers of Mines cannot testify to any pressure or influence IST exerted on them or the President (see BSGR PHB, Section III and above para. 42). Avidan's testimony with respect to IST is not what Guinea tries to imply (see BSGR PHB, Section III and para. 42(ii) above). Being of assistance in organising meetings; accompanying foreign businessmen to meetings as a local; understanding the local cultures, traditions and people; as well as understanding the applicable laws are all valuable services. Not only is this not evidence of corruption, Guinea has advanced no proof whatsoever for these allegations. Guinea fails to provide any

²⁴⁵ Guinea's PHB, Fn 521.

evidence that IST exerted pressure on Government officials to grant BSGR exploration and mining permits.

6.6 No evidence that BSGR bribed any public official to be granted the Base Convention and the Mining Concession

125. BSGR has demonstrated that (i) the payments to Thiam and Fofana were legitimate travel expenses (see above paras 73 to 76 and BSGR's PHB, Section III and IV, paras 185-187) (ii) the invitation to Steinmetz's daughter's wedding was not extraordinary (see above para. 75(iii), BSGR's PHB, Section IV, para. 187) and (iii) the payments to the Base Convention Commission are not evidence of bribery (see BSGR's PHB, Section III, paras 65, and 121-124). Guinea has failed to provide any evidence that Thiam or any member of the Base Convention Commission took a decision in favour of BSGR as a consequence of these alleged payments.
126. Conclusion (within the legal framework set out above): Guinea has failed to meet the required standard of proof for an allegation as serious as corruption. The threshold is high. Whatever threshold is applied, Guinea has not come close to it. But the higher threshold that should be applied in this case means Guinea's position is utterly hopeless.

VII. THE WITHDRAWAL OF THE MINING RIGHTS WAS NOT JUSTIFIED

7.1 The Technical Committee did not provide a fair forum in which to try the issues at stake

127. In a bid to defend the unlawful withdrawal of the mining rights from BSGR, Guinea dwells at length on the decision of the Technical Committee.²⁴⁶ Contrary to Guinea's allegations, BSGR has not dropped its claim that the process in front of the Technical Committee lacked procedural as well as substantive due process.²⁴⁷ As stated in previous submissions, the withdrawal decision was not justified, and it was also not rendered by an independent and impartial committee. This is why BSGR initiated these arbitral proceedings against Guinea. As has been demonstrated throughout these proceedings, BSGR has engaged with Guinea's allegations and demonstrated in this independent and impartial forum that it acquired its exploration and mining titles through legal means. As to Guinea's allegation that BSGR did not challenge Guinea's evidence during the Hearings,²⁴⁸ BSGR was not given the opportunity as not one of the members of the Technical Committee was presented by Guinea

²⁴⁶ Guinea's PHB, paras 484-517.

²⁴⁷ Memorial, Section 3.9.

²⁴⁸ Guinea's PHB, para. 485.

as a witness in these proceedings. With respect to BSGR's witnesses, Guinea did have the opportunity to ask questions on this matter, and BSGR's witnesses confirmed the position previously set out.

128. First, Cramer did not state that BSGR's dissatisfaction with the withdrawal of the mining rights resulted from a shareholders' conflict and not the irregularity of the process. This is nonsense and again, Guinea takes Cramer's testimony out of context.²⁴⁹ Cramer only sought to explain how he saw the relationship between BSGR and VBG in the context of the Technical Committee process.²⁵⁰ He did not mention, even once, that he considered the proceedings in front of the Technical Committee to be regular – quite the opposite.²⁵¹
129. Second, Cramer's position as to VBG in fact accords with Guinea's previous submissions in which it accepted that (i) during the period of the Technical Committee process, VBG was controlled by Vale; (ii) VBG repeatedly informed the Technical Committee that it did not have the knowledge to answer its questions; yet (iii) the Technical Committee responded that VBG was the only party to the process, and therefore the only party which should respond to its questions.²⁵² If VBG did acquiesce in the Technical Committee process, it did so only while at the same time confirming it could not reasonably respond to any allegations put to it. Furthermore, BSGR (and this Tribunal) now knows that at the time VBG apparently acquiesced in the Technical Committee process, Vale had already (in June 2011) been informed by Soros of *"Guinea's interest to develop the relationship with Vale"*, that *"the relationship with Vale should not be affected by the result of this investigation [into BSGR]"* and that *"[i]n this context it is necessary to open up a parallel channel of negotiation"* (i.e. without BSGR).²⁵³ Any position VBG then took in relation to the Technical Committee was infected by Soros' guarantees to Vale that the result would not affect its future in the country.²⁵⁴
130. Third, Cramer's statement that BSGR did not take the Technical Committee process seriously is not linked to the responses BSGR did provide to the committee. Cramer was explaining the context in which BSGR received the Allegations Letter. First, to BSGR, the allegations were outrageous in nature, and based in part on the report of a business

²⁴⁹ Guinea's PHB, para. 508.

²⁵⁰ Cramer/2/60/19 to 2/61/7.

²⁵¹ Cramer/2/71/13-16 (*"We didn't take it seriously because there was no genuine intent, it wasn't a proper committee, it wasn't being conducted properly. We felt that the head of the committee was a puppet."*).

²⁵² CMRG, paras 621 and 635 to 641.

²⁵³ Exhibit C-0238, page 6.

²⁵⁴ Cramer/2/58/25 to 3/59/4 (*"And the agenda that Vale was pursuing was not necessarily in the best interest of the partnership, but in the best interest of Vale, and therefore we were no longer speaking with one voice"*). Cramer/2/59/10-16: *"We felt – and we have a lot of evidence to believe – that there was a side-by-side deal between the Government of Guinea and Vale that they would not step up to the plate and protect the partnership; they would stay in the game, and that they would be allowed to stay in Guinea, have this asset, with BSGR out."*).

intelligence firm which "put together stories which are presented as facts".²⁵⁵ Second, notwithstanding that the Allegations Letter was stated to be confidential, it had been leaked to the press by Guinea and/or Soros before BSGR even received a copy.²⁵⁶ Third, contrary to Guinea's PHB, Cramer's statement that the Allegations Letter presented allegations as "facts" (and was therefore pre-judged) was not based on simply a "feeling".²⁵⁷ Guinea purposely did not put to Cramer in the Hearing the correct section of the Allegations Letter when (repeatedly) asking what his basis was for this statement in his witness statement.²⁵⁸ BSGR's Counsel was forced to interject, stating to Madam President that "I'm sorry to object, but these questions are being put on an unfair basis to the witness because he has not been shown the whole letter".²⁵⁹ When the correct section of the Allegations Letter was put before Cramer by BSGR's counsel, it was clear that Cramer's assessment that the Technical Committee had prejudged the conclusion of its investigation was based on the wording of the Allegations Letter itself.²⁶⁰

131. Fourth, as to BSGR's answers to the Technical Committee's allegations, contrary to Guinea's PHB, BSGR did deny the allegations of corruption.²⁶¹ Furthermore, Avidan's answer as to whether he did not disclose the bonus payment to the Technical Committee was clear and plausible.²⁶² The specific question put to VBG was whether IST had received "gifts and benefits".²⁶³ Avidan did not consider a bonus to be a gift or a benefit, or even part of IST's normal salary.²⁶⁴ If Guinea had wanted Avidan to disclose a bonus payment it should have been more specific in its allegations.
132. Fifth, alongside the Technical Committee process, Soros made representations to the Chairman of BSGR's PR company, FTI, about BSGR's apparent guilt, which led to FTI

²⁵⁵ Cramer/2/45/12 to 2/46/4.

²⁵⁶ BSGR's Memorial, paras 126-127; Cramer/2/37/11-24 ("And I'll take you back to how we became aware of the existence of these allegations in the first place: it was leaked to the press. The letter addressed to VBG -- of which we were a partner, but not the managing partner, at the time -- was leaked to the press. Me and some colleagues -- I and some colleagues were ambushed by a team of journalists who had this letter in their hand before it had been given to us. And in this very letter, once we got it, the Technical Committee talks about this being confidential information and it shouldn't be discussed with anybody. But yet the very people who had been involved in advising the Technical Committee on this letter had in fact leaked it to the press."). **PROTECTED**

²⁵⁷ Guinea's PHB, para. 514.

²⁵⁸ Cramer/2/26/20 to 2/27/6: Guinea put page 2 of Exhibit C-0053 to Cramer, and not page 7, which referred to the allegations as facts ("The **facts** suggest to the CTRTCM that (1) BSGR had the intention of acquiring rights to the mineral deposits in Simandou and Zogota by exploiting their influence vis-à-vis the officials of the Republic of Guinea...").

²⁵⁹ Wolfson/2/38/24 to 2/39/1; see also Wolfson/2/40/13-19.

²⁶⁰ Cramer/2/78/23 to 2/79/11.

²⁶¹ Guinea's PHB, para. 513; Exhibit C-0054, page 2 ("BSGR formally contests the claim that it made any payment, either directly or indirectly, to civil servants or to any other person in order to influence the government of Guinea"). See also BSGR's replies to allegations 10, 11, 12, 15 and 16, on pages 9 to 12 of Exhibit C-0054.

²⁶² Avidan/9/8/22 to 9/81/1 ("But I don't think I have to disclose the committee that each one of us had different bonuses, like a salary, so it was not exceptional to Mr Touré.").

²⁶³ Exhibit C-0054, pages 6-7.

²⁶⁴ Avidan/9/77/16-19 ("Q: Ok. That bonus, that wasn't part of his normal salary, was it; that was something special? A. No, it's like the rest of us: all of us got our salary and bonuses.")

cancelling its contract with BSGR.²⁶⁵ Later, FTI was forced to settle BSGR's claim for breach of contract, and pay BSGR a substantial sum in damages and costs.²⁶⁶ In addition, two of BSGR's employees had been arrested without charge and held in appalling conditions; Avidan had been declared a *persona non grata* by Guinea; the Government of Guinea unlawfully obstructed BSGR's works; and President Condé, Mohamed Fofana and Horton had made prejudicial statements to the press about BSGR.²⁶⁷

133. Against this backdrop, BSGR's reluctance to attend the Technical Committee's hearing was not surprising: it had good grounds to believe that it would not receive a fair treatment. These grounds were set out in detail in correspondence from BSGR and from the law firm Skadden to the Technical Committee.²⁶⁸ Having received advice as to the illegality of the process, BSGR felt that further participation in the process was unreasonable.²⁶⁹
134. It is surprising that Guinea places so much emphasis on the Technical Committee, which based its recommendation on 16 exhibits.²⁷⁰ This is in stark contrast to the hundreds of exhibits and oral testimony in front of this Tribunal. Given the seriousness of Guinea's allegations, BSGR has entrusted this Tribunal with the assessment of the evidence before it and the decision as to whether the recommendation by the Technical Committee to withdraw BSGR's mining rights was right or wrong.

VIII. BSGR'S CONSPIRACY CLAIM IS BASED ON CREDIBLE EVIDENCE

135. In Section VI of its PHB, Guinea describes BSGR's claims of a conspiracy as "*overly imaginative*", "*absurd*", "*multiple fables and stories [which] perfectly illustrate BSGR's propensity to manipulate the facts*", "*whimsical*", "*poor in evidence but rich in imagination*", "*not based on any credible evidence*" and "*far-fetched*".²⁷¹ Yet, as set out in BSGR's PHB Section VIII,²⁷² the opposite is true. Guinea's attempts to explain away the corruption of its own Government relies on wholesale misrepresentations of the evidence from the Merits

²⁶⁵ BSGR's PHB, para. 360(ix); Reply, Annex 1, para. 150(viii); CWS-7, para. 26; Libson/1/85/11 to 1/86/4; Cramer/2/71/25-76/9 ("*I mean, I cannot be clearer: we felt that this was not a genuine process, and it was funded and supported by people and organisations who were working against us, who had found us guilty and put out a smearing campaign in the public domain, who were cooperating with journalists, who were pursuing our reputation, who were undermining what we could do, who even approached, as I told you, our PR people who were helping us deal with the press and pulling out of a relationship with us at the moment of need.*").

²⁶⁶ Exhibit C-0028, para. 86; Exhibits C-0151 to C-0154.

²⁶⁷ Memorial, paras 114 to 119 and 129 to 134.

²⁶⁸ Exhibits R-0400; C-0072; C-0074; C-0075; C-0158.

²⁶⁹ Cramer/2/54//12-20 ("*A combination of the reasons that I've just stated: unsafe; that there was a lack of substance and sincerity behind the allegations; that the process in itself was illegal, because we had obtained, you know, advice from French lawyers saying that this was kind of a farce and this was not part of what was considered to be – it wasn't legally conducted. I think that's in my witness statement as well. We got a French expert legal opinion on this.*"); Exhibit C-0070.

²⁷⁰ Guinea's PHB, para. 488.

²⁷¹ Guinea's PHB, paras 518, 521, 538, 539 and 546.

²⁷² See also Reply, Sections 2.4 to 2.6 and Libson/1/70/23 to 1/74/7.

Hearing and on the record. Guinea's sloppiness in relation to the unambiguous evidence concerning the corruption of President Condé is reflected in its references in this section to President Conté, rather than Condé.²⁷³ This basic error sums up Guinea's approach to the evidence.

8.1 Payment by Rio Tinto of USD 10.5million to de Combret in order to achieve a settlement with the Government of Guinea

136. Para. 526: Guinea's claim that the de Combret payment was entirely unknown to President Condé is inconsistent with the evidence on the record. First, the contemporaneous emails between Rio Tinto executives suggest that President Condé was entirely aware that de Combret was acting on behalf of Rio Tinto.²⁷⁴ Second, there would have been no need for Rio Tinto to report itself to criminal authorities in three countries if its internal investigation did not reveal concerns that this payment was a corrupt payment. Given that de Combret was not a public official, for the payment to raise suspicions of corruption, there must have been a connection to the Guinean government. Third, the extensive media reporting at the time repeatedly described the payment as a "*bribery scandal*".²⁷⁵ Even Guinea accepts that the revelations were "*scandalous*".²⁷⁶

8.2 President Condé's attempt to extort money from BSGR

137. BSGR has already addressed the fallacy of Guinea's claims that President Condé's demand that BSGR pay USD 1.25 billion related to "*royalties or taxes due*". Guinea's PHB adds nothing to this analysis.²⁷⁷

138. Paras 534 and 535: Guinea claims that Avidan had "*no evidence*" for his statement that Soros asked VBG for USD 500 million to be paid "*through him*" (as quoted by Guinea) to settle issues with the Government of Guinea. But this entirely ignores Avidan's testimony which referred to Exhibits C-0234 and C-0238, both of which provide contemporaneous evidence for his statements.²⁷⁸ Exhibit C-0234 is the MOU between Open Society and VBG sent to Vale's general counsel by chris.canavan@soros.com, which requests an "*advance*

²⁷³ Guinea's PHB, paras 539 and 548.

²⁷⁴ Exhibit C-0204 ("*the result we achieved was significantly improved by Francois' contribution and his very unique and unreplaceable services and closeness to the President. He vouched for our integrity when it was needed...*"; "*Since the signing, Francois has helped me on a number of communication issues with the President and the Minister of Mines, which has been invaluable.*"; "*I am extremely worried if we lose the direct connection to the President that I have cultivated with Francois*") (emphasis added). It seems impossible that President Condé would not have known that that de Combret was acting on behalf of Rio Tinto when he was vouching for Rio Tinto or enabling a direct line of communication with Rio Tinto.

²⁷⁵ Exhibit C-0205. There are 51 references to "*bribery*" in relation to these payments in the coverage.

²⁷⁶ Rejoinder, para. 813.

²⁷⁷ Guinea's PHB, para. 533; BSGR's PHB, para. 360(viii); Reply, paras 243 to 247.

²⁷⁸ Avidan/9/168/19 to 9/175/19; Avidan/9/177/10 to 9/184/12.

payment of royalties" of USD 500 million. Importantly, recital B of the MOU refers to "ensuring Vale's [rather than VBG or BSGR's] successful long term investment in the country" (emphasis added). Exhibit C-0238 is Vale's internal emails over the same period, which reveal that at a meeting "with Soros,... he suggested that Vale should anticipate US\$ 250 M to the government" and that Soros told Vale that "it is necessary to open a parallel channel of negotiation" (i.e. without BSGR).

8.3 **Palladino, Mebiame and Och Ziff**

139. Paras 540, 541 and 545: Guinea claims that Cramer was "unable to identify any source" for his allegations concerning the "conspiracy between President Condé and the actors involved in the "Palladino matter".²⁷⁹ Yet, the quote included from Cramer in fact refers to the Hennig blackmail attempt and not the Palladino saga. This misrepresentation then forms the basis for Guinea's reference to "the weakness of his [Cramer's] testimony, which was hearsay". This is false. Cramer's testimony in relation to Palladino was compelling, and based entirely on documentary evidence on the record. In particular, Cramer referred to two Palladino agreements, a loan agreement (providing a 30% stake in the national mining company) and an option agreement (providing Palladino with a 49% in any state asset of its choosing).²⁸⁰ As the Mebiame complaint made clear, Mebiame and Hennig were then directly involved in the re-writing of the Mining Code, which provided for the state mining company to gain an automatic 15% free-carry in every mine in the country.²⁸¹ Reporting of the Palladino loan commented that its 30% stake in the state mining company (in addition to the 49% option) would potentially be worth billions, based on "Simandou alone".²⁸²
140. Para. 543: In relation to the criminal convictions of Mebiame and Och Ziff, Guinea claims that Cramer's "tirade" omitted key information and "knowingly distorts" the documentary record. The reverse is true. In trying to explain away the US authorities' convictions of Mebiame and Och Ziff, Guinea has submitted false evidence to the Tribunal.

- (i) Guinea states that Mebiame's plea agreement with Mebiame "only" concerns the

²⁷⁹ Guinea's PHB, para. 541.

²⁸⁰ Cramer/2/105/18 to 2/106/19; BSGR's PHB, para. 360(ii); Reply, paras 219 to 237; Exhibit C-0228, which contains the loan agreement at pages 1 to 15 (providing at clause 11.1 for a 30% stake in any subsidiary of the state mining company) and a previous memorandum of understanding as an annex, at pages 16 to 30 (French) and 31 to 46 (English) (providing at Clause 2.1 (pages 24 and 39) the "option" of taking 49% of the equity capital and voting rights of the state mining company "and" participation in the equity capital of "(i) any Affiliate of the GMC holding Mining Assets or (ii) any Mining Entity in which the State holds directly or indirectly State Participations.". Clause 2.4 also provided Floras Bell with a right of first refusal should Guinea wish to sell any State mining asset, which would have allowed Guinea to pass on BSGR's expropriated rights to Palladino had the loan not been cancelled). Floras Bell was the former name of Palladino (see C-0028, paras 54.1 – 54.3). Note, pages 47 to 108 of Exhibit C-0228 appear to be duplicates included in error.

²⁸¹ Reply, paras 195, 201-205; Exhibit C-0216, para. 41.

²⁸² Exhibit C-0314.

corrupt acts undertaken by Mebiame in Niger and Chad. This goes further than Guinea's own Rejoinder, which stated that the plea agreement "*primarily*" concerns Niger and Chad.²⁸³ Neither statement is referenced, because neither is true. The DoJ's information document accompanying the plea agreement (and dated the same day) includes multiple and serious references to Mebiame's corruption in Guinea, including corruption concerning "*Guinea Official #1*", who is President Condé, in return for "*special access to mining opportunities in Guinea*".²⁸⁴

- (ii) Guinea states that Mebiame's "*misrepresentations*" have been denied by Guinea. This, again, is entirely false. First, the DoJ's complaint against Mebiame – leading to the plea agreement – relied not only on Mebiame's interviews, but on contemporaneous emails in which Mebiame discusses his corruption in Guinea concerning "*Guinea Official #1*" and banking records showing the flow of at least USD 2 million to fund his corruption in Guinea. Guinea cannot deny the veracity of this evidence.²⁸⁵ Second, in its Rejoinder, Guinea in fact admitted that Mebiame had paid for Condé's use of a plane; that Mebiame wanted to help Condé during his 2010 presidential election; and that Mebiame accompanied Condé on an official visit to France.²⁸⁶ Again, Guinea's PHB mischaracterises its own prior submissions.
- (iii) Finally, Guinea states that the documents from the US authorities contain not a single reference to BSGR's mining rights. However, (i) the Mebiame complaint and plea agreement relate specifically to Mebiame making corrupt deals in Guinea in return for mining rights in Guinea; (ii) the press reports exposing the Palladino loan specifically linked the loan to the acquisition by Mebiame and Och Ziff of rights in Simandou;²⁸⁷ (iii) the DoJ established that Mebiame and Hennig drafted legal letters to existing rights holders, which explains why a letter to BSGR ostensibly from the Government of Guinea has only been located in English;²⁸⁸ and (iv) in a taped recording, Mebiame stated that the first "*case*"

²⁸³ Rejoinder, para. 841.

²⁸⁴ Exhibit C-0223, paras 13, 14, 16, 19, 22(c) and 22(i); Reply, paras 168-228; BSGR's PHB, paras 360(ii),(iii) and (iv).

²⁸⁵ BSGR Reply, paras 174, 175 and 193; Exhibit C-0216, para. 8 ("*The evidence of MEBIAME'S corrupt scheme includes, but is not limited to, business records obtained from the Hedge Fund [Och Ziff], e-mail messages obtained through court-authorized search warrants, corporate records, bank records, travel records, witness statements and MEBIAME's own voluntary admissions to U.S. law enforcement agents.*"); Exhibit C-0220, page 3 ("*The defendant [Mebiame] has at least three bank accounts in foreign countries, including in Cyprus, of which the government is aware. The government is aware of evidence that at least \$2 million flowed into these accounts related to the Guinea scheme alone.*").

²⁸⁶ Rejoinder, para. 843.

²⁸⁷ Exhibits C-0314 and C-0315.

²⁸⁸ BSGR Reply, paras 206 to 208.

given to him by President Condé was BSGR.²⁸⁹ There is a clear link between the convictions of Mebiame and Och Ziff and the treatment of BSGR by President Condé.

141. Para. 544: Guinea states that the Mebiame and Och Ziff convictions do not prove the conspiracy because they "*did not obtain any mining rights in Guinea*". Yet, this entirely ignores that the only reason the Palladino loan was cancelled in 2012 was due to negative press reports which "*indicated that the deal between the Guinean government and Coconspirator #1 was corrupt*".²⁹⁰
142. It is an inherent contradiction in Guinea's approach to evidence that in relation to BSGR, it relies on on-going investigations as evidence of BSGR's apparent guilt, notwithstanding that in the four years since the withdrawal of BSGR's rights, not a single BSGR employee or representative has been charged with any crime, let alone convicted.²⁹¹ Yet in relation to Mebiame and Och Ziff, who have been convicted of crimes, including corruption in Guinea involving President Condé, Guinea disputes (and mischaracterises) the clear evidence from the DoJ and SEC.

8.4 Soros

143. Paras 551 and 559: Guinea's position in relation to BSGR's apparent "*corruption*" (which is denied) pre-dating Soros' involvement is addressed in BSGR's PHB, para. 364. Similarly, Guinea's position on the payments made by Guinea to Mamadie Touré, again, adds nothing to the material on the record, and is addressed in BSGR's PHB, para. 135. Guinea has refused to acknowledge in its PHB that Mamadie Touré is currently in its pay – while at the same time relying on her partial statements to the Swiss prosecutor.

8.5 Mamadie Touré

144. In paras 561 to 568, Guinea attacks BSGR's witnesses' submissions on the motives behind Mamadie Touré's false testimonies. As set out in para. 139 of BSGR's PHB, Mamadie Touré made her statement in 2013 to comply with her obligations arising from her cooperation with the US government. She has refused to provide details of that agreement, but she still owns a house in Jacksonville, US; the Government of Guinea has not seized her assets in Guinea; Guinea has made multiple payments to her, both in 2013 and recently in relation to her Swiss testimony; and she remains a free woman.

²⁸⁹ Exhibit C-0135, page 6.

²⁹⁰ Exhibit C-0216, para. 42.

²⁹¹ Guinea's PHB, para. 365 and Fn 414.

8.6 Chain of custody and Michael Ostrove

145. In an attempt to paint BSGR as a wild conspiracy theorist, Guinea suggests that BSGR presented a further conspiracy theory based on Ostrove's role in the chain of custody of the Disputed Documents.²⁹² Guinea's submissions are misleading.
146. First, Guinea's analysis entirely ignores that BSGR's queries as to Ostrove's role were based on Ostrove's prior multiple misstatements as to the provision of the Disputed Documents to the FBI – and not on a "*mere explanation*" that Ostrove had scanned in those documents. See BSGR's PHB, paras 251 to 252.
147. Second, Guinea criticises BSGR for not instructing its expert, Radley, to "*verify whether the [Disputed] documents had been manipulated*". This ignores that (i) the party-appointed experts did not have access to the "*original*" documents and could not conduct their own inspections; (ii) the Terms of Reference provided only for the party-appointed experts to attend the inspection and comment on the Experts' report;²⁹³ and (iii) Guinea previously applied for BSGR's expert report not to be admitted, on the basis that even commenting on the Expert's report fell outside of the Terms of Reference, let alone verifying whether the documents had been manipulated. Guinea's application was rejected, as should its strange argument as to BSGR's instructions to Radley.
148. Contrary to Guinea's misleading submissions, BSGR's position as to the conspiracy against it is based on clear evidence. Guinea cannot provide explanations, and so instead has resorted to mischaracterising and/or ignoring the evidence.

IX. GUINEA'S COUNTERCLAIMS ARE WITHOUT MERIT

149. Guinea's counterclaims have to be dismissed in principle: as set out in BSGR's PHB and above, the evidence of the Merits Hearing has clearly established that BSGR did not acquire its exploration permits and mining rights through corruption.
150. As argued previously, first, BSGR is not the cause of Guinea's failure to develop its own natural resources (Section 7.1 of BSGR's Reply). Second, if Guinea had not deprived BSGR of its mining titles it would not have had to start any investigations for which it now claims costs (Section 7.2 of BSGR's Reply). Third, BSGR is not responsible for Guinea's tarnished image (Section 7.3 of BSGR's Reply). In addition:

²⁹² Guinea's PHB, paras 569 to 573.

²⁹³ Terms of References for the Tribunal-Appointed Experts, paras 17, 21 and 23.

9.1 Economic Losses

i. *Guinea's claim for compensation for alleged losses in Zogota is baseless*

151. Paras 585(i) - 598: Guinea's allegations, that it suffered losses due to the "*absence of development of the viable deposits in Zogota*", is nonsense and not supported by the evidence from the Merits Hearing:

- (i) BSGR was the only investor that applied for and was granted exploration permits in Simandou North and South.²⁹⁴ Guinea failed to demonstrate the opposite.
- (ii) BSGR had the technical and financial capacities to be granted the exploration permits in Simandou North and South (see above paras 66-71). In fact, Guinea itself relies on the geological analysis of BSGR's own geologist report and Ferreira to make the argument that Zogota was a viable deposit.²⁹⁵ It cannot argue on the one hand that BSGR did not have the technical and financial capabilities to develop Zogota and at the same time rely on BSGR's own exploration process, which is described in detail by Ferreira.²⁹⁶ It was because of BSGR's capabilities that the deposits in Zogota were found.²⁹⁷ It was a new iron ore deposit²⁹⁸ and neither BSGR, nor any other party, was aware of it as Guinea alleges.²⁹⁹ If BSGR had not discovered the deposits, Guinea would probably never have known about them.
- (iii) On the basis of the potential discovered, BSGR developed the Feasibility Study, which was one of the first of its kind in Guinea.³⁰⁰ On that basis, BSGR was granted the Base Convention and the Mining Concession.³⁰¹ This was before BSGR entered into a joint venture with Vale.

(iv) **PROTECTED**

The mine was opened up, the camp was completed, roads were constructed, and the railway

²⁹⁴ BSGR's PHB Section II, para. 14; Souaré/6/70/22-24.

²⁹⁵ Guinea's PHB, para. 590.

²⁹⁶ Ferreira/5/57/23-25 to 5/61/8.

²⁹⁷ Struik, CWS-2, paras 49 - 54, describing in detail how iron ore deposits in Zogota were discovered.

²⁹⁸ Ferreira/5/61/14-17 ("*And it could not have been assumed that the geologist went off, as so often you do, into the northern side and did you drilling there first, because it's easily accessible ...*").

²⁹⁹ Guinea's PHB, para. 593.

³⁰⁰ CWS-2, para. 68.

³⁰¹ CWS-2, paras 74 to 90.

³⁰² **PROTECTED**

was ready to transport the iron ore to Liberia.³⁰³

- (v) As to the viability of the project, this relates to the question of quantum, which is reserved for the second stage of these proceedings. BSGR agrees that, at the time, Zogota was a viable project. The second stage in this arbitration will show the value of this deposit and how much Guinea will have to pay to BSGR in compensation for the withdrawal of its mining concession in Zogota.

152. In light of the above and the evidence established during the Merits Hearing, this Tribunal is requested to dismiss this compensation claim for losses in Zogota as baseless. Even if BSGR had procured the exploration permits and mining concession through corruption (which is denied), Guinea failed to show how it would have suffered losses given that BSGR was the only company that ever applied for these exploration permits, discovered the iron ore and developed the mine. Without BSGR, Guinea would not know about this viable deposit and would be left with untouched and unknown natural resources of no value at all.

ii. *Guinea's compensation claim for losses in Simandou Blocks 1 and 2 are baseless*

153. Para. 586 (ii): Guinea's allegations are nonsense. First, BSGR did not procure the exploration permits through corruption (see BSGR's PHB, Section III). Second, BSGR had the financial and technical capabilities to explore Simandou Blocks 1 and 2 (see BSGR's PHB and above paras 66-71) and it concluded a joint venture partnership with Vale to develop the deposits until Guinea decided to withdraw the permits from VBG.

- (i) Paras 599 – 608: Guinea places great emphasis on the viability of the deposit in Simandou Blocks 1 and 2. As pointed out above and as confirmed by Guinea³⁰⁴, the quantification of the losses suffered by Guinea, which are related to the viability of the project in Guinea³⁰⁵ – are to be dealt with at the quantum stage.³⁰⁶ BSGR was aware of the mining potential in Blocks 1 and 2. It was well known after Rio Tinto had to disclose the estimated value after the hostile take-over attempt from BHP Billiton in 2007. Even if it was known that there was potential, up until BSGR was granted the exploration permits Rio Tinto had done nothing in Blocks 1 and 2.

- (ii) Para. 612: Guinea confirms that Vale invested large sums of money in the development of Simandou Blocks 1 and 2. This contradicts its allegations set out

³⁰³ Reply, paras 268 to 270; referring to the building of the Trans-Guinean railway; BSGR's Memorial paras. 108 and 122.

³⁰⁴ Guinea's PHB, para. 584.

³⁰⁵ Guinea's PHB, para. 601.

³⁰⁶ Guinea is extensively relying on Ferreira that Simandou Blocks 1 and 2 were viable. He did not confirm that.

in paragraph 586 (ii). In fact, VBG had completed and submitted its Feasibility Study for Blocks 1 and 2 in 14 September 2011, less than three years after it was granted the exploration rights, but this was never reviewed by the Government of Guinea. However, VBG had spent substantial sums of money to get to this point.

- (iii) Para. 613: It is not clear what point Guinea is trying to make by stating that BSGR's investment (at the exploration stage) was less than USD 20 million. First, spending USD 20 million on exploration work is still a substantial sum. (Guinea seems to forget that BSGR had at the time already spent about USD 100 million on Zogota³⁰⁷). Second, it was more than Rio Tinto had ever spent on the exploration in Blocks 1 and 2. Third, it is not clear what point Guinea is trying to make by referring to Struik's quote that Vale was taking over the development after the JV was concluded. Whether it was BSGR or VBG (BSGR was a 49% shareholder) that invested in the development, is irrelevant. The important point is that Guinea itself confirms that Simandou Blocks 1 and 2 were developed after over 10 years of no development under Rio Tinto.
- (iv) Paras 617 - 622: Guinea – quite bizarrely – suggests that it could have reached an agreement with Rio Tinto that had allowed Rio Tinto to develop 50% of Blocks 1 – 4. It is astonishing how Guinea can seriously – against the evidentiary background – suggest that Rio Tinto would have "*actively developed*" these blocks.³⁰⁸ The reality is that Rio Tinto refused to further invest in these blocks.³⁰⁹ Furthermore, it took Rio Tinto until 2016 (i.e. 19 years, in contrast to BSGR's 3 years) to submit a feasibility study for the remaining Blocks 3 and 4, which it only managed because it had entered into a joint venture with Chinalco in 2010. Finally, in November 2016, Rio Tinto left Guinea after it had sold its stake to Chinalco (for USD 20 billion) after writing off its investment in Simandou on diminished prospects of it being developed anytime soon.³¹⁰
- (v) Para. 625: It has been established and confirmed by Nabe³¹¹ that there was only

³⁰⁷ BSGR's PHB, para. 24. The exact amount invested at this stage will be determined in the second stage of these proceedings.

³⁰⁸ Guinea's PHB, para. 622.

³⁰⁹ Exhibit C-0181.

³¹⁰ Exhibit C-0205, page 195 ("*Last week [November 2016] Rio Tinto agreed to sell its stake in the \$20 billion project to Chinese state-owned Chinalco, after writing off its investment in Simandou earlier this year on diminished prospects of it being developed anytime soon.*").

³¹¹ Guinea's PHB, para. 625.

one other company interested in the exploration permits for Blocks 1 and 2 – Africanada – which was not the more qualified operator as Guinea seems to insinuate. The reality is that Guinea cannot provide any other name of the "several mining companies" that had expressed an interest in Simandou Blocks 1 and 2 at the time. Guinea tries to confuse the picture by quoting Struik in this context.³¹² Struik refers to companies that were interested in entering into a joint venture agreement with BSGR and not companies that were interested in acquiring exploration permits

- (vi) Guinea's point in para. 627 does not make sense: it is irrelevant which company was potentially interested in "developing large projects in Guinea" and has no bearing on Guinea's unsubstantiated compensation claim.³¹³

154. On the basis of the evidence established during these proceedings, in particular, during the Merits Hearing, it is clear that Guinea's compensation claim with respect to Simandou Blocks 1 and 2 must fail. Even if BSGR had procured the exploration rights through corruption (which is denied), Guinea failed to prove that it suffered losses. The reality is that there was no other company that would have taken Simandou Blocks 1 and 2 to any further stage of development than BSGR and VBG. Guinea's allegations are based on speculation only.
155. Guinea has provided no further detail in relation to its claim about the investigation costs caused by BSGR's alleged corruption in its PHB. BSGR refers to Section 7.2 of its Reply in this respect.

9.2 Non-Economic Losses

156. Paras 630 – 632: BSGR has addressed this allegation in detail in Section 7.3 of its Reply. Guinea is concerned about its negative perception in the world.³¹⁴ This is, despite Guinea's insinuations, not BSGR's fault. The information Guinea is so worried about is simply an honest account of the actions taken by a corrupt government. In addition, BSGR had no role in the investigations into and convictions of Mebiame and Och Ziff brought by the DoJ and SEC; the press exposure of the Sable Mining, Rio Tinto and Bolloré scandals; and the Getma arbitration – all of which (rightly so) caused reputational damage to Guinea and President Condé. This has been set out in detail in BSGR's Reply, Sections 2.4 to 3.6,

³¹² Guinea's PHB, para. 626.

³¹³ Guinea's PHB, para. 627.

³¹⁴ Guinea's PHB, para. 583.

BSGR's PHB paras 357-366 and above in –Section VIII. Finally, Guinea fails to provide any legal basis on which this Tribunal would be able to award moral damages.³¹⁵

X. CONCLUSION

157. Millions of words have been said and written about this case. There are over 120,000 words in both sets of PHBs alone. The Tribunal has the unenviable task of picking its way through these, the Memorials, the witness statements, the underlying evidence and the Hearing transcripts. So many words create a lot of distractions. There is no substitution for, or avoiding of, the detailed and forensic examination of the main thoroughfares and byways of these proceedings. But, having navigated its way through the material, the Tribunal will see clearly – if it has not done so already – that: BSGR was awarded its rights legitimately and those rights were then unlawfully expropriated. That was BSGR's case on day one. It is BSGR's case today. It is a case that BSGR has overwhelmingly and compellingly proved.

XI. REQUEST FOR RELIEF

158. For these reasons, and, on the basis of all of the material in these submissions and in these proceedings, BSGR repeats its request for relief, as set out in paragraphs 370 and 371 of its PHB.

Signed



Mishcon de Reya LLP

Submitted for and on behalf of BSG Resources Limited (In Administration), BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL

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**Karel Daele
James Libson
Mishcon de Reya LLP
Africa House
70 Kingsway
London WC2B 6AH
Tel: +44 (0) 203 321 7060
Fax: +44 (0) 203 761 1856
Counsel for the Claimants**

³¹⁵ Reply, para. 495.