Committee’s decision in the case of
Yansane v The Sunday Times

The complainant, who is the Minister of State for Mining & Technology in the Republic of Guinea, complained through representatives about an article which he considered to have been inaccurate and misleading in breach of Clause 1 (Accuracy), and Clause 2 (Opportunity to reply), of the Editors’ Code of Practice. The article was about the dispute between Rio Tinto, the Government of Guinea and BSGR (BSG Resources) – a company owned by Beny Steinmetz – over mining rights in the Simandou region, in the south of Guinea. The complainant expressed concern that the Guinean government had not been contacted before the article’s publication, and alleged numerous inaccuracies, which the Committee now turned to address.

The article reported that Rio Tinto’s licences to the entire Simandou range had been “expropriated” by the Guinean government, and that the company later paid $700m to recover half the rights. The complainant said that this information was inaccurate because Rio Tinto had half – and not all – of its licences revoked – rather than “expropriated” – because it failed to meet the requisite investment targets, and because the $700m payment by the company was, therefore, made to secure its remaining rights, rather than to recover them. The newspaper said that there had been no complaints about its previous reporting on this point, some of which also stated that Rio Tinto had lost all of its rights. For this reason, it had not contacted the Guinean government for comment before the article’s publication. While the Committee noted this position, however, the article was clearly about a contentious matter, and it would therefore have been appropriate for the newspaper to have contacted all directly interested parties for comment beforehand (if for no other reason, than to confirm the accuracy of the latest developments involving BSGR). The Committee considered that the newspaper had failed to take care not to publish inaccurate information, with the result that there had been a breach of Clause 1 (i) of the Code.

Under the terms of Clause 1 (ii), significantly misleading information must be corrected promptly, and with “due prominence”. While the information about Rio Tinto was part of the extensive background to the Simandou disputes – rather than the main focus of the article, which was BSGR’s objection to the revocation of its licences – the inaccuracies suggested that the Guinean government had divested the company of the entirety of its interest. This basic factual error was clearly misleading, and the newspaper offered to publish a clarification which made clear that while it had “reported that the Guinea government had earlier “expropriated” [the] rights from Rio Tinto and that Rio Tinto had paid $700m to the government to “recover” the remaining 50%”, the payment was actually “to settle outstanding issues between Rio and the Guinea government and to secure the rights”. The Committee was satisfied that the prompt publication of this wording would be sufficient to meet the newspaper’s Clause 1 (ii) obligations.

The Committee turned to address the newspaper’s reporting of the latest developments in the Simandou case, involving Beny Steinmetz and BSGR. The article reported that, “after an independent panel alleged that Steinmetz had acquired the rights [to Simandou] through corruption”, the Guinean president had cancelled them. The complainant noted that the rights were actually held by a joint venture, involving the Brazilian company Vale, and that he had cancelled them, not the Guinean president. Where the article focused on Steinmetz’s decision to challenge the revocation of the licences, the Committee was satisfied that readers would not have been significantly misled by the inaccuracies on these points, although it welcomed the newspaper’s willingness to correct them nonetheless. There was no breach of the Code.

Following the reported revocation of BSGR’s rights to Simandou, the article reported that “[l]ast week BSGR filed a case in the International Centre for Settlement of Investment Disputes” (ICSID). Both parties appeared to accept that, while a case had not actually been filed with the ICSID, Steinmetz’s legal representatives had written to the Guinean government, requesting settlement talks, and making clear that Mr Steinmetz would pursue some sort of litigation in their absence. The main point, therefore, was that Steinmetz was challenging the Guinean government’s decision, and that a process of dispute
resolution had been initiated. The Committee was satisfied, therefore, that readers had not been significantly misled on this point.

Finally, the Committee noted the complainant’s position that the newspaper should have made clear that BSGR had accepted that Frederic Cilins acted as its agent in acquiring the rights to Simandou, and that Mr Cilins had subsequently been convicted of obstruction of justice (“Last year the FBI recorded Frederic Cilins, an agent claiming to work for Steinmetz, offering millions of dollars to the former wife of the dictator who gave BSGR the rights if she handed over allegedly incriminating documents”). The Committee agreed, however, that this formulation suggested that BSGR accepted that its representatives had engaged in fraudulent conduct, and where this was not the case this additional information would potentially have misled readers. There was no breach of the Code on this point.

The terms of Clause 2 (Opportunity to reply) state that a “fair opportunity for reply to inaccuracies must be given when reasonably called for”. The newspaper had offered to publish a clarification on the points in the article which were significantly misleading, and the Committee had not established that the remaining information was significantly misleading. This was not a case, therefore, where an opportunity to reply was reasonably called for.

Reference no. 143188