

**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/I4/22**

**BETWEEN:**

**BSG RESOURCES LIMITED**

**(Claimant)**

**-v-**

**THE REPUBLIC OF GUINEA**

**(Respondent)**

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**First Witness Statement**

**DAG LARS CRAMER**

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I, **DAG LARS CRAMER**, of 7 Old Park Lane, London W1K 1QR, with date of birth 29 July 1962 will state as follows:

**A. INTRODUCTION**

1. I am the Chief Executive Officer (CEO) of Onyx Financial Advisors (UK) Limited ("Onyx"), a management services and financial advice company which is engaged by BSG Resources Limited ("BSGR") in the UK. Onyx has acted as BSGR's representative in the UK since 20 May 2005, providing management, accounting, investment advisory and public relations services.
2. I make this statement in relation to the claim by BSGR against the Republic of Guinea ("Guinea"). Save where I indicate otherwise, the facts and matters set out in this statement

are based on my first-hand knowledge of the events in question.

3. This witness statement has been prepared with the assistance of BSGR's lawyers, Mishcon de Reya. I have refreshed my memory by looking at correspondence and other documents from the relevant time.
4. It may be helpful if I briefly explain what I mean when I refer to the 'BSG group of companies'. Mr Steinmetz is a beneficiary of a Lichtenstein foundation called the Balda Foundation ("Balda" or the "Balda Foundation"). Balda indirectly owns a group of companies whose businesses focus on resources, diamonds, real estate and capital markets. These are what I refer to as the 'BSG group of companies' or the 'BSG group', although there is no legal entity by that name. BSGR is the company in that group which ultimately owns all the resources projects.

## **B. MY BACKGROUND AND ROLE IN THE BSG GROUP**

5. My background is in finance and corporate finance. In 1989 I joined Anglo American Corporation ("Anglo American") as a management trainee, and was with them until 2003. During my time there I held various senior roles within the finance division of the organisation, and ultimately became its Executive Vice President. I also had responsibility for the group's risk management activities after its listing in London. In 2003, I left Anglo American to join BSG and Onyx. Onyx was the corporate services company which provided management services to the BSG group.
6. I joined the BSG group of companies in September 2003. My main role was to be responsible for the investment activity of the BSG group, including all the trading, liquid instruments and financial markets activity. Originally, these activities were carried out through a number of different companies. When I joined, I consolidated all the various investment activities into BSG Capital Markets and became its CEO.
7. Another important part of my role was to help to introduce additional corporate discipline to what was already then a large organisation, but one which functioned to a certain extent as a family office. This meant, firstly, making sure that the management services that Onyx Financial Advisors Limited (a BVI company) was providing to the Balda Foundation were being provided efficiently, and, secondly, working to streamline the structure of the various companies. The BSG group had been growing organically for some time and as a result the structure needed rationalisation. Initially, I set up Onyx in London and then became its CEO.

8. Between 2003 and 2007 I was largely focussed on the investment activity of BSG Capital Markets. At that time, the markets were booming and we worked hard to capitalise on that with some success. In 2008, when the financial crisis hit, my role within the BSG group expanded to include providing financial and investment advice to many of the BSG companies which were struggling in the very difficult economic environment.
9. From there, my role has developed into more of a CEO role for the BSG group generally, although I hold this title only in respect of the duties that I perform through Onyx and BSG Capital Markets. I am also on the board of directors as a non-executive director of the main BSG group operating companies, BSGR and BSG Real Estate.

### **C. ONYX**

10. Throughout the time period relevant to these proceedings, 2005 to 2013, I was a shareholder and then the sole owner of the Onyx group of companies. I refer the Tribunal to the structure chart of the Onyx group,<sup>1</sup> which is correct as at 31 December 2014. Onyx Financial Advisors Ltd, the Onyx group holding company, was under contract to the Balda Foundation to provide management services to the operating companies in the BSG group. The Balda Foundation is certainly the Onyx group's largest client, although it is not its only client. As CEO of Onyx I am in charge of ensuring that all the management, accounting, advisory, public relations and other services are being provided efficiently and properly to the BSG group operating companies as required.
11. I am also responsible for ensuring that the Balda Foundation receives the information it needs from each of the operating companies in a bi-annual report. Twice a year I attend the Balda Foundation board meetings and update the board with accounts, operational reviews, performance and finances for each of the subsidiary companies. We discuss deal flow in the companies generally and also review the mandates to ensure all the companies are acting within their respective mandates and to see whether any of the mandates should be amended. I put this structure in place in order to allow the necessary information to be fed up to the Balda Foundation. I also built up a team within Onyx to work on the financial information. The need for regular reporting was also impressed on all the BSG group companies.

### **D. THE GUINEA PROJECT**

12. As CEO of BSG Capital Markets and Onyx, my role never included the day to day running

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<sup>1</sup> Onyx group structure chart dated 31 December 2014 (Exhibit C-0146).

of operations on the ground in Guinea. Until he left at the beginning of 2007, BSGR's then Chief Executive, Roy Oron, was in charge of the day to day running of BSGR, including the Guinea project, and he reported on the various projects to the BSGR board at its meetings. I became a non-executive director of BSGR in 2004 or 2005, and my involvement in the project was from then limited to updates given to the board by Mr Oron or, once he had left, from Mr Struik (CEO of BSGR Mining and Metals, which is a division of BSGR) and Yossie Tchelet, who was the finance director for BSGR.

13. At the beginning of 2007, Roy Oron left BSGR. Following this, the structure and organisation of the company changed slightly. I was aware that Mr Struik and Asher Avidan (who was hired in June 2006 to manage on-the-ground operations in Guinea) took over the day to day running of the Guinea project and, partly as a result of BSGR now being wholly owned by the BSG group of companies (Mr Oron had been a shareholder until his resignation), there was more visibility within the group of BSGR's work. However, and as I explain above, the day to day workings of BSGR's projects remained outside of my scope of responsibility and expertise – between 2003 and 2007 I was working almost exclusively on BSG Capital Markets projects and Onyx matters. What I knew of BSGR's project in Guinea came solely from the updates provided to the board.
14. In 2008 I became more involved with BSGR's projects, mostly because they were becoming increasingly problematic as a result of the worsening economic situation and BSGR therefore required more financial advice in relation to them. As the person within the group with the most relevant corporate and financial experience, I was asked to provide advice more generally across the BSG group companies as to financials and costs. Indeed, as the credit crunch developed I became increasingly concerned about access to liquidity and the financial position generally across all the group businesses, because everywhere credit lines were being reduced or withdrawn and this could obviously have a huge effect across the whole group. It was at this stage that my role developed into more of a CEO role within BSGR. Although from that point I took more of an interest in BSGR's finances and how it was funding its various projects, I still had no part in what was going on on the ground in Guinea.

#### **E. THE REMOVAL OF BSGR'S MINING RIGHTS IN GUINEA BY THE RESPONDENT**

15. I believe that BSGR has fallen victim to a complex conspiracy to remove its mining rights as a result of Alpha Condé taking power in Guinea in 2010. From this point onwards, my involvement in matters relating to BSGR's interests in Guinea increased, to manage the legal

and communication issues facing BSGR which emerged as a result of the conspiracy.

16. There have been widespread allegations about how President Condé came to power and his debts to those who (illegally) assisted him to do so. I have described matters relating to President Condé's climb to power, the allegations of vote-rigging and his subsequent need to remove BSGR's rights in some detail in my statement dated 25 November 2014 to the English High Court in respect of BSGR's judicial review application (the "Cramer Judicial Review Statement").<sup>2</sup> I respectfully refer the Tribunal to sections D to L of that statement. I reconfirm that the facts stated in that statement are true and expand upon three examples below.

### **The Walter Hennig / Asher Avidan meetings**

17. In March and April 2012, a series of meetings took place between a South African businessman called Walter Hennig and BSGR's Mr Avidan. The meetings were set up as a result of a request from Lloyd Pengilly, who is the former J.P.Morgan Chairman of Africa and was at the time a key member of their metals and mining banking team. Mr Pengilly is a formidable and influential player in African mining and the BSG group had a regular dialogue with him because the group then banked with J.P.Morgan. BSGR was not inclined to take meetings for no apparent reason with unknown South African businessmen, even when the request to do so came from Mr Pengilly. Mr Pengilly, however, repeated his request several times, and eventually brought it up in a meeting with Mr Steinmetz, and Mr Avidan was then asked to meet with Mr Hennig.
18. I did not attend the meetings myself, but was aware of them at the time and discussed them afterwards with Mr Avidan. An account of the meetings, as well as references to the transcripts from them, is included in paragraphs 35.7 to 35.10 of the Cramer Judicial Review Statement.<sup>3</sup> During the meetings, Mr Avidan told me, Mr Hennig seemed to be attempting to blackmail Mr Avidan by producing documents and contracts that he said evidenced that BSGR had obtained its mining rights illegally. Mr Avidan explained to Mr Hennig (and to me when describing the meeting) that the contracts Mr Hennig had produced were forgeries, and had been used before by local people in Guinea in other attempts to blackmail the company.

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<sup>2</sup> Witness Statement of Dag Cramer in support of BSGR's Judicial Review Application dated 25 November 2014 (Exhibit C-0028).

<sup>3</sup> *Ibid.* paras 35.7 to 35.10; Memorandum of meeting of 20 March 2012 (Exhibit C-0106); Transcript of meeting of 28 March 2012 (Exhibit C-0107); Transcript of meeting of 29 March 2012 (Exhibit C-0108); Transcript of meeting of 1 April 2012 (Exhibit C-0109).

19. Following Mr Avidan's meetings with Mr Hennig, Mr Avidan explained to me that previous attempts to blackmail BSGR had been made by individuals in Guinea and that these had been dealt with at the relevant time. As Mr Avidan explained, this was not unusual in a very underdeveloped and deprived country such as Guinea. Mr Avidan explained that the approaches had all been dealt with locally and had not been considered serious.
20. Given, however, that this most recent attempt had been made in London, by a South African businessman in a meeting that had been set up through a very senior and influential individual who knew the mining business well, it sparked understandable corporate concern and was investigated by BSGR. We took legal advice on the attempt and we also conducted an internal investigation to understand what the basis of these allegations was and whether there was any truth in them. I am aware from the results of the investigation that Pentler Holdings Limited ("Pentler") participated in the investigation and that it did not discover anything untoward. It was at this point that I first heard of Pentler – I was told that they had introduced BSGR to Guinea and that they were accordingly given a shareholding in the company. As far as I am aware, the conclusions of that investigation remain accurate.

#### **The Palladino affair**

21. The Cramer Judicial Review Statement and its exhibits explain and provide evidence in support of BSGR's belief that the removal of its exploration and mining rights was a politically motivated manoeuvre of President Condé, who was in debt to various third parties which had assisted him in stealing the Presidential election. Mr Hennig's blackmail attempts in his meetings with Mr Avidan are themselves evidence of this conspiracy. Mr Hennig was interested in what mining rights President Condé had at his disposal after his election because he and interests linked to him had agreed to provide significant funds to President Condé, as well as assisting in arranging for a South African company called Waymark Infotech and/or the South African Secret Service, to rig the presidential elections in Mr Condé's (as he was then) favour. In return, Mr Condé agreed that when he became president he would grant Mr Hennig and his associates shares in the mining assets of Guinea, including in Simandou.
22. Pursuant to this agreement, Mr Hennig secretly executed contracts with the GoG on behalf of his company, Palladino Capital 2 Limited (formerly Floras Bell), whereby those companies were granted very large shares in a new Guinean mining company established by President Condé (called "Soguipami"). Palladino Capital 2 Limited agreed in return to loan the GoG US\$25 million, which money was to go to Soguipami. The contract with Palladino Capital 2 Limited was discovered (notwithstanding a confidentiality clause in the agreement) by the

*Sunday Times* in London and exposed on 3 June 2012.<sup>4</sup> Following this exposure, the GoG was forced to return US\$25 million to Palladino Capital 2 Limited. The remainder of the funds provided by the Walter Hennig Group were apparently not returned.

23. In order to obtain the funds and/or mining rights to pay back Mr Hennig, President Condé instigated a review of all the mining licences in Guinea. Before any review at all, however, companies holding those licences were approached and asked to make huge payments in order to keep their rights. Rio Tinto, for example, paid US\$700 million in order to hold on to its existing rights over Simandou Blocks 3 and 4. I understand from what I have been told by Mr Steinmetz and Mr Avidan, that President Condé approached BSGR with a similar offer in which he said that in order to keep the mining rights, BSGR must pay the GoG 50% US\$1.25 billion. This 'offer' was rejected.

### **Mr Soros's use of his influence over others to harm BSGR**

24. It is clear to me that President Condé then acted in concert with his friend and supporter George Soros to seek to undermine BSGR and make it seem like it had attained its mining rights illegitimately. Mr Soros supported President Condé's apparent attempts to 'review' the Guinean mining industry and also had a personal obsession with BSGR and was himself determined to ensure that BSGR's rights in Guinea were withdrawn by the GoG. The entity holding these rights was BSGR Resources (Guinea) Sàrl ("BSGR Guinea"). Following a joint venture between BSGR and Vale S.A. in 2010, BSGR Guinea was renamed "VBG – Vale BSGR Guinea". However, for the sake of consistency, I will continue to refer to the company holding the rights as BSGR Guinea.
25. In particular, Mr Soros used his personal relationships with other influential people to further assist President Condé and the Committee appointed by him to make and propagate their allegations against BSGR. This included using Lord Mark Malloch Brown ("MMB"), a former British Government Minister and a man of considerable power and influence. MMB was the Chairman of Europe, Middle East and Africa for FTI Consulting LLP (formerly Financial Dynamics) ("FTI"), a communications consultancy which BSGR had instructed to defend and protect its interests. MMB was pressurised by Mr Soros to force FTI to resign the BSGR account and indeed did so.
26. I can explain this in more detail as follows:

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<sup>4</sup> The *Sunday Times*, "Secret deal threatens big miners; BHP Billiton and Rio Tinto at risk after shadowy middleman strikes backdoor pact in Guinea", dated 3 June 2012 (Exhibit C-0144).

- 26.1 From May 2009 until 14 November 2012, BSGR was a client of FTI and had instructed it pursuant to a contractual retainer to defend and protect BSGR's interests following the allegations regarding its interests in Guinea.
- 26.2 MMB was the Chairman of EMEA for FTI. In September 2014 he stood down from this role and became a "Special Adviser" to FTI. He was previously a Cabinet Minister in Gordon Brown's Government and worked under Kofi Annan in the United Nations as Administrator of the United Nations Development Programme; Chef de Cabinet to Mr Annan; and, briefly, as the UN's Deputy Secretary-General. He is also a close friend of Mr Soros, and has been for around 25 years. MMB was Deputy Chairman of George Soros Asset Management and sits on the board of several of the NGOs sponsored by Mr Soros.
- 26.3 On 14 November 2012, FTI terminated its contract with BSGR with immediate effect. It wrote a very short letter, giving no reasons for termination, save the last sentence which read "*circumstances have created a business conflict which cannot be allowed to continue.*"<sup>5</sup>
- 26.4 I understood from FTI that it was MMB who decided that FTI should terminate the contract with BSGR because Mr Soros had exerted pressure on MMB to do so. In particular:

26.4.1 On 29 October 2012, Mr Brewerton (a Managing Director of FTI) told me that:

- (a) "*George Soros had personally requested directly of [MMB] that Financial Dynamics [FTI's former name] cancel its contractual arrangements with BSGR*"; and
- (b) The reason for this request by Mr Soros was "*based on several unspecified allegations put forward to MMB about the integrity of BSGR's business practices but also a specific claim by George Soros that BSGR had organised the assassination attempt of the President of Guinea Alpha Condé which took place in July 2011*".<sup>6</sup>

26.4.2 On 12 November 2012, I received a telephone call from Mr Brewerton in which he said that FTI could "*no longer maintain a business relationship with BSGR*" and that he and Mr Waples (FTI's Senior Managing Director, UK Head of Strategic Communications and Mr Brewerton's manager) would meet with me that day to

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<sup>5</sup> Letter from FTI Consulting to Dag Cramer dated 14 November 2012 (Exhibit C-0147).

<sup>6</sup> Emails from Dag Cramer to Asher Avidan, Benjamin Steinmetz and David Kavanagh dated 13 and 14 November 2012 (Exhibit C-148) p.2.



discuss this.<sup>7</sup> During that meeting, Mr Waples confirmed to me that:

- (a) Mr Soros had over the prior month frequently called to exert pressure on MMB to cancel the contract;
- (b) Mr Soros had informed MMB that if he did not get FTI to act in accordance with his request, MMB ran the risk of "*becoming the story*";
- (c) MMB had a close relationship with Mr Soros and was "*on the board of one of his companies*" (Mr Waples suggested that MMB's decision was based on personal economics and bias as a result of that relationship);
- (d) Mr Soros had a personal obsession with BSGR and was determined to ensure that BSGR's mining licence was withdrawn or cancelled; and
- (e) He believed that the recent negative media coverage about BSGR was being promoted by Mr Soros.<sup>8</sup>

26.4.3 Mr Brewerton and Mr Waples both said that they did not agree with MMB's decision to cancel the FTI contract, but they had no choice since it was a direct instruction from MMB, who was the Chairman of the part of the business they worked in.<sup>9</sup>

26.4.4 Later the same day I had a further meeting with Mr Brewerton, in which he additionally explained that MMB or Mr Soros had also provided information about BSGR and its relationship with FTI to a journalist at the *Financial Times*, Helen Thomas.<sup>10</sup> Ms Thomas had been involved with articles making allegations against BSGR. Mr Brewerton explained that Ms Thomas was aware of FTI's intention to cancel the FTI contract, and had been aware of that as at 5 November 2012 (when FTI released a press statement on behalf of BSGR), as she had responded to the press statement from FTI that day to say that she was surprised that BSGR was releasing this statement as she had been told that FTI would no longer be working for BSGR. Mr Brewerton told me that, in his opinion, that information can only have come from Mr Soros.

26.4.5 Following these conversations I received a letter from MMB on behalf of FTI dated

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

14 November 2012, in which he formally resigned the BSGR account on behalf of FTI.<sup>11</sup>

26.4.6 On 19 November 2012, I met with MMB to discuss FTI's resignation and the reasons for it.<sup>12</sup> In this meeting MMB denied that Mr Soros had put pressure on him to cancel the account, and denied that Mr Soros told him that BSGR had been involved in an assassination attempt on the President of Guinea (instead suggesting that this information had come from "old spies" who were not reliable).

26.4.7 I was then, and remain, unconvinced by this account from MMB of what happened. The inconsistencies between what MMB and his FTI colleagues said about Mr Soros' involvement strongly indicate to me that MMB was seeking to hide the true extent of Mr Soros's involvement, including that Mr Soros had made very serious and untrue allegations regarding BSGR in order to force a cancellation of its retainer with FTI. The termination of the relationship with FTI left BSGR in a very difficult and exposed position at a crucial time. Even MMB admitted on 19 November 2012 that "*we've left you up a creek without a paddle.*"<sup>13</sup>

26.4.8 In that meeting, however, MMB did nevertheless admit that:

- (a) FTI's refusal to act for BSGR was "*partly about*" Mr Soros;<sup>14</sup>
- (b) he had repeated the rumours regarding the assassination attempt internally at FTI;<sup>15</sup> and
- (c) he had spoken to Mr Soros about BSGR.<sup>16</sup>

26.4.9 Notably, MMB explained to me that his relationship with Mr Soros was so close that MMB was in charge of funding the very NGOs which were building a case against BSGR:

*"I've been part of the funding decision by which we fund Global Witness. I, you know, have been, you know also approved the funding for, you know, the other transparency organisations of which there are Revenue Watch. There are two or three of them that*

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<sup>11</sup> Exhibit C-0147.

<sup>12</sup> Transcript of meeting between Dag Cramer and Lord Malloch-Brown dated 19 November 2012 (Exhibit C-0149).

<sup>13</sup> *Ibid.* p.3

<sup>14</sup> *Ibid.* p.6

<sup>15</sup> *Ibid.* p.8

<sup>16</sup> *Ibid.*

*have been involved in this Guinea issue... so yeah if you want to call it personal conflict it is a personal conflict.”<sup>17</sup>*

26.4.10 In the same meeting MMB also admitted to me that what Mr Soros's NGOs and supporters had done was to "key this thing up [i.e. the investigation of BSGR] for the committee to review."<sup>18</sup> I understood this to mean that Mr Soros and/or his connected interests had gone about deliberately collecting information that might harm BSGR and providing it to the Technical Committee in Guinea with the intention that the subsequent review would result in BSGR Guinea's exploration and mining rights being removed.

26.4.11 I later found out, as a result of documents provided to Mr Steinmetz following a Data Protection Act ("DPA") request he made to FTI, that MMB had disclosed to the Open Society Institute that FTI had terminated its retainer with BSGR, even before that issue had been discussed with BSGR itself. That information was not in the public domain and was confidential, especially given the potential harm it could cause to BSGR, and even more so given that the Open Society Institute was engaged in a campaign against BSGR (or at the very least was funding organisations, such as Global Witness and Revenue Watch, which were actively seeking to discredit BSGR and otherwise harm its reputation). On 2 November 2012, MMB sent an email to Kim Forepaugh of the Open Society Institute saying that:

*"I was wrong when I said FTI was no longer working for Steinmetz I am sorry to say on checking that we [FTI] are.”<sup>19</sup>*

26.4.12 Emails disclosed by FTI in response to Mr Steinmetz's DPA request also showed that MMB had:

- (a) Asserted internally in FTI on 4 April 2012 that Mr Steinmetz's "inside Africa transactions" were "corrupt";<sup>20</sup>
- (b) Told Edward Reilly (FTI's Global Chief Executive Officer) on 7 November 2012 that Mr Steinmetz's (and presumably also BSGR's) reputation "among policy, MGO and media circles is so bad that that is condemnation for many in

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<sup>17</sup> *Ibid.* p.7

<sup>18</sup> *Ibid.* p.5

<sup>19</sup> Extracts from miscellaneous emails provided by FTI in response to Mr Beny Steinmetz's subject access request under the Data Protection Act 1998 dated 30 March 2012 -13 November 2012 (Exhibit C-0150) p.1.

<sup>20</sup> *Ibid.*

*its own right" [sic];<sup>21</sup> and*

- (c) Been arguing the case against Mr Steinmetz and BSGR. In an email to Michael Vachon, who was director of communications for Soros Fund Management, on 7 November 2012, MMB said that FTI's BSGR "*account team [were] also arguing that the FT article was not the smoking gun it was claimed to be and so are challenging me on the veracity of the case against Steinmetz.*"<sup>22</sup>

26.4.13 It is very clear to me as a result of these conversations and emails, that MMB was put under pressure by Mr Soros to resign the BSGR account at a crucial time for BSGR and in the full knowledge that it would harm BSGR's reputation to do so. MMB was also himself defaming BSGR and Mr Steinmetz in quite aggressive terms and was apparently very willing to share confidential information about BSGR's relationship with FTI with third parties which were both external to FTI and hostile to BSGR.

## **F. THE TECHNICAL COMMITTEE PROCESS**

27. The GoG revoked BSGR Guinea's exploration and mining rights by three orders dated 17, 18 and 23 April 2014, under the direction of President Condé and following the completion of a review process. Having watched the process closely at the time, and discussed it extensively internally and with BSGR's then lawyers, Veil Jourde and Skadden, Arps, Meagher & Flom LLP ("Skadden"), I do not believe that the review was a fair or proper process, nor do I believe that the revocation of BSGR Guinea's rights was done in good faith following that review. The fundamental and significant breaches of due process and natural justice which characterised the review process are set out in some detail in the Cramer Judicial Review Statement. I respectfully refer the Tribunal to sections K to M in particular of that witness statement.<sup>23</sup> I expand upon my experience of the key issues below.
28. On 17 November 2011, the Respondent sent BSGR Guinea a list of queries in relation to the joint venture between Vale and BSGR, the acquisition of mining rights by BSGR Guinea and the technical and financial capabilities of BSGR.<sup>24</sup> The letter did not provide context for the raising of the queries, save that they were necessary to "*better understand the situation of*

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Exhibit C-0028, sections K to M.

<sup>24</sup> Letter from the Minister of Mines to BSGR Guinea dated 17 November 2011 (Exhibit C-0044).

*your company*". The letter also repeated the order from the Respondent to BSGR Guinea to stop works on the basis of allegations that the joint venture had not been properly authorised. BSGR responded in full, through its lawyers Veil Jourde.<sup>25</sup> It was not until later (see below) that we understood that this letter was seen by the Respondent as the commencement of its review of BSGR Guinea's mining titles. This was not communicated to us at the time.

29. In March 2012, the Respondent set up an ad-hoc three-tier committee to investigate the grant of mining licences by previous government. The Committee was appointed and supervised by President Condé. The first tier was an investigatory committee, the Technical Committee for the Review of Mining Titles and Agreements (the Technical Committee), and it lost no time in starting its review of BSGR Guinea's mining licences.
30. On 30 October 2012, the Technical Committee sent BSGR Guinea a letter detailing a series of allegations about BSGR and the way in which it had obtained its exploration and mining rights in Guinea (the "Allegations Letter").<sup>26</sup> The Allegations Letter alleged, in summary, that BSGR obtained its *"rights related to deposits of iron ore.....by the offer and delivery of rewards with the intention of influencing decisions of the Government of the Republic of Guinea."*<sup>27</sup> It also alleged that BSGR obtained those same rights *"with no intention of undertaking the work required"* but instead with a view to transferring the rights to a third party at a substantial profit.<sup>28</sup> In addition, the Allegations Letter falsely stated that the Claimant had failed to cooperate with the Respondent's previous requests for information in its letter of 17 November 2011.
31. BSGR and I personally had very significant concerns about the Technical Committee and its process. These concerns were principally that the Technical Committee was not conducting its investigation fairly or properly. In particular:

### **Context of the Technical Committee process**

- 31.1 The Technical Committee review took place at the same time as the story of Alpha Condé's conspiracy to deprive BSGR of its rights was becoming apparent to us. Given this, I was very concerned that this Technical Committee was designed to put a veneer of

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<sup>25</sup> Letter from BSGR to the Minister of Mines dated 28 November 2011 (Exhibit C-0045); Letter from the Minister of Mines to BSGR dated 19 January 2012 (Exhibit C-0046); Letter from Veil Jourde to the Minister of Mines dated 3 February 2012 (Exhibit C-0048).

<sup>26</sup> Letter from the Technical Committee to BSGR Guinea dated 30 October 2012 (the "Allegations Letter") (Exhibit C-0054).

<sup>27</sup> Ibid. p3.

<sup>28</sup> Ibid. p.4.

reasonableness on what was, in reality, an expropriation at any cost.

- 31.2 First, I was aware from what Mr Hennig had told me in March and April that year that President Condé had done some kind of deal with BSGR's rights which meant he had to get them back from BSGR Guinea regardless of the legality or fairness of doing so. Further evidence of Alpha Condé's conspiracy emerged when the Palladino scandal was exposed in June 2012 and then in November 2012 when FTI terminated its relationship with BSGR.
- 31.3 Second, before BSGR had even received the Allegations Letter or knew of its existence, journalists from *The Financial Times* visited me and asked me questions based on the content of the letter itself.<sup>29</sup> At the time, neither I nor anyone else in BSGR understood what these questions were based on or where they came from. It later became clear that the GoG and/or the Technical Committee had purposefully leaked a copy of the Allegations Letter to journalists before allowing BSGR to see a copy of the allegations or to respond to them in order to inflict maximum harm to BSGR's reputation. The leaking of information that was harmful to BSGR before it was provided to BSGR for its response became a common occurrence through the Technical Committee process. This was despite the Technical Committee saying in its Allegations Letter that the process was confidential and that BSGR should "*abstain from making any public comments with regards to the...proceedings until they are completed.*"<sup>30</sup>
- 31.4 For instance, on 20 April 2013, *The Financial Times* published an article about documents on which the Technical Committee relied, before BSGR Guinea had been shown those documents. BSGR Guinea was finally provided with those documents by the Technical Committee on 7 May 2013, with the Technical Committee relying on BSGR's response of "*no comment*" to *The Financial Times* journalists as evidence that it did not deny the authenticity of those documents.<sup>31</sup> I concluded at the time that the Respondent was using the media as a mouthpiece to cause maximum prejudice to BSGR.
- 31.5 Third, both President Condé and members of his government declared their intentions to reclaim BSGR's interests before the Technical Committee had completed its review, and before BSGR had even been provided with the evidence which the Technical Committee relied on. The statements made are covered in some detail in section M of the Cramer

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<sup>29</sup> This is explained in more detail at paragraphs 81.1 to 81.3 of the Cramer Judicial Review Statement, Exhibit C-0028.

<sup>30</sup> Exhibit C-0054, p8.

<sup>31</sup> This is explained in more detail at paragraphs 81.4 to 81.7 of the Cramer Judicial Review Statement, Exhibit C-0028. See also: Financial Times "*Steinmetz unit embroiled in US probe of \$2m payment for African mine rights*", 20 April 2013 (Exhibit C-0151); Exhibit C-0054.

Judicial Review Statement, but in particular:

- 31.5.1 On 7 February 2012, Mohamed Fofana, then Guinean Minister of Mines stated during a mining conference that BSGR *"didn't follow the law"* in relation to its deal with Vale.<sup>32</sup>
- 31.5.2 On 17 June 2013, President Condé said in an interview with UK's Channel Four News that he does not *"see how this deal [the granting of rights to BSGR] is of any benefit to Guinea."*<sup>33</sup>
- 31.5.3 President Condé declared in a speech at the beginning of October 2013 (as reported by The Financial Times on 21 October 2013) that his government had *"started a battle to recover our mines which were acquired fraudulently"*.<sup>34</sup>
- 31.5.4 On 4 November 2013, President Condé said in an interview that Guinea was *"currently engaged in an extremely difficult battle...to retrieve our wealth"* and that *"it is very important...that the world realizes that it is a scandal that someone may supposedly pay a few hundred million, and can make up to 5 billion on the back of the Guinean people. I believe this is now something known worldwide."*<sup>35</sup>
- 31.6 Finally, before and during the Technical Committee process, the Respondent had already taken steps to prevent BSGR Guinea from performing its obligations pursuant to its exploration and mining rights. For instance, in April 2011, the Respondent halted BSGR Guinea's project to upgrade the Trans-Guinean railway;<sup>36</sup> on 4 October 2011, the Respondent issued a notice to stop all of BSGR Guinea's works in Guinea;<sup>37</sup> and on 11 October 2012, the Respondent revoked its prior authorisation for BSGR Guinea to export iron ore from Simandou blocks 1 and 2, which was a central provision in the Base Convention.<sup>38</sup>

### **Lack of due process**

- 31.7 On the face of the Allegations Letter, it appeared to me that the Technical Committee process was designed to be prejudicial to BSGR. Without repeating what is set out in detail

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<sup>32</sup> Bloomberg, "BSG Role in Guinea's Vale Venture Faces State Review" dated 8 February 2012 (Exhibit C-0056)

<sup>33</sup> Transcript of Channel 4 news broadcast of "Guinea Corruption and diamonds" dated 17 June 2013 (Exhibit C-0059)

<sup>34</sup> Financial Times, "Guinea corruption probe advances but wait for Simandou goes on" dated 21 October 2013 (Exhibit C-0060)

<sup>35</sup> Transcript of interview with Alpha Condé dated 4 November 2013 (Exhibit C-0061)

<sup>36</sup> Reuters, "Update 1 – Brazil's Vale say Guinea halts railway upgrade" dated 20 April 2011 (Exhibit C-0152)

<sup>37</sup> Letter from Minister of Mines to BSGR dated 4 October 2011 (Exhibit C-0042)

<sup>38</sup> Letter from Minister of Mines to BSGR Guinea dated 11 October 2012 (Exhibit C-0053)

in section L of the Cramer Witness Statement, two examples in particular stood out to me. First, The Technical Committee described what it saw as the history of BSGR's involvement in Guinea as "facts", which included a series of extremely serious allegations which were entirely untrue.<sup>39</sup> Second, the Allegations Letter failed to provide or even to describe the evidence on which it relied in relation to the allegations it made. It actually said that "*even if each of these allegations is corroborated by specific evidence, neither the validity, nor the probative force of these items has yet been evaluated.*"<sup>40</sup> Indeed, throughout the process BSGR repeatedly asked the Technical Committee to provide it with the evidence on which it relied. It repeatedly failed to do so. Finally, in December 2013, three working days before the final hearing, it provided copies of evidence on which it purported to rely, but even then that evidence was complete.<sup>41</sup>

- 31.8 Given my concerns about the Allegations Letter and the motivation behind the Technical Committee review, BSGR instructed legal experts to undertake a review of the legality of the process. Mr Daniel Labetoulle, Honorary Chairman of the Litigation Section of the Conseil d'Etat, and Denys de Béchillon, a leading French professor of public law, concluded on 9 December 2012 that the process was illegal, for three principle reasons:

*"...the "review" procedure was set up in breach of the rules governing the constitutional organisation of the Republic of Guinea (I), the fact that the letter of 30 October 2012 reveals (and relies on) serious ignorance of the basic principles relating to evidence (II) and the fact that the provisions of Decree no. D/2012/045/PRG/SGG of 29 March 2012 do not ensure the guarantees of independence and impartiality that should be associated with a procedure that could lead to the withdrawing of a mining title (III)."*<sup>42</sup>

- 31.9 Our belief at the time that the Technical Committee process was illegal formed the basis of our responses to its correspondence. While BSGR did engage with the Technical Committee in good faith and provided responses to the specific questions asked, we maintained throughout the process that we did not consider the review to be compatible

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<sup>39</sup> Exhibit C- 0054 pp.4-7

<sup>40</sup> *Ibid.*, p.2.

<sup>41</sup> See paragraphs 79.1 to 79.4 of the Cramer Judicial Review Statement, Exhibit C-0028, referring to: Letter from BSGR to the Technical Committee dated 26 December 2012 (Exhibit C-0055); Letter from BSGR to the Technical Committee dated 26 December 2012 (Exhibit C-0153); Letter from the Technical Committee to BSGR Guinea dated 4 March 2013 (Exhibit C-0154); Letter from BSGR to the Technical Committee dated 15 March 2013 (Exhibit C-0155); Letter from the Technical Committee to BSGR Guinea dated 7 May 2013 (Exhibit C-0071); Letter from Skadden to the Technical Committee dated 4 June 2013 (Exhibit C-0072); Letter from the Technical Committee to BSGR Guinea dated 4 December 2013 (Exhibit C-0073); Letter from Skadden to the Technical Committee dated 8 December 2013 (Exhibit C-0074)

<sup>42</sup> Legal Consultation by Daniel Labetoulle and Denys De Béchillon dated 9 December 2012 (Exhibit C-0070)



with the rule of law and provided detailed reasons for our belief.<sup>43</sup>

- 31.10 In addition, from the start of the process BSGR raised issue with the means with which the Respondent had chosen to dispute our rights. As set out in our first response dated 26 December 2012, the Zogota Base Convention included a mechanism for resolving disputes which requires the parties to first submit to a preliminary phase of seeking an amicable resolution and if that fails, to proceed to arbitration.<sup>44</sup> The Respondent chose to ignore these provisions in their entirety.

### **Responding to the Technical Committee's allegations**

- 31.11 I understand that the final report of the Technical Committee criticises BSGR for failing to engage in the review process and states that the allegations on which it based its conclusion that the mining rights were acquired by way of bribery and corruption "*were not denied during the written and oral proceedings*".<sup>45</sup> Furthermore, in recommending that BSGR Guinea's rights be revoked, the Technical Committee relied on Article 3 of its Rules of Procedure which provided that "*in the absence to the questions asked, or in the event of manifestly insufficient answers, the holder is required to have agreed with the facts mentioned in the notification*".<sup>46</sup> This ignored in their entirety the submissions provided by BSGR during the Technical Committee process.
- 31.12 First, BSGR had responded in detail to the Respondent's initial letter of 17 November 2011 in respect of how it acquired its rights in Zogota and Simandou blocks 1 and 2, yet was criticised in the Allegations Letter for not providing a substantive response. In a letter dated 28 November 2011, BSGR explained its partnership with Vale and provided access to a data room containing documents supporting that explanation. On 19 January 2012, the Respondent indicated that it had not yet inspected the documents in the data room. To assist, BSGR agreed to provide those same documents in hard copy, submitting to the Minister of Mines four copies of 15 lever arch files comprising 50,000 pages confirming the legality of BSGR Guinea's rights in Zogota and Simandou Blocks 1 and 2.<sup>47</sup> I am unclear as to what further information or assistance BSGR could have provided to the Respondent in response to the letter dated 17 November 2011.

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<sup>43</sup> Exhibit C-0055, Exhibit C-0153, Exhibit C-0155, Exhibit C-0072, Exhibit C-0074 and Letter from Skadden to the Technical Committee dated 16 January 2014 (Exhibit C-0156) and Letter from Skadden to the Technical Committee dated 26 February 2014 (Exhibit C-0075).

<sup>44</sup> Exhibit C-0153.

<sup>45</sup> Exhibit C-0054, see p.7, para 4 and p.21, para 96.

<sup>46</sup> *Ibid.*, p.29, para 131.

<sup>47</sup> Exhibit C-0045, Exhibit C-0046, Exhibit C-0048.

- 31.13 BSGR also provided precise and accurate answers to the initial 25 allegations raised in the Allegations Letter, by letter dated 26 December 2012.<sup>48</sup> In addition, where the Technical Committee sought "*clarifications*" of BSGR's responses, we provided these, even in circumstances in which the Technical Committee failed to disclose the supposed "*evidence*" on which it relied in its request for such clarifications.<sup>49</sup> Yet these responses were simply ignored by the Technical Committee, in both its final hearing and its final report of conclusions.<sup>50</sup>
- 31.14 Furthermore, the Technical Committee report states that its conclusion is "*especially based*" on the exhibits obtained in the US proceedings against Mr Cilins. From the context of this paragraph, it appears as though the Technical Committee is referring to the alleged contracts with Mamadie Touré. The Technical Committee report states that the authenticity of the contracts "*does not seem, doubtful [and is] actually contested only by the minority shareholder of VBG [i.e. BSGR], but without any evidence*". Again, this misrepresents the actions of BSGR during the Technical Committee process. The Technical Committee first provided the alleged contracts to BSGR Guinea on 7 May 2013. In response, on 4 June 2013, BSGR (i) stated that the contracts were forgeries; (ii) confirmed that they had been used in a previous blackmail attempt against BSGR; and (iii) requested an opportunity for BSGR to perform a full forensic inspection of the "*originals*" of the contracts which the Technical Committee had said it held. This request was repeated by letter dated 8 December 2013. Yet our requests were ignored. Again, I am unclear what evidence we could have provided in absence of a forensic review of the contracts.
- 31.15 Instead of engaging with our responses, the Technical Committee ignored our submissions in their entirety, falsely representing in its final report that we did not deny the allegations

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<sup>48</sup> Exhibit C-0153.

<sup>49</sup> See BSGR's responses Exhibit C-0155 and Exhibit C-0072.

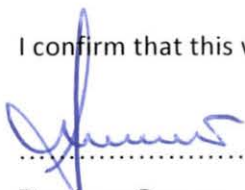
<sup>50</sup> In a letter dated 16 January 2014 Exhibit C-0156, Skadden, on behalf of BSGR, raised issue with the prejudice shown to BSGR in the Technical Committee hearing: "*Specifically, our letter of 4 June 2013 (to which no substantive response has even been received), is referred to only in passing and without any engagement as to its content. Our letter of 8 December 2013 (which the Chairman dismissed as simply "challenging the procedure" of the CTRTCM) is entirely disregarded as regards the annex to that letter which responded point-by-point to numerous allegations repeated or re-cast by the CTRTCM in its letter to VBG/our client of 1 November 2013 (and to which annex no response has been forthcoming).*" See further section L of the Cramer Judicial Review Statement.

and did not engage with its process. It is clear to me that the Technical Committee process was not a proper and fair investigation but instead an arbitrary procedure with a pre-determined conclusion.

## **G. CONCLUSION**

32. The unlawful revocation of BSGR's rights has had a huge effect, not just on that company but on the whole BSG group, as well as the Onyx group of companies. These companies have always had excellent reputations in business and with their service providers, but, since the untrue allegations of corruption have been made and then disseminated widely among the media, these reputations are, entirely unfairly, in tatters. Having been in a very privileged position of being able to pick and choose service providers, the BSG group and Onyx now operate in a much more challenging environment, solely as a result of the huge impact the GoG's action, and its work in spreading untruths about BSGR, has had on the reputation of the business. The Guinean government took away BSGR's assets but they also hugely, and entirely unfairly, damaged the BSG group's reputation. We are still dealing, on a daily basis, with the repercussions of both.

I confirm that this witness statement is true to the best of my knowledge and belief:



Dag Lars Cramer

19 August 2015