**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**

**(2) BSG RESOURCES (GUINEA) LIMITED**

**(3) BSG RESOURCES (GUINEA) SÀRL**

**Claimants**

**- v -**

**THE REPUBLIC OF GUINEA**

**Respondent**

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**Witness Statement**

**Marcus Joannes Paulus Maria Struik**

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I, **MARCUS JOANNES PAULUS MARIA STRUIK**, of Unit 7 Soleil, 8 Vickie Avenue, Sunset Acres, 2196, Johannesburg, Republic of South Africa**,** with date of birth 26 June 1958**,** will state as follows:

## A PERSONAL AND PROFESSIONAL BACKGROUND

1. I am the CEO of BSGR Mining & Metals, a Division of BSG Resources Limited, a company incorporated under the laws of Guernsey.

2. I am a Dutch citizen and have lived in South Africa since 1988. My private address is Unit 7 Soleil, 8 Vickie Avenue, Sunset Acres, 2196, Johannesburg, South Africa.

3. I graduated in 1987 as a mining engineer with a Master of Science degree from Delft University (Netherlands). I started my career at De Beers in 1988 in South Africa where I worked for 11 years, of which I spent 5 years in Botswana. In 1995, I was transferred from Botswana to Namakwa Sands on the west coast of South Africa. After that I was transferred to Kimberly Mines in 1996 where I worked until 31 August 1999. When I left De Beers in 1999, my position was that of Technical Services Manager and I was a member of the Executive Committee.

4. In 1999, I was called by a head hunter offering me a position as Consulting Mining Engineer at an independent consulting firm, Snowden Mining Industry Consultants in Johannesburg. Snowden had a very good international reputation and remains one of the few independent consulting firms that is hired by financial institutions and big mining companies to undertake due diligence, manage feasibility studies and/or do resource estimates. I was interested in a consultant position and joined Snowden. I climbed the ranks and in January 2001 I was promoted to Principal Consultant Mining Engineer. In October 2001 I became General Manager of the Snowden South African office, and was responsible for Africa and Europe.

5. Initially, during the first two years at Snowden, I focused much on the technical side of projects, dealing with mining, geology and metallurgy. Once promoted to General Manager, my task was twofold: being responsible for the overall management of the Snowden Africa office, and managing projects for our corporate clients. My main areas of consulting were Project Management of Pre/Feasibility Studies, financial evaluation of mining projects, project risk analysis, property valuation, completion tests on behalf of financial institutions, mine design, due diligence audits and technical audits. I was supervising mining and geology experts who reported to me as well as overseeing other consulting firms that were subcontracted as part of Snowden's client projects. My clients typically ranged from small private companies to larger corporations and financial institutions.

6. In 2005, after six years at Snowden, I was called by the same head hunter and Roy Oron offered me the position of COO at Norinter Investment SA (Pty) Ltd and I started on 1 October 2005. On 6 September 2006, this company changed its name to BSGR Advisory Services (Pty) Ltd. As of May 2007, all of the employment contracts that had been entered into with specialist staff (such as engineers and geologists etc) were transferred from BSGR Advisory Services (Pty) Ltd to BSGR Guernsey, with only the South African administrative staff remaining employed by the South African entity.

7. I was keen on a change so I took the new role. At BSGR Advisory Services Ltd, I was responsible for reviewing and advising on exploration and mining projects worldwide in

which BSGR had invested as a major shareholder. I was further in charge of a technical team advising the board of BSGR on various new potential projects. I also project managed feasibility studies for IPO purposes. We listed Nikanor, our copper and cobalt project in the DRC, on the Alternative Investment Market in London in July 2006 (at the time we achieved the highest listing on AIM). We also attempted to list Cunico (our base metals project comprising our copper and cobalt project in Zambia and our ferronickel projects in Macedonia and Kosovo) on the London Stock Exchange in August 2007, which unfortunately did not materialise due the financial crisis, which by that time had hit the commodities market. On 1 May 2007, after some restructuring within the BSGR Group, I was appointed CEO of BSGR Mining & Metals, a Division of BSGR Resources Limited, a position I currently hold. In this capacity, I am responsible for all mining and metal projects worldwide for BSGR, both projects that are in production as well as exploration projects.

8. I was involved in BSGR's operations in Guinea from the beginning and I am very proud of our achievements there. Prior to the intervention of Alpha Condé, BSGR, together with its joint venture partner Vale SA ("Vale"), was on target to achieve its first production of iron ore by the end of 2012. This would have represented the first ever production of iron ore since Guinea's independence in 1958. Instead, the Claimants' exploration and mining rights were expropriated by the Respondent on the basis of allegations that the Claimants acquired the rights through bribery and corruption. Those allegations are false. This statement addresses these allegations and recounts how the Claimants acquired their rights in an entirely legal manner.

## B THE PROJECT IN GUINEA

### First contacts in Guinea

9. It was in November 2005, one month after I had joined BSGR that I learnt about an exploration opportunity in Guinea through Mr Oron, BSGR's CEO at the time. He had connections to Michael Noy, Frédéric Cilins and Avraham Lev Ran, who in turn had made him aware of that opportunity. Noy, Cilins and Lev Ran later formed a company together called Pentler Holdings Limited ("Pentler").

10. I was aware that Mr Oron had visited Guinea already a couple of months earlier, in July 2005. During that visit, he had a meeting with the Ministry of Mines and Geology and he expressed BSGR's interest in exploration and mining in the country. Like many other companies, BSGR wanted to expand its footprint in Africa. BSGR was already active in Sierra Leone, Zambia and the Democratic Republic of Congo at that time.

11. I believe that BSGR's interests in Guinea were not limited to iron ore, but also included bauxite and diamonds and maybe other commodities. At Mr Oron's meeting, the Ministry introduced various exploration areas, including bauxite deposits in the north of the country and iron ore deposits in the Simandou area.

12. Personally, and despite my geological knowledge and experience in natural resources and mining in other African countries, I had not heard about Simandou by October 2005. I knew about Mount Nimba (in the south of Guinea), because BHP Billiton had been busy there for years. Simandou, however, was not known to me even though one of the mining giants, Rio Tinto, held iron ore mining licences there. Rio Tinto, however, kept the riches it was sitting on rather quiet. I will come back to that when I explain how Rio Tinto lost its mining concession for Simandou Blocks 1 and 2.

13. In November 2005, Mr Oron took me to Guinea to assess the opportunities BSGR had been told of in July 2005. My task was to review the information available, determine the potential of these opportunities, and, if positive, advise the board that BSGR should apply for the exploration licenses that were available.

14. Mr Cilins introduced Mr Oron and me to Ibrahima Sory Touré, a Guinean journalist. I am not aware about how Mr Cilins and Mr Touré got to know each other and what their relationship was, but it was clear to me that through his work Mr Touré appeared to be well connected in Guinea.

15. Mr Cilins and Mr Touré introduced me to the head of the Centre de Promotion et de Developpement Miniers ("CPDM"), Mr Soumah, to get technical information on potential assets as well as understand the "lay of the land", i.e. who was there already, who had what licence, what was still available and to explain the Mining Code.

16. The CPDM was and is the central agency in all things exploration and mining in Guinea, e.g. it is the custodian of the register that shows all mining rights (both the rights that are still available and the rights that have been granted), it advises on applications for new exploration and mining rights and it monitors the work undertaken (or not) by exploration and mining companies.

17. During that first trip to Guinea, which lasted for five days, I went to the CPDM a couple of times, and Mr Cilins and Mr Touré accompanied me, predominantly for translation purposes. I was not fluent in French at that time. I am still not, although my French has improved over the years. They took no part in the mining discussions as such, because they had no mining

background and were obviously not going to play any role in the mining activities themselves.

18. My discussions with the CPDM focused relatively quickly on two particular areas, known as Simandou North and Simandou South. Simandou North was singled out for its potential iron ore deposit, while Simandou South's potential was not clear to me but seeing that it was not far (some 70km) from the actual Simandou Range I included it as a potential for iron ore. Later on, after Fugro's airborne geophysical survey, we initially started mapping Simandou South for uranium and gold, only to stumble upon 'canga' and the subsequent discovery of an iron ore deposit at Mt Younon near the village of Zogota. I will discuss this in more detail later in my statement.

19. Coming back to my discussions with the CPDM, Simandou North and Simandou South were available for exploration in the sense that no exploration licences in these areas had already been granted to other mining companies. It became clear during my discussions with the CPDM that the Government was eager to grant these licences, but that BSGR was not the only party they were talking to.

20. Other mining companies I recall looking into the same areas were Vale, which was called CVRD at that time, (through its bauxite division), BHP Billiton, Rio Tinto (Simfer) and Mitsubishi. I realized that we had to demonstrate why it was in the Government's interest to grant the licences to us instead of to someone else. It is in this context that I gave a presentation in which I demonstrated BSGR's technical and financial capabilities to carry out the exploration works and feasibility studies and elaborated on the advantages of working with a junior natural resources company such as BSGR instead of working with the majors.[1]

21. I explained that we regarded Simandou North and Simandou South as a core asset that required immediate capital investment to determine whether an iron ore mine could be opened in these areas and, if so, bring the mine into operation as soon as possible. By contrast, the majors, including Rio Tinto, regarded Simandou as a strategic future asset on their books, which would only require capital if developed in the long term.

22. I also remember emphasising the fact that BSGR, being a privately owned company, had the ability to make quick decisions due to its non-hierarchical organisational structure. Its activities were not hampered by the bureaucracy that affected most majors.

[1] BSGR Presentation dated May 2005 (Exhibit C-0002).

23. As BSGR was serious about this opportunity, we reached out to and sought proposals from independent consulting firms like SRK, MSA and Snowden quite quickly to conduct a preliminary geological assessment of these prospects.

**Negotiating a Memorandum of Understanding and the award of the exploration licences**

24. Our pitch turned out to be successful, with the Government quite rapidly seeing the bigger picture and eager to develop this potential mining project together. This "bigger picture" was reflected in a draft Memorandum of Understanding compiled by Linklaters in Paris, in or around November/December 2005, which was discussed between us and the Ministry of Mines. Linklaters in Paris was chosen very early on to assist us in the review of the applicable mining legislation and the negotiation of the Memorandum of Understanding.

25. Several drafts of the Memorandum of Understanding were exchanged between us and the Government, as Mr Oron was initially unhappy with the Government's proposed terms and refused to sign. Together with a legal team from Linklaters, I went to Guinea in mid-January 2006, to negotiate the Memorandum of Understanding and to discuss our plans and projects in the country.

26. I believe that it was in the course of these discussions that the Government expressed its frustration about the lack of progress that Rio Tinto had made in the four blocks it was holding on the Simandou mountain. These blocks were known as Blocks 1, 2, 3 and 4. It was commonly noted in the discussions I had, both with the CPDM and the Ministry but also in the business community in Conakry, that Rio Tinto had sat on its licences for almost a decade and was only working in a small part of its total license area; holding on to its licences started to become fragile.

27. As a result of the legal advice on the Guinean Mining Code that we had sought in relation to Simandou North and Simandou South, I was aware that upon the renewal of an exploration permit, 50% of the exploration area had to be retroceded to the Government. It was clear to me that Rio Tinto had to do this at some point and thus I informed the CPDM and the Ministry that BSGR would be interested in half of Simandou if it became available. This would later be recorded in Annex 1 to the Memorandum of Understanding which refers to Blocks 1 and 2.[2] The reason for referring to those two blocks in particular was quite straightforward. The little work that Rio Tinto had been doing was concentrated in Block 4 and with lesser work in Block 3. So if Rio Tinto would have to retrocede 50% of its blocks, it was logical that it would retrocede Blocks 1 and 2.

[2] Memorandum of Understanding between Republic of Guinea and BSG Resources (Guinea) Limited dated 20 February 2006 (Exhibit C-0009).

28. As we were making progress on the Memorandum of Understanding, we applied for the exploration permits in Simandou North and Simandou South. They were granted to us on 6 February 2006. [3]

29. We have always operated to the highest standards and I am not aware of any incidents where improper payments were even considered let alone paid in any of the projects I have worked on. In any event, anyone in the mining industry would tell you that exploration permits are not worth very much. At that stage, the initial potential of the areas to be explored is yet to be determined, hence the decision to commence an expensive, and risky, phased exploration drilling programme. If the initial results show that it is not worth further investing (which is often the case), mining companies simply abandon the permits and hand them back to the issuing authorities.

30. The only payments that were ever made in connection with the exploration permits were administrative fees, stamp duties and taxes after the permits had been granted, the amount of which was pre-determined by the Guinean Mining Code with respect to each of the permits.

31. Following lengthy discussions, we finalized the negotiation of the Memorandum of Understanding, on terms acceptable to us, on or around 20 February 2006.[4] This was a significant moment both for us and the Government, as it was a first of its kind and as it opened the door to potential substantial investments in the country and unlocking the country's natural resources to the benefit of the Guineans.

32. To reflect the significance of the event, there was an official signing ceremony where Mr Oron handed over a company gift, a golden miniature car, to Minister of Mines Mr Souaré. The golden car was a standard company gift. We have still got some of them. We handed over the gift in front of other government officials and journalists. No one considered (or could have considered) the gift as a potential bribe.

**Exploring Simandou North and South**

33. After the signing of the Memorandum of Understanding, I started to travel to Guinea more often. It was during one of these trips that I met with President Conté for the first time. This meeting was organised by the Minister of Mines. Present at the meeting were, as far as I can recall, Mr Oron, Minister of Mines Mr Souaré and the President. Mamadie Touré (see further) was not there. We discussed the Memorandum of Understanding, BSGR's

[3] Decree No. 2006/706/MMG/SGG dated 6 February 2006 (Exhibit C-0004) and Decree No. 2006/707/MMG/SGG dated 6 February 2006 (Exhibit C-0005).
[4] Exhibit C-0009.

capabilities, the exploration plans and the budget. I can remember that one of the President's first questions was (in French) *"Are you going to be like the other companies and just sit here and do nothing or are you actually going to work? And let me remind you that I check on you"*.

34. We quickly moved forward with opening an office in Quartier Miniere, Conakry in April 2006 and established an exploration plan for Simandou North and South, about which we informed the Minister of Mines in June 2006.[5] The exploration programme consisted of a comprehensive airborne geophysical survey of the two areas; the establishment of an exploration camp in Simandou North; the beginning of a drilling campaign of over 22,000m on the two sectors; and the realisation of a sampling analysis programme for both sectors. We also planned to provide between 50 and 100 jobs for locals. We hired a local geologist, Mr Nassirou Bah, from the CPDM. We also informed the Minister that we had established a local entity in Conakry. As we had promised to the Minister in February 2006, we established an operating business in Guinea. In April 2006 we signed the lease agreement for our first office in Conakry. The official opening of the office was in September 2006.

35. In this start-up period, I was basically still on my own and in light of my relatively poor French Mr Cilins helped me with all sorts of things. I used him to open bank accounts with local banks, to buy cars, to get insurance, to find drivers, to find a house and a chef, domestic staff and security guys. He was basically my interpreter and assistant until after Asher Avidan arrived as Country Manager in June 2006. On a few occasions we had a drink in the evening and Mr Cilins would tell me about him and his partners' business activities in the country. I understood that they were importing and selling a range of products such as pharmaceuticals, food stuffs, soaps etc. I understood from Mr Cilins that Ms Touré was a local business partner who assisted them in distributing them downstream. I will elaborate on her further below.

36. As indicated earlier, Mr Touré was often in the company of Mr Cilins. And so as I was working with Mr Cilins quite frequently in this period, I also got to know Mr Touré a bit better. I started to use him directly to assist me in day to day issues and I employed him on a temporary basis. He also appeared to be passionate about the development of his country, particularly the youth development. I did not know at the time about his connections to the President Conté, nor did I know that Ms Touré was his half-sister. He never really spoke about his private matters.

37. About one year later we offered him a permanent job with BSG Resources (Guinea) Limited SARL ("BSGR Guinea"), as public relations officer. Mr Touré was keen to accept this

[5] Letter from BSGR to the Minister of Mines dated 24 June 2006 (Exhibit C-0088).

position because he was enthusiastic about our progress and commitment in the country and we were keen to offer the job to him, as he was very good at engaging with people and promoting our company.

38. We recruited Mr Avidan as Country Manager in Guinea in June 2006. We needed a Country Manager who would focus solely on the progress of the work in Guinea as I was also responsible for BSGR's other projects in Africa and Eastern Europe at the time, which I managed from BSGR's office in Johannesburg. Nevertheless, I remained very much involved in the Guinea project, particularly from a technical perspective as Mr Avidan did not have that expertise. As we now had our own man on the ground, we no longer required the assistance of Mr Cilins and we gradually stopped using his services.

39. At this time, I was approached by BHP Billiton to explore Simandou North and Simandou South together. As indicated above, they had also expressed an interest in those areas but the Government preferred us over them. Now they reached out to us with a farm-in proposal. I remember having physical meetings in Johannesburg with Mr Cesare Morelli, a representative of BHP Billiton, shortly after we were awarded the exploration licenses to Simandou North and South, and later on in London somewhere after the summer of 2006. They were proposing to finance the exploration programme in Simandou North and Simandou South in return for a shareholding in BSGR Guinea BVI or in new joint venture company. Ultimately, BSGR preferred not to farm-out and we brought the discussions with BHP-Billiton to an end.[6]

40. In September 2006, we officially opened BSGR's premises in Conakry. Before the official opening of the premises, but on the same day, we gave another presentation to a number of government officials, representatives of Ministries, the CPDM and also journalists setting forth our exploration goals in Simandou North and South.[7]

41. The conference took place in the Novotel. It was very important for us to demonstrate that we had an ambitious, yet achievable, plan and wanted to move forward with the project and gain the support of the Government and the local people. It was important for Guinea, so the press reported about the project in detail. Apart from me, Mr Oron, Mr Avidan, Mr Cilins and Mr Touré were present at the presentation on behalf of BSGR.

42. We started our exploration activities in Simandou North. We hired MSA Consultants, a South African geological consulting company, to help us with the mapping of Simandou North, and Fugro who carried out the airborne geophysical survey over Simandou North and South in

[6] Letter from Cesare Morelli to Marc Struik dated 15 June 2015 (Exhibit C-0003).
[7] BSGR Presentation to Ministry of Mines dated 19 September 2006 (Exhibit C-0089).

early 2007. The MSA team accompanied by BSGR personnel literally walked the area of Simandou North following a pattern of parallel lines to map the visible geology (e.g. outcrops, fault lines, etc). Fugro completed an airborne geophysical survey over Simandou North and South.[8] They flew over both areas following a regular pattern of lines that were initially 200m apart (called 'line spacing') and, where necessary, on a line spacing of 100m. The results of this survey were various maps showing magnetic and non-magnetic anomalies as well as various other ratios (strontium, rodium etc), which were used to identify drilling targets for hematite to determine the potential and quantity of Direct Shipping Ore ("DSO"), which was the main target of the exploration. DSO means iron ore that requires very little processing, usually one or two rounds of crushing and screening to produce a lumpy and fines product, before it can be sold. It is very valuable because it minimises operating costs for the mining company who extracts it and sells it. On the side, I have always believed that it is exactly because of the DSO quality that is present in Simandou that Rio Tinto has sat on its mining rights for years. Rio Tinto has huge tonnes of reserves of DSO in the Pilbara region, Australia, and so there is no need for it (to the frustration of the Guinean Government) to exploit the Simandou reserves for a long time to come.

43. The reasons we started our exploration activities in Simandou North were twofold: (1) the area was easier to access from Conakry than Simandou South, and (2) as Simandou North shared a border with Block 1 (which belonged to Rio Tinto), it was highly likely that the geology in Simandou North was more favourable for iron ore as the geology would be a continuation of the geology in Block 1 directly to the south of it. Although the Simandou Mountain Range dipped steeply into Simandou North and as such the potential for iron ore would be below surface, we believed that an open pit mining operation could potentially be established in Simandou North. This had to be proved, hence our first drilling campaign in Simandou North. The results of our initial boreholes showed, however, that there was very little hematite but a significant amount of magnetite with a relatively high iron ore content for magnetite. However, as explained below, we stopped working in Simandou North in 2007 and moved our equipment and concentrated our efforts in Simandou South, after we had discovered iron ore in Zogota.

44. Apart from our iron ore activities, we were also exploring for bauxite. We engaged Geoprospects (a Russian drilling company with a long presence in Guinea) to drill the areas and we engaged Hatch to complete a project scoping study based on the drilling results. As the drilling results showed that it would be very costly to develop an alumina project in this

[8] FUGRO Airborne Surveys Technical Report dated 6 September 2007 (Exhibit C-0090).

area, we returned the exploration permits to the Government and concentrated on Simandou North and Simandou South.

45. Nevertheless, one of the most important things we did in our bauxite areas was to introduce ourselves to the local people living in these areas. It was one of the first field trips I did together with Mr Avidan in August 2006. Mr Touré, who actually suggested to us that we go on this trip in order to get involved with the locals, was also part of this convoy.

46. We went to the bauxite areas where we introduced ourselves and the project to the local authorities in five different prefectures. We had to see the prefect and the mayor of each village. We had 25 meetings in total. During almost every meeting we presented, in line with local custom a "kola".[9] "Kola" is in fact a bitter nut, a couple of which are handed over in a small basket together with some local money, equivalent to around USD 50 if not less. It is a token, which is handed over to the prefect in front of the elders of the village to get their blessing for the project. The most difficult part is that they all invite you to stay and eat with them, which can be a bit of a challenge.

47. Even though this was a big effort, it was probably one of the best things we could have done for BSGR's reputation in the country. The fact that we actually went through these rituals 25 times was big news that reached Conakry fast. Something else happened during our trip that made the news in Guinea. It was a car accident we witnessed on the way back. The car had gone off a bridge into a small river below. I took the decision to stop our convoy and help the people involved in the accident. That was something normal for us to do. It was, however, unusual for the locals to witness foreigners doing such a thing. I can remember that even Mr Touré, who was in the car with me, could not believe it and was so touched that he started crying.

48. When we arrived in Conakry, everyone knew about what had happened. This story shaped BSGR's good reputation in Guinea and was even described by the Minister of Mines during a meeting with other mining companies in 2007 (I will talk about this meeting below). We became the model investor and it is likely that that created some resentment among the other mining companies, in particular Rio Tinto who started to talk in a negative way about BSGR. The goodwill that we created by doing all this was second to none, even though, in the end, we did not proceed with the bauxite exploration. It certainly helped when we applied for the exploration permits for Simandou Blocks 1 and 2.

[9] Photographs of the local custom "Kola" during bauxite meetings in August 2006 (Exhibit C-0091).

**Discovery of Iron ore in Zogota**

49. Whilst we were drilling in Simandou North, I believe it was mid-2007, we sent a team to Simandou South to start mapping and exploring the area. We had to get started in the south as the CPDM was expecting monthly reports on our progress. On the basis of the Fugro reports, we first looked for gold and uranium but our team on the ground discovered the presence of iron ore, or better "canga", by coincidence during a roadside ‘pitstop’.

50. "Canga" is an iron ore conglomerate. It is usually found downhill from iron ore deposits, from which they have eroded. The closest mountain the team identified where this canga could have come from was Mount Younon. The closest village at the foot of this mountain is called Zogota, hence Simandou South became known as Project Zogota. I was not there at the time, but once the team had completed a superficial check of Mount Younon, they reported the potential presence of hematite in large quantities. I told them to get samples and to have them analysed. It turned out that the samples contained direct shipping ore with a high iron ore content.

51. Although we hoped to find the presence of iron ore towards the northern boundary of the permit for Simandou South, as it was closest to Block 4 where Rio Tinto was drilling its Pic du Fon, we did not expect to find iron ore on Mt Younon. The then geological map of Guinea did not highlight this mountain as potentially being ‘irondiferrous’. When we discussed our find with Dr Mamadov, he came to have a look for himself. Dr Mamadov, is a Russian academic and the owner of Geoprospects, a drilling company we had hired to drill our bauxite deposits in the north. Dr Mamadov had been working in Guinea for almost 30 years and had been instrumental in mapping the geology of Guinea on behalf of the Government and was not aware of a potential iron ore deposit at Mt Younon.

52. We proceeded with detailed mapping of Mt Younon and identified drilling targets. By that time we had ceased all activities in Simandou North due to the unfavourable drilling results and had moved the team to Simandou South. Somewhere in the second half of 2007, we set up our base camp in the town of N’Zerekore and a satellite camp at the foot of Mt Younon. We engaged two drilling contractors: Geoprospects (who had drilled our bauxite areas) and Foraco (who had drilled in Simandou North). We further continued to use SGS, an independent international group with analytic laboratories around the world, to analyse all drill hole samples through its office in Johannesburg, South Africa. Our initial monthly operational costs were around USD 80,000 per month that increased to some USD 450,000 per month (excluding drilling costs) when we were in full swing.

53. Apart from all the exploration work in the field we were also socially very active. We supported the local community in Kérouané. We rebuilt the police station after it had been burnt down during riots. Local people came to our office and talked to us. There were several requests to help them every day. They were frustrated with Rio Tinto's inactivity. Rio Tinto had an office in Kérouané. The riots started because the people were arguing with Rio Tinto about the lack of employment. We also provided the community in Zogota with food, books and other school material, clothes and shoes, and we supported local soccer clubs.

54. I am jumping in time now but in January 2009, our exploration permits in Simandou North and Simandou South were about to expire after having been granted for an initial three year term. Mr Avidan filed a request on behalf of BSGR for the renewal of the exploration permits to the CPDM together with a proposal to retrocede half of the area covered under the permits. As we had discovered Zogota, which was in the south, we proposed to retrocede 50% of Simandou North and 50% of Simandou South, making sure that we kept the area around Mt Younon. In June 2009, the Minister of Mines granted the request as recommended by the CPDM. In what follows, I pick up the chronology of events again.

**How the Claimants were granted exploration permits in Simandou Blocks 1 and 2**

55. In order to understand how the Claimants acquired the exploration permits in Blocks 1 and 2, it is very important to look at why Rio Tinto lost its licences in the first place.

56. Rio Tinto acquired its licences I believe somewhere back in 1997. In 2006, when we signed the Memorandum of Understanding, they had already been in the country for 9 years. They had done most of its work in Block 4, some in Block 3 but had done almost nothing in Blocks 1 and 2.

57. Rio Tinto is a big player in the mining industry. It appears that at the time in 1997, the Government had asked Rio Tinto to look for opportunities in the country. This is probably also why Rio Tinto was granted generous privileges for a long time and was not criticised or questioned for its inactivity. The Government had, for example, granted Rio Tinto a Convention de Base in late 2002, ratified in the beginning of 2003, without Rio Tinto ever having presented a feasibility study. This was in breach of the Mining Code 1995, under which it was a requirement to submit a feasibility study first before a Convention de Base could be negotiated. This remains a requirement in the new mining code. Everyone in the industry knew that Rio Tinto was only focusing on its southern portion (Pic du Fon and Oueleba) and not doing any real work in the northern area.

58. As indicated earlier, I recall from my earliest conversations with the CPDM that they were complaining about Rio Tinto's inactivity and, as I mentioned above, the locals were also frustrated. The local communities got more frustrated when they realized that other, smaller companies like BSGR actually did some work. In fact, Rio Tinto detested us for having commenced serious exploration activities in Simandou North and Simandou South, adjacent and close to their areas. BSGR's activities made it obvious to the Guineans that Rio Tinto was just sitting there. In 2007, in the midst of yet another commodity super cycle, 'resource nationalism' reared its head throughout Africa and also in Guinea. This meant that governments through its mining ministries started to apply the "use it or lose it" rule.

59. In Guinea, the Minister of Mines started to do exactly that and focused on the progress made by all of the exploration and mining companies present in Guinea at that time. The first meeting that demonstrated the government's change of attitude took place in January 2007. The Minister of Mines, then Dr Sylla, called the mining companies, all of them, no matter if they were small or large, to a special meeting on a Saturday morning. When I heard about this special meeting, I had just returned to Johannesburg from a Guinea visit. I realized, however, that this was a meeting we should not miss and flew back to Guinea.

60. I recall that at the meeting the Minister made every mining company stand up and he asked: *"What are you doing? How much have you spent? How far are you with your feasibility study? When are you planning to be in production? When are we getting something out of the project?"*. It was obvious to me (but also to all present) that the Government had decided to start putting pressure on mining companies to start doing their work otherwise they would withdraw the licences and hand them over to other companies.

61. This was the point in time when Rio Tinto's problems started. In 2007, ten years after it had arrived in the country, it had still not commenced the exploitation of Blocks 1, 2, 3 and 4. In the same year, BHP Billiton commenced its well documented hostile takeover. Based on BHP's initial offer (value per share), which was far below what Rio Tinto expected, Rio Tinto had to admit that the Simandou asset was undervalued and that the potential size of the ore resource at Simandou was not between 1 and 2 billion tonnes as Rio Tinto had stated in its annual financials, but rather between 8 and 11 billion tonnes. This is when the Government realized that Rio Tinto had previously not been honest when it declared its iron ore resources in Simandou. The Ministry of Mines got obviously frustrated and Rio Tinto was put under pressure.

62. I was now almost certain that Rio Tinto's rights in Blocks 1 and 2 would be taken away from them. We wanted to put ourselves in the pole position to ensure that, if and when they came

back "onto the market", we would be best placed to secure them. To this end we started talking openly with our contacts in Guinea about what the process may look like and what we should do. Despite our good standing, we did not take anything for granted and started thinking about what we would have to demonstrate to the CPDM and the Government to make the best case for BSGR as against any other bid.

63. On 28 July 2008, President Conté issued a decree nullifying the previous decree of 30 March 2006 that gave Rio Tinto its mining licence, demoting Rio Tinto's status to that of an exploration permit-holder.[10] At the same time, Rio Tinto was required to retrocede half of its permit area. The Government's explanation was that Rio Tinto had failed to submit a feasibility study as was required by the Mining Code and had not informed the Government about the true potential in Simandou which was exposed by the BHP Billiton take-over attempt.[11] The President set up a commission to decide which half of Blocks 1, 2, 3 and 4 should be returned to the CPDM. If I remember well, Rio Tinto did not cooperate with the commission and it threatened to sue the Government in the international courts. This, in turn, infuriated President Conté and I believe that at some point even all of the four blocks were taken from Rio Tinto. This made Rio Tinto change its rhetoric and the situation normalized to some degree. In the end, Rio Tinto had to retrocede Blocks 1 and 2 but it retained Blocks 3 and 4, be it that the status of its mining titles over these blocks were downgraded from a mining concession to exploration permits. Moreover, Rio Tinto was under the obligation to submit a feasibility study within one year. As far as I know the feasibility study has not been completed up to now.

64. As explained above, BSGR had no hand in Rio Tinto losing its permits but we were obviously ready to apply and we did apply for exploration permits in Simandou Blocks 1 and 2 as soon as they became available. We were opportunistic and let it be known to people in Guinea that we would apply as soon as these blocks became available.

65. Although there was no formal bidding process involved, we were again not the only company that was interested in the permits. I believe that one other was a smaller Canadian company called Africanada and another one was a Chinese company the name of which I cannot recall.

66. As we were not the only company applying for the permits, the Ministry of Mines **Dr Lounceny Nabé** had to assess the companies' financial and technical capabilities. I remember receiving a letter from the Government in November 2008 in which they asked us for detailed results of work carried out under our existing permits, a commitment to support

[10] Decree No. D/2008/041/PRG/SGG dated 28 July 2008 (Exhibit C-0092).
[11] Letter from Minister Secretary General Sam Mamady Soumah to CEO of Simfer S.A. dated 30 July 2008 (Exhibit C-0093).

the Government should Rio Tinto take action against it and a commitment to pay a bonus of USD 20 million and to develop works if the exploration works revealed commercially viable deposits.[12] We replied with a letter on 6 November 2008 in which we provided the requested information and commitments.[13]

67. To some extent, I was surprised by the limited interest from other mining companies but, then again, until now there had only been talk about significant potential in this part of Simandou, but no concrete evidence of a large iron ore resource. Furthermore, the project would require a completely new infrastructure to transport the ore from the future mine site to a port, which would come with a huge price tag. To us, however, the project made a lot of sense. We had found Zogota and the prospect of combining Zogota and Blocks 1 and 2 was very attractive.

68. In comparison to the other applicants, BSGR had the advantage of being active in the area since 2006 and had demonstrated itself, despite the negative comments made by companies like Rio Tinto, to be a trustworthy and reliable company that had the technical and financial capabilities to undertake and complete exploration based on accepted international guidelines. We had proven to the CPDM, the Minister of Mines, the President and the people of Guinea that we would be able to deliver and were socially engaged as a company. We had discovered Zogota and were getting close to completing the first ever feasibility study for a mining project in Guinea. We had already invested a substantial amount of money and were about to start negotiations with the Liberian government regarding the transport of iron ore from Zogota/Simandou to the Port of Buchanan as described in the feasibility study. We did not need any support from anyone to get the exploration permits. We went through the same application procedure as the other two applicants. We had proven to the Government that we were a company to trust.

69. We were granted the exploration permits for Blocks 1 and 2 on 9 December 2008.[14] These were granted completely properly. We did not make payments for them nor did we have any contractual arrangements with any third party to exercise influence on the CPDM, Minister of Mines or the President.

**The exploration of Blocks 1 and 2**

70. On 22 December 2008, after President Conté had died, the military took over in the country. Captain Moussa Dadis Camara became President and one week later he appointed Kabine Komara as Prime Minister. The Transitional Government was supposed to be in office only

[12] Letter from the Ministry of Mines to BSGR dated 3 November 2008 (Exhibit C-0094).
[13] Letter from BSGR to the Ministry of Mines dated 6 November 2008 (Exhibit C-0095).
[14] Decree No. 2008/4980/MMG/SGG dated 9 December 2008 (Exhibit C-0010).

for two years. Mahmoud Thiam, a former banker at UBS and Merrill Lynch and who was educated and living in the US, was appointed as Minister of Mines at the beginning of 2009.

71. Later, the Technical Committee set up by Alpha Condé to investigate mining rights made unsubstantiated allegations that BSGR paid Mr Thiam substantial sums to promote its interests and to distribute funds to other government officials.[15] This is complete nonsense: BSGR never paid Mr Thiam anything. He was a straightforward guy who wanted to reform the mining sector and help the Guineans to capitalize on the vast resources their country had to offer. I have met him a few times in connection with BSGR's project. BSGR did not try to influence him and, in my opinion, he was not the kind of person who would be receptive to any such attempts.

72. As the new Minister of Mines, Mr Thiam wanted to inspect the sites of the mining companies. He asked us to show him the sites we were working on. We agreed and took our usual charter flight from Conakry to N'Zerekore to show him Zogota, I believe this was in the first half of 2009. He was mostly interested in Zogota as this was a new project and we were very close to finalising the feasibility study. After that there were some update meetings in the Ministry and I recall that he helped us when Rio Tinto tried to get in our way and prevented us from starting with our exploration work in Blocks 1 and 2.[16] He was, of course, involved in the negotiations of the Convention de Base.

73. Once Rio Tinto stopped interfering with our work, we started drilling and hired three drilling companies. The two we had used before (Foraco and Geoprospects) and a new drilling company from Canada called Energold. At the same time, we continued in parallel with completing the feasibility study for Zogota. Initial drill hole intersections in Blocks 1 and 2 showed DSO to a depth of 150 – 200 metres. That was fantastic as in one area alone (in Block 2), we estimated close to one billion tonnes of DSO, which could be easily mined, crushed and screened and transported to a port. Of course, we could not do so without having completed a feasibility study for Blocks 1 and 2 first. It was, however, reassuring that we had made the right investment. At the same time, I could hardly believe that Rio Tinto had been sitting on one of Guinea's prime deposits for such a long time without being questioned.

**Zogota Feasibility Study and Signing of the Convention de Base**

74. Every exploration project starts with geophysical surveys and field mapping to identify drilling targets. For this we used (besides our own people) Fugro and MSA. We then hired

[15] Letter from the Technical Committee to VBG-Vale BSGR Guinea dated 30 October 2012 (Exhibit C-0053).
[16] Letter from Minister of Mines to BSGR and Rio Tinto dated 11 Feb 2009 (Exhibit C-0096) and letter from Minister of Mines to Rio Tinto dated 14 July 2009 (Exhibit C-0097) pages 31-33.

Foraco and Geoprospects to drill at Zogota for us. As the initial results were good and very promising, we increased the number of holes we had to drill (i.e. we narrowed the drill hole spacing). Every drill core was split and one half was prepared for assaying at an independent laboratory. For this we used SGS in Johannesburg. We also used an independent secondary laboratory to carry out check assays. All QA/QC policies and procedures were checked by yet another independent consultant, my former employer, Snowden (in fact we used its policies and procedures and adapted these for our situation). All this was done under my supervision.

75. As the drilling progressed rapidly and we realised that we were sitting on a sizeable deposit at Zogota, we began work on the feasibility study. The completion of a feasibility study is a pre-requisite for being able to apply for a mining licence. Once completed, it has to be submitted to the Ministry of Mines through the CPDM. The feasibility study is a very detailed and technical document that contains geological, mining, hydrogeological, metallurgical, environmental, infrastructural, financial and other aspects and has to demonstrate that the project is economically viable. The Ministry of Mines, through the CPDM, reviews the feasibility study in detail. If the CPDM considers the feasibility study to be acceptable, the department informs the Minister of Mines that the applicant should be invited to commence negotiations for a mining convention.

76. I managed all BSGR people involved in this study - about 10 people - as well as all the independent consultants who performed the following tasks: (1) resource estimation was done in-house and reviewed by Snowden (Johannesburg), (2) mine design, mine planning and equipment specifications were done by SRK (Johannesburg), (3) hydrogeology and geotechnical design were done by SRK (Johannesburg), (4) metallurgy, plant design, product specifications were done by Bateman (Johannesburg), (5) power requirements and design, water usage determination, waste water management and general infrastructure (i.e. camps, airport, landing strip etc) were done by Bateman (Johannesburg), (6) environmental specialist studies were done by DWA (Johannesburg), (7) socio-economic aspects were done by Environ (Paris, London), (8) port design was done by WSP (Cape Town), (9) rail design was done by WSP (Johannesburg, London and Stockholm) and (10) financial modelling and marketing were done in-house but reviewed by independent modelling experts.

77. I personally managed all the progress meetings for the study and I read, reviewed and edited all individual consultant contributions to the feasibility study report. With the help of a secretarial team I then compiled the study report and upon completion had the full report translated into French by an independent company in Johannesburg. The final report also

included numerous technical drawings completed by mostly Bateman but also WSP and SRK.

78. We finished the Definite Feasibility Study ("DFS") for Zogota at the end of October 2009 and on 16 November 2009 we officially submitted it to the Ministry of Mines. I was very proud of the job we had done. It was the first ever feasibility study submitted to the CPDM. Not one mining company that was present at the time in Guinea had ever before done anything like it. The DFS was 450 pages demonstrating a commercially viable iron ore mine at Zogota.[17]

79. After the Ministry of Mines had reviewed the DFS, the Minister of Mines ordered the establishment of a committee for the technical examination of the DFS and the negotiation of a mining agreement, The Committee consisted of 20 members, representatives of different Ministries as well as legal and fiscal advisors. I can recall that there was a legal, technical, economic and financial advisor to the Ministry of Mines and Energy, as well as the executive director of the CPDM present and legal advisors from the Ministry of Economy and Finances, Planning Ministry, Ministry of Transport and the Ministry of Environment and Sustainable Development. BSGR was represented in the meetings by Mr Avidan, Mr Tchelet (in an advisory capacity), our in-house counsel Mr Doumbia, Mrs Rakitina, Mr Touré and myself. The meetings took place in the main board room at the Ministry of Mines. We started the negotiations immediately after having handed in the DFS, with questions and answers going back and forth between BSGR and the Committee.

80. I am aware that the Committee was formerly established by Decree dated 1 December 2009[18] but I am sure that we started the negotiations earlier. In my recollection the entire negotiations lasted for about five weeks.

81. Mr Thiam was determined not to delay the process. He had implemented a policy that the negotiations had to be completed within weeks. He also proposed that BSGR should organize catering for the members of the Committee for every day to avoid everyone disappearing for lunch and coming back after they had a lengthy siesta. He said that this would streamline the process and he was right.

82. BSGR paid for the catering. We also paid each of the 20 members a daily allowance. I think we paid $20,000 in total over the entire period of the negotiations. I assume that the $20,000 we paid are the "funds" the Technical Committee refers to when alleging that Mr Thiam

[17] Zogota Feasibility Study dated October 2009 (Exhibit C-0014).
[18] Decree 2009/3466/PRG/SGG/MMEH establishing a Commission for the Technical Examination of Feasibility Studies and Negotiation of a Mining Agreement with the Company BSGR dated 1 December 2009 (Exhibit C-0015).

apparently distributed "funds" to other government officials. It was standard practice in the mining industry in Africa to pay these allowances, which were determined by the head of the committee at the beginning of the meeting.

83. These meetings turned out to be very intense but productive. In the final two weeks we worked basically non-stop from 9am until 6.30pm every day. We gave a detailed presentation of the DFS and we got lots of questions about our proposal to build a railway between Conakry to Kankan (and eventually to Kerouane), royalties, taxes etc. We also went to various individual ministries to discuss HR, labour, employment contracts, training plans, social engagement and commitment to the communities etc. There were also lots of technical discussions going on and we were scrutinized assiduously.

84. One issue negotiated was BSGR's proposed transport solution of the iron ore from Zogota through the port of Buchanan in Liberia instead of the port in Conakry. This was sensitive as it was the Government's position not to export iron ore through neighbouring countries. As this position had apparently been used by other companies as an excuse not to build a mine as the transport costs were simply too much, Mr Thiam decided to abandon the policy and we were granted an exclusive right to export iron ore through Liberia.

85. What certainly helped to obtain this right was our proposal and commitment to build a passenger and cargo railway across the entire length of Guinea. We called it the "Conakry-Kankan" or "Trans –Guinea" railway. We also insisted that the exclusive right to export iron ore through Liberia was granted to the company and not to the Zogota project. We wanted to make sure that if Simandou Blocks 1 and 2 came into production, we could export the iron ore also through Liberia. The Committee finally granted our request, but we had to agree to extend the passenger railway by 200 km from Kankan to Kerouane.

86. Another important topic during the discussions was royalties. The Mining Code provided that the export of raw material, i.e. without upgrading or beneficiation, would carry a 7% royalty. We had to convince the Committee that we were actually upgrading the material through our crushing and screening process, which resulted in two products (lumpy and fines) being exported through Liberia. This brought the royalty down to 3.5%.

87. In the middle of us negotiating the Convention de Base, there was the assassination attempt on President Dadis Camara on 3 December 2009. All the foreign companies sent their people out of Guinea. It was a highly tense situation, but Mr Avidan and I decided, together with Mrs Rakitina and our lawyer Mr Doumbia, to stay and to finalize these negotiations. We were so close to signing the Convention de Base and we did not know what would happen in the

future. The members of the Committee were impressed and encouraged that we did not run away. We showed them that we were very serious about staying in the country and getting on with the work. It was not an easy decision for us to stay and of course, we were wary of the situation in the country.

88. In the end, life in Conakry continued as normal as possible and we were able to finalise the Convention de Base together with the Committee. The final terms of the Convention de Base consisted of a two phase plan. In the first phase, BSGR would construct a mine, a crushing and screening plant with a rail loop with load out station, and a connecting railway from Zogota to the existing railway in Liberia. In the second phase, BSGR would build a new railway from Blocks 1 and 2 to Buchanan in Liberia and develop a new deep-sea port southeast of Buchanan to export iron ore from these blocks, in the event we were granted a mining concession in Blocks 1 and 2.

89. After approximately five weeks of negotiations, the Committee sent a final draft of the Convention de Base to the Minister of Mines together with a recommendation to present it to the Cabinet of Ministers for their approval. The Cabinet did not approve it immediately, but sent it back to the Committee with some more questions. The Committee returned to BSGR and we continued to negotiate these suggestions and amended the Convention de Base accordingly. The revised Convention de Base was finally approved by the Cabinet.

90. On 16 December 2009 Mr Avidan and I were called to Mr Thiam's office to sign the Convention de Base.[19] Mr Thiam signed on behalf of the Ministry of Mines and Energy and Mamadou Sande on behalf of the Ministry of Economy and Finance. Mr Avidan and I signed on behalf of BSGR. As there was no parliament in place because of the transitional government, the Convention de Base was not approved by the Parliament but by Presidential Decree on 19 March 2010.[20]

**Vale Transaction**

91. On 30 April 2010, Vale S.A. acquired 51% of the shares of BSGR Guernsey and took over the control over the project. Substantial work was being done on the ground, to the extent that a feasibility study for Blocks 1 and 2 was finalized and filed in late 2011and Zogota was ready to go in production during Q4 of 2012. We were on schedule, if not ahead of schedule, until the Government decided first to stop the works and then to withdraw our mining rights.

[19] Convention de Base dated 16 December 2009 (Exhibit C-0069).
[20] Ordinance No. 003/PRG/CNDD/SGG/2010 dated 19 March 2010 (Exhibit C-0016) and Presidential Decree No. D2010/024/PRG/CNDD/SGG dated 19 March 2010 (Exhibit C-0017).

92. I have been provided with a copy of Asher Avidan's witness statement. To the best of my knowledge and recollection, his description of the works and the investments in paras. 64 to 85 is accurate.

## C MAMADIE TOURÉ'S AND THE TECHNICAL COMMITTEE'S ALLEGATIONS ARE COMPLETELY UNFOUNDED

93. What I have said above is a summary of a long, painstakingly thorough and expensive process that we went through to obtain our rights. Notwithstanding the above, the Respondent revoked the Claimants' rights relying on the Technical Committee's recommendation[21] which concluded that the Claimants' rights were acquired through bribery and corruption. This conclusion appears to have been based on (i) an affidavit of Mamadie Touré dated 2 December 2013; and (ii) contracts purportedly entered into with Mamadie Touré. I address both pieces of evidence below.

**Mamadie Touré did not organise meetings with President Conte**

94. Mamadie Touré's affidavit to the Technical Committee sets out a fabricated sequence of events.[22]

95. First, she was not the President's wife. I believe that she was the daughter of a deceased friend of the President and the President had apparently promised to take care of her. I asked Mr Touré much later whether she was indeed his wife and he, as her half-brother, said no. There was never an official wedding or any other form of celebration to which the families were invited or the Guineans knew of. Ms Touré, however, did tell everyone that she was his wife, even against the will of the President himself.

96. Second, I am not aware of any meetings that she had organised on BSGR's behalf with President Conté. I know that none of the meetings I attended with the President was organised by her nor did we need her in order to get in contact with the President.

97. She alleges in paragraph 13 of her Affidavit[23] that I had attended a meeting after the exploration permits in Simandou North and South were granted to BSGR, without saying when the meeting actually took place. She further alleges that the meeting was also attended by Mr Beny Steinmetz, Mr Cilins, Mr Noy, Mr Touré and Mr Patrick Saada. As far as I can remember Mr Steinmetz only came to Guinea for the first time in 2008. Later on he came to

[21] Technical Committee's recommendation concerning the titles and mining agreement held by the company BSGR Guinea ("Technical Report") dated 21 March 2014 (Exhibit C-0064).
[22] Affidavit of Mamadie Touré dated 2 December 2013 (Exhibit C-0086).
[23] *Ibid*, p.2, para 13.

Guinea again in 2009 and he was on the charter flight that Minister Thiam was on to visit Zogota. As far as I can recall, neither Mr Noy nor Mr Saada were ever in Guinea when I was there. This meeting and therefore also the part that Mr Cilins asked the President that Mr Steinmetz wanted to buy his diamonds, is a mere invention.

98. The follow up meeting in Dubreka, to which she refers in paragraph 14 of her Affidavit[24] where Mr Steinmetz, Mr Noy, Mr Cilins, Mr Touré, Mr Avidan, Mr Saada, Issiaga Bangoura and I apparently turned up to visit her, is also a complete invention. This meeting did not take place and we definitely never sought her help to get Simandou Blocks 1 and 2 nor asked her to lobby on our behalf with the President, nor promised to give her 5% of BSGR's turnover.

99. Another of her allegations concerns the reception BSGR hosted in September 2006 for the official opening of its company premises in Quartier Miniere, Conakry.[25] She says that she was invited because BSGR would receive credibility by being seen with her. As far as I remember she was not invited, although she was definitely there. I certainly did not consider Mamadie Touré an individual who would give BSGR credibility, but quite the opposite, as set out in paragraph 114 below.

100. In paragraph 18 of her Affidavit[26] she states that there was another meeting with her in Dubreka, where Mr Avidan and Mr Issiaga Bangoura were present. She mentions my name, stating that BSGR needed new contracts with her because I was no longer manager of BSGR. I can confirm that I have always been and still am CEO of BSGR and have never been replaced by Mr Avidan. This allegation is another lie.

101. The last meeting I allegedly attended (paragraph 22 of her Affidavit)[27] took place in Brameya. She says that Mr Steinmetz, Mr Cilins and I visited the President there. She does not say what the meeting was about, but claims that Mr Steinmetz handed over a small car encrusted with diamonds. First, I cannot recall that I have ever been to Brameya. Second, this meeting did not take place and certainly not with Mr Steinmetz. I did have a meeting with President Conté on his farm but I am not sure if Ms Touré was there. I will talk about this below.

102. I am also aware that the Technical Committee concludes that due to Mamadie Touré's interventions at the request of BSGR, BSGR was granted its mining titles and a mining agreement, and that BSGR did not have significant experience in the mining sector *"allowing*

[24] *Ibid*, p.2, para 14.
[25] *Ibid*, p.3, para 16.
[26] *Ibid*, p.3, para 18.
[27] *Ibid*, p.4, para 22.

*to doubt the existence of sufficient technical and financial capacity to succeed in these mining operations, a condition required by the mining code".*[28] First, as set out above, BSGR did not request Mamadie Touré's assistance with our applications for exploration and mining rights in Guinea: we were granted these entirely on our own merit. Second, BSGR had significant experience in the mining industry and indeed gave a presentation to the CPDM demonstrating this (as described in paragraph 20).[29] In any event, the conclusions of the Technical Committee demonstrate a misunderstanding of the mining code: to be awarded exploration rights, as BSGR was in February 2006, you only needed to show you had sufficient financial capabilities to succeed in exploration activities, not mining expertise (although we had that as well). Finally, the Claimants' mining agreement was concluded in December 2009, over a year after President Conté died. It is unclear from the Technical Committee Report how Mamadie Touré is supposed to have used her influence in relation to this. Indeed, she did not.

**The meetings I actually had with President Lansana Conté**

103. The first meeting took place shortly after the signing of the Memorandum of Understanding. This meeting is addressed in paragraph 39 above.

104. The second meeting took place on the President's farm sometime later in 2006. I remembered it drizzling that day and it was warm. We were instructed by the President himself to visit him at his farm, which was a couple of hours outside of Conakry. I went to see him with Mr Avidan and Mr Cilins, to report on the progress of the project. It is at this occasion that I gave him our company gift, a miniature golden replica of a Formula One car, the same we had given to the Minister of Mines before. We just discussed the development of the project. He was, as he had promised during our first meeting, very interested in the progress of the project and I remember that he warned us that he was watching us.

105. The third meeting was sometime in 2007. Unfortunately I cannot recall exactly when. I recall that it was at 10pm that Mr Avidan and I received the invitation from the President to come to the Presidential Palace in Conakry. It was not unusual for him to make such calls at ridiculous times of the day. His successor, Dadis Camara was even worse as he would call a meeting at 2am in the morning. In any event, Mr Avidan and I had no option but to attend this meeting with the President.

106. When we arrived at the Presidential Palace, we were called to a large rectangular room. He was sitting in a big chair at the far end of the room watching a soccer game on a TV mounted

[28] Exhibit C-0064 p.27, para 126.
[29] Exhibit C-0002.

to the wall to the left of him whilst smoking his little cigarettes. To our surprise Ms Touré was there as well. He asked us to sit down and now and then, while watching the game, he asked us how our work in Simandou North and South was progressing, what we were doing, how many people we had employed and if we were using the facilities of the villages. These were all very simple questions and we were happy to answer them. Ms Touré was just sitting there, but then she started to interrupt him while he was asking us questions. He went completely mad. He shouted at her and ordered her to shut up as this was none of her business. At some point I even feared that he would hit her in front of us.

107. I can recall that Mr Avidan and I were both shocked by these events and talked about it later in the car. Having experienced how the President treated her at this meeting, I find it difficult to believe that she could have had an influence on him at all. In any event, we did not need her. We had had little contact with her until then and after that meeting we certainly did not consider her as a point of contact to get to the President.

**BSGR did not sign any contracts with Ms Touré or Matinda**

108. The Technical Committee report states that its conclusions are "*especially based"* on a series of contracts which it alleges BSGR signed with Matinda/Ms Touré on 20 June 2007, 27 February 2008 and 28 February 2008.[30]

109. BSGR certainly did not enter into any contractual arrangements with her or any of her companies. The Protocole d'Accord dated 20 June 2007[31] is a forgery; there is no doubt about it. First of all, because I never signed that document (although I can see that it bears something that looks like my signature). Secondly because according to Ms Touré[32] this document was signed at a meeting on 20 June 2007 in the presence of Mr Steinmetz, Mr Avidan, Mr Saada, Mr Bangoura and Mr Touré whereas such a meeting has never taken place.

110. I am aware that Mr Avidan was also confronted with contracts that were allegedly signed by him. I am referring to the contracts apparently signed with Matinda on behalf of BSGR in February 2008. What I recall is that Matinda filed a claim based on these forged documents, which was served by the Conakry court on BSGR in June 2010. Mr Avidan immediately responded to that claim by sending a letter to Ms Touré's lawyer threatening to take legal action if she did not immediately withdraw the claim and confirm that these contracts were forgeries. The claim was withdrawn. Unfortunately this was not the only blackmail attempt

[30] Exhibit C-0064 p.4 and p.11-12, p. 25-26, paras 31 and 122.
[31] *Ibid*. p.216.
[32] Exhibit C-0086 p.3, para 17.

we had to deal with during our time in Guinea.

**BSGR did not know about the Pentler contracts**

111. The Technical Committee report also alleges that Pentler entered into contractual arrangements with Ms Touré on behalf of BSGR.[33]

112. BSGR had nothing to do with the contracts Pentler apparently concluded with any third parties.

113. In my understanding, Pentler was at one point an independent contractor and it could not and did not act on behalf of BSGR.

114. As far as I know, Pentler provided us with business opportunities and Guinea was not the only one. They referred more opportunities to us. One was the tender of Bong Mine in Liberia that they had heard about as they were operating in that country. The Government officially launched that tender in the first half of 2008. Pentler introduced us to the National Investment Committee (Tolbert) and Minister of Mines (Shannon). After that my team and I did the rest: we prepared the tender and submitted it to the National Investment Committee. In the end, BSGR were not awarded the tender as it went to China Union. And there have been more opportunities in gold, some in diamonds and some in coal that Pentler brought to us. Most of them we did not, however, follow up on as I was of the opinion that they were not for BSGR.

115. We were introduced to Guinea and its mining opportunities by Pentler. In return, Pentler received a shareholding.

116. Such a business agreement, in my experience, is not unusual. However, once introduced it was up to BSGR to develop this opportunity, to establish its contacts and to move forward. There was no need for further help from Pentler or to bribe any government official or to involve someone like Ms Touré to influence the President. Whatever relationship Pentler may have had with her, had nothing to do with BSGR and we did certainly not know about it. Pentler's involvement ended in late 2006. Mr Cilins was in Guinea or at least assisting us until September or October 2006, about three/four months after Mr Avidan had arrived.

117. Ms Touré has never received any payments from BSGR. I never signed off or heard about payments that were made to her. Equally, I am not aware of any cash or gifts that Mr Avidan

[33] Exhibit C-0064 p.11-12, p.25-26, paras 31 and 122.

would have given her and, considering the nature of my relationship with Mr Avidan, I am convinced that he would have told me if he had given such presents. He did not.

118. From the very first moment when I got involved with BSGR, I made sure that we did everything according to internationally accepted guidelines (e.g. Samrec, JORC and Equator Principles) and that we adhered to existing and applicable local (e.g. the Guinea Mining Code) and international laws. I insisted on following the guidelines, not only for moral reasons but also because it was simply in our own interests.

119. Based on my expertise in industry, I assumed that at some point an interested joint venture partner would turn up and would scrutinize all the work we had completed. This was common practice in our business. We were compliant with the Mining Code. We filed monthly (and at times weekly) reports to the CPDM. The CPDM told me many times that we were a prime example of good practice. We were the "star child" amongst the other companies. Not only that, people liked us for the reasons I have stated above. This has nothing to do with payment of money to government officials, but everything with our own efforts and interest in developing the project.

## D CONCLUSION

120. I have worked for BSGR since 1 October 2005 and I am immensely proud of what BSGR achieved in Guinea. When the Respondent illegally confiscated our licences, both BSGR and the Guinean people were robbed of a genuine opportunity to finally derive benefits from this huge natural resource called Simandou that for decades had not seen any meaningful mining activity. My experience of BSGR's business and the people involved in it, is that they have not engaged in corrupt business practices. The Respondent's revocation of our rights was based on false allegations founded on fabricated and forged evidence.

I confirm this statement is true to the best of my knowledge and belief.

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Marcus Joannes Paulus Maria Struik

.....25.02.2016.....

Date