

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

Second Witness Statement

DAG LARS CRAMER

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 make this Second Witness Statement in support of BSG Resources Limited, BSG Resources (Guinea) Limited and BSG Resources (Guinea) Sarl ("**BSGR**") against the Republic of Guinea ("**Guinea**").
2. In this second witness statement, I wish to respond to the allegations advanced by Guinea in its Counter-memorial, particularly in light of recently exposed evidence. Where I do not comment on an aspect of Guinea's allegations, this is not meant as an acceptance of those allegations.

B. THE BSG GROUP

3. As set out in my first witness statement, I provide the Balda Foundation with a bi-annual report on the operating companies within the BSG group of companies. I also attend the Balda Foundation board meetings which occur twice each year.
4. Onyx is a corporate services company. Onyx' clients include the Balda Foundation, which contracts Onyx to provide corporate and management services to subsidiary companies, including the BSG Group. Although Onyx does provide such services to third parties not owned or controlled by beneficiaries of Balda, providing services to third parties is not a significant part of the business of Onyx.
5. Whilst I am now aware that Onyx provided corporate services to Pentler in 2006, having reviewed the emails dated 13 February 2006 between Sandra and Michael Noy¹, I did not know about that at the time. Sandra did not generally keep me informed about minor pieces of work, such as this.
6. Although Guinea alleges that Mr Beny Steinmetz is the principal of all the BSG group companies, he is in fact an advisor to the main BSG operating companies. The main BSG operating companies have active, independent boards and hold regular board meetings, arriving at their decisions without the presence of Mr Steinmetz at meetings and usually without any contribution from him. I can only recall one occasion where Mr Steinmetz attended part of a BSGR board meeting. Sometimes Mr Steinmetz is provided with updates about the companies, and we speak frequently. However, Mr Steinmetz has no legal or other authority to make any decisions on behalf of any company within the BSG group of companies.
7. There is no doubt that Mr Steinmetz is considered a successful businessman and a highly intelligent individual. Given his experience, personality, and proven track record, his advice carries some weight, depending on the issue being considered. But he ultimately does not have any authority to make decisions for BSGR. Mr Steinmetz does not have a mandate to direct any BSG company to take certain actions and all the directors of BSG are careful to operate properly and in accordance with their mandates. Indeed, for a period of approximately 10 years we were advised by the Rothschild Trust, the CEO of whom sat

¹ Exhibit R-178, Emails between Sandra Merloni-Horemans and Michael Noy, 13 & 14 February 2006

on the board of Balda. I recall that one of the CFO's in Rothschild once said that, in the context of a hybrid family office like ours, we were the best run foundation they had ever seen.

8. Guinea misrepresent my role and relationship with Pentler and Margali in paragraphs 71 to 77 of the Counter-memorial, and its misleading organogram. During the past decade, Onyx has incorporated hundreds of BVI based holding companies, with the intention that they be made available as special purpose vehicles for legitimate use by Onyx's clients as they require. Pentler was a company of that sort. It was not established to be part of the BSGR Corporate Structure, and was shortly after incorporating, sold to the Pentler shareholders, in an arm's length transaction. If Guinea wish to represent Pentler as having fallen under the Onyx umbrella, every other corporate entity set up by Onyx should also be included in order to give the Tribunal a proper understanding of the role of Onyx. I also confirm that Margali is not a subsidiary of Onyx Suisse, and I do not recalling signing any documents in my capacity as its administrator.

C. FOFANA

9. I have been shown emails and documents concerning the organisation of a visa for Kassoury Fofana, and a work experience placement at Onyx's office for his daughter, Nancy Fofana.² Guinea implies that this, among other actions caused Conté's government to impose the "*retrocession*" on Simfer. This is patently untrue.
10. It is not uncommon for my office to organise a visa for a business associate of BSGR who is visiting London. If I was asked to assist someone with whom a BSG company group had business relations to obtain a visa, I would happily try to arrange this. Part of Onyx's purpose was, and remains, to facilitate the underlying requests of the BSG businesses and doing minor favours such as this is simply part of building and maintaining business relationships. I would normally ask a junior administrative staff member to deal with it. I do not recall the purpose of Mr Fofana's trip to London in 2009, nor do I recall whether I was aware of the purpose of his trip at the time.

² Exhibit R-244, E-mails between Miss Fofana, Mr. Cramer and Mrs. James Holmes, 14-16 December 2009. Exhibit R-247, E-mails between Mr. Avidan, Mr. Tchelet and Mr. Cramer and others, 4 January 2009; Exhibit R-248, Letter from Mr. Cramer (BSG Management Services Limited) at the Consulate General of the United Kingdom, 5 January 2009.

11. Regarding Fofana's daughter, it is quite common for us to host interns in this way and in fact last summer the children of two employees of companies that Onyx provides services to, did work placements in Onyx's office.

D. CONSPIRACY AGAINST BSGR CONFIRMED

12. In relation to my evidence through my Judicial Review witness statement concerning the conspiracy against BSGR, Guinea asserts that "*this fanciful tale is of course not supported by any evidence*"³. Guinea opportunely ignores that I exhibited to my Judicial Review witness statement a total of 148 documents which included:
- a. emails and contemporaneous notes of conversations between me and Heine van Niekerk, in which Mr Niekerk describes his first-hand knowledge of (i) President Condé's vote rigging; and (ii) his political motivation to withdraw mining rights from VBG;⁴
 - b. emails between Alpha Mohammed Condé (President Condé's son) and Sable Mining, evidencing payments by a mining company to the Condé regime in return for mining rights (as described in more detail below).⁵ In particular, the email of 18 August 2010 in which Andrew Groves, the CEO of Sable, emailed

³ Counter-memorial at [1156]

⁴ Exhibit C-0028, Cramer JR witness statement [37]-[47]; Exhibit C-0291, Exhibit DLC1/32 to the Cramer JR witness statement: E-mail from Dag Cramer to redacted "Note for the record", 6 June 2014; Exhibit C-0292, DLC1/33: Foresight Advisory Services website "Ambassador Moe Shaik", undated; Exhibit C-0293, DLC1/34: E-mail from Dag Cranmer to redacted "Note for the Record meeting with Heine Van Niekerk" dated 13 June 2014; Exhibit C-0294, DLC1/35: Brochure for Foresight Advisory Services: "The Intelligent Solution", undated; Exhibit C-0295, DLC1/36: Letter from Heine Van Niekerk to General Konaté dated 17 April 2014; Exhibit C-0296, DLC1/37: Guinea Country Overview, prepared by Foreign Advisory Services dated April 2014; Exhibit C-0297, DLC1/38: Preliminary Remote Behavioral Profile of General Sékouba Konaté, prepared by Foreign Advisory Services, undated; Exhibit C-0298, DLC1/39: President Alpha Condé – Remote Behavioural Profile and Risk Analysis, prepared by Foreign Advisory Services dated 1 April 2014.

⁵ Exhibit C-0028 [59]; Exhibit C-0299, DLC1/57: Extract from an E-mail from Alpha M. Condé to Andrew Groves and redacted individual copied to Bouba Sampil "Manganese" dated 5 August 2010; Exhibit C-0300, DLC1/58: E-mail and chain from Alpha M. Condé to redacted individuals copied to Bouba Sampil "Fwd: Letter" dated 7 August 2010; Exhibit C-0301, DLC1/59: Letter from Sable to Minister of Mines dated 7 August 2010; Exhibit C-0302, DLC1/60: Email from Alpha M. Condé to Heine Van Niekerk copied to Bouba Sampil: "Bank Detail and Letter update" dated 8 August 2010; Exhibit C-0303, DLC1/61: E-mail from Andrew Groves to Heine Van Niekerk dated 18 August 2010; Exhibit C-0304, DLC1/62: Email from Bouba Sampil to redacted individuals "Copy passport" dated 24 August 2010; Exhibit C-0305, DLC1/63: Email exchange between "a 2 z travel", redacted individual and Andrew Groves "Re: need help" dated 1 September 2010; Exhibit C-0306, DLC1/64: E-mail from "a 2 z travel" to redacted individual "Electronic ticket receipt" dated 1 September 2010; Exhibit C-0307, DLC1/65: E-mail from Segran Govender to Alpha M. Condé copied to redacted individual "Helicopter Requirement: Guinea Election Campaign" dated 5 September 2010; Exhibit C-0308, DLC1/66: E-mail from Alpha M. Condé to redacted individual "Guinea Helicopter" dated 11 September 2010.

Mr van Neikerk stating, “Alpha Conde paid”;⁶

- c. contemporaneous notes of meetings between Asher Avidan and Walter Hennig, in which Mr Hennig described how President Condé granted stakes in Guinean mining assets to South African interests in return for money;⁷
- d. the “Palladino contract”, which was the vehicle through which President Condé was to reward those South African interests with a 30% stake in the national mining company. The Palladino contract was cancelled after intense media scrutiny;⁸
- e. a legal consultation by Daniel Labetoulle, Honorary Chair of the Litigation Division of the French Council of State, and Denys de Béchillon, Professor of Public Law, in relation to the flawed legal basis of the Technical Committee;⁹
- f. numerous transcripts of interviews with President Condé and key Guinean ministers, demonstrating the political bias against BSGR;¹⁰ and
- g. internal emails from BSGR’s former PR agency, FTI, demonstrating that George Soros told FTI’s Chairman, Lord Malloch Brown, to terminate FTI’s relationship with BSGR.¹¹

⁶ Exhibit C-0303, DLC1/60: E-mail from Andrew Groves to Heine Van Neikerk, 18 August 2010.

⁷ Exhibit C-0028 [35.7] - [35.10]; Exhibit C-0309, DLC1/28: Contemporaneous memorandum of a meeting between Mr Hennig and Mr Avidan dated 20 March 2012; Exhibit C-0310, DLC1/29: Transcript of a recording of a meeting between Mr Hennig and Mr Avidan, dated 28 March 2012; Exhibit C-0311, DLC1/30: Transcript of a recording of a meeting between Mr Hennig and Mr Avidan dated 29 March 2012; Exhibit C-0312, DLC1/31: Transcript of a recording of a meeting between Mr Hennig and Mr Avidan, 1 April 2012.

⁸ Exhibit C-0313, DLC1/53: Loan Transfer Note dated 21 April 2011; Exhibit C-0314, DLC1/54: The Sunday Times “*Secret deals threatens big miners: BHP Billiton and Rio Tinto at risk after shadowy middleman strikes backdoor pact in Guinea*” dated 3 June 2012; Exhibit C-03015, DLC1/55: The Sunday Times “*World Bank to probe mines deal*” dated 24 June 2012

⁹ Exhibit C-0070 and Exhibit C-0028 [77.2.2].

¹⁰ Exhibit C-0028 [85]; Exhibit C-0316, DLC1/129: Bloomberg “*BSG Role in Guinea’s Vale Venture Faces State Review*” dated 8 February 2012; Exhibit C-0317, DLC1/130: Letter from the GoG to BSGR dated 20 March 2012; Exhibit C-0318, DLC1/131: Chatam House Q&A Session “*Guinea in Transition: Reform, Resources and Regional Relations*” dated 14 June 2013; Exhibit C-0319, DLC1/132: Transcript of broadcast of “*Guinea Corruption and diamonds*”, Channel 4 news dated 18 June 2013; Exhibit C-0320, DLC1/133: Financial Times “*Guinea corruption probe advances but wait for Simandou goes on*” dated 21 October 2013; Exhibit C-0321, DLC1/134: Extracts from “*The Other Scott Horton*” show dated 5 July 2013; Exhibit C-0322, DLC1/109: Transcript of interview with Alpha Condé dated 4 November 2013.

¹¹ CWS-7 (Cramer) at [26]; Exhibits C-0151-C-0154. Guinea ignore this evidence. However, I previously exhibited evidence that (i) Lord Malloch Brown admitted to me that FTI’s refusal to act for BSGR was “*partly about*” Mr Soros (CWS-7 (Cramer) at [26.4.8]); (ii) documents provided by FTI to BSGR exposed that Lord Malloch Brown was in direct contact with George Soros’ Open Society Institute in relation to FTI’s retainer with BSGR, even before that issue had been discussed with BSGR itself (CWS-7 (Cramer) at [26.4.11] and Exhibit C-

13. On the basis of that evidence, the English High Court concluded that:

“[t]here is no doubt at all, to my mind, on the present materials that there are some disconcerting features contained in the evidence relating to events which have happened in Guinea: not least, although certainly not solely, because of what appears to have been a possibly arbitrary detention and arrest of two employees of the claimant in Guinea for no very clear reason apart from their being such employees. There are numerous other points that can fairly be made, and are made, in Mr Cramer’s statement.”¹²

14. There was ample evidence when making my Judicial Review statement, however there has since been a flood of further evidence from copious sources, in many jurisdictions, unequivocally confirming the conspiracy against BSGR, and improper conduct causing enormous damage to BSGR. Additional evidence is regularly being uncovered. Sources include:

- a. the US criminal proceedings against Mr Samuel Mebiame;
- b. a cease and desist order by the Securities Exchange Commission and deferred prosecution agreement relating to Och Ziff Capital Management Group LLD and OZ Management LP in the United States (“Och Ziff”);
- c. Global Witness¹³, Wall St Journal¹⁴ and Bloomberg reports regarding Sable, the mining company that *“forged a relationship with Conde’s son in 2010 and helped with campaign logistics during the presidential elections that year. Two years later, Sable was awarded mining rights to the Mount Nimba iron-ore project and subsequently obtained an authorization to export through neighbouring Liberia, denied to some other mining companies...”*¹⁵
- d. the sacking of two senior Rio Tinto executives for their unlawful interference with Simandou mining rights, evidence by the improper payment by Rio Tinto

0154); and (iii) BSGR’s claim against FTI was settled in BSGR’s favour on 31 May 2013, with FTI agreeing to pay BSGR a substantial sum in damages and costs.

¹² [2015] EWHC 1813 (Admin), Exhibit C-0323.

¹³ <https://www.globalwitness.org/thedeceivers/>

¹⁴ Exhibit C-0324 Wall Street Journal article dated 11 May 2016

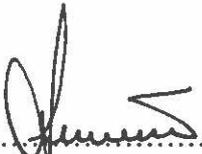
¹⁵ Exhibit C-0325, Bloomberg, “Guinea to probe Sable Mining after Global Witness Report” dated 16 May 2016

of US\$10.5 million to a middleman Francois de Combret for his services in securing a settlement between Rio Tinto and President Condé, and his access to President Condé;

- e. the allegations against Mr Thiam, which demonstrates the falsity of the tale Rio Tinto had concocted that Mr Steinmetz funded a property in New York for Mr Thiam. Rio Tinto had ruthlessly spread and repeated the lie since 2009, including to US foreign officials and to the world at large, through the public US RICO proceeding. Rio Tinto and Guinea conspired to besmirch and tarnish the reputation of Mr Steinmetz and BSGR;
- f. the payments made by Mr Mamoudou Kouyaté, special advisor to President Condé to Mamadie Touré;
- g. the French criminal investigations into the finances of the son of President Condé; and
- h. the conviction and sentencing of the Chinalco CEO.

15. As evidence continues to unfurl, my previous statements are proving to be a work of disturbing non-fiction, of a most sinister and greedy kind, as opposed to a "*fanciful tale*"¹⁶.

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



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Dag Cramer

Dated: 10 January 2017

¹⁶ Counter-memorial at [1156]