

CLAIM NO. []

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

BETWEEN:

BSG Resources Limited

Claimant/Applicant

-and-

(1) The Director of the Serious Fraud Office

(2) The Secretary of State for the Home Department

Defendants/Respondents

-and-

Onyx Financial Advisors (UK) Limited

Interested Party

WITNESS STATEMENT OF DAG LARS CRAMER

I, Dag Lars Cramer of 7 Old Park Lane, London W1K 1QR, WILL SAY as follows:

1. I am the Chief Executive of Onyx Financial Advisors (UK) Limited ("Onyx"), a management services and financial advice company which is engaged by the Claimant in the UK. Onyx has acted as the Claimant's representative in the UK since 20 May 2005, providing a virtual head office and management, accounting and public relations services. Onyx's former name was BSG Management Services Limited, which was changed to Onyx on 7 March 2011. A copy of the Certificate of Incorporation on Change of Name is at DLC1/Tab 3.
2. I am authorised by the Claimant to make this statement on its behalf. Except where I indicate to the contrary, the facts and matters contained in this witness statement are within my own knowledge or derived from instructions given to me by the Claimant. Where the facts are not within my own knowledge, I have identified my sources of information or belief. All the facts and matters stated herein are true to the best of my knowledge and belief.

3. References in this witness statement to a bundle of correspondence served by the Claimant in this application are in the format [Corr/Tab/Page Number]. All other tab and page references refer to the bundles of supporting documents served by the Claimant, in the format [Exhibit/Tab/Page Number]. Page numbers are only included where necessary.
4. I make this statement in support of an application by the Claimant pursuant to CPR 54.4 for permission to apply for judicial review of the decisions of the Serious Fraud Office ("SFO") and the Secretary of State for the Home Department ("SSHD") ("the Defendants") to accede to the formal request for assistance of the Republic of Guinea relating to a criminal investigation into BSG Resources Limited ("BSGR"), its agents and its employees.
5. This statement is limited to the ground that the decisions of the SSHD and the SFO were made unlawfully and/or were an irrational exercise of the decision-makers' discretion because the request for assistance is tainted by bad faith and/or political motivation.

A. BRIEF BACKGROUND TO PROCEEDINGS

6. On 25 July 2014, I was served with a section 2 notice by the SFO pursuant to a formal request for assistance from the Republic of Guinea ("Guinea") relating to a criminal investigation [Corr/3]. The section 2 notice stated that this investigation into BSGR "*and others*" related to "*the awarding of mining rights to BSG Resources Limited ("BSGR") over mineral deposits in Simandou and Zogota located in Guinea*" (the "Criminal Investigation").
7. Neither BSGR, nor the unidentified "others", had been made aware that such a Criminal Investigation had been commenced. The Claimant to date has not been provided with access to the criminal court file and the Defendants have failed to provide disclosure of the letter of request ("LoR") from Guinea which may provide more detail as to the allegations being investigated.
8. Section 2 notices were also served on 25 July 2014 on the Claimant's solicitors, Mishcon de Reya, and its previous UK firm of solicitors, Skaddens, Arps, Slate, Meagher & Flom (UK) LLP ("Skaddens") [Corr/1&2].
9. On 7 August 2014, Mishcon de Reya on behalf of the Claimant served a Letter Before Claim ("LBC") on the Proposed Defendants in respect of the three section 2 notices issued on 25 July 2014 ("the Section 2 Notices") [Corr/10]. The LBC *inter alia* raised the following issues:
 - 9.1 That the decisions of the Defendants to accede to the formal request for assistance were made unlawfully and/or were an irrational exercise of the decision-makers' discretion because:
 - 9.1.1 the LoR is tainted by bad faith and/or political motivation;
 - 9.1.2 the conduct under investigation is statute-barred under Guinean law; and
 - 9.1.3 any trial in Guinea would be conducted in breach or flagrant breach of Article 6 of the European Convention on Human Rights.
 - 9.2 That the Section 2 Notices were ill defined and too wide in their scope and that as a consequence of their scope the Section 2 Notices were oppressive; and
 - 9.3 That no adequate disclosure accompanying the Section 2 Notices had been made to effect compliance.

10. On 22 August 2014, the Second Defendant responded to the LBC, neither confirming nor denying that a request for mutual legal assistance had been made, providing no disclosure and simply referring the Claimant to a copy of the Home Office guidelines "Requests for Mutual Legal Assistance in Criminal Matters" [Corr/23].
11. On 7 October 2014, the First Defendant responded to the LBC [Corr/27]. The letter failed to engage with the detail provided in the LBC in support of the grounds for judicial review, instead providing bare denials to the Claimant's submissions. The response referred in passing to a second letter of request sent to the United Kingdom by the Republic of Guinea on 22 September 2014 ("the Second LoR"). However, no explanation was provided as to whether the Second LoR was sent in response to enquiries made of Guinea or was unprompted. No details of the content of the Second LoR are provided. No copy has been disclosed and the disclosure requested in the LBC was refused.
12. That same day, on 7 October 2014, the First Defendant issued amended section 2 notices to me [Corr/30], Mishcon de Reya [Corr/28] and Skaddens [Corr/29] ("the Amended Section 2 Notices"), revoking the first Section 2 Notices. However the Amended Section 2 Notices were even wider in scope than their predecessors.
13. Given the increased scope of the Amended Section 2 Notices and the failure of either Defendant to deal with the substance of the LBC, on 17 October 2014, Mishcon de Reya on behalf of the Claimant issued a further letter before claim in respect of the Amended Section 2 Notices (the "Second LBC") [Corr/31]. The Second LBC provided 14 days to respond.
14. The First Defendant responded on 31 October 2014, again rejecting the Claimant's arguments in perfunctory terms and providing none of the requested disclosure. The Claimant believes it now has no choice but to apply for judicial review of the Defendants' decisions. The Claimant has acted without delay to prepare its detailed application and collate the substantial volume of supporting evidence.

B. THE PARTIES

15. The Claimant is a company incorporated in Guernsey. It is an international diversified resources company with operations in multiple countries in Africa and Eastern Europe, including metals and mining operations in ferro-nickel, diamonds, iron ore and gold. The Claimant is also active in power generation in Nigeria. The Claimant has a fifteen year track record of providing risk capital for development and execution of exploration and mining operations in challenging environments. Beny Steinmetz is an advisor to BSGR.
16. Onyx intends to be an interested party in the judicial review proceedings, given that it will be directly affected by the outcome of a judicial review challenge in relation to the Amended Section 2 Notices.

C. SUMMARY: BAD FAITH AND POLITICAL MOTIVATION

17. The SFO's position in its letter of 7 October 2014 was that it has "*seen no evidence [to] suggest*" that the LoR is unlawful by reason of bad faith or political motivation. However, the indicators of political influence in relation to the LoR and Second LoR are numerous. It is evident that the request for mutual assistance was not made in good faith and relies upon demonstrably false allegations against the Claimant which were invented and disseminated by the very party now making the request for assistance.

18. This statement sets out how the Criminal Investigation into the Claimant, its agents and employees is politically motivated to justify the illegal expropriation of the Claimant's assets by the Government of Guinea ("GoG") to reward the Guinean President's backers in the 2010 Presidential election. The LoR and Second LoR were issued in furtherance of this illicit and prejudicial campaign.
19. In summary and as evidenced in the body of the statement:
 - 19.1 BSGR and its subsidiaries have been active in Guinea since February 2006 and have invested more than \$800 million in the country as part of efforts to explore and develop iron ore reserves at Zogota and subsequently Simandou, on its own account and also with its joint venture partner Vale. The company's exploration licences were granted legally, as part of an open application process, following years of exploration expenditure. This resulted in the signing of a Base Convention on 16 December 2009 between the GoG and the Claimant whereby the Claimant was granted a long term mining licence to export iron ore from Zogota and subsequently Simandou, through neighbouring Liberia. In April 2010, the Claimant entered into a joint venture with Vale S.A ("VBG") for the joint development and operation of BSGR's Simandou rights.
 - 19.2 Unbeknown to the Claimant, in early 2010, the then Presidential candidate Alpha Condé entered into a series of secret and unlawful agreements pursuant to which he would be provided with funds and logistical support to rig the upcoming election, in return for rights in the country's mines, including Simandou. These agreements were implemented. Firstly, the election was rigged, resulting in a huge swing in Alpha Condé's favour from 18% of the vote in the first round of the election to 52% in the second round, securing victory. Secondly, funds were transferred to Alpha Condé by way of a recorded loan of \$25million and further unrecorded transfers believed to be "*much much more*" [DLC1/21/424]. Thirdly, Alpha Condé attempted to reward his backers. He entered into an agreement known as the Palladino Contract, pursuant to which the provider of the \$25million loan would, on default of the loan, become entitled to a 30% share in a new Guinean national mining company established by Alpha Condé. Similarly, he promised Sable Mining Africa Limited ("Sable") valuable mining concessions in return for providing logistical and financial assistance during the election. Accordingly, it was necessary for Alpha Condé to nationalise or expropriate assets to fulfil these illicit deals.
 - 19.3 Alpha Condé's pursuit of Guinean resources began almost immediately on entering office, following which he announced his intention to "*shake up*" the mining regime. There followed a "review" into the granting of the Claimant's mining rights, resulting in the illegal expropriation of its assets in April 2014. The entire confiscation process conducted by the GoG violated both Guinean and international fundamental principles of law.
 - 19.3.1 Alpha Condé instructed DLA Piper to carry out an investigation into BSGR, with the principal aim of finding evidence that BSGR had obtained its rights in Guinea by corruption (the "DLA Piper Report"), notwithstanding that a previous report commissioned by Alpha Condé (dated 20 December 2011) had found no such evidence. The DLA Piper Report was based on third hand accounts by private investigators and unsupported by evidence. It made serious allegations of fraud against BSGR, which were both untrue and unbelievable.
 - 19.3.2 The discredited DLA Piper Report formed the basis of the formal review into the Claimant's rights. The review process was devoid of even the most basic elements of procedural fairness. The Committee:
 - (a) operated entirely under the control and direction of Alpha Condé;

- (b) ignored the presumption of innocence;
- (c) reversed the burden of proof meaning the Claimant was required to demonstrate it had not committed an offence of corruption;
- (d) was based upon evidence which was admitted by the Committee to have not been tested;
- (e) failed to properly disclose the documents upon which it purported to rely, notwithstanding repeated requests from the Claimant;
- (f) ignored in their entirety the Claimant's submissions;
- (g) conducted a prejudicial hearing in the absence of the Claimant and which was organised in such a way that there was no opportunity to test the truth of the key evidence relied upon; and
- (h) presided over the systematic leaking of information to sympathetic members of the media, in order to cause the maximum prejudice to the Claimant.

19.3.3 The review was conducted in the context of multiple statements made by President Condé and members of his GoG which demonstrated that it viewed the removal of the Claimant's assets as a foregone conclusion.

19.4 The treatment of the Claimant contrasted strikingly with (i) Rio Tinto, which in return for a payment to the GoG of \$700million and the granting of a 15% stake in its mines, was excused from the entire review process; (ii) RusAl, which agreed to make a payment to the GoG of \$836 million and whose rights have not been subject to the mining review; and (iii) Sable, which, in return for financial and logistical assistance provided to Alpha Condé during his election campaign, was granted lucrative mining rights by the GoG on rare terms. This raised suspicions that the deal was a cover to reward the company and Sable's director, Aboubacar Sampil, who incidentally assisted in the rigging of the election and remains a close associate of President Condé's son. That the three companies were treated so differently from the Claimant – which refused to make a payment to Alpha Condé to maintain its rights – is a further indication of the political motivation behind the prejudicial review of the Claimant's rights.

19.5 Furthermore, Alpha Condé enlisted help from overseas supporters, and in particular George Soros, in order to cause the Claimant maximum harm and prejudice. This extended to placing pressure upon the Claimant's UK PR advisors to terminate the Claimant's retainer and the making and spreading of allegations that the Claimant has repeatedly attempted to organise a coup d'état in Guinea. This has led to the questioning without foundation of unconnected businessmen in Guinea and the US about their links with the Claimant, purely on the basis that they share the same nationality as Mr Steinmetz.

19.6 The Alpha Condé regime has furthermore been tainted with numerous issues surrounding good governance and democracy including human rights abuses and a lack of independence in the justice system, which is detailed in the witness statement of James Lewis Libson, dated 26 November 2014.

19.7 In this context, it is clear that the LoR and Second LoR are politically motivated, to further the unlawful campaign of Alpha Condé against the Claimant. Any Criminal Investigation into the Claimant cannot be anything but unfair and prejudicial.

20. This Witness Statement is organised as follows:
- D. The grant of BSGR's mining rights
 - E. Joint venture with Vale
 - F. Investments made following the joint venture with Vale
 - G. Alpha Conde's election campaign and consequent interest in BSGR's mining rights
 - H. The pursuit of Guinean resources by Alpha Condé
 - I. The Government's illegal taking of BSGR's investments
 - J. Disruptions to the Claimant's works in Simandou
 - K. The Technical Committee's reliance on discredited evidence
 - L. The lack of due process throughout the review process
 - M. Bad faith towards the Claimant
 - N. Conclusion
21. A dramatis personae of the key individuals and entities referred to in this statement is at DLC1/1 and a chronology of key events is at DLC1/2.

D. THE GRANT OF BSGR'S MINING RIGHTS

22. On 6 February 2006, BSGR was granted two iron ore exploration licences near Simandou, Republic of Guinea ("Guinea"), including an area later known as "Project Zogota" [DLC1/4 & 5]. As is standard practice in the mining industry, due to no guarantee of success and the significant cost and risk involved in exploring an area to determine whether it could economically and technically be mined, BSGR did not pay anything for the exploration rights.
23. Rio Tinto had held an exploration licence over areas known as Simandou Blocks 1 and 2, as well as Blocks 3 & 4, since February 1997, granted at no cost by the former President, Lansana Conte. Rio Tinto focused its exploration efforts on Blocks 3 and 4. However, by 2008 it had failed to do any significant exploration works, especially in respect of Blocks 1 and 2. On 1 August 2008, the GoG informed Rio Tinto that it was rescinding its mining concession in respect of Blocks 1 and 2, on the basis that it had acted in breach of the 1995 Mining Code in a number of respects [DLC1/6]. The report by the law firm Heenan Blaikie dated 20 December 2011, instructed by President Alpha Condé, confirmed that the withdrawal of Rio Tinto's rights over Blocks 1 and 2 was justified by the fact that it had failed to comply with its obligations under the Mining Code. It concluded that:
- "the decision of the State to withdraw the Blocks 1 and 2 from Rio Tinto would have been justified by the fact that Rio Tinto had not respected their obligations relative to the corresponding permits of exploration."* [DLC1/7/67]
24. BSGR applied for exploration permits for Blocks 1 and 2 and understands that two other companies also did so. They were called to meetings with the Ministry of Mines, headed by the then Minister of Mines, Mr Louceny Nabé. BSGR's application was successful and its

permit signed by Mr Nabé on 9 December 2008 [DLC1/8/79]. The same Mr Nabé is currently serving under Alpha Condé as the Governor of the Central Bank.

25. Between 2006 and 2009, BSGR achieved considerable success with its exploration drilling programme, resulting in the completion of its feasibility study for Zogota in November 2009, submitted to the Ministry of Mines, and concluding the existence of a commercially operational deposit at Simandou South, while the Simandou North and Bauxite licenses were relinquished to the Government according to the Mining Code. A copy of a geological report concluding that the areas were commercially viable is at DLC1/9. The completion of the feasibility study within only three years of the exploration permits being issued was the first accomplishment of its type in the history of Guinea. This was achieved despite the death of President Lansana Conté in December 2008, which plunged Guinea into a period of political instability marked by military coups and transitional governments.
26. On 16 December 2009, a base convention ("the Base Convention") was entered into between the GoG and the Claimant whereby the Claimant was granted a long term mining licence to export iron ore from Zogota [DLC1/10]. In addition, this first Base Convention made reference to the export of iron ore from Blocks 1 and 2 through Liberia, once a feasibility study for these Blocks was completed (which was submitted in September 2011) and a second Base Convention negotiated for these Blocks. In return, the GoG would earn substantial sums in revenue, and, in addition to building the railway and deep-sea port through Liberia, BSGR committed to build a US\$1 billion passenger railway of 660km to connect the interior of Guinea to its capital, Conakry. The Base Convention followed a three-year exploration programme in which BSGR had invested over US\$165 million with no guarantee of success. The Claimant commenced construction work at Zogota and on the passenger railway soon after signing the Base Convention. To date, BSGR and its partner Vale, one of the largest mining companies in the world, have spent in excess of US\$800 million on the project, which, as explained below, the GoG illegally expropriated without any form of compensation.

E. JOINT VENTURE WITH VALE

27. With a significant expansion of its remit in Guinea, and having seen the commercial benefit of developing the Zogota and Simandou assets jointly, BSGR began to look for a joint venture partner to deliver West Africa's largest and most ambitious iron ore project. In April 2010, BSGR entered into a joint venture with Vale S.A. ("Vale") for the development and operation of BSGR's Simandou rights. A copy of the joint venture agreement is at DLC1/11. Pursuant to the agreement for that joint venture, BSGR sold 51% of the share capital of BSG Resources (Guinea) Limited (a Guernsey company) to Vale. BSGR and Vale jointly committed to capital expenditures in excess of US\$8-10 billion.
28. As the transaction with Vale did not involve a transfer of shares of BSGR Guinea (which is the entity holding the mining permits), there was no obligation to inform the GoG or seek its authorisation. Nevertheless, BSGR did keep the GoG informed and the GoG confirmed its approval:
 - 28.1 By letter dated 19 March 2010, the Minister of Mines, Mr Thiam, confirmed that "*the Government of Guinea welcomes the contemplated Joint Venture between Vale and BSGR for the development of the Zogota concession and blocs 1 and 2 of the Simandou mountain range.... We hope the above helps advance your venture talks.*" [DLC1/12/397]
 - 28.2 On 16 April 2010, BSGR told the GoG that negotiations regarding the joint venture with Vale were taking place. BSGR explained that "*The intention is that the Joint Venture will involve the purchase by Vale of a share of 51% in BSG Resources (Guinea) Limited and, consequently, an*

indirect share in BSG Resources (Guinea) Limited SARL” [DLCI/13/398]. The letter explained that although no formal approval was required under the terms of the 1995 Mining Code or the Base Convention, both BSGR and Vale agreed that the obtaining of such approval for the implementation of the joint venture was an important element in its success.

- 28.3 On 16 April 2010, the GoG confirmed by counter-signing BSGR's letter of the same day [DLCI/13/399 and DLCI/14/401] that it had no objection to the joint venture and specifically the acquisition by Vale of a 51% share of the share capital of BSGR Guinea.
- 28.4 On 14 June 2010, BSGR Guinea changed its name to VBG-Vale BSGR Guinea ("VBG"). This was formally registered with the Guinea Court of First Instance in Conakry [DLCI/15].
- 28.5 On 25 October 2010, BSGR notified the GoG by letter that the name of the Guinean company had been changed [DLCI/16]. In reply on 1 November 2010, the GoG confirmed this, noting *"We have noted this change according to which BSG RESOURCES GUINEA has become VBG-VALE BSGR Guinea and wish the new company great success."* [DLCI/17]. Thereafter, the GoG sent letters addressed to the new company name.

F. INVESTMENTS MADE FOLLOWING THE JOINT VENTURE WITH VALE

29. From July 2010 onwards, works in Zogota progressed quickly. The Government authorised VBG to proceed with the works on the Zogota to Sanquille railway in accordance with the Zogota Mining Convention [DLCI/18]. A feasibility study for this railway was provided by VBG which was approved and on 22 November 2010 the Government authorised the construction work for the first 40 km of the railway line, as set out in the letter at DLCI/19. Following this authorisation, the construction works on the first 9 km started and studies were commissioned for the following 330 km sections.
30. Further activities included the conduct of social and environmental studies as well as the construction of camps, maintenance and paving of access roads. The linking of the sites of Zogota and Blocks 1 and 2 was also undertaken. The above-mentioned works were conducted prior to Alpha Condé's election.
31. In September 2011, BSGR and its partner Vale were able to submit the feasibility study in respect of Blocks 1 and 2, just three years after BSGR had been granted exploration permits in those areas. The covering letter to the GoG is at DLCI/20. This was a very impressive accomplishment and stood in contrast to Rio Tinto, which had not managed to produce a feasibility study at all despite having had its permits for 11 years.

G. ALPHA CONDE'S ELECTION CAMPAIGN AND CONSEQUENT INTEREST IN BSGR'S MINING RIGHTS

32. Alpha Condé was elected President of Guinea on 21 December 2010. There have been widespread allegations that his election victory was achieved through vote-rigging by South African intelligence agents who were in turn to be repaid by Alpha Condé using looted assets, including BSGR's mining licences, as explained in detail below. The consequent Criminal Investigation into the Claimant is simply a furtherance of this illegitimate course of action which the Defendants are now assisting with by acceding to the Letter of Request.
33. Unknown to BSGR, in around early 2010, Alpha Condé (then a Presidential candidate) sought assistance with the forthcoming Presidential elections in Guinea from a Mr Samy Mebiame. Mr Mebiame is recorded discussing this arrangement in detail with Mr Mahmoud Thiam and a transcript of their conversation is at DLCI/21 ("the Mebiame Transcripts"). Mr Mebiame is the son of the former Prime Minister of Gabon and a man of considerable

influence in South Africa and other parts of Africa [DLCI/22]. Mr Thiam is a former investment banker at Merrill Lynch and U.B.S and was Minister of Mines in Guinea between 2009 and 2010, as described in the article at DLCI/23/495.

34. Mr Mebiame met with Mr Thiam *"on the advice of the General"* [DLCI/21/438]. It is inferred that this is a reference to General Konaté, the previous President of Guinea. During the recorded conversation, the two men discuss in detail the illicit arrangements made by Mr Condé to secure the presidency in 2010. That the recording is genuine is clear from the below:
 - 34.1 The recording of the conversation first emerged into the public domain on 14 September 2013 when GuinéeNews posted a 17 minute clip from their conversation. That article is at DLCI/24. In total, the medium claims to hold approximately 3 hours and 30 minutes of audio recording of the conversation. GuinéeNews is an independent online Guinean news portal which was founded in 1997 by Boubacar Bah Caba and which receives approximately 45,000 to 65,000 visits a day, as set out in the "About Us" section of its website, at DLCI/25/508. Subsequently, the transcripts of the recordings were also published by Mediapart, a whistleblower website founded by the previous editor of the Le Monde newspaper [DLCI/23].
 - 34.2 Mr Thiam has acknowledged the recordings publicly, although he has not disclosed who recorded or released them, as set out in the article at DLCI/23/496. Similarly, although Mebiame initially remained silent after accusations that he was Thiam's interlocutor, on 11 October 2013 he released a statement (through his lawyer) which verified that it was indeed his voice in the recordings with Thiam. However, he claims to have not been aware that the conversation was recorded. The statement is at DLCI/26.
35. According to the Mebiame Transcripts, Mr Mebiame agreed to first meet with Alpha Condé after Mr Condé *"approached South African friends of mine in the ANC [for assistance with the election]...and, as they were people I'd worked with for a long time, they said to me: "OK, listen Samuel, come with us; we want to "debrief" someone who wants to run in some elections in Africa."* [DLCI/21/422-423]. Their first meeting occurred in Paris on around 6 April 2010, attended by Alpha Condé, his son Mohamed Condé, Mr Aboubacar Sampil (Mohamed Condé's right hand man and a director of Sable) and Mr Mebiame [DLCI/21/423]. As recorded in the Mebiame Transcript at DLCI/21/423, at that meeting:
 - 35.1.1 Alpha Condé was *"debriefed about his ambitions"* to become President;
 - 35.1.2 Mr Mebiame said that Alpha Condé's opponent in the election was well known to the French, and hence advised Alpha Condé to get closer to the South Africans, as a counterweight;
 - 35.1.3 Mr Mebiame agreed to introduce Alpha Condé to what he called *"some important people"*; and
 - 35.1.4 Mr Condé agreed to this strategy, *"He [Condé] said to me, "OK, listen, I trust you, but how can I get there?" I said to him, "Me – I'll take you to South Africa." It was as simple as that"*.
- 35.2 The agreement was implemented, with Mr Mebiame commenting that *"He [Condé] put his faith in me, I took him there [South Africa]"*. This is supported by a press release published on Condé's Presidential website, confirming that on 6 April 2010, Alpha Condé and his son flew directly from Paris to Johannesburg, arriving early on 7 April 2010. An archived copy of the press release is at DLCI/27. The press release further reports that Alpha Condé

was greeted by "the highest officials of the ANC [the African National Congress, the Republic of South Africa's governing political party] and a delegation of business community of the South African economic capital" [DLC1/27/518]. Once there, Mr Mebiame introduced Alpha Condé and his son to "the important people, in particular the vice-president [Kgalema Motlanthe], the Muslim president [President Jacob Zuma], etc"[DLC1/21/423].

35.3 Three weeks later, Mr Mebiame was informed by his friends that Mr Condé returned on his own to Pretoria with his son, to meet with President Zuma and the South African "secret services" (the "SASS") [DLC1/21/423].

35.4 At those two meetings in Pretoria, it was agreed that:

35.4.1 Walter Hennig, a wealthy South African businessman, via interests linked to him (referred to herein as the "Walter Hennig Group") would provide significant funds, believed to be around US\$50 million, to Alpha Condé and/or Mohamed Condé;

35.4.2 Together with a South African IT company, Waymark, and the SASS, the Walter Hennig Group would provide assistance to rig the forthcoming elections in Guinea to ensure that Alpha Condé was elected as President; and

35.4.3 in return, Alpha Condé agreed that he would, when he became President, grant the Walter Hennig Group shares in the mining assets of Guinea, including in particular the lucrative Simandou (where BSGR had its interests), and would pay the SASS US\$14 million (and the SASS would in turn pay Waymark for their work on rigging the election).

35.4.4 Accordingly, in order to fulfil the corrupt deal, Alpha Condé had to deprive BSGR of its mining rights in Simandou.

35.5 That such an agreement was reached is clear from the following facts and matters:

35.6 Mr Mebiame's description of events recorded in the Mebiame Transcript confirms, amongst other things, that Alpha Condé met the SASS in Pretoria, where it was agreed that the SASS and Waymark would rig the election:

"So what happened is that they had this meeting, which was the meeting where Waymark was introduced, and everything has been put in place now...So the machine was set in motion, the agents were sent to Conakry, they did what they did..."
[DLC1/21/439]

35.7 The events described in the Mebiame Transcript were confirmed by a participant of the second Pretoria meeting, Walter Hennig, in a series of meetings with Asher Avidan, the President of BSGR. Their first meeting occurred on 20 March 2012, at Mr Hennig's office in London. As recorded by Mr Avidan in a contemporaneous memorandum of the meeting, [DLC1/28], Mr Hennig confirmed that:

35.7.1 Alpha Condé had sought the help of the South African Government and asked that they loan US\$50 million in exchange for options/stakes in operational mines and exploration projects of the country;

35.7.2 the South African Government had approached Mr Hennig to provide that loan; and

- 35.7.3 in return for providing those funds, Alpha Condé said that they would be granted options or stakes in the iron ore or oil and gas resources of Guinea, and in particular Simandou.
- 35.8 On 28 March 2012, Mr Hennig again met with Mr Avidan in London. The meeting was recorded and a full transcript appears [at DLC1/29]. At that meeting, Mr Hennig confirmed that the GoG's actions since the presidential election were aimed at taking BSGR's business by way of an exchange for the money that the Walter Hennig Group gave to Alpha Condé. Mr Avidan said that he believed that the GoG's investigation into BSGR's mining and exploration rights (described in more detail in Section L below) was "*a way of enticing our business in Guinea in exchange to your money you that [sic] gave the president or the government through...*". In response, Mr Hennig said "*I agree with you 100%*." [DLC1/29/532].
- 35.9 The next day, 29 March 2012, Mr Hennig and Mr Avidan met again. A transcript of the meeting is at DLC1/30. During that meeting, Mr Hennig:
- 35.9.1 Referred explicitly and on more than one occasion to the agreement reached with Alpha Condé at the meetings in Pretoria. Mr Hennig explained that he had held discussions with Alpha Condé about his "*transaction*", noting "*I said [to Alpha Condé] 'I know you're busy with a lot of other things, but I need my transaction to be done, you know.'*" He also referred to his "*deal*" and said it was a headache for Alpha Condé, saying that Alpha Condé "*wants it just to disappear somehow, good or bad.*"
- 35.9.2 Confirmed that the money had been paid pursuant to the agreement reached in Pretoria. Mr Hennig said:
- "I see June coming. I see my money there and I want to get a return before that happens."*
- The reference to June was to the upcoming parliamentary elections which Mr Hennig said he expected Alpha Condé to lose.
- 35.9.3 Left Mr Avidan in no doubt that Mr Hennig knew Alpha Condé well, had easy access to him and met him on a frequent basis. He said Alpha Condé was "*very stubborn*", and that he was "*bumping heads with him*".
- 35.9.4 During the meeting Mr Hennig also appeared to attempt to blackmail Mr Avidan, presenting him with contracts and documents which purportedly evidenced that BSGR had acquired its mining titles illegally. Mr Avidan's immediate reaction was that the documents are forgeries and BSGR had witnessed previous blackmail attempts on the basis of versions of similar documents.
- 35.10 On 1 April 2012, Mr Hennig and Mr Avidan met again, this time in Conakry, Guinea. Mr Hennig had been to see Alpha Condé in the interim. A transcript of the meeting is at DLC1/31/555. At this meeting, Mr Hennig:
- 35.10.1 Referred again to the agreement made with Alpha Condé at the meetings in South Africa, saying that he had discussed his "*project*" with Alpha Condé and been told it will take more time to resolve. He noted that "*Our contract is lying there*". It is inferred that this was a reference to the deal between the Walter Hennig Group and Alpha Condé reached in South Africa and/or the secret contract entered into with Walter Hennig's company, Palladino Capital, pursuant to that deal (referred to below at paragraphs 54 to 58).

- 35.10.2 Confirmed that he had discussed the Walter Hennig Group/Alpha Condé transaction with Alpha Condé. Alpha Condé had told him that since it was election time, there was “big scrutiny” of him and the GoG, and they would have to wait.
- 35.10.3 Explained that Alpha Condé said that he wished to keep the agreement reached in the South Africa meetings “completely off record”:
- “He [Alpha Condé] said, I mean obviously you know, with your thing you can’t, these things are completely off record.”*
- 35.10.4 Mr Avidan indicated that he would try to arrange to meet with President Condé. This meeting did not occur.
36. Further support for the existence of the Pretoria agreements was provided by Mr Heine van Niekerk, who according to the Mebiame Transcripts attended the second meeting in Pretoria in 2010:
- “Alpha asked the South African intelligence services not to involve me in the implementation part of Waymark... it was [Aboubacar or “Bouba”] Sampil who, after I introduced them in South Africa, took them to South Africa three weeks later, via a friend of his from Sable, their company...With an English friend called Hine [van Niekerk] and, you could say, Hine, he’s a former officer in the South African intelligence services- who I know well – we’ve never got on particularly well, by the way – and Hine presented him to the boss of the South African secret service, who’s called Moe Shaik... He got in contact with Moe Shaik [sic], the head of the service, they met in Pretoria”. [DLCI/21/438]*
37. I was put in touch with Heine van Niekerk through a mutual acquaintance, Clifford Sacks, with whom I have had a close and trusted relationship with for over 20 years. Clifford is the Head of Renaissance Capital Africa and Middle East and based in Johannesburg. Clifford had on several occasions prior to my meeting promoted the idea of a meeting with Mr Heine van Niekerk on the basis that he could help resolve the challenges BSGR faced in Guinea. He informed me that Mr van Niekerk was “well connected” with the SASS and also closely associated with Waymark, and that he possessed extensive knowledge about Waymark’s past and present activities in Guinea. Clifford informed me that Mr van Niekerk was now working for Cellou Dalein Diallo, the head of the main Guinean opposition party as well as representing Chinese investors and institutions which have an interest in developing the Simandou assets, expropriated from the Claimant. Clifford connected me with Mr van Niekerk via email and we agreed to meet at my office, 7 Old Park Lane in London at 10:00 on 6 June 2014. A contemporaneous note of the meeting is at DLCI/32.
38. From Mr van Niekerk’s email address, I saw that he now works with Foresight Advisory Services (“Foresight”), which I researched prior to the meeting by logging on to its website at www.foresightadvisors.co.za. Mr van Niekerk did not appear as either a member of its board or executive but the people who are in these positions are key individuals in the SASS, including Moe Shaik, the former head of SASS and who Mr Mebiame identified as attending the second Pretoria meeting. A print out from the website is at DLCI/33.
39. When Mr van Niekerk arrived at my office we engaged in small talk for about 20 minutes. He then suggested we leave our phones (he had several) in my office and go somewhere for coffee. We went to George on South Audley Street and sat down at one of their outside tables. Mr van Niekerk explained to me that Foresight has been mandated by Cellou Dalein Diallo to provide strategic advice and business intelligence services to him.

40. Mr van Niekerk confirmed to me that he has full control over Waymark with the CEO reporting directly to him. He confirmed to me he was in the same position when Waymark "fixed" the election for Alpha Condé and had the overall responsibility for this operation. He confirmed that he knows Samy Mebiame, Walter Hennig, Aboubacar Sampil and Alpha Condé himself very well and that the SASS had indeed conspired to support Alpha Condé's presidential campaign in many ways including the manipulation of voter registration data and election results. He explained that the technology is so clever and sophisticated that their activities cannot be traced.
41. I did not say anything but my conclusion was that Mr van Niekerk was concerned about the recent investigations into Waymark and was implying that the Claimant was the origin of Waymark having come under scrutiny. Towards the end of our meeting he asked me if I could pass onto him information, evidence or leads to undermine the Alpha Condé regime in the run up to the election. He also invited me to visit him and the CEO of Waymark in South Africa to explain "how they work".
42. We agreed to keep our conversation between the two of us and to stay closely in touch. I thanked him for getting in touch but pointed out to him that the Claimant was mainly focused on its commercial dispute with the GoG in the ICSID arbitration and did not have a desire to be involved with the politics of Guinea or its elections.
43. I met again with Mr van Niekerk on 11 June 2014, again at my office on 7 Old Park Lane. A contemporaneous note of the meeting is at DLC1/34. Mr van Niekerk immediately gave me a USB stick and told me it contained the reports he had promised me at our last meeting, which he had produced in the context of his retainer with Cellou Dalein Diallo. The reports as provided to me are exhibited at DLC1/35-39 and contain the Foresight General Brochure, an engagement letter between Foresight and General Konaté in French, a country profile of Guinea, a profile on General Konaté and a profile on Alpha Condé.
44. Mr van Niekerk spoke at great length about the logistics surrounding the meeting which took place in South Africa between himself, Alpha Condé, Alpha Condé's son Mohamed, Moe Shaik (the head of SASS at that time) and President Zuma. Mr Heine van Neikerk confirmed that President Zuma offered financial, intelligence and election IT support via Waymark, with Waymark "fixing" the election, and in return Alpha Condé would as President accommodate financial arrangements with South African interests supported and proposed by President Zuma. Mr van Niekerk mentioned to me that this deal was supposed to be "his" but Walter Hennig and Tokyo Sexwale had outmanoeuvred him and when he subsequently complained about it to Moe Shaik, he was told he had had his chance but had not moved quickly enough.
45. I asked Mr van Niekerk if Samy Mebiame was at the actual meeting. He told me he was not and that Samy had tried to push his way into the meeting but was not included. The Mebiame Transcript reconciles with this version of events, in which Mr Mebiame states that "[t]hree weeks later, he [Alpha Condé] returned on his own [to Pretoria] with his son without telling me" [DLC1/21/423]. I told Mr van Niekerk that I wanted to stay on good terms with him and we tentatively arranged to meet again in South Africa. This meeting did not occur.
46. However, Mr van Niekerk has recently forwarded to me a number of emails which he was copied into which evidence the provision of funds and logistical support by Aboubacar Sampil and Sable to President Condé during his Presidential election, which funds and support were to be repaid by the granting of lucrative mining titles. These matters are addressed in paragraphs 59 below.

47. From the parallel conversations between Mr Mebiame and Mr Thiam, Mr Avidan and Mr Hennig, and Mr van Niekerk and me, it is evident that agreements were reached whereby the 2010 Presidential election would be rigged by the SASS and Waymark and Alpha Condé would reward his backers with the Claimant's looted assets.

Implementation of the agreements (1) election rigging

48. In accordance with the deals struck in Pretoria, the election was rigged by Waymark and South African intelligence agents. This happened as described below.
- 48.1 Waymark is a South African IT solutions and services company, based in Pretoria. It has been involved in the installation of voter registration systems for governments across Africa, including South Africa. Waymark's involvement in elections has often been marred with controversy. In 2005, Waymark was suspended from cross-checking the voter roll in the run up to elections in Zanzibar due to "procedural problems", as explained in a highly developed eighty-eight page paper entitled Guinea Special Analysis (the GSA), published on-line in January 2013 [DLCI/41/730]. In the Democratic Republic of Congo, Waymark was accused of adding fictitious civilians to the registration list [DLCI/40/717]. Furthermore, the company was expelled from the UN Communication of Progress participant list on 17 September 2008 [DLCI/42]. To be a participant of the UN Communication of Progress, a company must commit to transparency and accountability [DLCI/43].
- 48.2 In May 2010, shortly after Alpha Condé's meeting with the SASS in Pretoria, a team from Waymark arrived in Conakry to meet with the electoral commission in Guinea, the Commission Electorale Nationale Indépendente ("CENI"), to lobby for their appointment [DLCI/41/757 - 758]. At that time, the President of CENI was Ben Sekou Sylla, and the Vice President, Louceny Camara.
- 48.3 In early June 2010, CENI announced that Waymark was the chosen election operator, replacing the incumbent French company, SAGEM.
49. The first round Presidential elections
- 49.1 The first round of presidential elections had already been held on 27 June 2010, and the results announced on 20 July 2010. Alpha Condé had achieved only 18.25% of the votes, whilst his main rival, Cellou Dalein Diallo, had secured 43.69%, as set out in a report by the Carter Centre at DLCI/44/829. The Supreme Court declared a runoff - or second round - between Alpha Condé and Cellou Diallo.
50. The second round Presidential elections
- 50.1 Following the death of the President of CENI, Mr Sylla, Mr Louceny Camara was appointed as President of CENI on about 13 September 2010 in a hastily called election. According to International Crisis Group, Mr Camara is considered to be close to Condé [DLCI/45/1012]. Indeed, several CENI members themselves, as well as the opposition, contested Mr Camara's appointment due to procedural flaws and Mr Camara's associations with Alpha Condé. The Carter Centre, a US NGO founded in 1982, in partnership with Emory University, produced a report on the elections dated 18 October 2011, entitled "Observing the 2010 Presidential Elections in Guinea" ("the Carter Report"), which stated:
- "In a hastily called election, Louceny Camara was elected as the new CENI president. Several CENI members who were present and others who were absent from the meeting contested the result due to procedural flaws. UFDG [the Guinean opposition party] and its alliance partners refused to accept the election of Camara, whom they accused of having taken actions during the*

first round that resulted in the cancellation of Ratomá's votes... by the Supreme Court."
[DLCI/44/831]

- 50.2 Similarly, according to International Crisis Group, the UFDG accused Mr Camara of concealing voting reports during the first round election and therefore acting in favour of Mr Condé's political party, RPG [DLCI/45/990]. Those objections to Mr Camara's appointment were not without substance: subsequently Mr Camara was convicted of electoral fraud and sentenced to one year in prison. However, his conviction was quashed by the Conakry Court of Appeal on 27 December 2010, shortly after President Condé was elected, further fuelling concerns that he was a confidant of Condé's [DLCI/45/1012].
- 50.3 On 15 September 2010, just two days after Mr Camara was appointed as President of CENI, CENI announced that the date of the second round election (then fixed to take place four days later, on 19 September 2010) would be delayed, citing technical difficulties. It is inferred from the Mebiame Transcripts that this delay was in order that Waymark and the SASS could come to Guinea and carry out their work, describing the period as the "*implementation part of Waymark*" and that "*Waymark turned up, did his work...*" [DLCI/21/424 and 438]
- 50.4 Various allegations of fraud were made by UFDG in the lead up to the second round elections, including allegations of violence against UFDG supporters. The Carter Report [DLCI/44/872] noted UFDG allegations that:
- 50.4.1 There had been violence targeting Peuls (who largely supported the UFDG) in the prefectures of Siguiri and Kouroussa in Upper Guinea, forcing much of UFDG's electorate out of the region and their assessors and delegates were not able to participate on election day due to intimidation and fear for their security.
- 50.4.2 In those prefectures their party's delegates and assessors had been fraudulently replaced with RPG (i.e. Condé's party) members and that ballot boxes had been stuffed.
- 50.4.3 There had been irregularities and fraud in all five communes of Conakry and 12 other prefectures, including fictitious polling stations, RPG members and local authorities attempting to influence votes, excessive proxy and derogation votes, expulsion of UFDG monitors from polling stations, ballot-box stuffing, missing protocols and irregularities with protocols.
- 50.4.4 That security forces had been inciting ethnic hatred.
- 50.5 It was further alleged in the African online newspaper *Mail and Guardian* that Waymark fraudulently added 1.9 million voters to the electoral list provided to them by SAGEM, mainly from the Haute-Guinée province which was a stronghold of Condé's [DLCI/46/1027]. Indeed, such were the UFDG's complaints regarding the vote that it later suspended its participation in the CENI central vote count on 14 November 2010, claiming that the CENI was not taking into account its complaints of electoral fraud [DLCI/47/1045].
- 50.6 On 7 November 2010, the second round of Presidential elections was held, using the Waymark system. According to Mr Mebiame, the raw data results of the election showed that Alpha Condé had lost, and so the SASS had to "*retouch*" the figures to ensure that Alpha Condé was the winner. This interference resulted in a huge swing in the voting in favour of Alpha Condé, from 18% in the first round of the elections to 52.52% in the second round, securing Alpha Condé the presidency. According to Mr Mebiame:

- 50.6.1 *"a friend called me very clearly afterward from the service [the SASS] in charge to say to me, "Samy, he's lost." I was shocked. Really, I was shocked, because I knew that Dalein [Dalein Diallo, the presidential rival] was strong, but all the same, I said to myself, "The rainbow coalition, all of this was behind him, and ..."... He lost and my friends [at the SASS] called me to say: "We've got the true results, he lost, we've been obliged to... We touched it up, that's all, that's it." [DLC1/21/439 - 440]*
- 50.6.2 *"you could say it's [the election is] a big swindle". [DLC1/21/432]*
- 50.6.3 *Mr Mebiame "saw Waymark's owner who is already on his knees saying "but if you want I can work for you" and the opposition is saying "No! We don't want to involve ourselves with you! You're in a real mess! If tomorrow morning, the police search your Waymark computers, the whole world will understand Alpha Condé was not elected, and that for Zuma and him it was a money affair." [DLC1/21/463]*
- 50.7 The provisional results were announced by CENI on 15 November 2010. Widespread violence followed this about-turn in the results, with reports suggesting a number of deaths [DLC1/44/833]. On 18 November 2010, the military declared a state of emergency, as set out in an article in *The Guardian* at DLC1/48/1054. The Supreme Court officially confirmed the results on 2 December 2010 [DLC1/49/1056], and on 21 December 2010 Alpha Condé was sworn into office. President Zuma attended the inauguration at the request of Mr Mebiame on behalf of Alpha Condé [DLC1/21/440].

Implementation of the deal (2): providing funds in return for shares in Guinean resources

51. In further implementation of the deal, the Walter Hennig Group provided the agreed funds, believed to be around US\$50m. This was confirmed by Mr Hennig in his conversation with Mr Avidan on 20 March 2012 in London.
- 51.1 Half of the money, namely US\$25m, was paid pursuant to a secret contract between the GoG and Palladino Capital, Walter Hennig's company, signed by Mr Mebiame, in April 2011 (set out in detail below). This was only part of the monies – there was (in Mr Mebiame's words) *"much, much more"*:

"he asked us for the famous loan of 25 – officially, but can you imagine that it was much, much more. So, in general, I am very open with you - it's much, much more. But it was necessary to put down something official". [DLC1/21/424].

Implementation of the deal (3): Rewarding the SASS

52. Around five months after the election, the SASS was paid US\$14 million by the GoG (via a payment to a company close to the SASS) for their work in rigging the election. No money was paid directly to Waymark, but they were paid by the company close to the SASS (despite the fact that Alpha Condé had said at the time that Waymark was not charging for providing election kits). This was confirmed by Mr Mebiame to Mr Thiam over the course of their lengthy conversation:
- 52.1.1 *"Waymark, in fact, is a 'phony' thing. No money has even been paid to Waymark; the 14 million were paid to the Intelligence Service." [DLC1/21/451]*
- 52.1.2 *"Allegedly that South Africa is giving free kits to sum of 14 M\$, and today, he is president. Five months later, a transfer from Guinea is made to the Intelligence Service for 14 M\$." [DLC1/21/451]*

52.1.3 “14 M\$ have been transferred to South Africa...That’s from the Central Bank; it had been transferred to a company close to the South African security services. And it’s this company that is repaying Waymark.” [DLC1/21/463]

53. As Mr Mebiame confirmed, part of that money was used in turn to pay Waymark for its work. Contrary to the assertion of Alpha Condé and/or his ministers at the time, Waymark’s kits were not given for free.

Implementation of the deal (4): Palladino Contracts

54. The remaining part of the agreement reached in Pretoria was that Alpha Condé agreed to provide to the Walter Hennig Group a stake in the Guinean mining sector, and in particular Simandou (where BSGR’s interests are held and which were regarded as the most lucrative iron ore reserve in Guinea). This was put in place by Mr Hennig and Mr Mebiame who, on behalf of the Walter Hennig Group, secretly executed contracts in the name of Mr Hennig’s company Palladino Capital, whereby that company was granted very large shares in a new Guinean mining company established by Alpha Condé, in return for a payment by Palladino Capital of US\$25 million. The details of those agreements are as follows:

54.1 On 14 March 2011 and in secret, the GoG entered into a Memorandum of Understanding with Palladino Capital, which was then called Floras Bell Limited (“Floras Bell”) (“the Floras Bell MOU”) [DLC1/50]. Mohamed Lamine Fofana (then Minister of Mines and Geology) and Walter Hennig signed the MOU on behalf of the GoG and Floras Bell respectively. The MOU stated that the parties would use their best efforts to finalise an agreement in terms significantly similar to those in the annexed Framework Agreement, within 30 days of the MOU (but subject to time extensions).

54.2 In summary, the Framework Agreement anticipated an agreement under which Floras Bell would be granted an option to take up to 49% of the new state mining company, and in addition further shares directly in the mining entities. Given that the new state mining company was to take a minimum 15% share of all mining operators (under the new mining code), that was an extraordinary agreement potentially providing Floras Bell with a stake worth billions of dollars. Just a few months later, on 11 August 2011, the new state mining company was created by decree by Alpha Condé. It was called Société Guinéenne du Patrimoine Minier (“SOGUIPAMI”). The decree (in French) is at DLC1/51.

54.3 On 12 April 2011 and in secret, the GoG entered into an agreement with Palladino Capital, the new name for Floras Bell (“the Palladino Contract”) at DLC1/52 in French and English. The contract was signed on behalf of the GoG by the Minister of Mines, Mr Fofana, and the Minister of Finance, Mr Kerfala Yansané, both of whom remain key ministers in the Alpha Condé Government. Palladino Capital was represented by (and the contract signed by) Mr Mebiame who was said to hold a power of attorney and be duly authorised for the purposes of entering into the contract on behalf of Palladino Capital.

54.4 Pursuant to the Palladino Contract:

54.4.1 Palladino Capital loaned to the GoG US\$25 million to finance SOGUIPAMI, which was not yet created but which was said to have “the task of implementing, under the supervision of the Ministry of Mines and Geology, the policies and the national strategies defined by the Government of the Republic of Guinea for the improvement and the viability of its mining patrimony by means of an integrated sector”;

54.4.2 The GoG had asked Palladino for this loan “because of the common interests existing between them” (Recital B). This is believed to be a reference to the conspiracy

whereby the Walter Hennig Group provided funds and assistance with rigging the election to Alpha Condé in return for rights in mining interests including BSGR's interests in Simandou.

- 54.4.3 The loan was for a 15-year term (Clause 6.1 and definition of "Reimbursement Date"), with interest at 2 month LIBOR (Clause 7.1) plus 300 base points, compounded monthly. Interest was payable on the Reimbursement Date, i.e. at the expiry of the 15-year term (Clause 7.2). Even taking a LIBOR rate of 0, this would result in a payment at the end of the 15-year term of \$39 million, representing the principle amount of \$25 million plus \$14 million in interest.
- 54.4.4 If the GoG defaulted, Palladino would be entitled to take a stake of up to 30% in "one of the subsidiaries of the investment company" (which appears to be a reference to SOGUIPAMI or subsidiaries related to it) (Clause 11.1). Such a stake could amount to billions of dollars.
- 54.4.5 Furthermore, Palladino was apparently entitled to call for repayment (or "remittance") at any time on terms that it would dictate to the GoG (Clause 11.2)
- 54.5 Given the exceptionally high interest rate, which compounded monthly, and that the debt could be repayable on demand, it seems as if the loan was designed to be defaulted, in order to gift Palladino a 30% share in the national mining company under a cloud of legitimacy.
- 54.6 On 24 April 2011, the Palladino loan amount of US\$25 million was transferred to Alpha Condé and/or an account nominated by him, as evidenced by the loan transfer note at DLC1/53, which was made available by a website set up to defend the loan, at www.guinealoan.com. According to Mr Mebiame, the money was never paid to SOGUIPAMI and was never accounted for by the GoG [DLC1/21/424-425]. The very strong likelihood is that this money went to Alpha Condé or interests related to him to be used pursuant to the agreement reached in Pretoria in April and May 2010.
55. It was not until much later that the contract with Palladino Capital was discovered (notwithstanding a confidentiality clause in the agreement) by the Sunday Times in London on 3 June 2012 and exposed [DLC1/54]. In particular, it was discovered that (a) the money had been paid but, contrary to the agreement, had not gone to the new mining company, given that the mining company was not yet established at the time the loan was made; and (b) Mr Hennig's company had been granted options over huge stakes in the new mining company, on very unusual terms. The article describes the Palladino Contract as "a secret deal that could hand billions of dollars of mining assets belonging to companies such as BHP Billiton and Rio Tinto to a shadowy middleman". It expands that:
- "Crucially, the terms of the loan include a provision that if the cash-strapped government defaults, Palladino can convert the debt into a 30% stake in the operations of the national mining company. This would potentially be worth billions. Simandou alone - owned by Rio Tinto, China's state giant Chinalco, resources tycoon Beny Steinmetz and Vale, the Brazilian iron ore group - is worth at least \$10 billion".*
56. According to a further article published in the Sunday Times on 24 June 2012 at DLC1/55/1105, the exposure of the Palladino Contract resulted in an investigation by the World Bank into the deal and Labour MP Eric Joyce urged the Serious Fraud Office to investigate the matter. In a letter to the SFO, Mr Joyce is reported to have said: "Walter Hennig is a director in the UK and Palladino has a UK subsidiary, making both entities subject to the UK Bribery Act, which prohibits bribery and corruption of any kind" [DLC1/55/1106].

57. Following the exposure, the GoG was forced to return US\$25m to Palladino Capital. The GoG did not explain why the loan had been made in secret, why it had entered into a contract with a company linked to the Walter Hennig Group at all, nor why the loan monies had not gone into the public finances or to finance SOGUIPAMI but had apparently been segregated at the direction of Alpha Condé. The Minister of Finance, Mr Yansané (and the same man who was later to sign the orders in April 2014 revoking BSGR's mining and exploration rights), said simply *"From a commercial perspective, it makes sense to repay a loan whose conditions we no longer deem favourable."* [DLC1/56]. That was a very inadequate explanation.
58. Although the Palladino loan was repaid, Mr Mebiame reports that Mr Condé remained indebted to the Walter Hennig Group in respect of the remainder of the monies provided to him. As set out in the Mebiame Transcript, Alpha Condé had paid back the US\$25m Palladino loan, but as for the rest, Mr Thiam asked *"But how are you planning to get the rest back?"* to which Mr Mebiame replied *"I can't get it back..."*. [DLC1/21/440].

Implementation of a separate, but related, deal with Aboubacar Sampil and Sable

59. In a deal reached contemporaneously with the deal with the Walter Hennig Group, Sable Mining Africa Limited ("Sable"), together with its director, Aboubacar or "Bouba" Sampil, provided direct assistance to Alpha Condé's election campaign in return for valuable mining concessions. This deal comprised two main elements:
- 59.1 Firstly, Mr Sampil agreed to put in place what Mebiame describes as the *"Bouba network"* of secret service and Waymark officials to rig the election [DLC1/21/438 - 439]. Mr Sampil introduced Alpha Condé to the SASS at the second meeting in Pretoria and is described by the GSA, as Condé's *"protégé"* who, in addition to Mebiame, was *"actively involved in organizing [the South African] meetings."* [DLC1/41/727].
- 59.2 Secondly, Sable provided financial and logistical assistance to Alpha Condé during his 2010 Presidential campaign, in return for an agreement by Mohamed Condé to reward the company and Mr Sampil with a lucrative mining concession. Mr Heine van Niekerk has recently provided to me striking and conclusive evidence of this illicit deal, as set out below. Mr van Niekerk acted as a broker between Mr Sampil, Sable and Mohamed Condé.
- 59.2.1 On 5 August 2010, Alpha M. Condé (Mohamed, President Alpha Condé's son) emailed Andrew Groves, the CEO of Sable, Bouba Sampil and a redacted name which is believed to be Mr van Niekerk [DLC1/57]. The email sets out a *"brief"* concerning a mining opportunity in Guinea, with a proposal as to how to *"get moving on it"*. Given that Alpha Condé was not yet elected, the email discussion appears to be a cover up for an agreement from Mohamed Condé to provide mining rights to Sable following the guaranteed election of his father, in return for money.
- (a) The first step was stated to be attendance at a meeting with the current Minister of Mines.

"FOLLOW-UP STEPS

A discussion between Mr Alpha Mohamed CONDE, Mr. Andrew Groves, Mr. Bouba Sampil and Mr. Heine van Nierkerk should rapidly take place to agree on the process to follow and prepare for the meeting that Mr. SAMPIL has obtained, for next Tuesday, with technicians in charge of the management of the manganese deposits at the Minister of Mines in Conakry".

- (b) The second step was the preparation of a letter of intent stating Sable's interest in the mining deposit.
 - (c) The third step was the payment of "*15,000 Euros for guaranteeing the steadfast support of the... [the email is cut off]*".
- 59.2.2 On 7 August 2010, Mohamed Condé performed his part of the initial deal, emailing an unknown individual and Bouba attaching "*the draft letter to be modified as you see fit. I'll be sending the banking reference from a secured connexion [sic] as we currently on public wifi*" [DLCI/58]. Condé concludes the email stating "*Best and thank you so much for making it all so much easier to efficiently move forward with credibility and the proper resources*". The reference to credibility appears to be the association with an AIM listed company, Sable. The "*proper resources*" is likely to be a reference to the agreement by Sable to provide monies to Condé.
- 59.2.3 The draft letter of intent attached to Mohamed Condé's email, at DLCI/59, is a letter from Sable to the Minister of Mines "*requesting a mining concession with the longer term goal of acquiring licences for manganese exploration*". That the letter was drafted by Mohamed Condé for Sable, in return for "*proper resources*", is evidence of the corrupt dealings between the company and the future Presidential regime.
- 59.2.4 In an email dated 8 August 2010 from Alpha M. Condé (Mohamed) to Mr Heine van Neikerk, copied to Mr Sampil, Mohamed provided his bank details as previously promised at DLCI/60, stating:
- "Hi Heine,*
- Here as agreed my bank details below and attached. Let me know if you have all you need as requested info vary from country to country but it should all be there. Also attached is a corrected version of the letter of interest as there were a couple of mistakes you might have corrected already but just in case..."*
- 59.2.5 Sable delivered on its side of the deal, providing funds to Mohamed Condé. On 18 August 2010, Andrew Groves, the CEO of Sable, emailed Mr van Neikerk at DLCI/61, stating:
- "Alpha Conde paid"*
- 59.2.6 In addition, at the end of August and the beginning of September, Sable paid for Alpha Condé's flights to and from France.
- (a) On 24 August 2010, Bouba Sampil emailed a redacted name, believed to be Mr Heine van Neikerk, referring to his "*meeting with the President Alpha Conde*" and setting out the candidate's travel requirements [DLCI/62]. Bouba attaches a copy of Mohamed Condé's passport and requests confirmation "*urgently for the plane tickets of the president and his son*".
 - (b) On 31 August 2010, the travel agent "a 2 z travel" emailed a redacted name, copying in Andrew Groves, requesting urgent funds to process tickets the next day [DLCI/63/1118]. In the same email chain, on 1 September 2010, the law firm acting for Sable emailed Andrew Groves asking him to "*confirm by return if this should be paid from the monies held on account for Sable*" [DLCI/63/1117].

- (c) That same day, "a 2 z travel" emailed Alpha Conde and Bouba Sampil, attaching several etickets in the name of "ALPHA MOHAMMED MR" [DLC1/64/1120]. That the tickets were bought by "a 2 z travel" on the same day the lawyer acting for Sable requested authorisation to use Sable monies to buy etickets from "a 2 z travel", raises the reasonable presumption that the tickets for Alpha Condé were paid for by Sable through its lawyer's account.

59.2.7 In September 2010, Sable arranged and paid for the lease of a helicopter for use by Alpha Condé between the first and second rounds of the Presidential election.

- (a) It is clear from the emails that Bouba Sampil was coordinating the transaction, with the pilot emailing Alpha Condé on 5 September 2010 stating that, "*with reference to points one and two above, I have forwarded both my Licence and the Helicopter Documents to Bouba to expedite*" [DLC1/65].
- (b) In an email dated 11 September 2010 between Mohamed Condé and a redacted name, which I believe to be Mr Heine van Neikerk, Mohamed provides detailed information to facilitate the organisation of the helicopter lease [DLC1/66], including:

"The campaign was intending to use the chopper you are kindly providing for 2 weeks approximately if possible"[DLC1/66/1125]

In respect of routing, "Bouba can help with this via the aviation company based in Mali or other local aviation contacts you have? I'll also run it again with Papa Koli by phone to expedite getting the requested reply" [DLC1/66/1126].

"This is the first time the campaign is using helicopters for touring purposes so your expertize is welcome as is that of the security experts scheduled to join us from South Africa who may also intervene..." [DLC1/66/1126]. This appears to be a reference to the SASS assisting with the rigging of the election.

In describing the campaign team, Mohamed refers to "*Papa Koli, Bouba, Kabinet and others in the team*" [DLC1/66/1127]. It is apparent that Bouba played a central role.

59.3 Upon taking office, Alpha Condé appointed his son Mohamed as an unofficial advisor and gave him an office in the Presidential palace, which according to *The Times*, Mohamed shares with Mr Sampil. Mr Sampil did not have an official role in Condé's administration, but in his own words he enjoyed a "*warm relationship*" with the President [DLC1/67/1130]. Mr Mebiame refers in his recordings to the power and impact of Mr Sampil in Condé's administration, including that Mr Sampil and Mohamed were specifically called upon to negotiate a mining deal with RusAl, where they supervised and influenced the Minister of Mines in a meeting in Paris with RusAl [DLC1/21/459 - 460].

59.4 Subsequently, in February 2012, Alpha Condé awarded an exploration permit in the Mount Nimba area of south east Guinea to West Africa Exploration Sarl ("West Africa"), on highly unusual terms. In particular:

59.4.1 Sable owns 80% of West Africa, and therefore was given an 80% stake in the Nimba mine.

- 59.4.2 The remaining 20% of West Africa is owned by a company named Nimba Mining Limited ("Nimba Mining"). According to the related party disclosures on page 49 of the 2013/14 Sable Annual Report and Accounts, Mr Sampil is "director and/or shareholder in Nimba Mining Limited" [DLC1/68/1181]. No further disclosure is provided as to the ownership of Nimba.
- 59.4.3 Mr Sampil was made a non-executive director of Sable in April 2012 on a salary of £72,000 per annum. He also has warrants over ten million shares in Sable [DLC1/67/1129]. Mr Sampil is also a director of West Africa.
- 59.4.4 In addition, a further company of which Mr Sampil is a "director and/or shareholder" (according to the 2013/14 Sable Annual Report and Accounts), Faniya Resources SAU, was then paid US\$6million by Sable for "services provided by Faniya in relation to the Nimba Project" [DLC1/68/1181]. *The Independent* describes these as "lobbying" services and reports that further funds were paid by Sable to another "Sampil firm" called Rio Pongo [DLC1/69/1187]. Sable describes the payments as "consultancy fees". However, the payments raised suspicions given that they amounted to more than one fifth of the company's market value and was in excess of its total annual labour costs. *The Independent* concludes that "Quite how Mr Sampil achieved this, and what actual work that involved for the six mill [sic], is not clear" [DLC1/69/1187].
- 59.4.5 In September 2013, Sable was awarded an expedited mining licence for the Nimba reserve.
- 59.4.6 In October 2013, Sable was awarded a rare permission to export the iron ore through Liberia, rather than building a railway in the infrastructure lacking Guinea. It was strange that the GoG permitted the exportation through Liberia, in circumstances in which it was challenging the granting of BSGR's rights in Guinea partly on the very basis of the company being awarded in 2009 the right to export iron ore through Liberia. As set out in a letter from the GoG to the Claimant on 30 October 2012, "its ore mineral export project through Liberia [was] contrary to the national strategy at the time aiming for a trans-Guinea railroad for shipping of Guinean iron ore" [DLC1/88/1303]. This was notwithstanding that BSGR had committed to also building a Trans-Guinean passenger railway, at a cost of US\$1 billion. Accordingly, *The Times* reports that "Sable has achieved a coup by sending out iron ore from its Nimba project through Liberia. This will be much cheaper than a route through Guinea" [DLC1/70/1188].
- 59.4.7 Finally, Sable was excused from the provisions of the new mining code, which provided that the GoG was awarded a 15% stake in all mining concessions.
- 59.5 Taken together, the awarding to Mr Sampil of a 20% stake in the Nimba mine, the preferential treatment afforded to Sable by the GoG in respect of the Liberian export route, the suspiciously large "consultancy fees" for the granting of the exploration rights, and the continued influence of Mr Sampil in Government, suggest that Bouba Sampil and Sable were highly rewarded for orchestrating the rigging of the election by way of the "Bouba network" and for the funding of Condé's election campaign.

H. THE PURSUIT OF GUINEAN RESOURCES BY ALPHA CONDÉ

60. Pursuant to the agreements reached in Pretoria, when Mr Condé came to power, he had to repay the Walter Hennig Group, Mr Sampil and Sable for its funds and assistance in rigging the election. As set out above, Condé repaid Mr Sampil and Sable generously by way of rights in the Mount Nimba mining deposit. However, in order to repay the Walter Hennig

Group, he needed to improve the state's resources, to sign a percentage over to his benefactors. As Mr Mebiame recommended to Condé, "*you improve Soguiɓami's resources. So, it's up to you to create it, because it's your vision.*" And then he said, "*But create it, what with? I have no money*" [DLC1/21/424].

61. Accordingly, it is inferred that President Condé set out to nationalise or expropriate assets for his new mining company, with the intention of signing a percentage of these rights over to the Walter Hennig Group by way of the Palladino Contract. To do so, Alpha Condé enlisted the assistance of his friend, George Soros, a billionaire and a man of great influence. This is inferred from the following facts and matters:

61.1 Just over four months after Alpha Condé came to power, he invited George Soros and various advisors (including from George Soros' Open Society Institute) to Guinea for four days. Mr Soros was invited by Alpha Condé specifically "*to help shake up the mining licence regime*" [DLC1/71/1189]. The Financial Times reported the announcement on 4 March 2011 in an article entitled "Guinea to review mining licences". It reported a senior official from Guinea's Ministry of Mines saying "*All contracts will be reviewed and reworked by the beginning of the second half of this year... The government will become a minority shareholder in all mining contracts.*" [DLC1/71/1189].

61.2 Following that visit, on 4 March 2011 Alpha Condé and George Soros held a joint press conference in Paris at which they announced that all existing mining contracts would be re-examined and a new mining code would be produced (which was later published on 9 September 2011) [DLC1/72]. George Soros's foundation, the Open Society Foundation, issued a press release following the Paris announcement, confirming those details. That press release is available on the website of another NGO funded by George Soros, Revenue Watch. The contact details given were for a Mr Mamaudou Kouyate ("Mr Kouyate"), referred to as "Advisor to President Alpha Condé" [DLC1/72/1191].

Focus on the Claimant's assets

62. Notwithstanding this focus on the need to renew all existing mining contracts, mining companies which had either provided monies to Condé prior to his election (Sable) and/or after his election (Rio Tinto and RusAl) were in fact excused from the review regime. The Claimant provided no such funds, and as a result, the GoG set out to expropriate its assets. The focus on the Claimant's assets was even more acute given that Simandou is one of the most lucrative iron ore deposits in Guinea. The contrast in treatment between the Claimant, and mining companies which provided funds to Condé, is clear evidence of the political motivation inherent in the GoG's treatment of BSGR.

63. Rio Tinto:

63.1 On 22 April 2011, Rio Tinto entered into an agreement with the GoG whereby:

63.1.1 Rio Tinto's mining rights in Simandou Blocks 3 and 4 would not be subject to an investigation by the Technical Committee, nor "*any changes introduced by the Government of Guinea as a result of its current review of the Mining Code or any future reviews*", as set out in a Rio Tinto press release at DLC1/73/1192. This was notwithstanding that (a) Alpha Condé and George Soros had announced weeks earlier that all existing mining contracts would be re-examined; and (b) the former Minister of Mines, Mr Thaim, asserting that "*Rio Tinto got its concession illegally*" [DLC1/21/458];

- 63.1.2 In return for retaining their stake and removal from the review regime, the press release sets out that Rio Tinto:
- (a) Made a payment of US\$700 million [DLC1/73/1192]; and
 - (b) Granted the GoG a stake of up to 35% in the Simandou project including 15% at no cost to the GoG. According to the Rio Tinto press release reporting on the agreement, "[t]he Government of Guinea plans to set up a state mining company to hold its stake" [DLC1/73/1193].
- 63.2 The transparency of the Rio Tinto settlement has been called into question but never properly scrutinised. The payment was described by Rio Tinto as a "settlement agreement" to resolve disputes between Rio Tinto and the GoG, but these "disputes" have never been detailed by either party. The South African newspaper Business Day went so far as to question whether the settlement was an "effective US\$700 million bribe to hold on to southern Simandou [Blocks 3 and 4]" at DLC1/74/1196.
- 63.3 Similarly, there have been accusations that the payment went to President Alpha Condé and not to the public finances. According to the GSA, a senior official in the Ministry of Finance stated to a Guinean newspaper in March 2012 that: "Everything leads us to believe that this sum was diverted by President Alpha Condé and his family because, to date, no penny of this huge sum was accounted for" [DLC1/41/734]. This accords with the Mebiame Transcript, in which Mr Thiam describes the agreement as "an instrument with which he [Condé] successfully paid himself 750 M\$" [DLC1/21/458]. Furthermore, according to Africa Mining Intelligence, even Rio Tinto demanded that the GoG "explain how it spent the \$700 million it paid" [DLC1/75/1197].
- 63.4 Accordingly, as a result of the agreement with Rio Tinto, Condé was successful in achieving both funds and assets for SOGUIPAMI, which two weeks prior to the signing of the Rio Tinto agreement he had partially signed over to Palladino. Given that this was sufficient to excuse Rio Tinto from the mining review upon which he had placed so much emphasis, it is inferred that the review process was merely a ruse by which Condé could expropriate the assets he had promised to the Walter Hennig Group.
- 63.5 Furthermore, one of the principal allegations against the Claimant in the review of its mining rights (as detailed below) was that it had 'flipped' its interests in Simandou by agreeing a joint venture with Vale. In comparison, however, Rio Tinto entered into a joint venture in July 2010 with Chinalco, whereby Chinalco paid US\$1.35billion for a 47% stake in Rio Tinto's blocks at Simandou. Rio Tinto has not been accused of 'flipping' its assets, as reported in the *Financial Times* at DLC1/76/1198.
64. RusAl:
- 64.1 Similarly, in April 2011, Condé applied pressure on the Russian company RusAl. RusAl acquired the Friguia bauxite mine and alumina refinery from Guinea in 2006. Alpha Condé threatened to nationalise the Friguia alumina refinery and demanded that RusAl pay almost US \$1billion in compensation for loss of revenues linked to the privatisation of the mine in 2006 [DLC1/41/807]. However, in March 2013 it was reported by *Africa Mining Intelligence* that RusAl agreed to pay the GoG US \$836 million in settlement of its disputes, in a deal reminiscent of the Rio Tinto "settlement" [DLC1/77/1200]. This followed the direct intervention of President Condé in a private meeting with the head of RusAl's alumina division in February 2013, to which the Minister of Mines was not invited [DLC1/78/1202]. To date, RusAl's mining titles have not been the subject of a review from the Technical Committee.

65. Sable:
- 65.1 As set out above, Sable was granted an expedited mining permit in Mount Nimba, was excused from the provisions in the new mining code and was granted a rare permission to export ore through Liberia, which the GoG had previously stated was not in the national interest. It is inferred that the preferential treatment was in consideration of the logistical support and financial assistance provided by Sable during Condé's presidential campaign and the status of Mr Sampil as a key ally to Mohamed Condé.
66. BSGR:
67. The Claimant has entered into no such agreement with the GoG and instead faced a purported "investigation" into its mining rights as part of the review process, leading to the premeditated removal of its rights and now a Criminal Investigation. As set out in the note at DLC1/79 in early February 2011, the President of BSGR, Asher Avidan, the CEO of VBG, Ricardo Saad, and Ibrahim Touré attended two meetings with President Condé. During those meetings, Alpha Condé proposed that BSGR made a payment to him of US\$1.25 billion and threatened to halt the building of the Trans-Guinean railway (which he did on 8 and 20 April 2011) and withdraw consent to exporting the iron ore through Liberia (which he did on 11 October 2011). The \$1.25 billion was calculated on Condé's misunderstanding of the joint venture agreement with Vale, which he interpreted as representing a payment to BSGR of \$2.5 billion up front. BSGR did not agree to the extreme proposal: it had no reason to "settle" with the GoG given that it had obtained its rights legally and had complied with the Mining Code. Instead, BSGR attempted to move forward with President Condé in a constructive manner. On 14 March 2011, Mr Avidan wrote to Condé to explain the works being undertaken in Zogota and Blocks 1 and 2, to clarify the details and legality of the joint venture agreement with Vale, and to reiterate the company's commitment to building the Trans-Guinean railway as a gift to the Guinean people at DLC1/80/1204. However, it is evident that Condé was not interested in a cooperative approach in the absence of a payment by BSGR to him.
68. According to Mediapart, the investigations into the Claimant were directly linked to the failure of Condé to recover the Claimant's rights by way of such a "settlement" payment:
- "The Steinmetz Group is certainly in trouble since it refused to put its hand in its pocket to preserve its rights in Simandou. Rio Tinto, which still owns half (but originally owned it in its entirety), has agreed to pay an additional 700 million dollars. **It was when BSGR refused, that investigations into its dealings began...** [by] the battalions of lawyers and private investigators funded by George Soros, Alpha Conde's chief supporter. The US Attorney General subsequently woke up, perhaps even relying on their results" (emphasis added) [DLC1/81/1232 - 1233].*
69. The experience of BSGR mirrors that of GETMA, which similarly did not enter into a settlement agreement with the GoG. Instead, like the Claimant, GETMA was the subject of corruption allegations which have now been found to be "implausible" and the expropriation of its rights, which the Common Court of Justice and Arbitration ruled was illegal, awarding GETMA €38.4 million in damages as set out in paragraphs 76.1.4 to 76.1.8 below.

I. THE GOVERNMENT'S ILLEGAL TAKING OF BSGR'S INVESTMENTS: AN OVERVIEW

70. Given BSGR's refusal to make a payment to Alpha Condé in February 2011, Alpha Condé set out to make entirely false accusations of fraud by BSGR in the obtaining of the mining rights, in order to justify the removal of those rights to reward his backers. The consequent revocation of BSGR's mining rights and the purported commencement of the

Criminal Investigation into BSGR, its agents and its employees, represents a furtherance of Alpha Condé's personal campaign against the Claimant, as evidenced by the following matters, which are expanded upon in Sections J to M below.

- 70.1 In around mid-2011, Alpha Condé instructed the Paris office of a Canadian law firm, Heenan Blaikie, to advise on all options as to how he could take back BSGR's rights to Simandou. Heenan Blaikie produced a report dated 20 December 2011 at DLC1/7. This report:
- 70.1.1 Was not concerned with allegations of fraud, but questions of whether there had been breaches of terms of BSGR's mining and exploration licences or similar. Heenan Blaikie's report did not mention any possibility of corruption; and
 - 70.1.2 Recommended that Alpha Condé's best case against BSGR was to allege that BSGR had failed to carry out its obligations under the mining concession and/or Base Convention on the basis that BSGR (a) had not produced financial reports as required; (b) had not paid fees amounting to US\$292,340; and (c) had failed to construct the Trans-Guinean Railway according to schedule (although Heenan Blaikie was apparently not aware that on 8 and 20 April 2011 Alpha Condé had ordered BSGR to halt all works on the Trans-Guinean Railway) as set out in an article at DLC1/82.
- 70.2 The strategies explored by Heenan Blaikie included outright expropriation, highlighting the risks and benefits associated therewith – as well as attempts to seek potential breaches of contracts, if any, which would justify a revocation of rights. However, the report failed to provide sufficient legal grounds to execute this objective and was therefore apparently discarded. Accordingly, in order to justify the removal of the Claimant's rights, the GoG had to allege fraud. With this intention:
- 70.2.1 Alpha Condé and/or George Soros (and/or DLA on their behalf) instructed Stephen Fox, the CEO of Veracity Worldwide, a private investigator, to find evidence of corruption against BSGR [DLC1/83].
 - 70.2.2 Alpha Condé and/or George Soros instructed Scott Horton, George Soros' lawyer at DLA Piper, to produce a report into BSGR, using Veracity's work ("the DLA Piper Report") [DLC1/84]. According to a "*person familiar with the matter*" quoted by Bloomberg, George Soros funded the DLA Piper Report [DLC1/85/1271].
- 70.3 At the same time, the GoG initiated a campaign of disruption of the Claimant's works, in order to place the Claimant under pressure. The GoG sent multiple letters to the Claimant alleging that it was not aware of the joint venture with Vale, withdrawing consent to both the Trans-Guinean railway and Liberian railway and issuing a notice to halt works. The Claimant attempted to cooperate with the GoG and provided information about its joint venture when requested. However, this information was simply ignored by the GoG as it undermined its predetermined intention to revoke the Claimant's rights.
- 70.4 By decrees dated 26 March 2012 and 29 March 2012, Alpha Condé established an ad hoc three-tier Committee established under, and supervised by, the President [DLC1/86 and 87]. Referred to as the Technical Committee or CTRTCM, it purported to inquire into the propriety of the grant of the Claimant's mining licences. Before the Committee had completed its review (and at a time when the Claimant had not even been provided with the evidence upon which the Committee relied), Alpha Condé and members of his Government had declared his intention to reclaim the Claimant's interests.

- 70.5 The Technical Committee first wrote to VBG on 30 October 2012 accusing it of obtaining its mining interests by corruption (the "Allegations Letter") [DLCI/88]. That letter was based on the DLA Piper Report and was prepared with the assistance of Mr Horton (the author of the DLA Piper Report). The allegations contained in it were untrue. The Allegations Letter formed the basis of the Guinean letter of request for assistance to the Swiss authorities, which on page 2 states that *"The elements of evidence collected during the Guinean procedure indicate that the allegations of corruption are well founded. We copy hereby a copy of the letter dated 30 October 2012 that was sent to the VBG company by the Technical Committee..."* at DLCI/89/1314. It is astonishing that as the foundation for a letter of request the GoG relied on the Allegations Letter, which as is detailed below is based on evidence entirely lacking in credibility, with absolutely no supporting documents, and without reference to the following eighteen months of correspondence between the Technical Committee and the Claimant in respect of the allegations. Even if the review process had been conducted in a fair manner, which is not accepted, then it would be prejudicial to rely on the first item of correspondence setting out the allegations, rather than the conclusions reached at the end of the investigation. The Claimant has not been provided with disclosure of the LoR or Second LoR, but it reasonably assumes that they are similarly based on the prejudicial Allegations Letter.
- 70.6 The Claimant's lawyers repeatedly asked the Technical Committee to provide them with all the evidence on which it relied. This information was provided only 3 working days before a scheduled final hearing into the Claimant's rights on 10 December 2013, and even then in incomplete form. Furthermore, throughout the review process, Alpha Condé and the GoG continued to make prejudicial statements against Mr Beny Steinmetz and the Claimant, extending to accusing them of plotting a coup d'état in the capital of Guinea.
- 70.7 BSGR's mining rights were revoked by three orders dated 17 April 2014, 18 April 2014 and 23 April 2014 [DLCI/90/1322 and 1324 and DLCI/91], under the direction of President Alpha Condé. Incidentally, in September 2014, Nava Touré, who chaired the Committee process, was rewarded by President Condé and promoted to General Secretary of the Ministry of Mines [DLCI/92].
- 70.8 The gross and fundamental breaches of due process and natural justice which characterised the inquiry proceedings are detailed below. BSGR has issued proceedings with the International Centre for Settlement of Investment Disputes (ICSID) against the Government of Guinea to challenge the illegal decision to revoke its rights. A copy of the request for arbitration is at DLCI/93. The entire review process, from the collection of "evidence" to the removal of rights, was characterised by (i) reliance on unreliable evidence; (ii) bad faith and (iii) lack of due process. It is likely that the Criminal Investigation will similarly be characterised by such prejudice and political motivation and that accordingly the LoR and Second LoR are tainted by bad faith.

J. DISRUPTIONS TO THE CLAIMANT'S WORKS IN SIMANDOU

71. Following the election of Alpha Condé as President, there was an almost immediate change in attitude on the part of the new administration towards VBG. Through official correspondence and a series of public announcements, the GoG sought to suspend the execution of all VBG works, over eighteen months before the formal commencement of the review process.
- 71.1 In April 2011, and despite the fact that works had already started, the GoG cancelled the agreement with VBG to rebuild the Trans-Guinean railway [DLCI/82]. The GoG challenged technical features of the railway project, arguing that the Government which had agreed to those features was no longer in power. However, the commitment to build the

Trans-Guinean railway had been made in good faith by the Claimant to benefit the Guinean population, rather than for commercial gain. It was therefore difficult to understand why the GoG cancelled the project.

- 71.2 On 4 October 2011, the GoG issued a notice to stop all of VBG's works in Guinea, claiming that they had been initiated "without authorisation" or by a company of which it was unaware called VALE [DLC1/94]. Similarly, on 31 October 2011, the GoG wrote to the Claimant to acknowledge receipt of its feasibility study, but stating that it did not recognise the entity which carried out the study, namely VBG [DLC1/95]. Such correspondence was notwithstanding the notice which had been provided to the GoG in respect of the joint venture between Vale and the Claimant and the GoG's formal acknowledgement of this on 16 April 2010 [DLC1/13 and DLC1/14] and 1 November 2010 [DLC1/96]. Given this repeated acknowledgement of the name change by the GoG and its own use of the new name, the correspondence from the GoG appeared to the Claimant to be intentional attempts to disrupt its works in bad faith.
- 71.3 On 17 November 2011, the GoG repeated its notice to stop works, stating that "*in the absence of authorizations granting BSGR and Vale to undertake these works, the Ministry of Mines and Geology has given you formal notice to stop, or engage in stopping without any further delay, the abovementioned works*" [DLC1/97/1376]. The letter further set out a detailed list of queries for VBG to answer, which the Allegations Letter describes as the initiation of the collection of information from BSGR and which it falsely claims were left unanswered by the Claimant. However, the Claimant responded to the queries in detail, as set out below.
- 71.3.1 In a letter to the GoG dated 28 November 2011, the Claimant explained its partnership with Vale and provided access to a data room containing documents supporting that explanation [DLC1/98].
- 71.3.2 On 19 January 2012 the GoG wrote again to the Claimant, to complain that it delayed submitting its feasibility study on Zogota [DLC1/99]. This was notwithstanding that the original study had been given to the GoG in November 2009 and had then been disclosed again in the dataroom on 28 November 2011, indicating that the GoG had not inspected the vast number of documents provided. However, to assist the GoG further, the Claimant agreed to provide the documents in hard copy.
- 71.3.3 On 3 February 2012, the Claimant submitted to the Minister of Mines four copies of 15 lever arch files comprising 50,000 pages confirming the legality of VBG's vested rights in Zogota and Simandou Blocks 1 and 2 [DLC1/100]. This was despite the GoG having been kept fully abreast of the joint venture agreements, the documents having been previously disclosed to the GoG in electronic copy and that the GoG's requests fell outside the audit and inspection rights afforded by the Mining Code and Base Convention.
- 71.4 However, notwithstanding the cooperation which the Claimant sought to achieve with the GoG, it continued to face disruption to its activities in Simandou, leading it to conclude that the objective of the state was to expropriate its assets. Accordingly, on 28 February 2012, the Claimant wrote to the GoG, raising its many concerns and calling for the President's personal intervention to "*take every possible measure to remove the obstacles*" faced. However, this did not improve relations [DLC1/101].
72. On 11 October 2012, the GoG stated that it would not grant VBG a right to export the iron ore originating from Zogota and Simandou through Liberia [DLC1/102]. The GoG gave no justification for the decision, which materially breached the agreements previously

signed with the GoG. In addition, the feasibility study had made clear that the export of ore via Liberia was central to the economic and technical viability of the project. One year later, the GoG granted Sable, the company connected to Aboubacar Sampil, the right to export iron ore from the Nimba range through Liberia.

73. On 30 October 2012, the GoG sent the Allegations Letter to the Claimant [DLC1/88]. The Allegations Letter falsely stated that the Claimant had failed to cooperate with the GoG's previous requests for information:

*"In regards to the matter of the mining titles registered in the name of the BSGR Guinea company (BSGR), the Minister of Mines and Geology had already initiated this collection of information before the establishment of the CTRTCM in submitting to you, in his letter No. 1876 dated 17 November 2011, a set of questions which **even today has yet to be properly answered**, a copy of which is attached to this letter."* [DLC1/88/1297] (emphasis added)

74. The Claimant is unclear what further information or assistance it could have provided to the GoG in response to the letter dated 17 November 2011. The GoG's failure to engage with the substantive responses provided – as evidenced by its letter dated 19 January 2012 which revealed it had not even accessed the Claimant's dataroom of documents – was repeated throughout the Technical Committee review, at great prejudice to the Claimant. The GoG was intent on disrupting the Claimant's works in advance of the review process, and any documents provided by the Claimant which undermined the GoG's predetermined conclusion were simply disregarded.

K. THE TECHNICAL COMMITTEE'S RELIANCE ON UNRELIABLE EVIDENCE

75. The Technical Committee's case against the Claimant was two-fold: (i) that its joint venture with Vale was illegal; and (ii) that it gained its mining rights via corruption. For the first, the Committee relied on the GoG's claims that the Claimant had not provided the documents requested to establish that the joint venture was legal. As set out above, this was demonstrably false. For the second, the Committee took as its evidential starting point the DLA Piper Report and Veracity Report. For instance:

- 75.1 In an article in the New Yorker on 8 July 2013, Condé is quoted as stating that *"I can't task my gendarmerie to do the investigation... they'll come up with members of their own families"* [DLC1/103/1421]. Accordingly, the man tasked with running the Committee, Nava Touré confirms that *"...when he turned his focus on Simandou he had no staff or trained inspectors, so he relied on D.L.A. Piper, the law firm, and Steven Fox, the investigator. "It was outsourced," Touré told me"*. (emphasis added) [DLC1/103/1423]

- 75.2 The entire case against the Claimant, as set out in the 25 allegations in the Allegations Letter is based unquestioningly on the assumptions of the Condé-commissioned DLA Piper Report. Without referring to any supporting evidence, the Allegations Letter describes the corruption allegations made against the Claimant in the DLA Piper Report as *"facts"* [DLC1/88/1303].

- 75.3 Similarly, a document entitled "A memorandum realized by Veracity (exhibit No. 15.)" is relied upon in a letter from the Committee dated 4 December 2013 to VBG *"to confirm the allegations contained in the successive letters previously sent by the CTRTCM [English translation]"*, at DLC1/117/1608.

76. However, as described below, both the DLA Piper Report and the Veracity Report are fundamentally flawed. That they are so patently fabricated indicates Alpha Condé's intention to harm the Claimant. Furthermore, the evidential basis of the Technical

Committee review is entirely circular: the allegations are based on the DLA Piper Report and Veracity Report and then purportedly confirmed by reference to those very reports.

76.1 The Veracity Report

76.1.1 In an article in the New Yorker in which Horton is extensively quoted, it is reported that: "*In the spring of 2011, Horton began to investigate the Simandou deal. For assistance he turned to a man named Steven Fox, who runs a risk-assessment company, in New York, called Veracity Worldwide*" [DLCI/103/1421]. The result is a report known as the "Veracity Report", which is at DLCI/83. It makes allegations of corruption against the Claimant on the basis of hearsay and innuendo and with no supporting documentary evidence. Notwithstanding this, the allegations in the Veracity Report became the nucleus of the GoG's campaign against the Claimant. In particular, the report alleges that:

- (a) BSGR turned to a Mr Frédéric Cilins (referred to as "FC" in the report) for assistance to "*obtain the moon*" in Guinea, which is inferred in the report to mean that BSGR wanted to obtain the Simandou concession [DLCI/83/1238]. This quote is directly referenced in allegation 1 of the Allegations Letter [DLCI/88/1300];
- (b) There was no contract between Cilins and BSGR, but a contract would be provided once Cilins was able to "*deliver results in Guinea*" and he would be paid on a "*success-only*" basis [DLCI/83/1238]. Again, this is directly referenced in allegation 1 of the Allegations Letter [DLCI/88/1300];
- (c) Cilins cultivated a network of contacts in Guinea, including with a journalist, Ibrahima Sory Touré, "*the brother of Mamadie Touré, the fourth wife of President Conté* [the former President of Guinea]" [DLCI/83/1239]. This is referenced in allegation 4 of the Allegations Letter [DLCI/88/1300];
- (d) Cilins distributed small amounts of money to these contacts for "*their services*" [DLCI/83/1239];
- (e) Through the contacts he had built up, Cilins met with President Conté and suggested he transfer part of the Simandou concession to BSGR from Rio Tinto [DLCI/83/1240];
- (f) A representative of BSGR gave a diamond encrusted watch as a gift to President Conté [DLCI/83/1241]. This is included as allegation 8 of the Allegations Letter [DLCI/88/1301];
- (g) BSGR wanted Cilins to serve as the local-director general in Guinea, but he refused [DLCI/83/1241]. This is included at allegation 18 of the Allegations Letter [DLCI/88/1302]; and
- (h) Madamie Touré's entourage was upset when Cilins ended his work in Guinea as they expected to be "*taken care of*" and to receive support from him [DLCI/83/1242]. The report does not state what this support was in consideration of.

76.1.2 Informed by the focus on Cilins in the Veracity Report, much of the Allegations Letter relates to the role of Cilins as "an agent" of BSGR in alleged corruption

facilitated by Mamadie Touré. However, this central allegation is false, based on a combination of the flawed Veracity Report, untested evidence and a misunderstanding of an FBI investigation into Cilins. The true position is as follows:

- (a) Lacking a permanent presence in Guinea in 2006, the Claimant sought to work with Frederic Cilins, who had extensive business operations in Guinea, which they subsequently established as Pentler Holdings ("Pentler"). Pentler took a participation of 17.65 per cent equity stake in BSGR Guinea in March 2006. However, this arrangement ended when BSGR re-acquired the entire equity from Pentler in March 2008, as set out in a press release from BSGR at DLCI/104/1431 - 1432.
- (b) Cilins was arrested in the US in April 2013 for offering money in return for Mamadie Touré confirming that there was no bribery and destroying the documents purporting to evidence bribery. However, after nearly a year of the prosecution pursuing multiple charges against Mr Cilins in the Southern District of New York, including the US Government providing disclosure of documentation to Cilins, Cilins agreed to plead guilty to one of five counts in the indictment. His guilty plea focused on his admission of trying to persuade a witness to leave the United States to avoid questioning [JLL/21]. All other counts were dropped. Cilins made no statements about the alleged participation of others and to date no-one else has been charged. Frederic Cilins is not an employee or agent of the Claimant and never has been.
- (c) Mamadie Touré has on several occasions attempted to blackmail BSGR with documents and contracts purporting to show that BSGR had paid her through Cilins in return for her assistance in obtaining mining rights over Simandou. BSGR has always rebuffed Ms Touré's blackmail attempts. The same documents and contracts were used by Walter Hennig in his blackmail attempt in a meeting with Asher Avidan, as described in paragraph 35.9.4.
- (d) Ms Touré's claims are false. As will be seen below, she has never been cross-examined as a witness and her affidavit relied upon by the Technical Committee has never been scrutinised by a court of law.

76.1.3 Accordingly, the reliance upon the Veracity Report to "confirm" the false Cilins allegations is erroneous.

76.1.4 Furthermore, I have known Mr Steven Fox of Veracity for 25 years, first at Princeton University and then when he worked for me at Anglo American PLC. He has kept in touch with me on and off over the years and I know that he has moved jobs regularly, at one time seeking investment from me for a start-up company he was incorporating in the business intelligence field. From my experience, he is a man of dubious character and I was not surprised to read that "evidence" supplied by him to the GoG was described by the Common Court of Justice and Arbitration ("CCJA") in May 2014 as "implausible" at DLCI/105/1436. In a case with significant similarities to the treatment of BSGR, the logistics company GETMA was awarded a 25 year port contract in Guinea in 2008. This contract was annulled by Alpha Condé within a week of the President announcing that he would review all state contracts so as to better control national assets. The contract was then awarded to the French port group, Bolloré, which GETMA

says had supported Condé during his election campaign, as set out at DLCI/106/1438.

- 76.1.5 During the claim, the GoG relied on a report by Veracity to argue that GETMA obtained its port concession by bribing the former Government, in particular the Minister of Transport Touré (who is also a member of the current Government) and a number of lower ranked officials. In its judgment, the CCJA made scathing remarks in respect of Mr Fox's credibility and the reliability of his evidence of corruption:

"67. In a letter of 14 November 2013, the Republic of Guinea sent an attestation in English by Mr Steven Fox, which in its own terms, shows a vast enterprise of corruption involving a number of parties (exhibit R 107)

76. The Court has observed that Mr Steven Fox was neither a direct or indirect witness of the corruption which he relates. He has made reference to unrelated statements, witnesses who he claims to be direct and indirect, and whose identities he refuses to unveil. HE has not made reference to any document. He is not directly questioning GETMA, nor having reference to any account which it holds and which has been used to make illicit payments. (...) The omissions of which Mr Fox is guilty do not allow for knowledge or verification of his sources, his methods and the content of the information he relates. They do not allow for the Court to verify his allegations.

77. Under these conditions, the Court can only dismiss the claims made by the Republic of Guinea in relation to the allegation of corruption."

as reported by Guineenews at DLCI/107/1444.

- 76.1.6 Accordingly, and ruling unanimously in GETMA's favour, the CCJA panel refused to accept Veracity's report, calling its findings "unlikely". The GoG was ordered to pay GETMA €38.4million for unlawful termination of their contract.
- 76.1.7 The similarities between the GETMA case and the situation facing BSGR are striking. Both had their rights removed by Condé in a purported "review" of mining titles and state contracts; both aggrieved parties believed the revocation was to reward Condé's election supporters; the basis of both removals were allegations of corruption, in particular the bribing of former Government ministers; in both instances, these allegations of corruption originated in a "report" by Mr Steven Fox on behalf of Veracity; and both Veracity reports were based on second hand evidence without documentary support. In the GETMA case, Mr Fox's evidence of corruption was found to be entirely lacking in credibility. It is therefore reasonable to conclude that Mr Fox's evidence of corruption in respect of Cilins and BSGR is similarly unfounded.
- 76.1.8 Given the judgment of the CCJA in GETMA that Steven Fox of Veracity lacked credibility and that his evidence was "implausible", it is inappropriate that such a report was relied upon to "to confirm the allegations" made by the Committee [DLCI/117/1607].

76.2 The DLA Piper Report

- 76.2.1 In 2011 Alpha Condé instructed DLA Piper to carry out an investigation into BSGR. The report produced by DLA Piper was based on the Veracity Report and third hand accounts by private investigators, some of which are believed to have

been obtained via BSGR's commercial rival Rio Tinto at DLC1/84. They were unsupported by any direct evidence.

- 76.2.2 The principal aim of the DLA Piper Report was to find evidence that BSGR had obtained its rights in Guinea by corruption. On page 1 of the report at DLC1/84/1243, it states that its instructions were whether BSGR had used “acts of corruption for the purpose of influencing the procedures for acquiring rights to Simandou, by offering “commissions” and “pecuniary benefits” in an irregular and abusive fashion to Guinean officials able to influence decisions on the distribution of mining rights.” These instructions were given notwithstanding the Heenan Blaikie report (dated 20 December 2011) had found no such evidence.
- 76.2.3 In-depth analysis of the DLA Piper report reveals it to have significant flaws. It is clearly a ‘sexed-up’ dossier which wilfully amplifies statements made in Steven Fox’s already flawed Veracity Report. The DLA Piper report also relies on sources whose credibility even its author, Scott Horton, admitted was ‘non-tested’. Specific examples of inaccuracies in the DLA Piper Report include the following:
- (a) It describes Mr Cilins as being French-Israeli when in fact he is French only. The report also claims that Mr Cilins is associated with the Israeli Secret Service which is highly implausible.
 - (b) The report quotes Mr Cilins a number of times, seemingly in reference to his interview for the Veracity Report. However, these quotes were misrepresented and/or inaccurate. For example, the DLA Piper Report contains: “he [Cilins] did acknowledge that she [Mamadie Touré] was ‘well taken care of’”, which implies he was ‘giving’ her money. However, the Veracity Report, from which the quote was taken, states: “Cilins claimed Touré’s family entourage was upset when he ended his work in Guinea because they expected to be ‘taken care of’”. These statements are vastly different. The Allegations Letter repeats the DLA Piper false extrapolation, stating at allegation 10 that “BSGR offered gifts to Mrs. Toure” [DLC1/88/1301].
 - (c) The DLA Piper Report claims that in August 2005, Mr Steinmetz met President Conté in a Geneva hospital, but in Steven Fox’s interview for the Veracity Report, Mr Cilins said: “Beny never saw Lansana Conté in the hospital in Geneva”. The Allegations Letter again repeats the mistruth in the DLA Piper Report, at allegation 6 [DLC1/88/1300].
 - (d) The DLA Piper Report states: “Proof provided by Cilins [...] is extremely damning and has a high probative value, implicating the CEO of BSGR at the time for an act of corruption...the evidence provided by Cilins made him subject to civil and criminal prosecution...he thereby believes that payment of extravagant monetary benefits [...] do not count as acts of corruption”. Mr Cilins has admitted to giving gifts in the interview but he never mentioned anything ‘extravagant monetary benefits’. This statement is therefore misleading. However, the Allegations Letter is based on the false presumption.
 - (e) The DLA Piper Report itself highlights several inherent weaknesses in the evidence it relies upon concerning one of its central allegations, the payment of “gifts and monetary benefits”. These same allegations were lifted from the DLA Piper Report straight into the Allegations Letter, notwithstanding their frail evidential basis. The false impression conveyed

in the Allegations Letter is that such allegations had substance and evidential support, given that they are stated to be "facts", when in fact the DLA Piper Report concluded this was not the case. For example:

- (i) In relation to alleged cash payments to military leaders in Guinea in 2009-2010, the DLA Piper Report notes that "*information [...] is limited*" and that there was "*no clear information that would make it possible to establish a connection between cash payments [...] involving BSGR's rights to Simandou*" [DLC1/84/1268].
- (ii) In relation to allegations that BSGR was involved in financing an arms deal by Global CST, a company related to Victor Kenan, the DLA Piper Report notes that the allegation "*must be verified*" since there was no actual evidence [DLC1/84/1268].
- (iii) As to the alleged delivery of a cheque by BSGR to Mamadie Touré for "*10 or 7 million USD*", which apparently bounced, the DLA Piper Report concludes that it was "*unusual for payments of this type to be made [i.e. by cheque]*" and "*it appears strange that the cheque was refused*" [DLC1/84/1267]. The report is unable to identify any evidential basis for this allegation.
- (iv) Referring to the gift of a model FI car to a Guinean official, the DLA Piper Report notes that it was handed over in a public ceremony and therefore "*might mean it was not an undue and abusive tactic*" [DLC1/84/1267].
- (v) As to one of the central allegations of bribery, the DLA Piper report concedes: "*Currently, no evidence has been found, but it is certain that monetary benefits offered during this period would have reached into the several millions of dollars*" [DLC1/84/1269]. If there is no evidence, as the report claimed, it is wholly inappropriate to make this assertion.

76.2.4 The report does not name its sources and there is a strong chance that they are not impartial and have a clear motive in seeking to discredit BSGR, including individuals related or linked to rival business. Furthermore, it does not include or refer to any evidence upon which it relies. On any objective view, it follows that the allegations made against the Claimant in the DLA Piper Report ought to have carried little to no weight. In practice, that report became the cornerstone of the entire review process and (so far as the Claimant understands from the minimal disclosure provided to date) of the continuing Criminal Investigation and LoR and Second LoR.

L. THE LACK OF DUE PROCESS THROUGHOUT THE REVIEW PROCESS

77. Notwithstanding the seriousness of the allegations to be investigated and the nature and value of the rights with which it was concerned, I am advised that the inquiry purportedly undertaken by the Technical Committee was devoid of even the most basic elements of procedural fairness. The process was wholly lacking in independence and impartiality, operating entirely under the direction of Alpha Condé. Furthermore, the Technical Commission appears to have accepted unquestioningly the findings of the Condé-

commissioned DLA Piper Report; to have refused all the Claimant's reasonable requests for such particulars and disclosure as might enable it to respond meaningfully to the allegations; and to have, at best, presided over and, at worst, been responsible for, a series of leaks of important documents to the international media prior to their service on the Claimant.

(i) Lacking independence

77.1 According to Article 3 of the Presidential Decree of 29 March 2012 which established the Technical Committee, it is the responsibility of the National Mining Commission to prepare a decision of "maintaining, adjusting or withdrawing" a mining title [DLC1/87/1286]. The National Mining Commission was made up of a "Strategic Committee" and a "Technical Committee". Article 4 establishes that the Technical Committee makes a recommendation to the Strategic Committee in relation to the mining rights under the review, with the Strategic Committee making a final decision to be transmitted to the President.

77.2 However, both the Technical and Strategic Committees were controlled by Alpha Condé:

77.2.1 According to Article 5 of the 29 March 2012 decree, the four members making up the Strategic Committee were "placed under the authority of the head of state" [DLC1/87/1287]. Furthermore, the members were four existing ministers of State, which were appointed to those roles by the President: the Minister for Mines and Geology, the Minister for Economy and Finance, the Minister for Justice and the Minister for Public Works and Transport. Accordingly, not only were the members of the Strategic Committee formally "under the authority" of Condé, but their ministerial jobs depended on keeping in his favour.

77.2.2 According to the legal opinion of Daniel Labetoulle, Honorary Chair of the Litigation Division of the French Council of State, and Denys de Béchillon, Professor of Public Law, sixteen of the eighteen members of the Technical Committee were nominated by the President or members of his Government [DLC1/108/1457].

77.2.3 Finally, the decision of the Strategic and Technical Committees could only be executed after approval by President Alpha Condé.

77.3 Given the above, Labetoulle and de Béchillon concluded that:

"The closeness of this link with the executive branch poses a legal problem of primary importance... it is once again that guarantees of "objective" impartiality are imperatively required so that an authority of this kind can legitimately be asked to express an opinion on the allegations of corruption and on the maintenance or withdrawal of rights and good conferred by authentic acts. And yet, the system that has just been described does not offer – cannot offer – such guarantees. As a minimum, a firmly guaranteed statutory independence is necessarily required. It is clearly this statutory independence... that the organic features of this Commission do not present" [DLC1/108/1457].

77.4 This conclusion is supported both by the discourse used by the President to describe the Technical Commission and the views expressed by Mahmoud Thiam to Mr Mebiame.

77.4.1 As is described in detail at paragraph 85.4 below, in an interview on a Senegalese talk show on 4 November 2013, President Condé highlighted his control over the review process, stating that "We expect the Technical Commission to make proposals to the committee that I chair. We will make a decision based on the proposition that will be made by the Commission concerning the modules 1 and 2." [DLC1/109/1464]

77.4.2 Similarly, Mr Thiam described the committee as "a review committee for mining convention, that Alpha put into place" and "I saw the names of the committee members-people who he [Conde] is controlling". [DLC1/21/454]

77.5 It was accordingly apparent to the Claimant that the Committee established by Alpha Condé contained no guarantees of independence or impartiality. It was used as a prop to implement the President's intention of expropriating the Claimant's assets and its "findings" should be viewed in this light.

(ii) Prejudicial process

78. Not only did President Condé retain control over the Technical Committee, but the entire review process was devoid of procedural fairness. As set out below, it was apparent to the Claimant that the Technical Committee was tainted by an abuse of power, ignoring the presumption of innocence and the rules governing the burden of proof and violating internationally recognised principles of due process.

78.1 In summarising the allegations put to the Claimant in the Allegations Letter, the Technical Committee describes them not as allegations which must be addressed, but as "facts" which must be dis-proved [DLC1/88/1303]. In this regard, it appears that the Technical Committee accepted unquestioningly the findings of the DLA Piper Report, upon which the Allegations Letter was based.

78.2 Furthermore, the burden of proof was reversed in the proceedings, with the Claimant required to demonstrate that it had not committed an offence of corruption, notwithstanding that the Committee admitted in the Allegations Letter that "neither the validity nor probative evidence of this proof [upon which the allegations rely] [had] been assessed" [DLC1/88/1298]; and further notwithstanding the failure to disclose any evidence to support the allegations. This is all the more serious in the context of the Allegations Letter stating that in the event the Claimant did not respond to the allegations, the Committee would "consider [its] actions as acceptance of the merit of the allegations... These omissions may consequently provide grounds for a decision against [BSGR's] interest regardless of any other elements of proof" [DLC1/88/1299]. Accordingly, the Claimant's interests could be withdrawn on the basis of untested allegations, simply by the company not responding in a manner the Committee itself judges as sufficient.

78.3 From the start of the Committee's constitution, the Claimant expressed its concerns with the legality of the procedure. As raised in the Claimant's response dated 26 December 2012 [at DLC1/110/1475]:

"The lack of specific information regarding the allegations made against BSGR, the lack of the slightest evidence provided to support them, and the Committee's request that a detail response be provided within a very short time limit, and if such response was not made it might issue "recommendations" against the retention of its mining rights by BSGR, does not take into account at all the most basic principles of procedural fairness and the adversary proceedings".

78.4 A further letter from the Claimant to the Technical Committee dated the same day highlighted procedural flaws in the committee process and enclosed a copy of a legal opinion of Daniel Labetoulle and Denys de Béchillon in relation to the legality of the process of the Committee review [DLC1/110]. The legal consultation concluded on 7 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 (1), 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)." [DLCI/108/1448]

(iii) Failure to disclose documents

79. The Allegations Letter fails to set out the sources of its vague and false allegations, does not attach any evidence, nor does it identify the evidence on which it relies. It was accordingly almost impossible for the Claimant to know what it was accused of and what it needed to address. However, notwithstanding these concerns, the Claimant's first 26 December 2012 letter responded to the 25 allegations to the best of its ability in the context of the non-disclosure of evidence of the Technical Committee [DLCI/110].

79.1 In that letter and in the following months, the Claimant made multiple requests to the Technical Committee to disclose the evidence upon which it relied:

79.1.1 On 26 December 2012, the Claimant highlighted that [DLCI/110/1474]:

"The Letter from the Committee states that each of these 25 allegations is "corroborated by specific evidence" (while at the same time stating that the probative force of said evidence has not yet been evaluated), which can only lead to doubt being cast on the impartiality of the Committee and the fair and equitable nature of the procedure, which also raises further questions, given, moreover, that no particular details are provided regarding this "evidence".

In particular:

- (a) The Letter from the Committee makes no attempt to identify the source of the numerous allegations it contains;*
- (b) No supporting evidence is attached to the Letter from the Committee, nor is there any indication of the content of the (alleged) evidence;*
- (c) This is the case even though the allegation that BSGR made a number of payments to public agents or their family and/or associates constitutes the central point of the Letter from the Committee and that such payments, if they had actually been made, would be easily identifiable through bank statements, payment orders, copies of cheques, etc."*

79.1.2 By a further letter on 26 December 2012, the Claimant states that [DLCI/111/1511]:

"the procedure, which is completely inquisitorial, is based on the concealment from the accused party (our company) of the evidence that is supposed to prove its guilt in such a manner that said evidence, assuming that it exists, which we do not believe, is exempt from any adversary proceedings".

79.1.3 Furthermore, on 15 March 2013, in response to a request from the Technical Committee for clarifications in relation to the Claimant's responses to the 25 allegations, the Claimant highlights that:

"In violation of the adversarial principle and the right to due process, the Technical Committee does not provide the slightest indication of the content of the information and statements that supposedly call for the clarifications it is seeking..." [DLCI/113/1523]

79.2 It was not until 7 May 2013, over six months from the date of the Allegations Letter, that the Technical Committee provided a handful of documents which it claimed supported its serious claims, and with no explanation as to why the documents were not produced earlier. The 7 May 2013 letter, at DLCI/114 demanded the Claimant's explanation of the documents within 7 days, notwithstanding that they had been withheld from the Claimant for over six months.

As the Claimant's solicitors, Skaddens, informed the Technical Committee by letter dated 4 June 2013, the disclosure of these documents further demonstrated the prejudicial nature of the review process and its reliance on discredited evidence [DLCI/116]. The letter highlighted that, *"Versions of the alleged documents have been used in previous blackmail attempts to blackmail our client in connection with false allegations of bribery and corruption..."* [DLCI/116/1602]. Furthermore, the wider concern in respect of the disclosed documents was that the Technical Committee appeared to be cherry picking the "evidence" it wished to disclose and which it wished to hold back. As Skaddens stated in its 4 June 2013 response:

"If there is evidence upon which the CTRTCM relies, basic fairness requires that the entirety of such evidence must be produced so that it may be assessed by our client. This is particularly so given the obviously flawed basis for the allegations arising from the DLA Report..." [DLCI/116/1605].

79.3 The 4 June 2013 letter again requested that the Technical Committee itemise and produce to the Claimant all evidence on which it relied. This request was ignored until a further six months later, when on 4 December 2013, the Technical Committee disclosed evidence it purported to rely on in support of its allegations, again in incomplete form. This was over one year since the date of the Allegations Letter, and only three working days before a hearing was scheduled to take place to decide whether the Claimant's assets were to be revoked. The letter and exhibit are at DLCI/117. Translations of documents 1 and 2 of the exhibit are at DLCI/118, comprising affidavits of Cilins and Mamadie Touré.

79.4 Even then, the "evidence" disclosed by the Committee was incomplete and relied upon by the Committee without question. It related in its entirety to the – false – allegation that the Claimant colluded with Mamadie Touré, presenting no evidence in respect of the multiple other allegations made in the Allegations Letter. Furthermore, the main evidence to support this one allegation was an affidavit from Mamadie Touré, which the Claimant had no opportunity to test by way of cross examination, and which, as raised by Skaddens, *"refers to a wholly incredible and unsupported set of events and our client considers this to be an entirely concocted, self-serving statement by a witness who has previously (unsuccessfully) sought to extort money from BSGR"* [DLCI/119/1825].

79.5 I understand that Mamadie Touré's affidavit is demonstrably false. By way of just one example, she claims that she met with Mr Steinmetz in Guinea in 2006 and that she organised a meeting between Mr Steinmetz and President Conté at that time. At paragraphs 13 and 14 of her affidavit, she states that:

"I organized a meeting with the President. Steinmetz, Cilins, Michael Noy, Ibrahima Touré, Marc Struik and Patrick Saada attended the meeting... After the end of the meeting... Steinmetz told me that he was happy that I had helped BSGR to obtain the permits for Simandou North and South. Steinmetz said that he needed more assistance with the President to obtain blocks 1 and 2 of Simandou" [DLCI/118/1813].

- 79.6 This is clearly critical to the allegations of corruption. Yet, there is clear and undisputable evidence that Mr Steinmetz did not visit Guinea prior to 2008, and therefore could never have attended those meetings. A copy of the flight details for the BSG Group's private aircraft "Challenger 601" is at DLC1/115/1576, 1580 and 1582. In 2006, Challenger 601 flew 3 times to Guinea, on 16 January, 20 February and 18 September. As can be seen from the corresponding hotel booking at DLC1/115/1578 and the Israeli Ministry of Interiors records of entry and exit to Israel at DLC1/115/1581 and 1583, Mr Steinmetz was in London and Israel respectively over those dates and could not possibly have been in Guinea. Mr Steinmetz only travels by air on the Challenger 601 and therefore could not have been in Guinea at any other point in 2006. Furthermore, Mr Avidan only joined BSGR in June 2006, so it is technically impossible that he would have attended these meetings. That such a critical aspect of Ms Touré's evidence is demonstrably false indicates that the affidavit was simply an attempt by the Guinean authorities to substantiate a pre-judged and fabricated thesis of corruption.
- 79.7 By letter dated 8 December 2013, Skaddens summarises the multiple concerns with the "evidence" provided by the Technical Committee:
- "Taken together, the above places BSGR in an impossible position, where it is – somehow – required to respond to allegations by 10 December where (i) 'evidence' relied on in supposed support of (some of) those allegations has been withheld until days before that deadline; (ii) it remains unclear whether this is the entirety of the evidence that is put forward against BSGR or not; (iii) it is clear that a large proportion of the allegations now appear to be (admittedly) unsupported and therefore, we assume, are not pursued; and (iv) in respect of the 'evidence' that is said to support the allegations that remain (in relation to Mamadie Touré) BSGR is prevented from testing that evidence at any hearing in order to establish its falsity" [DLC1/119/1826].*
- 79.8 In a similar manner, the Claimant has been denied disclosure of any of the evidence against it which forms the basis of the Criminal Investigation. However, the Claimant reasonably assumes that the evidence relied upon will be the same unreliable evidence which led to the revocation of its mining rights by the Technical Committee. That the Claimant was never afforded the basic right to test this evidence, notwithstanding repeated requests, is indicative of its flawed basis.

(iv) Prejudicial Hearing

80. On 16 December 2013, a hearing took place in Guinea before the Technical Committee to determine whether the Claimant's rights should be revoked. A full transcript of the hearing is at DLC1/120. The hearing was held in the absence of the Claimant and just five working days after the disclosure to the Claimant of the majority of the "evidence" to support the allegations in the Allegations Letter. The procedural flaws in respect of the hearing are set out below.
- 80.1 In the Allegations Letter, the Technical Committee states at page 3 that, *"...if you do not provide the called-upon witnesses or do not appear at the session of the CTRTCM of which you will have been notified, the CTRTCM will consider your actions as acceptance of the merit of the allegations specified against you in this letter. These omissions may consequently provide grounds for a decision against your interest **regardless of any other element of proof.**"* (emphasis added) [DLC1/88/1299].
- 80.2 Accordingly, the failure of the Claimant to appear at the 16 December 2013 hearing was itself sufficient grounds to revoke its mining rights. However, the Claimant could not possibly attend any hearing in Guinea because (i) the President of BSGR had been declared a *persona non grata* by the GoG in March 2013 and denied entry to the country

[DLC1/141]; (ii) two BSGR employees in Guinea had been imprisoned without charge and held in appalling conditions, as set out in detail in the witness statement of James Lewis Libson; and (iii) because allegations had been made, and published by Mr Soros, against Mr Steinmetz that he was involved in a coup and assassination attempt on the President.

80.3 As early as 4 June 2013, Skaddens on behalf of the Claimant raised concerns about the safety of any BSGR employees or officers visiting Guinea:

"This concern [about the conduct of the review process] is heightened by the recent arrest, without cause of justification, and detention – in appalling conditions – by the Guinean authorities of certain employees of our client who remained in Guinea. This targeting of our client gives rise to serious concerns about the safety of its employees and officers visiting or remaining in Guinea". [DLC1/116/1602]

80.4 However, only after the hearing took place, on 17 February 2014, did the Technical Committee suggest that representatives from the Claimant could have attended under a letter of safe passage from the Government or by video link [DLC1/121]. As set out in Skaddens' letter of 26 Feb 2014 [DLC1/122/1868]: *"It is telling that these suggestions have only now been made after the hearing and after the CTRTCM has made its decision"*.

80.5 The hearings were further organised to ensure that there was no opportunity to test the truth of the Mamadie Touré affidavit, given that Mamadie Touré was not called as a witness. The Claimant's request to question Mamadie Touré in person was denied.

80.6 Furthermore, it is clear from the transcript of the hearing that no attention was given to correspondence with the Technical Committee in which the Claimant responded to the allegations and evidence submitted against it. As set out by Skaddens in its letter of 16 January 2014:

"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)." [DLC1/123/1873 and 1874]

80.7 It was therefore apparent that the hearing was being held on the pretence that the Claimant did not have answers to the 25 allegations in the Allegations Letter, notwithstanding that it had provided substantive responses on 26 December 2012, 4 June 2013 and 8 December 2013. That the Technical Committee had failed to address those responses is further evidence that it had reached its conclusion to revoke the Claimant's titles from the outset.

80.8 On 21 March 2014, the Technical Committee recommended to the Strategic Committee that the Claimant's mining rights should be revoked. A copy of the recommendation is at DLC1/124. The Technical Committee relies on the 25 allegations in the Allegations Letter to support its recommendation, again describing them as *"facts"*, ignoring in their entirety the submissions made by the Claimant throughout the review process. This strategy was echoed in the Swiss letter of request, which presented the Allegations Letter as *"fact"* and failed to acknowledge that the Claimant had provided a substantive response.

(v) Systematic leaking of information

81. The Committee process was on the face of it intended to be confidential, with the Allegations Letter expressly stating that "*The CTRTCM intends to maintain the strict confidentiality of this letter as well as the allegations appearing in it and the procedures that will follow*" [DLC1/88/1304]. However, the review process was characterised by systematic leaks of documents to sympathetic members of the media, often before those documents were even provided to the Claimant, in an attempt to cause the Claimant maximum prejudice.
- 81.1 On 3 November 2012, Tom Burgis (together with Helen Thomas and Misha Glenny) published an article in *The Financial Times* based on the contents of the Technical Committee's letter of 30 October 2012 and/or on the DLA Piper Report [DLC1/125]. Prior to the article being published, on 3 November 2012, Tom Burgis and Helen Thomas visited my office to interview me and Asher Avidan in relation to the allegations contained in their intended article. At that time, neither Asher nor I had seen the Allegations Letter. However, from the questions asked and the detail included in the published article, it was clear that the authors had been provided with that letter.
- 81.2 According to Mahmoud Thiam, the Allegations Letter had in fact been leaked to *The Financial Times* an entire two weeks before it was received by the Claimant:
- "That [the review] was triggered by a letter that, allegedly, a review committee for mining convention, that Alpha put into place, had written to BSGR. And before, when you look... The Financial Times contacted me to ask me questions. I said: "I don't know what it's about." They sent me a copy of the letter. The date on which the Financial Times sent me the letter precedes the date on the letter by two weeks and the date on which BSGR, to whom the letter was addressed, received it. This means that he is putting the committee into place that he's [inaudible]- I saw the names of the committee members- people who he is controlling; they write a letter to BSGR, allegedly confidential, etc., to demand explanations. Even before sending it to BSGR, they send it to the Financial Times via Tony Blair's office to cause a scandal".* [DLC1/21/454]
- 81.3 There is a strong likelihood that the letter was leaked by George Soros and/or Scott Horton of DLA Piper to Misha Glenny, who co-authored *The Financial Times* article and is on the advisory board of Global Witness, a non-governmental organisation which derives 40% of its funding from George Soros' Open Society Foundation. The impact of the Allegations Letter was significantly amplified by it being leaked to the press, which resulted in the allegations being read as fact – even though the foundations of the allegations are flawed.
- 81.4 Similarly, on 19 April 2013, Global Witness published a report in which it claimed to have seen documents purported to be evidence of the Claimant's bribery [DLC1/126]. This was before those documents had been provided by the Technical Committee to the Claimant, which was not done until 7 May 2013 (in a letter copied to Mr Horton) [DLC1/114]. Furthermore, the Global Witness report comments that "...we have seen three leaked letters from BSGR to the review committee".
- 81.5 On 20 April 2013, in an article in *The Financial Times*, Mr Burgis (with Misha Glenny and Cynthia O'Murchu) also reported on the documents stated to be evidence of the Claimant's corruption, referring to them as "*documents seen by the Financial Times*" [DLC1/127/1969].

81.6 On 7 May 2013, when those documents were finally provided to the Claimant, the Technical Committee relied on the fact that the Claimant had refused to comment to *The Financial Times* regarding them. The Technical Committee noted that:

"...the companies VBG, BSGR and BSGR Guinée have not, at any time, publicly denied the existence and the authenticity of these contracts even when their representatives were confronted by journalists from the Financial Times in possession of copies of the said contracts. According to an article which appeared in the Financial Times on 21 April 2013 (p.1), BSGR simply refused to comment on these contracts." [DLC1/114/1532] (translated from the French original, emphasis added).

81.7 This is all the more remarkable given that the Allegations Letter effectively gagged the Claimant from making any comment in respect of the review procedure, with the letter stating that "You are hereby requested to respect this confidentiality and avoid any public comments regarding this procedure until its conclusion. Failure to do so will be grounds for the CTRTCM to take any measure deemed appropriate" [DLC1/88/1304]. From the above, it is clear that the GoG and parties acting for it used sympathetic members of the press as their mouthpieces to further prejudice the Claimant. This was compounded by the confidentiality conditions imposed on BSGR which frustrated its ability to defend itself.

(vi) Contrast with the approach of GoG to other allegations of corruption

82. The actions taken by the Government of Guinea against BSGR are in stark contrast with its general ambivalent attitude towards alleged corruption and provide yet another indication of the bad faith demonstrated towards the Claimant. A report by AfriMap of September 2013 on the anti-corruption policies in Guinea concludes that:

"Anti-corruption measures – especially the establishment of the anti-corruption bodies – are, according to some, just taken to please development partners and not genuinely to combat corruption that benefits the authorities themselves. For others, the ineffectiveness of the anti-corruption measures is due to a lack of political will, the absence of a national strategy, the inappropriate legal framework, lack of public trust, insufficient resources and a lack of capacity of the anti-corruption bodies". [DLC1/128/1978]

82.1 The report further mirrors BSGR's complaints about the Technical Committee and the investigation conducted by it. In relation to the Guinean corruption control, audit and prevention bodies, the report states as follows:

"The lack of independence of [the corruption control, audit and prevention bodies] seriously limits their action and may in fact contribute to the perception that they are used as political tools because they are almost all administratively located within the President's Office" [DLC1/128/1981]

and

"An additional problem is that the majority of these organs, if not all of them, report directly to the executive, which raises serious questions about their independence. The most active of these organs are placed under the umbrella of the President's Office ..." [DLC1/128/2001]

82.2 The report further confirms BSGR's complaints about the role and the power of President Alpha Condé and the impact on the corruption agenda:

"The anti-corruption strategy depends on checks and balances that are very weak and lack institutional coherence, as is the case with the public procurement system. The weaknesses of these

systems reflect the weaknesses of all three branches of government in Guinea – the executive, legislature and judiciary. These institutions inherited and still maintain a long tradition of an authoritarian system in which the over-powerful executive is deprived of any effective internal checks and balances, thus encouraging rule by fiat"; [DLC1/128/1984]

and

"Guinea is still ruled by a very powerful presidential regime which guarantees the omnipotence of the President at the head of a dominant and all-powerful executive" [DLC1/128/1984]

and

"The nature of the powers of the President of the Republic over the ANLC [the National Anti-Corruption Agency] and the other control bodies shows a hierarchical relationship and not supervision. Indeed, the President has powers of appointment, dismissal and instruction over the bodies in charge of prevention and repression of corruption attached to him or placed under his authority". [DLC1/128/2002]

M. BAD FAITH TOWARDS THE CLAIMANT

83. Even before the Committee had completed its review (and without providing BSGR with all the evidence on which it relied), Alpha Condé and members of his GoG had already declared his intention to take BSGR's interests, through prejudicial comments and disruption to the Claimant's ability to carry out its activities in Simandou. Such illustrations of bad faith against the Claimant continued throughout and after the review process, as a means of justifying the revocation of the Claimant's rights. It has extended to the placing of pressure upon the Claimant's advisors to terminate their retainer with the Claimant, the spreading of false allegations that the Claimant has organised a coup d'état in Guinea and the arrest without foundation of Israelis in Guinea, purely on the basis that they share the same nationality as Mr Steinmetz.

(i) Prejudicial comments by the GoG

84. Prior even to the commencement of the review into the granting of the Claimant's mining concession, it is apparent that the GoG viewed the removal of the company's rights as a foregone conclusion. For instance, on 7 February 2012, the Minister of Mines, Mohamed Fofana, stated during the Investing in African Mining Indaba conference in Cape Town that BSGR "didn't follow the law" in reaching a deal with Vale [DLC1/129/2026]. He further stated that its permit was to be reviewed and might be cancelled depending on the findings of a commission. In a letter dated 20 March 2012 to the Claimant, Mr Fofana does not deny having made such statements, nor that he harboured a prejudice against the company:

"It is regretful that my words may have thus been interpreted. Indeed, the eventual preoccupations that I may have cannot in any case lead the Ministry to pronounce itself on the validity of the titles and conventions that is outside the review process review aforementioned". [DLC1/130/2030]

85. Such prejudicial treatment of the Claimant continued after it was first put on notice of the allegations against it on 30 October 2012 in the Allegations Letter.

- 85.1 On 14 June 2013, President Alpha Condé was interviewed at Chatham House during a question and answer session entitled "Guinea in Transition: Reform, Resources and Regional Relations". A transcript of the interview is at DLC1/131. In response to a question about declaring BSGR's President, Asher Avidan, a *persona non grata* in March 2012, Alpha Condé referred to Cilins as "one of BSGR's leaders in the United States", accused BSGR of playing "a

role in some of the political turmoil faced in Guinea at the moment" and, notwithstanding a hollow reference to remaining "respectful of the principle of innocent until proven guilty", commented that "soon there should be some revelations that will allow more openness into the matter" [DLC1/131/2041].

85.2 On 17 June 2013, in an interview with President Condé for the UK Channel Four News, the Claimant is described as Condé's "bête noire" [DLC1/132/2044]. Condé adds that "I don't see how this deal [the granting of rights to BSGR] is of any benefit to Guinea" [DLC1/132/2044].

85.3 On 21 October 2013, Tom Burgis of the Financial Times reported that:

"In his clearest statement of intent to date, Mr Condé declared in a speech at the start of October that his government had "started a battle to recover our mines which were acquired fraudulently"..." [DLC1/133/2048].

85.4 On 4 November 2013, Alpha Condé stated in an interview that:

"We are currently engaged in an extremely difficult battle, which you are following, since the international press has been publishing it.

This is our battle to retrieve our wealth..... I'm not fighting to retrieve this wealth for me; I'm fighting to retrieve this wealth for Guinea.

Every Guinean patriot should make this his own fight.

All people who are willing to fight with me to ensure that the riches of Guinea serve the people of Guinea, are people I'm ready to work with..... This Technical Committee is responsible for the review of the contract and makes proposals. We expect the Technical Commission to make proposals to the committee that I chair. We will make a decision based on the proposition that will be made by the Commission concerning the modules 1 and 2. It is very important is 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 that this is now something known worldwide." [DLC1/109/1464]

85.5 Although not explicitly named, it is plain that the "contract" under review was the Claimant's. The emotive language and the invocation of a patriotic call to arms (before having even seen the Technical Committee's recommendations) make it clear that President Condé had already decided that the Claimant's mining rights should be removed and that he was closely involved in the Committee process. In a democratic society under the rule of law, public pronouncements of this nature would immediately disbar the speaker from any decision-making role in the matters under discussion, on grounds of obvious bias. In this case, however, Alpha Condé retained the decision-making power as to whether BSGR's rights would be withdrawn and acknowledged as much ("We [the committee which he chairs] will make a decision" [DLC1/109/1464]).

85.6 Such prejudicial statements were not limited to Condé and his Government, but extended to the people tasked with carrying out the investigation into the Claimant. For instance, during a radio interview on 5 July 2013, the author of the DLA Piper Report, Scott Horton, describes the Simandou deal as "fundamentally wrong", "one of the most astonishing corruption plays" he had ever seen and that there was "little factual doubt" in the truth of the allegations [DLC1/134/2051]. Similarly, suggesting the guilt of individuals associated with the Claimant, in an article in the New Yorker dated 8 July 2013, Horton states that "Steinmetz's future travel options may be limited" [DLC1/103/1430].

(ii) Pressure on the Claimant's advisors

86. George Soros used his personal contacts with other influential people to assist Alpha Condé to make allegations against the Claimant and limit the Claimant's ability to defend itself. This included Lord Mark Malloch Brown, a former British Government Minister and the Chairman of FTI Consulting Limited ("FTI") (a communications consultancy which the Claimant had instructed to defend and protect its interests). Lord Malloch Brown was pressurised by Mr Soros to resign the Claimant's account and did so. This was confirmed by senior employees of FTI, who disclosed that (a) Mr Soros' determination to ensure the Claimant's mining interests were withdrawn had led him to pressure Lord Malloch Brown to terminate the Claimant's retainer with FTI; and (b) in doing so, Mr Soros had made extreme allegations to support his cause, including a wholly false allegation that the Claimant was involved in an assassination attempt on Alpha Condé in 2011 (as set out in the documents in DLC1/135 to 138).
- 86.1 The Claimant issued proceedings against FTI and Lord Malloch Brown on 10 April 2013 for, *inter alia*, breach of contract, breach of fiduciary duties, breach of confidence and defamation. The Claim Form and Particulars of Claim are at DLC1/139. The claim was settled in the Claimant's favour on 31 May 2013, with FTI agreeing to pay the Claimant a substantial sum in damages and costs. The Claimant donated this money to charities in Guinea. A copy of the Claimant's press release dated 10 June 2013 and corresponding media articles relating to the claim are at DLC1/140.

(iii) Allegations of organising coups d'état and arrest of Israeli citizens in Guinea

87. As set out above, the prejudice shown to the Claimant by Alpha Condé and the GoG, of which the commencement of the Criminal Investigation forms part, included the making of multiple allegations of the most serious nature against the Claimant. This has extended to the President and the GoG consistently seeking to create the false impression that the Claimant has engaged in corrupt and/or illegal activities including plotting a coup d'état in Guinea.
- 87.1 From the disclosure in the FTI claim, it is clear that George Soros at best promoted and at worst invented an allegation that the Claimant had been involved in an assassination attempt on President Condé in 2011 [DLC1/136/2054].
- 87.2 Perhaps to add credibility to this purported threat, in March 2013, the President of BSGR, Asher Avidan, was declared *persona non grata* by the GoG, which was justified by President on the basis of the purported "*role they [BSGR] played in some of the political turmoil that we face at the moment in the country*" [DLC1/141].
- 87.3 This unfounded rumour was further expanded and circulated in late 2013, by the French publication Le Canard Enchaîné. On 25 September 2013, Le Canard Enchaîné published an article entitled "*CIA and DGSE documents tell of coup d'état in Conakry*" ("Le Canard Article") [DLC1/142]. The article alleged that reports from both the CIA and the French secret service, the DGSE, had shown that Mr Steinmetz and BSGR were preparing a coup d'état in Guinea with the aid of mercenaries ahead of the parliamentary elections due to take place on 28 September 2013.

The story spread quickly throughout the international media, including being reported by Agence France Presse, Radio France International, Jeune Afrique, Le Monde, France 24, Guinea News, France Info and Slate Afrique. It was also capitalised upon by the GoG to claim that the opposition party, UFDG, was planning a coup. Notwithstanding the lacking basis for the report, Security Minister Madifing Diane appeared to confirm the allegation

against BSGR, stating that: "*Guinea is in danger and the strings are being pulled from outside....*" [DLCI/143/2110].

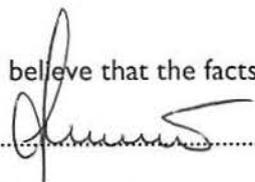
- 87.4 The GoG added further to the credibility of the reports on 25 September 2013 by abruptly arresting and jailing four Israeli citizens residing in Guinea, who the GoG claimed were associated with BSGR [DLCI/144]. The individuals were not connected to BSGR in any way, nor had they ever been employed by BSGR. Shortly after the legislative elections had taken place, in which President Condé's party achieved a majority – and therefore the value in negative stories about "outsider" control of the opposition party had diminished – the four Israelis were released without explanation.
- 87.5 On 2 October 2013, the Claimant issued proceedings for defamation in respect of the Le Canard Article [DLCI/145]. The claim will be heard on 5 and 6 February 2015 jointly with another defamation claim brought by an individual called Victor Nassar in respect of the same Le Canard Article.
- 87.6 In response to the proceedings, on 11 October 2013, the Le Canard Defendants issued a Service of Notice of an offer of Evidence, which laid out the evidence on which the defendants intended to rely including a note from the French intelligence services (the "DGSE"), referred to in the La Canard Article [DLCI/146/2145-2146]. The DGSE note was on the face of it a forgery, and on 13 January 2014 Stephane Genest, DGSE Chief of Staff, confirmed that the note in question did not come from the DGSE [DLCI/147].
- 87.7 It follows that a false note about Mr Steinmetz's potential involvement in a plot was created in the knowledge that it was false, represented to be from the French Secret Service when that was known to be untrue and distributed to individuals in the press with the intent that such untruths would be believed, reported on, disseminated and would significantly harm the reputation of the Claimant. The manipulation, fabrication and dissemination of false intelligence reports was just the latest indication that Alpha Condé is determined to use all available means, including illegal tactics, to damage the reputation of the Claimant. The – false – allegations were motivated solely by Alpha Condé's desire to first seize the Claimant's assets in Guinea and then justify that seizure in the public domain.
- 87.8 Such hostility towards the Claimant is ongoing. As recently as 20 October 2014, Asher Avidan, the President of BSGR, sent me an email informing me of a further allegation that the company was involved in a coup d'état in Guinea. A copy of Asher's email is at DLCI/148/.
- 87.9 That weekend, Mr Avidan had received a telephone call from the CEO of Cellcom West Africa, Avishai Marziano, who he had met in 2011 during the VBG negotiations regarding the building of a railway through Liberia to export iron ore from Simandou. Avishai had been in the telecom business for the last 15 years, working in Africa for the majority of that time.
- 87.10 Mr Avidan had not spoken to Avishai since 2011, but Avishai felt compelled to call him following a traumatic experience at the hands of US and Guinean airport security. As set out in Mr Avidan's note, Avishai told him that on his return from a business trip to New York two weeks prior, he was approached by FBI agents and escorted from the plane he had boarded. He was then questioned for about half an hour regarding suspicions regarding a coup d'état in Guinea. This interrogation included questions specifically about Avishai's links to BSGR and Mr Avidan.

- 87.11 Avishai relayed to Mr Avidan that he was shocked and did not understand what the FBI was talking about. He further suspected President Condé, whom he had met a few times in relation to Cellcom's Guinean developments, targeted him solely because he is an Israeli citizen and because of that, he is accused of being an agent of BSGR, Mr Avidan, or Mossad. This experience mirrored that of the four Israeli nationals arrested in September 2013, following the Le Canard Article [DLCI/144].
- 87.12 Shortly after, the GoG refused Avishai entry to Guinea. He was escorted and forced to depart the country immediately, and his 3 phones and a laptop computer were seized. Furthermore, Avishai mentioned that four of his Liberian colleagues were arrested and jailed in Guinea in the last three to five months, without any case, charges or evidence. He did not understand what this was related to until the events at the airport in New York.
- 87.13 That the GoG is prepared to question and imprison Israeli citizens in Guinea solely on the basis of their nationality and therefore implied links to the Claimant confirms the political motivation behind any purported investigation into BSGR.

N. CONCLUSION

88. I believe strongly that the Criminal Investigation is founded upon the conclusions of the Technical Committee which were reached in flagrantly unfair proceedings. Furthermore, Alpha Condé had plainly determined to revoke BSGR's mining licences by one means or other well in advance of the commencement of the review process, in order to reward his supporters. These are strong indicators that the LoR and Second LoR are politically driven and made in bad faith. By facilitating the Criminal Investigation, the Defendants will further the scandalous prejudice inflicted upon the Claimant to date by the corrupt Condé regime.

I believe that the facts stated in this witness statement are true.



.....

Dag Lars Cramer

DATE