

In the matter of an arbitration
under the Rules of Arbitration of
the International Centre for
Settlement of Investment Disputes

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 1
Hearing on the Merits

Monday, 22nd May 2017

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
PROFESSOR ALBERT JAN VAN DEN BERG
PROFESSOR PIERRE MAYER

(1) BSG RESOURCES LIMITED
(2) BSG RESOURCES (GUINEA) LIMITED
(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

M KAREL DAELE, JAMES LIBSON and KATY COLTON, of Mishcon de Reya, DAVID WOLFSON QC, of One Essex Court, and DAVID BARNETT and GABRIELLE PELED, of Barnea & Co, appeared on behalf of the Claimants.

MICHAEL OSTROVE, SCOTT HORTON, THÉOBALD NAUD and SÂARRA-TILILA BOUNFOUR, of DLA Piper, LAURENT JAEGER and AGNÈS BIZARD, of Orrick Herrington & Sutcliffe, and MOHAMED SIDIKI SYLLA, of Sylla & Partners, appeared on behalf of the Respondent.

Secretary to the Tribunal: BENJAMIN GAREL
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09:30

1

Monday, 22nd May 2017

2

(9.35 am)

3

THE PRESIDENT: Good morning to everyone. I am pleased to

4

open this hearing and welcome you all here for this long

5

session that we plan to have.

6

As a first step, some of us know each other but

7

others don't, and so that we can associate faces to

8

names, we would go through quickly the attendance list

9

and introductions.

10

On my right is Professor van den Berg. On my left

11

is Professor Mayer. On my far left is the Secretary to

12

the Tribunal, Mr Garel. And on my far right is the

13

assistant to the Tribunal, Mr Langer.

14

Can I ask the Claimants first to introduce who's

15

here today on behalf of the Claimants. Mr Daele, do

16

I give you the floor?

17

MR DAELE: Thank you, Madam President. Let me introduce the

18

team for BSGR.

19

So on my immediate left I have James Libson of

20

Mishcon de Reya. To his left we have Katy Colton, also

21

of Mishcon de Reya. To her left we have David Wolfson

22

of One Essex Court Chambers. To his left we have Jack

23

Burstyn, also of Mishcon de Reya. To Mr Burstyn's left

24

is Gabrielle Peled from Barnea & Co, the Israeli law

25

firm. Then to her left we have David Barnett, also of

09:37

1 Barnea & Co. To his left, the last one in the row,
2 that's Dag Cramer: he is the BSGR representative, he is
3 also one of the witnesses. He will give testimony
4 tomorrow morning in accordance with the rules that we
5 agreed upon.

6 We will in the second week have also Maître Marc
7 Bonnant from Geneva. I just would like to point out
8 that not all of us are going to be here for the entire
9 duration of the hearing, so it's not out of discourtesy
10 to the Tribunal if you don't see the entire team all the
11 time.

12 THE PRESIDENT: Thank you.

13 (Interpreted) May I turn to the Republic of Guinea
14 and ask its counsel to carry out the same exercise,
15 introduction of the persons in the room. Who is going
16 to take the floor? Maître Jaeger.

17 MR JAEGER: (Interpreted) Good morning, Madam President.
18 Insofar as I can see them, I can introduce the members
19 of the team.

20 To my left, Michael Ostrove of DLA Piper.
21 Immediately to his right, Théobald Naud, a lawyer at
22 DLA Piper. Then Sârra-Tilila Bounfour, lawyer with
23 DLA Piper; Agnès Bizard, lawyer with Orrick; Andrea
24 Lapunzina-Veronelli, lawyer with DLA Piper. Then Quirec
25 de Kersauson, lawyer with Orrick; Mr Scott Horton,

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1 lawyer with DLA Piper; Clémentine Emery, lawyer with
2 DLA Piper. And then I can't see the end of the row.
3 Oh, Ms Eugénie Wrobel, an intern with DLA Piper. And
4 finally, two trainees: Valérie Kubwimana and
5 Marius Attindogbe.

6 THE PRESIDENT: Thank you very much. We are therefore going
7 to apply the schedule that we agreed to in Procedural
8 Order No. 9 that you decided to put in place with
9 a detailed schedule. We are going to start with the
10 opening statements, and as of tomorrow we shall start
11 hearing witnesses.

12 We shall show the necessary flexibility as to the
13 hours that you've agreed to. We had indicated a maximum
14 amount of time for each party per day, that you have
15 complied with while skipping half a day. So it might be
16 useful to repeat that the maximum amount of time
17 allotted to each party is 22 hours and 30 minutes, which
18 should allow you -- well, your estimate of times are
19 within that maximum, but were you to go over this, we
20 couldn't.

21 (In English) It may be useful to briefly address
22 transparency issues, as they have given rise to all
23 sorts of questions over the last days, and before as
24 well.

25 This is an arbitration under the UNCITRAL

09:41

1 Transparency Rules, as adapted to ICSID proceedings.
2 This means that transparency is the rule and
3 non-disclosure is the exception. Of course we have, as
4 we all know, a large number of documents that are
5 protected under Article 7 of the Transparency Rules,
6 essentially because they emanate from pending criminal
7 or other arbitral proceedings.

8 The final version of the protocol on transparency
9 was sent to you last night; it evolved over time, and
10 was also shaped in part by technical requirements.
11 I thought it might be helpful that we briefly go through
12 it, so if there are questions, we can raise them now,
13 and otherwise we can proceed along these lines.

14 The purpose of the protocol is to allow maximum
15 transparency and at the same time protect the documents
16 that are legitimately confidential, and also -- and that
17 is right now the Tribunal's main concern -- to allow for
18 smooth conduct of the hearings.

19 So to implement these objectives, the rule is that
20 the parties should endeavour to request moderation,
21 "moderation" being another name for saying the cut of
22 the video feed before confidential information is
23 addressed. As you have seen from the protocol last
24 night, it seems that if it is done afterwards, this does
25 create technical issues because the equipment is

09:43

1 programmed in a way that there can be no more than one
2 ex-post cut per hour. So we will have to live with
3 this. This is apparently not something that we can
4 change.

5 We have also said that each team should have one
6 person who is responsible for raising moderation
7 requests: this can be done orally or raising the red
8 flag that you must have received from the secretary.
9 Obviously if someone is doing a cross-examination and
10 gets to a question about a protected document, I assume
11 that the cross-examiner will say that, "This is now
12 protected", as opposed to the other member of the team;
13 we will have to handle this with just good common sense.
14 For the resumption, you will also orally say, "This is
15 not protected anymore from now on", either orally or by
16 way of using the green card.

17 If there is an objection, obviously, where the
18 parties disagree on protection or non-protection, the
19 Tribunal will hear the parties and then decide the
20 matter.

21 Those are, I think, the main points that we need to
22 keep in mind over these coming days. The Tribunal has
23 asked itself how to compute the time of any objections
24 or incidents about transparency. We do not know, and so
25 we decided that probably the best way is to wait until

09:45

1 tomorrow night, see how it goes; for the time being, not
2 count the time against any of the parties; and when we
3 have a little experience, maybe we can draw up a rule
4 that makes sense.

5 You will also remember as we go along that we have
6 instituted the system of mini-openings every morning of
7 each day. So everything in terms of objections or
8 questions or comments that do not require immediate
9 attention could be deferred to this mini-opening session
10 the next morning.

11 We have agreed that fact witnesses would be
12 sequestered, but for Mr Cramer, who is a party
13 representative. I see no other fact witness in the room
14 for now, so that is fine and we can go ahead with the
15 oral argument.

16 We have agreed that you would use no more than three
17 hours for your opening statements. If you have slides,
18 you may distribute hard copies of the slides, and
19 electronic copies during the day. We received
20 demonstrative exhibits from the Respondent a few days
21 ago. We have not received any demonstratives from the
22 Claimants, and we understand that the Claimants have
23 none, as the Secretary has confirmed to us.

24 That is all that the Tribunal had to raise before we
25 start. If the parties have anything, of course this is

09:47

1 a good time to raise it. Can I first turn to the
2 Claimants: anything that should be addressed before we
3 start with the openings?

4 MR DAELE: No, Madam President.

5 THE PRESIDENT: Thank you. Anything on the Respondent's
6 side?

7 MR OSTROVE: (Interpreted) Thank you, Madam President. On
8 the introductions of the people in the room, just a word
9 of explanation. Mr Nava Touré, who is the
10 representative of Guinea, in fact was detained in
11 Washington for business he has to deal with. He hopes
12 to join us either tomorrow afternoon or on Wednesday
13 morning. So he will be joining us.

14 I also wanted to tell you that Mohamed Sidiki Sylla,
15 who is our local counsel in Guinea, who took an active
16 part in the preparation of our submissions, will be
17 arriving through Conakry this morning, and will be here
18 this afternoon.

19 As far as the question of transparency is concerned,
20 and a difficulty for the presentation of the documents
21 is concerned, we noted during the preparation of our
22 opening statements that it was quite complex. There are
23 lots of documents that are being submitted here that are
24 internal to the companies, and that are protected in
25 this case, following the LCIA discovery process.

09:49

1 As far as the LCIA aspects are concerned, we spoke
2 to the Vale counsel recently to see whether there would
3 be an objection to these exhibits, or the flow of video
4 not be interrupted, not be cut when we are talking about
5 one of these documents.

6 I suggest that this morning or at lunchtime BSGR
7 thinks about this, to see whether there is an objection
8 from BSGR, because if we have to cut and restart the
9 video -- well, the documents are under control; if there
10 is no objection to putting this in the public domain,
11 then we could work more -- the flow, let's say, would be
12 letter.

13 proposal, and

14 THE PRESIDENT: Merci. (in English) I think it's a good
15 you may confirm among counsel over lunchtime. The
16 Tribunal's concern is simply that if the video flow is
17 cut too soon, transparency is not really implemented as
18 we had agreed -- as you had agreed -- that it would be.
19 But this is left, of course, to your consideration
20 during the lunch break, if that is fine.

21 (Interpreted) Any other comment on behalf of the
22 Respondent before we start the opening statements?

23 MR OSTROVE: No, Madam President.

24 THE PRESIDENT: (in English) Any question or comment?

25 MR LIBSON: No question or comment, but we also will be
 referring to confidential documents during the course of

09:51

1 our opening and we will be signifying in the manner that
2 has been directed. So there will be stop and flow,
3 I hope not too significant a stop and flow. I think
4 over lunch, if a list of the documents that you are
5 referring to could be made available, then it may be
6 that by looking at the documents we can see which ones
7 we may not have an objection to being recorded in the
8 video proceedings.

9 THE PRESIDENT: Fine. Thank you very much.

10 So if there's nothing further, then we can proceed
11 with the opening statement of the Claimants. As you
12 know of course, you have three hours. We will take
13 a break sometime in the middle, when you get to a point
14 where it makes sense to stop.

15 You have the floor.

16 (9.52 am)

17 Opening statement on behalf of Claimants

18 MR LIBSON: Dear Madam President, dear members of the
19 Tribunal, I am James Libson, a partner at Mishcon
20 de Reya, and I am appearing as counsel for the
21 Claimants, who I will refer to together as "BSGR". As
22 you just said, Madam President, I have been allotted
23 three hours for these opening submissions, but I intend
24 to be shorter.

25 The submissions in this arbitration are voluminous,

09:53

1 but the key issue in this case is very simple indeed:
2 was the forceful removal of BSGR's rights by the
3 Respondent legal? As you will see over the next two
4 weeks, the unavoidable truth is that it was not.

5 Any noise blurring that truth was created by the
6 Respondent to satisfy the corrupt needs of one man,
7 President Alpha Condé, supported by his gang of cronies,
8 ultimately led and controlled by George Soros. That
9 noise has spawned thousands of newspaper articles,
10 multiple criminal proceedings in various jurisdictions,
11 and countless civil proceedings. This room alone is
12 filled with a great number of highly experienced
13 lawyers, and the parties have each spent millions of
14 dollars to reach this position.

15 And yet to what end? After seemingly endless
16 amounts of resource being dedicated to trying to impugn
17 the basis on which BSGR obtained its rights, at its very
18 highest point the Respondent's case is that in relation
19 to those rights, a woman, unrelated to President Lansana
20 Conté, and who did not at the time -- or ever -- have
21 an official role in the Guinean Government, and who the
22 Respondent does not trust enough to call as a witness,
23 received payment from a third party apparently connected
24 to BSGR.

25 There is no evidence of BSGR making a payment to

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1 this woman Mamadie Touré, no evidence of her influence
2 over the award of the mining rights in question, no
3 evidence of President Conté influencing the award of
4 those rights, and no evidence of him or anyone else
5 being passed any money that was alleged to have been
6 received by Mamadie Touré.

7 This should be no surprise, given that President
8 Lansana Conté died before the majority of the rights in
9 question were granted. In a story that has more than
10 its fair share of fictional allegations, not even this
11 Respondent could find a way to argue that a dead man was
12 able to affect the processes in question. (Pause)

13 THE PRESIDENT: I thought you were speaking at quite a slow
14 pace -- no blame, of course, but a very easy pace to
15 listen to. The interpreters think it is too fast. So
16 if I can ask you to slow down a little bit.

17 MR LIBSON: I will slow down. All my timings are based on
18 that speed!

19 THE PRESIDENT: I thought that was a good speed. But do
20 your best.

21 MR LIBSON: I will slow down.

22 What there is clear evidence of is that BSGR
23 procured its mining rights in accordance with applicable
24 legislation by making the appropriate applications,
25 which were reviewed by countless Guinean ministers and

09:56

1 senior Guinean officials. Had it not been for the
2 intervention of President Alpha Condé, BSGR would have
3 invested close to \$10 billion in developing a mine at
4 Simandou, which was due to start production in 2012.
5 This would have represented the first ever production of
6 iron ore in Guinea since its independence in 1958.
7 Instead, five years later, the people of Guinea are yet
8 to derive any benefit from their vast reserves of iron
9 ore, having been badly served by both international
10 mining companies, in particular Rio Tinto, and also by
11 their own government.

12 All of this begs the question: why are we here
13 today? The real reason we are here today is that
14 Guinea, as well as being one of the poorest countries in
15 the world, is governed by one of the most corrupt
16 presidents in the world. President Alpha Condé has
17 manufactured a case of corruption against BSGR in order
18 to reward his financial backers, who supported his
19 corrupt theft of power. Indeed, the idea that President
20 Condé could accuse anyone else of corruption belongs in
21 the realm of fiction, not in legal submissions.

22 I'm sure the Respondent will state that it has the
23 Guinean people's interests at heart, but its actions
24 speak otherwise. President Condé's corrupt quest to
25 obtain and maintain power has been at catastrophic

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1 expense for his own people. He has failed his people,
2 he has failed democracy, and his actions have led to
3 years of unnecessary and devastating legal action
4 against my client, BSGR. It is now time to right this
5 wrong and recognise BSGR for what it is: the innocent
6 victim of the corrupt President Condé, acting until now
7 with impunity, under the influence of George Soros.

8 Because the simple truth is this: BSG is here today
9 because it did not pay a bribe. BSGR refused to pay the
10 bribe President Condé demanded, and had its assets
11 stolen as a result. Unlike other companies, such as
12 Rio Tinto, who bowed to President Condé's will and paid
13 up, BSGR didn't, and it is now suffering the
14 consequences. But let me be clear: faced with the same
15 situation, BSGR would make the same decision, and that's
16 because BSGR has never and will never pay bribes or
17 engage in any corrupt practices.

18 I will be covering five main topics today: first,
19 a brief overview of the legal framework for BSGR's
20 claim; second, the legal acquisition of BSGR's mining
21 rights; third, I will deal with the lack of evidence of
22 BSGR's apparent corruption; fourth, I will address the
23 real reason BSGR lost its rights, namely the corruption
24 of President Condé and BSGR's refusal to pay him off;
25 and fifth, and very briefly, I will address Guinea's

1 counterclaim.

2 So turning to my first topic: the legal framework of
3 corruption. I'm not addressing today in detail the
4 legal landscape relating to the standard of proof,
5 burden of proof and governing law relating to Guinea's
6 allegations, or the case law relating to causal link.
7 BSGR has addressed these matters in detail in its
8 submissions, and I respectfully refer the Tribunal to
9 paragraphs 298 to 338 of its Reply.

10 I will now, however, address the new case which BSGR
11 recently added to the record, namely the recent decision
12 of the world leading arbitrators David Caron,
13 Yves Fortier and Toby Landau in *Kim and Others*
14 *v The Republic of Uzbekistan*, which has been added to
15 the record as Exhibit CL-0060.

16 I want to do this because our legal submissions on
17 other issues are fully set out in our memorials, but
18 this new authority has not been mentioned, and it is
19 useful to have in mind before we properly meet one of
20 the key characters in this case, Mamadie Touré. What is
21 especially noteworthy is how far short Guinea's
22 allegations against BSGR fall when assessed against the
23 thresholds for proving corruption set out in the Kim
24 case.

25 There are some striking factual similarities in the

10:00

1 two cases. A prominent woman is said to be related to
2 the President of the country, and in the Uzbekistan
3 case -- but not in this case -- she clearly was so
4 related. In both cases she was alleged to have been
5 bribed to advance the interests of a foreign investor.
6 As in this case, Uzbekistan relied on alleged red flags
7 to prove the corruption; and as in this case, there was
8 a debate about the standards of proof required to prove
9 corruption. Uzbekistan argued that it was reasonable
10 certainty, whereas the claimants advanced that it was
11 clear and convincing evidence.

12 Ultimately, Uzbekistan was unsuccessful in
13 convincing the very strong tribunal that corrupt acts
14 presided over the claimants' acquisition of shares. In
15 ruling that corruption had not been made out, the
16 tribunal relied on the following conclusions which we
17 respectfully adopt.

18 First, red flags may be helpful in the analysis but
19 are not proof in themselves. This must be right and is
20 the commonly accepted principle. In applying it to this
21 case, there is another layer. The red flags on which
22 the Respondent relies do not relate to the acquiring of
23 the rights in question at all. There are no red flags
24 in relation to those rights, except in relation to how
25 those rights were eventually taken away. Guinea will

10:02

1 make a presentation on the corporate structure of BSGR
2 today, but this simply has no bearing on the case and
3 suggests Guinea is clutching at straws.

4 Second, in the Uzbekistan case, although
5 Ms Karimova, the daughter of the President, was the
6 intended target of the alleged payment which the
7 tribunal found she had received, corruption under Uzbek
8 law was not proven as she had no official role at the
9 time. The same applies in the case before you, but more
10 so.

11 It is BSGR's primary position that Guinean law
12 applies to these proceedings. As BSGR has set out in
13 its memorials, the two offences under Guinean law which
14 are relevant are active corruption and trading in
15 influence. Both require the offering of gifts to
16 a public official or influence over a public official.

17 Mamadie Touré, as we will see, had no official role
18 in the Guinean Government. She was not married to or in
19 any way related to the President; unlike Ms Karimova,
20 who was undoubtedly the President's daughter. And as
21 Guinea's witnesses themselves point out, she wielded no
22 influence. Again, this is a distinction from
23 Ms Karimova, whom the tribunal found was viewed as
24 a powerful person. There is not a single person on
25 either side of this case who thought the same of

10:03

1 Mamadie Touré.

2 Third, in respect of the definition of "government
3 official", Ms Karimova was not considered to be
4 a government official at the time of the payments, even
5 though she was found to have had some power in the
6 country and undertook some government functions both
7 before and after the relevant time at issue in the case.
8 On this basis, Mamadie Touré is even further from being
9 considered a government official than Ms Karimova.
10 Mamadie Touré was not only not a government official, or
11 anything even close to it, she also had no power at the
12 time BSGR obtained its rights.

13 Fourth, the fact that there was clear evidence of
14 payments being made to Ms Karimova was not sufficient to
15 make out corruption. Again, in this case we are even
16 further from the facts and position in Kim. Here there
17 is no evidence -- I repeat: no evidence -- of any
18 payment from BSGR to Mamadie Touré.

19 Fifth, in Kim the tribunal was unconvinced that
20 Ms Karimova was involved in any performance or
21 non-performance in return for her payment. In our case
22 the same is true. The Respondent has failed to prove or
23 even say what it is Mamadie Touré is said to have done,
24 or even could conceivably have done, in return for the
25 alleged payments.

10:04

1 Sixth, in the light of all these points, the
2 tribunal in Kim was not satisfied that there was any
3 linkage at all between the alleged corrupt payment and
4 a specific advantage to the alleged bribe-giver. Again,
5 the similarity to our proceedings is marked.
6 Mamadie Touré was not in a position to confer any
7 advantage to BSGR. That might explain why the
8 Respondent has not come close to setting out what
9 advantage it says BSGR did gain from its alleged
10 payments to her.

11 Seventh, in both Kim and this case, there is a gap
12 in the witness list: the very person to whom these
13 payments were alleged to have been made. In Kim, the
14 tribunal understandably expressed its surprise at
15 Ms Karimova's non-appearance and lack of testimony,
16 despite her being in the government's control. In this
17 case, Mamadie Touré has been in the control and even the
18 pay of the Government of Guinea, and they have failed to
19 produce her.

20 Finally, if Guinean law is not said to apply, we
21 must look to international law. In this regard the
22 tribunal in Kim agreed with earlier tribunals -- and
23 I urge you to follow this conclusion -- that when
24 ascertaining the content of international public policy
25 against corruption, that policy covers only government

10:06

1 officials. There is, said the tribunal, no
2 international consensus that international public policy
3 extends to cover the corruption of private individuals.

4 Ms Karimova was as close as a person can get to
5 being a government official without actually being one.
6 She actually received a payment and was seen to exercise
7 power. Mamadie Touré, on the other hand, is nowhere
8 close to being a government official, had no power in
9 the eyes of anyone and received nothing from BSGR. If
10 corruption could not be established in the Kim case, it
11 certainly cannot, on the tests applied there, be
12 established in the present case.

13 So now I turn to my second topic, which is how BSGR
14 obtained its rights legally.

15 This arbitration relates to three vested rights of
16 BSGR which were forcibly and unlawfully withdrawn and
17 revoked by the Respondent.

18 The first right is an iron ore mining convention
19 granted to BSGR Guinea on 19th March 2010 over an area
20 in Simandou South, near the village of Zogota. I will
21 refer to this right as the "Zogota Mining Concession".

22 The second right is a mining infrastructure
23 agreement dated 16th December 2009 entered into by
24 BSGR Guernsey and BSGR Guinea with the Republic of
25 Guinea. This largely, but not exclusively, related to

10:07

1 the rights and obligations arising from the
2 pre-mentioned Zogota Mining Concession. I will refer to
3 this right as the "Base Convention".

4 The final right was a prospecting permit granted to
5 BSGR Guinea over an area referred to as Simandou
6 Blocks 1 and 2 granted on 9th December 2008, which
7 I will refer to as the "Blocks 1 and 2 permit". This
8 gave rise to an exclusive right to explore for iron ore
9 and a right to develop the area upon completion of
10 a feasibility study.

11 All three rights were expropriated and/or
12 nationalised by the Respondent in April 2014 without
13 compensation. This stripped BSGR Guinea of all of its
14 relevant assets.

15 This purported justification for the unlawful
16 expropriation and/or nationalisation was given in
17 a report of the Technical Committee which was
18 established by President Alpha Condé to give the veneer
19 of legitimacy to the unlawful machinations of the
20 Soros-driven conspiracy to destroy BSGR.

21 As I will be addressing later, the Technical
22 Committee report was flawed and made unsupported
23 allegations that BSGR acquired its rights by corruption.
24 The Technical Committee relied predominantly on the
25 testimony of Mamadie Touré, an untrustworthy witness

10:09

1 who, as I have said, Guinea has not even risked calling
2 in these proceedings and who, it has transpired, was
3 paid by President Alpha Condé's advisor to give her
4 false statement.

5 Since then, Guinea has sought to reduce its reliance
6 on the words and documents provided by the discredited
7 Mamadie Touré, perhaps not surprisingly. However, the
8 simple fact remains that at the heart of Guinea's case
9 is the allegation that BSGR, through a third party named
10 Pentler, made payments to Mamadie Touré to secure its
11 mining rights.

12 Given the utter falsity of this allegation, it may
13 come as no surprise, despite the protestations to the
14 contrary, that there is not a single piece of direct
15 evidence supporting this central allegation. Guinea
16 relies entirely on indirect and inferential evidence.

17 There can hardly be an investment in history that
18 has been so thoroughly scrutinised or adversely
19 characterised as this one. Yet despite the efforts of
20 prosecuting authorities around the world, governments
21 and well-resourced commercial entities, not a scrap of
22 direct evidence has been found showing that BSGR paid
23 Mamadie Touré anything. There is no mystery to this; it
24 just doesn't exist because it did not happen.

25 The true position is that BSGR acquired its mining

10:10

1 rights lawfully. You will hear submissions from Guinea,
2 no doubt, and there will be much time dedicated to early
3 years, which I will deal with later on. But the
4 processes undertaken between 2008 and 2010 which led to
5 the grant of the rights this Tribunal is concerned
6 with -- being the Zogota Mining Concession, the Base
7 Convention and the Blocks 1 and 2 permits -- were looked
8 at in exhaustive detail by ministers and senior Guinean
9 officials at the time, and were conducted to the highest
10 standard of international due process. In fact, by that
11 time the investment that BSGR had made in the country
12 and the feasibility study that they had undertaken were
13 probably then, and still are, the finest examples of
14 international investment into an infrastructure project
15 in the entirety of Guinea's history.

16 I will deal first with the circumstances leading up
17 to the granting of the mining rights in Zogota, namely
18 the Base Convention in 2009 and the Zogota Mining
19 Concession in March 2010.

20 BSGR first acquired its exploration permits for
21 Simandou North and South in February 2006, upon the
22 recommendation of the Guinean Mining Administration, and
23 with the approval of Guinea's own witness, Ahmed Souaré.

[PROTECTED]

[REDACTED]

[REDACTED]

3 The exploration permits allowed BSGR the exclusive
4 right to explore the area to assess whether there was
5 a commercially viable iron ore deposit. Exploration
6 permits are usually given out for free, as they require
7 a huge capital investment with no guarantee of a return.
8 It is only when a company discovers a commercially
9 viable resource and submits a feasibility study to the
10 Ministry of Mines that it can be considered for a mining
11 concession. This was the case with BSGR.

12 Following an analysis of preliminary drilling
13 results for Simandou North, BSGR concluded the area held
14 little potential for direct shipping ore. However,
15 initial fieldwork in 2007 in Simandou South resulted in
16 the discovery of an iron ore deposit with potential for
17 direct shipping ore near the village of Zogota. After
18 investing over \$130 million, in November 2009 BSGR filed
19 a feasibility study in respect of the Simandou South
20 area, now called the Zogota Project.

21 The feasibility study ran to over 450 pages, with
22 1,000 pages of annexures, and set out the viability of
23 mining operations in Zogota. This was the first serious
24 feasibility study ever submitted to the CPDM. By way of
25 comparison, it took Rio Tinto 19 years to submit

10:13

1 a feasibility study in respect of Simandou Blocks 3
2 and 4, leaving the area undeveloped in the intervening
3 period. That BSGR achieved this in just 3 years was
4 hailed, justifiably, as a huge step forward in the fight
5 against the so-called "resource curse" which had plagued
6 Guinea.

7 Following submission of the feasibility study on
8 1st December 2009, the Minister of Mines, Mahmoud Thiam,
9 established a Base Convention Committee, in accordance
10 with the 1995 Mining Code, to evaluate the feasibility
11 study and negotiate a mining convention with BSGR. That
12 Base Convention Committee consisted of 20 members from
13 numerous government departments, the Central Bank, and
14 the National Company of Mining Infrastructure. That
15 committee met every day for one month, from 9.00 am to
16 6.00 pm, to negotiate with BSGR the precise terms of the
17 Base Convention.

18 This was no rubber-stamping exercise. The Base
19 Convention Committee analysed the feasibility study and
20 the Base Convention in great detail. BSGR's fact
21 exhibits include multiple reports and questions between
22 departments on a wide range of issues relating to the
23 terms of the draft agreement, including geological
24 issues, exploitation, infrastructure, transport, tax,
25 financial and environmental issues. Similarly, you will

10:15

1 see evidence of detailed questions being put to BSGR,
2 which BSGR responded to in a lengthy letter dated
3 7th December 2009.

4 At the conclusion of this long process, on
5 15th December 2009 the Base Convention Committee
6 reported to Minister of Mines Thiam that BSGR's project
7 accorded with the government objectives, and recommended
8 entering into the Base Convention and awarding a mining
9 concession. This, however, was not even the end of the
10 scrutiny. On receiving the recommendation from the Base
11 Convention Committee, Minister of Mines Thiam reported
12 to the Council of Ministers, summarising the conclusions
13 of the committee, and requesting that the council
14 approve the draft Base Convention.

15 The Council of Ministers then proceeded to set up
16 its own subcommittee to look into five technical and
17 infrastructure issues. After meeting again on
18 18th December 2009, the Council of Ministers reported to
19 the Prime Minister and recommended that the Base
20 Convention be signed. The parties signed the Base
21 Convention on 20th December 2009, and the Base
22 Convention entered into force when it was ratified by
23 a presidential decree with General Konaté on
24 19th March 2010.

25 There's no evidence whatsoever that Mamadie Touré or

10:16

1 President Lansana Conté had any involvement at all in
2 the workings of the Base Convention Committee and the
3 Council of Ministers. How could they? President Conté
4 had died over a year before, shortly followed by
5 Mamadie Touré fleeing the country.

6 Also on 19th March 2010, in accordance with
7 Article 8 of the Base Convention, President Konaté
8 granted BSGR Guinea a mining concession in relation to
9 the Zogota deposit. As just indicated, President Conté
10 had died over a year earlier and Mamadie Touré had fled
11 the country in the meantime. It is a complete mystery
12 how, in these circumstances, they could have influenced
13 the granting of this right in any manner at all.

14 The Zogota Mining Concession complied with
15 Article 41 of the 1995 Mining Code, which permitted
16 rights holders the exclusive and valuable right to carry
17 out prospecting and development of deposits within the
18 area of the concession. What is notable about Guinea's
19 case is that it fails to explain how this detailed
20 process was unlawful.

21 There are obvious witnesses who could testify in
22 relation to the lawfulness of the negotiation process,
23 being the 20 members of the Base Convention Committee.
24 That committee included Dr Aboubacar Koly Kourouma, the
25 General Secretary of the Ministry of Mines and Energy;

10:17

1 Momo Sakho, the senior advisor to the presidency,
2 responsible for natural resources and sustainable
3 development; Cécé Noramou, advisor to the Minister of
4 Mines; El Hadj Mohamed Aluy Thiam, representative of the
5 Minister of Justice; Tidjane Yansane, advisor for
6 infrastructures; Saadou Nimaga, legal advisor for the
7 Minister of Mines; Alkaly Yamoussa Bangoura, technical
8 advisor for the Minister of Mines; Ibrahima Kalil Touré,
9 economic and fiscal advisor of the Minister of Mines;
10 Ibrahima Kalil Soumah, executive director of the CPDM
11 and Ministry of Mines; Sada Baila Ly, executive director
12 of the National Company of Mining Infrastructures;
13 Ibrahima Sory Sangare, advisor to the President of the
14 Republic to the Ministry of the Presidency for Economy
15 and Finances; Louise Juliette Darchicourt, legal advisor
16 for the Ministry of the Presidency for the Economy and
17 Finances; Mamadou Saliou Diallo, legal advisor to the
18 Minister of Environment and Sustainable Development;
19 Jean Pierre Condé, legal advisor to the Minister for
20 Planning; Younassa Koita, National Director of Land
21 Transport; Halabi Ahmed Salim, legal advisor for the
22 Minister of Transport; Cécé Loua, advisor for the
23 Minister of Territorial Administration and Political
24 Affairs; Roger Patrick Millimono, main advisor to the
25 governor of the Central Bank; and N'fa Fofana, Director

10:19

1 of Mines and Energy at the Administration and Control of
2 Major Projects.

3 Guinea has not called a single individual from this
4 list as a witness in this arbitration. Of 20 to choose
5 from, Guinea has ignored the 19 who were there, and
6 instead, and extraordinarily, it has chosen to call
7 Bouna Sylla as a witness, who was asked to take part in
8 the committee but declined. You may think this is odd,
9 given that at the centre of Guinea's case is the
10 allegation that BSGR acquired its rights unlawfully, and
11 the Base Convention and Zogota Mining Concession are two
12 of the three rights that were withdrawn.

13 The reason for this omission is simple: Guinea knows
14 that had it called as a witness any of the other
15 19 ministers or senior Guinean officials who were
16 actually involved in the negotiation, they would have
17 testified that BSGR acquired its rights lawfully.

[PROTECTED]

22 THE PRESIDENT: I understand there's a red flag, so that
23 means that what comes is protected; is that right? And
24 the technicians understand it. Thank you. You will
25 raise your flag again when we can resume the floor.

10:22

[PROTECTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10:23

[PROTECTED]

9 THE PRESIDENT: I understand we can go back to releasing the
10 floor.

11 MR LIBSON: If we look to the contemporaneous evidence as
12 well, the message from the ministers was the same: this
13 was a good deal for the country and was negotiated
14 lawfully, with Guinea's interests at its heart.

15 In a letter dated 6th January 2010, the chairman of
16 the Base Convention Committee and Secretary General of
17 the Ministry of Mines, Kourouma, provided the Minister
18 of Work with a copy of the Base Convention. In that
19 covering letter, which has been translated into English,
20 he stated that, first, BSGR presented its feasibility
21 study for the exploitation of Zogota. The feasibility
22 study was examined by an inter-ministerial committee.

23 The inter-ministerial committee concluded the
24 project was good for the following six reasons. First,
25 the iron deposits in Zogota were new in the landscape of

10:25

1 the Guinean mining potential, i.e. BSGR discovered iron
2 ore in a new area. Second, he said, the deadline for
3 completion of the project was short, being three years;
4 miraculous in that country. Third, the creation of
5 jobs. Fourth, the construction of the passenger
6 Conakry-Kankan railway in exchange for the right of
7 evacuation of iron ore by Liberia. Fifth,
8 diversification of the exploitation of mineral
9 resources. And sixth, the international financial
10 context, which was scarce for investment.

11 In the same letter, Kourouma further confirmed that
12 the agreement was negotiated taking into account current
13 concerns such as environmental protection, community
14 development and processing of low-grade ore to increase
15 the duration of the activity. He concludes the letter
16 by explaining that this project, with its investment of
17 \$2.452 billion and its size, 30 million tonnes of iron
18 ore, will create a new economic zone in the south-east
19 of the country. What an opportunity has been thrown
20 away.

21 The report from the Ministry of Mines at the end of
22 2009 also referred to signing the Base Convention as
23 being the only project which gave the government
24 an avenue to commercial production of any mineral
25 deposit within a relatively short time.

10:26

1 Guinea, extraordinarily, now suggests that this was
2 a bad deal negotiated under undue influence from BSGR
3 and was a sham analysis of the feasibility study. Both
4 are untrue. If Guinea had any courage in this
5 conviction, it would have called as a witness the people
6 actually involved in the negotiation. Guinea has not
7 done so because it knows that this would be fatal to its
8 case.

9 Quite bizarrely, Guinea instead just ignores the
10 evidence BSGR has submitted from multiple ministers and
11 senior officials stating that BSGR's case is not
12 supported by any evidence other than the testimony of
13 Mahmoud Thiam. As I have demonstrated, again, this is
14 just not correct.

15 Quite plainly, there is not a shred of evidence that
16 the Base Convention Committee was influenced by
17 Mamadie Touré, President Conté or Mahmoud Thiam.
18 President Conté had died a year earlier, and
19 Mamadie Touré had fled the country.

20 In relation to Thiam, Guinea baldly asserts that
21 Thiam would have threatened to fire those committee
22 members that would be against BSGR. Yet no committee
23 member has said this, which is likely why Guinea has not
24 called any as a witness. There is no evidence that any
25 member was fired or replaced, or threatened to be fired

10:28

1 or threatened to be replaced. In addition, Mahmoud
2 Thiam was just one of many individuals involved in the
3 process and, as I will go on to in more detail later,
4 after much scrutiny, no evidence has been found that he was
5 bribed by BSGR.

6 As the documents and testimony of multiple witnesses
7 demonstrate, the award of the Base Convention and the
8 Zogota Mining Concession was lawful and followed a high
9 standard of due process.

10 I have now dealt with the lawful granting of the
11 Base Convention and the Mining Concession, and I will
12 move to discuss the final rights in question: the
13 Blocks 1 and 2 permit. This involves a discussion first
14 of the withdrawal of these rights from the previous
15 rights holder, Simfer, which is a subsidiary of
16 Rio Tinto. For consistency I will refer to the company
17 as "Rio Tinto" alone. I will show that this withdrawal
18 was lawful. I will then move to the subsequent lawful
19 granting of these rights to BSGR.

20 On 25th February 1997 Rio Tinto was awarded four
21 prospecting permits covering a huge area of the Simandou
22 mountain. The permits were valid for a period of three
23 years. In accordance with the 1995 Mining Code on
24 exploration of permits, if no feasibility study has yet
25 been completed, half of the area covered by the permits

10:29

1 must be returned to the government. This is known as
2 "retrocession".

3 On 30th May 2000, and in accordance with the 1995
4 Mining Code, Rio Tinto retroceded 50% of its mining
5 permits and renewed the remaining permits for two
6 further years. This left Rio Tinto with prospecting
7 permits in respect of four blocks, named Blocks 1 to 4.
8 However, from this point onwards, Rio Tinto sought to
9 retain its permits without regard to the Mining Code and
10 without performing any real development. That was
11 a breach of Guinean law. The Tribunal probably need not
12 decide why Rio Tinto did that, but it was probably to
13 keep the blocks from falling into the hands of its
14 commercial rivals.

15 BSGR has described the unlawful behaviour of
16 Rio Tinto in detail at paragraphs 11 to 84 of its Reply,
17 and I respectfully refer the Tribunal to those sections.
18 In the interests of time, I will address now the
19 headline points only. Even in overview, the litany of
20 unlawfulness is devastating.

21 First, in 2002 Rio Tinto's prospecting permits for
22 Blocks 1 to 4 were renewed without retrocession. The
23 Respondent itself has admitted that Guinean law
24 applicable at the time provided for the mandatory
25 retrocession of 50% on the second renewal of prospecting

10:31

1 permits. Rio Tinto's actions were clearly in violation
2 of this law.

3 Notwithstanding that Rio Tinto had not [retro]ceded
4 half of its area, and had not completed and submitted
5 a feasibility study, on 26th November 2002 Rio Tinto and
6 Guinea concluded a base convention in which the
7 government committed to granting Rio Tinto a mining
8 concession for Blocks 1 to 4. This consolidated
9 Rio Tinto's unlawful entitlement to mine Blocks 1 to 4
10 and was itself unlawful. You may wish to note the
11 contrast between the process that Rio Tinto didn't go
12 through and the process that BSGR was forced properly to
13 go through in order to get its mining concession.

14 In both 2004 and 2005 Rio Tinto again refused to
15 accept any retrocession to its Blocks 1 to 4. By
16 May 2006 Rio Tinto was due to finalise and submit
17 a feasibility study to the Ministry of Mines. Instead,
18 Rio Tinto froze Guinea's mining reserves by delaying the
19 exploration works and by concentrating the little
20 exploration it did do on only a tiny area of the
21 perimeter, with no exploration whatsoever in the rest of
22 the blocks. There are countless documents from this
23 period noting the government's frustration with
24 Rio Tinto's lack of process.

25 For example, in a letter from Minister of Mines

10:32

1 Souaré to Rio Tinto in 2005, and before BSGR was even
2 present in the country, he notes five detailed reasons
3 why the Ministry of Mines should not sign a draft decree
4 granting a mining concession to Rio Tinto. Those
5 reasons include:

6 "... the Mining Code stipulates that the mining
7 concession shall be granted only in the event of the
8 discovery of one or more deposits, the evidence of which
9 is duly established by a feasibility study ...
10 Unfortunately, this is not the case today for the
11 project."

12 Again, the contrast with BSGR.

13 Minister Souaré described the situation as
14 a "crisis", with one suggested solution being that
15 Rio Tinto divide its blocks in half. Notwithstanding
16 this, in 2006 Minister Souaré appeared to have taken
17 an about-turn, and Rio Tinto was granted a mining
18 concession in respect of the whole of its current
19 entitlement, Blocks 1 to 4.

20 The Respondent has refused to provide any documents
21 at all from the period between 29th December 2005 and
22 12th May 2006 relating to the circumstances surrounding
23 the granting of these valuable rights to Rio Tinto.
24 BSGR requests that the Tribunal make the adverse
25 inference that the reason why the Respondent has not

10:34

1 provided any documents is that those documents would
2 reveal the illegality of the award.

3 Indeed, the government has previously even admitted
4 that this mining concession was not lawfully granted.
5 In its 2011 settlement agreement with Rio Tinto, the
6 preamble notes that a dispute arose between the parties
7 in relation to the legality of the 2006 concession. As
8 Rio Tinto's position was that the concession was lawful,
9 and we know that there was a dispute about it, it
10 follows that the government's position must have been
11 that it was unlawful.

12 Just two months after the mining concession was
13 signed, Rio Tinto in fact reduced its investment in
14 Guinea and further delayed the first commercial
15 exploitation of the Simandou reserves. On 12th May 2006
16 Rio Tinto informed the government that it was delaying
17 each aspect of its project by a further two to four
18 years, including delaying a feasibility study from
19 May 2006 until April 2010, four years. The delay suited
20 Rio Tinto's competitive ambitions well. The longer it
21 locked up mining in Guinea, the longer Rio Tinto could
22 charge super-competitive prices for the mining it was
23 doing in the rest of the world.

24 By December 2007 the government started to examine
25 all mining permits and concessions to determine whether

10:35

1 the mining companies had complied with their obligations
2 and commitments. The biggest mining deposit in the
3 country was Simandou, and it is therefore no surprise
4 that President Conté took an active interest in
5 Rio Tinto's rights and its abject failure to develop the
6 area. This was particularly stark given that by this
7 time Rio Tinto had held the rights for almost ten years
8 and still claimed to be six years away from production.

9 President Conté took legal advice from the Ministry
10 of Mines in relation to Rio Tinto's rights. The legal
11 advice was unequivocal: both Rio Tinto's 2002 base
12 convention and 2006 mining concession had been awarded
13 in breach of the law and should be reviewed.

14 By letter dated 22nd May 2008, Rio Tinto was
15 informed in a detailed and reasoned letter of the
16 government's intention to revoke its mining concession
17 on the ground of illegality. Not only did the letter
18 highlight Rio [Tinto]'s multiple breaches of the Mining
19 Code, but it specifically pointed out the damage done to
20 Guinea by Rio Tinto's self-interested and immoral freeze
21 on development.

22 After the suspension of the mining concession,
23 several technical and legal committees who analysed
24 Rio Tinto's rights confirmed that these rights had been
25 granted unlawfully and needed to be revised.

10:36

1 So between August and December 2008 the government
2 negotiated in good faith with Rio Tinto to try to find
3 an amicable solution. The government suggested as a way
4 forward that Rio Tinto submit plans to retrocede 50% of
5 its Blocks 1 to 4, with the remaining two blocks reduced
6 from a mining concession to a prospecting permit.
7 However, Rio Tinto simply refused to compromise over its
8 perimeter. In addition, it announced scaling back its
9 investments as a result of a worldwide internal review
10 of its mining assets and the financial crisis.

11 As a result, the retrocession was forced upon
12 Rio Tinto, with Blocks 1 and 2 removed, leaving
13 Rio Tinto with Blocks 3 and 4. Over a dozen
14 governmental committees, mining authorities and
15 ministries, and over 30 Guinean public officials were
16 involved in the decision to withdraw Blocks 1 and 2 from
17 Rio Tinto. The ultimate decision to withdraw Blocks 1
18 and 2 was taken by the Council of Ministers without the
19 involvement of President Conté, who was very sick at the
20 time, and who died a mere two weeks later.

21 Several of Guinea's own witnesses accepted that the
22 concession and exploration permits were validly
23 withdrawn. [PROTECTED]

24 THE PRESIDENT: Since I see that it does work, I say nothing
25 when you raise your flag. But if there is any question,

10:38

1 of course it can be raised. But I understood that the
2 technicians had seen your flag and therefore they would
3 cut the floor. [PROTECTED]

5 SPEAKER: I think the problem is that we don't see Jack.

6 So maybe we will later on change the order so that the
7 speaker can see when the flag is being raised.

8 THE PRESIDENT: Absolutely. And maybe if you sit next to
9 each other, then you --

10 SPEAKER: We can see the Tribunal but we don't see --

11 THE PRESIDENT: Yes, that's fine. During the break, maybe
12 you can change the way you are seated. (Pause)

13 MR LIBSON: I had just said that the ultimate decision to
14 withdraw Blocks 1 and 2 was taken by the Council of
15 Ministers without the involvement of President Conté,
16 who was very sick at the time, and who would die two
17 weeks later.

[PROTECTED]

10:40

[PROTECTED] [REDACTED]

[REDACTED]

15 In his witness statement in these proceedings,
16 Souaré confirmed that the withdrawal of Blocks 1 and 2
17 was of Rio Tinto's own making. He comments that:

18 "I think that, unfortunately for Rio Tinto, when
19 I came back to business in 2008 I could see that they
20 had not fulfilled all of the commitments that they had
21 made when they got their concession in 2006 when I was
22 Minister of Mines."

23 Another of Guinea's witnesses, Kanté, confirms the
24 failures of Rio Tinto. His witness statements says
25 that:

10:41

1 "It was common knowledge that Rio Tinto had not
2 honoured some of its commitments regarding its titles.
3 Indeed, Rio Tinto was late in implementing
4 a retrocession of part of its perimeter and it was
5 frustrating to realise that the feasibility study still
6 had not been presented."

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 There appears to be consensus that the withdrawal of
24 Rio Tinto's rights in Blocks 1 and 2 was undertaken in
25 a lawful manner, or at least without any pressure or

10:43

1 influence from Mamadie Touré or President Conté. I will
2 address this in further detail later.

3 Now I will turn to the lawful award of a prospecting
4 permit for Blocks 1 and 2 to BSGR. I've dealt with the
5 taking away from Rio, and I am now going to turn to the
6 award to BSGR.

7 What is clear from my recounting of the depressing
8 chronology of Rio Tinto's multiple failures is that it
9 was widely known in the mining industry and in Guinea
10 from as early as 2002 that Rio Tinto was acting in
11 breach of the 1995 Mining Code and had failed to
12 undertake any substantial development of Blocks 1 to 4.

13 What is also not in dispute, and was also widely
14 known in the mining industry, was that Blocks 1 to 4
15 represented one of the largest untapped reserves of iron
16 ore in the world. This was a very different prospect to
17 Zogota, which, prior to BSGR's investment and drilling,
18 was not known to contain high-grade iron ore.

19 It is therefore no surprise that, being an ambitious
20 company, BSGR wanted to obtain permits to explore some
21 or all of Blocks 1 to 4. This does not signify anything
22 illicit, or anything close to it; far from it. BSGR
23 sought to do what Rio Tinto had failed to do in over ten
24 years: develop a mine at Simandou and start production,
25 which would benefit the country and the people of

10:44

1 Guinea.

2 When it became clear that the government was
3 frustrated with Rio Tinto's lack of progress, BSGR
4 expressed its ambitions using the normal formal
5 channels.

6 On 12th July 2007 BSGR wrote to Minister of Mines
7 Kanté to express its interest in acquiring
8 an exploration permit for Blocks 1 and 2. This was not
9 an unusual course of action. Indeed, a few weeks
10 earlier BSGR had written to Minister Kanté to express
11 its interest in some diamond exploration rights
12 elsewhere in the country.

13 In April 2008 BSGR wrote again to Minister Kanté to
14 inform him that it had returned nine permits in respect
15 of bauxite and uranium, and to clarify that it now had
16 the capacity to extend its rights to Blocks 1 and 2 of
17 Simandou.

18 You should note the difference between BSGR and
19 Rio Tinto again, where, in compliance with Guinean
20 mining law, BSGR is offering back the permits that it
21 doesn't wish to explore, whereas Rio Tinto unlawfully
22 held on to them.

23 Minister Kanté responded on 10th July 2008, now
24 formally rejecting BSGR's application to Blocks 1 and 2
25 on account of the concession being held by Rio Tinto.

10:45

1 When Rio Tinto's rights were suspended in July 2008,
2 BSGR reapplied for Blocks 1 and 2, along with another
3 mining company, AfriCanada.

4 The application process for Blocks 1 and 2 was
5 robust, and the eventual award of the exploration
6 permits to BSGR was in accordance with Guinean law.

7 First, BSGR's application was only entertained when
8 the government's negotiations with Rio Tinto to find
9 an amicable solution stalled and the government's
10 frustrations grew.

11 Second, the government set out a number of
12 substantial conditions that the applicants for the
13 mining rights had to meet. BSGR was the only company to
14 apply which satisfied these preconditions, as confirmed
15 in a memo dated 10th November 2008 from Minister of
16 Mines Nabé to Prime Minister Souaré and the Minister of
17 Justice.

18 By this time BSGR, you will recall, had already
19 demonstrated through its work in Zogota that it was
20 committed and capable of undertaking the work required
21 to explore an area for a commercially viable deposit,
22 and had provided the Ministry of Mines with all the
23 geological results obtained from the prospecting permits
24 granted to it. In contrast, the Respondent has failed
25 to produce any documents at all relating to whether

10:47

1 AfriCanada -- or, for that matter, any other interested
2 mining company -- met the same conditions. BSGR again
3 asks the Tribunal to draw an inference, this time that
4 BSGR was the only company that met the conditions
5 required to be awarded the permit of Blocks 1 and 2.

[PROTECTED]

[REDACTED]

10:48

[[PROTECTED]]

5 THE PRESIDENT: Is there a technical issue? It doesn't seem
6 to be the case. Are we back on? Fine.

7 MR LIBSON: It's difficult to see what more the government
8 could have done to ensure that the grant of Blocks 1
9 and 2 permits was lawful. It waited until the breakdown
10 of its negotiations with Rio Tinto before entertaining
11 application for Blocks 1 and 2; it set conditions, which
12 BSGR met; and it considered whether BSGR was a suitable
13 investor. Similarly, BSGR acted lawfully throughout the
14 process and, as I will address now, did not engage in
15 any corrupt means to obtain those rights.

16 Madam, I am coming to the next section and I am
17 about halfway through my submissions, if this is
18 a convenient moment for a break.

19 THE PRESIDENT: I understand it is a convenient moment in
20 your presentation --

21 MR LIBSON: It's convenient for me.

22 THE PRESIDENT: -- so it is also a convenient moment for us.

23 Do you want to take ten minutes, until 11.00, and
24 resume at 11.00? Is that fine with everyone? Good.

25 (10.50 am)

10:54

1 (A short break)

2 (11.06 am)

3 THE PRESIDENT: Before you resume, just two technical
4 points. The interpreters still think that you are
5 speaking a little fast, and listening more carefully to
6 your speed, in addition to the content of course,
7 I think if you can slow down, it would be good. I know
8 it is not easy to do so; just do your best.

9 MR LIBSON: I will.

10 THE PRESIDENT: With respect to the red/green flags, we
11 changed the seating the arrangements so that it would
12 work better. The technicians do see the flags, so
13 I need not interrupt the speaker, which I do prefer. If
14 you can hold up the flag the entire time of the cut, it
15 makes it easier. And if the speaker can wait a few
16 seconds -- there are buttons to push to make sure that
17 the flow is uninterrupted -- that will help. And of
18 course this all applies to the Respondent for this
19 afternoon.

20 Is everything clear?

21 MR LIBSON: Everything is clear.

22 THE PRESIDENT: Fine. So you have the floor, Mr Libson.

23 MR LIBSON: Thank you, Madam President.

24 I have covered so far two of the five topics that

25 I said I was going to address. I have covered the

11:07

1 overview of the legal framework for BSGR's claim, with
2 an analysis of the Kim case, and I have also dealt with
3 the legal acquisition of each of the three rights in
4 question. I want to just add one other point to my
5 second subject, the legal acquisition, and that is this.

6 I made much of the absence of any oral testimony
7 that Guinea could have brought to this Tribunal in
8 relation to the acquisition of rights, especially in
9 relation to the committee that granted two of those
10 three rights. We also asked for another source of
11 evidence that related to the granting of the rights, and
12 that would have supported or undermined that process,
13 and that is all of the documentary evidence that
14 surrounded that process: the emails, the documents, any
15 other exchanges that were in the control of Guinea to
16 support the process. None of that has been disclosed.
17 There is a complete absence of any documentation from
18 Guinea in relation to those processes, with the slightly
19 strange excuse being given that those documents were no
20 longer in the government's control.

21 So I have asked you to draw inferences in relation
22 to the lack of documentary production in relation to
23 other subjects, and I ask you to draw inferences again
24 in relation to the lack of documentary disclosure in
25 relation to the committee process as well.

11:09

1 So I have three topics left to deal with: the lack
2 of evidence of BSGR's apparent corruption; the real
3 reason BSGR lost its rights, namely the corruption of
4 President Condé; and third, a brief comment on Guinea's
5 counterclaim.

6 So topic number 3 is: BSGR's mining rights were not
7 obtained by corruption.

8 Guinea's case rests on its central and flawed
9 premise that it has overwhelming evidence that BSGR
10 obtained the mining rights by corruption. In fact, the
11 Respondent has described this case as being the first
12 case in the history of arbitration which shows so much
13 evidence of corruption. This is quite a remarkable
14 statement to make. It is even more remarkable in this
15 arbitration, where no amount of grandstanding, big talk,
16 fancy demonstratives or faux confidence can hide the
17 glaring hole at the centre of Guinea's case.

18 There is no direct evidence of BSGR making payments
19 to secure its expropriated rights. There is no evidence
20 of BSGR making payments to Mamadie Touré, no evidence of
21 BSGR making payments to President Conté and no evidence
22 of BSGR making payments to Mahmoud Thiam.

23 The burden of proof is on Guinea to demonstrate its
24 evidence of corruption, and the causal link between this
25 apparent corruption and the award of the mining rights

11:11

1 in issue. Guinea has set itself up for a fall. No
2 matter how many pages of accounts, emails and contracts
3 it puts before this Tribunal over the next two weeks, it
4 cannot point to a single document connecting any payment
5 to the award of BSGR's expropriated rights. The reason
6 for this is that the genesis of Guinea's evidence is in
7 the flawed testimony and forged documents of
8 Mamadie Touré, a witness who Guinea has not called, and
9 who has never been cross-examined.

10 BSGR has addressed in detail the corruption
11 allegations raised by Guinea in both of its memorials,
12 and its witnesses will provide testimony on these
13 issues. For this reason I will not be addressing the
14 detail now, but will instead refer to some of the key
15 themes.

16 First, the majority of the apparent evidence of
17 corruption which Guinea relies upon relates to
18 Mamadie Touré. BSGR's position, as I will later
19 develop, is that the allegations relating to Mamadie
20 Touré are false. But as a preliminary point, the
21 elephant in the room is that Mamadie Touré fled Guinea
22 in 2008, after the death of President Conté. This was
23 before BSGR was granted the majority of the rights in
24 question. There is simply no causal link between the
25 allegations relating to Mamadie Touré, which are false

11:12

1 in any event, and the award of the expropriated rights
2 to BSGR. This is evident in the Technical Committee
3 report which fails to link the alleged behaviour of
4 Mamadie Touré to the actual rights in question.

5 Turning to the substance of the allegations, as
6 I have said, the Technical Committee report alleged that
7 the spider in BSGR's web of corruption was Mamadie
8 Touré. According to the report, Mamadie Touré recently
9 intervened with the Guinean authorities on behalf of
10 BSGR to acquire the rights in question. Because this
11 was the basis for Guinea's expropriation of BSGR's
12 rights, it has had no choice but to anchor its defence
13 in this arbitration also to Mamadie Touré.

14 Yet, unfortunately for Guinea, Mamadie Touré lacks
15 any credibility whatsoever. She was also not the wife
16 of the President, she wasn't a government official, and
17 she had no power, authority or position to influence
18 anyone or any process. Even had payments been made to
19 her -- which they weren't -- she had no influence to
20 wield or sell, and no one who made the decisions has
21 said she tried to exercise any influence. This in
22 itself is fatal to Guinea's position.

23 The Tribunal should not simply take BSGR's word for
24 this. One of the bizarre ironies, of several in this
25 case, is that Guinea's own witnesses and government

11:14

1 officials have exactly the same view of Mamadie Touré as
2 my clients have. As I said, she had no ability to, and
3 did not, influence the granting of mining rights to
4 BSGR.

[PROTECTED]

[REDACTED]

11:16

[PROTECTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

We get here because

5 Mamadie Touré was paid by Guinea to provide evidence in
6 the Technical Committee in order to provide a semblance
7 of due process to a predetermined conclusion.

8 This is yet another further irony in these
9 proceedings. The Respondent withdrew BSGR's rights on
10 the basis of false allegations that BSGR paid
11 Mamadie Touré, yet it was in fact the Respondent who
12 paid her.

13 Over a series of three months in 2013, Mamadie Touré
14 was paid \$50,000 in six instalments by Mr Mamadou
15 Kouyaté, the special advisor to President Alpha Condé.
16 Mamadie Touré was also offered US citizenship by the US
17 authorities if she could target Frédéric Cilins,
18 Mr Thiam and BSGR. Guinea has tried to explain this
19 away as a transcription error, but this is not true.

20 In any event, what Guinea cannot explain away are
21 the copies of the cheques and evidence showing payments
22 on behalf of Guinea to Mamadie Touré. It cannot be
23 denied that she was induced by money, and possibly by
24 citizenship, to give her false evidence.

25 If the testimony of the Guinean witnesses, the

11:18

1 payments by Guinea to Mamadie Touré and her absence from
2 these proceedings were not enough to destroy her
3 credibility, a cursory glance at her purported evidence
4 should be the final nail in the coffin. The narrative
5 she peddles has already been disclaimed by her once, and
6 several of the claims are inconsistent with either her
7 own previous evidence or BSGR's documentary evidence,
8 and sometimes both.

9 For instance, on the most basic level, she claims
10 that Beny Steinmetz came to her house in Guinea in 2006
11 and offered her 5% of BSGR's turnover in Guinea in
12 return for her assistance in obtaining Blocks 1 and 2
13 Simandou. Mr Steinmetz has proved, both by reference to
14 his passports and landing cards, that he did not visit
15 Guinea until 2008. Guinea was required to produce all
16 documents showing all entry and exit records of
17 Mr Steinmetz between 2005 and 2008. Guinea has failed
18 to do so. The adverse inference from yet another
19 failure to produce documents that must be drawn is that
20 it has no evidence that Mr Steinmetz did enter Guinea
21 before 2008.

22 This is just one of the wealth of examples of the
23 implausible nature of Mamadie Touré's evidence. She is
24 a liar, a blackmailer and a fraudster.

25 It is therefore perhaps no surprise that Guinea has

11:20

1 chosen to take the risk of not calling Mamadie Touré in
2 these proceedings. Yet not only is Guinea not calling
3 Mamadie Touré, but it has failed to produce even
4 a single witness who can attest to Mamadie Touré's
5 alleged receipt of illicit payments from BSGR, which is
6 the very crux of Guinea's case. Without payment, there
7 is no corruption.

8 The best that Guinea can offer is Mr Souaré's and
9 Mr Nabé's subjective understanding of what could be
10 inferred from Mamadie Touré's presence at a meeting with
11 President Conté. Mr Nabé simply concludes that the fact
12 that she was at a meeting with the President "said it
13 all". Rather, it is the fact that his evidence is the
14 best that Guinea can do which says it all.

15 Guinea's case frays further with the testimony of
16 another of its own witnesses, Mr Kanté. He recalls
17 President Conté in fact dismissing Mamadie Touré from
18 a meeting with the line, "I had told you to stay out of
19 these proceedings". As to evidence of payments, Guinea
20 can show payments from BSGR to Pentler. It can also
21 show wholly independent payments from Pentler to
22 Mamadie Touré. Yet for all of its detailed analysis of
23 payments, nowhere is there credible evidence that BSGR
24 paid Mamadie Touré. BSGR has submitted that it had no
25 knowledge of any arrangements Pentler had with Mamadie

11:22

1 Touré, and Pentler did not act on behalf of BSGR.

2 Guinea will present a spreadsheet of payments which
3 includes lines showing -- and I quote from the
4 spreadsheet -- "Direct payments to Mamadie Touré". Make
5 no mistake: this is not evidence. The only basis for
6 these lines in the spreadsheet is the affidavits of
7 Mamadie Touré, a witness who even Guinea does not trust
8 to call, and who has been paid for her testimony. There
9 is simply no actual evidence of this money having been
10 paid or received.

11 Indeed, the testimony of the Guinean ministers
12 demonstrates that BSGR had no need to pay Mamadie Touré,
13 even if it would have been inclined to do so. She
14 simply had no role in BSGR's lawful granting of rights
15 and no material influence over President Conté.

16 Finally, again, even if the Tribunal is minded to
17 conclude that BSGR paid Mamadie Touré -- which is
18 vehemently denied -- Mamadie Touré was simply not
19 a government official. She wasn't even President
20 Conté's fourth wife. And even if she was, being married
21 to a Guinean official does not make that person
22 a government official under Guinean law. Even on its
23 best case, Guinea loses.

24 As part of the document production exercise, Guinea
25 was ordered to produce documents in relation to the

11:23

1 marital status of Mamadie Touré, including (1) any
2 marriage registration certificate or other official
3 document certifying Mamadie Touré to be the wife of
4 President Conté; (2) any marriage registration
5 certificate or other official document certifying
6 President Conté to be the husband of Mamadie Touré; (3)
7 any certificate or other official document certifying
8 Mamadie Touré to be the fourth wife of President Conté;
9 (4) all internal and external documents, including
10 communications, memoranda, notes and/or formal
11 invitations, between 2005 and 2010 in relation to the
12 wedding of Mamadie Touré and President Conté; (5) all
13 documents relied on for, or that confirm, Mamadie Touré
14 being the widow of President Conté; and (6) all
15 documents and communications in relation to Mamadie
16 Touré's application for a diplomatic passport and for
17 its renewal.

18 You won't be surprised where I'm going here. Guinea
19 did not produce a single document responsive to this
20 request. BSGR requests the Tribunal to draw the
21 inference that Mamadie Touré was not President Conté's
22 fourth wife. It is an inference that must be drawn
23 because there's no evidence -- not a single scrap of
24 evidence -- to suggest that she is.

25 This inference is supported by a number of factors.

11:25

1 For example, contemporaneous press reports following
2 President Conté's death mention only two of his three --
3 not four -- wives being present at the funeral
4 proceedings. As confirmed by video footage of the
5 mourning party inside the People's Palace, Mamadie Touré
6 did not attend her supposed husband's funeral.

7 Guinea also points to a purported diplomatic
8 passport belonging to Mamadie Touré. Yet the passport
9 issued to her in 2006 -- six years after her alleged
10 marriage to President Conté -- is not a diplomatic
11 passport and makes no reference to her alleged status as
12 a spouse of the President of Guinea; only to her being
13 an "administrative editor", whatever that is.

14 To hammer the message home, Guinea's own exhibit
15 referring to "Mamamdie Conté (sic)" as the fourth wife
16 of the President also refers to someone called
17 Aisha Koné being "sometimes referred to as Conté's
18 'fourth wife'" (R-84).

19 Mamadie Touré was not the wife, fourth or otherwise,
20 of President Conté, and she certainly was not
21 a government official.

22 Aware, therefore, of the fragility of its case,
23 Guinea has been forced to try to extend its allegations
24 of corruption from Mamadie Touré to allege that BSGR
25 bribed President Conté directly. Again, there is simply

11:27

1 no evidence for this.

2 First, this bizarre allegation leads to the
3 inevitable question: if BSGR was bribing President
4 Conté, why on earth would it need to bribe
5 Mamadie Touré?

6 Second, clutching at straws, Guinea relies on BSGR
7 presenting Conté with a model car at a public event as
8 evidence of corruption. This is the model car
9 (indicating), or something similar to this, that was
10 presented at that presentation.

11 BSGR does not need to respond to this point, as
12 Guinea's own witness, Minister Souaré, has done this for
13 us. [PROTECTED]

[REDACTED]

11:29

[PROTECTED] [REDACTED]

[REDACTED]

16 Mamadie Touré is the principal player in the ghost
17 cast of witnesses that apparently support Guinea's case.
18 She has the starring role, but there is a slew of minor
19 actors that, despite their absence in these proceedings,
20 Guinea purports also to rely upon. Not only do they
21 have even less credibility and reliability -- if that is
22 possible -- than Mamadie Touré, but Guinea does not come
23 close to establishing what possible connection to or
24 influence over the decisions or decision-makers these
25 phantom witnesses had or could have had.

11:30

[PROTECTED]

[REDACTED]

14 is particularly so when looked at through the eyes of
15 the Kim case that I mentioned earlier.

16 Moving back to the expropriated mining rights which
17 are the subject of this arbitration, to fill in the gap
18 in its evidence following the death of President Conté
19 and the fleeing of Mamadie Touré, Guinea alleges that,
20 in respect of the Base Convention and the Zogota Mining
21 Concession, BSGR corrupted Mahmoud Thiam, who was the
22 Minister of Mines during the relevant period. Last week
23 Guinea sought permission from the Tribunal to adduce
24 evidence onto the record from Thiam's recent trial in
25 the United States, and I assume they will try to make

11:32

1 a big splash from his conviction.

2 Yet, perversely, another irony in this case is that
3 Mr Thiam's recent conviction has only strengthened the
4 veracity of his witness statement in these proceedings.
5 Mr Thiam was convicted of receiving and laundering
6 \$8.5 million in bribes from China International Fund and
7 China Sonangol.

8 A review of the original complaint against Thiam
9 from December 2016, the transcript of his interview with
10 FBI agents and the transcript of the trial reveal three
11 key things.

12 First, Mr Thiam's corrupt scheme with Chinese
13 interests would have negatively impacted BSGR. Far from
14 illegitimately promoting BSGR's interests, Thiam in fact
15 entered a deal with CIF where he received bribes in
16 exchange for facilitating the award of highly valuable
17 investment rights, including -- and quoting from the
18 complaint -- "the near total control of Guinea's
19 valuable mining sector", presumably to the exclusion of
20 other mining interests.

21 Second, as evidence of BSGR's apparent corruption,
22 Guinea states that Mr Thiam purchased a property of more
23 than \$3.7 million in Duell Road, New York, using funds
24 from BSGR. However, after gaining access to Mr Thiam's
25 bank accounts, emails and documents, the FBI established

11:33

1 that Mr Thiam purchased this property from funds
2 provided by the Chinese company, and not BSGR.

3 Finally, and perhaps most importantly, the FBI and
4 US authorities obtained access to a huge swathe of
5 documents as part of its extensive investigation,
6 including Mr Thiam's email account, his bank records and
7 documents, and interviewed also numerous people,
8 including a senior advisor to the Prime Minister of
9 Guinea, the Minister of Justice, the Minister of the
10 President's Office in charge of Economy and Finance, and
11 another high-ranking official in the Republic of Guinea
12 who served in the Ministry of Mines.

13 It is clear from reviewing the transcript of
14 Mr Thiam's interview with the FBI that they were not
15 simply concentrating on his links with China, but
16 specifically wanted to uncover evidence from BSGR. One
17 telling conversation between the FBI agent Martinez and
18 Mr Thiam proceeded as follows. Martinez says:

19 "Okay. We're gonna switch gears again. Let's talk
20 about Steinmetz, the infamous. What did he offer while
21 you were in ..."

22 And then there's some cross-talk. Thiam answers
23 this half-made question:

24 "He never offered me anything."

25 Referring to Steinmetz:

11:35

1 "He had no reason. You see, the thing is, people
2 miscalculate things. There are people who had reason to
3 offer me because their standing in the country was in
4 jeopardy, or they needed something. He [Steinmetz] was
5 in a position where the private government had legally
6 awarded him that permit. He was not in violation. He
7 was doing his work. He was actually working faster than
8 the others. And the only thing he needed is when he was
9 under attack that the government or the ministry comes
10 and makes sure that the law is applied. So he had no
11 reason to pay anyone."

12 Martinez asked the next question:

13 "Well, you're talking to the guy that arrested
14 Frederic Cilins."

15 And Thiam answers:

16 "Yeah. That's between him and Cilins."

17 Martinez says:

18 "I suppose."

19 Thiam then answers:

20 "By the time I got there --"

21 And Martinez intervenes:

22 "But I think somebody in your position, I find it
23 interesting to hear you say that they have legally
24 obtained --"

25 You can see where he is going and what he wants to

11:36

1 get out of Thiam. And Thiam answers finally:

2 "At the time of audit, the permit was legal at that
3 time. Be careful. According to Guinean law, the permit
4 was legally obtained. It was illegally seized. It was
5 legally obtained according to the Guinean mining law."

6 Later in the conversation Mr Thiam added that:

7 "When I came in, he had the permit legally in hand.
8 It went through every single step required by the mining
9 process to get to where he was. He had all the
10 approvals and decrees, etc, etc."

11 So here we have a situation where the FBI clearly
12 wanted to get evidence against BSGR. They had access to
13 a much wider cache of documents and information than the
14 Respondent does, and yet still did not uncover evidence
15 of corruption between BSGR and Mr Thiam. The reason for
16 this is that there wasn't any. The apparent evidence on
17 which the Respondent relies was even disproved by
18 Thiam's conviction. This only supports the testimony of
19 countless Guinean ministers who confirm that BSGR
20 obtained its rights legally. There is simply no
21 documentary evidence of BSGR paying Mahmoud Thiam; there
22 is no oral evidence either.

23 Mr Thiam was under the most severe pressure it is
24 possible to imagine. He was being investigated by the
25 FBI whilst incarcerated, and he must have known that

11:38

1 implicating BSGR and Mr Steinmetz to prosecutors would
2 have served his interests, particularly when those
3 prosecutors could not even disguise their own ambition
4 to discover evidence about Mr Steinmetz. Not even then
5 did he produce any evidence that he was corrupted by
6 BSGR. In absolute accordance with the other Guinean
7 ministers, whose interests would similarly have been
8 served by denouncing BSGR, Thiam hasn't because he
9 can't.

10 So now I turn to my fourth topic: the real reason
11 why BSGR lost its rights.

12 So what have we seen so far? We have seen that the
13 granting of the expropriated rights followed due
14 process, with the involvement of multiple ministers from
15 different departments, and that those ministers have
16 testified under oath that the mining titles were granted
17 lawfully; that none of those ministers has stated they
18 acted under undue influence, and that many had never
19 even heard of Mamadie Touré. But even Guinea's own
20 witnesses have testified that Mamadie Touré had no
21 influence over President Conté, that Mamadie Touré was
22 not married to President Conté, that she had left the
23 country by the time the majority of the rights were
24 granted, and that even the FBI has failed to uncover
25 evidence that BSGR bribed Mahmoud Thiam.

11:39

1 In short, the Base Convention, the Zogota Mining
2 Concession and the Blocks 1 and 2 permits were granted
3 lawfully, and the revocation of those rights by the
4 Respondent was unlawful. That is enough for the
5 Claimants' case to succeed. The Claimants are not
6 required to provide any explanation for the true motives
7 of the Respondent. However, the issues that are the
8 subject of this arbitration do not exist in isolation.
9 The revocation of the Claimants' rights has spawned
10 criminal investigations in multiple jurisdictions, often
11 played out in the international media.

12 Some may say there is no smoke without fire. But
13 here Guinea lit the fire, doused the flames with petrol
14 and stole BSGR's fire extinguisher. The conduct of the
15 Respondent is so extreme that it must be addressed, in
16 order to put the false allegations against BSGR into
17 their proper context.

18 So we come to yet another irony in this case.
19 Whereas the Respondent has struggled to find any direct
20 evidence at all that the expropriated rights were
21 unlawfully granted, the evidence of the Respondent's
22 corruption is extensive.

23 President Alpha Condé stole the 2010 presidential
24 election with the assistance of outside interests,
25 including Samuel Mebiame. Once in power, Condé needed

11:41

1 to repay those outside interests with BSGR's mining
2 rights. Yet Condé could not afford this scheme, nor
3 succeed without outside influence.

4 Enter the scene another character who haunts the
5 story: the billionaire George Soros, who is driven by
6 a blind hatred of Israelis and Beny Steinmetz, and was
7 prepared to support, fund and facilitate anything he
8 could to harm Steinmetz's interests. Condé couldn't
9 succeed without Soros's money and influence, and what
10 was created was a symbiosis of cess, a conflation of two
11 different interests seeking to achieve the same result:
12 to destroy BSGR by revoking its rights.

13 Condé needed to repay his debts; Soros needed to
14 satisfy his egotistical craving to interfere with
15 Steinmetz and reinforce his bogus veneer as the world's
16 policeman, judge, jury and moral arbiter of
17 transparency. Soros's vanity and excessive hatred of
18 Beny Steinmetz have meant that he is directly
19 responsible for propping up one of the most corrupt
20 regimes in the world, interfering with lawfully held
21 rights and, once again, delaying production of iron ore
22 in Guinea, to the detriment of the very people he
23 piously professes to be seeking to help.

24 This is the story of the grossest hypocrisy:
25 a deeply corrupt individual, who believes himself to

11:42

1 operate on a plane above the rule of law and democratic
2 process, supporting a deeply corrupt President who stole
3 his way to power, which included stealing lawfully held
4 rights from my client. And the effect of all of this
5 has caused untold devastation to some of the poorest
6 people on Earth.

7 In support of his corrupt scheme, to this day Soros
8 has deployed his massive influence in the corridors of
9 power, the world's media, and through his endless and
10 ill-gained wealth, to commence and influence legal
11 processes, to manufacture evidence and to destroy BSGR's
12 and Beny Steinmetz's reputations.

13 This is not a fanciful tale, as the Respondent may
14 suggest. As time progresses and more criminal
15 investigations are launched relating to Guinea, more
16 evidence is unfolding to support this sorry tale.

17 In particular, on 16th February 2016 the Court of
18 Justice of the Economic Community of West African States
19 ruled that Guinea's detention of two BSGR employees for
20 over seven months was illegal.

21 In May 2016 the Wall Street Journal uncovered emails
22 which demonstrated that Sable Mining had made payments
23 to government officials in Guinea in 2010 in return for
24 lucrative mineral concessions.

25 Also in 2016 Samuel Mebiame, an influential Gabonese

11:44

1 national and fixer, was arrested by US federal
2 authorities for, amongst other things, the payment of
3 bribes to senior Guinean government officials in return
4 for mining rights. Emails disclosed during that case
5 revealed that Mebiame was dealing directly with
6 Alpha Condé in order to deliver mining rights in return
7 for corrupt payments. Mebiame entered into a plea
8 arrangement and is awaiting sentencing for a maximum
9 term of 60 months.

10 In a closely related case, the hedge fund Och-Ziff
11 agreed to pay criminal fines of over \$400 million for
12 corruption of a foreign public official in relation to,
13 amongst other things, corruption in Guinea in return for
14 the grant of mining interests. The settlement with
15 Och-Ziff revealed that in 2011 Och-Ziff entered into
16 a fraudulent share deal in order to pay \$25 million to
17 President Alpha Condé as a bribe in return for mining
18 rights. (Pause)

19 In the UK, Rio Tinto was forced to turn itself in to
20 the authorities when it was uncovered that it had made
21 a payment of \$10.5 million to a presidential advisor,
22 Monsieur de Combret, in return for securing its
23 \$700 million settlement with the Government of Guinea in
24 2011. Concerns had previously been raised that this
25 \$700 million payment was never paid into the treasury,

11:46

1 but that President Condé personally benefited.

2 These multiple international investigations support
3 BSGR's long-held belief that the expropriation of its
4 rights was politically motivated in order to satisfy
5 President Condé's corrupt deals. I will address only
6 the highlights of this evidence today, although the
7 entire body of evidence is staggering.

8 First of all, I am going to deal with Samuel Mebiame
9 and Och-Ziff.

10 Mebiame worked on behalf of the South African
11 Walter Hennig and the hedge fund Och-Ziff to make
12 payments of over \$25 million to Alpha Condé before and
13 after his election in order to secure mining rights.
14 Again, you do not need to take BSGR's word for this as
15 the FBI and US Securities and Exchange Commission have
16 compiled the evidence for us.

17 For example, in referring to direct payments made to
18 President Alpha Condé before the election, the Mebiame
19 complaint (C-0223) states:

20 "The defendant SAMUEL MEBIAME had special access to
21 mining opportunities in Guinea because of payments he
22 provided to senior government officials in Guinea in
23 exchange for such access. For example, in 2010, MEBIAME
24 provided an S-class Mercedes Benz ..."

25 A real one, not the model one they're referring to:

11:48

1 "... to Guinea Official #1 while he was a candidate
2 for office."

3 "Guinea Official #1" can only be President
4 Alpha Condé.

5 Once in power, President Condé's appetite for
6 corruption only increased. Whereas before the election
7 he received a Mercedes Benz to guarantee mining rights,
8 after the election he increased his price to \$25 million
9 for access to state assets. In order to secure these
10 funds, Och-Ziff and Walter Hennig entered into a sham
11 share sale, securing \$25 million.

12 According to the Och-Ziff cease-and-desist order
13 (C-0225), these monies were split as follows:

14 "... [US]\$2.1 million to Och-Ziff to satisfy
15 an outstanding debt ... \$25 million to the government of
16 Guinea to try to secure access to valuable mining
17 investments there, \$1 million to the agent affiliated
18 with the high level Guinean government official and his
19 family ..."

20 I.e. the \$1 million was going to Mebiame, the
21 association was with Alpha Condé:

22 "... and the remainder, [i.e. \$23.9 million] to
23 personally benefit himself [Walter Hennig] and his
24 business partner."

25 In order to make the \$25 million payment to Condé,

11:49

1 Hennig devised a further sham transaction known as the
2 "Palladino loan". The terms of the loan were designed
3 to ensure that Guinea defaulted, which would lead to
4 Palladino being automatically granted a 30% share in
5 a new state-owned mining company, SOGUIPAMI. Once the
6 Palladino loan was agreed, Mebiame emailed Hennig to
7 discuss finalising what he called in an email "that
8 'asset identification and allocation strategy'". From
9 the events which followed, it is clear that the assets
10 identified to be placed in the new state-owned mining
11 company were none other than BSGR's.

12 Alongside this, email records show that between
13 June 2010 and June 2012 Mebiame arranged a number of
14 additional payments to President Alpha Condé and other
15 senior Guinean officials. In particular, on 15th March
16 2011 Mebiame arranged to pay \$440,000 to rent a private
17 Airbus jet for Alpha Condé. Mebiame also told federal
18 agents that he made cash payments of approximately
19 \$100,000 to \$200,000 to another senior official,
20 believed to be Minister Kerfella. This is the same
21 individual who sat on the Strategic Committee which made
22 the formal decision to revoke BSGR's rights.

23 So the stage was set: Condé needed to repay Mebiame
24 and his associates either by extorting a huge payment
25 from BSGR or by nationalising BSGR's rights. Condé

11:51

1 wasted no time to start implementing this plan, with the
2 faithful support of his friend George Soros.

3 As soon as President Condé came to power, he
4 announced in a press conference with George Soros that
5 he intended to "shake up the mining regime". Yet his
6 second act reveal his true motive: to shake up BSGR's
7 mining rights.

8 Just two months after being elected, President Condé
9 called two BSGR representatives to a meeting, alleged
10 without any evidence at all that BSGR had breached
11 Guinean law and demanded that BSGR pay him \$1.25 billion
12 to keep its rights. Guinea has claimed that this was
13 a demand for tax payments. However, despite being
14 ordered to do so by you, Guinea has failed to produce
15 any documents relating to the apparent tax code BSGR
16 breached or any documents relating to a tax demand. The
17 reason is simple: President Condé's tax demand was not
18 a tax that you normally find in a written code; it was
19 an extortion tax. This was nothing less than
20 a presidential shakedown.

21 Next, when BSGR refused to acquiesce to Condé's
22 illegitimate demands, George Soros intervened. He
23 ordered his foot soldiers at Open Society Foundation to
24 enter into a memorandum of understanding with BSGR's
25 joint venture partner, Vale, again in order to keep the

11:53

1 mining rights at Simandou. That MOU required the joint
2 venture to pay \$500 million to keep the rights, and
3 tellingly referred to "ensuring Vale's successful long
4 term investment in the country". No reference was made
5 to BSGR's rights to the asset. Already, it seems, in
6 March 2011, BSGR was being written out of the picture.

7 Soros then telephoned BSGR's joint venture partner,
8 Vale, to seek assistance with removing BSGR from Guinea.
9 In a note of that call, Vale's former CEO, Murilo
10 Ferreira, reports that Soros told him that -- and this
11 is quoting from the note:

12 "... it is the President Alpha Condé that does not
13 recognise the agreement with the dealer Steinmetz."

14 In a further note, Murilo Ferreira reports that
15 Soros approached him again in the first week of
16 March 2011, this time seeking a payment of \$250 million
17 to have the right to sit with President Condé to discuss
18 the rights at Simandou. That Condé's payment demands
19 quickly reduced from \$1.25 billion to \$0.5 billion to
20 \$0.25 billion is itself evidence that the demands had no
21 basis at all. When BSGR and Vale rejected all three of
22 these offers, President Condé and Soros moved on to the
23 next stage of the plan to destroy BSGR's rights:
24 baseless allegations of corruption.

25 The treatment of BSGR once it refused to pay Condé

11:55

1 can be contrasted with the treatment of Rio Tinto, which
2 I talked about earlier.

3 In April 2011 Rio Tinto agreed to pay the Condé
4 government \$700 million to reinstitute its mining
5 concession in Blocks 3 and 4. Recently revealed emails
6 expose that Rio Tinto made a payment of \$10.5 million to
7 a middleman, François de Combret, to secure access to
8 Condé in order to reach this settlement with him. It is
9 believed that some of these monies were then funnelled
10 on to Condé.

11 In a very revealing email, one senior Rio Tinto
12 executive described the need to make the payment,
13 stating that de Combret was -- quoting from the email:

14 "... extremely valuable assurance that things do go
15 smoothly as we bed down the arrangements with the
16 [Government of Guinea]. I am extremely worried if we
17 lose the direct connection to the president that I have
18 cultivated with François."

19 This could not be clearer. As a result of the
20 discovery of this suspect payments and emails, Rio Tinto
21 has been forced to report itself to investigating
22 authorities in both the UK and the US.

23 Once the settlement with Rio Tinto was secured,
24 Condé invited one of Soros's NGOs, Revenue Watch
25 Institute, to assist in redrafting the country's Mining

11:56

1 Code. From the Mebiame complaint, it is clear that
2 Mebiame and Hennig also assisted, creating a motley crew
3 of individuals and organisations who were motivated to
4 deprive BSGR of its rights.

5 As a result, the new Mining Code provided the basis
6 for reviewing existing mining rights and paved the way
7 for the Technical Committee review which led to the
8 eventual removal of BSGR's rights. Given that Rio Tinto
9 agreed to make a payment to keep its rights, it should
10 come as no surprise that they were left out of the
11 Technical Committee review. In contrast, BSGR, the
12 company which refused to give in to Condé's extortion
13 attempts, became the sole focus of this review.

14 But even before the formal investigation into BSGR's
15 rights began, Condé's government took steps to interfere
16 with the Base Convention. For example, also in
17 April 2011 the Ministry of Transport ordered BSGR to
18 stop its works on the Trans-Guinean Railway, which BSGR
19 had committed to building as a gift to the Guinean
20 people in the Base Convention. No explanation for the
21 notice to stop works was provided to BSGR. This
22 essential infrastructure would have been
23 life-transforming for Guinean citizens. Yet because of
24 the Respondent's baseless intervention, it lies
25 undeveloped some six years later.

11:58

1 It is within this context that the Respondent's
2 counterclaim is laughable. Clearly BSGR is not the
3 reason for Guinea's failure to develop its own natural
4 resources. Guinea is unfortunately its own worst
5 enemy.

6 In September 2011 Soros hosted a dinner in New York
7 with President Condé and representatives from all the
8 mining companies which had projects in Guinea. BSGR,
9 you will not be surprised to hear, was not invited, and
10 did not even find out about this meeting until 2015.
11 Condé and Soros behaved as if BSGR's removal from Guinea
12 was a foregone conclusion.

13 During this period Condé and Soros then hired the
14 law firm Heenan Blaikie principally to investigate
15 BSGR's mining rights. [PROTECTED]

[REDACTED]

[REDACTED] This was
21 not the answer Condé or Soros had hoped for.

22 Undeterred, however, by the legal advice that BSGR
23 had obtained its rights lawfully, Condé continued his
24 quest to get BSGR out of Guinea. In February 2012 Condé
25 tasked Soros's Revenue Watch with setting the order of

12:00

1 the mining contracts to be reviewed by the Technical
2 Committee. And which company was chosen to be
3 investigated first? You've guessed it: BSGR.

4 So even before the Technical Committee had
5 commenced, Condé and Soros had already taken countless
6 steps designed to deprive BSGR of its rights. The
7 Technical Committee was a mere formality to create
8 a veneer of due process to the withdrawal.

9 According to the chairman of the Technical
10 Committee, Nava Touré, the investigation was, in his
11 words, "outsourced" to Soros's agents, DLA Piper. So
12 here we reach another irony: Soros's agents created the
13 process that allows Guinea to steal BSGR's rights. But
14 DLA Piper did not conduct a proper investigation.
15 Instead, they spoke to sources which even they admit
16 were unreliable; based serious allegations on the word
17 of representatives from Rio Tinto, a commercial rival to
18 BSGR, which wanted on get back the rights to Blocks 1
19 and 2, and which we know now was covering up its own
20 bribery; and relied on documents provided to it by none
21 other than the today convicted -- not then -- Samuel
22 Mebiame, a man who also wanted to deprive BSGR of its
23 rights.

[PROTECTED]

12:01

[PROTECTED] [REDACTED]

[REDACTED]

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[[PROTECTED]] [REDACTED]

[REDACTED]

16 On 30th October 2012 the Technical Committee sent
17 its first letter to BSGR, marking the start of the
18 formal review into BSGR's rights. This letter relied on
19 a series of 28 allegations -- all described as "facts",
20 not allegations -- to conclude that BSGR acquired its
21 mining rights unlawfully. These allegations were
22 actually false. They were also taken almost verbatim
23 from the DLA Piper report and Mamadie Touré's word in
24 her statement. What we now know from the Mebiame
25 complaint is that it was Mebiame and Hennig who likely

12:05

1 assisted with the drafting of this allegations letter;
2 this is the same Mebiame and Hennig who had paid Condé
3 to get mining rights in Guinea.

4 Given the actions of Condé and Soros before the
5 Technical Committee review had even commenced, it may
6 come as no surprise that the Technical Committee review
7 itself was entirely devoid of substantive or procedural
8 fairness. It also ran in parallel to a campaign
9 launched by Condé and Soros to tarnish BSGR's name and
10 interfere with its contractual relations.

11 For example, even before BSGR had received a copy of
12 the allegations letter, it had been leaked to
13 journalists close to George Soros. Those journalists
14 then inevitably published negative stories about BSGR
15 based on the false allegations. This created the
16 perfect storm for Soros to apply pressure to BSGR's PR
17 advisors, FTI, to terminate its contract with BSGR.
18 Again, this was not paranoia on the part of BSGR. In
19 an email to BSGR, FTI itself admitted that "George Soros
20 has personally requested" that FTI "cancel its
21 contractual arrangements with BSGR", as Soros was
22 a close friend of FTI's chairman.

23 So at its time of greatest need, BSGR was unable to
24 properly defend the false allegations against it.
25 Breaking the law is part of the Soros modus operandi; he

12:06

1 regards himself as flying high above it. And breaking
2 the law to deprive BSGR of its lawful rights is no
3 different in character than forcing its PR advisors to
4 act unlawfully.

5 Turning now to the procedure of the Technical
6 Committee review, the Technical Committee described the
7 allegations against BSGR as "facts", as I've said, which
8 must be disproved, turning on its head the burden of
9 proof in normal processes; it repeatedly failed to
10 disclose the documents on which it relied, despite
11 BSGR's multiple requests, a process that is echoed in
12 these proceedings; it ignored BSGR's submissions; it
13 held a hearing in BSGR's absence, providing a letter of
14 safe passage only after the hearing had been held; and
15 it was conducted in breach of both Guinean laws on
16 independence and the Base Convention.

17 As if this was not bad enough, in parallel with the
18 Technical Committee review, Condé, his ministers and
19 Soros repeatedly made statements to the international
20 press and took actions which left no doubt that the
21 withdrawal of BSGR's rights was a foregone conclusion.
22 I will list only some of those examples now to give
23 a flavour of the environment in which the review was
24 conducted.

25 In March 2013, Asher Avidan, the president of BSGR,

12:08

1 was declared a persona non grata in Guinea, with no
2 explanation at all.

3 In April 2013, two other BSGR employees were
4 imprisoned without charge and were held in appalling
5 conditions in Guinea for seven months. The arrests were
6 belatedly explained as being related to the criminal
7 investigation that Guinea has conducted into BSGR. Yet
8 as I referred to earlier, the Court of Justice of the
9 Economic Community of West African States has since
10 declared that the detention was illegal and ordered
11 Guinea to pay compensation.

12 Guinea now states that it was not provided with the
13 opportunity to defend itself before the Court of
14 Justice, and that the finding of illegality has no
15 basis. This is yet again another example of Guinea
16 acting unlawfully and then blaming others when its
17 unlawful behaviour has been exposed.

18 As the judgment makes clear, Guinea was first
19 invited to submit a defence to the Court of Justice on
20 6th December 2013. Guinea failed to do so, and was
21 served with a notice of default. Some six months later,
22 Guinea submitted a request for an extension of time to
23 respond. This was granted, yet still Guinea failed to
24 submit a defence even within this extended deadline.

25 Guinea was provided with ample opportunity to defend

12:09

1 its treatment of BSGR employees, but it couldn't do so.
2 As the Court of Justice rightly found, Guinea once again
3 had acted unlawfully towards BSGR.

4 Two months after the unlawful arrest of the BSGR
5 employees in June 2013, Condé accused BSGR of "playing
6 a role in some of the political turmoil in Guinea" and
7 promised some further "revelations", as he called them,
8 about BSGR in due course (C-0057).

9 A few days later, Condé referred to BSGR's rights in
10 an interview with Channel 4 News (C-0058) and said:

11 "I don't see how this deal is of any benefit to
12 Guinea."

13 In July 2013 Soros's lawyer at DLA Piper described
14 the Simandou deal as "fundamentally wrong", "one of the
15 most astonishing corruption plays" he had ever seen, and
16 that there was "little factual doubt" in the truth of
17 the allegations (C-0028). This was nine months before
18 the so-called Technical Committee review reached its
19 conclusions.

20 In October 2013 Condé declared that his government
21 had "started a battle to recover our mines which were
22 acquired fraudulently" (C-0059).

23 In November 2013 Condé referred to his "battle to
24 retrieve our wealth", and referred to it being
25 "a scandal that someone may supposedly pay a few hundred

12:11

1 million, and can make up to 5 billion on the back of the
2 Guinean people" (C-0060). This clearly referred to
3 BSGR. Yet in a moment of apparent honesty, Condé
4 revealed his real motivation for seeking to cancel
5 BSGR's mines: not false allegations of fraud, but just
6 money.

7 As I have already described, alongside this process
8 Condé's advisor Mamadou Kouyaté made six separate
9 payments to Mamadie Touré totalling \$50,000.

10 It is within this context of intimidation that the
11 withdrawal of BSGR's rights in April 2014 must be
12 viewed. The Respondent's case is that BSGR's mining
13 rights were withdrawn lawfully following
14 an investigation by the Technical Committee. Yet the
15 actions which Condé and Soros took prior to that
16 Technical Committee even being constituted, and even
17 then during the review, expose that the revocation was
18 entirely predetermined.

19 This is the same context in which the criminal
20 investigations against BSGR must be viewed. Following
21 Guinea's unlawful arrest of two BSGR employees, it
22 sought legal assistance from Switzerland, the US and the
23 UK. These letters rogatory were based on the
24 allegations letter, which was baseless, and the arrest
25 of the two BSGR employees, which has recently been found

12:12

1 to have been illegal by an international court. Guinea
2 made up the allegations against BSGR, disseminated them
3 by way of letters rogatory, and then seeks to rely on
4 the investigations in other jurisdictions as evidence of
5 BSGR's guilt. This is entirely circular.

6 So now I come to my final section, which is the
7 short word on Guinea's counterclaim.

8 As to Guinea's counterclaims, in my respectful
9 submission they are simply perverse. Like a stubborn
10 child, Guinea is refusing to accept the blame for the
11 wrongs it has committed. Had Guinea not interfered with
12 BSGR's lawful rights, BSGR would have commenced
13 production of iron ore from Simandou in 2012 and would
14 have built hundreds of kilometres of a Trans-Guinean
15 Railway Passenger Railway, transforming the Guinean
16 economy. Instead, and tragically, Simandou lies dormant
17 some five years after the intended date of production,
18 with no growth, no jobs, no exports and no benefit to
19 the Guinean people.

20 This is no more evident than if we review the
21 Ministry of Mines' own status report from 2009. As
22 I described earlier, the Ministry of Mines referred to
23 the Base Convention as being the only project which gave
24 the government an avenue to commercial production of any
25 mineral deposit within a relatively short time. For the

12:14

1 Respondent to then unlawfully cancel the Base
2 Convention, and then blame BSGR for the country's lack
3 of production, is simply nonsensical. Guinea has dug
4 its own grave.

5 In relation to the costs for investigating BSGR,
6 this is simply laughable. Is Guinea seriously asking
7 BSGR to repay the money Guinea paid to Mamadie Touré to
8 make up lies about BSGR? If Guinea wishes to recover
9 these costs, it should look to two culprits who led it
10 up this garden path for their own illegitimate motives:
11 President Alpha Condé and George Soros. They are the
12 people who have failed Guinea, and they should be made
13 to pay.

14 As to Guinea's image, one only needs to look at the
15 Mebiame complaint, the Och-Ziff settlement, Sable Mining
16 allegations and the Rio Tinto scandal to know that
17 Guinea does very well in tarnishing its own image.
18 There is only one party in these proceedings with
19 an unfairly harmed reputation, and that is my client,
20 BSGR.

21 There is a hint of Hollywood about this whole story.
22 There are plots and intrigue and a cast of colourful
23 characters. There are in fact two stories: one is told
24 by my client and the other is the one told against my
25 client. One is true and one is not.

12:16

1 There is not a single allegation made by my client
2 in what I have said today that is not supported by
3 direct evidence. From the moment they came under
4 attack, my client suspected that sinister, malign forces
5 were at work. No one believed them. Stoked by Soros --
6 who will have to answer for his actions in a different
7 proceeding -- the press dismissed what my client had to
8 say and bought the Soros/Condé promoted lines hook, line
9 and sinker.

10 My client has been vilified. BSGR's name has come
11 to represent the worst type of investment activity.
12 A proud company has been brought to its knees.
13 Mr Steinmetz has suffered an even worse fate. There is
14 not a depth to which the Soros and Condé defamation of
15 him will not sink, including accusations of involvement
16 in an assassination attempt against Condé.

17 But it turns out that my client has been right all
18 along, and the liars, corrupters, manufacturers of
19 evidence are the Respondent, its President and his
20 sponsor. My client is a hard-nosed commercial
21 organisation, but it was the only player in the history
22 of Guinea that has been prepared to invest responsibly
23 and for the long-term benefit of the Guinean people.
24 The very people who have a democratic, moral or
25 self-appointed duty to protect the interests of the

12:17

1 Guinean people have betrayed them through their
2 corruption, venality and outright greed.

3 This Tribunal, over the next two weeks, has
4 an opportunity to do two things: first, it can help
5 restore the reputation of an unfairly maligned company;
6 and second, it can ensure that that company regains its
7 rights for the benefit of those who most need it. It
8 should seize that opportunity with both hands.

9 Madam President, if there's anything else I can
10 assist you with, I can, but otherwise those are my
11 comments.

12 THE PRESIDENT: Thank you very much. I don't think that we
13 will have questions at this stage. We will now want to
14 listen to the Respondent and then to the witnesses, and
15 we may have questions later on.

16 If there are no remarks with respect to procedural
17 organisation, then we could take a break now. We had
18 planned to take one hour. Is it fine if we resume,
19 let's say, at 1.30? Is that fine with everyone?

20 (Interpreted) Is this alright with you,
21 [Respondent], Claimants?

22 MR OSTROVE: Well, if lunch is ready now, madam, we could
23 now break for lunch.

24 THE PRESIDENT: Fine. Alright. So let's now break until
25 1.30. See you anon. Bon appétit to everyone.

12:19

1 (12.19 pm)

2 (Adjourned until 1.30 pm)

3 (1.36 pm)

4 THE PRESIDENT: (Interpreted) So the Respondent has the
5 floor for the opening statements. Who is going to take
6 the floor first? Mr Ostrove.

7 Opening statement on behalf of Respondent

8 MR OSTROVE: (Interpreted) Thank you, Madam President,
9 gentlemen arbitrators.

10 To start with, we had given a list of the exhibits
11 that had been redacted that we wished to show to our
12 adversaries. They have not given their agreement, and
13 therefore we are going to have to use the red and green
14 cards quite frequently. You would have had the
15 possibility of seeing everything; unfortunately this
16 will not be the case.

17 Madam President, gentlemen arbitrators, it is
18 a great honour for DLA Piper and Orrick to be able to
19 represent the Republic of Guinea in this case. It is
20 a case of exceptional importance for the state of Guinea
21 because this case is the cornerstone of its fight
22 against corruption, and because it is one of the central
23 elements in its commitment towards transparency of
24 exploitation of natural resources.

25 President Alpha Condé has been fighting against

13:38

1 corruption since he took power in 2010. Contrary to the
2 allegations that I can only qualify as pure lies from
3 BSGR, as we could see from their writings, Guinea has
4 been improving every year since 2010 in the well-known
5 classification of Transparency International. But this
6 fight has cost dearly the people involved in cases of
7 corruption. And BSGR, to start with, have not spared
8 any effort to denigrate the government, the President,
9 and even his family, of interfering with the good
10 operations of government.

11 This case is also of exceptional importance for
12 Africa, and it is important worldwide. It is the
13 demonstration of developing states, the way they can
14 highlight the corruption practices that too often have
15 taken away sovereign resources, have enriched private
16 parties or individuals, or civil servants and their
17 families; all of this to the detriment of local
18 populations.

19 It is the demonstration that these countries may
20 also cooperate with countries that have more means at
21 their disposal, such as Switzerland, the United States,
22 Israel, France and the UK, who have all assisted Guinea,
23 and all understood how important this case was for it.
24 And Guinea wishes to thank its partners in the fight
25 against corruption.

13:39

1 This case is also particularly important in the
2 settlement of disputes between states and investors, the
3 well-known ISDS system, which is debated today in the
4 negotiation of free trade agreements for other treaties.

5 This system has been attacked by some as being
6 non-transparent. It is said that the tribunals are made
7 up of private judges, who render private justice behind
8 closed doors, in the interest of powerful multinational
9 companies, to the detriment of state sovereignty.

10 In our case the principle of transparency applies.
11 It is an opportunity to demonstrate to the critics of
12 this ISDS system what we well know, i.e. that ICSID
13 arbitrators have the integrity, the experience, the
14 wisdom and the determination to take impartial
15 decisions, and to thus demonstrate that the ISDS system
16 may function, even faced with illicit behaviours of
17 investors that are unscrupulous; that there is no
18 impunity when faced with arbitral justice.

19 So what resides at the core of this arbitration
20 case? The parties are perfectly in agreement upon the
21 fact that the only real question that you have to deal
22 with is whether the mining rights which were withdrawn
23 from BSGR had been fraudulently obtained through
24 corruption. We are submitting to you that there is no
25 doubt whatsoever as to the answer to this question: it

13:41

1 is positive.

2 Given the exceptional circumstances of this case,
3 Guinea has managed to gather multiple elements of
4 evidence. This is probably why we were criticised for
5 this. It is probably the first time ever that that many
6 pieces of evidence of corruption have been gathered.
7 It's not, as was said earlier, empty words. Guinea is
8 serene and trustful.

9 You will note a difference between our pleadings and
10 the ones that you heard this morning, and that is
11 because we are going to refer to exhibits which will
12 make your task easier to check what we are ascertaining.
13 The Claimants did not do likewise. There was
14 a considerable distortion of elements and exhibits
15 alike, and we are going to take them one by one. And of
16 course it will be more difficult to check what they were
17 saying, since they didn't judge that it would be of
18 interest to give you the supporting evidence.

19 You have a bundle at hand to look at these elements
20 directly.

21 So what is this evidence? Well, to start with, why
22 is this important today in this arbitration? Companies
23 that resort to corruption often rely on the fact that
24 states, especially developing countries such as Guinea,
25 do not have sufficient means to track international

13:43

1 payments or to see through empty shells that are set up
2 in offshore jurisdictions. BSGR therefore resorted,
3 like many others, to this complex network of dozens of
4 companies which are offshore -- Guernsey, Jersey,
5 et cetera -- to organise their business.

6 BSGR did not count on the efforts that might be
7 deployed by Guinea to gather such evidence. To start
8 with, Guinea itself started an investigation in order to
9 determine how the BSGR companies -- a group which was
10 famous first and foremost for trading in diamonds, and
11 had no experience in iron ore -- how this group was able
12 to obtain mining rights on the greatest iron ore deposit
13 in the world, not only qualitatively but also
14 quantitatively.

15 Rumours and doubts were actually circulating even
16 before President Condé was elected. This being said,
17 Guinea was not going to withdraw rights on the basis of
18 rumours. It in fact recruited investigators and lawyers
19 that are professional to have a clear picture. And this
20 investigation showed that there was corruption, and
21 finally enabled the state to put its hand on the
22 corruption contracts that were signed by BSGR and its
23 intermediary Pentler, with several other intermediaries
24 and their Guinean and Malian consultants, amongst which
25 Mamadie Touré, the fourth spouse of late President

13:45

1 Lansana Conté.

2 But our case also led to other legal battles that
3 enabled us to develop further evidence, beyond what the
4 investigation put forth. Rio Tinto in fact summoned
5 BSGR, as well as ex-minister Mahmoud Thiam, in front of
6 the American courts, and there was a discovery procedure
7 which brought out a lot of the elements that we have at
8 our disposal today. For instance, we were told that
9 Mahmoud Thiam left the country and took a lot of
10 documents with him, and it was through the discovery
11 proceedings concerning Rio Tinto that we managed to
12 recuperate a lot of these elements.

13 By the way, the company Vale, which had purchased
14 51% of the shares in the BSGR mining project for a total
15 amount of US\$2.5 billion, later started LCIA arbitration
16 against BSGR on the grounds that BSGR would have hidden
17 the corruption during the due diligence process, and
18 hundreds of internal documents from BSGR were produced
19 in this case in point, which unfortunately are not
20 available. Guinea regrets that the public may not have
21 access to these documents, but it would seem that it is
22 in the interest of BSGR to refrain from being
23 transparent.

24 On this score, we also need to bear in mind [PROTECTED]

the

13:47

1 statements in the LCIA case: they are the witness
2 statements of Cilins, Noy and Lev Ran, which have not
3 been presented to you as exhibits in this case. Since
4 these individuals testified against Vale, they did not
5 present any witness statements here, but BSGR managed to
6 hide what these people had to say; but not totally, as
7 we shall see in a moment.

8 Beyond the civil procedures, there were also
9 criminal procedures that enabled us to establish
10 a certain number of pieces of evidence.

11 Mrs Mamadie Touré, for one, decided to cooperate
12 with the American authorities, and we therefore have her
13 witness statement that we are presenting here, which is
14 perfectly credible and created under circumstances that
15 guarantee this credibility. Why? Because it was
16 prepared under the control of the Justice Department,
17 the US Justice Department.

18 You were told today that Guinea gave money to
19 Mrs Touré to obtain her witness statement. I don't
20 believe that she could believe for one moment that
21 Guinea had become her greatest friend. Why? Because
22 she was held by the FBI and was under the obligation of
23 becoming a cooperating witness in the international
24 procedures. Mrs Mamadie Touré was key in the American
25 proceedings and she was under detention by the FBI.

13:49

1 Indeed, when she decided to cooperate, she took a lawyer
2 and she had to travel several times to gather evidence
3 to help the American authorities. And Guinea doesn't
4 deny that it paid \$50,000 to cover legal fees and
5 transport fees. There's nothing to hide, contrary to
6 others who made other payments to Mrs Touré and under
7 other circumstances.

8 You were also told today that she would have had
9 an offer to become an American citizen in exchange for
10 her testimony in the United States. This has been said
11 by BSGR. We dismantled this argument totally, since it
12 was done on the basis of a mistaken transcription; all
13 of this was clearly explained in our Rejoinder,
14 paragraphs 375 to 379. If you so wish, at some stage we
15 can play the audio recording and you will see that there
16 was no such offer ever made.

17 All of her goods have been confiscated and she lives
18 in poverty in the United States as we sit here today.
19 In fact she would have run a great risk in presenting
20 false testimony when she is under a cooperating witness
21 case in the US.

22 Thanks to the FBI, we also have recordings of the
23 discussions between [Mamadie] Touré and
24 [Frédéric] Cilins, who made the mistake of travelling to
25 the United States to meet with her. This afternoon we

13:51

1 shall be playing some of the recordings.

2 There were also criminal investigations in
3 Switzerland that result from some of these documents
4 because BSGR was allowed to present some of the exhibits
5 in these proceedings. The principle of criminal
6 specificity means that Guinea is not allowed to present
7 documents obtained thanks to legal assistance with the
8 Swiss authorities. The same applies to documents
9 obtained through French and English legal assistance.
10 Because of the confidentiality of the fact-finding
11 exercise, all of the documents that were obtained are
12 not available. And Guinea did not start a criminal
13 investigation to obtain this evidence; these are two
14 distinct matters completely. You don't have the
15 elements for the Israeli investigation either, although
16 this might have an impact here.

17 As the Tribunal is well aware, Mr Steinmetz and
18 Mr Avidan are heard by the criminal authorities in
19 Israel for the same acts of corruption as those that are
20 submitted to you. They are under house arrest, or
21 anyway they are not allowed to travel over. Whatever
22 the case, the request was never presented.

23 It is very difficult to understand the comment that
24 was made this morning that the Israeli authorities would
25 only have investigated on the basis of an allegation

13:53

1 letter that would have been presented in this case.

2 These authorities are totally independent and

3 investigations are likewise independent.

4 To close on the criminal side, let's not forget
5 Mahmoud Thiam, who signed the [Base] Convention under
6 circumstances that are more than suspect for Zogota.
7 Mr Thiam may not testify. He would have been condemned,
8 as an American citizen, to remain in the United States,
9 condemned with the help of Guinea for the laundering of
10 the fruit of corruption. This great friend of BSGR that
11 wrote a witness statement in their favour, we heard this
12 morning, received \$8.5 million from another investor in
13 Guinea at the same time in exchange for other mining
14 titles. We can understand the method quite clearly.

15 Despite the evidence that you do not have at hand,
16 you have a great many elements that we are going to
17 mention this afternoon and that have been presented in
18 this case, and that we shall see throughout the week:
19 you have corruption contracts; you have evidence of
20 payments, proof of payments; you have internal emails to
21 BSGR; you have recordings of the FBI; you have the
22 statements of mining ministers and other actors who were
23 involved.

24 This is indeed an exceptional case, of exceptional
25 importance, with evidence of corruption which is equally

13:54

1 exceptional.

2 MR JAEGER: I would like to complete these preliminary
3 comments by making a few comments on the system of
4 defence that was adopted by BSGR in this case, faced
5 with the damning evidence of corruption that is opposed
6 by Guinea. I'm talking about the defence of BSGR
7 societies, although they are the Claimants. Bizarrely,
8 the Claimants are behaving as though they were
9 defensive.

10 Let me give you an example, an example that is
11 particularly clear, i.e. the attempt they made in
12 November 2016 to derail our proceedings. You will
13 remember that on 4th November 2016 the Claimants tried
14 to challenge the members of the Tribunal in front of the
15 ICSID President on the ground that they would have
16 lacked impartiality in this case in point by rendering
17 a procedural order that dealt with an incident relating
18 to the communication of exhibits.

19 The attempt to challenge the members of the panel of
20 course failed because it was fallacious; and by the way,
21 it's unthinkable that the Claimants and their counsel
22 could have believed for one moment that they would
23 succeed. But what is important here is the violence of
24 this attack, which illustrates the lack of respect by
25 BSGR for the bodies that are entrusted with the decision

13:56

1 to judge their acts.

2 Were they trying to obtain an extension or delay
3 three days before the Reply was supposed to be rendered?
4 We will never know. But maybe it was simply
5 an attitude. It seems that BSGR is a specialist of
6 challenges and instances that are charged with the
7 judgment.

8 Your Tribunal is not the only target of these
9 attacks. In reality, all of the bodies that have been
10 entrusted with judging this case have been treated in
11 a similar way. [PROTECTED]

[REDACTED]

19 THE PRESIDENT: Let me take advantage of this interruption
20 to make sure that the technicians clearly see the
21 signals, red and green flags? Because you see it's on
22 this side now. (Pause)

23 MR JAEGER: [PROTECTED]

[REDACTED]

25 Similarly, when BSGR had to explain itself before

13:59

1 the Technical Committee to review mining titles in
2 Guinea in 2013, it took the same attitude. It didn't
3 ask for the members to be recused, because there was no
4 such procedure, but it behaved in the same way. It sent
5 very violent letters to the Technical Committee
6 challenging its independence, saying that the Technical
7 Committee was simply an extension of President Alpha
8 Condé by challenging its impartiality and claiming the
9 decision of the Technical Committee had been taken, was
10 a foregone conclusion before the Technical Committee
11 actually handed down a decision.

12 So we are seeing here the same kind of behaviour,
13 once again: refusal to take part in the proceedings and
14 refusal to be present at the hearing. So really we are
15 seeing a similar pattern in the defence system adopted
16 by BSGR before the three bodies that were responsible
17 for judging its actions. It's true that before criminal
18 instances it did not follow the same behaviour, and it
19 is very easy to understand why.

20 I would also like to draw a parallel between what
21 was said this morning by BSGR's counsel on the
22 inter-ministerial committee that ruled on the Base
23 Convention and the feasibility study. This morning
24 I believe I heard, I believe that BSGR's counsel said
25 the inter-ministerial committee had ruled according to

14:00

1 the highest principles of due process.

2 The members of this inter-ministerial committee were
3 remunerated by BSGR: they each received the equivalent
4 of \$1,000 for their services. Consequently, if we make
5 a parallel between the inter-ministerial committee, that
6 is according to the highest ethical standards, and the
7 Technical Committee, which ruled supposedly without any
8 independence, the only difference is the members of the
9 Technical Committee were not remunerated by BSGR to hand
10 down a decision that would be favourable to BSGR.

11 So in addition to these bodies, BSGR went after
12 Guinean authorities in general. You heard a whole slew
13 of accusations against the President of Guinea, against
14 George Soros -- and in fact we really fail to see what
15 his interest would be to step in and intervene in this
16 case; it's quite obscure because Mr Soros has no
17 particular interest in the Simandou case -- and also
18 against Rio Tinto representatives. I will not go into
19 all these points, but I would like to spend some time on
20 the two examples that have to do with this case
21 directly.

22 The first is the transaction that was entered into
23 between Guinea and Rio Tinto, in which Rio Tinto agreed
24 to pay \$700 million to Guinea. \$700 million is only
25 half of the profits that they had received by selling

14:02

1 their rights. It was said that, out of these
2 \$700 million, President Conté had received some bribes.
3 This is entirely inaccurate and untrue.

4 This was said in a very interesting way this
5 morning. Opposing counsel said that "It is believed
6 that". He didn't say that this was the case; rather
7 that it is "believed" that this is so. In other words,
8 these are insinuations. So facing these insinuations,
9 we provided evidence that the \$700 million were paid
10 into the Guinea investment fund. The \$700 million were
11 fully paid into this fund under the control of the IMF.
12 So to make such an insinuation is completely dishonest.

13 And there is another allegation that we heard: the
14 alleged attempt to extort. This would be that President
15 Alpha Condé would be attempting to extort BSGR,
16 demanding \$1.25 billion to the President. We heard this
17 insinuation this morning, without any evidence
18 whatsoever: that the intention of President Condé was to
19 simply grab these funds, without a shred of evidence.
20 Whereas it is clear that this pattern was similar to
21 what occurred with Rio Tinto. In other words, it was
22 a proposed settlement whereby the investor was simply
23 asked to pay back half of the profits from the
24 operation. And just as was the case with Rio Tinto,
25 these funds were intended not for the personal account

14:04

1 of the President, but indeed to the Guinean development
2 fund.

3 So all of these accusations are slanderous. I will
4 not go into all the other accusations about attempts to
5 trump the elections; I think they are outside the scope
6 of this arbitration and I think they are really red
7 herrings. I think that BSGR, through all these
8 accusations, want to prejudice Guinea. They have been
9 relayed in the media, and BSGR's approach essentially is
10 to respond to the evidence that we are giving the
11 various courts by coming up with slanderous insinuations
12 that are relayed by the media.

13 So this means that they are not believing in the
14 rule of law, and it is absolutely commensurate with
15 their image. We should not expect anything else from
16 a group that has turned corruption into a business
17 model; we should not expect for them to behave in any
18 other way than what they have done in the past.

19 This concludes our preliminary comments. If you
20 will allow me, I would like to give the floor to
21 Michael Ostrove; he will take over now.

22 MR OSTROVE: (Interpreted) So coming back to our case, as
23 I said earlier, the parties agree that the crux of the
24 case is corruption. How is corruption defined in
25 connection with this arbitration? Some information so

14:06

1 that we know what we are talking about during this week.

2 It's not corruption as a crime. This Tribunal does
3 not have jurisdiction and is not competent to discuss
4 the criminal responsibility of BSGR or its leaders;
5 others will handle that. BSGR are wrong about this when
6 they give a report of the head of the bar that addresses
7 just the notion of corruption under Guinean criminal
8 law. This is why Guinea did not believe that it was
9 necessary to summon the head of the bar, Mr Sur, to
10 appear.

11 Here corruption is meant as a civil and
12 administrative offence. The Tribunal has to determine
13 whether the mining rights were obtained in a fraudulent
14 manner through corruption. In this context, when we are
15 talking about administrative and civil wrongdoing,
16 corruption is understood in the broadest sense, so it
17 includes traffic of influence.

18 Generally speaking, it's not necessary to remind
19 this Tribunal of what constitutes corruption; it's dealt
20 with in our Memorial and also in our Rejoinder.

21 The Tribunal of course knows that corruption, in its
22 broadest sense, is universally sanctioned, first of all
23 by international public policy. There are many
24 international conventions and regional conventions that
25 condemn corruption.

14:08

1 In this regard we can mention, because it is
2 particularly relevant, the protocol on the fight against
3 corruption of ECOWAS. This is Exhibit RL-80, tab 1 of
4 your bundle. Guinea signed and ratified this protocol
5 in 2002. The protocol is in effect and is part of the
6 international public policy applicable in Guinea during
7 the facts of the case.

8 The definition of "corruption" under international
9 public policy is quite broad. This is Article 6, and it
10 indicates to what actions this convention applies. We
11 are not interested in 6.1(a), but 6.1(b) and 6.1(c).

12 6.1(b) covers the fact of offering or granting,
13 either directly or indirectly, to a public official,
14 an object with a pecuniary value either for him or
15 herself or for a third party, in exchange for an action,
16 or the omission of an action, within one's duties.

17 Then the ECOWAS protocol 6.1(c) goes on to say that
18 the fact of promising, offering or directly or
19 indirectly granting any unjustified advantage to any
20 person who states or claims that it can exert influence
21 over the decisions or actions of persons occupying
22 positions in the public or private sector, that this
23 influence be exercised or not, or that the supposed
24 influence accomplishes or not said results.

25 This morning you heard pleadings on recent

14:10

1 jurisprudence, *Kim v Uzbekistan*. Sorry to correct the
2 pronunciation of the president of the tribunal,
3 David Caron; he was actually my professor in
4 international law at Berkeley 25 years ago. Be that as
5 it may, this award does not provide BSGR with what it's
6 seeking. Why? Let me here go into a few elements of
7 fact and law that are quite distinct in this case from
8 the *Kim* case.

9 In the *Kim* case, the alleged payment was such that
10 Madame Karimova, who was behind the sale of a company,
11 was allegedly overpaid -- in other words, that the
12 company that had been sold was overvalued -- and the
13 tribunal considered that there was not sufficient
14 evidence to prove that this payment had been in excess
15 of the true value.

16 But here the facts are entirely different. We are
17 not talking about Mamadie Touré, who had a mining
18 licence sold on to BSGR and she was overly remunerated
19 for that. No, that's not what is being claimed. But
20 she did receive payments in order to secure her
21 influence over other persons.

22 In the *Kim* case the tribunal said that the red flags
23 could be sufficient, but they said in this case that the
24 red flags were not sufficient because there were other
25 explanations underlying the transaction. In our case we

14:12

1 have red flags; we also have direct evidence. We have
2 above 50 payments, with 50 documents proving these
3 payments: we have internal emails, testimony, et cetera.

4 As we just saw with the ECOWAS protocol, the
5 framework for applicable corruption is entirely
6 different. In the Kim case the tribunal basically was
7 looking to the Uzbek Criminal Code that limits the
8 definition of "corruption" to a very narrow definition:
9 it is limited to public officials. This is why the
10 tribunal said it is not about the trading of influence.
11 In other words, they took a very narrow view.

12 PROFESSOR VAN DEN BERG: (Interpreted) You promised to make
13 references. So can you give us the exhibit number?

14 MR OSTROVE: I believe it's Exhibit [CL-]0060. It was
15 published a few months ago, but unfortunately they only
16 introduced the exhibit into the proceedings a few days
17 ago.

18 Le me resume. Even though Mamadie Touré is, without
19 a shadow of doubt, the wife of the President, BSGR's
20 efforts and attempts to prove the opposite are
21 completely inoperative. You will hear witnesses
22 questioned on these questions. But from the moment she
23 gave the impression of having influence, she is covered
24 by the definition of "corruption" in our case.

25 In our case, beyond international policy, corruption

14:14

1 in the broad sense is also condemned in internal Guinean
2 law. I don't want to dwell upon this; you have our
3 memorials. RL-[83], the 2010 Guinean Constitution, that
4 once again sets out corruption as a very severe
5 offence. In our Rejoinder, paragraphs 36 to 41, you
6 will find our explanation: when we are talking about
7 civil and administrative law in Guinea, corruption and
8 influence trading is approached through the angle of
9 fraud.

10 So what are the legal consequences of corruption?
11 The situation is entirely clear. The ICSID dispute
12 settlement system does not tolerate its use to protect
13 an investment that has been obtained through fraudulent
14 or illegal means, including through corruption. This
15 means that a request in an ICSID arbitration on the
16 basis of an illegal investment simply is inadmissible.
17 This is clearly set out in SAUR v Argentina -- this is
18 RL-60 -- paragraph [308].

19 When an investment suffers from fraudulent
20 illegality right from inception, as is the case here,
21 the Tribunal is faced with two options: either there is
22 the legality clause in the instrument that establishes
23 your competence -- in this case you could simply decline
24 your competence. This is the case when you have a [BIT]
25 arbitration where, in the definition of "investment", it

14:16

1 is said that "any investment that is conducted in
2 accordance with domestic law". But this is not the case
3 here; we don't have that kind of clause. We are not
4 claiming that this Tribunal is incompetent.

5 But when there's no legality clause, no jurisdiction
6 clause, the Tribunal must then say that the application
7 is inadmissible. As a reminder, BSGR have never
8 challenged the fact that if there is proof of
9 corruption, their application is inadmissible. This is
10 simply not challenged in the memorials.

11 So if the Tribunal concludes that the mining rights
12 were obtained through corruption, then this means all of
13 the relief sought by BSGR is simply inadmissible.

14 I would like to now give the floor over to Mr Naud,
15 who will be looking at the evidence of corruption.

16 MR NAUD: Madam President, gentlemen arbitrators, this
17 morning you heard a version of the facts as told by
18 BSGR's counsel. According to them, the circumstances in
19 which they obtained their mining rights were entirely
20 proper. This is not so. Guinea has demonstrated in its
21 Rejoinder and in its Rejoinder. BSGR have obtained each
22 one of these mining titles by buying the decisions of
23 the state, and this was this that led the Guinean State
24 to withdraw the mining titles under the heading of
25 fraud, which is what BSGR is complaining of today.

14:18

1 BSGR have in fact bought: the influence of Mamadie
2 Touré on her husband, President Conté, and through him
3 on the government; the influence of Mrs Touré's
4 half-brother, Ibrahima Touré, on the administration: he
5 had the status of a member of the family of President
6 Conté; and the support and influence of President Conté
7 himself: a man who was sick, at the end of his life, and
8 easy to influence by offering him gifts, and of course
9 the remuneration of his wife and his brother-in-law
10 satisfied him and secured his influence in favour of the
11 BSGR companies.

12 Following President Conté's demise, BSGR goes even
13 further in their methods: they bought the support and
14 influence of the Minister of Mines, Mahmoud Thiam; and
15 they bought the decision of a governmental commission.

16 The parties have submitted to you a joint chronology
17 of facts. As you will have seen, the parties agree on
18 many of the events that have occurred in this case.

19 So what is BSGR's defence, faced with these
20 allegations of corruption? They challenge that
21 Mrs Touré was the wife of President Conté. We will
22 return to this question later, and we will return to all
23 of the evidence that we have that establishes her
24 status. They contest that the contracts enter into
25 between Pentler. Pentler, a company that you did not

14:20

1 hear anything about this morning, was connecting with
2 the mining rights that they were vying for. They
3 challenge that contracts were directly entered into with
4 Mrs Touré. They deny that by remunerating Mrs Touré,
5 they were able to benefit from her influence over
6 President Conté. And finally, they deny having
7 benefited after President Conté's demise from the
8 support of Minister Thiam, and to have bought the
9 decision of the members of a governmental commission.

10 During these hearings you will hear the witnesses
11 for BSGR and the Republic of Guinea on each one of these
12 points. For now, we would like to go over the initial
13 facts that establishes the pattern of corruption.

14 Let me start with the period during which the
15 research permits were obtained fraudulently, and my
16 colleague will present the period that followed during
17 which BSGR fraudulently obtained the mining contracts.
18 Let me start with the initial period during which the
19 prospecting permits were obtained.

20 BSGR recognised that it was informed of the
21 existence of mining opportunities in Guinea in early
22 2005 by Messrs Cilins, Noy and Lev Ran. What do we know
23 about these three men at the time? They have business
24 in West Africa and they have no experience in the mining
25 sector, which BSGR has recognised.

14:21

1 BSGR was immediately interested by these mining
2 opportunities and tasked Mr Cilins, who is
3 a French-speaker, to introduce BSGR to the mining
4 administration in Guinea. Mr Cilins was able to arrange
5 a meeting between BSGR and the Minister of Mines,
6 Minister Souaré, and Mr Oron, the CEO of BSGR will be
7 present at that meeting, the meeting that took place on
8 July 20th 2005.

9 You will observe that Mr Oron, who was there right
10 at the beginning of BSGR's presence in Guinea, but he's
11 not here. To justify his absence we have
12 Exhibit CWS-15, which says that Mr Oron did not want
13 to witness for BSGR in the LCIA arbitration against
14 Vale. This statement does not say why Mr Oron did not
15 want to be a witness for BSGR in these proceedings.

16 Just a few days after having met with the Minister
17 of Mines, Mr Souaré, Mr Oron sent him an email to
18 clarify the main interests of BSGR in Guinea. This is
19 the email of August 2nd 2005, Exhibit R-171, tab 2. Let
20 me draw your attention to the last sentence of the first
21 paragraph, which says that BSGR places Simandou at the
22 head of its interest. Let me read this last sentence:

23 "Let's mention the main areas of interest: 1. The
24 preparatory work for operating the iron ore of
25 Simandou."

14:23

1 Mr Souaré did not respond to this email. Why?
2 Because the Simandou iron deposits had already been
3 attributed to another company, namely Rio Tinto.
4 But BSGR was not satisfied. Mr Cilins then uses
5 contacts to get some support. He has contacts with
6 Mr Ismaël Daou, who meets with Aboubacar Bah, another
7 businessman in Mali. Mr Aboubacar Bah introduced to
8 Mr Daou and Mr Cilins a former minister of Guinea,
9 Mr El Hadj Fodé Soumah, and this minister then presents
10 to Mr Cilins Mrs Mamadie Touré, the wife of President
11 Conté, and her half-brother, Ibrahima Sory Touré.

[PROTECTED]

[REDACTED]

5 Mr Bah and Mr Daou did their work well by
6 introducing BSGR to Mamadie Touré, because all of
7 a sudden BSGR is in a good position.

8 Following this decisive meeting, BSGR is getting
9 undeniable presidential support to advance its interest.
10 Mr Cilins meets the President of the Republic who calls
11 into this meeting the Minister of Mines, Mr Souaré, and
12 expressly asks him to facilitate BSGR's work. Here I am
13 referring to Exhibit RWS-2, paragraph 10.

14 BSGR also gets authorisation to use the President's
15 helicopter in order to go to the mining area that they
16 are interested in. I don't want to dwell upon this
17 because we discuss it in paragraphs 142 to 146 of our
18 Reply, but I will simply note the following points.

19 During this mission the President's helicopter
20 landed on the Simandou area, which was under Rio Tinto's
21 permit. Rio Tinto complained to Minister Souaré. The
22 minister, quite angry that BSGR was so persistent about
23 a deposit belonging to another company, immediately
24 called in BSGR representatives to get an explanation for
25 this behaviour.

14:27

1 BSGR representatives came to the meeting in the
2 company of Mamadie Touré, the President's wife. The
3 minister then reminded BSGR that Simandou was not
4 available. But knowing that he has to be lenient
5 because Mamadie Touré is there, and because there had
6 been a meeting with President Conté two days prior to
7 that, he is indulgent and he suggests that BSGR could
8 apply for a permit for zones to the north and to the
9 south of the Simandou deposit that already belonged to
10 Rio Tinto.

11 This is what BSGR does now, assured that they will
12 be given these titles, given the presidential pressure
13 that was exerted upon the minister. And on February
14 6th 2006 BSGR is granted its first mining permits.
15 There are no copies of the application that BSGR would
16 have made to the administration; there is simply no
17 record of such application.

18 If BSGR gets these first prospecting permits without
19 any difficulty, this is not sufficient for BSGR. Right
20 from the beginning, their objective was the Simandou
21 deposit. This explains that in parallel, in addition
22 to getting these permits, BSGR has been seeking since
23 November 2005 to have the Minister of Mines sign
24 a memorandum of understanding. The draft memorandum of
25 understanding would create an exclusive partnership

14:29

1 between BSGR and the state for the development of mining
2 activity in Guinea.

3 Several versions of the draft memorandum are given
4 by BSGR to the Minister of Mines. We have a first
5 version dated November 2005 that covers all of the
6 Simandou deposits, including the zones under Rio Tinto
7 permits; this is Exhibit R-173, under tab 5. Again,
8 I don't want to dwell upon this.

9 Then there is a second version of this draft
10 protocol, dated January 2006. You will find it under
11 tab 6 of your binder (C-208). And given the resistance
12 imposed by the Minister of Mines, it only applies to the
13 zones to the north and south of Simandou, for which BSGR
14 is trying to get a prospecting permit.

15 But there is a third version of this draft MoU,
16 which is in tab 7, and this is signed at the end of
17 February 2006 and it grants preemption rights on all or
18 part of the Simandou deposit that would be handed over
19 to BSGR. And this MOU, as early as February 2006,
20 covers Blocks 1 and 2 of Simandou that are under
21 Rio Tinto permits. So we can see that right from the
22 beginning, BSGR are vying for Blocks 1 and 2 of
23 Simandou.

24 I would like to show simply on this annex where you
25 find this reference to Blocks 1 and 2. It's behind

14:31

1 tab 7 in your bundle. It's not the last page; it's the
2 antepenultimate page where you have these coordinates.
3 You can see already in February 2006 the coordinates
4 include first of all Block 1 and Block 2 in Simandou.

5 So at the beginning of February 2006, the MoU was
6 still being negotiated, was not signed yet. However,
7 BSGR did understand that all of the people that had
8 enabled it to have access to the President -- that is to
9 say Mr Ismail Daou, Mr Aboubacar Bah, Mr Ibrahima Sory
10 Touré and Madame Touré -- who enabled it to have some
11 way of exerting pressure upon the Minister of Mines,
12 were a fantastic asset. And therefore BSGR decided to
13 make sure that that relationship would be sustainable;
14 however, taking a number of precautions.

15 First of all, BSGR decided to set up a shell company
16 to make an act vis-à-vis these people. This is Pentler,
17 a very empty shell company registered in the UK that,
18 through Onyx and Ms Merloni-Horemans, sells to
19 Messrs Cilins, Lev Ran and Noy. That transfer takes
20 place in February 2006. And immediately after that
21 transfer, BSGR commits itself to Pentler.

[PROTECTED]



14:33

[PROTECTED]

[REDACTED]

11 This table is known as the "milestone agreement" by
12 BSGR. It's a series of milestones for the development
13 of the mining zones of North and South Simandou, and for
14 the development of Blocks 1 and 2, and at every single
15 milestone, there is the payment of a bonus. And at the
16 end, the payment will be \$15 million for Simandou North
17 and South, and \$4.5 million for Blocks 1 and 2. And on
18 the basis and on the strength of that agreement with
19 Pentler, BSGR then will sign contracts with each of the
20 local intermediates.

[PROTECTED]

14:35

[PROTECTED]

[REDACTED]

14:37

[PROTECTED]

[REDACTED]

20 What would Pentler do with this capital? Well,
21 Pentler concludes two other agreements, again on the
22 same day in February 2006, one with Mr Daou, the other
23 one with Ms Touré, in order to give them each
24 a participation in the Simandou project, in exchange for
25 their assistance in getting the mining rights.

14:39

1 Let me show you those documents, and start with the
2 MOU with Mr Daou: R-185, tab 11. Let me read the
3 paragraph in the middle of the page:

4 "BSGR Guinea approached the Guinean authorities with
5 a view to establishing a partnership for the development
6 and exploitation of part of the iron ore deposits of
7 Simandou. Within the framework of that project,
8 BSGR Guinea submitted to the Guinean authorities
9 a proposal for the Republic of Guinea to hold a stake of
10 15%, and for Mr Ismaila Daou, as a local partner, to
11 hold a 2% stake."

12 Obviously the 2% stake of Mr Daou does not appear in
13 an MOU with the state; the state is not aware of this
14 arrangement. And then the last paragraph:

15 "In order to integrate the stake of Mr Ismaila Daou,
16 BSGR Guinea will transfer 17.65% of its capital to
17 Pentler, of which 13.32% of that capital will be
18 attributed to Mr Ismaila Daou."

19 Then Pentler signs exactly the same agreement with
20 the wife of the President, Mamadie Touré: R-24, tab 12.
21 It's the same text, except for the fact that the stake
22 given by Pentler to the wife of the President in the
23 project is 5% and not 2%, that is to say one third of
24 the full participation or the full stake going to the
25 state.

14:41

1 So how is Madame Touré brought into this project?
2 BSGR Guinea transfers therefore part of its capital to
3 Pentler, as we already saw. 33% of that capital will be
4 transferred to Mrs Touré.

5 Before knowing what was the impact of signing these
6 contracts, there's one point that I shall have you
7 consider: the authenticity of these agreements. I have
8 shown you four agreements entered into by BSGR: with
9 Mr Sory Touré, Mr Bah, [Mr Daou] and Madame Touré, with
10 the four individuals. The BSGR companies are actually
11 challenging the authenticity of these agreements, as you
12 may have noticed. In the joint chronology of facts,
13 BSGR is manifestly bothered by the existence of these
14 contracts, because it has said:

15 (In English) "Claimants have highlighted in blue the
16 agreements that they cannot confirm to be a fact, since
17 BSGR were not a party to those agreements or payments."

18 (Interpreted) BSGR is obviously bothered by these
19 contracts. And yet in the Reply the BSGR companies
20 assert without any ambiguity at all that these
21 agreements are perfectly authentic.

22 We don't have Mr Noy's witness statement in this
23 arbitration. However, BSGR gives you a flavour of it in
24 Annex 1, paragraph 32 of the Reply: they said BSGR had
25 an opportunity to question Mr Noy about the contracts

1 between Pentler and Mamadie Touré, and Mr Noy has
2 confirmed that they are genuine. So these contracts are
3 therefore genuine.

4 It's not at all astonishing that BSGR should be
5 bothered by the existence of these contracts. Look at
6 the timing of it all. On the day of the conclusion of
7 these agreements, 20th February 2006, BSGR got the
8 signature of the MOU with Guinea, and the final version
9 includes a right of first refusal to BSGR on Blocks 1
10 and 2, which are still supposedly under Rio Tinto. As
11 shown by Minister Souaré in his witness statement
12 paragraph 25, Annex RWS-2, [who] you will be seeing next
13 week:

14 "The signature of this protocol ... was a compromise
15 that gave me peace. I felt that it protected my
16 minister from the pressure exerted by the family of the
17 President, particularly [Mr] Touré and [Mrs] Mamadie
18 Touré."

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 The mechanism implemented by BSGR was therefore
24 working extremely well. Through Mr Cilins, BSGR got
25 close to the presidential entourage. The presidency

14:45

1 gave out instructions, exerted pressure, so that the
2 mining rights would be granted to BSGR; thanks to the
3 protection of which BSGR, through Pentler, a shell
4 company, is remunerating the presidential entourage.

5 So that's what I wanted to say for the obtention of
6 the first mining permits of BSGR.

7 Later, 2006/2007, they went again through the same
8 corruption process in order to get bauxite and uranium.
9 They are not within this arbitration because they gave
10 that up later, so I shall not dwell on these other
11 corruption agreements. I remit you only to paragraphs
12 [218 to] 247 of the Guinea Counter-Memorial, where we
13 give you a description thereof.

14 So back to Blocks 1 and 2, that they still haven't
15 got, but BSGR will stop at nothing to get them.
16 Starting in March 2007, a new mining minister, Mr Kanté,
17 who will be with us next week, is appointed. In
18 July 2007 they submit to him a request for Blocks 1
19 and 2, when those blocks and those permits are still
20 under Rio Tinto.

21 Minister Kanté will be inflexible with BSGR for two
22 reasons, that he explains: (1) blocks 1 and 2 are still
23 under Rio Tinto's concession; and (2) BSGR did get
24 prospection permits fraudulently, but it does have them,
25 and yet they haven't come up with the slightest result

14:47 1 on any activity carried out under those permits. And
2 faced with this refusal, BSGR went back to the same
3 method.

[PROTECTED]

[REDACTED]

14:48

[PROTECTED]

[REDACTED]

15 The identity of "the Lady" is very clear because
16 Mr Struik and Mr Avidan corroborate this in the witness
17 statements. Mr Struik is at CWS-12, paragraph 11; and
18 Mr Avidan, CWS-3, paragraph 93. They clearly say in the
19 witness statements that "the Lady", that was their name
20 for Mamadie Touré.

[PROTECTED]

14:50

[PROTECTED]

[REDACTED]

[REDACTED] The Prime Minister and the

11 President convene Minister Kanté, Minister for Mines, at
12 least twice in order to try to find a solution for BSGR,
13 and Madame Touré is actually present at at least one of
14 those meetings. Mr Kanté mentions this in his witness
15 statement and you shall be able to hear him next week.

16 At this juncture BSGR was feeling that it was
17 getting close to the end, and that the rights would
18 probably be given to them over Blocks 1 and 2, and they
19 understand that they have phenomenal value. So,
20 therefore, what does BSGR do? First of all, it starts
21 negotiating buying back the Pentler stake, and buying
22 back that stake is negotiated by Mr Steinmetz himself.

23 The buyback of that stake is what you will find in
24 tab 16 (C-84): it's a share purchase agreement entered
25 into by one of the BSGR group companies with Pentler.

14:52

1 I will ask you at this point simply to keep two things
2 in mind. The first thing is the overall amount for the
3 transaction, that is under point 2: you see several
4 payments that are going to be made for a total of
5 \$22 million. And the second point to keep in mind is
6 the first clause that defines the nature of the
7 transaction. It says:

8 "The Seller [i.e. Pentler] agrees to sell its entire
9 17.65% holding in BSGR Guinea Limited ... to the
10 purchaser on a free and clear basis with no third party
11 rights."

12 But please remember that there are third-party
13 rights, because Pentler did give Mr Daou and Mamadie
14 Touré a stake.

15 What does the agreement provide, this last sentence
16 here?

17 "When the transaction is executed, the purchaser
18 [BSGR] takes the full responsibility of local
19 consultants [and] advisers ..."

20 What does that sentence mean? That means that BSGR
21 is perfectly aware of the existence of local advisors
22 and consultants working for BSGR, and therefore they
23 accept to take them on board and to take full
24 responsibility for them. Why? Because it knows quite
25 role what their role is, because otherwise why would

14:54

1 they take on these intermediaries, the local
2 consultants, without knowing who they are or what role
3 they were playing to begin with?

4 So indeed, before signing that document, BSGR
5 negotiated two direct agreements with Mamadie Touré. So
6 there are two agreements: 27th February and
7 28th February 2008. The first agreement is R-28,
8 tab 17:

9 "The BSGR company commits itself to giving
10 four million dollars by way of commission for the
11 obtention of blocks 1 and 2 of Simandou situated in the
12 Republic of Guinea ..."

13 And for its part, the Matinda company -- pointing
14 out that Matinda is Mamadie Touré's company:

15 "... for its part to do everything necessary in
16 order to obtain from the authorities the signature in
17 order to obtain the blocks in favour of BSG Resources
18 Guinea."

19 So the role of Madame Touré is nothing but exerting
20 her influence on the authorities for them to issue the
21 blocks to BSGR.

22 So they sign with Mrs Touré, and you will see that
23 on the next document, which is a much shorter one, from
24 28th February 2008 (R-29). There's only one operative
25 sentence:

14:55

1 "BSGR commits itself to giving 5% of its action
2 shares in blocks 1 and 2 in Simandou situated in the
3 Republic of Guinea [to the Matinda company,
4 Matinda & Co Limited] ..."

5 BSGR is now claiming that these two agreements are
6 fake. However, take into account that this is 5% for
7 Blocks 1 and 2: exactly the same thing that they had
8 already thought of vis-à-vis Madame Touré. And you saw
9 that the share purchase agreement with Pentler did say
10 that BSGR was going to become responsible for the
11 locals. In other words, you find exactly the same
12 amount which is being kept now for the benefit of
13 Madame Touré.

14 After the signature of these agreements, things pick
15 up, because BSGR then gets into several strategic
16 conversations to obtain the permits for Blocks 1 and 2.

[PROTECTED]

and on

20 25th July 2008 the President signs a presidential decree
21 withdrawing the Rio Tinto concession on Blocks 1 to 4 of
22 Simandou (C-92).

23 The legal reason for this withdrawal is that
24 Rio Tinto did not proceed in keeping with the provisions
25 of the Mining Code to the retrocession of part of its

14:57

1 zone on its rights; we saw that this morning. However,
2 thereafter there was a negotiation between Rio Tinto and
3 the state in order to make sure what was going to be the
4 part of the zone of Rio Tinto that finally Rio Tinto
5 will be able to keep over Blocks 1 to 4; in other words,
6 what would be the part to be retroceded to the state and
7 what would be kept by Rio Tinto.

8 But BSGR would not allow these negotiations to
9 prosper. Ten days after the withdrawal of the Rio Tinto
10 concession, BSGR is writing to the minister asking once
11 again for the granting of permits for Blocks 1 and 2.
12 This is C-[98], I believe, 5th August 2008. Minister
13 Kanté will not give a reply, and he will actually be
14 removed a few weeks after that.

15 His successor, Minister Nabé, who will also be
16 present here before you next week, is going to accept.
17 As he says, he is going to accept because of the
18 tremendous pressure of President Conté and Madame Touré.

19 On 4th December 2008, when the negotiation was still
20 under way between Rio Tinto and the state, a decision
21 was finally adopted in the Council of Ministers to
22 withdraw Blocks 1 and 2 from Rio Tinto -- Blocks 1 and
23 2, that is to say those that BSGR wanted from the very
24 beginning -- and on the same day they granted those
25 blocks to BSGR.

14:58

1 On 9th December 2008 Minister Nabé -- who did not
2 resist for a long time, unlike Minister Kanté -- finally
3 signed the decree granting BSGR the prospection permits
4 on Blocks 1 and 2 (C-10).

5 The BSGR companies acted at the right time, because
6 only a few days after getting these permits, the
7 President died. Madame Touré took refuge in Sierra
8 Leone. We heard this morning a great deal from BSGR
9 that Madame Touré immediately left after the death of
10 the President to Sierra Leone, without saying that that
11 particular exile, which takes place precisely after the
12 death of President Conté, actually does reveal that she
13 was playing such an important role; so important,
14 indeed, that she feels forced to flee Guinea right after
15 the death of her husband, because President Moussa Dadis
16 Camara takes over and obviously the former presidential
17 entourage is running a risk, and particularly
18 Madame Touré herself.

19 Madame Touré in Sierra Leone then is no longer
20 useful for BSGR, because the President died, so she is
21 no longer of any use, and BSGR decided to buy back her
22 stake of 5% in the project to get rid of her. That
23 buyback took place against an amount of \$4 million and
24 is recorded in a statement signed by Madame Touré on
25 2nd August 2009, R-269, tab 19 of your binders. Let me

15:00

1 read that statement:

2 "I the undersigned Madame MAMADIE TOURE,
3 businesswoman residing in the commune of Dubreka,
4 Director General of the MATINDA AND CO LIMITED company,
5 living in Freetown REPUBLIC OF SIERRA LEONE, recognises
6 having finalised with the BSGR company the payment of
7 an amount of four million [dollars] ... representing the
8 total value of all of my shares (5% ...) as well as my
9 services for the obtention of the mining rights in
10 favour of BSGR in Guinea."

11 BSGR preceded to the payment of the \$4 million in
12 question through Mr Ghassan Boutros, who is a Lebanese
13 businessman who had activities in Guinea. The details
14 of this payment of \$4 million are in paragraph 392 of
15 the Reply of the Republic of Guinea, and we shall have
16 ample opportunity in the course of this week, in the
17 course of cross-examination, to go back over these
18 payments amounting to \$4 million.

19 Madame Touré, for her assistance, for her influence
20 in favour of BSGR, therefore obtained \$4 million against
21 her stake in that project. But in April 2010, BSGR with
22 Vale entered into an agreement through which the latter
23 bought 51% of the Simandou project, as against
24 \$2.5 billion. Faced with the tremendous profit made by
25 BSGR, Mamadie Touré realised that she was taken for

15:02

1 a fool. She sold 5% for \$4 million, and Vale is buying
2 51% for \$2.5 billion, which means therefore that her 5%
3 would have cost at least \$250 million.

4 So Madame Touré, through a bailiff, denounces the
5 2009 act and is asking BSGR to give her back her 5%
6 stake. This is C-114.

7 BSGR formally denounces this manoeuvre that they
8 call "blackmail". But in reality it is no blackmail,
9 because Madame Touré will accept withdrawing that
10 bailiff denunciation only after having signed a new
11 agreement with BSGR to get her stake bought back. When
12 faced with a blackmail, you go see the authorities; and
13 when there is a real agreement, you renegotiate. And
14 this is what BSGR did, once again through Pentler.

[PROTECTED]

[REDACTED]

15:04

[PROTECTED]

[REDACTED]

16 So which are these other entities with which Pentler
17 and Matinda may have been in business relations in
18 Guinea over that period, 2005 to 2010? There again, the
19 fact that these agreements are genuine is not being
20 impugned. It is precisely BSGR which will then pay out
21 the \$5.5 million to Mamadie Touré, through Pentler and
22 through a lawyer in the United States of America.

23 We have traced all of these payments; we shall be
24 seeing them in due time. But later today we will be
25 showing you how this financial flow was organised. It

15:06

1 is possible to see that at least \$3.6 million from BSGR
2 to Pentler has been traced, and then from Pentler on to
3 Madame Touré. All of the details are in the appropriate
4 paragraphs of the Reply submitted by Guinea.

5 As a conclusion, it is demonstrated that, directly
6 or through the empty shell, Pentler, BSGR entered into
7 agreements with the spouse of the President of the
8 Republic; that in exchange for these agreements,
9 Mrs Touré and the President, two of the three most
10 important people in the country, exerted their influence
11 so that the rights that were looked at by BSGR be
12 granted to them; and, after the granting of these
13 rights, Mrs Touré had the benefit of several million
14 dollars in payment.

15 This is a blatant case of corruption which goes
16 against the validity of the rights that were granted and
17 means that the claims in front of your Tribunal are not
18 admissible. Thank you.

19 MR OSTROVE: Madam President, I think we are about halfway
20 through: maybe this would be the right time for a break.

21 THE PRESIDENT: Yes, I think it is a good time for
22 a 15-minute break, and we will resume afterwards.

23 (3.08 pm)

24 (A short break)

25 (3.28 pm)

15:28

1 THE PRESIDENT: (In English) It looks like we're ready to
2 start again. (Interpreted) So I'm going to give the
3 floor back to counsel for Guinea.

4 MS BOUNFOUR: (Interpreted) Thank you, Madam President,
5 gentlemen arbitrators.

6 We could have stopped with the presentation that was
7 made by Maître Naud, since the permits were obtained
8 fraudulently through corruption and therefore an act
9 which is obtained in this way cannot create any rights
10 to the benefit of the holder. (Pause)

11 Concerning Blocks 1 and 2 at Simandou, the situation
12 is crystal-clear: there's only one mining title that was
13 granted, and that is the one dated 9th December 2008,
14 and of course BSGR cannot draw any rights from this.

15 Concerning Zogota, you could hear this morning the
16 BSGR companies are telling us: well, at the end of the
17 day, the 2006 permits are not the subject of this
18 arbitration; this has no impact on this case, since we
19 are talking about the Base Convention of Zogota and the
20 Zogota concession. Well, this is erroneous, and we will
21 come back to this in a moment.

22 But more than this, this reasoning in fact ignores
23 the Mining Code of 1995 which applies, because in
24 reality exploitation permit, mining concession and
25 mining convention cannot be disassociated. The

15:30

1 convention itself under the code is Article 11, to do
2 with the research permit. It is its accessory. If the
3 mining concession falls, the convention falls also, by
4 definition. And if you look at the concession itself,
5 Article 43 tells us that it is granted to the holder of
6 a research permit which is valid. So the research
7 permit has to be granted by definition, which is the
8 case here; and if it falls, obviously the concession
9 which is granted under that permit falls also.

10 Whatever the case, let's recall that, contrary to
11 what was claimed by the BSGR companies, a convention and
12 a concession for Zogota are also the direct fruit of
13 fraudulent acts that result from corruption, and it's on
14 these fraudulent acts that we should come back in more
15 detail.

16 Contrary to what you heard this morning, Guinea
17 never alleged that it was Mrs Mamadie Touré and
18 President Conté that would have influenced the process
19 for the granting of these conventions and concessions.
20 Quite the contrary, Guinea was quite clear in its
21 writings, especially at the time.

22 If we go back a little bit to the end of
23 December 2008, the President died, Mrs [Touré] left the
24 country, and as soon as the demise was announced in
25 December 2008, Captain Camara became the head of state.

15:32

1 And this is where BSGR understands rapidly that they
2 have to find some sort of support within the Guinean
3 administration.

4 How did they go about this? They had already
5 established links with a politician who is very close to
6 Mahmoud Thiam, who had been asked to become the Minister
7 of Mines at the time. Through this connection, BSGR was
8 introduced directly to Minister Thiam, even before he
9 was appointed, and obtained direct and privileged access
10 to the Minister of Mines, as he was going to become
11 a few months later, on 15th January 2009.

12 One of the first acts of this minister consisted in
13 renewing in 2009 the research permits on North and South
14 Simandou -- and this mentioned was by Maître Naud --
15 while BSGR had practically done no research on these
16 during the initial period covered by the permit.

17 So it is particularly difficult to imagine that
18 hardly a few months later, in November 2009, BSGR would
19 be in a position to apply for a feasibility study as
20 required by the Mining Code. Let me remind you that the
21 feasibility [study] is a prerequisite for the obtention
22 of a concession and a convention alike.

23 But what is really important is not so much the
24 content of the feasibility study but the process which
25 was applied since the beginning of the application for

15:33

1 the same up until the signature of the [Base] Convention
2 at Zogota. Here the exhibits and witness statements in
3 fact show that there is a blatant forgery.

4 The feasibility study, which comprises 19 volumes,
5 thousands of pages, was applied for on 16th November
6 2009. The [Base] Convention at Zogota was signed on
7 16th December 2009. The BSGR companies claim that
8 Guinea was able first to look at the feasibility study
9 in detail, ask its questions from BSGR, obtain
10 additional information and bring about modifications and
11 so forth, and straight after that, negotiate a mining
12 convention; all of this, as you heard this morning, in
13 less than one month. This is just not credible when you
14 know the complexity of mining projects, both in
15 technical aspects and financial aspects. You will have
16 the confirmation this week that this version of facts is
17 totally erroneous.

18 On this point there is a document I would like to
19 draw your attention upon, at tab 23 of your folders. It
20 is C-15. It is an inter-ministerial decision signed by
21 Minister Thiam which creates an inter-ministerial
22 committee entrusted with the examination of the
23 feasibility study or analysing the feasibility study and
24 negotiating the mining convention for Zogota.

25 If you turn to the last page of this ministerial

15:35

1 decision, you see that it was signed on 1st December
2 2009: 1st December 2009, only two weeks before the
3 signature of the convention for Zogota, and not one
4 month before, as suggested by BSGR. We note that some
5 of the members of this committee didn't even know about
6 its existence, nor their appointment, on the very day,
7 but only several days later. This is the case of
8 Bouna Sylla, who will be heard next week.

9 The process was therefore rushed, much more than
10 BSGR claims or leads us to believe, and they are
11 perfectly aware of the flaws of this depiction of facts.

12 This is why some of the witnesses for BSGR insist on
13 the fact that they would have worked night and day with
14 this inter-ministerial committee, weekends included,
15 et cetera, to be able to sign the [Base] Convention, and
16 we will probably talk about this with Mr Struik in
17 evidence.

18 But again, this is quite impossible, because what
19 BSGR failed to recall, although it is important, is that
20 on 3rd December 2009 the head of state -- that is
21 Camara -- was the victim of an assassination attempt and
22 had to be, in fact, rushed abroad. So it's two days
23 after the creation of the inter-ministerial committee.

24 The Republic of Guinea therefore had no head of
25 state, was in a political vacuum and a [security]

15:37

1 situation which was extremely fragile, with
2 an administration that had slimmed down completely, and
3 Mr Bouna Sylla will be heard on this point. Therefore
4 it would have been very difficult for a government to
5 commit over 25 years on a mining convention for
6 something such as Zogota.

7 In this context, rather than waiting for the
8 stabilisation of the political context, as anybody would
9 have done, the process is speeded up. And why so?
10 Well, if Dadis Camara, the head of state, doesn't return
11 to Guinea, it will be a change of regime and government
12 that will take place, necessarily. Mahmoud Thiam, the
13 Minister of Mines, could be replaced and BSGR would lose
14 its greatest ally within the Guinean administration.

15 To pick up on what Mr Thiam said at the time, during
16 his trial in the United States, and that describes the
17 situation quite correctly -- this is R-[578]:

18 (In English) "... things were getting tense. They
19 led to the President being shot in the head by his own
20 head of security, and everything went downward from
21 there, so no one was focused on anything else but the
22 survival of the country and their own survival at that
23 time."

24 (Interpreted) What we shall be seeing during the
25 next two weeks, and what exhibits and witness statements

15:39

1 tell us, is far remote from what BSGR is claiming. In
2 fact we are talking about eleven days of effective
3 existence of the inter-ministerial committee, from
4 2nd to 12th December 2009, disturbed by the major
5 political events that I mentioned; only two meetings
6 between the committee and BSGR; and a very swift
7 signature of the convention in order to take stock of
8 the situation in case there is a new government.

9 The only explanation to this speeded-up process is
10 the personal intervention of Minister Thiam and the
11 corruption efforts of BSGR. Because you need to
12 remember that it is Minister Thiam who signed the
13 decision that created the inter-ministerial committee,
14 that appointed its members, and that testifies under
15 paragraph 30 of his witness statement, CWS-5, that he
16 wanted this process with BSGR to be completed within
17 eight weeks maximum, which would mean that there is no
18 in-depth work possible on the feasibility study, nor on
19 the negotiation of the convention.

20 It's also Mr Thiam who asked the committee to speed
21 up the work even further in December 2009. This is what
22 you will find under tab 26 of your files, R-267. It's
23 an article in the press, the Guinean press, which
24 comments this first meeting of the inter-ministerial
25 committee with BSGR. Let me come to the third

15:41

1 paragraph:

2 "The members of the Commission were invited,
3 according to our contact, by the Minister Thiam, to
4 speed up the negotiations for this convention ..."

5 And a little further down:

6 "Mr Thiam also, according to several witnesses,
7 asked those who were not convinced by the reliability of
8 the project to declare that this was the case so that
9 they would be removed from the BSGR file."

10 This probably explains the summary character of the
11 report that will be rendered by the committee less than
12 two weeks later, twelve days later, on 14th December
13 2009, which is R-268: a six-page report only.

14 Finally, it is Minister Thiam who signed the Base
15 Convention on 6th December 2009, two days only after the
16 report was published. We will come back to this more in
17 detail with the BSGR witnesses this week.

18 The question one might ask is: what motivated this
19 obvious acceleration? Well, the answer is
20 straightforward: it's money, money belonging to BSGR
21 companies. The Republic of Guinea showed in this case
22 a certain number of payments to public agents that help
23 the process that led to the signing of the Base
24 Convention.

25 First, payment to the inter-ministerial committee.

15:43

1 Mr Struik, who was employed by BSGR and who is
2 a witness, says in his first witness statement, CWS-2,
3 that he paid \$20,000 in total to the members of this
4 committee. You will find this under tab 28 of your
5 folders, and I would like to draw your attention more
6 particularly to paragraph 82 that I'm going to quote for
7 you:

8 (In English) "We also paid each of the 20 members
9 a daily allowance. I think we paid \$20,000 in total
10 over the entire period of the negotiation ..."

11 (Interpreted) A little further:

12 (In English) "It was standard practice in the mining
13 industry in Africa to pay these allowances, which were
14 determined by the head of the committee at the beginning
15 of the meeting."

16 (Interpreted) What we're talking about here is
17 \$1,000 paid to each of the members of the
18 inter-ministerial committee in charge of looking at the
19 feasibility study and negotiating the mining convention.
20 In fact it's probably more than \$1,000, since Mr Bouna
21 Sylla, like other members, did not take part in the
22 meeting. But it is, more than this, three times more
23 than the annual earnings of a Guinean subject, which is
24 US\$300 at the time. And for a high-ranking civil
25 servant, \$1,000 for eleven days of work, two meetings

15:44

1 with an investor, is already disproportionate.

2 Obviously these are not the millions that were
3 perceived by Mrs Touré that could be mentioned during
4 the first part of these pleadings, but it's already part
5 of the corruption process.

6 Obviously there are no regulatory texts that would
7 demand that a mining company should pay any amount to
8 civil servants directly. And why so? Because it is
9 obvious that one cannot imagine that the civil servants
10 in charge of assessing a mining project be remunerated
11 directly by the mining company itself. This is truly
12 corruption: it's a payment in cash offered to a public
13 agent so that he or she accomplish an act under its own
14 responsibility.

15 What is striking is that BSGR does not challenge
16 this, but admits quite willingly to have paid \$20,000 to
17 the entity that was in charge of negotiating its
18 convention. BSGR presents as its defence -- and here
19 you had this when I was quoting Mr Struik -- this is
20 standard practice, they say, and it's the president of
21 the committee that requested it, we are told.

22 Well, saying that corruption is a generalised
23 practice was not and will never be an acceptable
24 defence, faced with corruption. And secondly, certainly
25 not the fact that a payment should be requested by

15:46 1 a public agent, that would legitimise the said payment.

2 It remains condemnable.

3 Further to the payments that we've just seen,
4 payments to the committee, I think we heard our
5 adversary this morning state that Guinea had no evidence
6 of any payment that would have been paid by BSGR
7 companies to Mr Thiam. Well, as we said ourselves, this
8 is totally erroneous. BSGR did indeed pay for several
9 airline tickets, totally unjustified advantages
10 furnished by BSGR.

[PROTECTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24 Mr Thiam, as recalled earlier, presented a witness
25 statement in our case, but unfortunately cannot attend

15:48

1 and cannot be cross-examined because he is presently in
2 prison in the United States. So it's up to this
3 Tribunal to decide what weight is to be granted to this
4 witness statement. But as noted in our introduction,
5 you still need to take stock of the fact that BSGR has
6 moved away from Mr Thiam, since they do not mention his
7 statement in their opening statements.

8 Mr Thiam's recent sentencing in the United States of
9 course puts his credibility at stake in our case. BSGR
10 might insist that there is no link with the present
11 case. This is totally wrong. Mr Thiam was not
12 condemned for speeding; he was condemned for laundering
13 of funds that were illicitly obtained. We are talking
14 about US\$8.5 million, obtained when he was minister.
15 Contrary to what Mr Struik says in his first witness
16 statement, paragraph 71, Mr Thiam was not
17 a straightforward guy at all, who would not be receptive
18 to any such attempts.

19 It's all the more difficult to give credit to
20 Mr Thiam's witness statement [as] he himself admitted
21 lying on several occasions when he was sued in the
22 criminal court in the US. You will see several of these
23 lies under R-578. I'm not going to go into detail at
24 this stage, but it's tab 25 if you'd like to take a look
25 at it. The fact that he should have been a minister to

15:50

1 avoid rules of compliance meant that he could use these
2 funds. Furthermore, he set up a highly complex
3 financial engineering system to dissimulate money flows.

4 As a conclusion, we've seen since the beginning of
5 the afternoon that the BSGR companies have set up a very
6 complex corruption pattern, which evolved over the five
7 years that it applied. And now we will go back to the
8 arguments BSGR uses for its defence against corruption
9 and blatant inconsistencies.

10 MR JAEGER: (Interpreted) I will now deal with another
11 aspect of this case, the third part in our pleadings.
12 This is the inconsistency of BSGR's defence on
13 corruption.

14 You may have seen this morning that there is
15 a tremendous lack in its defence on corruption,
16 particularly vis-à-vis the accumulation of evidence you
17 just heard in our various memorials. BSGR's defence is
18 a plea denying that it had entered into contracts with
19 go-betweens, in particular with Mrs Touré, and having
20 made payments to these go-betweens. But it only denies
21 the facts for the contracts that it is party to; in
22 other words, the contracts that it has signed. It says
23 that those contracts are false contracts. On the other
24 hand, it does not deny the existence or validity of
25 contracts entered into by Pentler with the local

15:52

1 consultants, and in particular with Mamadie Touré.

2 This morning you heard Théobald Naud explain that in
3 its Reply BSGR was saying that Mr Noy, one of Pentler's
4 leaders, recognised that these contracts were valid. So
5 there is still this missing piece in BSGR's defence.
6 All the contracts were entered into with local
7 consultants by Pentler. So BSGR's defence system
8 consists in saying that Pentler is an independent local
9 partner and that its actions do not make BSGR liable in
10 any way, and in fact are of no concern to BSGR.

11 You will note that in his first witness statement in
12 paragraphs 111 and 112, and in the second witness
13 statement, paragraph 109, Mr Struik says:

14 (In English) "BSGR had nothing to do with the
15 contracts Pentler apparently concluded with any third
16 parties.

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

20 (Interpreted) We already observed in our Rejoinder
21 that this defence system simply does not obtain in these
22 arbitration proceedings. Even were we to suppose that
23 Pentler is an independent local partner, if Pentler has
24 committed acts of corruption, it matters not for Guinea
25 who is the entity that has committed acts of corruption.

15:54

1 In other words, Guinea has withdrawn the mining
2 [titles] because they were invalid, because they were
3 fraudulent; it matters not who corrupted, it matters not
4 whether it was BSGR or Pentler. That is irrelevant to
5 this arbitration because in both cases the mining titles
6 are null. So the defence whereby Pentler is blamed,
7 saying, "We don't know what Pentler did,
8 but as far as we are concerned, BSGR, we have not
9 committed any acts of corruption", this means that
10 BSGR's defence is wide open.

11 So this is probably to defend individuals that are
12 involved now in criminal proceedings, but this is
13 certainly not applicable to this arbitration. BSGR's
14 thesis is wrong, and basically it rests on
15 a misrepresentation of facts. Pentler is not
16 an independent local partner; Pentler was specifically
17 tasked with executing the acts of corruption for BSGR.
18 BSGR had, so to speak, outsourced corruption to Pentler.
19 And this is what I shall demonstrate and prove.

20 Let me give you some background about Pentler. We
21 have looked at things seen from the angle of BSGR, and
22 opposing counsel did not mention Pentler once. But it
23 is very interesting --

24 PROFESSOR VAN DEN BERG: Once.

25 MR JAEGER: I beg your pardon, yes, once. Alright, I freely

15:56

1 admit it: once. It's the exception that confirms the
2 rule.

3 So as I was saying, I would like to go over some
4 background about Pentler. There are three phases; each
5 phase is about two years.

6 The first period is between when Pentler is
7 activated, on 13th February 2006, and when it was set
8 aside/pushed out in 2008. During that period, Pentler
9 is charged with recruiting and paying local consultants.

10 The second phase is from 20th March 2008 to 8th June
11 2010. During this phase Pentler is not involved at all
12 in the project. BSGR then takes over the handling of
13 local consultants.

14 A third phase starts on June 8th 2010, when
15 Mrs Touré, who believes that she has been cheated by
16 BSGR, threatens to go on the offensive. This is where
17 Pentler steps back in to try and settle the dispute with
18 Mrs Touré and to get rid of any evidence. And this
19 third period ends with the arrest of Mr Cilins by the
20 FBI on March 25th 2013.

21 So let me talk about the first phase now,
22 February 2006 to March 2008.

23 Pentler is a vehicle for the payment of local
24 consultants. So the first thing to be said is that
25 Pentler was not involved in getting the prospecting

15:57

1 permits for the north and south parts of Simandou. And
2 it's erroneous to state, as BSGR does, that Pentler is
3 the one that introduced BSGR to Guinea. This is what
4 Mr Steinmetz has said in his witness statement
5 number [2] in paragraph 17. He says:

6 (In English) "The situation as I understood it was
7 that Pentler had never been a consultant for BSGR in
8 Guinea -- it introduced the company to the country in
9 2005 and 2006 and then conducted no further work."

10 (Interpreted) This is actually not true. Pentler
11 did not introduce BSGR into Guinea; it is Mr Cilins who
12 did this, Mr Cilins who was responsible for recruiting
13 local consultants. In particular, he recruited
14 Mrs Mamadie Touré, Mr Bah, Mr Daou and Mr Ibrahima
15 Sory Touré. He is the one who coordinates their
16 interventions with the President. And it's thanks to
17 Mr Cilins's services and these various characters that
18 BSGR obtained their prospecting permits for the Simandou
19 North and South zones in February 2006.

20 How do we know that it's not Pentler? Because we
21 know that at the time it's dormant, it's just a shelf
22 company. It's on the shelves. Ms Merloni-Horemans, you
23 will see in her witness statement there is no
24 contradiction of this fact. She activated this company
25 only on February 13th 2006, when it was sold to

15:59

1 Messrs Cilins, Noy and Lev Ran for the sum of \$1,500.

2 So it is not Pentler that introduced BSGR to Guinea.
3 Pentler is activated on February 13th 2006, after their
4 prospecting permits were obtained for Simandou North and
5 Simandou South. Why? To reward and to remunerate the
6 local consultants who made it possible to accomplish
7 this.

8 When we look at Pentler's actions, there is no doubt
9 that that was its sole purpose. Théobald Naud said this
10 earlier. Red flag, please. [PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mr Steinmetz in his

18 witness statement, paragraph [17], [said]:

19 (In English) "... Pentler had never been
20 a consultant for BSGR in Guinea ..."

21 (Interpreted) And BSGR says in its Reply:

22 (In English) "... Pentler was not expected to, and
23 did not, assist BSGR in achieving the various
24 milestones."

25 (Interpreted) So why should Pentler get

16:01

1 \$19.5 million, according to the milestones to be found
2 in this agreement? As Mr Naud said earlier, we see the
3 same milestones in the contracts with two local
4 consultants. So the milestones are there not to set
5 a goal for Pentler in terms of what permits to get, but
6 to set for Pentler the date and the condition to
7 remunerate the local go-betweens.

8 I think we can go back to the green flag.

9 We know that the total sum paid by BSGR to Pentler
10 was then paid out to the local go-betweens. This is
11 very important because it completely destroys the thesis
12 of Pentler as a local partner. Pentler is completely
13 transparent, it's just a pass-through; it passes on the
14 payments to the local partner or the intermediaries.
15 A local partner, if they use consultants, they actually
16 pay them. Pentler is just passing the money on. It is
17 completely financed by BSGR, it has no self-financing;
18 it is just a conduit to the locals. So Pentler is
19 really a screen between BSGR on the one hand, and
20 Mamadie Touré and the various other consultants on the
21 other hand.

22 This is where we see also the role played by Pentler
23 to pass on the interests in the project to the various
24 consultants. We see that Pentler gets free of charge
25 from BSGR an interest of 17.65% in the project. But

16:03

1 also know that Pentler, as Mr Naud showed, committed to
2 pay 5% to Mrs Touré and 2% to Mr Daou.

3 What is interesting here is the modus operandi.
4 BSGR don't want Mr Daou or Mrs Touré to have a direct
5 interest of 2% and 5% in BSGR Guinea; because BSGR is
6 a primary shareholder, they don't want to have these
7 other shareholders. So what do they decide to do? They
8 give 17% to Pentler, and the local consultants don't
9 have an interest in the capital of BSGR Guinea, but of
10 Pentler. So once again you have a screen between the
11 local consultants, Mrs Mamadie Touré and Mr Daou, and
12 BSGR.

13 All of this means that in the end the major
14 shareholder of Pentler is Mrs Mamadie Touré, who gets
15 one third of the shares in Pentler, and Mr Daou, who
16 gets 13.32% of the shares of Pentler. That is the
17 purpose of Pentler.

18 Things change starting in March 2008. This brings
19 us to the second phase, when Pentler is simply set aside
20 from the project.

21 In early 2008 BSGR decides to buy back Pentler's
22 interest of 17.65% in BSGR Guinea, and on March 28th
23 2008, as you heard, the sales contract is [signed] for
24 \$22 million, with a possible supplement of \$8 million.
25 This is Exhibit C-84.

16:05

1 What's interesting is that the agreement was
2 negotiated by Mr Steinmetz in person. This is said in
3 his witness statement. One might wonder why
4 a transaction of \$30 million requires the personal
5 involvement and negotiation of the head of the group.

6 What we know actually is the stakes are huge. It's
7 crucial for BSGR to get that 17% interest back because
8 at that point the mining titles to the north and south
9 zones of Simandou had been obtained and they were about
10 to get the permits for Blocks 1 and 2, and BSGR is
11 starting to understand that 17.5% interest has a huge
12 potential value. Two years later, BSGR sells 51% in
13 BSGR to Vale for \$2.5 billion.

14 So clearly it was out of the question of BSGR to
15 allow Pentler to keep such a bonus. So this is when
16 Mr Steinmetz realises he has to retrieve this and he's
17 going to negotiate an agreement with Pentler to get this
18 interest back.

19 This is something he explains in his testimony: that
20 Mr Noy, who was negotiating with him, was very reluctant
21 to sell at that price, which is understandable, but
22 Mr Steinmetz was able to convince Mr Noy to sell and
23 gets this interest back.

24 What's interesting is that Pentler then is out of
25 the game; it has no more purpose. It is no longer there

16:07

1 to remunerate go-betweens, nor to bring them in with
2 an interest in the business. So it's a problem, because
3 the local consultants had been recruited and paid by
4 Pentler, and they are minority shareholders in Pentler's
5 capital, Mrs Touré being the largest one of them.

6 So these local consultants have to be somehow taken
7 on board, and what we see in the MOU, Exhibit C-184, we
8 see that the local consultants will be taken over by
9 BSGR. In Article 1 of the MOU, BSGR takes on full
10 responsibility for the local consultants.

11 What is interesting is to look at Article 6 in the
12 same MOU, where it is said:

13 (In English) "The Consultant [Pentler's
14 shareholders] will continue to advise and act as
15 consultant for the period of 5 years from signing date
16 hereof to the best interest of the Company."

17 (Interpreted) We are talking about "the Consultant":
18 this doesn't mean Pentler, because in the agreement
19 Pentler is defined as "the Seller". So "the Consultant"
20 does not refer to Pentler. Actually we are told it is
21 Pentler's shareholders, Mr Lev Ran, Mr Noy, Mr Cilins,
22 but it's also Mamadie Touré -- she holds 33.3% -- and
23 it's also Mr Daou.

24 This means that BSGR is basically taking on these
25 individuals and ensuring their services, who, via this

16:09

1 clause, are committing to work for BSGR for five years.
2 So the link between the local consultants and BSGR,
3 although BSGR had done everything possible by setting up
4 Pentler as a screen, well, that link is restored via
5 contract, and that contract is evidence of the link.

6 This link is also evidenced by the execution of this
7 agreement, and the performance of the contract will be
8 ensured by BSGR. Mr Naud said a while ago, a month
9 before signing the MOU, BSGR had already entered into
10 a contract with Matinda, which is Mamadie Touré's own
11 company, a direct agreement whereby she received
12 \$4 million in commissions and another agreement whereby
13 she was given a 5% interest; so once again, the 5% that
14 had been granted by Pentler and now simply granted
15 directly to Mamadie Touré. This is Exhibits R-28 and
16 R-29; I won't dwell on these.

17 The 5% interest that is given to Mamadie Touré by
18 BSGR is then bought back on August 2nd 2009 via
19 a contract entered into directly by Mamadie Touré and
20 BSGR. This is Exhibit R-269. This occurs nine months
21 after the sale to Vale.

22 From August 2009 to April 2010 BSGR pays the
23 \$4 million that are essentially the sales price through
24 a Lebanese businessman, Mr Boutros, and his company,
25 LMS, whose role is basically to stand in the place of

16:11

1 Pentler to be sort of a screen between BSGR and Mamadie
2 Touré. But as we will see later, the payments made by
3 Mr Boutros to Matinda were uncovered and have been
4 introduced as exhibits in this arbitration.

5 But BSGR made a mistake: they didn't pay high enough
6 a price, and when Mamadie Touré realises the price that
7 was obtained with Vale, she threatens to disclose
8 everything, which of course is very dangerous for BSGR
9 because for the agreements with Vale, BSGR guarantees
10 there will be no contracts with consultants, and were
11 Mrs Mamadie Touré to speak out, of course this would be
12 highly dangerous.

13 This brings us to the third phase, when Pentler
14 comes back into the game, but this time to simply buy
15 Mrs Touré's silence. This phase begins in June 2010.

16 On June 8th 2010 Mrs Touré denounces the agreement
17 on the sale of 5% of August 2nd 2009, and BSGR sends
18 Pentler to go and buy her silence. And Pentler
19 succeeds. On June [20th] 2010, Pentler enters into
20 an agreement with Mrs Touré. She agrees to [be paid]
21 \$5 million in exchange for keeping secret their
22 agreements.

23 This is Exhibit R-32. We don't have time to comment
24 on it now, but you will find it under tab 36. But if
25 you look at it, you will see it is very interesting.

16:13

1 There are many clauses on the fact that Mrs Touré agrees
2 to not speak out on a whole series of questions. And
3 the \$5.5 million, the price of her silence, are indeed
4 paid in several payments and in this very tortuous way.
5 BSGR pays Pentler through a company called Windpoint.
6 Pentler then pays Olympia Title, a US company, and
7 Olympia Title pays Mrs Touré, either on buying property
8 in Florida or via wire transfers to an account.

9 So Mrs Mamadie Touré's silence is bought and paid
10 for, and now there is one last phase which will be fatal
11 for BSGR. This is when it has to get the originals of
12 the contracts entered into with Mrs Mamadie Touré back
13 from her. And you know what happens then. I'm not
14 going to go into any detail here. Mr Cilins improvises
15 himself as a secret agent in Florida, he meets Mamadie
16 Touré in Jacksonville, [she] wears a wire for the FBI,
17 he says he was sent by Mr Steinmetz to get the contracts
18 back. And you know how this all ends up: Mr Cilins was
19 arrested after this conversation.

20 I'd like to thank you for your attention. I will
21 now give [Yann Schneller] the floor.

22 MR SCHNELLER: I'm Yann Schneller, and I will be talking to
23 you now about the procedure through which the mining
24 rights of BSGR were withdrawn.

25 These rights were withdrawn by the Republic of

16:15

1 Guinea after a procedure before an administrative body,
2 a Technical Committee, and in its Memorial BSGR
3 criticises that procedure. The main criticism is that
4 the procedure did not respect the rights of the defence.

5 On this procedure, first of all let me tell you that
6 BSGR's rights were perfectly respected; that's number
7 one. Number two, BSGR Guinea -- which at the time was
8 called VBG, which was the holder of the rights and was
9 party to the procedure -- did not challenge the
10 procedure at the time, and therefore it is not entitled
11 to challenge it now. Finally, the parent company of
12 BSGR Guinea was not a party to the procedure in front of
13 the Technical Committee and therefore it cannot invoke
14 any violations of the rights of defence, since it has no
15 standing to do so.

16 If the Tribunal feels that corruption is a matter of
17 substance, is a matter of merit, then you would have to
18 realise that the rights were withdrawn because of
19 corruption, and that procedure is perfectly regular.

20 Just a few words now about the origin of this
21 procedure. The new President, Alpha Condé, turned good
22 governance into a priority. He decided to reform the
23 mining sector, and in that framework the Mining Code was
24 adopted in September 2011. The new Mining Code provided
25 for a procedure to review the existing mining

16:16

1 agreements, just to make sure that they were in keeping
2 with the new Mining Code.

3 That programme was set up through a decree of
4 29th March 2012 setting up two administrative bodies:
5 the Technical Committee, entrusted with the procedure of
6 the review of the mining agreements; and the Strategic
7 Committee, which was to give opinion on the basis of the
8 recommendations of the Technical Committee as to the
9 advisability of keeping or withdrawing the mining
10 rights.

11 That review programme was supported by the African
12 Development Bank and the African Legal Support Facility.
13 Four well-known international law firms, well-reputed
14 because of their mining expertise -- DLA Piper, Orrick,
15 Heenan Blaikie and [Gide] -- were recruited to help the
16 Technical Committee in its mission.

17 The review programme concerned 19 projects, which
18 corresponds to the projects which were the subject of
19 mining agreements, and particularly the mining companies
20 such as Rio Tinto, Bellzone or RusAl. At least one
21 other company, other than BSGR, also had its mining
22 rights withdrawn: this is the SEMAFO company. This is
23 simply to show that BSGR has not received any treatment
24 different from that of other foreign investors. In
25 reality, BSGR was the subject of review like all the

16:18

1 others.

2 As regards BSGR, the review procedure began in
3 October 2012 and it led to a recommendation aiming at
4 withdrawal on 21st March 2014. The procedure lasted
5 therefore 17 months, and I will now take you through it.

6 At this juncture, however, let me point out that the
7 only company concerned by the procedure was BSGR Guinea.
8 On this point I should like the Tribunal to refer to
9 tab 37, where you will find an extract of the Memorial
10 from BSGR, pages 14 and 15 of the Memorial on the
11 Merits. You see there the pricing structure of the
12 three BSGR companies that are a party to this procedure.
13 BSGR Guinea, the one at the bottom, which is 100% owned
14 by BSGR Guernsey, is also a subsidiary of BSGR. And
15 these are three companies -- BSGR Guinea, BSGR Guernsey
16 and BSGR -- which are the parties to this arbitration.

17 It was BSGR Guinea that was the subject of the
18 review procedure. At the time, 51% of its shares were
19 in the hands of Vale. Indeed, BSGR Guernsey here is not
20 important; it was simply the vehicle through which the
21 shareholding was kept by BSGR Guinea.

22 Therefore you see also that in the structure at the
23 time, BSGR Guinea had changed its name: at the time it
24 was called Vale BSGR Guinea, or VBG, and in the
25 correspondence of the time you will see that its name is

16:20

1 VBG. However, to simplify my presentation, I will just
2 refer to "BSGR Guinea", which is the present-day company
3 that is a party to this arbitration.

4 Let me also say that this point has not been
5 challenged -- not challenged in arbitration, not
6 challenged before the Technical Committee -- that the
7 only company involved was BSGR Guinea. This is
8 an important point because, as we shall see, BSGR Guinea
9 did not challenge the procedure; it even accepted to
10 take part in it, which means therefore that its
11 challenging now in the arbitration is in direct
12 contradiction of its behaviour at the time.

13 The procedure before the Technical Committee began
14 with the sending to BSGR Guinea of a letter of
15 allegations dated 30th October 2012, a very important
16 document, C-53. In this letter the Technical Committee
17 mentioned the allegations of corruption against the
18 rights of BSGR Guinea. This letter also mentioned the
19 links that BSGR Guinea had established with Mrs Mamadie
20 Touré, as well as the various corruption schemes.

21 The Technical Committee asked BSGR Guinea to give
22 explanations on these facts by presenting an answer
23 accompanied by the necessary support documentation and
24 witness statements. The Technical Committee said that
25 BSGR Guinea should submit in writing all pertinent

16:21

1 communications, it could be assisted legally, and it
2 would be invited to put forward its explanations and
3 arguments at a Technical Committee session.

4 The Technical Committee from the very beginning said
5 that it would be essential for [BSGR] Guinea to present
6 its defence, and it invited it to use every possible
7 means to do so. In the weeks after that, the committee
8 received three letters: one from BSGR Guinea, which is
9 the company holding the rights; another one from its
10 majority shareholder, Vale; and another one from the
11 minor shareholder, BSGR. Each of these three letters
12 mentioned the position that each of these three
13 companies would be taking before the Technical
14 Committee's procedure.

15 The first one to write was Vale, on 26th November
16 2012. They said that the facts mentioned in the
17 allegations letter dated back to a time at which it
18 didn't take part in BSGR Guinea, and therefore it could
19 not give any explanation about those facts. Vale added
20 that at the time it took the stake in BSGR Guinea, it
21 had carried out a procedure of due diligence, and BSGR
22 had declared then that its rights had been regularly
23 obtained.

24 Two days later, on 20th November 2012, BSGR Guinea
25 answered the allegations laid down. BSGR Guinea was

16:22

1 actually using the same answer as Vale: it said that it
2 was controlled by Vale, that it wasn't present at the
3 material time of the facts, and that it therefore could
4 not give any explanations, and asked the Technical
5 Committee to address itself directly to BSGR.

6 The position expressed by BSGR Guinea is extremely
7 important for your Tribunal for several reasons. First
8 of all, BSGR Guinea decided not to challenge the facts
9 of corruption. It decided to allow the Technical
10 Committee to issue its recommendation on the basis of
11 the information it had. But it was up to BSGR Guinea to
12 answer, because it was the only holder of the mining
13 rights in question and the only one concerned by the
14 procedure.

15 By virtue of the principle of autonomy and
16 continuity of legal personality, an artificial person
17 cannot invoke a change in shareholding to abstain from
18 answering for facts prior to the possession of the
19 shares. By abstaining from challenging the facts, BSGR
20 Guinea therefore contributed to the withdrawal, since
21 the evidence of corruption was numerous at the time, and
22 it didn't contest it. And yet this is the same company
23 which today, in this arbitration process, claims that
24 the procedure was irregular and that the withdrawal was
25 unjustified. BSGR Guinea's position in this arbitration

16:24

1 cannot be reconciled with what it was doing at the time
2 of the facts.

3 By virtue of the principle of estoppel, and as we
4 have said in our Counter-Memorial, BSGR Guinea is not
5 grounded to challenge in this arbitration the withdrawal
6 of the rights. We shall see that in spite of the fact
7 that BSGR didn't want to answer the allegations letter,
8 the Technical Committee was very supple and enabling
9 BSGR Guinea to be helped by BSGR, the parent company.

10 On 16th December 2012 --

11 PROFESSOR MAYER: (Interpreted) I'm sorry. Would you
12 kindly, every single time, give me the tab number? It
13 will be easier to follow you.

14 MR SCHNELLER: On 16th December 2012 BSGR, the minority
15 stakeholder in BSGR Guinea, wrote to the Technical
16 Committee to challenge the procedure. This is R-400,
17 tab 41. That letter was accompanied by two French
18 lawyers' contributions and was a violent challenge of
19 the procedure.

20 BSGR was in fact challenging a procedure that hadn't
21 even started. It felt that the procedure would violate
22 its rights, even though it hadn't even yet tried to
23 assert its own rights; it's just that the procedure was
24 irregular.

25 What is particularly striking is that BSGR said that

16:25

1 it was deprived of rights of defence, when in fact it
2 had no standing to invoke such, since it was a third
3 party to the procedure. Indeed, BSGR wasn't a party to
4 the procedure before the Technical Committee and
5 therefore BSGR never was beneficiary of the rights of
6 defence of which it claims it was dispossessed.

7 On the same day BSGR sent another letter to the
8 Technical Committee: C-54 tab 42. In substance, BSGR
9 was denying en bloc all of the facts mentioned in the
10 allegations letter, and yet it was giving absolutely no
11 evidence to challenge those allegations or to reject
12 those allegations; it produced absolutely no documentary
13 proof and no witness statement.

14 Yet the Technical Committee did examine the answers
15 of BSGR carefully and because of the very general
16 nature, the Technical Committee asked BSGR Guinea about
17 the answers given by BSGR, making it possible for BSGR
18 Guinea to provide some explanations about this. These
19 are C-157 in tab 43 and R-406 in tab 44. The Technical
20 Committee therefore examined the answers of BSGR and
21 made it possible for it to present its observations
22 through BSGR Guinea, showing therefore that the
23 challenge of the procedure by BSGR is not serious.

24 On 1st November 2013 the Technical Committee told
25 BSGR Guinea that a hearing would be held on

16:27

1 10th December 2013 and asked for some explanations for
2 that hearing. BSGR Guinea said that it would be present
3 at the hearing, but that it was not in a position to
4 give the required clarification. It asked BSGR to
5 attend the hearing.

6 On 4th December 2013 the Technical Committee gave
7 BSGR Guinea 15 new forms of evidence of corruption that
8 had been obtained within the framework of international
9 cooperation between Guinea and United States, and these
10 are -- and this is a particularly important point: the
11 written testimony of Madame Touré, C-73, tab 49, through
12 which the Technical Committee was sending to BSGR Guinea
13 the written statement by Mrs Touré, as held by the
14 American authorities; Mr Cilins's written statement; the
15 audit and video recordings of the FBI; two cheques of
16 Mr Cilins to Madame Touré for a total amount of \$60,000;
17 two bills from the Matinda company for a total amount of
18 \$1 million; contracts between the BSGR and Matinda --

19 PROFESSOR VAN DEN BERG: I'm sorry, where are you now? Is
20 that tab 49?

21 MR SCHNELLER: All of that is in tab 49.

22 PROFESSOR VAN DEN BERG: Thank you.

23 MR SCHNELLER: The Technical Committee therefore transmitted
24 all this evidence to BSGR Guinea and, because of its
25 importance, it asked BSGR Guinea to make comments on it;

16:28

1 to transmit this to BSGR, so that BSGR could also
2 provide comments.

3 Furthermore, and because of the fact that the
4 hearing was going to be held very quickly, the Technical
5 Committee [told] BSGR Guinea that it could ask for
6 a postponement of the hearing, which it did do, from
7 10th to 16th December 2013. The Technical Committee
8 granted this.

9 For its part, BSGR told the Technical Committee that
10 it felt that the procedure was not loyal and that it
11 would not take part in the procedure unless some
12 conditions were met. Among these conditions, BSGR was
13 requiring Madame Mamadie Touré to be present for
14 a [cross]-examination. BSGR knew full well that
15 Madame Touré was being held by the American authorities
16 and therefore was not authorised to come to Guinea and
17 give her testimony to the Technical Committee, therefore
18 BSGR was asking for an impossible condition to be met.

19 In all likelihood, the challenging of the procedure
20 by BSGR was basing itself on the false idea that the
21 Technical Committee had to offer the same guarantees as
22 a court. But the Technical Committee was not a court
23 but an administrative body, and therefore international
24 law only imposes upon the host body, in the case of
25 an administrative body, only imposes the possibility for

16:30

1 the person being questioned to come forward and submit
2 as much as information as they want, which is exactly
3 what happened.

4 What is interesting from the point of view of the
5 rights of defence is that it's BSGR itself that was
6 depriving itself of the rights that today it wishes to
7 invoke, because the Technical Committee asked it to come
8 and submit its evidence, but BSGR didn't do so. It
9 didn't ask for any further time in order to submit its
10 observation, it didn't ask for the hearing to be
11 postponed; it simply asked for an impossible condition
12 for its participation, and it never attended the
13 hearing.

14 BSGR could have asked for the [hearing] or said that
15 they couldn't come because of reasons for security. But
16 they could have used video conference means, as the
17 regulations allowed it to do so, but it never did. And
18 it could also get itself represented by its counsel, the
19 procedural regulations would have allowed it to do so,
20 but it didn't want to. In order to be deprived of your
21 rights of defence, you would still have to try and use
22 them. And BSGR never did this, and therefore it is
23 alone responsible for the situation it is now clamouring
24 against.

25 On 12th December 2013, the Technical Committee asked

16:31

1 BSGR Guinea what its position was in connection with the
2 BSGR letter, and on 13th December 2013, BSGR Guinea
3 answered -- and this is R-414, tab 52 -- that
4 BSGR Guinea:

5 "... had not taken part, in any way whatsoever, in
6 the preparation of that answer, which was sent to you by
7 BSGR under its sole responsibility. The observations
8 contained in that answer exclusively reflect the
9 viewpoint of BSGR."

10 What does this letter say? That Vale decided to put
11 some distance between themselves and BSGR because it saw
12 the evident of corruption and therefore wanted to veer
13 away from BSGR, leaving it alone to answer for its acts.
14 On the basis of such evidence of corruption, Vale did
15 not believe in the absence of corruption as defended by
16 BSGR.

17 Moreover, BSGR Guinea confirmed its presence at the
18 hearing of 16th December 2013, which did take place on
19 that day on the premises of the Technical Committee at
20 Conakry, in the presence of representatives of BSGR
21 Guinea. BSGR Guinea was then represented by director
22 general Mr Vidoca, as well as three of its lawyers,
23 particularly a specialist on arbitration, Cleary
24 Gottlieb. You can see this in tab 53 (R-415). Let me
25 just mention a few extracts of this.

16:33

1 First of all, BSGR did say that it was the holder of
2 the rights being examined. To the question, "Do you
3 recognise that this hearing only represents BSGR
4 Guinea?", the lawyer answered:

5 "BSGR Guinea was indeed the holder of the mining
6 rights."

7 It stated:

8 "From our standpoint, the Committee wished to have
9 information that BSGR indicated not having available ...
10 But it is obvious ... that the holder of the mining
11 titles is [BSGR Guinea]."

12 It is therefore clear that it was the only company
13 that was concerned by the Technical Committee.

14 During that hearing BSGR also explicitly waived the
15 right to challenge the proceedings. When the committee
16 questioned Mr Vidoca on this score, he answered:

17 "... from the outset, we've never had a single
18 objection, nor any questioning."

19 At the end of the hearing Mr Vidoca even thanked the
20 members of the Technical Committee and indicated:

21 "... I would like to thank you for your kindness,
22 your courtesy, and for having welcomed us the way you
23 did here, and reinforcing the wish of BSGR Guinea to
24 cooperate with you ..."

25 Consequently, if the company holding the titles

16:34

1 waived the right to contest the facts at the time, it
2 should not be allowed to do so within the arbitration.

3 Finally, BSGR Guinea refrained from making any
4 comments as to the evidence of corruption. It just said
5 that no act of corruption could be put against BSGR
6 Guinea since Vale entered among its shareholders, and
7 therefore it should not be able to contest this within
8 the arbitration.

9 At the end of the proceedings the Technical
10 Committee had a great many pieces of concurring
11 evidence. This was a consistent set that confirmed the
12 existence of corruption.

13 At this stage I would like to correct an inaccuracy
14 that was pronounced this morning. It was said that the
15 Technical Committee practically only relied on
16 Mrs Touré's witness statement. This is erroneous. It
17 was based on 14 elements of evidence and there is no
18 hierarchy, no ranking within these pieces of evidence
19 for the committee; it just relies on all of them to make
20 its recommendation.

21 At the end of the proceedings BSGR Guinea had not
22 challenged evidence of corruption, nor its minority
23 shareholder, BSGR, did likewise, therefore the Technical
24 Committee had no choice but to recommend withdrawal.

25 The recommendation of the Technical Committee --

16:36

1 this is C-64, under tab 54 -- is particularly
2 interesting for your Tribunal, and I say this because
3 the reasoning of the Technical Committee to recommend
4 withdrawal is still topical in our arbitration.

5 In particular, it explained in its recommendation,
6 after having come to the conclusion that there was
7 corruption, that it had:

8 "... in vain wondered, given the perfectly
9 consistent character of the indications, as to the
10 plausibility of other elements in the analysis."

11 And added:

12 "... no consistent interpretation of the various
13 pieces of evidence ... had been offered by the owner of
14 the titles or the convention nor the shareholders of
15 that company, whether majority stakeholders or
16 minority."

17 This conclusion, as demonstrated by Laurent Jaeger,
18 is similar to what we find today. The various theses
19 invoked by BSGR still do not enable us to set aside the
20 facts of corruption.

21 I shall finish this presentation with a few words
22 concerning the pseudo-lack of independence and
23 impartiality of the Technical Committee.

24 We note that several third parties have come to the
25 same conclusion: first, Vale, who moved away from BSGR

16:37

1 at the time of the facts and is now suing BSGR in front
2 of an LCIA tribunal on the grounds of corruption; and
3 the American justice that opened an investigation
4 against Mr Cilins, and who condemned him, given his
5 attempt at destruction of the corruption agreements.

6 Furthermore, the criminal authorities in Switzerland
7 and England have started criminal proceedings; and at
8 a later stage, more recently, Israeli investigation
9 against Messrs Steinmetz and Avidan.

10 Finally, we know what we have to think of the
11 pseudo-lack of impartiality and independence which is
12 invoked by BSGR. A few months ago BSGR tried to
13 challenge your very own Tribunal. BSGR claimed that
14 your Tribunal did not offer sufficient guarantees of
15 impartiality because you had rejected its request for
16 communication of deliberations, et cetera. BSGR claimed
17 that you would not have the necessary impartiality to
18 deal with this dispute. This obviously cannot be taken
19 seriously.

20 MR OSTROVE: Madam President, I think we have 25 minutes
21 left on our meter?

22 THE PRESIDENT: A little less. I make it 19.

23 MR OSTROVE: So we are going to try to stick to this in
24 order to make a few comments, and then the remainder
25 will be [postponed] until the [mini-opening that has

16:39

1 been discussed for each day].

2 My colleague Yann Schneller has explained how BSGR
3 refused to cooperate with the Technical Committee. But
4 we can't be astonished because we know exactly what BSGR
5 were doing. They opted for an aggressive defence, tried
6 to destroy any piece of evidence that could be submitted
7 to the Technical Committee and that could have led to
8 the withdrawal of its rights.

9 So BSGR once again entrusted Mr Cilins, who was
10 still a shareholder of Pentler, to go and see Mamadie
11 Touré, who by that time lived in the United States.
12 This was a complete failure, since he didn't know that
13 Mamadie Touré was already in touch with the FBI. As
14 already mentioned, when he met her, she was equipped
15 with a microphone and was filmed by the FBI and
16 Mr Cilins was tapped.

17 So we are going to try and listen to a few excerpts
18 that can be found under R-380. You can't see them
19 because it is audio, but the transcription can be
20 followed under tab 55: it's R-36. We haven't got enough
21 time to listen to everything, but I can only recommend
22 that you listen to the entire opus because it's really
23 meaningful.

24 Why did they do that? BSGR learnt in 2012 that
25 copies of the corruption contracts are circulating.

16:41

1 Asher Avidan says in his witness statement, CWS-3, that
2 a South African person, Mr Hennig, showed him copies of
3 these communications between BSGR and another party and
4 knows that there is an attempt at blackmailing BSGR. He
5 now claims that this is erroneous, but he knows that
6 they are circulating. And we see that in the
7 allegations of the Technical Committee there was a lot
8 said about this relationship with Mamadie Touré.

9 Furthermore, BSGR knows that the Guinean Government
10 is aware of the existence of these contracts. Why?

11 How? **[PROTECTED]** they gave
12 Mr Cilins a copy of a draft report from our law firm,
13 DLA Piper, meant for the government on the
14 investigation, and we know that this report was stolen.

15 How do we know that it was stolen? Well, because on
16 several occasions we asked, within the arbitration
17 proceedings, BSGR to give an explanation, and you saw
18 that their explanation is total silence. It's
19 an internal project, it's confidential. And
20 furthermore, we've got Mr Cilins -- you see this under
21 tab 55 on page 60, which is also on the screen -- that
22 Mr Cilins explains to Mrs Touré that he's got the report
23 and that it's confidential. Page 45.

24 Sorry, I need to get this going.

25 (Audio recording Exhibit R-380 played)

16:43

1 Then he continues on page 60 speaking of the report
2 again. It's difficult to hear, but if you follow the
3 transcription, it's quite clear on page 60 he says:

4 "You saw my name?"

5 (Audio recording Exhibit R-380 played)

6 It's difficult to hear, but at the end he says:

7 "Well, I can tell you that nobody knows that we've
8 got this. Nobody knows that we've got this because we
9 had to pay for it."

10 And you see what technique has been applied; judge
11 for yourselves.

12 We are trying to highlight the right excerpts on the
13 screen.

[PROTECTED]

20 So in the light of these developments, it becomes
21 urgent for the BSGR companies to try and put a stop to
22 Guinea's efforts to lay its hands on this report. It
23 doesn't know that Mrs Touré already has copies. And of
24 course they want to go and see Mrs Touré because there
25 are two major problems: first, her role is now known,

16:45

1 and they want to obtain a statement from her that denies
2 this relationship with BSGR and denies that she is the
3 wife of the President; and the second problem is that
4 she has kept copies of the contracts, or the originals
5 rather, and therefore these originals had to be
6 destroyed, and any copy.

7 It is precisely to achieve those two things that
8 Mr Cilins visited here, and in the 100 pages of
9 transcription this is exactly what we find,
10 transcription of the FBI recording.

11 So, on the one hand, Mr Cilins tried to get
12 Mrs Touré to sign a forged witness statement where she
13 would deny any wedding link with the President and any
14 link with BSGR. This is on page 22 at tab 55.
15 Mr Cilins tries to explain that it's not merely
16 a problem for himself:

17 "... but for you, Mamadie, because you are the wife
18 of the President."

19 And we are going to try and listen to this now.

20 (Audio recording Exhibit R-380 played)

21 He says that's what Alpha is trying to do and he's
22 fighting to obtain these pieces of evidence. He also
23 explains that the investigators who are working with
24 DLA Piper came to visit him, Mr Cilins, and Mamadie
25 pretends that she is worried and she says, "Oh, what

16:47

1 should I do if he comes to see me?" He says, "Well,
2 next time I come to see you, I'm going to come back with
3 a piece of paper, a statement" -- and this is on
4 page 23, again on the screen.

5 (Audio recording Exhibit R-380 played)

6 Answer: Mr Cilins is going to come again with
7 a document. BSGR was perfectly aware of this. How do
8 we know? [PROTECTED]

[REDACTED]

20 And about relations with BSGR, to be denied also.
21 This is tab 55 (R-36), just before, where you see the
22 answer, which is signed "Beny". This is the answer
23 given by Beny Steinmetz, who is obviously embarrassed
24 that somebody should have sent this document to him. He
25 denies desperately ever knowing this lady. You can hear

16:49

1 Mr Steinmetz in a moment. But Hamlet comes to mind:
2 "The lady doth protest too much, methinks"; except here
3 it's not the lady that protests, it's "the Lady" in
4 question.

5 Six days later, April 11th 2013, Mr Cilins once
6 again meets Mamadie Touré and presents the draft
7 statement that's been prepared. We are now on tab 55
8 (R-36), page 52, and you can see it on the screen.

9 (Audio recording Exhibit R-380 played)

10 PROFESSOR VAN DEN BERG: Mr Ostrove, can you give me some
11 information concerning this transcript?

12 MR OSTROVE: Yes.

13 PROFESSOR VAN DEN BERG: That's the original in French.

14 I believe the translation into English is Exhibit C-64,
15 the recommendation of the Technical Committee? And in
16 Annex 3 there are various transcriptions in English.

17 MR OSTROVE: I think these are translations. We haven't
18 worked with these transcriptions, so I don't know if
19 they are correct or not.

20 PROFESSOR VAN DEN BERG: So according to the transcript,
21 Mr Cilins is asking for the originals of the contract.
22 Can you tell us what contracts he is talking about here?
23 Just give me a list.

24 MR OSTROVE: Yes, because we got all the contracts from
25 Mamadie Touré.

16:54

1 PROFESSOR VAN DEN BERG: Yes, but there are all kinds of
2 contracts: some that are challenged, others that are
3 not. Can you just tell us what originals was he seeking
4 here?

5 MR OSTROVE: If you will allow me, I can get back to this to
6 see exactly how many contracts he was discussing with
7 her and to try to establish exactly which ones these
8 were, because he only had photocopies. We are getting
9 back to the contracts in just a moment.

10 PROFESSOR VAN DEN BERG: Because if you are talking about
11 corruption, you have to be very specific. You have
12 given us a table, and there's a certain number of
13 contracts on this table. If you could tell us which
14 contracts are being referred to here.

15 MR NAUD: When Mr Cilins is talking with Mrs Touré about
16 contracts, he mentions at least two of them orally. We
17 don't know what they're looking at when they're talking
18 because we can't see it on the video. But on page 75,
19 or at the top of page 76 that you see on the screen, you
20 see that he's speaking:

21 "I sent the original."

22 He answers:

23 "27 and 28 February."

24 So these are the contracts of February 27th and 28th
25 2008 that we discussed earlier today.

16:55

1 MR OSTROVE: They are BSGR contracts. We know that none of
2 the Pentler contracts are contested; it's just the BSGR
3 contracts that are being contested. So we are going to
4 try and see with Mr Cilins if there's more information
5 as to which BSGR contracts we are talking about. We
6 know at the very least it's these two.

7 So that was regarding the statement: is she or is
8 she not the wife of Mr [Conté]? And you heard that he
9 tried to say:

10 "I know you can't lie, but think about it carefully,
11 because as a wife it's one thing; if you're not a wife,
12 it's something else, and there is an additional risk to
13 which you would be exposed as a wife, and we suggest you
14 are just a friend of the presidential family."

15 She answers:

16 "I cannot say that. I am the boss's wife."

17 In the draft statement that he had promised to
18 bring, and this is the project that has been reviewed by
19 Mr Cilins -- I'm not going to play the excerpt, but on
20 page 56 he says:

21 "I've brought a statement. You can read it, you can
22 look it over. I'm going to read it to you. It simply
23 says that you have nothing to do with this."

24 And she explains that there was something that was
25 worked over by the lawyers. And she agrees. She says:

16:57

1 "Yes, I'll sign it, but without any reference to
2 being the wife."

3 Mr Cilins takes the phone, talks to somebody else,
4 somebody that we don't know, that's not identified. If
5 we had a few moments, we could listen to it.

6 Now we're at pages 43 and 44.

7 (Audio recording Exhibit R-380 played)

8 He explains to the person with whom he is speaking
9 that she can never say that that's certain. So we are
10 at page 66 of tab 55.

11 So to conclude on the statement, one thing is very
12 clear: at this time they cannot deny the fact that
13 Mrs Touré is the wife. They try to get her to sign
14 something. Even when she's with the FBI, she knows it's
15 almost like a game, she refuses to go along with it, and
16 it's clear that she cannot sign this.

17 In parallel, he tries to [persuade] Mamadie Touré to
18 destroy the original documents, and that's really the
19 gist of his mission. As early as April 11th, the first
20 time he meets with her, he underlines several times just
21 how urgent the situation is, because Mamadie Touré says:

22 "I was questioned by the FBI, and they are going to
23 subpoena me."

24 And they look at what a subpoena means, and she
25 says:

16:59

1 "I am going to have to testify before a grand jury,
2 and I have to present all the documents that I have in
3 my possession."

4 This is tab 55, in Exhibit [R-36], page 43 or 44.

5 (Audio recording Exhibit R-380 played)

6 She is asked, "You said you had no documents?" She
7 said, "Yes". What is on this document?

8 (Audio recording Exhibit R-380 played)

9 Mr Cilins's reaction to the subpoena, the idea that
10 she has to turn over all the documents to the US, it's
11 not, "Well, you have to give the documents"; no. It's,
12 "Urgent, urgent, very urgent. They have to be
13 destroyed, all of it".

14 And the passage that's marked "inaudible" -- we just
15 heard it -- is:

16 "The same document that we want to destroy is the
17 document that the American government is after."

18 He thinks that he's gotten her to agree to destroy
19 the documents, and on pages 54 to 55 he talks about how
20 to burn the documents. I am not going to play the
21 excerpt because I don't have enough time. And they part
22 ways.

23 Later on we heard the phone call. He comes back to
24 see her, and this time she has brought photocopies. And
25 Cilins stressed the fact that this is not enough; he

17:01

1 doesn't want photocopies. This is page 74 of this
2 exhibit. He says, and I am quoting just to save time:

3 "Photocopies? We don't give a damn. I don't need
4 photocopies. Whatever is photocopied, you have to get
5 rid of that."

6 And later on, at page 76:

7 "In fact, we have to destroy all of that. But even
8 that, that's a document that says -- I'm going to take
9 all of that, I'm going to get rid of it. But this is
10 useless, it's all photocopies. But we're going to
11 destroy them."

12 Then on page 77 he says:

13 "Do you know what's left, like documents? Because
14 the originals are what is left, because here you don't
15 have originals."

16 Cilins wants to destroy the photocopies and the
17 originals as a matter of urgency, because he knows that
18 photocopies are harder to authenticate. But he also
19 says that even if she has photocopies, this is
20 dangerous, because if she denies knowing BSGR, and the
21 authorities come to her house and find photocopies of
22 the documents, she'll be in trouble.

23 This is page 105. Mamadie Touré asked, "Do you
24 think the photocopy is valid?" And he answers:

25 "Photocopy is not valid. But it doesn't matter,

17:03

1 that's not it. If you say, 'I don't know anything about
2 this, I have nothing to do with this', but they are
3 documents with your name, you simply can't say that you
4 didn't know anything about it because your name is on
5 the document. So why are you keeping this at home? You
6 know you have to destroy everything, it's very simple."

7 They agree to meet again on Saturday so that Mamadie
8 Touré can come with a key to go and get the documents
9 and destroy them. He sees her again on April 14th 2013,
10 but he is arrested by the FBI at the airport in
11 Jacksonville and he spends two years in prison.

12 But how did he try to convince Mamadie Touré to do
13 this? Simply by promising very large sums of money. We
14 find this on pages 57 to 59 of the same document. She
15 explains that first \$1 million will be paid out for the
16 destruction of the documents: he starts out with
17 \$200,000, and he adds \$800,000 when President Conté is
18 gone. And he claims that President Conté at that time
19 is suffering from pancreatic cancer and he is going to
20 die, and he says, "And then you will get \$800,000".

21 Then he says there will be a \$5 million bonus --
22 even more -- if BSGR gets through the Technical
23 Committee process. And by explaining this, he is
24 getting this straight from Beny Steinmetz. This is on
25 page 58. And this is when he explains that if BSGR can

17:04

1 survive the process of reviewing its titles, that she
2 will be remunerated.

3 (Audio recording Exhibit R-380 played)

4 He says:

5 "This is directly from number 1. I don't want to
6 mention his name."

7 And she says ...

8 (Audio recording Exhibit R-380 played)

9 He continues, and she explains that this is all from
10 Beny, and she says Beny is the guy at the top; it's
11 quite striking. And it was not to impress Mamadie
12 Touré, as is being said by opposing counsel; it was not
13 necessary. She just says "number 1". Is Michael saying
14 that? She would be already quite impressed. No, it's
15 Beny.

16 Then she says again later, on pages 63/64, that he
17 has to be present directly during the destruction of the
18 documents, at the request of "number one", the "big
19 boss", at pages 63/64. And he says:

20 "You know ... There's only one that I speak with ...
21 the big boss."

22 So he says, "I want you to be there, Mrs Touré;
23 I can't lie to him". So Mamadie then asks for more
24 money. And Cilins repeats:

25 "... there's only one person who can decide [in the

17:07

1 organisation]."

2 This is page 70:

3 "You must understand that, all the persons in
4 between ..."

5 And there he's talking about Michael Noy, the
6 Pentler people, Avidan, et cetera, that nobody can
7 decide. There's only one person who decides, the person
8 who's at the top; it's almost that he's talking about
9 God in this case. But he's the only one.

10 "When I say something, it's 100%, because I know
11 it's 100%. And nobody can tell you 100%, only him, the
12 one at the top."

13 So it's very striking.

14 What do these discussions prove? They prove that
15 the corruption contracts were authentic. BSGR is
16 claiming that Mamadie Touré was blackmailing, that she
17 was showing these contracts to try and get something.
18 We'll see if the witnesses continue along this line,
19 because Mr Cilins does not say once, "Don't play with
20 these fakes"; he just says, "You have to destroy the
21 originals because they can be authenticated".

22 Secondly, it's the proof of the relationship between
23 Pentler and BSGR. Pentler only does what he's told to
24 do by the top boss.

25 And it is proof of the link between Mamadie Touré

17:08

1 and the President; he says that she cannot deny that.
2 And it's the proof of the influential role that she
3 played, without which the BSGR companies would never
4 have gotten the mining titles that they have today. And
5 all that Mr Cilins finds that needs to be hidden is the
6 existence of his role between BSGR and Pentler,
7 Mamadie Touré and Pentler, and Mamadie Touré and the
8 President.

9 Given the fact that we're running out of time,
10 I think that we're going to stop here. We would like to
11 thank you for your attention during this long day. We
12 will come back to our relief sought, et cetera, during
13 the course of the week.

14 (5.09 pm)

15 THE PRESIDENT: Thank you. I think this brings us to
16 a close of our first day of hearings.

17 Tomorrow we will start with our mini-openings. This
18 could be an opportunity to give us the list of the
19 contracts that were referred to in the conversation
20 between Mr Cilins and Mamadie Touré, and to address any
21 other topic that you wish to bring up tomorrow. The
22 whole idea behind the mini-openings is to introduce the
23 evidence that will be presented during the course of the
24 day and to solve any other organisational or procedural
25 problem that there might be, or anything that may have

17:10

1 occurred during the preceding day.

2 Tomorrow we will first hear Mr Cramer, then we will
3 hear Mrs Merloni-Horemans. This is what you have in
4 your programme. (In English) That is the plan, isn't
5 it, for tomorrow?

6 Is there anything that needs to be said at this
7 stage, before we adjourn for the day? On the Claimants'
8 side?

9 MR DAELE: I assume we just need to check the use of the
10 time.

11 THE PRESIDENT: Yes, I suggest the best way to do this is
12 for the Secretary to send an email to everyone -- maybe
13 it's already done; I don't know, you're so efficient --
14 so everybody has a written record of the time. Is there
15 anything on the Respondent's side?

16 (Interpreted) Respondent, anything that you wish to
17 raise before we finish for today?

18 MR JAEGER: Yes, I have a question of detail.

19 Tomorrow we will be questioning English-speaking
20 witnesses, in fact this is so during these proceedings,
21 and sometimes we will be questioning them on exhibits
22 that are in French. To make the questioning more easy,
23 we will provide translations of these exhibits; but they
24 have not been produced, they have been made just for the
25 purpose of questioning the witness, just so that they

17:12

1 can be shown to the witness.

2 I simply wanted to bring this to the Tribunal's
3 attention and to ask you if this raises any kind of
4 a problem.

5 THE PRESIDENT: I don't think it raises a problem insofar as
6 the three arbitrators understand both languages and can,
7 should it be necessary, compare the texts. It goes
8 without saying, of course, that the translation will be
9 accurate, but if there is any need to control them, we
10 can do this.

11 (In English) Is there someone on the Claimants' side
12 who can check the translations from French into English?
13 It is true that it is a difficulty that I had not
14 envisaged, but that does occur: that if witnesses are
15 asked questions on documents that are only in French in
16 the record, of course they need to have a translation.
17 If the translation is already established, it is easier
18 and faster than asking the interpreter to translate the
19 document, which is the other way of doing it, of course.

20 MR LIBSON: Yes, we have no objection in principle. But I'm
21 assuming that the translations will come across this
22 evening with the witness bundles, with the other
23 documents.

24 MR OSTROVE: (In English) The witness bundles are provided
25 in the morning before the testimony, and we will

17:13

1 certainly provide the English translations in the
2 witness bundles in the morning.

3 MR LIBSON: Is it possible to have the translated documents
4 this evening?

5 MR JAEGER: (In English) In fact the translations are those
6 that were produced in the LCIA proceedings. So
7 I suppose you must have a copy of those translations.

8 MR LIBSON: Yes, but we don't know which one are going to be
9 referred to. It would just make it easier if we could
10 look at the documents this evening.

11 MR JAEGER: The only thing is that it's unusual to produce
12 witness bundles in advance of a cross-examination; it
13 can give a cue to the witness as to what --

14 THE PRESIDENT: I think the difficulty is that it discloses
15 on what document a specific witness will be
16 cross-examined, and hence the reluctance. Let me just
17 briefly speak with my colleagues.

18 MR OSTROVE: If I may, because these are the translations
19 from the LCIA proceeding, BSGR has already seen and
20 validated all of these translations, because these are
21 translations that were submitted in the arbitration
22 between BSGR and Vale. So --

23 THE PRESIDENT: No, I understand that, yes. Who has
24 submitted these translations in the LCIA arbitration?

25 MR OSTROVE: We don't know which --

17:15

1 THE PRESIDENT: Either party?

2 MR OSTROVE: Both parties --

3 THE PRESIDENT: It's not necessarily a BSGR translation; it
4 could be a Vale translation that BSGR is not necessarily
5 endorsing. Let me just see what we best do.

6 (The members of the Tribunal confer)

7 THE PRESIDENT: What the Tribunal would suggest is that
8 tomorrow we give the translations and the original
9 documents to the interpreters. If there is any
10 question, the interpreters will be able to check and
11 retranslate, if that is what you wish; and when you have
12 any doubt, you can certainly raise it and tell us that
13 you wish a fresh translation. Or if you say, "We have
14 no recollection of this document or this translation",
15 or the content, then you raise it and the translator
16 will retranslate, rather than relying on the translation
17 that is being provided.

18 MR LIBSON: Thank you.

19 THE PRESIDENT: Does that work on the Claimants' side?

20 MR LIBSON: Thank you.

21 THE PRESIDENT: Good.

22 MR DAELE: Yes, it does.

23 THE PRESIDENT: It does work on the Respondent's side? So
24 you will make sure that we have copies for the
25 interpreters tomorrow before we start.

17:18

1 MR JAEGER: Yes.

2 THE PRESIDENT: Excellent.

3 MR DAELE: Maybe if I may add one other practical point:

4 it's the review of the transcript. If we could set up
5 some arrangements about whether there are corrections to
6 be made to the transcript or --

7 THE PRESIDENT: What we usually do is do it after the
8 hearing, and I think we have probably provided this in
9 P09, just because everybody is very busy doing other
10 things, preparing for the next day, in the evening.

11 If there's anything that is really creating
12 a difficulty for the further progress of the hearing,
13 because you want to refer to part of the transcript and
14 it was not transcribed in the way that you think is
15 correct, then you could raise it in the morning, in the
16 mini-openings, and we'll see what we do about it.

17 MR DAELE: Thank you.

18 THE PRESIDENT: Does that work? Good. Fine.

19 Then have a good evening for everyone.

20 Was there something that I have cut short?

21 MR OSTROVE: Not important enough for the moment, thank you.

22 THE PRESIDENT: Not for the moment? Fine. So you can keep
23 it until tomorrow morning. Fine.

24 Good evening to everyone, and that closes for today.

25 (5.20 pm)

17:19

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(The hearing adjourned until 9.30 am the following day)

