ICC INTERNATIONAL COURT OF ARBITRATION

CASE No. 27340/SP/AJP/SP/ETT/SVE

URBAJET

(Morocco)

v.

THE REPUBLIC OF EQUATORIAL GUINEA

(Equatorial Guinea)

This document is a certified true copy of the original of the Final Award delivered in compliance with the Rules of Arbitration of the International Chamber of Commerce.

INTERNATIONAL COURT OF ARBITRATION
INTERNATIONAL CHAMBER OF COMMERCE

ICC ARBITRATION No. 27340/SP/AJP/SP/ETT/SVE

URBAJET (Morocco

Claimant

V.

THE REPUBLIC OF EQUATORIAL GUINEA

Respondent

FINAL ARBITRAL AWARD

ARBITRAL TRIBUNAL

Maître Luiz Aboim (President)
Maître José Manuel García Represa (Co-Arbitrator)
Maître Javier Fernández-Samaniego (Co-Arbitrator)

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I. INTRODUCTION

1. This final arbitral award ("***Arbitral Award***") is rendered in case no. 27340/SP/AJP/ETT/SVE, administered by the International Court of Arbitration of the ICC (the "***Court***"), in compliance with the Rules of Arbitration of the International Chamber of Commerce ("***ICC***") in force since 1st January 2021 ("***Rules***").

II. THE PARTIES AND THEIR COUNSEL

2. On 29 March 2006, the parties identified hereunder signed contract no. 66/05 for the construction of two thousand (2,000) social housing units in the Republic of Equatorial Guinea: one thousand (1,000) units in Malabo, and one thousand (1,000) in Bata (hereinafter referred to as the "***Contract***").[1]

A. THE CLAIMANT

3. The claimant party is URBAJET, a Moroccan company with its registered office in Casablanca, immeuble Jet Business Class, Lotissement Attaoufik, No. 16-18, Sidi Maarouf Casablanca, Morocco, represented by Messieurs Karim Amor and Youssef Choukri (hereinafter referred to as the "***Claimant***").

4. The Claimant presents itself as follows:

   (i) Entity of the Jet Group (Just Entirely Tailored) group of companies, active on the market since 1987 and composed of several entities specialised in various aspects of the construction sector, major player in the implementation of substantial real estate programmes launched by the Moroccan government;[2] and

   (ii) Created in 1998 under the name JET AGREGATS, initially dedicated to the exploitation of quarries for building and public works. After assignment of that activity, it specialised in the technical execution of real estate projects and changed name in 2002 from JET AGREGATS to URBAJET to reflect the nature of its new activities, which are split into two activity sectors: (i) delegated project management for the execution of property projects in Morocco, and (ii) firm for construction and industrialisation of the processes of production, control and certification of housing, notably in the Republic of Equatorial Guinea.[3]

[1] Exhibit C1 and Exhibit R8 – "*Contract for the Construction of two thousand (2,000) social housing units: one thousand (1,000) in Malabo and (1,000) in Bata*". The Tribunal finds that the copy of the original Contract in Spanish submitted to the debates (Exhibit C1) is accompanied by a sworn translation into French, to which the Tribunal refers and excerpts of which are quoted in this Arbitral Award.
[2] Claimant's Statement of Claim, para. 17.
[3] Claimant's Statement of Claim, paras. 19 and 20.

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5. The Claimant is represented by its counsel:

Maître Laurent Sablé
Uriti
176 boulevard Haussmann
75008 Paris
France
Tel.: +33 6 09 80 25 95
Email: laurent.sable@uriti.law

Maître Alexis Weil
Jane Avocats
176 boulevard Haussmann
75008 Paris
France
Tel.: +33 6 67 88 60 60
Email: aweil@jane-avocats.com

B. THE RESPONDENT

6. The respondent party is the Republic of Equatorial Guinea (hereinafter referred to as the "***Respondent***"), represented by:

The Minister for Public Works, Housing and Urbanism
Via Ministerial Malabo 2
Equatorial Guinea
Tel.: +240 333 09 14 12

The Minister for Finance, the Economy and Planning
Via Ministerial Malabo 2
Equatorial Guinea
Tel.: +240 333 33 33 33

The Chair of the Steering Committee of GE-PROYECTOS
Via Ministerial Malabo 2
Equatorial Guinea
Tel.: +240 222 67 73 63

7. The Respondent is represented in this case by the lawyers of its Legal Committee:

Maître Francisco Moro Nve
Maître Adalberto Ncogo Angono
Maître Francisco Evuy Mikue
Maître Anatolio Nzang Nguema
Maître Gladys Delcourt

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Legal Committee of the State Lawyers
Apartment no. 6, Carretera del Aeropuerto S/N Malabo
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Tel.: +244 222 2825 55

Email: fmoro27@yahoo.es
Email: adalbertoncogo@gmail.com
Email: sejomse@gmail.com
Email: anzangnguemamangue1@gmail.com
Email: gladys.77@hotmail.fr

8. The Respondent is also represented in this case by the following counsel:[4]

Maître Jean-Charles Tchikaya

4 rue Pierre l'Ermite
75018 Paris
France
Tel.: +33 1 56 52 87 73
Email: jctchikaya@yahoo.fr

9. The Tribunal refers to the Claimant and/or the Respondent as a "***Party***", or together as the "***Parties***".

III. THE ARBITRAL TRIBUNAL AND THE ADMINISTRATIVE SECRETARY

10. The Claimant has nominated as co-arbitrator:

Maître José Manuel García Represa

Wordstone Dispute Resolution AARPI
80 rue Jouffroy d'Abbans
75017 Paris
France
Tel.: +331 59 44 05 96
Email: jose-manuel.garciapresa@wordstone.com

11. On 25 May 2023, in compliance with Article 13 (2) of the Rules, the Secretary General of the Court confirmed Maître García Represa in the capacity of co-arbitrator.

12. The Respondent nominated as co-arbitrator:

Maître Javier Fernández-Samaniego

Osborne Clarke, Inc.
2222 Ponce de Leon Blvd. Suite 300

[4] Terms of Reference, paras. 52, 53, 55.

Miami, FL 33134
United States
Tel.: +1 786 447 4259
Email: javier.samaniego@osborneclarke.com /
javier.samaniego@samaniegolaw.com

13. On 25 May 2023, in compliance with Article 13(2) of the Rules, the Secretary General of the Court confirmed Maître Fernández-Samaniego in the capacity of co-arbitrator.

14. The President of the Tribunal is:

Maître Luiz Aboim

Mayer Brown International LLP
201 Bishopsgate
London EC2M 3AF
United Kingdom
Tel.: +44 (0)203 130 3823
Email: laboim@mayerbrown.com

15. During its meeting of 22 June 2023, the Court appointed Maître Luiz Aboim as President of the Tribunal in compliance with Article 13(4)(a) of the Rules.

16. At the procedural hearing of 6 September 2024, the Parties confirmed to the Tribunal that they accepted the appointment of Maître Line Chataud as Secretary of the Tribunal in replacement for Ms Ftouki:[5]

Maître Line Chataud

Mayer Brown International LLP
201 Bishopsgate
London EC2M 3AF
United Kingdom
Tel.: +44 (0)203 130 3823
Email: lchataud@mayerbrown.com

17. In compliance with paragraph 12 of the terms of reference dated 18 September 2023 ("***Terms of Reference***"), the Parties gave their agreement for the reimbursement of the justified and reasonable costs incurred by the Administrative Secretary.

IV. SECRETARIAT OF THE COURT

18. Subject to a later change, the team of the Secretariat in charge of this case is composed of the following persons:

[5] Procedural Order no. 3, paras. 38-40

Judge Ms Sophie Varenne
Deputy Judge Ms Hortense Kropp

International Court of Arbitration
International Chamber of Commerce
33-43 Avenue du Président Wilson
75116 Paris – France
Tel.: +33 1 49 53 30 09 / 2847 / 2820
Email: ica2@iccwbo.org

V. THIRD PARTY BACKER

19. On 29 November 2022, the Claimant informed the Secretariat that it was using a third party backer, NIVALION III, L.P.[6]

20. At the request of the Tribunal, and only in case of doubt over a potential conflict of interest or in case of proven risk for the proceedings, the Claimant agreed to provide the Tribunal with the necessary information making it possible to verify the absence of conflict of interests.

VI. ARBITRATION CLAUSE

21. In compliance with Article 4 of the ICC Rules, it is stated that the Contract between the Parties contains specific provisions on the resolution of disputes in Article 41, which presents as follows:

> "***ARTICLE 41. – APPLICABLE LAW AND RESOLUTION OF DISPUTES***
>
> *[…] In case of dispute, the parties shall meet to reach an amicable solution, and in the absence of agreement they shall submit to the arbitration of the International Chamber of Commerce of Paris*."[7]

VII. APPLICABLE LAW

22. Article 41 of the Contract stipulates that:

> "*This Contract shall be governed by the Laws, regulations and other provisions in force in Equatorial Guinea […]*".

VIII. RULES OF PROCEDURE

23. The arbitration was conducted in compliance with the Rules. In compliance with Article 19 of said Rules and paragraph 183 of the Terms of Reference, in the case of absence of agreement between the Parties, any procedural matter which was not

[6] Terms of Reference, para. 23.
[7] Exhibit C1: Contract, Article 41.

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set out in the Rules was settled by the Tribunal, whether or not reference is thereby made to a national law to be applied to the arbitration.

24. Regarding matters relating to the obtaining of proof, the Parties and the Tribunal were guided, but not bound, by the provisions of the International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration as adopted on 17 December 2020, in compliance with paragraph 184 of the Terms of Reference.

IX. PLACE OF THE ARBITRATION

25. On 23 February 2023, the Court nominated Paris, France, as place of the arbitration in compliance with Article 18(1) of the Rules. The Parties agreed in the Terms of Reference that:

(i) Any award or order issued within the framework of this arbitration shall be considered as rendered at the place of the arbitration. The Parties undertake not to raise any argument claiming that such award or order rendered by the Tribunal or the Presiding Arbitrator is null and void simply because one of the arbitrators may have signed elsewhere than the place of the arbitration (para. 175).

(ii) In compliance with Article 18(2) of the Rules, the Tribunal is authorised to hold hearings and meetings at any location and by any means it considers appropriate, depending on the circumstances of the case, which may include the use of video conference if the Tribunal considers this to be necessary (para. 176).

26. The final hearing was held in Paris, place of the arbitration, in person, on 2 and 3 October 2024 ("***Hearing***").

X. LANGUAGE OF THE ARBITRATION

27. On 9 August 2023, during the Case Management Conference, the Parties agreed to conduct the procedure in the bilingual form, enabling the Tribunal to speak in a single language, and the Parties and their representatives in the language of their choice, in compliance with the following rules, adopted in paragraphs 177 and 178 of the Terms of Reference:

> "*The Tribunal: the correspondence with the Parties, the procedural orders, the award(s) and the conduct of the meetings and hearings shall be in French; the Tribunal shall have the option of responding to communications in the same language (Spanish or French) as that used by a representative of the Parties or a witness;*
>
> *The Parties: the Parties may address the Tribunal in French or Spanish, but must observe the following rules concerning their submissions and evidence:*
>
> *a. Statements and responses: shall be submitted in French;*

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b. Documents: shall be submitted in their original language, with the option of being quoted in their original language (with a footnote containing an unofficial translation of the text quoted);

c. Expert reports: shall be submitted in French, with the option of being quoted in their original language (with a footnote containing an unofficial translation of the text quoted);

Hearings: the Parties shall hire a simultaneous French-Spanish and Spanish-French interpreter, and a French transcription service; and

Other matters: on the request of one of the Parties, the Tribunal shall settle any other matter concerning the language of the arbitration that may not have been set out in the agreement set out above."

28. After signing of the Terms of Reference, neither of the Parties made any later request concerning the language of the arbitration. The Parties and the Tribunal proceeded in compliance with the above agreement.

XI. THE CONTRACT

29. The Tribunal sets out hereunder the main clauses of the Contract considered necessary to its decision in this Arbitral Award, in compliance with the sworn translation produced by the Claimant (emphasis in the original text):[8]

"***CHAPTER 1: GENERAL PROVISIONS***

Article 1. *– this contract has the purpose of the* ***construction of two thousand (2,000) social housing units, one thousand (1,000) in Malabo and one thousand (1,000) in Bata****, the technical specifications of which are as attached.*

Article 2. *– In compliance with the price estimate and the unit price list, the cost of the constructions, before taxes, is fixed at forty four billion three hundred million (44,300,000,000) CFA Francs Without ICNI.*

[…]

ARTICLE 4. – APPOINTMENT OF THE GOVERNMENT REPRESENTATIVES

A) For the purposes of this contract, it is understood that the term "GOVERNMENT" shall mean: Any competent authority for the execution of the constructions and admitted by the law, and more specifically

[8] Exhibit C1: Contract entered into between URBAJET and the Republic of Equatorial Guinea dated 29 March 2006.

GE-PROJETS, the General Directorate of Public Works, and the Bodies engaged by the Government.

B) The term "ENGINEER" refers to the Technicians mandated by the institutions indicated in the previous paragraph, appointed by GE-PROJETS and the General Directorate of Public Works for the monitoring of execution of the constructions.

[…]

ARTICLE 6. – TECHNICAL CONTROL AND CERTIFICATIONS OF THE CONSTRUCTIONS

The National Bureau of Planning and Monitoring of Projects in Equatorial Guinea "GE-PROJETS" or the Ministry of Infrastructures and Urbanism shall be responsible for the technical control and the proper execution of the constructions which are the subject of this Contract.

GE-PROJETS is responsible for issuing the corresponding certifications of the constructions. The Government may also nominate one or more internationally renowned firms specialised in the control and supervision of constructions.

The Ministry for Finance and Budget is responsible for payment of the certifications submitted to it by the representative of the Government in compliance with the provisions of Article 4, within the framework of the performance of this Contract.

[…]

ARTICLE 7. – UNIT OF MEASUREMENT AND CURRENCY

The units of measurement used shall be exclusively those of the International Metric System.

The currency used shall be the CFA Franc, applying the exchange rate of:

1 Euro = 655,597 CFA Francs.

ARTICLE 8 – GUARANTEE DEPOSITS AND INSURANCE

The Property Developer must present to the Government a guarantee deposit equal to the advance, with the aim of ensuring and guaranteeing full accomplishment of the contractual obligations, which may be according to any of the conditions which [sic] established by this contract.

This guarantee deposit must be a bank guarantee. It shall take effect once deposited in an escrow account with the correspondent bank mentioned in this Contract. Once the guarantee deposit takes effect, the account will be released.

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Furthermore, the Property Developer shall take out an insurance policy of several million EUROS to cover any damages that the site may cause to third parties.

These guarantee deposits and insurance policies may not be cancelled or amended without notification from the insurance company to the Government.

ARTICLE 9. – REVISION OF THE PRICES

The amount of the contract is fixed and final. However, in order to take account of changes to the economic conditions during the term of the Contract, a correction factor K shall be applied in compliance with the following formulae:

Am = Ao x K, where
Ao = Initial amount of the prices before the reconsideration.
Am = Modified amount of the prices after the reconsideration.
K = Correction factor defined subsequently.

For the payments in local currency:

K = Kiev = 0.15 + 0.45 x S/So + 0.40 x P/Po

where:

S = Value of the index for remuneration for all salaries in Equatorial Guinea during the period which is the subject of the revision of the prices of the Contract.

P = Value of the index of industrial prices in Equatorial Guinea during the period which is the subject of the revision of the prices of the Contract.

S and P are published by the competent bodies of Equatorial Guinea.

So and Po = values of the initial indexes upon signing of the Contract.

[…]

ARTICLE 11. – CONTINUOUS COVER ON THE SITE

The Property Developer shall ensure continuous cover during working hours of the management and the qualified staff necessary to guarantee the normal operation of the company and the progress of the works.

In the same way, the plant allocated to a Contract may not be relocated when it is necessary for the works or posted as guarantee to another site or destined for another site, even belonging to the same Property Developer, without the prior written permission of the Government.

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ARTICLE 12. – EXECUTION TIMEFRAME

The timeframe for execution of the constructions is fixed at ***FORTY EIGHT (48) MONTHS****, which shall begin upon receipt of the advance and after notification of the Service Order for launch of the works, taking account of partial deliveries of constructions considered to be completed throughout the period in question.*

Said timeframe shall not include any periods of cessation of activity during periods of rain, or delay or interruption for any external cause or owing to force majeure.

ARTICLE 17. – EXTRACTION OF QUARRY MATERIALS

The Government shall give the adequate Permissions to the company for the extraction free of charge of the quarry materials in the public land of the State, the municipalities or the Rural Communities and which it uses under this Contract, without prejudice to the environmental legislation in force in the Country upon signing the contract or the legislation in the matter of exploitation of quarries.

Ownership of the quarries, like all other locations used, is mandatory for the Property Developer during and at the end of the project.

[…]

ARTICLE 18. – ALLOCATION OF PROPERTY

The Government shall deliver the land on which the works are to be executed and its annexes free from any occupant. The liability arising out of the allocation by the construction works of private properties situated within the project areas shall not be attributed to the Property Developer.

[…]

ARTICLE 26. – ADDITIONAL WORKS

In the event where the Government seeks from the Property Developer [sic][9] *the execution of constructions not stipulated or included in this Contract, these shall be the subject of an additional contract negotiated and signed between the two parties.*

[9] The Tribunal records a material error in translation. According to the original text, it should be "General Contractor" instead of "Property Developer":

> "*Artículo 26 – Trabajos Adicionales. En el caso de que el Gobierno solicitara del Contratista la ejecución de obras no previstas ni incluidas en el presente Contrato, éstas serán objeto de un contrato adicional negociado, y suscrito entre las dos partes*.".

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ARTICLE 27. – SIGNIFICANT CHANGES IN EXECUTION

The Property Developer may not alter, modify or introduce any substantial changes to the nature of the constructions which are the subject of this contract without the prior written permission of the Government.

ARTICLE 28. – BASIC PRICES

The prices established in this Contract as they are defined in Article 3 (6) above are subject to the conditions of the month of March 2006. The prices established in this Contract are fixed and may be reviewed in compliance with the provisions of Article 9.

[…]

ARTICLE 31. – GENERAL NATURE OF THE PRICES

The prices of this Contract include all costs incurred directly and indirectly and necessary to the continuation of the constructions, and in particular:

- *The costs of staking out and marking of the constructions; costs of recruitment of labour.*

- *Costs of installation and removal of the materials of the constructions.*

ARTICLE 33. – EVALUATION OF THE WORKS

The evaluation of the works executed shall be undertaken by means of monthly or fortnightly certifications that the Property Developer shall deliver to the Government Engineer.

ARTICLE 34. – TERMINATION OF THE CONTRACT

The Project Owner may terminate this Contract for the following reasons:

a) Bankruptcy or dissolution; competing creditors, insolvency, and failure to present the required guarantee deposit.

b) Failure by the Successful Bidder to commence the works within a period of 90 days from the date of approval of the Project, and assuming full and free provision of the land to which reference is made in the First Condition.

c) Suspension of the works for causes attributable to the successful bidder for more than 90 days after commencement, without special justifying circumstances.

d) For very serious defective execution of the works not corrected by the Property Developer.

e) For unauthorised cessation of the works.

f) For corruption by offering or proposing bribes or entering into undeclared agreements to the benefit of the Property Developer, Engineers, Consultants, authorities or civil servants, within the framework of the execution of the works.

The circumstance set out in paragraph (f) shall be considered as a cause for contractual termination, without prejudice to the criminal or civil liability that may apply.

The Property Developer may terminate this Contract for the following causes:

a) When the Project Owner interferes with, blocks or withholds any necessary approval for the issuance of one of the Certifications.

b) Cessation of works for a period of over 90 days for causes attributable to the Project Owner.

In case of termination or normal expiry of the Contract, the Property Developer shall recover the materials imported under the temporary admission scheme, without prejudice to the provisions of Article 2 of this Contract.

These materials, equipment and plant shall be subject to holdback in case of termination attributable to the company, provided that they are guaranteed.

ARTICLE 35. – ADVANCES

35.1 All works, auxiliary resources and materials necessary for the proper execution and completion of any unit of the constructions shall be considered to be included in its price, with the specifications, details and descriptions of the prices.

35.2 The Property Developer [sic] *shall have the right to obtain advances on account at the level of FORTY (40) % of the value of the total price of the constructions.*

35.3 Regardless of the cause, no advance on account shall be made before presentation to the Government of the guarantee referred to in Article 8 of this contract.

ARTICLE 36. – CONDITIONS OF PAYMENT - LATE PAYMENT INTEREST

The evaluations of the works executed shall be given to the Government Engineer at the end of each month or every week. These evaluations shall be carried out taking account of the measurements of the

constructions actually executed and they shall be evaluated in compliance with the unit quotation. The Engineer shall have a period of fifteen (15) days to verify and record the status of execution of the constructions carried out and to sign the monthly certifications.

The monthly certifications of the constructions executed by the Property Developer [sic] *shall be paid within a period of forty five (45) days from signing, or sixty (60) days from the date of their delivery by the Property Developer* [sic] *to the Engineer.*

Any payment made outside of the periods established shall entitle the Property Developer [sic] *to claim default interest calculated from the due date, which shall be established pursuant to the tax rule of the BEAC (Interest rate) per day.*

ARTICLE 38. – EARLY ACCEPTANCE

The Government reserves the right to accept one or more parts of the constructions as and when they are completed and before final and full completion of the constructions, as set out in this contract.

ARTICLE 41. – APPLICABLE LAW AND RESOLUTION OF DISPUTES

This Contract shall be governed by the Laws, regulations and other provisions in force in Equatorial Guinea.

In case of dispute, the parties shall meet to reach an amicable solution, and in the absence of agreement they shall submit to the arbitration of the International Chamber of Commerce of Paris.

ARTICLE 46. – AMENDMENTS

This Contract may not be modified or amended without the prior written agreement of both parties."

XII. HISTORY OF THE DISPUTE

30. In this Section XII, the Tribunal will summarise the main contractual events having occurred after signing of the Contract in March 2006 and until the start of this arbitration in October 2022. The facts relevant to the analysis and to the decision of the Tribunal on the specific arguments, claims and objections raised by the Parties will be examined in Sections XIV to XVII.B.

31. In March 2006, the Claimant and the Respondent entered into the Contract targeting the construction of 2,000 social housing units, including one subproject of 1,000 housing units in the town of Malabo and one subproject of 1,000 housing units in the town of Bata, in Republic of Equatorial Guinea (amended during performance

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of the Contract, the "***Project***").[10] The price of the Contract was fixed at 44,300,000,000 CFA Francs[11] (22,150,000,000 CFA Francs exclusive of taxes for each of the subprojects) in compliance with the estimate and the unit price list (Article 2 of the Contract).

32. The timeframe for execution of the Contract was fixed at 48 (forty eight) months from receipt by the Claimant of the first service order, and an advance of 40% of the value of the total price of the constructions (Articles 12 and 35 of the Contract).

33. It results from the exhibits submitted to the debates that, on 25 July 2006, the Claimant gave the Respondent a bank guarantee (also referenced as deposit repayment guarantee) issued by the bank Crédit Immobilier et Hôtelier ("***CIH BANK***") dated 20 July 2006, for an amount equivalent to that of the contractual advance of 17,720,000,000 CFA Francs, which is 40% of the total amount of the works, in compliance with Article 8 of the Contract.[12]

34. It is also established that in August 2006[13] the Respondent paid the Claimant the advance[14], half of which remained frozen by the guarantee issuing bank, with a view to release upon completion of the works and lifting of the bank guarantee. The advance and the associated service order entailed commencement of the works pursuant to Article 12 of the Contract for a period of 48 months, until August 2010.

35. Nevertheless, it results from the case file that on 7 September 2006 the Claimant informed the Respondent of the situation of the land, which had to be deforested and evacuated before commencement of the works, proposing a quotation drafted by a company specialised in deforestation:

> "*In compliance with the spirit of the contract referenced above, under the terms of which the Government of the Republic of Equatorial Guinea wanted to submit an order to our company for the construction of 2,000 social housing units in Malabo and Bata, and following an inspection of the land intended to house these projects, we observed that these sites can only be exploited after the deforestation has been undertaken firstly, and the homes erected there have been evacuated.*

[10] Statement of Claim, paras. 24-25; Submissions in Defence paras. 12-15 (*inter alia*).
[11] The franc of the Financial Cooperation in Central Africa ("***CFA franc***" or "***CFA F***") for the countries of the Economic and Monetary Community of Central Africa (CEMAC) including the Republic of Equatorial Guinea (cf. website of the Bank of Central African States (BEAC): https://www.beac.int/billets-pieces/histoire-franc-cfa/, consulted on 22 August 2025).
[12] Exhibit C31: Deposit repayment guarantee dated 20 July 2006; Request for Arbitration, para. 80; Statement of Claim, para. 27; FTI Report, para. 5.4; Claimant's Post-Hearing Submissions, paras. 65-67.
[13] On 30 August 2026, according to para. 81 of the for Arbitration, and on 18 August 2006 according to para. 28 of the Statement of Claim. The Tribunal finds that the value date shown on Exhibit C36 is 18 August 2006.
[14] FTI Report, para. 5.10.

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> *Due to this, we would be grateful if you would give us your instructions so these two obstacles can be removed, in order to enable us to proceed with the site facilities and begin the works.*
>
> *In order to activate the procedure, we have contacted specialist firms to carry out the deforestation of the land, and quotations have been given to us for these works, the amounts of which come to 244,409,000 CFA Francs exclusive of taxes for the Malabo site. For Bata, we will send you the amount upon receipt of the offer. We therefore ask you to give us your agreement to begin these works, the amount of which will be invoiced to you. […]*"

36. The Claimant continued to encounter difficulties in launching the works during the year 2006 and early 2007, including owing to the delay in allocating the land of Malabo and Bata for the works.[15]

37. On 4 April 2007, more than one year after signing the Contract, the Claimant was informed of the appointment by the Respondent of the company Trans African Services ("***TAS***") as representative for the supervision and control of the works in Malabo and Bata.[16] More than six years later, on 27 November 2013, FMH Engineering ("***FMH***") replaced TAS as accredited engineer for the control and supervision of the works.[17] TAS and FMH are referred to indifferently as the "***Engineer***" in this Arbitral Award.

38. The Contract initially stipulated standard popular homes, but was substantially modified by a service order for additional works dated 3 May 2011 (hereinafter "***SO90***"), which were to be executed in two phases. SO90 notably added the expansion of the floor area of the homes (villas and apartments) and additional urbanisation works (a primary school, a secondary school, sports grounds, a car park, a police station, a shopping centre and a health centre, among others), for

[15] Statement of Claim, paras. 31 to 40. Exhibit C39: Letter sent by URBAJET to Equatorial Guinea dated 7 September 2006; Exhibit C144: Letter sent by URBAJET to Equatorial Guinea dated 26 September 2006; Exhibit C40: Letter sent on 1st November 2006 by URBAJET to Equatorial Guinea; Exhibit C41: Letter sent on 11 December 2006 by URBAJET to Equatorial Guinea; Exhibit C42: Letter sent on 19 January 2007 by URBAJET to Equatorial Guinea; Exhibit C43: Letter sent on 21 February 2007 by URBAJET to Equatorial Guinea; Exhibit 44: Letter sent on 21 February 2007 by URBAJET to Equatorial Guinea; Exhibit C45: Letter sent on 26 February 2007 by URBAJET to Equatorial Guinea; Exhibit C46: Letter sent on 28 February 2007 by URBAJET to the Prime Minister of Equatorial Guinea; Exhibit C47: Letter sent on 26 March 2007 by URBAJET to Equatorial Guinea.

[16] Exhibit C48: Letter dated 4 April 2007 by the National Bureau of Planning and Monitoring of Projects (GE-PROYECTOS) of the Respondent to URBAJET; Statement of Claim, para. 41.

[17] Exhibit C94: Letter dated 27 November 2013 by the National Bureau of Planning and Monitoring of Projects (GE-PROYECTOS) of the Respondent; Statement of Claim, para. 115.

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an additional amount of 76,535,496,993 CFA Francs exclusive of taxes.[18] The Claimant was not notified of other service orders subsequent to SO90.[19]

39. On 19 November 2013, additional works for the supply of drinking water were approved by the Respondent, with their cost amounting to 3,434,788,302 CFA Francs exclusive of taxes (the "***2013 Additional Works***").[20] According to the Claimant, these works were made necessary by the lack of availability of a functional municipal drinking water network and were only sufficient to serve the homes of phase I of the Project. Similar works therefore had to be executed for the homes not in phase I and the facilities, in compliance with the quotation sent by the Claimant to the Respondent on 2 June 2017.[21]

40. After several exchanges about late payments and suspension of the phase II works in Malabo, on 1st December 2015 the Parties finally signed a report of partial acceptance of the works in Malabo (notably 134 homes) constituting phase I of the Project.[22] The Claimant contends that the Respondent is responsible for the further significant delays on the remaining works that followed.[23]

41. On 29 March 2017, the Parties agreed on the execution of additional works for the construction of hydraulic structures for a total amount of 526,553,792 CFA Francs exclusive of taxes (the "***2017 Additional Works***").[24] The total amount of the contract for each of the subprojects was increased to the sum of 102,646,839,091 CFA Francs exclusive of taxes, which is a total increase to the amount of the Contract of more than four times the initial amount of 44,300,000,000 CFA Francs exclusive of taxes, to a total amount of **205,293,678,182 CFA Francs exclusive of taxes**.

42. The last interim statement of works validated by the Respondent was Interim Statement 18, concerning the Malabo subproject, dated 1st January 2018 ("***Interim Statement 18***", with each interim statement of works hereinafter being a "***Interim Statement***")[25], which was not paid.[26]

[18] Exhibit C4: Service Order no. 090 dated 3 May 2011.
[19] Exhibit C4: Service Order no. 090 dated 3 May 2011; Request for Arbitration, para. 13; Statement of Claim, para. 102; FTI Report, paras. 1.15 to 1.18.
[20] Exhibit C92: Validation of the 2013 Additional Works dated 19 November 2013; Statement of Claim, para. 112.
[21] Exhibit C93: Quotation dated 2 June 2017; Statement of Claim, para. 113.
[22] Exhibit C114: Report of partial acceptance of the Phase I works; Statement of Claim, para. 118.
[23] Cf. para. 43 above.
[24] Exhibit C6: Validation of the 2017 Additional Works dated 29 March 2017; Statement of Claim, para. 151; FTI Report, para. 1.19.
[25] Exhibit C9: Interim Statement 18 (Malabo) dated 1st January 2018; Statement of Claim, para. 169.
[26] Exhibit C10: Letter sent by the Claimant to the Respondent dated 22 March 2018; Statement of Claim, para. 170.

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43. It results from the exhibits submitted to the case file that the Claimant sent the Respondent several reminders about various aspects of the execution of the works, notably (i) the availability or occupation of the land necessary to the works; (ii) the modifications of the services of the project; (iii) the late payments and payment defaults, and also the need to revise the price of the Contract and the calculation of late payment interest on the amounts due; (iv) the reasons for the suspensions of the works; and (v) the percentage completion of the works.[27]

44. According to the Claimant, the amounts due in compliance with Interim Statement 18 remain unpaid to date, in spite of its multiple reminders in 2018, 2019, 2020 and 2021.[28]

45. The letters of 18 December 2020[29] and 18 May 2021[30] convey the position of the Claimant prior to termination of the Contract, without any response of the Respondent having been submitted to the debates. Consequently, the Respondent's position on the claims filed by the Claimant at the time is not established by elements contemporary to the facts.

46. On 14 September 2022, the Claimant notified termination of the Contract for breach, and served formal notice on the Respondent to pay it the sum of **62,091,893,340 CFA Francs** within 15 days ("***Notification***").[31] In the absence of response of the Respondent to the Notification, the Claimant decided to commence these arbitral proceedings.

XIII. HISTORY OF THE PROCEEDINGS

A. REQUEST FOR ARBITRATION AND ANSWER

47. On 28 October 2022, the Claimant filed its request for arbitration (hereinafter the "***Request***"), pursuant to the Contract.

48. On 4 November 2022, the Secretary General of the Court of the ICC confirmed receipt of the Request in French, and asked the Claimant to pay the filing fee of USD 5,000. On 18 November 2022, the Claimant paid the filing fee of USD 5,000.

49. On 29 November 2022, one of the counsels for the Claimant confirmed to the Secretariat that, to accelerate the payment of the administrative fees, he had paid the fees from one of his own accounts. Furthermore, he informed the Secretariat that his firm would reimburse those costs, which would be borne by a third party backer, NIVALION III, L.P., on behalf of the Claimant. To that effect, the counsel for the Claimant added an invoice drawn up by his firm on

[27] Claimant's Statement of Claim, paras. 157-168; Exhibits C131 to C141.
[28] Claimant's Statement of Claim, paras. 170-178; Exhibits C10 to C27.
[29] Exhibit C27: Letter sent by the Claimant dated 18 December 2020.
[30] Exhibit C7: Letter sent by the Claimant dated 18 May 2021.
[31] Exhibit C29: Letter sent by the counsel for URBAJET dated 14 September 2022; Statement of Claim, para. 183; Claimant's Post-Hearing Submissions, para. 38.

behalf of the Claimant, including the amount of €4,986 (corresponding to the filing fee of USD 5,000).

50. On 30 November 2022, the Secretariat issued an invoice for payment of the filing fee by the Claimant, and sent the Request to the Respondent, accompanied by a communication in Spanish owing to the absence of language specified in the arbitration agreement and the writing of the Contract in Spanish.

51. On the same day, the Secretary General of the Court of the ICC communicated to the Claimant:

(i) The notification to Maître José Manuel García Represa of his appointment as potential co-arbitrator by the Claimant, in the event of constitution of a Tribunal composed of three members. Without prejudice to the Court's decision or any agreement of the Parties concerning the number of arbitrators, the Secretariat asked Maître García Represa whether he accepted that appointment.

(ii) That the advance on the provision for arbitration costs until signing of the Terms of Reference had been fixed at USD 150,000, on the basis of an amount in dispute estimated by the Claimant at USD 87,265,795 (equivalent to €75,117,906 and 130,705,619 MAD[32]).

52. On 1st December 2022, the Secretariat sent the Parties and the arbitrators two emails under the terms of which the Secretariat updated the original financial table (dated 30 November 2022).

53. On 8 December 2022, the Secretariat informed the Claimant that the Request had been received by the Respondent on 5 December 2022.

54. On 5 January 2023, the Respondent, represented by Maître Francisco Moro NVE ("*acting on behalf and in the capacity of representative of the State of the Republic of Equatorial Guinea*"), asked by email for an extension to the period of time to present the Respondent's answer to the Request. That request was made in Spanish and accompanied by a letter dated 27 December 2022, in which the Respondent did not express any observations about the language of the arbitration.

55. On 12 January 2023, the Secretariat acknowledged receipt of the request for extension, and notified the Parties about the establishment of the place of the arbitration, the language of the arbitral proceedings, and the representation of the Respondent as follows:[33]

[32] Moroccan dirhams, the currency of the Kingdom of Morocco ("MAD").

[33] Translated from the original correspondence in Spanish:

"*Como las partes no han llegado a un acuerdo, la Corte fijará la sede del arbitraje (Artículo 18(1)). A la hora de estudiar acuerdos de arbitraje que hacen alusión a Paris, la práctica*

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"***Place of the Arbitration***

[…] In the absence of agreement between the parties, the Court shall fix the place of the arbitration (Article 18 (1)).

When it examines arbitration agreements which make reference to Paris, the Court commonly fixes the place of the arbitration in Paris (France) when at least one of the parties declares that such was the intention of the parties or when no observation is received.

Language of the Arbitration

The arbitration agreement does not specify the language of the arbitration. The Respondent has not submitted comments on the language of the arbitration. We ask the Respondent to submit its comments on the language of the arbitration no later than ***16 January 2023****. If the parties do not reach agreement, the Arbitral Tribunal shall determine the language of the arbitration (Article 20).*[34]

Representation

We note that the Respondent is represented by Francisco Moro Nve, Adalberto Ncogo Angono, Cirilo Pérez Mba, Evuy Nguema and Anatolio Nzang Nguema Mangue. Consequently, all future correspondence to the Respondent shall only be sent to those representatives. Each party must promptly inform the Secretariat, the Arbitral Tribunal and the other parties of any changes in its representation (Article 17)."[35]

56. On 15 January 2023, in a correspondence sent exclusively to the Secretariat, the Respondent, represented by Maître Francisco Moro NVE acting in his capacity of representative of the Respondent, filed his observations concerning the language of the arbitration. The Respondent stated that it was favourable to the holding of the arbitration in Spanish owing to the following elements:

habitual de la Corte es fijar la sede del arbitraje en Paris (Francia) cuando al menos una de las partes afirma que esta era la intención de las partes o cuando no se reciben comentarios al respecto."

[34] Translated from the original correspondence in Spanish:
"*El acuerdo de arbitraje no especifica el idioma del arbitraje. La Demandada no ha presentado comentarios sobre el idioma del arbitraje. Invitamos a la Demandada a presenter sus comentarios sobre el idioma del arbitraje el o antes del* ***16 de enero de 2023****.*
Si las partes no llegan a un acuerdo, el tribunal arbitral determinará el idioma del arbitraje (Artículo 20)."

[35] Translated from the original correspondence in Spanish:
"*Notamos que la Demandada está representada por Francisco Moro Nve, Adalberto Ncogo Angono, Cirilo Pérez Mba, Evuy Nguema y Anatolio Nzang Nguema Mangue. Por consiguiente, toda correspondencia futura dirigida a la Demandada será enviada únicamente a dichos representantes. Cada parte deberá informar a la Secretaría, al tribunal arbitral y a las otras partes con prontitud de cualquier cambio en su representación (Artículo 17).*"

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(i) The Contract and its annexes are written exclusively in Spanish;

(ii) Article 44 of the Contract stipulates that the Spanish version shall prevail in case of discrepancy;

(iii) The use of Spanish, in accordance with the provisions of the Contract, is preferable to avoid the high costs of translation; and

(iv) Article 41 of the Contract provides for the application of the laws, regulations and other provisions in force in the Republic of Equatorial Guinea, thus entailing that the relevant legal texts are written in Spanish. A contrary decision would involve a complete translation of all these legal texts if the language of the arbitration was not Spanish.

57. Furthermore, the Respondent argued that Article 20 of the Rules stipulates that "*In the absence of an agreement by the parties, the arbitral tribunal shall determine the language or languages of the arbitration, due regard being given to all relevant circumstances, including the language of the contract*." It also emphasised that the relevant circumstances included:

(i) The fact that the Contract and its performance are closely linked to the Republic of Equatorial Guinea, which is the place of the Contract and the performance;

(ii) That the witnesses speak Spanish and the essential documents to clarify the dispute are in Spanish, which indicates that any visual inspection or expert appraisal should be undertaken in Spanish; and

(iii) The time factor and the costs and fees to appoint interpreters at hearings, which the Respondent "*is not able to assume*".

58. On 16 January 2023, the Claimant accepted the extension sought by the Respondent and stated the reasons in favour of conducting the arbitration in French, mentioning the following elements:

(i) The Claimant has not favoured the official language of its country, which is Arabic, but rather the French language;

(ii) French is the official language of the Republic of Equatorial Guinea. In that context, it seems normal that the Respondent can respond in French to claims made against it in that language;

(iii) A large number of documents exchanged by the Parties during performance of the Contract are in French;

(iv) Opting for French would make it possible to avoid the need to translate those documents into another language, which would have implications in terms of time and costs for the arbitration; and

(v) The lawyers appointed by both Parties speak fluent French.

59. On 19 January 2023, the Secretariat sent all Parties the correspondence issued by the Respondent on 15 January 2023, accompanied by the observations hereunder:

> "**Constitution of the Tribunal**
>
> *We note that the Claimant indicated that "*the stakes of the dispute justify its resolution by three arbitrators*".*
>
> *The Secretariat refers to its letter of 12 January 2023 by which it indicated that* "As the parties have not reached an agreement, the Court will determine the number of arbitrators (Article 12(2))". *The Court shall therefore be invited to determine the number of arbitrators (Article 12(2)).*
>
> *We will soon be in a position to invite the Court to constitute the Arbitral Tribunal. We remind you that it is not possible to join a party to the arbitration at a later stage, unless all parties, including the additional party, agree otherwise (Article 7(1)). Save in the case of notification otherwise by a party no later than* ***24 January 2023*** *inclusive, we will proceed to constitute the Arbitral Tribunal.*[36]
>
> ***Place of the Arbitration***
>
> *We note that the Claimant indicated that "*the parties decided to submit any dispute to arbitration according to the rules of the International Chamber of Commerce with the confident intention that this dispute, if it were to arise, would take place in a neutral place favourable to the arbitration, namely Paris (France)*".*

[36] Translated from the original correspondence in Spanish:

> "*Tomamos nota que la Demandante ha indicado que "l'enjeu du litige justifie qu'il soit résolu par trois arbitres".*
>
> *La Secretaría se refiere a su carta de fecha 12 de enero de 2023, mediante la cual indicó que "Ya que las partes no han llegado a un acuerdo, la Corte determinará el número de árbitros (Artículo 12(2)).*
>
> *Pronto estaremos en posición de invitar a la Corte a constituir el tribunal arbitral. Le/s recordamos que no es possible incorporar ninguna parte al arbitraje posteriormente, a menos que todas las partes, incluida la parte adicional, acuerden lo contrario (Artículo 7(1)). Salvo que cualquiera de las partes nos informe de lo contrario el o antes del 24 de enero de 2023 inclusive, procederemos a constituir el tribunal arbitral.)*.".

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The Secretariat refers to its letter of 12 January 2023 in which it indicated that, considering that the parties had not reached an agreement, the Court would fix the place of arbitration (Article 18(1)).[37]

Language of the Arbitration

The arbitration agreement does not stipulate the language of the arbitration. The Respondent has not accepted the Claimant's proposal to make French the language of the arbitration and instead has proposed Spanish. As the parties have not reached an agreement, the Arbitral Tribunal shall determine the language of the arbitration (Article 20)."[38]

60. On 23 January 2023, the Claimant confirmed its agreement concerning the extension of the period of time for answer to the Request, and indicated that it would continue to communicate with the Secretariat in French.

61. On 25 January 2023, the Secretariat acknowledged receipt of the Claimant's agreement to the Respondent's request to extend the period of time to submit its answer to the Request until 6 February 2023. The Secretariat thus made the following observations:

"**Constitution of the Tribunal**

We note that the Respondent has proposed to submit the dispute to one arbitrator. The Secretariat refers to its letters dated 12 and 19 January 2023, in which it indicated that "[and] as the parties have not reached an agreement, the Court will determine the number of arbitrators (Article 12(2)*)". Consequently, we will invite the Court to fix the number of arbitrators (Article 12(2)).*

Language of the Arbitration

We note that the Claimant has indicated that "[it] intends to continue to address the Secretariat in French*". The Secretariat refers to its letter of 19 January 2023 in which it indicated that "*As the parties have not reached an agreement, the Arbitral Tribunal

[37] Translated from the original correspondence in Spanish:

"*Tomamos nota que la Demandante ha indicado que "les parties ont décidé de soumettre tout litige à un arbitrage selon les règles de la Chambre de Commerce Internationale avec l'intention assurée que ce litige s'il devait intervenir se déroulerait dans un siege neutre favorable à l'arbitrage à savoir Paris (France)."*
La Secretaría se refiere a su carta de fecha 12 de enero de 2023, mediante la cual indicó que en vista de que las partes no han llegado a un acuerdo, la Corte fijará la sede del arbitraje (Artículo 18(1))".

[38] Translated from the original correspondence in Spanish:

"*El acuerdo de arbitraje no prevé el idioma del arbitraje. La Demandada no ha aceptado la propuesta de la Demandante de que el francés sea el idioma del arbitraje y, en su lugar, propone el español. En vista de que las partes no han llegado a un acuerdo, el tribunal arbitral determinará el idioma de arbitraje (Artículo 20).*"

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shall determine the language of the arbitration*". Consequently, we understand that the Claimant intends to communicate with the Secretariat in French until the Tribunal determines the language of the arbitration.*"

62. On 13 February 2023, the Respondent submitted its Answer to the Request (hereinafter the "***Answer***"), dated 6 February 2023, signed by Maître Francisco Moro Nve (the legal representative of the Respondent).

63. On 14 February 2023, the Secretariat acknowledged receipt of the Answer, informing the Respondent that the objections made under Article 6(3) of the Rules would be settled directly by the Tribunal.

64. On 15 February 2023, the Respondent, represented this time by Maître Cirilo Pérez Mba, acknowledged receipt of the letter from the Secretariat dated 14 February 2023 and reserved the right to present the objections contained in the Answer.

B. SEAT OF THE ARBITRATION AND CONSTITUTION OF THE TRIBUNAL

65. On 24 February 2023, the Secretariat informed the Parties that on 23 February 2023 the Court had:

(i) Decided to submit the arbitration to the decision of a Tribunal composed of three members in compliance with Article 12(2) of the Rules;

(ii) Designated Paris, France, as seat of the arbitration in compliance with Article 18(1) of the Rules;

(iii) Fixed an advance on costs at USD 740,000, subject to later adjustments and in compliance with Article 37(2) of the Rules.

66. In the same communication, the Secretary General of the Court therefore invited:

(i) The Claimant to nominate a co-arbitrator no later than 13 March 2023. In case of failure to nominate, the Court would nominate a co-arbitrator on its own initiative pursuant to Article 12(4) of the Rules; and

(ii) The Parties to reach an agreement over the nomination of the President of the Tribunal and to notify this no later than 3 March 2023. If the Parties did not reach an agreement, the Court would appoint the President of the Tribunal in compliance with Article 12(5) of the Rules.

67. On the same day, the Secretariat informed the Parties that such arbitration would henceforth be administered by the ICC ICA1 team.

68. On 3 March 2023, the Claimant informed the Secretariat that (a) the Parties had not reached agreement over the nomination of the President of the Tribunal, and that consequently the President of the Tribunal would have to be nominated by the Court,

and (b) according to the Claimant, the President of the Tribunal would have to be "*fluent in French and Spanish*".

69. On 7 March 2023, the Secretariat noted the absence of agreement between the Parties concerning the nomination of the President of the Tribunal, and specified that the Court would nominate the President in compliance with Article 12(5) of the Rules. The Secretariat asked the Respondent for confirmation of its agreement regarding the need for the President of the Tribunal to be fluent in French and Spanish.

70. On the same date, the Respondent confirmed its agreement to the nomination of the President of the Tribunal fluent in Spanish and French. Furthermore, the Secretariat informed Maître Javier Fernández-Samaniego that he had been appointed co-arbitrator by the Respondent.

71. On 8 March 2023, the Claimant submitted a document entitled "Note in Response" (hereinafter "***Note in Response***") concerning the language of the arbitration, stating that:

(i) The Claimant had initially expressed the wish that the procedure be conducted in French;

(ii) The Respondent had not opposed the use of French in the first exchanges of correspondence during the proceedings, but had then indicated that it would prefer the proceedings to take place in Spanish;

(iii) The choice of French was justified for various reasons already presented in its previous communications;

(iv) French was the official language of the Respondent;

(v) The Claimant had the right to speak French in these proceedings directed against the Respondent pursuant to the Respondent's legislation on administrative procedures.[39]

72. The Claimant furthermore emphasised that the administrative law of the Republic of Equatorial Guinea provided that proceedings in progress overseas could be conducted in languages other than Spanish, with the obligation for the administration of the Republic of Equatorial Guinea to translate the procedural acts into Spanish. Consequently, it concluded that denying the Claimant the right to speak French in this case would constitute a breach of the laws of the Republic of Equatorial Guinea.

73. Furthermore, the Claimant specified its position relating to the statute of limitations applicable to the dispute, stating that the timeframes mentioned by the Respondent were not applicable to its claims, and that in any event it was not possible to consider that the time limitation period could have begun

[39] Article 33 of Law 1/2014 of the Republic of Equatorial Guinea dated 28 July 2014, applicable to administrative proceedings. "*Article 33. – Languages of the proceedings. 1. The language to be used in proceedings conducted by an Administrative Authority must be Spanish*."

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on the date of signing the Contract. Lastly, the Claimant stated that it had written to the Respondent several times to try and find an amicable outcome to the dispute, such that the argument of inadmissibility raised by the Respondent should be dismissed.

74. On 10 March 2023, the Secretariat confirmed receipt of the Note in Response and sought additional observations from the Respondent concerning the arguments put forward by the Claimant. The Secretariat specified that the Note in Response and all comments received would be sent directly to the Tribunal, once constituted, for examination. The Secretariat also stated to the Parties that, taking account of the fact that the Parties were not in agreement over the language of the arbitration, the Tribunal would determine the language of the arbitration.

75. On 15 March 2023, the Respondent:

(i) Requested the correction of certain data and the inclusion of new representatives and counsel; and

(ii) Notified that the Respondent would file a counterclaim for breach of the Contract, given that the Claimant had constructed only 134 homes in Malabo out of the 2,000 planned (1,000 in Bata and 1,000 in Malabo), having received more than 70% of the total price of the Contract.

76. On 16 March 2023, the Secretariat confirmed the update of the Respondent's distribution list, and informed the Respondent that it had to notify its counterclaim upon constitution of the Tribunal, unless the Respondent notified it before, also stating that this could have the effect of increasing the amount of the advance on costs of arbitration fixed by the Court. The Tribunal notes that the Respondent did not file a counterclaim in this case.

77. On 17 March 2023, the Respondent presented its observations concerning the Note in Response of 8 March 2023. The Respondent reiterated its choice of the Spanish language and expressed its wish to hold meetings with the Claimant with a view to initiating an amicable negotiation process. The Respondent also sought the suspension of the arbitral proceedings until conclusion of the negotiations between the Parties.

78. On 24 March 2023, the Claimant accepted the suspension of the arbitral proceedings for a period of 15 days, which period could be renewed by mutual agreement of the Parties, subject to certain conditions regarding the nomination of the arbitrators.

79. On 21 April 2023, following several exchanges between the Parties and with the Secretariat, the Claimant informed the Secretariat that the proceedings should continue without delay. Consequntly, it was agreed by the Parties that the Tribunal should be constituted as soon as possible.

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80. On 25 April 2023, the Secretariat confirmed that the Secretary General would be invited to confirm the nominations of the co-arbitrators and that, subject to indications otherwise by the Parties, the Tribunal would be confirmed.

81. On 25 May 2023, after having given the Parties the opportunity to raise objections, the Secretariat informed the Parties of the confirmation of the co-arbitrators and the nomination by the Court of a President of the Tribunal "*fluent in Spanish and French*" as follows:

> "***Constitution of the Tribunal***
>
> *In compliance with Article 13(2) of the ICC Rules, the Secretary General confirmed, on 25 May 2023:*
>
> *- Maître José Manuel García Represa in the capacity of co-arbitrator after the nomination of the Claimant (Article 13(2)); and*
>
> *- Maître Javier Fernández-Samaniego in the capacity of co-arbitrator after the nomination of the Respondent (Article 13(2)).*
>
> *These confirmations have been communicated to the ICC International Court of Arbitration (the "Court") (Article 13(2)).*[40]
>
> ***Nomination of the President***
>
> *As the arbitration agreement does not provide an alternative method of nomination of the President, the Court shall nominate the President (Article 13(4)).*
>
> *In that respect, it should be noted that the parties have agreed that the Court shall nominate a President fluent in French and Spanish.*"

[40] Translated from the original correspondence in Spanish:
"*Según lo previsto en el Artículo 13(2) del Reglamento, el 25 de mayo de 2023 el Secretario General confirmó a:*
- José Manuel García Represa, como coárbitro tras la designación de la Demandante (Artículo 13(2)); y a
- Javier Fernández-Samaniego, como coárbitro tras la designación de la Demandada (Artículo 13(2)).
Dichas confirmaciones serán comunicadas a la Corte Internacional de Arbitraje de la CCI (la "Corte" (Artículo 13(2))."
"*Dado que el acuerdo de arbitraje no prevé un método alternativo para la designación del Presidente, la Corte lo nombrará (Artículo 13(4)).*
En este sentido, se deja constancia del acuerdo entre las partes para que la Corte nombre a un presidente con perfecto conocimiento del idioma español y francés."

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82. On 23 June 2023, the Secretariat communicated to the Parties that during its session of 22 June 2023, the Court had nominated Maître Luiz Aboim as President of the Tribunal.

C. CASE MANAGEMENT CONFERENCE AND PROCEDURAL TIMETABLE

83. On 27 June 2023, in the absence of agreement over the language of the arbitration, the Tribunal wrote to the Parties in Spanish and in French in order to discuss the next steps of the proceedings, notably (i) the preparation of the Terms of Reference in compliance with Article 23 of the Rules, (ii) the first case management conference, (iii) the timetable of the proceedings, and (iv) other procedural matters, in particular the language of the arbitration.

84. On 21 July 2023, the Secretariat informed the Parties that, in its session of 20 July 2023, the Court had postponed to 31 August 2023 the time limit for establishment of the Terms of Reference (Article 23(2) of the Rules).

85. On 9 August 2023, taking account of the availability of the representatives of the Parties and the observations of the Parties about the language of the arbitration, the Tribunal held the Case Management and Procedural Timetable Conference between 2pm and 4pm[41]. The Claimant was represented by Maître Sablé and Maître Veil, and the Respondent by Maître Tchikaya.

86. On 11 August 2023, the Tribunal stated the agreement between the Parties on the adoption of French as the language of the arbitration at the Case Management Conference of 9 August 2025, including the precisions mentioned in paragraph 27 of this Arbitral Award on the possible use of Spanish. Furthermore, the Tribunal stated to the Parties other points addressed at the Case Management Conference concerning (i) the possibility of agreement between the Parties to the procedural timetable (the Claimant having filed a detailed proposed timetable at the Case Management Conference), (ii) the confirmation by the Respondent of its intention (or not) to file a counterclaim, (iii) that the proposal of a visit to the premises in Malabo made by the Respondent would be subject to an assessment of its relevance by the Tribunal after receipt of the Statement of Claim and of the Submissions in Defence and Counterclaim, (iv) the invitation sent to the Parties to provide a summary presentation of their claims and counterclaims, and their expectations, for the purposes of inclusion in the Terms of Reference, and (v) pursuant to the agreement of the Parties, the nomination of an administrative secretary of the Tribunal.

87. On 14 August 2023, the Respondent confirmed the agreement of the Parties to the language of the arbitration as stated by the Tribunal on 11 August 2023, and confirmed its intention to present a counterclaim, as follows:

> "*the Respondent intends to file a counterclaim striving to have the Claimant ordered to return to it the sum*

[41] Terms of Reference, paras. 76 to 104.

of 17,720,000,000 CFA Francs corresponding to 40% of the amount of the works, paid by the State on 30 August 2006 (Article 35 of the contract) and having been the subject of a deposit repayment guarantee laid down in Article 8 (C31) with interest."

88. On 16 August 2023, the Claimant proposed a procedural timetable to the Tribunal and expressed its reservations over the relevance of a visit to Malabo, notably owing to concerns relating to on-site security.

89. On 17 August 2023, the Tribunal confirmed that it had received the proposed timetable from the Claimant, and noted the absence of comments of the Respondent on this subject within the given period of time (having expired on 14 August 2023). Having regard to the absence of agreement between the Parties, the Tribunal indicated that it would rule on the procedural timetable through a procedural order.

90. On 25 August 2023, the Secretariat stated to the Parties that it had invited the Respondent to pay the balance of the amount of the advance on 26 July 2023, and informed them that the ICC had not yet received that payment. Consequently, the Secretariat (i) granted a further period of time to the Respondent to pay the amount of USD 370,000 before 1st September 2023, and (ii) stated that if it did not receive that payment, the Secretariat could ask the Claimant to pay the balance of the amount of the advance on behalf of the Respondent.

91. On 25 August 2023, the Tribunal rendered Procedural Order No. 1 ("***PO1***") stipulating the following Procedural Timetable:

	EVENT	**RESPONSIBLE PARTY**	**DATE**
a)	Statement of Claim	Claimant	29 September 2023
b)	Submissions in Defence and Counterclaim (12 weeks)	Respondent	22 December 2023
c)	Provisional date for the decision on the site visit to Malabo, in compliance with the arguments of the Parties in their previous submissions	Tribunal	12 January 2024
d)	Submissions in Reply and Submissions in Defence on the Counterclaim (10 weeks)	Claimant	22 March 2024
e)	Submissions in Rejoinder and Submissions in Reply on the Counterclaim (10 weeks)	Respondent	31 May 2024
f)	Submissions in Rejoinder on the counterclaim (and/or the objections of jurisdiction or admissibility) (5 weeks)	Claimant	28 June 2024
g)	Notification of the names of the experts and adverse witnesses that a Parties wishes to cross-examine at the Hearing	Claimant and Respondent	26 July 2024
h)	Prior video conference on the organisation of the Hearing	Tribunal and Parties	6 September 2024

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i)	Hearing	Tribunal and Parties	30 September to 4 October 2024
j)	Submissions on the Hearing and on the costs of the arbitration	Claimant and Respondent	To be decided

D. TERMS OF REFERENCE

92. On 25 August 2023, the Tribunal also communicated draft Terms of Reference, including the agreements made at the Case Management Conference. The Tribunal invited the Parties to submit their comments no later than 1st September 2023. Taking account of the history of the proceedings and the need to offer the Parties adequate time to comment on and sign the Terms of Reference, the Tribunal asked the Secretariat for additional time to submit the signed Terms of Reference.

93. On 25 August 2023, co-arbitrator Maître Fernández-Samaniego informed the Parties, in compliance with Article 11(3) of the Rules, that he planned to join law firm Osborne Clarke. On 30 August 2023, the Claimant congratulated Maître Fernández-Samaniego. The Respondent did not comment on the change of law firm of Maître Fernández-Samaniego.

94. On 31 August 2023, the Secretariat informed the Parties that on 17 August 2023 the Court had extended the period of time to draw up the Terms of Reference until 30 September 2023 (Article 23(2) of the Rules).

95. On 1st September 2023, the Claimant submitted its comments on the draft Terms of Reference. The Respondent did not submit comments on the draft Terms of Reference.

96. On 6 September 2023, the Secretariat informed the Parties that, following the payment request sent to the Respondent on 25 August 2023, the Secretariat had not yet received payment of the balance of USD 370,000. Consequently the Secretariat made a further payment request granting the Respondent additional time to pay until 15 September 2023. The Secretariat reminded the Parties that if this payment was not made, the Secretariat could ask the Claimant to pay the balance on behalf of the Respondent.

97. On 8 September 2023, the Tribunal acknowledged receipt of the Claimant's observations on the draft Terms of Reference and recorded the absence of comments of the Respondent. The Tribunal also revised the draft Terms of Reference and submitted a final version with a view to electronic signature by the Parties no later than 15 September 2023. Furthermore, the Tribunal also proposed the nomination to the post of Administrative Secretary of Ms Chérine Ftouki (later replaced by Maître Chataud, in compliance with paragraph 16 above), and invited the Parties to submit any observations or to approve that nomination before 15 September 2023.

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98. On 15 September 2023, the Claimant confirmed that it had signed the Terms of Reference, produced the required DocuSign confirmation, and approved the nomination of the Administrative Secretary. On 16 September 2023, the Respondent confirmed that it had signed the Terms of Reference, produced a signed copy of the last page of the Terms of Reference, and approved the nomination of the Administrative Secretary.

99. On 18 September 2023, the Tribunal thanked the parties for having signed the Terms of Reference, and confirmed the appointment of Ms Ftouki. Having noted that the Parties had not electronically signed the Terms of Reference, the Tribunal initiated the signature proceedings again via DocuSign and invited the Parties to sign the Terms of Reference before 20 September 2023. On 18 and 19 September 2023, the Arbitral Tribunal and the Parties signed the Terms of Reference, and a signed copy was sent by the Tribunal to the Parties and to the Secretariat.

100. The Terms of Reference signed by the Parties contains their agreement concerning these proceedings and any objections of the Parties to the jurisdiction of the Tribunal and admissibility of the claims or counterclaims:[42]

> "*By signing these Terms of Reference, the Parties acknowledge that they agree to submit to this arbitration and expressly waive any procedural objection they may have in respect of the facts already known by the Parties at the time of signing these Terms of Reference, including objections relating to the constitution and composition of the Tribunal, but excluding objections of jurisdiction and admissibility*."

101. On 26 September 2023, the Secretariat renewed the payment requests of 26 July 2023, 25 August 2023 and 6 September 2023, and invited the Respondent to pay the balance of the amount of the advance, offering it additional time to make the payment.

E. STATEMENT OF CLAIM AND SUBMISSIONS IN DEFENCE

102. On 29 September 2023, the Claimant submitted its Statement of Claim to the Arbitral Tribunal ("***Statement of Claim***"), accompanied by factual exhibits C-33 to C-145, legal exhibits CL-1 and CL-2, and an expert's report on the valuation of the loss prepared by Ms Juliette Fortin ("***FTI Report***") of the firm of experts FTI ("***FTI***").[43]

103. On 16 October 2023, the Secretariat renewed the payment requests and invited the Respondent to pay the balance of the amount of the advance, offering it additional time to make the payment. The Secretariat also stated that if it did not receive payment within the time indicated, it reserved the right to

[42] Terms of Reference, para. 200.
[43] Exhibit CE1.

ask the Claimant to pay the balance of the amount of the advance on behalf of the Respondent.

104. On 7 November 2023, the Secretariat once again renewed the payment requests and invited the Respondent to pay the balance of the amount of the advance, offering it additional time to make such payment. The Secretariat stated that if it did not receive payment within the time indicated, it reserved the right to claim payment of the balance of the amount of the advance from the Claimant on behalf of the defaulting party.

105. On 7 December 2023, the Respondent sought postponement of the date for submission of its Submissions in Defence by 90 days. On 8 December 2023, that request was sent to the Claimant by the Tribunal.

106. On 11 December 2023, the Claimant opposed that request for additional time, stating that it went against the principles of efficiency and expeditiousness of the arbitral proceedings.

107. On 11 December 2023, the Secretariat, not having received payment of the advance by the Respondent, invited the Claimant to substitute for the Respondent and make payment of the advance.

108. By decision dated 12 December 2023, the Arbitral Tribunal granted an extension to 8 January 2024 to file the Submissions in Defence, with the possibility for the Claimant to request a similar period of time for its submissions in reply.

109. On 14 December 2023, the Claimant expressed its concern over the impact of any additional delay, and confirmed its choice not to seek a similar postponement to that granted to the Respondent at this stage of the proceedings.

110. On 9 January 2024, one day after the time limit granted by the Tribunal, the Respondent filed its Submissions in Defence ("***Submissions in Defence***"). The Submissions in Defence did not address the substance of the dispute and the Respondent's request for a visit by the Tribunal to Malabo, but only (i) raised the lack of jurisdiction of the Tribunal, and (ii) sought the bifurcation of the proceedings pursuant to Article 22 and Appendix IV of the Rules.[44] Nevertheless, the Submissions in Defence contained (i) a mention "*as a guideline*" concerning a presumed violation of the Uniform Act on Commercial Companies and Economic Interest Groups in force in Equatorial Guinea, concerning the branch created by the Claimant in the Republic of Equatorial Guinea[45]; and (ii) a reservation of the Respondent over its right

[44] Submissions in Defence, paras. 36 to 42.

[45] Submissions in Defence, paras. 6 to 8; Exhibits R1 to R4 and RL1 and RL2. In its Submissions in Reply, paras. 105 to 116, the Claimant asserted with exhibits in support that "*between 2013 and 2021, the Equatorial Guinea authorities provided the Claimant each year with a certificate of registration in the proper and due form for the branch of URBAJET, between 2013 and*

to modify, develop or supplement its arguments and its claims during these proceedings, and, where applicable, to file a counterclaim.[46]

111. On 10 January 2024, the Claimant confirmed that it would substitute for the Respondent in the payment of the balance of the advance. The same day, the Respondent informed the Secretariat that it had transferred USD 370,000 for the payment if its share of the arbitration costs. On 12 January 2024, the Respondent sent an email attaching the proof of payment (swift) made.[47]

112. On 11 January 2024, the Claimant informed the Arbitral Tribunal that it had read the Submissions in Defence and indicated that it was opposing the request for bifurcation filed by the Respondent.[48] In the same email, the Claimant filed a series of observations and asked the Tribunal to dismiss any request for bifurcation and to maintain the procedural timetable.[49]

113. On 12 January 2024, the Arbitral Tribunal acknowledged receipt of the Claimant's comments on the request for bifurcation, found that neither of the Parties had addressed in their submissions the usefulness of a visit to Malabo, and inferred from this that: "*the Parties do not intend to request such visit.*". That same day, the Respondent informed the Tribunal that it was maintaining its request for a visit to Malabo. According to the Respondent, such a visit would be useful so the Tribunal could verify the degree of compliance with the Contract by the Claimant and the quality of the works executed, and to forge an opinion on the case.[50]

114. On 31 January 2024, the Tribunal communicated its Procedural Order No. 2 ("***PO2***"), through which it declared the Respondent's request for bifurcation admissible and dismissed it on the merits. On the merits, the Tribunal noted in PO2 that the Claimant's claim mentioned by the Respondent to justify its jurisdictional objection already featured in the Request, in the Terms of Reference and in the Statement of Claim. The Respondent had not raised any jurisdictional objection in its Answer to the Request, or upon signing the Terms of Reference, and only presented it after the Statement of Claim (in which the Claimant had presented its case on the merits), which was

2021. This unequivocally demonstrates the legal recognition of the status of the branch by the Equatorial Guinea authorities"; Exhibit C146: Certificates of registration of the branch of URBAJET in Equatorial Guinea for the years 2013 to 2021.

[46] Submissions in Defence, para. 43.

[47] Email from Maître Weil to the Secretariat dated 10 January 2024; Email from Maître Tchikaya dated 10 January 2024; email from Maître Adalberto Ncogo Angono dated 12 January 2024; Letter from the Secretariat to the Parties dated 16 January 2024.

[48] Email from Maître Weil dated 11 January 2024.

[49] Email from Maître Weil dated 11 January 2024.

[50] Email from Maître Adalberto Ncogo Angono dated 12 January 2024.

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after the extended period of time given to it to present its Submissions in Defence.

115. Consequently, the Tribunal concluded that the bifurcation was not justified by the quest for greater efficiency of the arbitral proceedings. The Tribunal therefore invited the Parties to present their positions on the jurisdictional objection raised by the Respondent in their next submissions, respecting the procedural timetable established in PO1.

116. Furthermore, in PO2, the Tribunal dismissed the request for visit to Malabo, indicating that, in compliance with the procedural timetable, this request should have been justified in the submissions of the Parties, with the Party wanting this visit having to establish its evidentiary usefulness (including for the purposes of Article 22(1) of the Rules). Considering that the Parties had not mentioned this visit in their respective statements and therefore had not used the option conferred on them in PO1, the Tribunal was not persuaded of the usefulness or the need for such a visit at this stage of the proceedings. Furthermore, as the Respondent had not expressed its position on the merits, it did not enable the Tribunal to assess the relevance of such a visit to establish the proof of the Respondent's arguments in defence.

F. SUBMISSIONS IN REPLY AND OBJECTIONS OF THE RESPONDENT

117. On 22 March 2024, the Claimant submitted its Submissions in Reply to the Tribunal ("***Submissions in Reply***"), accompanied by factual exhibits C-146 to C-153 and legal exhibits CL-3 to CL-29. These submissions were limited to addressing the Claimant's arguments in response to the objection to jurisdiction raised by the Respondent.

118. On 31 May 2024, the Respondent did not make use of the opportunity given to it by PO1 to submit submissions in rejoinder ("***Submissions in Rejoinder***"). On 7 June 2024, the Tribunal invited firstly the Respondent to confirm that it had not submitted Submissions in Rejoinder, and secondly the Parties to present their comments on the management of the next steps of the proceedings.

119. On 14 June 2024, the Respondent submitted to the Tribunal a document entitled "Respondent's Objections to Jurisdiction" (hereinafter "***Respondent's Objections***") and explained that it had not submitted Submissions in Rejoinder because it:[51]

> "*did not believe it had to do so for the major reason that, in its Submissions in Defence of 8 January 2024, it asked the Tribunal to decline jurisdiction to hear the claims of URBAJET*."

120. Subsequently, in the same document, the Respondent reiterated its objections to the jurisdiction of the Tribunal.

[51] Respondent's Objections, para. 2.

121. On 3 July 2024, the Tribunal and the Parties held a video conference in order to discuss the organisation of the Hearing, and also other matters raised by the Parties and the Tribunal. During that conference, in response to the questions of the Tribunal, the Respondent confirmed that it understood that the appropriate moment to present its arguments in defence on the merits was that of the Submissions in Defence, in compliance with PO1, and that it did not intend to raise any defence on the merits in this case.

122. During the same video conference, the Tribunal notified its intent to appoint Maître Chataud as Administrative Secretary of the Tribunal, in replacement for Ms Ftouki, and communicated the curriculum vitae and the necessary declarations of Maître Chataud.

G. THE FINAL HEARING

123. On 2 September 2024, the Tribunal invited the Parties to submit their comments and suggestions on: (i) the draft procedural order no. 3, in which it established that there would be no cross-examination of witnesses or experts (subject to the presence of FTI for any questions of the Tribunal); (ii) the curriculum vitae of Maître Chataud in French and in Spanish, and the declarations of Maître Chataud and the Tribunal concerning his appointment in the capacity of Administrative Secretary of the Tribunal; and (iii) the prior video conference relating to the organisation of the Hearing, intended to discuss the observations of the Parties and the decisions of the Tribunal, where applicable, necessary to render procedural order no. 3 and the logistical aspects of the Hearing.[52]

124. On 5 September 2024, the Claimant sent its suggestions for modifications to the draft procedural order no. 3, mainly suggestions of presentation, and a proposed provisional programme for the Hearing.

125. On 6 September 2024, in compliance with the Procedural Timetable, the video conference about the organisation of the Hearing was held. During that conference, the Parties confirmed that they did not wish to question the FTI expert at the Hearing. The Tribunal nevertheless reserved the right to ask questions to the expert mandated by the Claimant during the Hearing.

126. The Parties also agreed on the fact that the Hearing would be held in French, without simultaneous translation into Spanish. Various other logistical aspects were discussed with a view to the Hearing, which would be held at the Paris office of the law firm of the President of the Tribunal at 10 avenue Hoche 75008, Paris.

[52] Email from the Tribunal dated 2 September 2024.

127. Lastly, the Parties confirmed to the Tribunal that they accepted the nomination of Maître Chataud as Administrative Secretary of the Tribunal, in replacement for Ms Ftouki.[53]

128. On 11 September 2024, the Tribunal rendered Procedural Order no. 3 ("***PO3***") on the organisation of the Hearing. The Tribunal dismissed the Claimant's request, made during the video conference relating to the organisation of the Hearing, for an intervention of its expert during the opening pleadings of the Hearing. Nevertheless, the Tribunal sought the presence of the expert at the Hearing to answer any questions of the Tribunal.[54]

129. The Hearing was held on 2 and 3 October 2024 in Paris, in the presence of the Tribunal assisted by the Administrative Secretary.

130. The Claimant was represented by its counsels Maître Laurent Sablé, Maître Alexis Weil and Ms Laly Blanchard; its representatives Mr Karim Amor and Mr Youssef Choukri; and assisted by its expert from FTI Ms Juliette Fortin and her team (Ms Charlotte Legrand and Mr Théo Lefevre). The Respondent was represented by its counsels Maître Jean-Charles Tchikaya, Ms Gladys Delcort Ncara, Maître Adalberto Ncogo Angono and Maître Cirilo Pérez Mba.

131. The following stenographers were present at the Hearing: Ms Nathalie Laouti, Ms Caroline Chapuis-Lefevre, Ms Léopoldine Onana-Brion and Ms Déborah Cavennes.[55]

132. The Hearing followed the order of the programme laid down in Annex 2 of PO3, on Wednesday 2 October 2024 between 10:30 and 17:00 and on Thursday 3 October between 10:30 and 12:45.[56]

133. During the Hearing, the Parties were invited to answer the questions of the Tribunal, which reserved the right to seek updated calculations of the claims.

134. A prior meeting of deliberations was held following the Hearing, on 4 October 2024.

135. On 10 October 2024, Maître Sablé informed the Tribunal of the change of law firm and the new email address of Maître Weil.

[53] Email from Maître Tchikaya dated 4 September 2024, and email from Maître Weil dated 5 September 2024.
[54] PO3, paras. 18 to 22.
[55] PO4, para. 2 and Annex 1 PO4: Attendance register of the Hearing.
[56] PO4 para. 3.

H. POST-HEARING SUBMISSIONS AND SUBMISSIONS ON THE COSTS OF THE ARBITRATION

136. On 24 October 2024, the Tribunal rendered Procedural Order No. 4 ("***PO4***") fixing the procedural timetable and indicating its instructions for the remaining steps of the proceedings:

Procedures	Dates
Comments on the transcription of the Hearing and potential confirmation of information, transmission of information and additional exhibit	No later than 1st November 2024
Translation of the transcriptions into Spanish and validation by the Parties	No later than 8 November 2024
Post-Hearing Submissions of the Parties	No later than 22 November 2024
Communication of the submissions to the other Parties	Upon receipt of the submissions
Transmission of the submissions of the Parties on the costs of the proceedings	No later than 29 November 2024

137. On 29 October 2024, the Claimant submitted its comments on the transcription of the Hearing.[57] The transcriptions were followed by their translations into Spanish sent by the Claimant to the Tribunal on 13 November 2024.[58] The Tribunal did not receive comments from the Respondent on the French and Spanish versions of the transcriptions.

138. On 1st November 2024, the Claimant presented its observations a requested by the Tribunal in PO4 ("***Claimant's Observations***") and communicated a copy of Decree Law no. 4/1980 confirming that the decrees of 1965 and 1967 are integrated into Equatorial Guinea law and remain in force, as well as a copy of Article 1106 of the Equatorial Guinea Civil Code, respectively numbered Exhibits CL-30 and CL-31.

139. On 18 November 2024, the Respondent submitted its post-hearing submissions, accompanied by a copy of the first page of the Official Journal of the State of Equatorial Guinea, which includes Decrees 923/65 and 3354/67 ("***Respondent's Post-Hearing Submissions***"). The Claimant submitted its post-hearing submissions to the Tribunal on 22 November 2024 ("***Claimant's Post-Hearing Submissions***"). On 25 November 2024, the Tribunal forwarded said submissions to the Parties.[59]

140. In compliance with paragraph 8 of PO4, 29 November 2024 the Claimant submitted its submissions on the costs of the proceedings on ("***Submissions on the***

[57] Email from Maître Weil dated 29 October 2024.
[58] Email from Maître Weil dated 11 November 2024.
[59] Email from Maître Aboim to the Parties dated 25 November 2024.

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Costs"). On 2 December 2024, the Tribunal stated that it had not received the Respondent's submissions on costs.[60]

I. CLOSURE OF THE PROCEEDINGS AND ARBITRAL AWARD

141. On 26 March 2025, the President of the Tribunal informed the Parties that, owing to health problems in his family, the draft final award would not be ready for the date initially scheduled of 31 March 2025. He also specified that the Tribunal was in contact with the Secretariat on this matter.[61]

142. On 28 March 2025, the Secretariat notified that, at its session of 27 March 2025, the Court had extended the time limit to render the final arbitral award to 30 May 2025 (Article 31(2) of the Rules).

143. In the same letter, the Secretariat informed the Parties of the nomination of Ms Sophie Varenne in the capacity of Judge of the ICA2 team of the Court, and the new case reference: 27340/SP/AJP/SP/ETT/SVE.

144. On 9 May 2025, Maître Weil informed the Tribunal of the new contact details of Maître Weil and Maître Sablé.

145. On 22 May 2025, the Secretariat informed the Parties that, in its session of 17 May 2025, the Court had extended the time limit to render the final arbitral award to 31 July 2025 (Article 31(2) of the Rules).

146. On 18 July 2025, the President of the Tribunal informed the Parties that, in spite of his efforts to finalise the award, the Tribunal was unable to send its draft award to the ICC during the week of 7 July as initially planned.[62]

147. On 30 July 2025, the Secretariat informed the Parties that, in its session of 29 July 2025, the Court had extended the time limit to render the final arbitral award to 30 September 2025 (Article 31(2) of the Rules).[63]

148. On 15 September 2025, the Tribunal informed the Parties of the closure of the proceedings (Article 27 of the Rules). By letter of the same date, the Secretariat informed the Parties: (i) of the receipt of the draft Arbitral Award submitted by the Tribunal on 15 September 2025 (Article 34 of the Rules); (ii) that as the Respondent is a State, the Court will scrutinise the draft at one of its special committees in early October 2025 (Article 5(1)(c) of Appendix I of the Rules); and (iii) that the Parties could "*be notified of the date on which an award will be served in order to prepare accordingly*", and

[60] Email from Maître Aboim to the Parties dated 2 December 2024.
[61] Email from Maître Aboim to the Parties dated 25 March 2025.
[62] Email from Maître Aboim to the Parties dated 18 July 2025.
[63] In making that decision, the Court took account of the fact that the Tribunal was bound to submit the draft award for the scrutiny of the Court until no later than mid-September 2025 (Article 34 of the Rules).

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that, in these cases, the Secretariat could retain the Arbitral Award for a period of three working days before notifying it.

149. On 16 September 2025, the Tribunal invited the Parties to confirm their agreement concerning (i) the signing of the Arbitral Award by the Tribunal with use of an electronic signature platform, and (ii) the notification of the Arbitral Award by email.

150. By email dated 17 September 2025, the Claimant asked the Secretariat to send the Arbitral Award to the Parties as soon as it was ready to be notified, without the need to notify the Parties in advance.

151. On 18 September 2025 at 09:36 CET, the Secretariat acknowledged receipt of the Claimant's correspondence dated 17 September 2025, a copy of which the Secretariat sent directly to the Respondent. Furthermore, the Secretariat informed the Parties that, in the absence of agreement to an alternative method of service, it would send the Arbitral Award without notifying the Parties in advance.

152. Also on 18 September 2025, at 10:38 CET, the Respondent confirmed its agreement with the Claimant concerning the service of the Arbitral Award, and also asked the Secretariat to serve the Arbitral Award to the Parties "*as soon as it is ready*". On the same day at 11:40 CET, the Secretariat acknowledged receipt of the Respondent's correspondence, a copy of which the Secretariat sent directly to the Respondent, and confirmed that it would serve the Arbitral Award without notifying the Parties in advance.

153. In response to the email from the Tribunal dated 16 September 2025 concerning the signing and service of the Arbitral Award, on 18 September 2025 at 16:16 CET, the Claimant informed the Tribunal that it was not opposed to the electronic signature of the Arbitral Award and its service by electronic means, with the signed electronic version constituting the service made in compliance with the Rules. Nevertheless, taking account of the possibility of application for exequatur in a jurisdiction outside of the European Union, the Claimant asked the Tribunal "*to draw up originals in hard copy, signed by hand, one of which to be sent to each of the parties by the Secretariat by post. These originals can of course be sent after service of the electronic version of the award*."

154. On 18 September 2025 at 19:48 CET, the Respondent confirmed its agreement with the Claimant concerning the signing and service of the Arbitral Award as follows: "*the Respondent is of the same opinion as the Claimant regarding the terms of the electronic signature of the award and its communication in hard copy*." Following a request for clarification of the Tribunal on the same day at 10:20 CET, the representative for the Respondent confirmed the address for sending the Arbitral Award as follows: "*I confirm to you that the award can be sent to me at the address 4 Rue Pierre l'Ermite in Paris 18th, which is that of my branch office*."

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155. On 25 September 2025, the Secretariat informed the Tribunal and the Parties that the Court had extended the time limit to render the Arbitral Award to 31 October 2025 (Article 31(2) of the Rules). On 30 October 2025, the Secretariat informed the Tribunal and the Parties that the Court had extended the time limit to render the Arbitral Award to 28 November 2025 (Article 31(2) of the Rules).

XIV. JURISDICTION OF THE TRIBUNAL

156. During the Hearing and in their Post-Hearing Submissions, the Parties confirmed the jurisdiction of the Tribunal to rule on its own jurisdiction[64], without raising objections regarding the conduct of the proceedings by the Tribunal.[65]

157. Before ruling on the merits of the dispute, the Tribunal will first examine the admissibility of the objection to jurisdiction raised by the Respondent. Finding its admissibility, it shall then pronounce on its jurisdiction.

A. ARGUMENTS AND SUBMISSIONS OF THE RESPONDENT

158. The Tribunal will summarise hereunder the Respondent's arguments, as presented in its submissions, in that they are necessary to the Tribunal's decision on the admissibility and merits of the objection to jurisdiction.

1. Admissibility of the objection to jurisdiction

159. The Respondent explains that it had raised the objection to jurisdiction only in its Submissions in Defence owing to the Claimant's claim striving to obtain a hold harmless guarantee relating to the payment of penalties that may be pronounced by the "*courts and administrations*" of the Respondent.[66] According to the Respondent, this claim expresses a doubt of the Claimant over the jurisdiction of the Tribunal to hear the dispute, having regard to the nature of the Contract, which is an administrative contract.

160. The Respondent founded the admissibility of the objection to jurisdiction on three principal arguments:

(i) The lack of jurisdiction of the Tribunal is not a new claim, but an argument with which the Tribunal was already seised (without specifying since when), thus escaping the application of Article 23(4) of the Rules

[64] Respondent's Post-Hearing Submissions, para. 6. Transcription, D1, p. 33: **Representative of the Respondent**: "*I simply wanted to add, and this is logical, that the difference in applicable law between the contract and the arbitration agreement allows us to ask the Arbitral Tribunal to decline jurisdiction since the Arbitral Tribunal is competent pursuant to the arbitration agreement to be able to decline jurisdiction. Hence the rule of the competence-competence doctrine*." (Emphasis added).

[65] Transcription, D2, p. 23, lines 44 to 52.

[66] Submissions in Defence, paras. 17 and 18.

and Article VII of the Terms of Reference relating to new claims;[67]

(ii) The impossibility of anticipating the jurisprudential evolution resulting from the ruling of the *Conseil d'Etat* of 17 October 2023[68], handed down after signing of the Terms of Reference of 19 September 2023, and invoked by the Respondent in the Submissions in Defence;[69] and

(iii) The dismissal of the claim for bifurcation in PO2 was accompanied by an invitation of the Tribunal to the Parties to "*submit any comment to the jurisdictional objection raised by the Respondent*" in their later submissions.[70]

161. Furthermore, the Respondent contends, by analogy with the French law applicable in procedural matters, that an objection to jurisdiction could be raised for the first time before the appeal court, and consequently remains admissible by the Tribunal even when it is presented at the time of its Submissions in Defence.[71]

162. On those grounds, the Respondent asked for its objection to jurisdiction to be declared admissible by the Tribunal.

2. Merits of the objection to jurisdiction

163. The principal arguments invoked by the Respondent in support of its objection to jurisdiction are (i) firstly that the Contract constitutes an administrative contract under Equatorial Guinea law, and (ii) secondly that in that way it falls to the exclusive jurisdiction of the administrative courts of the Respondent.[72]

(i) **The Contract is an internal administrative contract**

164. The Respondent contends that the Contract is an administrative contract because it concerns a public works contract, on a public interest construction, specifically social housing.[73] Furthermore, the Contract was signed by the Minister for Infrastructure and Urbanism, the Minister for Finance and Budget, and the Director General of GE-PROYECTOS, and was funded in full by the Bank of Central African States ("***BEAC***").[74]

[67] Respondent's Post-Hearing Submissions, paras. 4-6.
[68] Submissions in Defence, paras. 32 to 34.
[69] Respondent's Post-Hearing Submissions, para. 7.
[70] Respondent's Post-Hearing Submissions, para. 8.
[71] Exhibit RL 5: *Conseil d'Etat* ruling, 2nd and 7th chambers, 23 December 2015, No. 376018.
[72] Submissions in Defence, paras. 19 to 35.
[73] Submissions in Defence, para. 19.
[74] Submissions in Defence, para. 19.

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165. According to the Respondent, the Contract is not an international administrative contract, but an "internal" contract concerning the construction of social housing in the Republic of Equatorial Guinea, where the Respondent made payments to the Claimant into its bank accounts in two banks in Malabo (Société Générale de Banque-Guinée Équatoriale and CCEI Bank).[75]

(ii) **The Contract falls to the exclusive jurisdiction of the administrative courts of the Republic of Equatorial Guinea**

166. In that context, the Respondent asserts that the Tribunal does not have jurisdiction to hear the claims filed on the grounds of the Contract, owing to the two decrees invoked by the Claimant. According to the Respondent, the following decrees govern contracts entered into with the State in the Republic of Equatorial Guinea:[76]

(a) Decree 923/1965 of 8 April 1965, Baseline Law on State contracts ("***Decree 923/65***") and

(b) Decree 3354/1967 of 28 December 1967 governing State contracts in the Republic of Equatorial Guinea ("***Decree 3354/67***").

167. According to the Respondent, the Contract, as administrative contract, falls to the exclusive jurisdiction of the administrative courts of the Republic of Equatorial Guinea, in compliance with Decrees 923/65 and 3354/67.

168. The Respondent firstly invokes Article 17 of Decree 923/65, which it translates as follows:[77]

> "*Disputes arising out of the interpretation or performance of contracts governed by this law shall be resolved by the competent court of the department having entered into the contract. These agreements may be the subject [of] administrative legal remedies under the conditions laid down by the law governing that court*."

169. Furthermore, the Respondent invokes Article 21.5 of Decree 3354/67, which it presents as being "*more explicit*" about the matter of jurisdiction. Said provision provides for an obligation for foreign companies wishing to tender for the award of State works contracts to submit to the jurisdiction of the courts of the Republic of Equatorial Guinea. The Respondent has translated Article 21.5 of Decree 3354/67 as follows:[78]

[75] Submissions in Defence, para. 20.
[76] Submissions in Defence, para. 21.
[77] Submissions in Defence, para. 22.
[78] Submissions in Defence, para. 23.

> "*Article 21. Without prejudice to the regulatory provisions in the matter, foreign companies wishing to tender for the award of State works contracts must fulfil the following conditions:*
> *[…]*
>
> *5. The contractor, in its bid, shall solemnly declare to submit to the jurisdiction of the civil, criminal, labour and administrative courts for all incidents that may arise directly or indirectly out of the contract*."

170. It is further contended by the Respondent that Article 54 of Decree 3354/67 attributes exclusive jurisdiction to the Equatorial Guinea courts to hear disputes relating to administrative contracts. The Respondent has proposed the following translation of Article 54:[79]

> "*Matters in dispute arising out of the interpretation or performance of contracts governed by this Law shall be resolved by the competent body of the department having entered into the contract. Its decisions may be appealed before the administrative courts under the conditions laid down by the law governing that court, Article 17 LCE-1.*
>
> *The administrative court also has jurisdiction to hear contracts which, owing to their nature, must be submitted, even on a supplementary basis, to the administrative legal system*."

171. On the grounds of the above provisions, the Respondent concludes that this dispute, relating to an administrative contract, "*imperatively*" falls to the jurisdiction of the administrative courts of the Republic of Equatorial Guinea, and that consequently this Tribunal does not have jurisdiction owing to the "*non-arbitrability of the dispute concerning an administrative contract*".[80]

172. In support of these arguments, the Respondent invoked two decisions of the French *Conseil d'Etat* [French Council of State] in its Submissions in Defence, contending that the objection to jurisdiction it is raising is based on general principles of French public law.[81] According to the Respondent, French law excludes the possibility of submitting administrative contracts, even international, to arbitration with its seat overseas.[82]

173. In its submissions, the Respondent asks the Tribunal to decline jurisdiction owing to the "*non-arbitrability*" of the dispute concerning an internal administrative contract, which under Equatorial Guinea law falls to the

[79] Submissions in Defence, paras. 24 and 25.
[80] Submissions in Defence, para. 26.
[81] Submissions in Defence, para. 29.
[82] Submissions in Defence, paras. 28 to 33.

exclusive jurisdiction of the administrative courts of the Republic of Equatorial Guinea.[83]

174. Lastly, in its Post-Hearing Submissions, the Respondent answered a question set at the Hearing regarding the possibility of the Republic of Equatorial Guinea invoking its national law in order to invoke the lack of jurisdiction of this Tribunal sitting in Paris, as follows:

> "*17. Yet the arbitrability of the dispute is a matter which precisely pertains to international public policy, and more specifically the overriding mandatory provisions. In other words, according to administrative case law, the ban for public entities is an issue which is subject to arbitrability and which, consequently, pertains to international public policy.*
>
> *18. In this case, the two Equatorial Guinea decrees of 1965 and 1968* [sic]*, submitted both by the Claimant and by the Respondent, and which attribute jurisdiction for disputes concerning State contracts in general, and the public contract signed by the Republic of Equatorial Guinea with [the Claimant] in particular, solely to the Equatorial Guinea administrative courts, constitute overriding mandatory provisions which must be complied with.*
>
> *19. To summarise, the Respondent has grounds in raising the lack of jurisdiction of the Arbitral Tribunal in this case, because: (i) French arbitration law enshrines the non-arbitrability of disputes involving public entities; (ii) Equatorial Guinea law also enshrines the non-arbitrability of disputes involving public entities regarding "State" contracts; these rules relating to non-arbitrability are overriding mandatory provisions; (iv) the overriding mandatory provisions of Equatorial Guinea must be regarded as pertaining to international public policy, in that they pursue identical objectives to French law (*MK Group *case law); (v) the validity of the arbitration clause can be examined in the light of a State rule where it pertains to international public policy (*Dalico *case law).*" (Emphasis in the original)

175. It is on the grounds of the above reasons that the Respondent has asked the Tribunal to (i) declare admissible the argument of lack of jurisdiction of the Arbitral Tribunal; and (ii) decline jurisdiction to rule on the claims of the Claimant.

B. ARGUMENTS AND SUBMISSIONS OF THE CLAIMANT

176. The Tribunal summarises below the Claimant's arguments as they have been developed in its submissions, and as necessary to clarify its decision

[83] Submissions in Defence, para. 35.

on the admissibility and the merits of the objection to jurisdiction raised by the Respondent.

1. Inadmissibility of the objection

177. On the admissibility of the objection to jurisdiction, the Claimant stated:

(i) That in French arbitration law any objection to jurisdiction must be raised "*at the start of the proceedings. And yet Equatorial Guinea failed to raise that objection at the start of the proceedings*";[84]

(ii) That the Respondent had participated in the proceedings, indicating its intent to file counterclaims, even though the Respondent later waived its claims ("*Equatorial Guinea filed claims before the Arbitral Tribunal. […] Equatorial Guinea had indicated that it was filing counterclaims before the Arbitral Tribunal, before waiving doing so at the hearing of pleadings*");[85] and

(iii) That the Respondent had also participated in the proceedings by asking the Tribunal to make findings through a visit of the Tribunal to Malabo "*so that [the Tribunal] can verify the degree of compliance by the claimant with the contract signed with the respondent and the quality of the work executed by the claimant, in order that you can form a clear conviction of the case in question*"[86], even if ultimately that visit did not take place, in compliance with the decision of the Tribunal in PO2.

178. On those grounds, the Claimant asked the Tribunal to find that the Respondent's participation in that arbitration is valid as waiver of its objection to jurisdiction, and to declare the objection inadmissible.[87]

2. Absence of grounds of the objection

179. In the event where the Tribunal was to consider that the Respondent had not waived its objection to jurisdiction, the Claimant asks the Tribunal to confirm its jurisdiction to settle this dispute, and consequently to dismiss the objection to jurisdiction raised by the Respondent for the following reasons:

(i) The arbitration clause is independent of the Contract (in compliance with Article 1447 of the French Code of Civil Procedure – made applicable

[84] Claimant's Post-Hearing Submissions, paras. 6-7.
[85] Claimant's Post-Hearing Submissions, para. 8.
[86] Email from Maître Adalberto Ncogo Angono (counsel for the Respondent) to the Tribunal dated 12 January 2024 at 19:31 CET (unofficial translation by the Claimant), mentioned in the Claimant's Post-Hearing Submissions, para. 10.
[87] Claimant's Post-Hearing Submissions, para. 13.

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to international arbitration by Article 1506 of the same Code – and French case law) and must be analysed by the Tribunal according to the material rules of French law on international arbitration;[88]

(ii) "*It is indisputable that the Parties intended to submit any dispute relating to the Contract to arbitration*"[89], "*subject to the potential breach of international public policy of the country in which the award to be rendered is liable to be the subject of a request for annulment*", in this instance France;[90]

(iii) French international public policy does not prohibit the conclusion of arbitration clauses by foreign public legal entities. In that respect, the Claimant contends, invoking the *INSERM* ruling of the Court of Jurisdictional Disputes[91], the predominance of the jurisdiction of the civil courts for arbitral disputes and the review of international arbitral awards, including for disputes involving an administrative contract or pertaining to French public law, save in very specific circumstances: if and only if the dispute concerns the application of imperative rules of French public law (for example relating to the occupation of the French public property, French public procurement, French partnership agreements or French public service delegation agreements) and a French public legal entity is involved in the dispute. According to the Claimant, none of these conditions is satisfied in this case. The Claimant concludes from this that "*a contrario the administrative courts and the Conseil d'Etat have no jurisdiction when no imperative rule of French public law is at issue or no public contract under French law is the subject of the dispute*", which it claims that the Court of Jurisdictional Disputes confirmed in the *Ryanair* case.[92] Thus, it considers that the decisions of the *Conseil d'Etat* invoked by the Respondent are not applicable in this case. The Claimant furthermore asserts that the *Cour de Cassation* [French Supreme Court in civil and criminal matters] recognises the arbitrability of disputes involving States or foreign public legal entities;[93]

(iv) The law of the Republic of Equatorial Guinea does not provide that its administrative courts have exclusive jurisdiction to settle disputes relating to administrative contracts;[94] and

[88] Submissions in Reply, paras. 85 and 148-153.
[89] Submissions in Reply, para. 157.
[90] Submissions in Reply, para. 154.
[91] Exhibit CL17: Court of Jurisdictional Disputes, 17 May 2010, no. 3754, Published in the Bulletin.
[92] Exhibit CL18: Court of Jurisdictional Disputes, 24 April 2017, no. 4065, Published in the Bulletin.
[93] Submissions in Reply, paras. 86 and 158-192.
[94] Statement of Claim, paras 87 and 193-212.

(v) The Respondent cannot invoke its national law.[95]

180. Furthermore, the Claimant stated in its Post-Hearing Submissions that, at the Hearing, the Respondent had confirmed that the administration of the Republic of Equatorial Guinea could enter into a private contract such as the Contract without resorting to a call for tenders. The Claimant notes, *inter alia*, that:[96]

> "*Article 28 of Decree 923/1965 provides for the possibility for the administration of Equatorial Guinea to evade the obligation to conduct a call for tenders under certain conditions, which includes the condition of urgency*".

181. The Claimant concludes from this that, under those conditions:[97]

> "*the urgency enabling Equatorial Guinea to enter into a contract for the construction of home* [sic] *must also enable Equatorial Guinea to enter into the arbitration clause, condition of signing the construction contract*."

182. On those grounds, the Claimant asks the Tribunal to accept jurisdiction to hear the claims filed in this case.

C. DECISION OF THE TRIBUNAL

183. The Tribunal will rule firstly on the admissibility of the objection to jurisdiction (1), and, after having declared it admissible, shall decide on the merits of that objection (2).

1. The objection to jurisdiction is admissible

184. It falls to the Tribunal, pursuant to the competence-competence doctrine enshrined by French law, to verify its own jurisdiction to hear the claims filed by the Claimant.

185. The Tribunal will firstly examine whether the Respondent raised the objection late, and where applicable if the Respondent waived the objection owing to its participation in this case.

a) The Respondent reserved its right to raise the objection in the Terms of Reference

186. The Claimant rightly stated that the objection to jurisdiction must be filed at the start of the proceedings, at the first opportunity. Notwithstanding, the

[95] Statement of Claim, paras. 88 and 213-223.
[96] Statement of Claim, paras. 28 to 33.
[97] Post-Hearing Submissions, para. 33.

Respondent reserved its right to raise the objection of lack of jurisdiction in paragraph 200 of the Terms of Reference, which was signed by the Parties:

> "*By signing these Terms of Reference, the Parties acknowledge that they agree to submit to this arbitration and expressly waive any procedural objection they may have in respect of the facts already known by the Parties at the time of signing these Terms of Reference, including objections relating to the constitution and composition of the Tribunal, but excluding objections of jurisdiction and admissibility*." (Emphasis added)

187. The Claimant did not raise any objection to this legal reservation. The Respondent then raised the objection to jurisdiction in its Submissions in Defence, constituting its first stance subsequent to the Terms of Reference, and sought the bifurcation of the proceedings in order that the Tribunal would rule firstly on said objection.

188. In PO2, paragraphs 15 and 16, the Tribunal dismissed the Respondent of its request for bifurcation and expressly invited the Parties to submit any comment on the jurisdictional objection raised by the Respondent in their next submissions:

> "*15. Given that the Respondent has not raised a jurisdictional objection which is the subject of this PO2 in its response of 6 February 2023 to the Request for Arbitration, or upon signing the Terms of Reference on 16 September 2023, and that it only presented it after the Statement of Claim (in which the Claimant presented its case on the merits), which was just before the extended time limit that had been given to it to present its Submissions in Defence (on 8 January 2024), the Tribunal is not persuaded that the bifurcation at this state* [sic] *of the proceedings is justified given the quest for greater efficiency of this arbitration.*
>
> *16. On those grounds, the Tribunal dismisses the Claim for Bifurcation, and invites the Parties to submit any comment to the jurisdictional objection raised by the Respondent in their next submissions, in compliance with the timetable established in PO1*." (Emphasis added)

189. Consequently, the Respondent raised the objection to jurisdiction in compliance with its reservation of rights in the Terms of Reference, and for that reason the Tribunal does not consider – in the procedural context of this case – that the Respondent did so late.

b) The Respondent did not waive its right to raise the objection

190. In that context, the Respondent's participation in the debates relating to the objection to jurisdiction cannot be interpreted as a waiver of said argument.

191. The Tribunal finds that it is not established that the Respondent waived the objection to jurisdiction solely owing to the fact of having requested a visit to Malabo. Indeed, this request was dismissed in PO2 mainly owing to the absence of defence on the merits on the part of the Respondent, and consequently in the absence of information enabling the Tribunal to find the usefulness of such inspection measure:[98]

> "*In this context, the Tribunal is not persuaded of the usefulness or the need for such visit at this stage of the proceedings. Apart from a wish expressed by the Respondent, it has not demonstrated how a site visit to Malabo would be necessary (including taking account of the considerable time and costs this would involve) for the Tribunal "*to be able to verify the degree of compliance by the claimant with the contract signed with the respondent and the quality of the work executed by the claimant*". Beyond the fact that the members of the Tribunal are not technical experts – as the Claimant rightly states – the Respondent has not yet given its stance on the merits so as to enable the Tribunal to assess the relevance and need for a visit to establish proof of the Respondent's arguments, notably those set out in paragraphs 158 to 167 of the Terms of Reference*."

192. Similarly, the Tribunal upholds that the indication by the Respondent of its intent to present counterclaims, without having submitted them with its Submissions in Defence, cannot be regarded as contradictory or constitute a waiver of the objection to jurisdiction.

193. On the contrary, the confirmation by the Respondent during the proceedings, in the Objections of the Respondent[99] and at the Hearing, that "*there is no counterclaim*"[100] is consistent with the position adopted by the Respondent under the objection to jurisdiction.

194. The Tribunal consequently finds that the objection to jurisdiction raised by the Respondent is admissible, without the need to examine the other arguments invoked by the Parties.

2. The Tribunal has jurisdiction to hear the dispute

195. The Tribunal is seised with a dispute relating to the performance of the Contract, an administrative contract entered into between the Claimant, Moroccan company, and the Respondent, a foreign State in respect of the French legal order. The Contract comprises an arbitration agreement referring to the Rules.[101] The Court fixed Paris, France, as place of the arbitration, which entails

[98] PO2, para. 23.
[99] Cf. para. 119 above.
[100] Transcription, D1, p. 21.
[101] Cf. para. 21 above.

the application of the provisions of Book IV of the French Code of Civil Procedure on international arbitration.[102]

196. Pursuant to the competence-competence doctrine enshrined in said Code[103], the Tribunal rules on its jurisdiction by applying the material rule of French international arbitration law, according to which the arbitration clause is legally independent of the principal contract and its existence and its effectiveness are assessed, subject to the imperative rules of French law and international public policy, according to the mutual intent of the parties, without the need to refer to a State law, in compliance with the French case law set out hereunder.

197. The Claimant is right when it indicates that, according to the *Dalico* ruling[104], the Tribunal must establish its jurisdiction by considering the mutual intent of the Parties, without the need to refer to a State law, such as the law of the Republic of Equatorial Guinea, subject to the imperative rules of French law and international public policy. The Claimant quotes the following relevant passage:[105]

> "*But whereas pursuant to a material rule of international arbitration law, the arbitration clause is legally independent of the principal contract which contains it directly or by reference, and its existence and its effectiveness are assessed, subject to the imperative rules of French law and international public policy, according to the mutual intent of the parties, without the need to refer to a State law; whereas in this instance, the Court of Appeal legally justified its decision by establishing the existence of the arbitration clause without having regard to the Libyan law of the contract, and sovereignly upheld, by the analysis and interpretation of the documents submitted, that the annex invoked notably had the purpose of substituting the arbitration clause originally stipulated for that giving jurisdiction to the Libyan courts, and that its integration in the contractual whole demonstrated, even though this document was not signed, the mutual intent of the parties to submit to the clause in dispute;*" (Emphasis added)

198. After having examined the arguments invoked by the Respondent, the Tribunal considers, in compliance with the material rules of French law set out hereunder, that these arguments cannot undermine the jurisdiction of the Tribunal. The Tribunal decides that it has jurisdiction to hear the dispute

[102] Book IV, Articles 1442 to 1527 of the French Code of Civil Procedure.
[103] Articles 1465 and 1506 (3) of the French Code of Civil Procedure: "*Article 1465. The Arbitral Tribunal alone has jurisdiction to rule on disputes relating to its jurisdictional authority*."; "*Article 1506. Unless the parties have agreed otherwise, and subject to the provisions of this title, the following articles apply to international arbitration: […] 3 […] 1465 […] relating to the arbitral authority*".
[104] Cass. Civ. 1st, 20 December 1993, no. 91-16.828.
[105] Submissions in Reply, para. 151.

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between the Parties for the reasons set out in this Section XIV.C.2 as follows:

(i) The arbitration clause inserted into Article 41 of the Contract, even if it is an administrative contract, is legally independent of said contract and must be fully applicable and effective in compliance with the agreement of the Parties (Section XIV.C.2.a);

(ii) The mutual intent of the Parties to resort to arbitration for any dispute relating to the Contract is established and has not been disputed (Section XIV.C.2.b);

(iii) French international public policy does not prevent a foreign public legal entity from entering into an arbitration agreement, save in the case of imperative provision to the contrary, which is not demonstrated in this case (Section XIV.C.2.c);

(iv) The jurisdiction of the Tribunal does not conflict with the law of the Republic of Equatorial Guinea (Section XIV.C.2.e); and

(v) The Respondent cannot assert its national law in order to exclude the jurisdiction of the Tribunal (Section XIV.C.2.e).

a) The existence and severability of the arbitration clause

199. Article 41 of the Contract contains the following arbitration clause:

> "*In case of dispute, the parties shall meet to reach an amicable solution, and in the absence of agreement they shall submit to the arbitration of the International Chamber of Commerce of Paris*."

200. According to the material rules of French law, the principle of severability of the arbitration clause from the contract also applies to international arbitration, in compliance with Articles 1447 and 1506 of the French Code of Civil Procedure:

> "*Article 1447. The arbitration agreement is independent of the contract to which it relates. It is not affected by the ineffectiveness of that contract. […]*"

> "*Article 1506. Unless the parties have agreed otherwise, and subject to the provisions of this title, the following articles apply to international arbitration: 1. 1446, 1447, 1448 (paragraphs 1 and 2) and 1449 on the arbitration agreement […].*"

201. The Tribunal finds that the Parties agree on the severability of the arbitration clause of Article 41 in relation to the Contract.[106]

[106] Submissions in Reply, para. 150. Transcription, D2, p. 12. (**Representative of the Respondent**: "*Already, legally, the arbitration clause is an agreement within an agreement. It is autonomous*.")

b) The mutual intent of the Parties to resort to arbitration for any dispute relating to the Contract is established

202. Consequently, the Tribunal will examine the existence of the mutual intent of the Parties to submit their disputes concerning the performance of the Contract to arbitration. To that end, the finding of the existence of an arbitration clause in the Contract, which was signed and performed by the Parties and the validity of which has not been challenged, is sufficient to establish a mutual intent of the Parties to resort to arbitration.

203. In the *Dalico* ruling, the *Cour de Cassation* interpreted the contractual whole to find that, even in the absence of signature in a contractual document, the contractual whole demonstrated the wish of the parties to submit to arbitration.[107]

204. The recent case law of the Paris Court of Appeal confirms, in a case between a property developer and the State of Cameroon, that the intent of the parties was established via an arbitral clause in a contract:[108]

> "*38. Article 52.1 of the Special Administrative Terms and Conditions stipulates, under the title "Settlement of disputes", that: […]*
>
> > *In the absence of amicable settlement, the dispute shall be definitively settled pursuant to the Rules of Conciliation and Arbitration of the International Chamber of Commerce of [Locality 4], France, by one or more arbitrators nominated in compliance with those Rules. The place of settlement of the dispute shall be [Locality 4].*
>
> *39. This wording unambiguously expresses the mutual intent of the parties to settle matters by submitting to arbitration, pursuant to the rules of the International Chamber of Commerce of [Locality 4], any dispute that may arise out of the performance of the contract*."

205. The Respondent does not challenge the validity of the Contract and the arbitration clause featuring in its Article 41, which unambiguously expresses the mutual intent of the Claimant and the Respondent to submit their disputes over the Contract to arbitration.

206. In its Submissions in Defence, the Respondent explains that, in the early 2000s, the Respondent had decided to arrange the construction of the 20,000 homes which are the subject of the Contract, and that, to achieve that objective, it had to use the services of several private property developers "*notably from China, Egypt, Maghreb, Lebanon and Spain, such as Safadi Group Promotora, which has built several commercial buildings in the country, but also Arab contractors, China Dalien, CEMEC […]*".[109]

[107] In compliance with para. 195 above.
[108] CL24 – Ruling of 4 July 2023.
[109] Submissions in Defence, para. 9.

207. The Respondent submits that the Claimant was chosen partly owing to its good relations with Morocco, and consequently did not hesitate to sign the Contract with the Claimant, as follows:[110]

> "*It is not irrelevant to inform the Arbitral Tribunal that, since its independence on 12 October 1968, Equatorial Guinea has maintained excellent bilateral relations with the Kingdom of Morocco in all areas. The proximity and the friendships between the president of Equatorial Guinea and His Majesty the late King of Marco* [sic] *Hassan II were such that one of the sons of the president of Equatorial Guinea was named Hassan and a road in Malabo bears the name Avenida Hassan II.*
>
> *It is therefore owing to these good relations with Morocco that Equatorial Guinea did not hesitate to sign contract no. 066/05 with URBAJET on 29 March 2006*."

208. Furthermore, it results from the debates that the Respondent expressly recognised, at the Hearing, that in consideration of the established relations between the Parties, and having regard to Article 28 of Decree 923/65, it did not intend to comply with the procedure applicable to public contracts, considering the urgency of the Project.[111] Due to this, the Respondent entered into the Contract privately with the Claimant, and included the arbitration clause stipulated in Article 41 of the Contract.

209. On those grounds, the Tribunal finds the mutual intent of the Parties to resort to arbitration in compliance with Article 41 of the Contract, subject to the imperative rules of French law and international public policy.

c) French international public policy does not prevent the Claimant from submitting disputes involving the Respondent to arbitration

210. The Claimant states in its Submissions in Reply that settled case law of the Paris Court of Appeal and the *Cour de Cassation* does not prevent foreign public legal entities, such as the Respondent, from submitting their disputes to international commercial arbitration.

211. The Claimant has submitted to the debates several examples of French case law dismissing pleas or arguments of the Republic of Equatorial Guinea similar to those raised in this case. It results from those decisions that the conclusion of an arbitration clause by the Respondent cannot, in itself, be contrary to French international public policy.

212. For example, within the framework of proceedings for exequatur of an arbitral award between the Respondent and a Cameroon bank, relating to an "establishing agreement" entered into between that bank and the Republic of Equatorial Guinea and containing an arbitration clause, the Paris Court of Appeal

[110] Submissions in Defence, paras. 11 and 12.
[111] Cf. para. 230 below.

dismissed the argument of the alleged incapacity of the Respondent to submit to arbitration, indicating:[112]

> "*Whereas, under the pretext of conflict with international public policy, the appellant reiterates its arguments relating to the rules allowing the Republic of Equatorial Guinea to subscribe to an arbitration clause, regarding which it has been said that they are unfounded since it was bound by the arbitration clause without being able to enforce the national legal standards of the State, as the fact of a State entering into an arbitration agreement is not contrary to international public policy*"[113] (Emphasis added)

213. The capacity of the Respondent, as foreign State, to submit to arbitration is also confirmed within the framework of proceedings for annulment of an arbitral award rendered under the ICC Rules, having its seat in Paris, in which the Respondent had invoked the illegality of the arbitration clause featuring in a settlement agreement. The agreement stipulated a tag-along clause to the benefit of a French telecommunications company.[114] After the refusal of the Respondent to buy the shares belonging to the French company (and to plead on the merits), the Arbitral Tribunal had recorded the obligation of the Respondent to acquire the shares which were the subject of the agreement. Through a decision of 22 September 2015, confirmed by the *Cour de Cassation* on 15 June 2017, the Paris Court of Appeal dismissed the request for annulment filed by the Respondent.[115]

214. The Claimant has also invoked, to establish that the submission of the Respondent to arbitration does not conflict with French international public policy, a decision of the Paris Court of Appeal of 22 February 2022, (partly) dismissing a request for annulment lodged by the Respondent against an ICC award between it and the "Commercial Bank Guinéa Ecuatorial".[116] The award in question resulted from an agreement between the Respondent and the bank following non-performance of a first arbitral award, according to which the liability of the Republic of Equatorial Guinea was engaged owing to its refusal to grant the credit institution approval (an administrative act) to said bank.[117]

215. The Respondent has not given a direct response to the aforementioned case law, merely invoking decisions of the *Conseil d'Etat* dated 23 December 2015[118] and 17 October 2023.[119] The Claimant has grounds in contending that

[112] Submissions in Reply, para. 183; Exhibit CL19: Paris Court of Appeal, division 1 – ch. 1, 18 November 2010, no. 09/2006.
[113] Exhibit CL19: Paris Court of Appeal, division 1, ch. 1, 18 November 2010, no. 09/20069.
[114] Exhibit CL20: Paris Court of Appeal, division 1, ch. 1, 22 September 2015, no. 14/17200.
[115] Exhibit CL20: Paris Court of Appeal, division 1, ch. 1, 22 September 2015, no. 14/17200.
[116] Submissions in Reply, para. 187; Exhibit CL23: Paris Court of Appeal, 22 February 2022, no. 19/05045.
[117] Exhibit CL23: Paris Court of Appeal, 22 February 2022, no. 19/05045.
[118] Exhibit RL5: Ruling of *Conseil d'Etat*, 2nd and 7th chambers, 23 December 2015 no. 376018.
[119] Exhibit RL6: Ruling of *Conseil d'Etat* of 17 October 2023.

the decisions invoked by the Respondent do not apply to this dispute or to the Contract. In compliance with the case law of the Court of Jurisdictional Disputes cited by the Claimant, the jurisdiction of the administrative courts can only be upheld when the contract at the origin of the dispute is "*subject to the imperative rules of French public law relating to the occupation of the public land or those governing public procurement*"[120], which is not the case of a contract concerning the construction of homes in the Republic of Equatorial Guinea, subject to the law of the same country.

216. In any event, at the Hearing, the Respondent accepted the jurisdiction of the Paris Court of Appeal, and not the *Conseil d'Etat*, to hear appeals of a foreign State in the matter of international arbitration:[121]

> *"[…] naturally, for a foreign State, the appeal would not be before the* Conseil d'Etat*, we agree. It would be before a court of the judiciary, in this instance the Paris Court of Appeal* [sic]."

217. Having regard to the aforementioned elements, the Tribunal finds that this dispute does not raise matters which could conflict with French international public policy liable to prevent the jurisdiction of the Tribunal.

d) The jurisdiction of the Tribunal does not conflict with the law of the Republic of Equatorial Guinea

218. The Claimant asserts, having regard to the jurisdiction of the Tribunal, that Decrees 923/65 and 3354/67 dated respectively 1965 and 1967 are neither relevant nor applicable to this dispute. According to the Claimant, said decrees are "*obsolete provisions in respect of the dispute in question… antiquated texts*" which should not prevail over "*the modern principles of international and arbitration law…*".[122]

219. For the Tribunal, the sole fact that the aforementioned decrees are old is not determining for their application. That said, it is apparent upon their simple reading that these decrees were enacted by the Spanish Head of State at the time, Francisco Franco, and published in the Spanish Official Journal at the time when the Republic of Equatorial Guinea was not yet an independent republic.[123]

220. It is consequently not surprising that these decrees, adopted without modification of the original text, do not exhaustively regulate the effects of arbitration clauses in the international contracts entered into by the Republic of

[120] Submissions in Reply, para. 175; CL18: Court of Jurisdictional Disputes, 24 April 2017, no. 4075, Published in the Bulletin.
[121] Transcription, D2, p. 8.
[122] Submissions in Reply, paras. 201-202.
[123] RL-3 and RL-4.

Equatorial Guinea.[124] On the other hand, the Tribunal finds that there are at least five elements to suggest that it is not established that these decrees conflict with its jurisdiction.

221. *Firstly*, Decree 923/65 concerns the Baseline Law on State contracts, which State at the time was Spain, and is still in force today in the Republic of Equatorial Guinea, as accepted by the Parties. Article 17 invoked by the Respondent forms part of the Preliminary Title on "*Contracts of Works, Service and Supply*". The Respondent translates Article 17 as follows:

> "*Disputes arising out of the interpretation or performance of contracts governed by this law shall be resolved by the* ***competent court of the department having entered into the contract****. These agreements may be the subject of] administrative legal remedies under the conditions laid down by the law governing that court*." (Emphasis added)

222. Nevertheless, the Claimant explains in its Submissions in Reply that the original text of Decree 923/65 in Spanish does not refer to disputes before a "court", but submits the matters in dispute arising out of the interpretation or performance of contracts with the State to "*the competent body of the department having entered into the contract*".[125]

223. This is therefore a provision which regulates the submission of certain disputes, arising out of the interpretation or performance of contracts governed by that same law, to an administrative body. While it is true that Decree 923/65 opens an avenue of appeal against the decisions ("*acuerdos*") of that administrative body before the administrative court "*in compliance with the law governing said court*", this dispute does not relate to a decision of such a body.

224. According to the Claimant, "*this competent body does not exist in practice and no department has signed the Contract, since it is the State itself which entered into the Contract*"[126], which has not been disputed by the Respondent. Furthermore, the Tribunal finds that the Respondent has not identified which administrative body would allegedly have jurisdiction to settle, primarily, the disputes submitted to this Tribunal, which administrative court would allegedly have jurisdiction to hear the appeal against the decisions of such a body, or what would allegedly be the "*Law governing said court*".

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[124] Email from the Respondent to the Tribunal dated 18 November 2024, with copy of the Official Journal of the Republic of Equatorial Guinea integrating the Decrees into the national law of the country after the declaration of its independence.

[125] Translation of the original in Spanish:

> "*Art. 17. Las cuestiones litigiosas surgidas de la interpretación o cumplimiento de los contratos regulados por la presente Ley serán resueltas por el órgano competente del Departamento que haya celebrado el contrato. Contra sus acuerdos habrá lugar a recurso contencioso-administrativo conforme a los requisitos establecidos por la Ley reguladora de dicha jurisdicción*." (RL-3). (Emphasis added)

[126] Submissions in Reply, para. 196.

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225. Indeed, after the Submissions in Reply, the Respondent merely asserted, without any demonstration or explanation, that:[127]

> "*Articles 17 of Decree 923/1965, 21.5 and 54 of Decree 3354/1967, in force in Equatorial Guinea and applicable to the contract in question, provide for the exclusive jurisdiction of the administrative courts of Equatorial Guinea to hear disputes relating to such internal administrative contract*."

226. However, Article 17 of Decree 923/65 cannot be interpreted within the meaning contended by the Respondent, since it does not establish exclusive jurisdiction of the administrative courts of the Republic of Equatorial Guinea to hear all disputes resulting from contracts entered into with the State. The article does not prohibit the submission of such disputes to arbitration by agreement between the State and a private party. Furthermore, the text of Decree 923/65 does not relate to the arbitrability of disputes relating to administrative contracts.

227. *Secondly*, regarding Articles 21.5 and 54 of Decree 3354/67, they have been translated by the Respondent as follows

> "*Article 21. Without prejudice to the regulatory provisions in the matter, foreign companies wishing to tender for the award of State works contracts must fulfil the following conditions:*
> *[…]*
>
> *5. The contractor, in its bid, shall solemnly declare to submit to the jurisdiction of the civil, criminal, labour and administrative courts for all incidents that may arise directly or indirectly out of the contract. […]*"
>
> "*Article 54. Matters in dispute arising out of the interpretation or performance of contracts governed by this Law shall be resolved by the competent body of the department having entered into the contract. Its decisions may be appealed before the administrative courts under the conditions laid down by the law governing that court, Article 17 LCE-1. The administrative court also has jurisdiction to hear contracts which, owing to their nature, must be submitted, even on a supplementary basis, to the administrative legal system*."

228. Firstly, the text of Article 54 only reproduces Article 17 of Decree 923/65, without elaborating on any exclusivity of the administrative court of the

[127] Objections to Jurisdiction, para. 5. Respondent's Post-Hearing Submissions, para. 18.

Republic of Equatorial Guinea or prohibiting the submission of disputes to arbitration.[128]

229. Moreover, the Claimant contends in its Submissions in Reply that the Respondent never demanded the declaration of submission set out in Article 21.5 above, which, according to the Claimant, is valid as waiver of such declaration and consequently its effects.[129]

230. The Respondent has not disputed not having requested or obtained the declaration of submission set out in Article 21.5 of Decree 3354/67, and on the contrary expressly agreed to and signed an arbitration clause contained in Article 41 of the Contract. During the Hearing, questioned about the possibility of entering into the Contract privately, the Respondent confirmed that possibility under Decree 923/65:[130]

> **Representative of the Respondent**: "*you have the Article [28] which provides for exceptions, i.e. public contracts can be entered into the most legally in the world by the State of Equatorial Guinea without resorting to a call for tenders, and I quote the Article [28], in case of exceptional circumstances owing to recognised urgency, and there is also … national security, for reasons of national security.*
>
> *Therefore, applied to the case, we have a record which relates to an urgency to build social housing. We have privileged relations with the co-contractor, having regard to its nationality and also to other partners in the field. And, naturally, the State of Equatorial Guinea, in complying with the law, in remaining within this legal framework that I have just set out, awards this contract to [the Claimant]*."

231. *Thirdly*, the Claimant, in its Submissions in Reply, interprets the provisions of Decrees 923/65 and 3354/67 as rules of national jurisdiction, between the civil and administrative courts of the Republic of Equatorial Guinea,

[128] Original in Spanish: "Artículo 54. *Las cuestiones litigiosas surgidas de la interpretación o cumplimiento de los contratos regulados por la presente Ley serán resueltas por el órgano competente del Departamento que haya celebrado el contrato. Contra sus acuerdos habrá lugar a recurso contencioso-administrativo conforme a los requisitos establecidos por la Ley reguladora de dicha jurisdicción. (Art. 17 LCE) También corresponde a la jurisdicción contencioso-administrativa la competencia para conocer de aquellos contratos que, habida cuenta de sue naturaleza, deban quedar sometidos, aunque sea de modo supletorio, al ordenamiento juridico-administrativo*."

[129] Submissions in Reply, paras. 197 and 198.

[130] Claimant's Post-Hearing Submissions, para; 29; RL 3 Decree 923/1965 of 8 April 65 approving the Law on State contracts. The Claimant has replaced the reference to Article 69 (concerning public service management contracts), mentioned by the Respondent at the Hearing, with Article 29 (concerning public works) of the same Decree. Article 28 seems to be the correct reference, and in any event does not alter the confirmations which are quoted hereunder.

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which apply in the absence of an arbitration clause.[131] This interpretation appears plausible having regard to the context in which the decrees were adopted, and owing to the fact that it has been established that the Respondent regularly resorts to arbitration, in view of the decisions cited in this Section XIV.C.2 above.

232. *Fourthly*, the Claimant rightly notes that the law of the Republic of Equatorial Guinea adopts the law of the Organisation for the Harmonisation of Business Law in Africa (OHADA), which provides the possibility for the State and public legal entities to enter into arbitration clauses over the rights of which they have free disposal, which thwarts the argument of non-arbitrability.[132] Consequently, the argument raised by the Respondent that Decrees 923/65 and 3354/67 "*constitute overriding mandatory provisions*" is contradictory with the application of the OHADA Uniform Acts in the Republic of Equatorial Guinea.

233. The Claimant alleges that:[133]

> "*insofar as the Respondent tries to give [to Articles 17 of Decree 923/1965, 21 and 54 of Decree 3354/1967] an interpretation contrary to that of Article 2 of the Uniform Act, it should be considered that these articles […] are unenforceable*".

234. Indeed, subsequent to said decrees, in 1999 the Republic of Equatorial Guinea integrated OHADA and is therefore subject to the 1993 treaty instituting OHADA, which provides in its Article 10 that:[134]

> "*Uniform Acts are directly applicable and overriding in the Contracting States notwithstanding any conflict they may give rise to in respect of previous or subsequent enactment of municipal laws*."

235. And yet Article 2 of the OHADA Uniform Act on Arbitration of 1999 expressly permits public legal entities to resort to arbitration over the rights of which they have free disposal:

> "*States, other public territorial bodies, public entities and any other legal person under public law may also be a party to an arbitration, regardless of the legal nature of the contact, without being able to invoke their own laws to object to the arbitrability of the dispute, to their capacity to submit to arbitration or to the validity of the arbitration agreement*."

[131] Submissions in Reply, para. 99.
[132] Submissions in Reply, paras. 250 *et seq*.
[133] Submissions in Reply, para. 209.
[134] Submissions in Reply, para. 206.

236. The Claimant contends that the aforementioned act is "*the arbitration law in force at the time of conclusion of the Contract*".[135] Even if the aforementioned Uniform Act is not applicable to this arbitration owing to its scope limited to arbitrations "*when the seat of the Arbitral Tribunal is located in one of the Member States*" of the OHADA[136], the express authorisation that public legal entities may be parties in an arbitration contained in the aforementioned Article 2 demonstrates that the submission of this dispute to the Tribunal does not conflict with the law of the Republic of Equatorial Guinea.

237. Consequently, the Tribunal finds that it is not established that the Respondent's participation in these proceedings constitutes a breach of the law of the Republic of Equatorial Guinea.

e) The Respondent cannot invoke its national law in order to exclude the jurisdiction of the Tribunal

238. The Respondent in any case cannot invoke arguments founded on its national law to support the objection raised relating to the jurisdiction of the Tribunal in this international arbitration.

239. In support of its argument of the national nature of the Contract, the Respondent quotes Article 1504 of the French Code of Civil Procedure, which stipulates:[137]

> "*Arbitration which involves the interests of international trade is international*."

240. The Respondent contends, without citing case law on this point, that:[138]

> "*9. According to French case law, it results from this definition that the arbitration has an international nature when the dispute submitted to the Arbitral Tribunal relates to an operation which is not economically resolved in a single State, regardless of the capacity and nationality of the parties, the law applicable to the merits of the dispute or the proceedings, and the seat of the Arbitral Tribunal. This qualification does not depend on the intent of the parties.*
>
> *10. It therefore ensues that the Moroccan nationality of the Claimant has no effect on the national nature of this arbitration.*
>
> *11. In this case, it results from the exhibits communicated by the parties that contract no. 066/05 is a public contract, more specifically 1) – an administrative contract that is national and not international, 2) – having to be performed only on the territory of Equatorial Guinea, the*

[135] Submissions in Reply, para. 210.
[136] The Uniform Act on Arbitration of 1999 and 2017 provides the following: "*Article 1. – This Uniform Act shall be applicable to any arbitration when the seat of the arbitral tribunal is located in one of the Member States*."
[137] Objections of the Respondent, para. 8.
[138] Objections of the Respondent, paras. 9 to 11.

> *price of which, stipulated 3) – in CFA Francs, local currency of Equatorial Guinea, was paid periodically by the State through debiting its Treasury account, 4) – to the benefit of bank accounts opened with banks in Equatorial Guinea, specifically CCEI BANK – Equatorial Guinea and SGBGE (Société Générale de Banque Guinée Équatoriale – account no. 371 51153 102-21), 6) – belonging to the URBAJET branch created on 21 June 2006*."

241. In short, the Respondent asserts that the Contract:[139]

> "*[…] is not here an international administrative contract but national, since its place of execution is the territory of Equatorial Guinea where social housing was to be built and where the State made payments to URBAJET into accounts it had opened in two banks in Malabo (Société Générale de Banque-Guinée Équatoriale and CCEI BANK).*"

242. The arguments raised by the Respondent according to which it claims that the Contract is a "*national administrative contract*" are not supported in the evidence submitted to the case file or in French case law. On the contrary, the Claimant has correctly stated that according to the *Cour de Cassation*:[140]

> "*Arbitration which involves the interests of international trade is international*; *whereas the internationality of the arbitration calls upon an economic definition according to which it is sufficient that the dispute submitted to arbitration relates to an operation which is not economically resolved in a single State, regardless of the capacity or the nationality of the parties, the law applicable to the merits of the dispute or the proceedings, or the seat of the Arbitral Tribunal*."

243. The Claimant has explained in detail each of the international elements of the Contract and its performance.[141] As far as the Tribunal is concerned, it is obvious that the Contract is an international contract, and that this case is international arbitration within the meaning of Article 1504 of the French Code of Civil Procedure, owing to the fact that it is a project for construction by a Moroccan company in the Republic of Equatorial Guinea, financed by the BEAC having its registered office in Cameroon[142], with the use of Moroccan banks such as the Crédit Immobilier et Hôtelier (CIH)[143], with part of the costs incurred in MAD and part in CFA Francs, and that "*all construction machinery and rolling stock* [had to be] *conveyed either from Morocco or from other Countries, such as Portugal*", requiring customs exemptions and permissions.[144]

[139] Submissions in Defence, para. 20; Objections of the Respondent, paras. 5 to 12.
[140] Submissions in Reply, para. 137; CL13: Cass 1st civ., 26 January 2011, no. 09-10.198, Bull. 2011, I, no. 15.
[141] Submissions in Reply, paras. 138 to 147.
[142] Submissions in Reply, para. 139; Submissions in Defence, para. 19.
[143] Submissions in Reply, para. 140.
[144] Submissions in Reply, para. 144; C152: Authorisation for import of equipment dated 8 July 2015.

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244. In any event, the Respondent cannot assert provisions of its national law relating to public contracts in order to deny its consent to the arbitration which is however laid down in Article 41 of the Contract. The Claimant asserts, in its Submissions in Reply, that the Respondent cannot challenge the jurisdiction of the Tribunal on the grounds of its national law.[145] It cites, in that respect, a ruling of the Paris Court of Appeal dated 4 July 2023, handed down in the context of a request for annulment directed against an ICC arbitral award rendered in Paris against the State of Cameroon. In that ruling, the Court confirmed that the provisions of the Cameroon Code of Public Procurement were not incompatible with the option for the State to consent to an arbitration clause, and that Cameroon could not invoke the provisions of its national law in order to deny its consent to the arbitration:[146]

> "*35. Pursuant to a material rule of international arbitration law, the arbitration clause is legally independent of the principal contract which contains it, directly or by reference. Its existence and its effectiveness are assessed, subject to the imperative rules of French law and international public policy, according to the mutual intent of the parties, which alone invests the arbitrator with his jurisdictional authority, without the need to refer to a State law. […]*
>
> *40. In compliance with the principle stated above, the State of Cameroon, which does not demonstrate or even allege any breach of an imperative rule of French law or international public policy, cannot, in order to deny its consent and plead for the unenforceable nature of this clause, invoke provisions of its national law drawn from Article 61 of the Cameroon Code of Public Procurement, the wording of which in fact does not conflict with the possibility for the parties to insert an arbitration clause in special administrative terms and conditions*." (Emphasis added)

245. The Tribunal notes that, in a ruling of 18 November 2010 concerning the exequatur of an award pronounced in Gabon, the Paris Court of Appeal noted:[147]

> "*Whereas pursuant to the principle of validity of the arbitration agreement, the intent of the parties is sufficient to validate it, which escapes the authority of the national laws; […]*
>
> *Whereas, moreover, Article 2 (2) of the Uniform Act on Arbitration, applicable directly in the States parties to the OHADA Treaty, provides that the States … may also be a party to an arbitration, without being able to invoke their own laws in order to*

[145] Submissions in Reply, paras. 213 *et seq*.
[146] CL24: Paris Court of Appeal, division 5 ch. 16, 4 July 2023, no. 21/19249.
[147] Exhibit CL19: Paris Court of Appeal, division 1 – ch. 1, 18 November 2010, no. 09/20069

> *object to the arbitrability of the dispute, to their capacity to submit to arbitration or to the validity of the arbitration agreement; whereas the appellant therefore cannot object to the validity of the arbitration agreement on the grounds of the formalities of its national law. […]*
>
> *Whereas further the arbitration clause is autonomous of the contract containing it, which is moreover stated by Article 4 (1) of the aforementioned Uniform Act according to which the arbitration agreement shall be independent from the main contract; […]*" (Emphasis added)

246. It results from the aforementioned decisions that, pursuant to the material rules of French arbitration law, a foreign State cannot assert the provisions of its national law in order to object to the validity of an arbitration clause lawfully entered into, regardless of the applicability of the OHADA Uniform Act on Arbitration.

247. Taking account of the Tribunal's findings in this Section XIV.C.2, the Tribunal dismisses the Respondent of its objection to jurisdiction and, in compliance with the material rules of applicable French law on international arbitration, accepts jurisdiction, stating that:

(i) The Respondent does not contest having freely negotiated and subscribed to the arbitration clause contained in Article 41 of the Contract;

(ii) Article 41 of the Contract establishes the mutual intent of the Parties to submit their disputes relating to the Contract to international arbitration;

(iii) French public policy does not prohibit the submission of contracts signed by foreign states to arbitration, and this arbitration does not conflict with French international public policy;

(iv) The Respondent does not allege the impossibility for the Republic of Equatorial Guinea to subscribe to arbitration clauses, but merely cites its national law (Decrees 923/65 and 3354/67, still in force in spite of the fact that they had been adopted before independence of the State), and whereas those texts do not exclude the arbitrability of the disputes arising out of administrative contracts and do not preclude the Respondent from entering into arbitration clauses with partners such as the Claimant; and

(v) In any event, the Respondent cannot assert provisions of its national law in order to thwart the arbitration clause freely consented in Article 41 of the Contract, and the resulting jurisdiction of this Tribunal.

248. In view of the foregoing, the Tribunal determines its jurisdiction to hear and settle the Claimant's claims.

XV. THE CLAIMANT'S CLAIMS

249. Its jurisdiction having been ascertained, the Tribunal will move on to the claims of the Claimant concerning the merits of the dispute. The Claimant is seeking for the Tribunal to render an award as follows:[148]

> "*[…] b. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, the sum of* ***EUR 8,753,000*** *(in the alternative the sum of 5,738,178,661 CFA Francs) for unpaid statements of work;*
>
> *c. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, interest at the legal rate with compound interest on this sum. The Tribunal is asked to uphold, when the order is made in euros, the EURIBOR interest rate + 2%, and when the order is made in CFA Francs, the Marginal Loan Facility Rate of the Bank of Central African States.*
>
> *The date to be upheld for the calculation of interest is, for each invoice, 60 days from issue of the invoice.*
>
> ***This amount is valued at the sum of EUR 22,626,000*** *for the late payment interest (subject to adjustment) on the statements of work paid late or unpaid;*
>
> *d. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, the sum of* ***EUR 7,160,000*** *(in the alternative the sum of 4,693,894,000 CFA Francs)* ***for the contractual adjustment of the price****;*
>
> *e. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, the sum of* ***EUR 46,727,000*** *(in the alternative the sum of 30,634,301,000 CFA Francs)* ***for loss of profits****;*
>
> *f. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, the sum of* ***EUR 7,045,000*** *(in the alternative the sum of 75,756,000 MAD)* ***for the loss arising out of the maintenance of the bank guarantee****;*

[148] Terms of Reference, paras. 151 to 157; Statement of Claim, para. 294; Claimant's Post-Hearing Submissions, para. 103.

g. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, the sum of ***EUR 5,927.95*** *(in the alternative the sum of 3,886,000 CFA Francs)* ***for the additional costs initially valued in CFA Francs****;*

h. The Respondent shall be ordered to pay the Claimant, within 14 days of notification of the award by the Secretariat of the ICC as laid down by Article 35 of the Rules, the sum of ***EUR 2,680,423.51*** *(in the alternative the sum of 29,239,000 MAD)* ***for the additional costs initially valued in MAD****;*

i. The Respondent shall be ordered to pay the Claimant, concerning claims c) to h), ***interest at the legal rate with compound interest from receipt of the letter of formal notice sent by the counsel for the Claimant on 14 September 2022****.*

The Tribunal is asked to uphold, when the order is made in euros, the EURIBOR rate + 2%, when the order is made in CFA Francs, the Marginal Loan Facility Rate of the Bank of Central African States, and, lastly, when the order is made in MAD, the weighted average rate of accounts and certificates of deposit to 6 months of the Bank Al-Maghrib.

j. The Arbitral Tribunal shall find that the principal obligation guaranteed by the deposit repayment guarantee issued by the bank Crédit Immobilier et Hôtelier (CIH Bank) on 20 July 2006 is fully extinguished. Consequently, the Claimant asks the Arbitral Tribunal to find that said guarantee deposit is now null and void owing to the absence of any principal obligation remaining to be guaranteed.

k. The Respondent shall hold URBAJET harmless for the payment of any amount (including costs) that it may be ordered to pay by the courts and administrations of Equatorial Guinea in the context of the Project;

l. The Respondent shall be ordered to bear ***all costs and fees of arbitration, including the fees and expenses of the arbitrators, experts, and the fees and expenses of the lawyers of URBAJET****, in compliance with the ICC Arbitration Rules;*

m. ***The Respondent shall be dismissed of all its claims****;*

n. ***The final award shall be accompanied by provisional execution****;*

o. All other measures that the Arbitral Tribunal may deem appropriate shall be ordered." (Emphasis in the original)

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A. THE ABSENCE OF DEFENCE ON THE MERITS OF THE RESPONDENT

250. After signing of the Terms of Reference, in its Submissions in Defence the Respondent explained that it would not present a defence on the merits[149], notwithstanding the mention of certain arguments of defence[150] and a potential counterclaim that the Respondent reserved in its Submissions in Defence.[151]

251. The Respondent never pleaded counterclaims in this case. Furthermore, during the Hearing it confirmed its decisions to abandon its counterclaims[152], to not present a defence on the merits[153], and to raise only the objection to jurisdiction (dismissed by the Tribunal in Section XIV above).

252. In any event, the Respondent's silence must not be considered as an acceptance of the Claimant's arguments and claims. Consequently, by ruling on the merits of the Claimant's claims, the Tribunal cannot grant them without assessing their lawfulness and grounds, and without ensuring that said claims are supported by sufficient proof.

253. In this Section XV, the Tribunal will summarily set out the arguments and submissions put forward by the Claimant in support of each of its claims, before pronouncing on their grounds having regard to the evidence submitted to the debates. The Tribunal has taken into consideration all arguments presented but, with a desire for clarity and concision, only makes reference to the arguments and exhibits it considers necessary to justify each decision.

B. THE PROVISION OF THE LAND

1. Arguments and submissions of the Claimant

254. The Claimant explained in its Statement of Claim[154], in support of the supporting documents, that the negotiations concerning the Contract began in 2001. During those negotiations, the Parties agreed (i) in March 2004 on the standard plans for the type T2 individual houses of a habitable area for each unit of 61.71 m²; and (ii) in July 2005 on the plans for the standard units for type T2 apartments

[149] Submissions in Defence, paras. 39, 40 to 42 (*inter alia*).
[150] Such that relating to the presumed conflict with the law in force in the Republic of Equatorial Guinea, dismissed by the Claimant, cf. para. 110 above.
[151] Submissions in Defence, para. 43.
[152] Cf. para. 193 above.
[153] Transcription, D1, p. 46, lines 17 to 23: "**MR JAVIER FERNÁNDEZ-SAMANIEGO**: *You have just said that you have followed the instructions of this Tribunal. This is a choice you made. You have had the opportunity to go into the merits, but you made another choice.* **MR JEAN-CHARLES TCHIKAYA**: *Absolutely*."
[154] Statement of Claim, paras. 24 *et seq*.

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of a unit inhabitable area of 57.37 m² ("***Initial Plans***").[155]

255. According to the Claimant, these two plans constituted the plans of principle of the Project for the construction of the 2,000 social housing units which are the subject of the Contract, entered into on 29 March 2006.[156] The Claimant explained that the number and type of homes of the Malabo subproject and the Bata subproject were to be identical. According to the Claimant, this would make it possible to ensure a single and reduced cost per home, independently of whether the home was built in Malabo or in Bata.[157]

256. The Claimant asserts that, in compliance with Article 18 of the Contract, the Republic of Equatorial Guinea was bound to provide "*the land on which the works are to be executed and its annexes free from any occupant*".[158] It contends that this obligation was not respected, with the necessary land not having made available in the condition and within the timeframes set out in the Contract, which did not allow for launch and normal execution of the sites.[159]

257. The Claimant explains that the land allocated to the Malabo subproject presented various problems which meant launch of the projects and constructions could not take place as planned.[160] These included particularly uneven reliefs, the presence of a riverbed, and a swampy and very clayey soil, with the presence of large basalt boulders. Consequently, the Claimant was forced to adapt the constructions to the specificities of the soil and the sloping of the land, which it claims entailed significant additional costs. Furthermore, it states that the riverbed reduced the constructible land base in the footprint of the land provided, requiring technical adaptations. It adds that the land of the Bata subproject presented similar characteristics, notably the presence of riverbeds and the absence of prior deforestation.[161]

258. The Claimant furthermore contends that the two plots were regularly occupied by third parties, since the first allocation.[162] The Claimant submitted to the debates exhibits confirming that the Claimant had asked several times for the intervention of the Equatorial Guinea authorities, between

[155] Exhibit C34: Plan of the properties dated March 2004; Exhibit C35: Plan of the properties dated 6 July 2005.
[156] Statement of Claim, para. 24.
[157] Statement of Claim, para. 25.
[158] Statement of Claim, paras. 31 *et seq*.
[159] Statement of Claim, para. 193.
[160] Statement of Claim, para. 195.
[161] Statement of Claim, para. 195.
[162] Statement of Claim, para. 196.

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7 September 2006 and 13 August 2008, in order to access the land free from any occupation.[163]

259. Furthermore, it asserts that a joint meeting with the Respondent held on 15 November 2019 found the persistence of such unlawful occupations[164], which were also the subject of a documentary broadcast on an Equatorial Guinea public television channel on 9 July 2020.[165]

260. The Claimant contends that the Respondent did not take any effective measure to remedy the occupations affecting the sites, thus compromising the proper execution of the contractual services.[166] It concludes from this that the Respondent breached an essential obligation arising out of the Contract, and that such non-performance caused it significant harm.[167]

2. Decision of the Tribunal

261. The Tribunal states that Article 18 of the Contract signed in March 2006 provides the following regarding the availability of the land dedicated to the Project:

> "***ARTICLE 18. – ALLOCATION OF PROPERTY***
>
> *The Government shall deliver the land on which the works are to be executed and its annexes free from any occupant. The liability arising out of the allocation by the construction works of private properties situated within the project areas shall not be attributed to the Property Developer*."

262. The Claimant has submitted a detailed chronological presentation of the difficulties encountered on the land, relating to the condition of the land and notably its occupation by third parties and by the Respondent from 2006.[168] This chronology demonstrates that the land remained occupied until termination of the Contract. As an example:

(i) In a letter dated 1st November 2006, following a meeting held on 26 October 2006, the Claimant reminded the Secretary

[163] Statement of Claim, para. 192. Exhibit C38: Letter sent by URBAJET to GE-Projets dated 7 September 2006; Exhibit C39: Letter sent by URBAJET to Equatorial Guinea dated 26 September 2006; Exhibit C40: Letter sent on 1st November 2006 by URBAJET to Equatorial Guinea; Exhibit C52: Letter sent on 5 May 2007 by URBAJET to the Presidency of Equatorial Guinea; Exhibit C131: Letter from URBAJET to GE-PROYECTOS dated 22 November 2017; Exhibit C133: Letter from URBAJET to GE-PROYECTOS dated 13 August 2018.

[164] Exhibit C136: Minutes of the meeting dated 15 November 2019; Exhibit C137: Minutes of the meeting dated 15 November 2019.

[165] Exhibit C141: Excerpt of the documentary broadcast on the channel TV GE dated 9 July 2020.

[166] Statement of Claim, para. 199.

[167] Statement of Claim, para. 200.

[168] Statement of Claim, paras. 39 to 168.

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of State of the Respondent that the land of Malabo was occupied and the land of Bata had not been allocated:[169]

"*During this interview, we had presented the various points preventing launch of the works on the Malabo site and the urbanisation studies of the Bata project, that we are now listing for you below:*

Malabo Project:
- *Official allocation of the land to Urbajet by letter from your department.*
- *Evacuation of the occupants on the land destined to the project.*
- *Deforestation of the land (see proposal made by letter of 7/9/2006).*
- *Agreement to the plan for execution of the Malabo project filed [with] your department.*
- *Establishment of the service order to begin the works for the Malabo project.*

Bata Project:
- *Allocation of the land for the Bata project.*

Malabo and Bata Projects:
- *Agreement to the exemptions from taxes and temporary admission of equipment (see list filed on 25-6/10/2006).*
- *Designation of the quarries for exploitation of the aggregates for the Malabo and Bata projects.*
- *Exemption from taxes on the fees for visas and residency permits for the staff having to work on these projects*."

(ii) In March 2007, which was one year after signing the Contract, the Claimant stated that the execution timetable of the Project remained subject to the prior evacuation of the land, and to the resolution of other matters concerning the Project:[170]

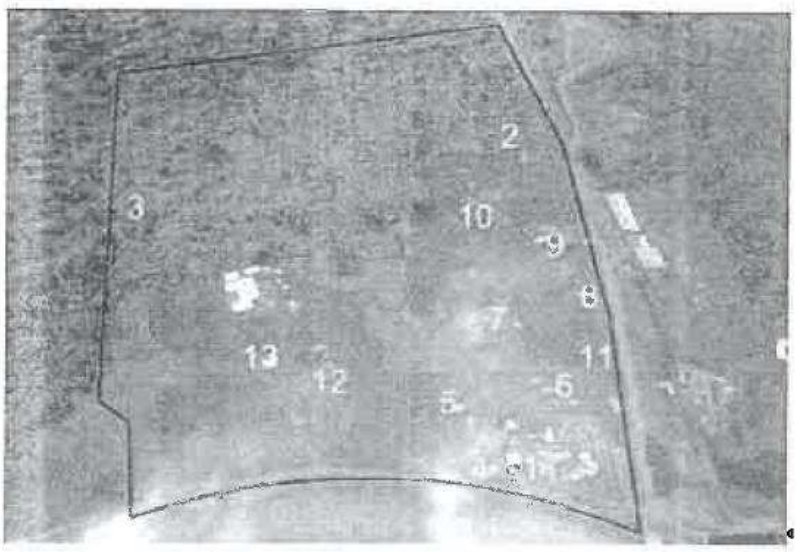
"*[…] We hereby send you for approval the works envelope planning for the sites of Malabo and Bata.*

[169] Exhibit C40: Letter from the Claimant to the Respondent dated 1st November 2006.
[170] Exhibit C47: Letter from the Claimant to the Respondent dated 26 March 2007.

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This planning is dependent on the release of the land and the allocation of the exemptions from taxes and duties. […]"

(iii) In May 2007, the Claimant sent a letter to the Respondent about the occupation of the land in Malabo, demonstrating the points of occupation with an aerial photo (sites numbered):[171]



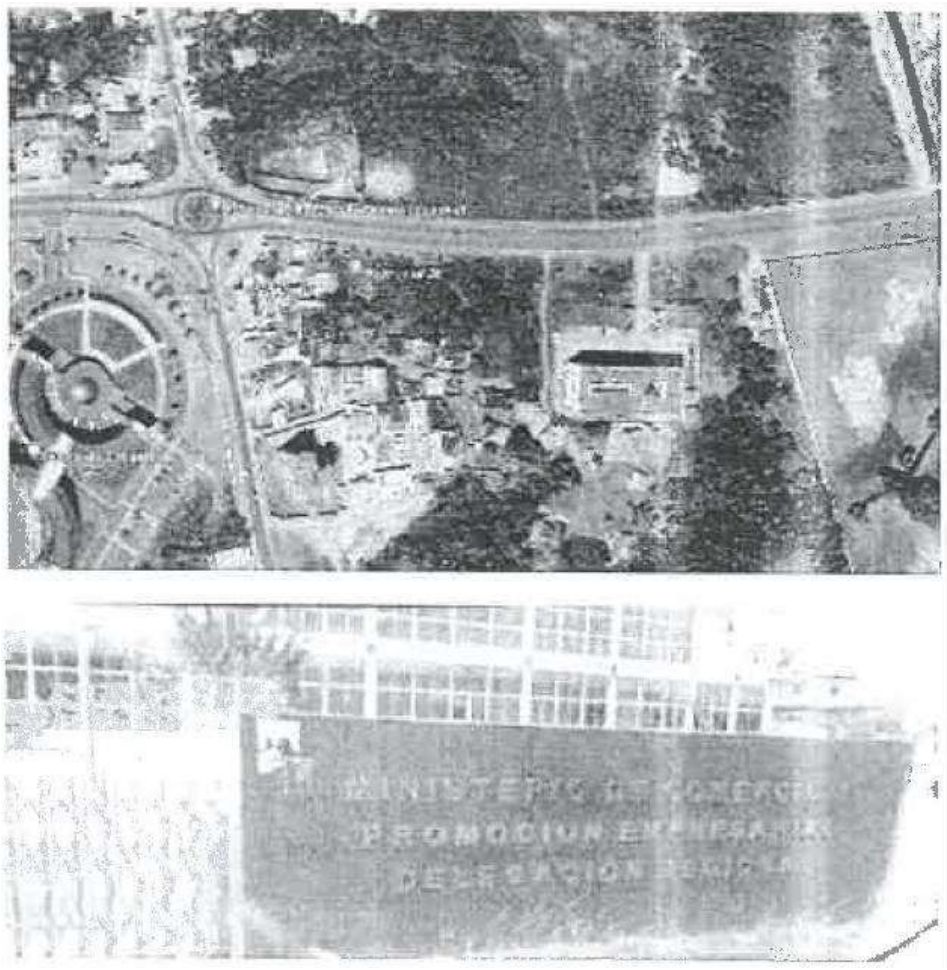
(iv) In 2011, the situation was similar in Bata. The Claimant demonstrated that in 2011 the land remained widely occupied by third parties, at the sites numbered 1, 2, 3, 5, 6 and 8 to 13 below:[172]



(v) The Claimant has explained that some of the above zones have been vacated over the years in Bata, but has submitted to the debates exhibits demonstrating that in 2023 the Respondent had built two properties in zone no. 5 (GEPetrol building) and in zone no. 13 (Regional Delegation

[171] Exhibit C52: Letter from the Claimant to the Respondent dated 5 May 2007. Statement of Claim, para. 46.
[172] Statement of Claim, para. 68.

of the Ministry of Trade and Promotion of Companies), identified below:[173]



(vi) The Claimant has also demonstrated that between end 2017 and May 2021, it intervened several times with the authorities of the Respondent concerning the illegal occupations of the land of Malabo.[174]

(vii) By letter dated 6 January 2020, the government of Bioko-Norte acknowledged the abnormal and unlawful occupations of the land of Malabo:[175]

"*I acknowledge receipt of your attentive letter without number dated 02 January of the year of the workshop, in which you request the mediation of this provincial centre regarding the occupation of the lands that the government has granted in favour of this company to execute the construction of social works in the Community of Neighbours no. 3-20, allocated by urban district no. III of Malabo;*

[173] Statement of Claim, para. 70.
[174] Statement of Claim, paras. 157 to 167.
[175] Exhibit C139: Letter from the provincial government of Bioko-Norte dated 6 January 2020. Translation provided by the Claimant.

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unfortunately, they are occupied by citizens who have built arbitrary constructions on the site, obstructing the prey. [sic]

In its relations, this provincial government unambiguously ratifies the decision made by the government to allocate to this company the area of land which refers and according to the location plan provided by the company; in order to promote the socioeconomic development of our country in general and this province of Bioko Norte in particular, and warns the managers of this community of neighbours not to sanction or interfere in social matters; consequently, has just authorised this date [sic], *you can duly carry out the activities and maintain the appropriate control over the superficial extension constituting the pano* [sic] *situation which, at your time, was granted by the government of our country, denouncing at the appropriate time the supposed neighbours who may meddle in this place to paralyse such a social interest project*." (Emphasis added)

(viii) On 18 May 2021, the Claimant wrote again to the Respondent concerning the occupation of the land of Malabo by third parties:[176]

"*This same committee also confirmed to us the immediate demolition by the government of the illegal constructions, and that we will no longer have to worry about this problem which is now under the control of the authorities.*

We are bound however to inform y0ou that the constructions have still not been demolished, as demonstrated by the photos and the plan accompanying our letter, and that the attempts of invasion and occupation of several areas of the land persist.

People are penetrating the land, often by force, and claiming that they are the legal owners of various plots found in the land reserve allocated to our project. We explain to them repeatedly that the land is the property of the State and that a site plan provides for the development of a socioeconomic programme carried out by our company.

We are at a loss in this situation and we fear for the safety of our staff on site, who are facing insults and threats by these people. Thus, we ask you to take all necessary measures for the demolition of the illegal constructions still present, the permanent securing of the perimeter of the project by the police, and particularly to put a stop to these acts which are damaging to our common interests."

263. Taking account of the foregoing, it results from the examination of the exhibits submitted to the debates and the elements put forward by the Claimant that the breaches by the

[176] Exhibit C7: Letter from the Claimant to the Respondent dated 18 May 2021. Statement of Claim, paras. 167-168.

Respondent of its obligation to provide land free from any occupant, in compliance with Article 18 of the Contract, are established.

264. With regard to the difficulties encountered by the Claimant on the sites of the subprojects of Malabo and Bata, notably owing to the state of deforestation of the land, their geographic configuration and the presence of riverbeds, the Tribunal finds that these circumstances are largely established in the exhibits presented to the debates mentioned above in this Section XV.B. However, these circumstances do not fall within the scope of Article 18 of the Contract, which concerns the delivery of the land free from any occupant. In any case, the Respondent accepted and covered the cost of resolving said circumstances during the works, as the Tribunal will examine in Section XVI hereunder.

265. Having regard to the successive modifications made to the projects, and the coverage by the Respondent of the costs relating to the preparation of the sites for the installation of the site facilities, the Tribunal will examine the impact of these elements on the total cost of the Contract in Section XVI.C hereunder.

266. On those grounds, the Tribunal considers that the Respondent breached its obligation under Article 18 of the Contract, thus engaging its contractual liability to the Claimant.

C. THE MODIFICATIONS OF THE PROJECT

1. Arguments and submissions of the Claimant

267. Under the terms of its Statement of Claim, the Claimant asserts that, in compliance with Articles 26 and 27 of the Contract, any request of the Respondent striving for the execution of constructions not stipulated in the Contract had to be the subject of an additional contract negotiated between the Parties.[177]

268. It contends that, in spite of those provisions, from 24 May 2007 the Respondent made several requests which significantly altered the works agreed in the Initial Plans of the Project. The Claimant accepted these modifications, which entailed substantial delays in the execution of the project, and a considerable increase in the price of the works (more than four times the initial cost).[178]

269. The Claimant furthermore contends that several of these claims were the subject of SO90. Nevertheless, the Respondent continued to unilaterally submit change requests, such as the construction of new buildings, the modification of existing buildings, or their repositioning owing to the partial occupation of the land[179], notably:

[177] Statement of Claim, para. 201.
[178] Statement of Claim, paras. 202 to 205.
[179] Statement of Claim, para. 207.

(i) The 2013 Additional Works, concerning the supply of drinking water;[180] and

(ii) The 2017 Additional Works, for the construction of hydraulic structures.[181]

270. The Claimant asserts that these additional modifications without the respective contractual addendums forced it to execute significantly more studies and to revise the plans of the Project many times, which, it states, constitutes a contractual breach (and caused it harm).[182]

2. Decision of the Tribunal

271. The Contract stipulates, in its Articles 26 and 27, that works not set out in the Contract will be the subject of an additional contract between the Parties, and that the Claimant cannot substantially alter its services without the permission of the Respondent:

> "***ARTICLE 26. – ADDITIONAL WORKS***
>
> *In the event where the Government seeks from the Property Developer the execution of constructions not stipulated or included in this Contract, these shall be the subject of an additional contract negotiated and signed between the two parties.*
>
> ***ARTICLE 27. – SIGNIFICANT CHANGES IN EXECUTION***
>
> *The Property Developer may not alter, modify or introduce any substantial changes to the nature of the constructions which are the subject of this contract without the prior written permission of the Government.*"

272. Furthermore, Article 46 provides that the Contract must be amended in writing:

> "***ARTICLE 46. – AMENDMENTS***
>
> *This Contract may not be modified or amended without the prior written agreement of both parties*."

273. The exhibits submitted to the debates do not include any additional contract within the meaning of Article 26 of the Contract. However, they establish that at least part of the additional works was the subject of service order no. SO90, and that the Claimant executed services which were not part of the Contract or the subject of later service orders.

[180] Cf. para. 39 above.
[181] Cf. para. 41 above.
[182] Statement of Claim, para. 207.

274. The Claimant has demonstrated, during the arbitral proceedings and by means of supporting documents, that the Respondent sought the execution of additional works and substantial changes to the Project, without granting the Claimant's requests for an additional contract.[183] Nevertheless, the Respondent approved the prices and plans of the additional works, which were executed later and validated by the Engineer up to Interim Statement 18, in compliance with Section XV.D.1.

275. Furthermore, it results from the exhibits submitted to the debates that additional works were made necessary to vacate the land and restore it with a view to launch of the projects, notably by carrying out deforestation works. The Tribunal will summarise hereunder some of these works and modifications to the constructions, which have been confirmed by FTI:

(i) In April 2007, the Claimant communicated to the Respondent that the land allocated to the Malabo subproject was not deforested and required significant earthworks owing to its incline[184]; furthermore, the Claimant informed the Respondent of the presence of a riverbed on the land, which required a significant revision to the Initial Plans;[185]

(ii) Between May and July 2007, the Respondent sought substantial modifications to the Initial Plans[186], and ordered that the new plans had to provide: (a) three to four bedrooms, instead of the two bedrooms initially planned; and (b) that the bedroom doors did not open directly onto the dining rooms or lounges.[187]

The abandonment of the Initial Plans, which provided for the construction of 2,000 similar type T2 buildings of around 57 m² and 62 m²[188], to the benefit of plans targeting buildings of much larger dimensions, even villas, clearly shows from the minutes of the meeting of 5 July 2007, invoked by the Claimant in its Statement of Claim:[189]

"*[…] This layout will enable the separation between the individual homes (villas) and the collective homes in the 5-storey buildings. These apartment buildings will be the only ones to occupy the first lot of an area of 84,447.47 m². Hence a gain in open space*

[183] Statement of Claim, paras. 42 to 44.
[184] Exhibit C49: Letter from the Claimant to GE-PROYECTOS dated 24 April 2007. Exhibit C51: Letter from the Claimant to GE-PROYECTOS dated 27 April 2007.
[185] Exhibit C50: Letter from the Claimant to the Respondent dated 26 April 2007.
[186] Cf. para. 254 above.
[187] Exhibit C53: Letter from the Respondent to the Claimant dated 24 May 2007; Exhibit C55: Letter from the Respondent to the Claimant dated 31 May 2007.
[188] Cf. para. 254 above.
[189] Exhibit C57: Minutes of the working meeting of 5 July 2007; Statement of Claim, para. 57.

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for the green areas and social facilities. A new site plan must be drafted by URBAJET to take account of these new modifications. […]"

[…] The net floor area of the apartments must be increased to 80 m² and that of the villas (individual homes) to 110 m². […]

[The Respondent] selected for the social facilities: children's gardens, children's playgrounds and basic health infrastructures for first aid. The construction of shopping centres was not planned for this programme.

URBAJET was asked to propose studies and an estimate of the cost of the earthworks and civil engineering works for the amenities concerning the river, which divides the site into two separate plots. An access road to the second plot for the villas will be developed along the Ela Nguema-Airport motorway of Malabo. As this is a site outside of the developed urban zone, URBAJET must provide all sanitation works (evacuation of rainwater, sewerage and wastewater), including the construction of a treatment plant for sewer water before discharge of the treated water into the river. It is also recommended to provide a water tower and a drinking water supply network for the site.

The Property Developer has not yet managed to vacate the areas of land still suffering from spontaneous occupation. It promises to do everything possible to succeed with the eviction without delay."; (Emphasis added)

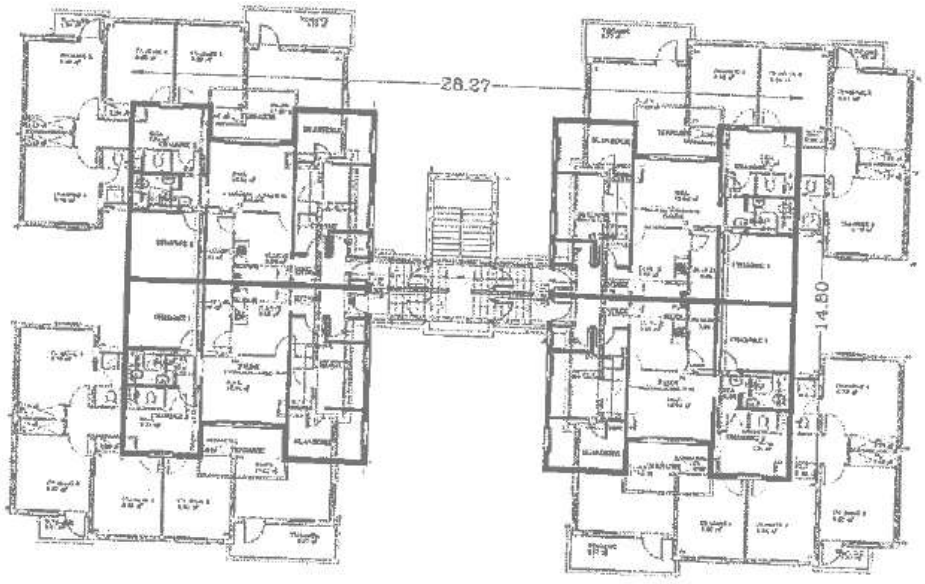
(iii) In 2008, after having validated the execution plans prepared by the Claimant and integrating the requested changes, the Respondent requested the reservation, on the Malabo land, of an area of 3,000 m² with a view to the construction of a church, which did not fall within the scope of the Contract.[190] The Claimant sent the Respondent new plans taking account of the modifications and additional works mentioned above owing to the request of the Respondent.[191] The Respondent rejected the new plans for the apparently contradictory reason that "*there can be no question of additional works without making significant progress in the contracted works*."[192] The comparison reproduced below between the Initial Plans (in black) and the new plans (in red) of the standard buildings and villas

[190] Exhibit C66: Letter sent by URBAJET to Equatorial Guinea dated 10 April 2008.
[191] Exhibit C67: Letter sent by URBAJET to TAS dated 14 April 2008.
[192] Exhibit C68: Letter sent by the Republic of Equatorial Guinea to URBAJET dated 28 May 2008.

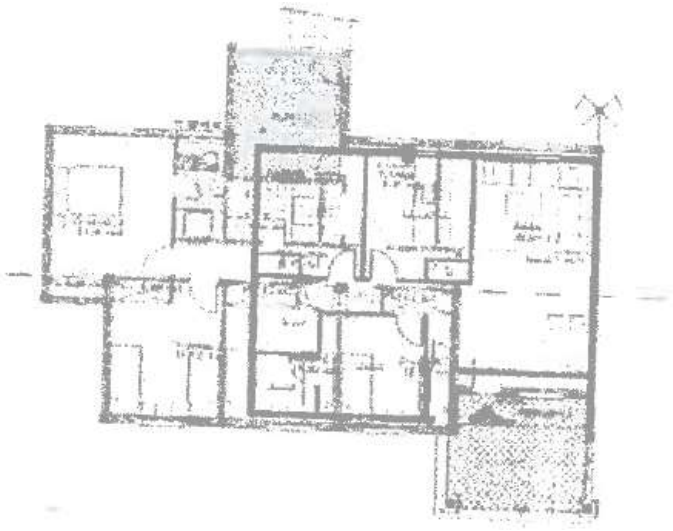
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confirms the scale of the changes made to the Project by the Respondent relating to the homes (not to mention the modifications relating to the urbanisation of the Project), and illustrates the extent of the additional works sought:[193]

Evolution of the Standard Plan of the Buildings



Evolution of the Plan of the Villa Homes



(iv) In 2009, the Respondent requested the modification of the terraces of the buildings;[194]

(v) On 17 August 2010, the report of the Engineer TAS confirmed the changes sought by the Claimant, and the increase in the

[193] Statement of Claim, para. 81; Presentation of the Claimant to the Hearing, pp. 16 and 17.
[194] Exhibit C82: Letter from the Claimant to the Respondent dated 19 June 2009.

costs justifying a revaluation of the Project for the purposes of Article 9 of the Contract. The Tribunal reproduces the excerpt of said report quoted by the Respondent:[195]

"*The works effectively began in early 2008, and the delay thus observed between the date of signing the contract and the start of the works was notably due:*

- *To the change in the architectural programme;*
- *To the wait for the architectural plans approved by the Property Developer;*
- *To the wait for the exemption on the equipment and materials by Urbajet. […]*

On the request of the Property Developer, the initial floor areas were increased, hence the change in the architectural programme. […]

Urbajet will have to assess the cost of the additional works due to the increase in the floor areas and the various requests of the Property Developer in compliance with the quantities below. […]

The works of the villas are currently 98% complete. […]

According to the accumulated percentages of distribution of trades presented by Urbajet, we are at 76% in the masonry works.

The masonry of the 4 buildings under construction is assessed at 94%. […]

4. CONCLUSIONS

According to the cost per covered m² of the contract of the contractor Urbajet, which is 298,116 F/m² for the villas and 288,336 F/m² for the apartments, the effective production is four billion three hundred and forty six million four hundred and forty five thousand two hundred and forty eight (4,345,445,248) CFA Francs.

It should be noted that the cost of the construction signed by the contractor Urbajet in March 2006 is now relatively low, because taking account of the current economic conditions it will be impossible for Urbajet to carry out this project at that rate. The cost of construction currently in Malabo is on average between 600,000 and 650,000 Francs per covered m². Urbajet is working at this rate, but is invoiced for half this.

[195] Exhibit C81: TAS progress report dated 17 August 2010.

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A reassessment of the cost of the project is necessary, in compliance with Article 9 of the Urbajet contract. […]

Urbajet must assess the cost of the additional works due to the increase in floor areas and the various requests of the Property Developer in compliance with the quantities specified both for the villas and for the buildings.

It should also be emphasised that the urbanisation works have not yet begun (highways, sanitation, electricity, drinking water supply, telephony and street lighting) owing to the fact that URBAJET has not yet received a service order for that purpose.

In the interest of the project, we recommend that the Property Developer makes a swift decision in order that the constructions executed can be ready to operate shortly." (Emphasis added)

(vi) In 2011, the Parties signed SO90[196], concerning certain changes to the works of the Contract, in particular:[197]

- The execution of additional urbanisation works including the earthworks;

- The increase in the floor area of the villas and apartments;

- The execution of additional facilities works, and in particular a primary school, a secondary school, sports grounds, a car park, a police station, a shopping centre and a health centre.

(vii) On 19 November 2013, more than seven years after signing the Contract, the Respondent validated the Claimant's proposal concerning the 2013 Additional Works.[198] These concerned the supply of drinking water for some of the homes which were the subject of phase I of the Project, which allows the Tribunal to conclude that these "additional" works were not set out in the Contract;[199]

(viii) In March 2015, the Claimant presented to the Engineer the plans for phase II of the Project, taking account of the Respondent's change requests;[200]

[196] Exhibit C4: Service Order no. 090 dated 3 May 2011.
[197] Statement of Claim, para. 102.
[198] Cf. para. 39 above.
[199] Exhibit C92: Validation of the 2013 Additional Works dated 19 November 2013.
[200] Exhibit C101: Letter sent by the Claimant to GE-PROYECTOS dated 18 March 2015.

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(ix) On 21 September 2015, FMH requested other modifications concerning the installation of a school[201], which were rejected by the Claimant;[202]

(x) On 29 March 2017, FMH gave its agreement to the price of the 2017 Additional Works relating to the construction of hydraulic structures.[203]

276. Having regard to these elements and the exhibits submitted to the debates, there is cause to acknowledge that the Claimant has grounds in contending that the Project was never stabilised from the point of view of the extent of the works. And notwithstanding the acceptance by the Respondent of SO90, the 2013 Additional Works and the 2017 Additional Works, no additional contract or addendum to the Contract was drawn up between the Parties to govern all the changes sought by the Respondent during the works.

277. Consequently, the Respondent breached its obligation, arising out of Article 26 of the Contract, to enter into an additional contract – or at the very least a written addendum in compliance with Article 46 –, thus engaging its contractual liability to the Claimant to pay for the services executed not set out or included in the Contract, which are the subject of the FTI Report.

D. THE LATE PAYMENTS AND PAYMENT DEFAULTS

1. Arguments and submissions of the Claimant

278. The Claimant contends that pursuant to Article 36 of the Contract, the Engineer of the Project had a period of fifteen days from delivery of the statements of work to ascertain the status of execution of the constructions carried out, and to sign said statements of work.[204] As from that date, the monthly statements of work had to be paid within a period of forty five days, being a maximum payment period of sixty days from delivery of the Interim Statements to the Respondent.[205]

279. However, according to the Claimant, it was never able to produce the statements of work at a monthly frequency, having been forced to comply with the validation frequency imposed by the Respondent.[206] The Claimant has submitted to the case file the list of validated statements of work and the dates of payment by the Respondent.

[201] Statement of Claim, para. 134.
[202] Exhibit C111: Letter from the Claimant to FMH dated 22 February 2016.
[203] Cf. para. 41 above; Exhibit C6: Validation of the 2017 Additional Works dated 29 March 2017.
[204] Statement of Claim, para. 208.
[205] Statement of Claim, para. 209.
[206] Statement of Claim, para. 210.

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280. The Claimant asserts that the Respondent never respected the payment times laid down in the Contract, and that the Respondent paid only Interim Statement 1 relating to the Bata subproject and Interim Statements 1 to 9 concerning the Malabo subproject in their principal. According to the Claimant, the interest relating to those statements of work was never paid, and the other statements of work remained unpaid.[207]

281. Consequently, the Claimant contends that it was forced to regularly remind the Respondent of these breaches by sending numerous letters from 2016 until December 2020, aiming to obtain payment of the sums due.[208] It claims that it also drew the Respondent's attention to the negative consequences of those delays, both on the progress of the Project and on its own cash flow.[209]

282. According to the Claimant, the Respondent did not respond to these requests, and the situation of unpaid statements of work worsened significantly from the year 2015. It claims that the balance of the sums due amounted to 8.8 billion CFA Francs exclusive of taxes at the end of 2015, to 16 billion CFA Francs exclusive of taxes in 2016, and to 20.8 billion CFA Francs exclusive of taxes at the end of 2017.[210]

283. The Claimant contends that the last payment made by the Respondent was paid on 19 September 2017, for an amount of 260,935,258 CFA Francs exclusive of taxes, which is only 1.2% of the total debt, which then amounted to 20,423,259,447 CFA Francs exclusive of taxes.[211] According to the FTI Report, this payment partially covers the works executed up to the end of December 2014 (Interim Statement 10).[212]

284. The Claimant indicates that on 1st January 2018, FMH and the Claimant validated Interim Statement 18 relating to the Malabo subproject, citing works

[207] Statement of Claim, para. 211.
[208] Statement of Claim, para. 212. Exhibit C124: Letter sent by URBAJET dated 7 November 2016; Exhibit C126: Letter sent by URBAJET dated 24 January 2017; Exhibit C145: Letters from URBAJET seeking payment of unpaid Interim Statements on various dates; Exhibit C10: Letter sent by URBAJET dated 22 March 2018; Exhibit C11: Letter sent by URBAJET dated 17 April 2018; Exhibit C12: Letter sent by URBAJET dated 23 April 2018; Exhibit C13: Letter sent by URBAJET dated 30 April 2018; Exhibit C14: Letter sent by URBAJET dated 7 May 2018; Exhibit C15: Letter sent by URBAJET dated 14 May 2018; Exhibit C16: Letter sent by URBAJET dated 21 May 2018; Exhibit C17: Letter sent by URBAJET dated 28 May 2018; Exhibit C18: Letter sent by URBAJET dated 4 June 2018; Exhibit C19: Letter sent by URBAJET dated 7 June 2018; Exhibit C20: Letter sent by URBAJET dated 11 June 2018; Exhibit C21: Letter sent by URBAJET dated 18 June 2018; Exhibit C22: Letter sent by URBAJET dated 25 June 2018; Exhibit C23: Letter sent by URBAJET dated 2 July 2018; Exhibit C24: Letter sent by URBAJET dated 15 May 2019; Exhibit C25: Letter sent by URBAJET dated 11 September 2019; Exhibit C26: Letter sent by URBAJET dated 12 June 2020; Exhibit C27: Letter sent by URBAJET dated 18 December 2020; Exhibit C28: Letter sent by URBAJET dated 18 May 2021.
[209] Statement of Claim, para. 211.
[210] Statement of Claim, para. 213.
[211] Statement of Claim, para. 214.
[212] FTI Report, para. 1.26.

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executed for an amount of 51,840,024,155 CFA Francs, and a sum due to URBAJET of 20,822,300,701 CFA Francs.[213]

285. The Claimant explains that the total amount of the works executed for the two subprojects has been fixed at 53,043,249,155 CFA Francs since 1st January 2018, and that those sums have not been paid in full, in spite of its repeated reminders.[214]

286. Consequently, the Claimant concludes from this that the Respondent breached its principal obligation arising out of Article 36 of the Contract to pay for the works executed.

2. Decision of the Tribunal

287. Article 36 of the Contract stipulates the conditions of payment of the works executed by the Claimant in the following terms:

> "***ARTICLE 36 – CONDITIONS OF PAYMENT […]***
>
> *The evaluations of the works executed shall be given to the Government Engineer at the end of each month or every week. These evaluations shall be carried out taking account of the measurements of the constructions actually executed and they shall be evaluated in compliance with the unit quotation. The Engineer shall have a period of fifteen (15) days to verify and record the status of execution of the constructions carried out and to sign the monthly certifications.*
>
> *The monthly certifications of the constructions executed by the Property Developer shall be paid within a period of forty five (45) days from signing, or sixty (60) days from the date of their delivery by the Property Developer to the Engineer.* […]"

288. Article 33 of the Contract provides that the Engineer must evaluate the works executed monthly or fortnightly:

> "***ARTICLE 33. – EVALUATION OF THE WORKS***
>
> *The evaluation of the works executed shall be undertaken by means of monthly or fortnightly certifications that the Property Developer shall deliver to the Government Engineer*."

289. The Claimant cites that (i) on 4 April 2007, more than a year after signing of the Contract, GE-PROYECTOS informed it that TAS was appointed Engineer of the Project, to supervise and control the works to be executed in Malabo and Bata;[215]

[213] Statement of Claim, para. 215.
[214] Statement of Claim, paras. 215 and 216; Exhibit C9: Interim Statement no. 18 (Malabo) dated 1st January 2018.
[215] Statement of Claim, para. 41.

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and (ii) on 27 November 2013, FMH succeeded TAS in the capacity of Engineer under the Contract.[216]

290. The Claimant has submitted to the debates, with its Statement of Claim, in support of its detailed chronology, statements of work numbered Interim Statements 1 to 18 of Malabo, and Interim Statement 1 of Bata, duly validated by the Engineer and other supporting documents, in compliance with the table below:[217]

Invoice	Subproject	Amount invoiced	Date of invoice	Payment/invoice	Payment date
Interim Statement no. 1	Bata	932,980,665 CFA	31/12/2007	932,980,665 CFA	30/08/2008
Interim Statement no. 1	Malabo	975,220,200 CFA	31/03/2008	641,074,335 CFA	30/08/2008
	Malabo			334,145,865 CFA	24/02/2009
Interim Statement no. 2	Malabo	580,241,400 CFA	31/10/2008	580,241,400 CFA	24/02/2009
Interim Statement no. 3	Malabo	2,289,501,757 CFA	30/07/2009	1,690,298,978 CFA	24/02/2009
	Malabo			599,202,779 CFA	23/09/2010
Interim Statement no. 4	Malabo	3,330,447,057 CFA	30/04/2010	400,797,221 CFA	23/09/2010
	Malabo			2,929,649,836 CFA	29/09/2011
Interim Statement no. 5	Malabo	1,878,222,490 CFA	31/03/2010	1,566,261,124 CFA	29/09/2011
	Malabo			311,961,366 CFA	01/10/2012
Interim Statement no. 6	Malabo	4,560,660,137 CFA	13/08/2012	4,020,665,764 CFA	01/10/2012
	Malabo			539,994,373 CFA	10/12/2013
Interim Statement no. 7	Malabo	2,104,722,153 CFA	11/01/2013	1,564,727,780 CFA	10/12/2013
	Malabo			539,994,373 CFA	11/07/2014
Interim Statement no. 8	Malabo	2,817,160,424 CFA	31/12/2013	1,460,005,627 CFA	11/07/2014
	Malabo			1,357,154,797 CFA	11/03/2015
Interim Statement no. 9	Malabo	3,522,175,124 CFA	31/08/2014	1,931,386,099 CFA	11/03/2015
	Malabo			1,590,789,025 CFA	10/09/2015
Interim Statement n. 10	Malabo	5,328,692,721 CFA	31/12/2014	1,234,927,408 CFA	10/09/2015
	Malabo			1,435,255,676 CFA	05/04/2016
	Malabo			579,856,130 CFA	24/01/2017
	Malabo			260,935,258 CFA	12/09/2017
Interim Statement no. 11	Malabo	11,359,862,738 CFA	01/06/2015		
Interim Statement no. 12	Malabo	8,798,244,827 CFA	01/01/2016		
Interim Statement no. 13	Malabo	12,884,925,509 CFA	01/07/2016		
Interim Statement no. 14	Malabo	14,305,041,961 CFA	01/10/2016		
Interim Statement no. 15	Malabo	16,013,787,018 CFA	31/12/2016		
Interim Statement no. 16	Malabo	17,967,420,335 CFA	31/03/2017		
Interim Statement no. 17	Malabo	20,423,259,447 CFA	30/06/2017		
Interim Statement no. 18	Malabo	20,822,300,701 CFA	31/12/2017		

291. Taking account of the considerable volume of data relating to the works executed over a decade, which were validated by the Engineer and partially paid, the Claimant appointed an independent expert from FTI to examine all supporting documents it submitted to the case file. FTI conducted a detailed analysis of the technical, administrative and financial documents relating to the Project, and confirmed the consistency and legitimacy of the claims lodged by the Claimant in respect of the services executed.[218]

292. The Tribunal finds that the method adopted by FTI for the audit of the exhibits communicated by the Claimant – consisting of identifying the certified works, whether or not they'd been paid, in compliance with each Interim Statement validated by the Engineer – corresponds to a standard and reasonable approach in the context of a case relating to construction works.

[216] Statement of Claim, para. 115.
[217] Statement of Claim, para. 210.
[218] FTI Report, para. 2.12.

293. The report established by FTI, after having analysed the exhibits provided, confirmed that the Claimant has not been paid in full for all works executed in compliance with Interim Statements 1 to 18 of Malabo and Interim Statement 1 of Bata, as follows:[219]

> **Payment of works executed**
>
> 2.7 Urbajet invoiced the Republic of Equatorial Guinea for the works executed via interim statements of works certified by the Engineers, appointed in the contractual context.
>
> 2.8 Until 2017, the Republic of Equatorial Guinea systematically paid the certified Interim Statements late in relation to the timeframes set out in the Contract. From 2017, the Respondent no longer paid any certified Interim Statement.
>
> 2.9 By analysing the certified Interim Statements of the works executed and the payments received, I also found that the Republic of Equatorial Guinea had not adjusted the prices when it made its payments, even though the Contract stipulated a formula for adjustment of the prices.
>
> 2.10 The unpaid amounts and late payments furthermore caused a cash flow issue for Urbajet. I used the marginal loan facility rate provided by the BEAC and I applied compound interest.
>
> 2.11 I quantified the losses linked to the payments of the works of the Contract, taking account of the works executed, the payments received and the dates of payment, the advances received, and the formula for adjustment of the prices.
>
> 2.12 I present a summary of my costing relating to the payment of the prices of the works of the Contract in Table 2-3 below. The calculation of interest shall be updated throughout the proceedings to take account of the passing of time. The breakdown of my analyses can be found in Section 3.
>
> **Table 2-3: Summary of the costing relating to the payment of the works**

Category	**k CFA F**	**k EUR eq.**
Certified Interim Statements unpaid	5,738,179	8,753
Late payment interest	12,405,432	18,922
Revision of the prices	4,693,894	7,160
Total	**22,837,504**	**34,835**

> *Note: Conversion into euros on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs).*
> *Source: Annex 3, tab 'Unpaid Interim Statements'.*

294. Having regard to the proof submitted to the debates, notably the FTI Report, and the contemporary exhibits submitted by the Claimant with its Statement of Claim and later submissions, there is cause to find that the Respondent breached its payment obligation arising out of Article 36 of the Contract. The Tribunal will proceed to value the loss suffered by the Claimant in Section XVI hereunder.

[219] FTI Report, paras. 2.07 to 2.12.

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E. THE REVISION OF THE PRICES

1. Arguments and submissions of the Claimant

295. The Claimant asserts that, according to Article 9 of the Contract, a formula for revision of the prices had to be applied in order to take account of the evolution of the economic conditions during performance of the Contract.[220]

296. It contends that, in spite of its reiterated requests, the Respondent failed to undertake such revision, thus refusing to implement that contractual stipulation[221].

297. It concludes from this that such abstention constitutes a breach of an essential obligation of the Contract, having caused a loss for which it is claiming compensation.[222]

2. Decision of the Tribunal

298. According to Article 9 of the Contract, the price of the Contract is fixed and final, subject however to taking "*account of changes to the economic conditions during the term of the Contract*", "a correction coefficient K will be applied" under the following terms:

> "***ARTICLE 9. – REVISION OF THE PRICES***
>
> *The amount of the contract is fixed and final. However, in order to take account of changes to the economic conditions during the term of the Contract, a correction factor K shall be applied in compliance with the following formulae:*
>
> *Am = Ao x K, where*
> *Ao = Initial amount of the prices before the reconsideration.*
> *Am = Modified amount of the prices after the reconsideration.*
> *K = Correction factor defined subsequently.*
>
> *For the payments in local currency:*
>
> *K = Kiev = 0.15 + 0.45 x S/So + 0.40 x P/Po*
>
> *where:*
>
> *S = Value of the index for remuneration for all salaries in Equatorial Guinea during the period which is the subject of the revision of the prices of the Contract.*

[220] Statement of Claim, para. 219.
[221] Statement of Claim, para. 220.
[222] Statement of Claim, para. 221.

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P = Value of the index of industrial prices in Equatorial Guinea during the period which is the subject of the revision of the prices of the Contract.

S and P are published by the competent bodies of Equatorial Guinea.

So and Po = values of the initial indexes upon signing of the Contract. […]"

299. The Tribunal finds that Article 28 of the Contract stipulates that the base for the prices of the Contract is the conditions existing in March 2006, and allows their revision in compliance with the provision of Article 9, by applying the coefficient K:

"***ARTICLE 28. – BASIC PRICES***

The prices established in this Contract as they are defined in Article 3 (6) above are subject to the conditions of the month of March 2006. The prices established in this Contract are fixed and may be reviewed in compliance with the provisions of Article 9."

300. It results from these stipulations that the Contract grants the Claimant the right to update the prices during performance of the Contract, pursuant to Article 9, in relation to the price of the Contract fixed in March 2006, in compliance with Article 28. This right was recognised by the Engineer, and was the subject of several requests of the Claimant before termination of the Contract, which were ignored by the Respondent.

301. It results from the exhibits submitted to the debates that, at least from 17 August 2010, the report of the Engineer TAS found, in view of the increase in costs, the need to reassess the cost of the Project for the purposes of Article 9 of the Contract:[223]

"*4. CONCLUSIONS*

According to the cost per covered m² of the contract of the contractor Urbajet, which is 298,116 F/m² for the villas and 288,336 F/m² for the apartments, the effective production is four billion three hundred and forty six million four hundred and forty five thousand two hundred and forty eight (4,345,445,248) CFA Francs.

It should be noted that the cost of the construction signed by the contractor Urbajet in March 2006 is now relatively low, because taking account of the current economic conditions it will be impossible for Urbajet to carry out this project at that rate. The cost of construction currently in Malabo is on average between 600,000 and 650,000 Francs per covered m². Urbajet is working at this rate, but is invoiced for half this.

[223] Exhibit C81: TAS progress report dated 17 August 2010.

A reassessment of the cost of the project is necessary, in compliance with Article 9 of the Urbajet contract. […] (Emphasis added)

302. Furthermore, before termination of the Contract, on 18 May 2021 the Claimant sent a reminder to the Respondent for payment of the price adjustment in compliance with Article 9 of the Contract, in the context of an attempt at amicable settlement of the sums remaining unpaid.[224] At the time of the Notification, the Claimant served formal notice on the Respondent for several breaches of the Contract, including the revision of the prices.[225]

303. The report established by FTI, after examination of the Interim Statements certified by the Engineer, confirmed that the amounts paid by the Respondent had not been adjusted in compliance with the formula for revision of the prices of the Contract:[226]

> "*2.9 By analysing the certified Interim Statements of the works executed and the payments received, I also found that the Republic of Equatorial Guinea had not adjusted the prices when it made its payments, even though the Contract stipulated a formula for adjustment of the prices*."

304. It results from the conclusions of the FTI Report and the exhibits submitted to the debates that the Respondent breached its obligation to readjust the prices according to the formula set out in Article 9 of the Contract. The loss suffered by the Claimant as a consequence of that breach is examined in Section XVI.E hereunder.

F. LATE PAYMENT INTEREST

1. Arguments and submissions of the Claimant

305. The Claimant contends that Article 36 of the Contract provides that any payment made by the Respondent outside of the contractual timeframes shall give rise to the application of interest, calculated at the interest rate of the BEAC.[227]

306. It is also alleged that, in spite of the requests made on that ground, the Respondent failed to pay the late payment interest set out by that

[224] Exhibit C7: Letter from the Claimant to the Respondent dated 18 May 2021 ("*Further to our previous correspondences linked to the absence of adjustment of the Interim Statement of the Malabo project, and notably that of 18 December 2020, we inform you that the difficulties we are experiencing are persisting and that the lack of visibility which has now endured for several years does not contribute to fostering a reassuring climate. As you know, the project has undergone several changes, suspensions and events which have had a considerable adverse effect on our situation, such as: […] – The absence of revision of the prices of the contract in compliance with the contract, […]*").

[225] Exhibit C29: Letter sent by the counsel for URBAJET dated 14 September 2022 ("*Furthermore, the Republic of Equatorial Guinea has consistently breached its commitments and has notably: […] – Failed to adjust the prices in compliance with the contract*.").

[226] FTI Report, para. 2.9.

[227] Statement of Claim, para. 222.

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stipulation.[228] It states that this results in a breach of an essential obligation of the Contract.[229]

2. Decision of the Tribunal

307. The Tribunal agrees with the Claimant that Article 36 of the Contract provides for the payment of late payment interest for any payment outside of the periods established in the Contract:

> "***ARTICLE 36 – […] LATE PAYMENT INTEREST***
>
> *[…]*
>
> *Any payment made outside of the periods established shall entitle the Property Developer to claim default interest calculated from the due date, which shall be established pursuant to the tax rule of the BEAC (Interest rate) per day*."

308. The Tribunal finds, from the table prepared by FTI and reiterated in paragraph 290 above, that the Interim Statements were paid in full or partially only several months after expiry of the 60-day period laid down in Article 36 of the Contract, without payment of the corresponding late payment interest. For example, said table demonstrates that Interim Statements 1 of Malabo and Bata were invoiced respectively on 31 December 2007 and 31 March 2008, but were only paid on 30 August 2008, which was between five and eighteen months after their invoicing dates.

309. The FTI Report, after examination of the Interim Statements certified by the Engineer, confirmed that the amounts paid by the Respondent did not include late payment interest, which was calculated by FTI:[230]

> "*I present a summary of my costing relating to the payment of the prices of the works of the Contract in Table 2-3 below. The calculation of interest shall be updated throughout the proceedings to take account of the passing of time*."

310. In its letter before termination of the Contract, dated 18 May 2021, the Claimant reminded the Respondent about the payment of late payment interest in compliance with Article 36 of the Contract, within the framework of an attempt at amicable settlement of the sums remaining unpaid.[231] It has been established that the Respondent did not respond to this letter or to the Notification of Termination.

[228] Statement of Claim, para. 224.
[229] Statement of Claim, para. 225.
[230] FTI Report, para. 2.12.
[231] Statement of Claim, para. 174; Exhibit C7: Letter from the Claimant to the Respondent dated 18 May 2021.

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311. Consequently, it results from the FTI Report and the exhibits submitted to the debates that the Respondent breached its obligation to pay the late payment interest stipulated in Article 36 of the Contract. The consequences of this breach, notably the losses alleged by the Claimant, are examined in Section XVI.D hereunder.

G. THE SUSPENSION OF THE WORKS AND TERMINATION OF THE CONTRACT

1. Arguments and submissions of the Claimant

312. The Claimant contends that Article 34 permits termination of the Contract in case of interruption of the works for a period exceeding ninety days when that interruption is attributable to the Respondent.

313. In that respect, the Claimant states that Article 34 provides notably that the termination may take place when the Respondent interferes with, blocks or withholds any necessary approval to the issuance of a certification, or in case of cessation of the works for more than ninety days for causes attributable to it.

314. The Claimant states that beyond the release of the land and the changes to the Project, the Respondent prevented it from continuing the works:

(i) On the Malabo project: it claims that the Respondent decided to divide this subproject into several stages after signing of the SO90. On 25 July 2015, the Respondent unilaterally ordered the suspension of phase II of the Malabo subproject, pending the presentation of a new financing offer;[232] and

(ii) On the Bata project: the problem of occupation of the land by third parties was never resolved. After a first invoice of 31 December 2007, the studies had reached a rate of completion of 40% and the earthworks a rate of 15%.[233] However, continuation of the works was made impossible owing to the ongoing occupation of the land by third parties, in spite of the requests for intervention sent to the Respondent.[234]

315. Furthermore, the Claimant alleges that the late payments and payment defaults of the sums due under the Interim Statements forced the Claimant to suspend the works, as its cash flow no longer enabled it to continue them in the absence of guarantees of payment and sufficient liquid assets to acquire the necessary equipment.[235]

[232] Statement of Claim, paras. 119 *et seq*.
[233] Exhibit C62: Interim Statement no. 1 (Bata) dated 31 December 2007.
[234] Statement of Claim, paras. 64 *et seq*.
[235] Statement of Claim, para. 234.

316. The Claimant concluded that, for those reasons, the two subprojects were interrupted for periods greatly exceeding ninety days, for reasons attributable to the Respondent.

317. Consequently, the Claimant contends that it had grounds in notifying the termination of the Contract for wrongdoing, after a last formal notice to the Respondent dated 14 September 2022.[236]

2. Decision of the Tribunal

318. Article 34 of the Contract authorises the Claimant to terminate the Contract notably for the following reasons:

> "***ARTICLE 34. – TERMINATION OF THE CONTRACT***
>
> *[…] The Property Developer may terminate this Contract for the following causes:*
>
> *a) When the Project Owner interferes with, blocks or withholds any necessary approval for the issuance of one of the Certifications.*
>
> *b) Cessation of works for a period of over 90 days for causes attributable to the Project Owner. […]*"

319. The Claimant has established that:

(i) On 2 April 2014, GE-PROYECTOS asked the Claimant to suspend the works of phase II of the Malabo subproject until full completion of the phase I works;[237]

(ii) After the first works Interim Statement concerning the Bata subproject dated 31 December 2017[238], the Claimant could not continue the works insofar as the land allocated to the Project was continually occupied by third parties and the Respondent;[239]

(iii) After Interim Statement 18 dated 1st January 2018[240], on 22 March 2018 the Claimant notified the Respondent of its need to reduce its activity because said works Interim Statement remained unpaid:[241]

> "*We have mobilised and exhausted all our credit facilities and we are now in an uncomfortable situation which requires*

[236] Statement of Claim, paras. 183 to 187; Exhibit C29: Letter sent by the Claimant to the Respondent dated 14 September 2022.
[237] Exhibit C97: Letter from GE-PROYECTOS to the Claimant dated 2 April 2014.
[238] Exhibit C62: Interim Statement no. 1 (Bata) dated 31 December 2007.
[239] Statement of Claim, paras. 65 to 67.
[240] Exhibit C9: Interim Statement no. 18 (Malabo) dated 1st January 2018.
[241] Statement of Claim, para. 170; Exhibit C10: Letter sent by URBAJET to Equatorial Guinea dated 22 March 2018.

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a restructuring of our liabilities. The level of payment of our work Interim Statements is no longer allowing us to envisage a satisfactory production rate and we were forced to visibly reduce our workforce at the end of the financial year 2017, with the exception of number of employees reserved to the maintenance of the delivered phase of the project."

(iv) Between March 2018 and December 2020, the Claimant sent 16 letters to the Respondent reiterating the technical and financial difficulties encountered during the Project which is the subject of the claims in this case; and the Tribunal finds that, according to the exhibits submitted to the debates, the Respondent did not provide any response;[242]

(v) On 18 May 2021, the Claimant wrote to the Respondent to find a solution to the deadlock caused by the difficulties on the sites and the absence of payment, with a reminder of the status of the situation of performance of the Contract.[243] The Tribunal finds it useful to reproduce below the text of said letter, as cited by the Claimant, which summarises the status of the Project in May 2021 and the conditions established by the Claimant at the time for the works to be able to restart:

"*Further to our previous correspondences linked to the absence of adjustment of the Interim Statement of the Malabo project, and notably that of 18 December 2020, we inform you that the difficulties we are experiencing are persisting and that the lack of visibility which has now endured for several years does not contribute to fostering a reassuring climate.*

As you know, the project has undergone several changes, suspensions and events which have had a considerable adverse effect on our situation, such as:

- The allocation of uneven land, crossed by the bed of a river and with an unsuitable soil type,

[242] Statement of Claim, para. 171; Exhibit C11: Letter sent by URBAJET dated 17 April 2018; Exhibit C12: Letter sent by URBAJET dated 23 April 2018; Exhibit C13: Letter sent by URBAJET dated 30 April 2018; Exhibit C14: Letter sent by URBAJET dated 7 May 2018; Exhibit C15: Letter sent by URBAJET dated 14 May 2018; Exhibit C16: Letter sent by URBAJET dated 21 May 2018; Exhibit C17: Letter sent by URBAJET dated 28 May 2018; Exhibit C18: Letter sent by URBAJET dated 4 June 2018; Exhibit C19: Letter sent by URBAJET dated 7 June 2018; Exhibit C20: Letter sent by URBAJET dated 11 June 2018; Exhibit C21: Letter sent by URBAJET dated 18 June 2018; Exhibit C22: Letter sent by URBAJET dated 25 June 2018; Exhibit C23: Letter sent by URBAJET dated 2 July 2018; Exhibit C24: Letter sent by URBAJET dated 15 May 2019; Exhibit C25: Letter sent by URBAJET dated 11 September 2019; Exhibit C26: Letter sent by URBAJET dated 12 June 2020; Exhibit C27: Letter sent by URBAJET dated 18 December 2020.

[243] Exhibit C7: Letter sent by URBAJET dated 18 May 2021.

- The unexpected and repeated modifications to the content and services of the project,
- The continual appropriations of plots of land initially allocated to the project,
- The absence of revision of the contract prices in compliance with the contract.
- The late payment of Interim Statements,
- The absence of application of the tax and social measures.
Taking account of our profound respect for the privileged relations held by our two countries, we had:
1. Tolerated your decision to temporarily suspend all the works relating to the Bata subproject, and later those of the (phase 2) homes of the Malabo subproject.
2. Continued until the end of the year 2017 to make our best efforts to execute the works of infrastructures and facilities of the Malabo subproject, despite the accumulated unpaid sums.
The late payment of our Interim Statements however has continually increased year on year to reach in 2017 an amount of 20.8 billion CFA Francs. […]
That said, we inform you that our relaunch of the works is now conditional on your implementation and acceptance of all the points listed hereunder no later than 1st July 2021. These points are inseparable and aim to re-establish a framework of mutual trust which will make it possible to best serve our reciprocal interests.
1. Payment of our last works Interim Statement.
2. Payment of the contractual late payment interest in compliance with Article 36 of the Contract.
3. Payment of the price adjustment in compliance with Article 9 of the Contract.
4. Definitive resolution of the issue of occupation of the site by evacuating the occupants and putting security in place to prevent any other intrusion.
5. Production of a release of the deposit repayment guarantee to the due limit of its amortisation.
6. Notification of the order to resume the phase 2 works of the homes of the Malabo project.
7. Notification of the order to resume the works of the Bata subproject in compliance with the updated price and the content of the Malabo project already validated."

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(vi) Until termination of the Contract, the Claimant continued to keep a minimal structure of staff on the sites, and to take measures to protect its staff and equipment dedicated to the works.[244]

320. The Tribunal notes the absence of response of the Respondent to the letters mentioned above, and the interruption of the projects sought by the Respondent for several years.

321. On 14 September 2022, the counsel for the Claimant sent the Respondent the Notification ("*Notification of Termination and Formal Notice*")[245], in which the Claimant notified the termination of the Contract and served formal notice on the Respondent to pay it the sum of 62,091,893,340 CFA Francs within a period of fifteen days. The reproduction of the Notification below illustrates the technical and financial situation of the Project:

> "*[…] As a reminder, on 29 March 2006 URBAJET and the Republic of Equatorial Guinea entered into a contract under the terms of which URBAJET undertook to construct 1,000 homes in Malabo and 1,000 homes in Bata in exchange for payment of the sum of 44,300,000,000 CFA Francs exclusive of taxes.*
>
> *In particular, it was provided that payment would be made as the works progressed and were certified.*
>
> *While some studies were able to begin immediately, the construction works were delayed owing to the failure by the Republic of Equatorial Guinea to make suitable land available.*
>
> *The amount of the works relating to the Malabo subproject was subsequently modified by service order no. 090/GEP/011 dated 3 May 2011 (for an amount of 76,535,496,993 CFA Francs exclusive of taxes), the validation of additional works in 2013 (for an amount of 3,434,788,302 CFA Francs exclusive of taxes), and the validation of additional works in 2017 (for a total amount of 526,553,792 CFA Francs exclusive of taxes). It is understood that said modifications were also applicable to the Bata subproject.*
>
> *Thus, an amount of 102,646,839,091 CFA Francs exclusive of taxes was due for each of the subprojects, which is an overall update of the initial contract from 44,300,000,000 CFA Francs exclusive of taxes to 205,293,678,182 CFA Francs exclusive of taxes.*
>
> *Certificates have been validated concerning the two subprojects.*

[244] Statement of Claim, paras. 176 to 181.
[245] Exhibit C29: Letter sent by the counsel for the Claimant to the Respondent dated 14 September 2022.

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In particular,

- A certificate no. 1 was validated for a sum of 1,203,225,000 CFA Francs exclusive of taxes for the Bata subproject;

- A certificate no. 18 was validated for a sum of 51,840,024,155 CFA Francs exclusive of taxes for the Malabo subproject.

This is a total of 53,043,249,155 CFA Francs exclusive of taxes.

As at 31 December 2017, the Republic of Equatorial Guinea had paid a total amount of 47,305,070,494 CFA Francs to URBAJET, including 20,802,764,615 CFA Francs in advance having been amortised at the level of 5,718,642,575 CFA Francs. On that date, the amount of the advance remaining due amounted to 15,084,122,040 CFA Francs guaranteed by a deposit repayment guarantee submitted by URBAJET to the Republic of Equatorial Guinea in the sum of 17,720,000,000 CFA Francs.

On that date, the Republic of Equatorial Guinea had to pay the sum of 20,822,300,701 CFA Francs to URBAJET after amortisation of the advance.

However, in spite of URBAJET's reminders, the Republic of Equatorial Guinea never paid that sum.

Furthermore, the Republic of Equatorial Guinea consistently breached its commitments, and notably:

- Failed to make suitable land available to URBAJET in order to proceed with the constructions in a timely manner;

- Believed it was able to unilaterally change the content and the services of the project;

- Once the land was selected, believed it was allowed to appropriate (or allow the unlawful occupation of) plots of the same land for purposes other than the construction of the homes under URBAJET's responsibility;

- Failed to adjust the prices in compliance with the contract;

- Failed to pay the works Interim Statements in compliance with the contractual stipulations;

- Failed to implement the tax and customs measures it had undertaken to grant to URBAJET;

- Believed it was allowed to unilaterally or totally suspend the sites;

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- Failed to remedy the situation of accommodation of the URBAJET teams.

By letter dated 24 May 2021, URBAJET reminded the Republic of Equatorial Guinea of these multiple breaches of the contract and served formal notice on it to resolve some of these difficulties no later than 1st July 2021.

The Republic of Equatorial Guinea never responded to those requests.

Furthermore, after having observed the significant deterioration of its equipment, its plant and its stock stored on the site, and in order to preserve their condition, URBAJET resolved to move – in August 2022 – these goods to a closed and secure warehouse in Calle Alcaide in Malabo. This relocation required an authorisation of the Ministry of the Interior in order to enable the transportation of the biggest plant on the roads of the town of Malabo, which was obtained on 15 June 2022.

In that context, to its great surprise, URBAJET learned of the questioning and the attempted arbitrary imprisonment of its local representative on 19 August 2022. It was only after an ordeal of many hours and in a seriously impaired psychological state that said representative was released subject to confirming his place of residence and being contactable at any time.

After having implemented all resources to enable the resumption of the projects, and in the context of the questioning and the arbitrary detention of its local representative, URBAJET is now hereby forced to officially pronounce and notify the termination of the contract, in compliance with Article 34 of the Contract binding the parties, owing, notably, to the interruption of the works for a period exceeding 90 days through fault of the Property Developer.

In that context, the keys to the two apartments built and occupied in the context of the project by the URBAJET teams are available to you and will be sent to you on first request. As a reminder, the keys to the two other apartments were returned – on the request of the Republic of Equatorial Guinea – on 15 November 2021.

Consequently, URBAJET serves formal notice on the Republic of Equatorial Guinea to pay it the following sums within fifteen days:

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Unpaid invoices	5,738,178,661 CFA
Late payment interest on the unpaid invoices (Article 36 of the contract) (subject to completion)	4,628,924,097 CFA
Contractual adjustment of the prices (Article 9 of the Contract)	12,387,544,162 CFA
Loss of profit	30,160,809,990 CFA
Reimbursement of bank guarantee fees	1,284,890,880 CFA
Costs of warehousing, cost of transport and cost of repair of the equipment (subject to completion)	500,000,000 CFA
Operating costs (immobilisation costs) (subject to completion)	526,941,113 CFA
Costs of financial immobilisation	6,864,604,437 CFA
TOTAL:	**62,091,893,340 CFA**

This payment must be made to the CARPA account of our firm.

The breakdown of the calculations relating to the amounts indicated above is annexed hereto.[246]

These amounts are subject to increase in case of absence of payment within 15 days.

Lastly, URBAJET serves formal notice on the Republic of Equatorial Guinea to give, within the same period of time, full and final release of the deposit repayment guarantee issued by the Bank "Crédit Immobilier et Hôtelier" dated 20 July 2006 to the benefit of the Republic of Equatorial Guinea.

Although the Republic of Equatorial Guinea has not responded to the requests aiming to find an amicable solution to this dispute in the past, our client is not opposed to an amicable settlement of this dispute and we are available to discuss this with you. However, in the absence of payment within the period mentioned above and agreement over the principle of financial compensation, URBAJET shall be forced to institute any appropriate proceedings before the International Court of Arbitration of the International Chamber of Commerce of Paris.

In compliance with our ethical obligations, we strongly recommend that you send a copy of this letter to your usual counsel and communicate their contact details to us.

We offer you, Minister for Public Works, Housing and Urbanism, Minister for Finance, the Economy and Planning, and Madam Chair of the Steering Committee

[246] Calculations in compliance with the annex to Exhibit C29: Letter sent by the counsel for the Claimant to the Respondent on 14 September 2022.

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of GE-PROYECTOS, the expression of our kindest regards."

322. At the end of the time limit of the Notification, it is established that no response was sent, and no payment was made by the Respondent.

323. Having regard to the aforementioned elements, the Tribunal finds that the Claimant had grounds in terminating the Contract, pursuant to Article 34, notably owing to the payment defaults and other breaches preventing progress of the works (notably the failure to vacate the land, the occupation of the land by third parties, and the Respondent's decision "*to temporarily suspend all the works relating to the Bata subproject, and later those of the (phase 2) homes of the Malabo subproject*"), which are the subject of the Notification and formal notice reproduced in paragraph 321 above, which were the subject of several earlier notifications submitted to the debates.[247]

XVI. THE LOSS SUFFERED BY THE CLAIMANT

A. THE RIGHT TO COMPENSATION OF THE LOSS SUFFERED AND LOST EARNINGS

324. Since it has been established, in Section XV above, that the Respondent breached several contractual obligations, it falls to the Tribunal to pronounce on the heads of loss invoked by the Claimant and their valuation.

325. The Claimant's right firstly to remuneration for works not initially stipulated in the Contract and requested by the Respondent, and secondly to reimbursement of the additional costs, lost earnings and losses suffered resulting from the delay caused by the Respondent, the consecutive price revisions, the late payment interest on the sums due, and the termination of the Contract, results:

(i) From the systematic interpretation of the Contract, notably Articles 9, 18, 34, 36 and 46, breach of which by the Respondent has been recorded in Section XV above;

(ii) From the performance of the Contract, in particular the various requests made by the Respondent during the project and the validation by the Engineer of the works executed in compliance with Interim Statements 1 to 18 of Malabo and Interim Statement 1 of Bata; and

(iii) From the present silence of the Respondent in respect of the Claimant's letters relating technical and financial difficulties within the framework of the Project, and in particular the Notification of Termination of the Contract and Formal Notice to pay unpaid amounts dated 14 September 2022.

[247] See correspondence cited in paragraph 36 above.

326. In that context, the Tribunal finds that the legal provisions of the law of the Republic of Equatorial Guinea invoked by the Claimant are compatible with the stipulations of the Contract and its performance by the Parties, in that they lead to the same conclusions: the right of the Claimant to the losses suffered and lost earnings.

327. The texts set out by the Claimant provide for the right of the property developer to payment of the services executed, plus compensation for lost earnings and losses suffered following a cessation of the works attributable to the Administration, as follows:[248]

(i) Article 53 of Decree 923/65 approving the law on State contracts[249] provides that:

"*Article 53. […] If the Administration decides on the permanent suspension of works or allows a period of one year to elapse from temporary suspension without ordering their resumption, the holder is entitled to the value of the services effectively executed and to the industrial profit relating to the services not executed*."

(ii) Article 162 of Decree no. 3354/67 on the payment of State contracts[250] provides that:[251]

"*If the Administration decides on the permanent suspension of works or allows a period of one year to elapse from temporary suspension without ordering their resumption, the holder is entitled to the value of the services effectively executed and to the industrial profit relating to the services not executed. (Article 53 LCE)*

[248] Statement of Claim, para. 234.

[249] Exhibit RL-3: Decree 923-1965 of 8 April 1965 approving the Law on State contracts. Original text:
"*Art. 53. […] Si la Administración decidiese la suspensión definitiva de las obras o dejase transcurrir un año desde la suspensión temporal sin ordenar la reanudación de las mismas, el contratista tendrá derecho al valor de aquellas efectivamente realizadas y al beneficio industrial de las dejadas de realizar*."

[250] Exhibit CL2: Article 162 of Decree 3354-1967 dated 28 December 1968 approving the Payment on State Contracts in EG. Original text:
"*Artículo 162. Si la Administración decidiese la suspensión definitiva de las obras o dejase transcurrir un año desde la suspensión temporal sin ordenar la reanudación de las mismas, el contratista tendrá derecho al valor de aquellas efectivamente realizadas y al beneficio industrial de las dejadas de realizar (Art 53 LCE)*
Se considera como obra efectivamente realizada no sólo la que pueda ser objeto de certificación por unidades de obra terminadas, sino también las accesorias llevados a cabo por el contratista y cuyo importe forma parte del coste indirecto a que hace mención el artículo 67 de este Reglamento, asi como también los acopios situados al pie de obra.
Se entiende por beneficio industrial la cantidad resultante de aplicar el coeficiente que por este concepto incide en el presupuesto de ejecución material de la obra para obtener el importe total del presupuesto del contrato."

[251] Statement of Claim, para. 237.

> *The services effectively executed are considered to be not only those that may be the subject of certification by completed units of work, but also the secondary services executed by the successful bidder and the amount of which is included in the indirect costs set out in Article 67 of this Regulation, and the supplies located on the site.*
>
> *The industrial profit is understood to be the amount resulting from the application of the corresponding coefficient, as it features in the material execution budget of the works, making it possible to obtain the total amount of the contractual budget*."

328. Furthermore, during the Hearing and in its Post-Hearing Submissions, the Claimant stated that Article 1106 of the Equatorial Guinea Civil Code adopts the principle of compensation in full, of the loss suffered and the lost earnings, as follows:[252]

> "*the reparation of the damages comprises not only the value of the loss suffered, but also the value of the earnings that the creditor ceased to obtain, subject to the provisions contained in the following articles*."

329. Having regard to the principle of compensation in full inserted into the abovementioned article of the Equatorial Guinea Civil Code, and the international nature of the Contract, the fact that the Project was the subject of international financing by the BEAC and that the Claimant is not an Equatorial Guinea company, insofar as the most likely counterfactual scenario would be that the Claimant, without other projects in the Republic of Equatorial Guinea, would not have kept the payments received from the Respondent in CFA Francs, the Tribunal considers that the Claimant has grounds in making its claims in euros, once the exchange rate used is duly justified.

330. In this case, Article 7 of the Contract, while establishing the CFA Franc as currency of the Contract, provides for a fixed exchange rate for the euro of "*1 EUR = 655,597 CFA Francs*". The FTI Report uses this same exchange rate to express in euros the amounts calculated in CFA Francs (notably, for Tables 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 5-5, 6-7 and 7-2: "*Note: Conversion into euros on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs)*"). Furthermore, Article 8 of the Contract required the Claimant to take out "*an insurance policy of several million EUROS to cover any damages that the site may cause to third parties*". For the amounts calculated in MAD, the FTI Report uses "*the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR)*" (notably for Tables 2-2, 2-5, 2-6, 2-7, 5-5, 6-7 and 7-2) drawn from the source Capital IQ (Annex 3 to the FTI Report, tab "Summary") and which is consistent with the rate published by the Central Bank of Morocco (Bank Al-Maghrib or "***BAM***"). The Tribunal considers that the exchange rates applied are duly justified.

[252] Claimant's Post-Hearing Submissions, para. 48.

331. In the absence of response on the merits from the Respondent, the only elements submitted to the case file for the purposes of assessment of the losses suffered by the Claimant comprise exhibits submitted to the case file by the Claimant and the FTI Report, the FTI Update dated 30 September 2024 ("***FTI Update***") and some corrections received from FTI by the Claimant after the Hearing ("***FTI Corrections***").[253]

332. In this Section XVI, after having found the consistency of the methodological approach upheld by FTI, the Tribunal will pronounce on each of the heads of loss invoked by the Respondent, and on the calculations presented by FTI.

B. THE APPROACH FOLLOWED BY FTI

333. The FTI Report adopts a standard and recognised approach to calculate the economic loss suffered by the Claimant: FTI compared firstly the works executed and the amounts received by the Claimant in compliance with Interim Statements 1 to 18 of Malabo and Interim Statement 1 of Bata (factual scenario) and secondly a counterfactual scenario in which the Contract would have been performed as planned, including additional works, and the Respondent would have respected its commitments, notably payment of the sums due within the contractual timeframes, and where applicable with adjustments of the prices:[254]

> **Approach followed**
>
> 2.2 To assess the loss suffered by Urbajet, I compared:
>
> - the financial situation of Urbajet in the absence of the contractual breaches accused of the Republic of Equatorial Guinea; and
>
> - the effective financial situation of Urbajet taking account of the breaches accused of the Republic of Equatorial Guinea.
>
> 2.3 I considered that within the framework of a normal performance of the Contract:
>
> - Urbajet would have been paid on time for all works executed;
>
> - the prices would have been adjusted in accordance with the contractual formula;
>
> - the sites would have been finalised and therefore the margin to be generated would have been obtained;
>
> - the bank guarantee would have been released at the end of the projects, putting an end to the payment of fees;
>
> - the escrow would have been lifted and returned to Urbajet at the end of the projects; and
>
> - no additional operating cost would have been incurred by Urbajet.

[253] See para. 494 above.
[254] FTI Report, p. 13.

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334. The FTI Report compared the counterfactual chronology with that set out by the Contract as follows:[255]

Figure 2-1: Counterfactual chronology of the Contract

Contract 28/03/2006	**SO no. 90** 03/05/2011	**2013 Additional Works** 15/11/2013	**2017 Additional Works** 21/03/2017
2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017			
Provisional duration of the works: 48 months	Additional duration: 36 months	Additional duration Additional Works	**Total completion of the Project** 02/05/2017
Delivery of the bank guarantee **Start of the escrow** 20/07/2006	**Provisional period for end of bank guarantee** 20/07/2010	**Completion of the 2,000 homes** **Return of the guarantee deposit** 02/05/2024	

Source: FTI analyses

Figure 2-2: Actual chronology of the Contract

Contract 28/03/2006	**SO no. 90** 03/05/2011	**2013 Additional Works** 15/11/2013	**2017 Additional Works** 21/03/2017	
2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022				
Provisional duration of the works: 48 months	Additional duration: 36 months	Additional duration Additional Works	Extension of the Project	
Delivery of the bank guarantee **Start of the escrow** 20/07/2006	**Provisional period for end of bank guarantee** 20/07/2010	**Provisional date for end of works** 02/05/2024	**Suspension of the works (Interim Statement no. 18 Malabo)** 01/01/2013	**Request for arbitration** 22/10/2022
			Last payment received by Urbajet 26/09/2017	**Termination of the Contract** 14/09/2022

335. Having regard to the contractual stipulations breached by the Respondent, and to the termination of the Contract, the Tribunal considers to be reasonable the method upheld by FTI, aiming to put the Claimant back in the situation it would have been in if the Contract had been performed properly. This standard method enables the Tribunal to arrive at the compensation in full set out in Article 1106 of the Equatorial Guinea Civil Code.[256]

336. In compliance with the Tribunal's request, and the reserves of the Claimant's right to update the amount of the applicable interest[257], FTI updated its calculation of interest accrued up to 30 September 2024 in the FTI Update.

337. In its Post-Hearing Submissions[258], the Claimant indicated to the Tribunal that it had been informed by FTI "*that two errors had slipped into its report*" and reproduced the corrections made by FTI, as well as their negative impact on FTI's calculations ("***FTI Corrections***"). FTI explained its two errors as follows, before adjusting its calculations:

[255] FTI Report, p. 13.
[256] Cf. para. 328 above.
[257] Statement of Claim, para. 293.
[258] Claimant's Post-Hearing Submissions, paras. 95 *et seq*.

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"*Upon rereading my FTI Report, I found two anomalies concerning the calculation of interest:*

- *Interest was wrongly calculated from the date of termination of the Contract (effective on 29 September 2022) up to the date of the FTI Report (29 September 2023) on the bank guarantee fees, while the bank guarantee fees were assessed on the date of my FTI Report;*[259]

- *Interest was wrongly calculated over the period between the date of termination of the Contract (effective on 29 September 2022) up to the date of the FTI Report (29 September 2023) on the logistics and security costs, while these related precisely to that period.*"

338. This Arbitral Award makes reference to the FTI Report, to the FTI Update and to the FTI Corrections, while considering the most recent (lower) amounts calculated by the FTI.

339. FTI summarised its costing of the losses suffered by the Claimant as at 30 September 2024 in local currency (CFA Francs or MAD) as follows:[260]

	Loss (corrected) as at 29/09/2023 [C]		Interest [D]		Loss as at 30/09/2024 [E] = [C] + [D]	
Category	k CFA F	k MAD	k CFA F	k MAD	k CFA F	k MAD
Interim Statements unpaid/paid late	18,143,610	-	2,428,335	0	20,571,945	-
Price adjustment	4,999,157	-	338,435	0	5,337,593	-
Payment of the works executed	**23,142,768**	**-**	**2,766,770**	**0**	**25,909,538**	**-**
Loss of profit	**32,626,580**	**-**	**2,208,769**	**0**	**34,835,349**	**-**
Bank fees	-	8,154	-	209	-	8,363
Interest on amount in escrow	-	67,502	-	5,535	-	73,137
Loss linked to the bank guarantee	-	75,756	-	5,744	-	**81,500**
Additional operating costs	3,886	29,931	263	768	4,149	30,699
Total	55,773,234	105,687	4,975,802	6,512	60,749,037	112,199

340. The Claimant has lodged its claims in euros, and in the alternative in local currency, either CFA Francs or MAD. Consequently FTI, according to its corrections, estimated the total losses at a total of **€103,097,000** as at 30 September 2024 as follows:[261]

[259] See FTI Report, para. 5.15.
[260] Claimant's Post-Hearing Submissions, para. 95.
[261] Claimant's Post-Hearing Submissions, para. 95. FTI explains the conversion rates used as follows: "*Note: Conversion into euros of the amounts in CFA Francs on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs), and of the amounts in MAD at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR).*"

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Impact of the update of the interest as at 30 September 2024 on the losses suffered by Urbajet, assessed in k EUR eq. (*):

Category	Loss (corrected) as at 29/09/2023 [C]	Interest [D]	Loss as at 30/09/2024 [E] = [C] + [D]
Interim Statements unpaid/paid late	27,675	3,704	31,379
Price adjustment	7,625	516	8,142
Payment of the works executed	**35,300**	**4,220**	**39,521**
Loss of profit	**49,766**	**3,369**	**53,135**
Bank fees	758	19	778
Interest on amount in escrow	6,287	515	6,802
Loss linked to the bank guarantee	**7,045**	**534**	**7,579**
Additional operating costs	**2,790**	**72**	**2,861**
Total	**94,901**	**8,195**	**103,097**

341. The Tribunal will consequently examine each of the amounts quantified by FTI for each head of loss alleged by the Claimant, starting from the calculations in local currency, then their conversion into euros in compliance with Article 7 of the Contract[262] for the amounts in CFA Francs (€1/655,597 CFA Francs) and in compliance with the approach adopted by FTI for the costs in MAD (€1/0.093 MAD, calculated on the date of the Request).[263]

C. THE PAYMENT OF THE WORKS EXECUTED

1. Arguments and submissions of the Claimant

342. The Claimant asserts that on the date of termination of the Contract, the total amount of the works executed within the framework of the Project amounted to the sum of 53,043,249,155 CFA Francs.

343. This sum corresponds to the amounts set out in Interim Statement 1 relating to the Bata subproject and in Interim Statements 1 to 18 relating to the Malabo subproject, confirmed by the Engineer in compliance with Article 36 of the Contract, and ascertained by FTI in compliance with the exhibits submitted to the debates by the Claimant, as follows:[264]

[262] Cf. para. 29 above.
[263] FTI Report, para. 5.26; cf. para. 340 above.
[264] FTI Report, Table 3-2, paras. 3.12-3.13. FTI Exhibits 3.1 to 3.19

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Table 3-2: Summary of the works Interim Statements

Interim Statement	Date of Interim Statement	Amount (k CFA F)
No. 1 Bata	31/12/2007	1,203,225
No. 1 Malabo	31/03/2008	1,625,367
No. 2 Malabo	31/10/2008	967,069
No. 3 Malabo	30/07/2009	3,875,807
No. 4 Malabo	30/04/2010	2,040,945
No. 5 Malabo	31/03/2010	1,878,222
No. 6 Malabo	13/08/2012	4,560,660
No. 7 Malabo	11/01/2013	1,876,689
No. 8 Malabo	31/12/2013	3,776,721
No. 9 Malabo	31/08/2014	3,052,361
No. 10 Malabo	31/12/2014	2,038,489
No. 11 Malabo	01/06/2015	6,364,567
No. 12 Malabo	01/01/2016	4,008,828
No. 13 Malabo	01/07/2016	6,230,999
No. 14 Malabo	01/10/2016	1,602,471
No. 15 Malabo	31/12/2016	1,928,162
No. 16 Malabo	01/04/2017	2,858,810
No. 17 Malabo	01/07/2017	2,703,575
No. 18 Malabo	01/01/2018	450,281
Total		**53,043,249**

Source: Annex 3, tab 'Tables for comparison'

344. The Claimant acknowledges having received from the Respondent payments representing a total of 47,305,070,494 CFA Francs, including:[265]

(i) 20,802,765,000 CFA Francs for advances paid (a) on 30 August 2006, in the sum of 17,720,000,000 CFA Francs, and (b) on 19 September 2011, in the sum of 3,082,764,615 CFA Francs;

(ii) 26,502,305,879 CFA Francs for the payments of Interim Statement 1 in Bata and up to Interim Statement 10 in Malabo.

345. FTI confirmed these payments as follows:[266]

[265] Statement of Claim, para. 244.
[266] FTI Report, para. 3.29.

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Table 3-5: Amounts received by URBAJET from 2006 to 2017

Payments received for	Payment in k CFA F	Date
Advance of 40% of the initial amount of the Contract	17,720,000	30/08/2006
Interim Statements No. 1 in Bata and No. 1 in Malabo	1,574,055	06/08/2008
Interim Statements No. 1, No. 2 and No. 3 in Malabo	2,604,686	18/02/2009
Interim Statements No. 3 and No. 4 in Malabo	1,000,000	31/08/2009
Interim Statements No. 4 and No. 5 in Malabo and 2nd advance	7,578,676	29/09/2011
Interim Statements No. 5 and No. 6 in Malabo	4,332,627	01/10/2012
Interim Statements No. 6 and No. 7 in Malabo	2,104,722	10/12/2013
Interim Statements No. 7 and No. 8 in Malabo	2,000,000	09/05/2014
Interim Statements No. 8 and No. 9 in Malabo	3,288,541	13/03/2015
Interim Statements No. 9 and No. 10 in Malabo	2,825,716	11/09/2015
Interim Statement No. 10 in Malabo	1,435,256	06/04/2016
Interim Statement No. 10 in Malabo	579,856	23/01/2017
Interim Statement No. 10 in Malabo	260,935	26/09/2017
Payments of advances	**20,802,765**	
Payments of works	**26,502,306**	
Total	**47,305,070**	

Note: Most payments are partial; they only cover part of the amounts invoiced in the Interim Statements.
Source: Annex 3, tab 'Tables for comparison'

346. Consequently, after deduction of the advances and the sums already paid for the works executed, the Claimant contends that the Respondent still owes it the sum of **5,738,178,661 CFA Francs** exclusive of taxes for unpaid Interim Statements, before interest.

347. FTI has summarised the total amount claimed by the Claimant as follows:[267]

Description		Amount in CFA Francs
Works executed for the Subproject in Malabo	[a]	51,840,024
Works executed for the Subproject in Bata	[b]	1,203,225
Total advances received	[c]	20,802,765
Sum of payments received (excluding advances)	[d]	26,502,306
Total [a] + [b] – [c] – [d]		**5,738,179**

[267] FTI Report, para. 3.30; version of Table 3-6 of Annex 3, tab Tables for comparison

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2. Decision of the Tribunal

348. The Tribunal has examined the evidence submitted to the debates, notably the Interim Statements of works countersigned by the Engineer in compliance with the contractual stipulations, and the conclusions of FTI on the payments received by the Claimant.

349. The Tribunal finds that the Claimant has established the verification of the amounts claimed under Table 3-6 above as follows:

(i) The Respondent approved works executed for a total of 53,043,249,155 CFA Francs, in compliance with Interim Statement 1 of Bata and Interim Statements 1 to 18 of Malabo;[268] and

(ii) The Claimant received 47,305,070,494 CFA Francs[269], of which 20,802,765,000 CFA Francs in advances paid; and 26,502,305,879 CFA Francs in partial payments of Interim Statement 1 of Bata and up to Interim Statement 10 of Malabo:[270]

Statement of payments					
DATE	**REF**	**DESCRIPTION**	**REF**	**CFA Francs**	
30/08/06	0807	ADVANCE/2000 HOMES MALABO-GUINEA	N0	17,720,000,000.00	
8/6/2008	0804	TRANSFER TAS INERNATIONNAL GE	N1	1,574,055,000.00	
2/18/2009	0206	TRANSFER TAS GE	N2	2,604,686,243.00	
8/31/2009	0809	TRANSFER RECEIVED GE	N3	1,000,000,000.00	
9/29/2011	1	TRANSFER ADVANCES/PAYMENT	N4	7,578,675,575.00	20,802,764,615.00
10/1/2012	80	TRANSFER RECEIVED GOV EQ. GUINEA	N5	4,332,627,130.00	
12/10/2013	19	TRANSFER RECEIVED EQ. GUINEA	N6	2,104,722,153.00	
5/9/2014	6	TRANSFER GE PAYMENT WORKS INTERIM STATEMENT	N7	2,000,000,000.00	
3/13/2015	3	TRANSFER GE PAYMENT WORKS INTERIM STATEMENT	N8	3,288,540,896.00	
9/11/2015	17	TRANSFER RECEIVED SYGMA	N9	2,825,716,433.00	
4/5/2016	12	TRANSFER PAYMENT WORKS INTERIM STATEMENT GE	N10	1,435,255,676.00	
1/23/2017	3	TRANSFER CLIENT SYGMA	N11	579,856,130.00	
9/26/2017	26	TRANSFER RECEIVED	N12	260,935,258.00	
			Total	**47,305,070,494.00**	

350. Consequently, in the absence of elements establishing other payments made by the Respondent for the works executed, the Tribunal decides that the Respondent owes the Claimant **5,738,178,661 CFA Francs** before interest (calculated in Section XVI.D hereunder) and exclusive of taxes, which is the difference between the amounts of the Interim Statements for works executed that it approved (53,043,249,155 CFA Francs) and the payments received by the Claimant (in the sum of 47,305,070,494 CFA Francs).

D. THE LATE PAYMENT INTEREST ON THE INTERIM STATEMENTS

1. Arguments and submissions of the Claimant

351. The Claimant asserts that, in compliance with Article 36 of the Contract, any payment made by the Respondent after the timeframes contractually

[268] FTI Report, Annex 3, tab Unpaid Interim Statements, cells G48 and G65; Exhibits FTI-3.1 to 3.19.
[269] Statement of Claim, para. 244.
[270] FTI Report, Annex 3, tab Unpaid Interim Statements, cells F21 and F22; and Exhibit FTI-3.29, Statement of payments received from GE.

stipulated give rise to the application of interest calculated on the basis of the BEAC interest rate.[271] In its latest submissions, it specifies that it is claiming interest at a "EURIBOR +2%" rate if the order is made in euros, and at the BEAC Marginal Loan Facility Rate if the order is made in CFA Francs.[272]

352. It contends that none of the payments made by the Respondent was paid within the required timeframes, all having been paid late[273], and concluded from this in its Statement of Claim that the total sum of **12,405,431,762 CFA Francs** as at 29 September 2023 (date of the FTI Report)[274] was due by the Respondent in contractual interest relating to the late payments (1,301,613,083 CFA Francs)[275] and to the Interim Statements having remained unpaid (11,103,818,678 CFA Francs).[276] The FTI Update subsequently updated these amounts to 30 September 2024.[277]

353. To determine the start date of calculation of the late payment interest on the Interim Statements, the FTI Report considered the payment period of sixty days from issuance of the Interim Statements, as set out in Article 36 of the Contract:[278]

> The payment period of 60 days corresponds to the total period of time between issuance by URBAJET of the Interim Statement of works and payment by the Republic of Equatorial Guinea as set out in the Contract:[53]
>
> - 15 days to ascertain and sign the monthly certifications; and
>
> - 45 days to pay from signing of the monthly certifications.

354. To determine the end date of calculation of the interest on the Interim Statements certified by the Engineer and effectively paid (in some cases partially or in several instalments), FTI considered in its report the actual payment date and, where applicable, the residual amount remaining payable of each Interim Statement (on which amount the interest continues to accrue), as follows:[279]

[271] Statement of Claim, para. 246.
[272] Claimant's Post-Hearing Submissions, para. 103 (c).
[273] Statement of Claim, para. 247.
[274] FTI Report, Annex 3, tab Interim Statements Unpaid, F31.
[275] FTI Report, Annex 3, tab Interim Statements Unpaid, A148.
[276] Statement of Claim, para. 252. FTI Report, Annex 3, tab Interim Statements Unpaid, P65.
[277] FTI Update, p. 2. The Tribunal notes that the interest of this head of loss was updated jointly with the updating of the interest on the works executed but not paid and on the price adjustment.
[278] FTI Report, para. 3.35.
[279] FTI Report, para. 3.36.

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- the contractual payment date as start point (corresponding to the date of issue of the works Interim Statement by Urbajet, plus 60 days payment period);

- the amount of the certified works Interim Statement, and the residual amount payable in the event where the certified works Interim Statement was paid in several instalments; and

- the dates of the different payments to correctly take into account the end dates of the calculation periods, associated to the residual amounts in the event where the Interim Statements were paid in several instalments.

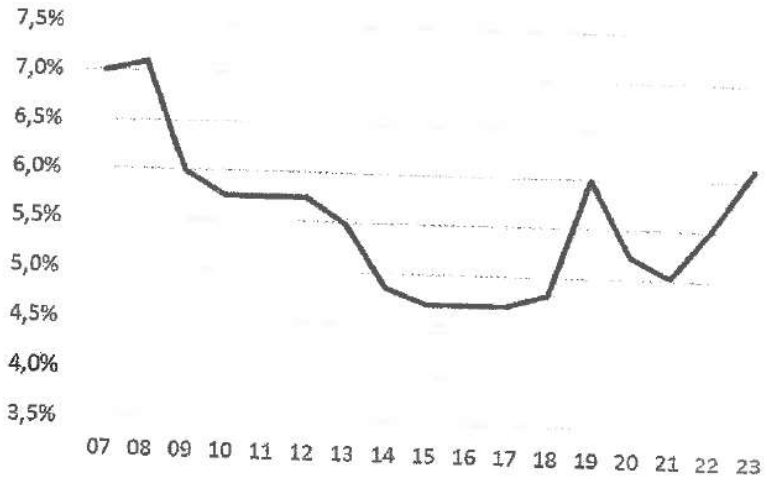
355. Then, the FTI Report considered what interest rate to apply, taking account of the fact that the BEAC publishes several different interest rates, as follows:[280]

> 3.39 For the rate to use, Article 36 of the Contract refers to "the tax rule of the BEAC (Interest rate) per day".[54] This tax rule is not precisely defined in that the Contract does not indicate the source of the rate to be used. Furthermore, the BEAC publishes multiple interest rates.
>
> 3.40 I consider that non-payment of the works Interim Statements within the given timeframes can be likened to a supplier loan benefiting the Republic of Equatorial Guinea. This would not have been possible without resorting to bank finance.
>
> 3.41 I therefore uphold that the Marginal Loan Facility Rate ("MLFR") and its equivalent before 25 July 2018: the Repo Rate ("TIPP")[55], because this seems to me to be the most suitable in comparison to other available rates. The MLFR is the rate in force of a permanent loan facility of the BEAC.

356. The FTI Report highlights the variation in the MLFR (Marginal Loan Facility Rate, "***MLFR***"), which varied between 7% and 4.7% during the period covered by the Claimant's claims:

[280] FTI Report, paras. 3.39 to 3.41.

Graph 3-2: Evolution of the MLFR (formerly TIPP)



Source: Annex 3, tab 'Graphs for comparison'

357. The Tribunal considers to be reasonable the adoption of the MLFR proposed by FTI[281], of between 4.5% and 7% per annum, equivalent according to FTI to the rate of a "*supplier loan*", lower than the rate of commercial bank finance. Furthermore, the MLFR is an interest rate published by the BEAC, adapted to the conditions envisaged by the Parties for the Project, because the MLFR reflects the cost of refinance of credit institutions in the CEMAC (Economic and Monetary Community of Central Africa) zone, formed by Cameroon, Congo, Gabon, the Republic of Equatorial Guinea, the Central African Republic and Chad.

358. The Claimant explained that Interim Statement 1 of Bata and Interim Statements 1 to 9 of Malabo have been paid in full, while Interim Statement 10 of Malabo has only been partially paid.[282] According to the Claimant, Interim Statements 11 to 18 of Malabo have not received any payment, even partial.[283]

359. FTI confirmed the total calculation of interest of **12,405,431,762 CFA Francs** as at 29 September 2023 as follows:

[281] FTI Report, para. 3.41.
[282] Statement of Claim, para. 246.
[283] Statement of Claim, para. 246.

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(i) Interest on Interim Statements paid late:

Table 3-7: Costing of interest on Interim Statements paid late

Works Interim Statement	Calculation base (k CFA F)	Rate	Interest (k CFA F)
No. 1 (Bata)	932,981	7.1%	27,967
No. 1 (Malabo)	975,220	7.0%	24,592
No. 2 (Malabo)	580,241	6.5%	4,893
No. 3 (Malabo)	2,289,502	0.0%	0
No. 4 (Malabo)	3,330,447	5.8%	362,447
No. 5 (Malabo)	1,878,222	5.8%	163,588
No. 6 (Malabo)	4,560,660	5.6%	43,514
No. 7 (Malabo)	2,104,722	5.3%	94,049
No. 8 (Malabo)	2,817,160	4.8%	79,924
No. 9 (Malabo)	3,522,175	4.7%	96,814
No. 10 (Malabo)	5,328,693	4.7%	403,827
Total			**1,301,613**

Note: Interim Statement no. 10 was paid in 4 instalments and late, and part of it remains unpaid.
Source: Annex 3, tab 'Tables for comparison'.

(ii) Interest on unpaid Interim Statements:

Table 3-8: Costing of interest on unpaid Interim Statements

Works Interim Statement	Calculation base (k CFA F)	Rate	Interest (k CFA F)
No. 10 (Malabo)	1,817,718	5.3%	654,675
No. 11 (Malabo)	5,451,852	5.3%	2,846,877
No. 12 (Malabo)	3,552,639	5.3%	1,711,445
No. 13 (Malabo)	5,521,936	5.4%	2,475,374
No. 14 (Malabo)	1,420,116	5.4%	613,144
No. 15 (Malabo)	1,708,745	5.4%	709,449
No. 16 (Malabo)	2,533,489	5.4%	1,011,418
No. 17 (Malabo)	2,455,839	5.5%	941,189
No. 18 (Malabo)	399,041	5.6%	140,246
Total			**11,103,819**

Note: Interim Statement no. 10 was paid in 4 instalments and late, and part of it remains unpaid.
Source: Annex 3, tab 'Tables for comparison'.

360. In the FTI Update of 30 September 2024, FTI explained that the updating of the interest due to the Claimant concerning the unpaid Interim Statements had been taken into account in the update of this head of loss,

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jointly with the other heads of loss relating to the payment of works executed (unpaid Interim Statements and adjustment of prices).[284]

361. The FTI Corrections[285] have not affected the calculation of the interest on the Interim Statements unpaid or paid late.[286]

2. Decision of the Tribunal

362. The Tribunal, taking account of the elements and conclusions in paragraphs 348 *et seq*. above, adopts the conclusions of FTI on the adoption of the MLFR as applicable interest rate.

363. Consequently, the Tribunal decides that the Respondent owes the Claimant the sum of 12,405,431,763 CFA Francs as at 29 September 2023 in late payment interest on the Interim Statements. Consequently, the total loss of the Claimant concerning (a) the amount in principal due for the unpaid Interim Statements of 5,738,178,661 CFA Francs[287], and (b) the interest on the Interim Statements paid late, amounts to 18,143,610,423 CFA Francs as at 29 September 2023.[288]

364. The FTI Update, as detailed in the Claimant's Post-Hearing Submissions, raises the amounts of the payments for works executed and late payment interest on the Interim Statements to **20,571,945,000 CFA Francs** as at 30 September 2024[289], which is **€31,379,000.00**.[290]

365. Furthermore, in compliance with the principle of compensation in full[291], the Tribunal decides that the interest due in CFA Francs owing to the late payments or unpaid amounts on the Interim Statements must be updated from the FTI Update of 30 September 2024 and until the date of the Arbitral Award, pursuant to the daily MLFR published by the BEAC with annual capitalisation.[292]

E. THE REVISION OF THE PRICES

1. Arguments and submissions of the Claimant

366. The Claimant is claiming an increase in the price of the works established in 2006 at the level of **4,693,893,620 CFA Francs**, before interest[293], pursuant to Articles 9 and 28 of the Contract, which provides for the revision of the prices owing to the evolution of the economic conditions in the Republic of Equatorial Guinea,

[284] FTI Update, paras. 1.3 and 1.4.
[285] Cf. para. 494 above.
[286] Post-Hearing Submissions, p. 18.
[287] Cf. para. 334 above.
[288] Cf. para. 339 above.
[289] Post-Hearing Submissions, p. 20.
[290] Cf. para. 340 above.
[291] Cf. para. 328 above.
[292] Cf. para. 357 above and para. 502 hereunder.
[293] FTI Report, Annex 3, tab Revision of prices, R23.

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notably by (a) the applicable remuneration index applicable to all salaries (Index S), and (b) the industrial price index (Index P).[294]

367. The Claimant explains that this increase was calculated by FTI on the basis of two indicators representative of the economy of the Republic of Equatorial Guinea, namely: (a) the minimum interprofessional salary of the national private sector, and (b) the consumer price index published by the World Bank for the country.[295]

368. The FTI Report upheld the contractual formula of Article 9 and applied the correction coefficient "K" considering the following criteria for its calculation:[296]

- the economic conditions of March 2006 were applicable to the initial price of the Contract;
- the price of SO no. 90 had been established under the economic conditions of May 2011 (month of signing the SO). Indeed, I do not have information suggesting that these prices were established according to the initial prices of the Contract;
- the 2013 Additional Works had been established under the economic conditions of November 2013; and
- the Additional Works of March 2017 had been established under the economic conditions of March 2017. However, these works were executed and ascertained during the same year and are therefore not subject to price adjustment.

369. Taking account of the varying economic conditions of 2006, 2011, 2013 and 2017, FTI separated the amounts of the works executed as follows:[297]

- the amounts of the works executed pertaining to the Contract and established under the economic conditions of March 2006 (A_0 *Contract*);
- the amounts of the works executed pertaining to SO no. 90 and established under the economic conditions of May 2011 (A_0 *SO 90*); and
- the amounts of the works executed pertaining to the Additional Works of November 013 (A_0 *AW 13*).

370. FTI explained that two of the indexes set out in the contractual formula did not seem to exist (or not any more), and justified the use of alternative indexes selected as follows:

[294] Statement of Claim, paras. 254 to 256 and 258.
[295] Statement of Claim, para. 257.
[296] FTI Report, para. 3.50.
[297] FTI Report, para. 3.51.

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3.52 The formula for revision of the prices given by the Contract makes reference to two indexes that I have not been able to find and that do not seem to exist today, namely:

- the index for remuneration for all salaries in the Republic of Equatorial Guinea (S); and
- the index of industrial prices in the Republic of Equatorial Guinea (P).

3.53 To assess the loss, I have therefore used alternative indexes, as close as possible to those set out in the Contract. I uphold the following indexes:

- For the index (S): the minimum interprofessional salary of the national private sector in the Republic of Equatorial Guinea.
- For the index (P): the consumer price index published by the World Bank in the Republic of Equatorial Guinea.

3.54 The use of these two indexes seems logical to me. Indeed:

- For the index (S): I consider it to be reasonable that the evolution of the minimum wage is similar to the evolution of all salaries.
- For the index (P): I consider it to be reasonable that the evolution of the consumer price index of the World Bank in the Republic of Equatorial Guinea is similar to the evolution of industrial prices.

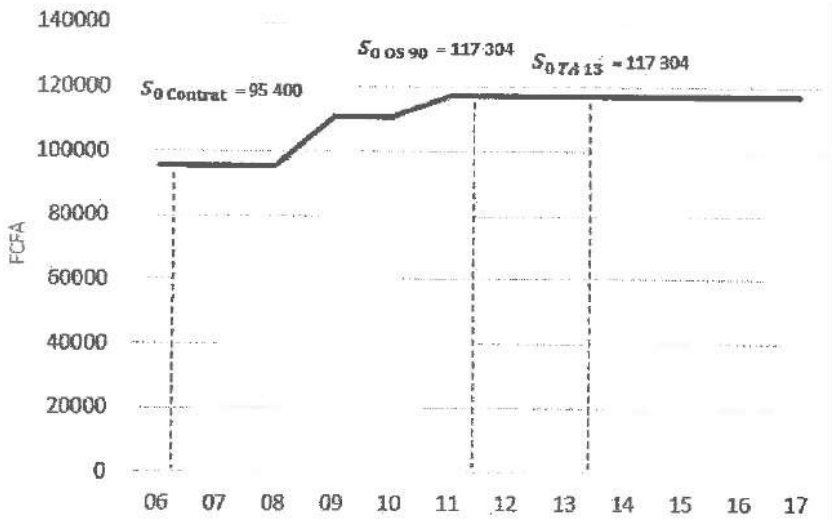
371. In summary, considering the absence of the indexes initially set out in the contractual formula, the approach upheld by FTI consists of substituting: (a) for the index S (remuneration applicable to all salaries), the minimum interprofessional salary of the private sector, in which the Claimant operates, instead and in place of a published general price covering all salaries of the country; and (b) for the index (P) (industrial price index), a consumer price index applicable to the Republic of Equatorial Guinea, published by a recognised institution such as the World Bank.

372. To determine the index S for the years 2006, 2011, 2013 and 2017, FTI applied specific decrees for salaries, and estimated that in the absence of a decree subsequent to 2012, the salaries remained stable beyond that year.[298] FTI showed the evolution of the minimum wage in the country and the result on the index S of the contractual formula as follows:[299]

[298] FTI Report, paras. 3.55 to 3.59. FTI-3.25, Decree no. 8 2007 (Minimum wage 2007-2008) p. 1: "*WHEREAS the last revision of the minimum wage is dated 28 April 2003*" (original in Spanish: "*CONSIDERANDO QUE, la última revisión del salario mínimo data del 28 de abril de 2.003*"); Exhibit FTI-3.26, Law Library of Congress Equatorial Guinea Minimum Wages; Exhibit FTI-3.27, BEAC Annual Report 2006 (p. 76).

[299] FTI Report, para. 3.55

Graph 3-3: Evolution of the minimum wage in the Republic of Equatorial Guinea



Sources: Annex 3, tab 'Revision of prices'

373. In relation to the index P, FTI explained the absence of industrial producer price index in the Republic of Equatorial Guinea[300], and adopted the consumer price index published by the World Bank, in the absence of existence of any other index linked to the construction and building sector:[301]

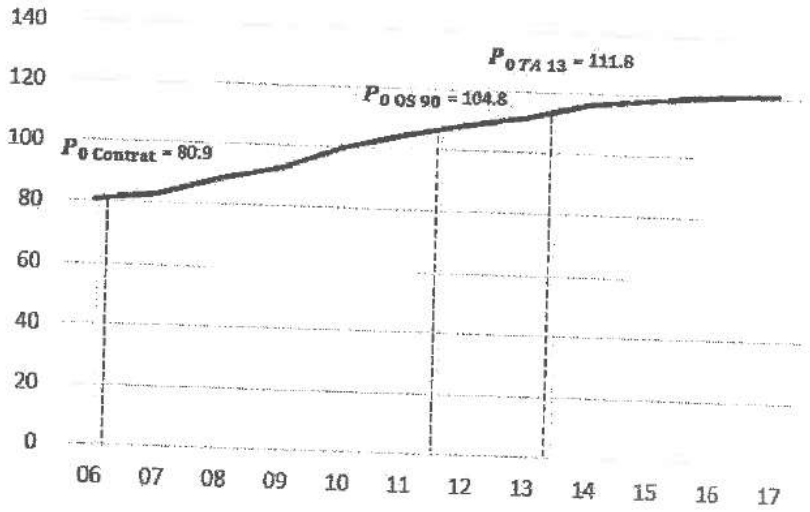
> 3.60 In 2011, the Economic and Statistical Observatory of Sub-Saharan Africa listed the Republic of Equatorial Guinea as a State which does not produce an industrial producer price index.[64]
>
> 3.61 Furthermore, I have not found an index linked to the building, public works or construction sector in the Republic of Equatorial Guinea.
>
> 3.62 In the absence of publicly accessible source and/or index, I consider that the consumer price index produced by the World Bank is a logical alternative to assess the adjustment of the prices.
>
> 3.63 To determine "**$P_{0\ Contract}$**", "**$P_{0\ SO\ 90}$**" and "**$P_{0\ AW\ 13}$**", I have respectively taken the values of the index in 2006, 2011 and 2013.

374. FTI has shown the evolution of the consumer price index in the Republic of Equatorial Guinea and its impact on the index P of the contractual formula:[302]

[300] Exhibit FTI-3.28, Afristat Industrial Producer Price Index (p. 4).
[301] FTI Report, paras. 3.60 to 3.63. Exhibit FTI-3.32.
[302] FTI Report, para. 3.64.

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Graph 3-4: Evolution of the consumer price index in the Republic of Equatorial Guinea



Source: Annex 3, tab 'Revision of prices'

375. FTI has presented its calculations according to the contractual formula in the table below:[303]

Table 3-10: Costing of the adjustment to the prices of the Contract (k CFA F)

Year	Works Contract	Works SO no. 90	Additional Works	K Contract	K SO no. 90	K AW 2013	Value of works after adjustment	Difference
2006	0	0	0	1	0	0	0	0
2007	1,203,225	0	0	1.0	0.0	0.0	1,216,719	13,494
2008	2,592,436	0	0	1.0	0.0	0.0	2,691,355	98,919
2009	3,875,807	0	0	1.1	0.0	0.0	4,382,418	506,611
2010	3,919,168	0	0	1.2	0.0	0.0	4,571,477	652,309
2011	0	0	0	1.2	1.0	0.0	0	0
2012	4,560,660	0	0	1.2	1.0	0.0	5,657,362	1,096,702
2013	2,207,075	3,446,335	0	1.3	1.0	1.0	6,311,650	658,240
2014	290,312	4,800,538	0	1.3	1.0	1.0	5,389,407	298,557
2015	0	6,938,606	3,434,788	1.3	1.1	1.0	10,825,335	449,019
2016	0	9,761,632	0	1.3	1.1	0.0	10,338,622	576,990
2017	0	5,486,113	526,554	1.3	1.1	0	6,355,720	343,053
Total	**18,648,682**	**30,433,225**	**3,961,342**	**0**	**0**	**0**	**57,737,143**	**4,693,894**

Note: The value A0 corresponds to the sum of the different Works (53,043,239 k CFA F).
Source: Annex 3, tab 'Tables for comparison'

2. Decision of the Tribunal

376. In compliance with Section XV.E.2 above, in view of the conclusions of the FTI Report and the exhibits submitted to the debates (notably reminders of the Claimant), the Tribunal found that the Respondent had breached its obligation to readjust the prices of the Contract, fixed in March 2006, according to the formula laid down in Article 9.

[303] FTI Report, para. 3.65.

377. Having regard to the amount of the price adjustments sought by the Claimant, the Tribunal also considers that the work executed by FTI was:

(i) Logical regarding the indexes selected, in the absence of publication of the indexes of the contractual wording. FTI chose (a) for the index S, concerning the remuneration applicable to all salaries, the minimum interprofessional salary of the private sector in which the Claimant operates, instead and in place of a general published index covering all salaries of the country; and (b) for the index P, concerning industrial prices, a consumer price index applicable to the Republic of Equatorial Guinea published by the World Bank;[304] and

(ii) Conservative concerning the application of the indexes. Regarding the index S, FTI used the contemporary indexes at the time of signing the Contract, so of 2006 and/or then the index applicable to each modification of the additional works plans for the years 2011, 2013 and 2017.[305] FTI applied specific decrees for the salaries and considered that salaries remained stable beyond 2012, in the absence of a decree after that year (even though the natural trend would be an increase in salaries after the year 2012), which would have increased the calculation of the loss;[306] and, for the index P, in the absence of industrial price index in the Republic of Equatorial Guinea, or another index linked to the construction or building sector, FTI adopted the consumer price index published by the World Bank.[307]

378. In the absence of other criteria or indexes proposed by the Respondent, and after having considered the exhibits submitted to the case file and the calculations of the FTI Report, the Tribunal adopts the criteria proposed and the calculations of FTI[308], which it considers to be sufficiently reliable.

379. Consequently, the Tribunal decides that the Respondent owes the Claimant the sum of 4,693,893,620 CFA Francs before interest[309] for the adjustment of the price of the Contract[310], and 4,999,157,000 CFA Francs with interest up to 29 September 2023.

[304] Cf. para. 371 above.
[305] FTI Report, Annex 3, tab Revision of prices; Exhibits FTI-3.25, FTI-3.30, FTI-3.31 and FTI-3.32.
[306] Cf. para. 372 above.
[307] Cf. para. 373 above.
[308] FTI Report, Annex 3, tab Revision of prices; Exhibits FTI-3.25, FTI-3.30, FTI-3.31 and FTI-3.32.
[309] FTI Report, Annex 3, tab Revision of prices, R23.
[310] The Tribunal notes that, in the table on page 20 of its Post-Hearing Submissions, the Claimant cites an amount of 4,999,157,000 CFA F as adjustment of the price. As this amount is not detailed or justified, the Tribunal will only uphold the justified (lower) amount, which is 4,693,893,620 CFA F before interest.

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380. The FTI Update, as detailed in the Claimant's Post-Hearing Submissions, raises the amount of the adjustment of the prices to **5,337,593,000 CFA Francs** due to the impact of late payment interest up to 30 September 2024[311], which is **€8,142,000,000**.[312]

381. Furthermore, in compliance with the principle of compensation in full[313], the Tribunal decides that the amounts due in CFA Francs under the revision of the price of the Contract must be updated from the FTI Update of 30 September 2024 and up to the date of the Arbitral Award, by applying the daily MLFR published by the BEAC with annual capitalisation.[314]

F. THE LOSS OF PROFITS

1. Arguments and submissions of the Claimant

382. The Claimant is founding its claim of loss of profits of **30,634,301,193 CFA Francs**[315] before interest on Article 162 of Decree no. 3354/67[316], applying an expected margin rate of **19.81%** to the loss of revenues estimated by FTI at 154,640,640,977 CFA Francs.[317]

383. The Claimant contends that beyond payment of the sums due for the works executed and remaining unpaid, it must also be compensated for the loss of earnings resulting from the breach of the Contract by the Respondent, and for the costs resulting from the permanent suspension of the projects. For this purpose, the Claimant sought the estimate by FTI of the share of the profit which remained to be obtained by the Claimant on the works yet to be executed in Malabo and Bata.[318]

384. Taking account of the prolonged interruption of the sites of the Project for several years for reasons attributable to the Respondent, the Claimant cites that Article 162 of Decree no. 3354/67 entitles it to compensation for loss of profit (industrial profit) resulting from the non-performance of the Contract, as follows:[319]

[311] Claimant's Post-Hearing Submissions, p. 20.
[312] Cf. para. 340 above.
[313] Cf. para. 328 above.
[314] Cf. para. 357 above and para. 502 hereunder.
[315] FTI Report, Annex 3, tab Loss of profit, D38.
[316] Statement of Claim, para. 261; Exhibit CL2: Article 162 of Decree 3354/1967 dated 28 December 1968.
[317] FTI Report, Annex 3, tab Loss of profit, P26.
[318] Statement of Claim, paras. 263 to 265.
[319] Original and full text of Article 162 in Spanish:

> "***Artículo 162***
> *Si la Administración decidiese la suspensión definitiva de las obras o dejase transcurrir un año desde la suspensión temporal sin ordenar la reanudación de las mismas, el contratista tendrá*

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> "*If the Administration decides on the permanent suspension of works or allows a period of one year to elapse from temporary suspension without ordering their resumption, the holder is entitled to the value of the services effectively executed and to the industrial profit relating to the services not executed. […]*
>
> *The industrial profit is understood to be the amount resulting from the application of the corresponding coefficient, as it features in the material execution budget of the works, making it possible to obtain the total amount of the contractual budget. […]*"

385. The FTI Report adopted a standard approach consisting of comparing the financial situation in which the Claimant would have been in the context of the normal performance of the Contract, to its actual financial situation in view of the Respondent's breaches.[320]

386. The FTI Report upheld, in the scenario of the normal performance of the Contract:[321]

> "*- the proper completion of the works, namely the 2,000 homes in Malabo and bata;*
>
> *- the full achievement of the revenues laid down in the Contract; and*
>
> *- the disbursements normally necessary to completion of the Project*."

387. To calculate the Claimant's loss of profit, FTI considered (a) the revenues remaining to be generated on the works not yet executed, and (b) the margin rate that the Claimant would reasonably have expected.[322]

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derecho al valor de aquellas efectivamente realizadas y al beneficio industrial de las dejadas de realizar (Art 53 LCE).
Se considera como obra efectivamente realizada no sólo la que pueda ser objeto de certificación por unidades de obra terminadas, sino también las accesorias llevados a cabo por el contratista y cuyo importe forma parte del coste indirecto a que hace mención el artículo 67 de este Reglamento, asi como también los acopios situados al pie de obra.
Se entiende por beneficio industrial la cantidad resultante de aplicar el coeficiente que por este concepto incide en el presupuesto de ejecución material de la obra para obtener el importe total del presupuesto del contrato.
Transcurrido un año desde la suspensión temporal, acordada por la Administración, sin haber ordenado la reanudación de las obras, el contratista tendrá opción entre solicitar la indemnización a que se refiere el artículo 148 de este Reglamento o instar la resolución del contrato."

[320] FTI Report, para. 4.4.
[321] FTI Report, para. 4.5.
[322] FTI Report, para. 4.7.

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388. As detailed in the FTI Report[323], the expert estimates the revenues remaining to be generated on the Contract at 154,640,977,830 CFA Francs[324], which is the difference between (a) the total amount of the Contract and SO90, of 197,370,994,994 CFA Francs, and (b) the amount of the works executed of 49,081,907 CFA Francs, (c) after adjustment of the price in compliance with Articles 9 and 18 of the Contract, as follows:

Table 4-1: Valuation of the loss of revenues

k CFA F		Amount Contract	Amount SO no. 90	Total
Total generated unadjusted	A	18,648,682	30,433,225	49,081,907
Contractual total unadjusted	B	44,300,000	153,070,994	197,370,994
Loss of revenues unadjusted	= B – A	25,651,318	122,637,769	148,289,087
Adjusted loss of revenues		**27,429,075**	**127,211,902**	**154,640,977**

Note: The adjusted loss of revenues results from the application of the price revision coefficient, as presented in paragraph 3.49.
I have applied a respective coefficient to the amount of the Contract and to the amount of SO no. 90.
Source: Annex 3, tab 'Loss of profit'

389. The Claimant asserts that for years it tried to continue the Project without success through fault of the Respondent, and that the conclusions of FTI about the amounts claimed are based on undisputed exhibits and amounts, more specifically the Interim Statements, SO90, and the Additional Works of 2013 and 2017.

390. Regarding the margin rates, FTI calculated the rate effectively generated on the Project from 2006 to 2017 at 19.18%, analysing (a) the actual revenue of the Project posted in the accounts (explaining that the Claimant used progress-based accounting)[325], (b) the direct expenses incurred on the Project and posted in the accounts; and (c) the inventory variation posted in accounts, in compliance with the table below:[326]

[323] FTI Report, paras. 4.14 to 4.15.
[324] FTI Report, Annex 3, tab Loss of profit, P26.
[325] As explained by the Claimant at the Hearing: "*URBAJET adopted the method of progress-based accounting for recognition of the revenues, a standard approach according to the Moroccan chart of accounts. It must therefore be differentiated between the margin rates which had been upheld within the framework of the project and the margin rates which were used in an accounting context. The approach upheld in the accounting context is a method which consists of posting as operating income a share of the revenues corresponding to the expenses incurred during the financial year, increased by a predetermined accounting expense*." (Transcription, p. 18: L12-25).
[326] FTI Report, paras. 4.8 to 4.12.

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Table 4-2: Summary of the calculation of the margin rate

Description		Cumulative situation in 2018 (in k MAD)
Revenues	A	611,661
Direct expenses of the Project	B	504,067
Inventory variation	C	(13,576)
Margin (value)	**D = A-B-C**	**121,170**
Margin rate	**= D / A**	**19.81%**

Source: Annex 3, tab 'Margin rate'

391. FTI explains that it reconciled the revenues of the Claimant's audited accounts with a breakdown of the revenues by project, in order to verify its calculation of the margin rate.[327] This breakdown is detailed in the worksheet in Annex FTI-4.2 and the Claimant's tax returns for the years 2007 to 2018 have been submitted to the debates as Exhibits FTI-4.3 to FTI-4.14.

392. Then, FTI compared that margin rate with the rates estimated by the Claimant in its business plans prepared in 2006, 2011 and 2015. These margin rates are higher, in compliance with the table below:[328]

Table 4-3: Presentation of the margin rates according to the business plans

million CFA Francs	**Budget 2006**	**Budget 2011**	**Budget 2015**
Revenues	45,316	197,371	204,241
Cost	29,524	113,967	128,206
Result	15,792	83,404	76,035
Margin	**34.8%**	**42.3%**	**37.2%**

Note: I converted the amounts of the 2006 business plans from MAD to CFA Francs for comparability purposes.
Sources: Annex 3, tab 'Margin rates'

393. FTI explained the difference between the above rates as resulting, *inter alia*, from an accounts provision for the rise in costs in relation to the Claimant's business plans and owing to the fact that the Claimant uses different conversion rates from CFA Francs to MAD to express its revenues and the budgeted costs (a more reliable rate for purchase than for sale, which further deteriorates the margin).[329] FTI estimates that a margin rate calculated on the basis of the actual billing and actual costs of the Project to date (instead of a calculation on progress) would amount to 44.8%.[330]

[327] FTI Report, note 69, p. 45.
[328] FTI Report, paras. 4.16 to 4.18.
[329] FTI Report, paras. 4.19 and 4.20.
[330] FTI Report, para. 4.21.

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394. Consequently, on the basis of revenues not generated of 154,640,977,830 CFA Francs[331], FTI has concluded that the Claimant would have reasonably generated a margin rate of 19.81% on the rest of the Project[332], and valued the loss of profit at **30,634,301,193 CFA Francs**[333] as follows:

Table 4-4: Valuation of the loss of profit (k CFA F)

Description	Total
Loss of revenues	154,640,977
Expected margin rate	19.81%
Loss of profit (k CFA F)	30,634,301

Source: Annex 3, tab 'Loss of profit'

2. Decision of the Tribunal

395. In compliance with Section XV.G.2 above, it results from the exhibits submitted to the debates that the Claimant had grounds in terminating the Contract pursuant to Article 34 of the Contract.

396. The Tribunal has also found, in view of the correspondence produced, that the Notification of Termination was sent only after the Claimant had tried for several years to continue the Project without response from the Respondent, including to the Notification of Termination.[334]

397. Consequently, it has been established that the Claimant could not complete the Project owing to the contractual breaches of the Respondent, ascertained by the Tribunal in Section XV.G.2 of this Arbitral Award.

398. The Tribunal considers that, to calculate the Claimant's loss of profit, FTI adopted a standard and conservative approach based on the calculation of the margin rate generated and its application to the amount of the revenues not generated owing to the termination of the Contract. The Tribunal considers the margin rate of 19.81% adopted by FTI to be reasonable in the context of the Contract, considering that the alternative rates presented by FTI for the Project and as set out in the Claimant's business plans amounted to over 34%[335], and could reach as much as 44.8% if the contemporary actual costs incurred by the Claimant were considered.[336]

399. In the absence of other criteria and rates proposed by the Respondent, and after having considered the exhibits submitted to the case file and the calculations of the FTI Report, the

[331] FTI Report, Annex 3, tab Loss of profit, P26.
[332] FTI Report, para. 4.22.
[333] FTI Report, Annex 3, tab Loss of profit, D38.
[334] Cf. para. 322 above.
[335] Cf. para. 392 above.
[336] Cf. para. 361 above.

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Tribunal adopts the criteria, proposed margin rate and calculations of FTI[337], which it considers to be sufficiently reliable.

400. Consequently, and having regard to the reasons set out above, the Tribunal concludes on the merits of this claim presented for loss of profit, and accordingly decides that the Respondent owes the Claimant the sum of 30,634,301,193 CFA Francs[338] on that ground before interest, and 32,626,580,000 CFA Francs with interest to 29 September 2023.

401. The FTI Update, as detailed in the Claimant's Post-Hearing Submissions, brings the amount of the loss of profit with late payment interest to **34,835,530,000 CFA Francs** as at 30 September 2024[339], which is **€53,135,000.00**.[340]

402. Furthermore, in compliance with the principle of compensation in full[341], the Tribunal decides that the amounts due in CFA Francs for the loss of profit must be updated from the FTI Update of 30 September 2024 and until the date of the Arbitral Award, by applying the daily MLFR published by the BEAC with annual capitalisation.[342]

G. THE FEES RELATING TO MAINTENANCE OF THE BANK GUARANTEE

1. Arguments and submissions of the Claimant

403. The Claimant asserts that pursuant to Article 8 of the Contract, it obtained from CIH BANK a deposit repayment guarantee corresponding to the amount of the advance which was given to the Respondent.[343]

404. On 30 August 2006, in compliance with Article 35 of the Contract, the Republic of Equatorial Guinea paid an advance in the sum of 17,720,000,000 CFA Francs, representing 40% of the total amount of the works as costed at the time.[344] To that effect, the CIH BANK required the Claimant to place in escrow a sum equivalent to half the advance, which is 149,143,829.21 MAD.[345]

405. The Claimant contends that it has suffered an economic loss owing to maintaining the guarantee in place for a longer duration than the 48 months of works set out in the Contract. The Claimant explained that the duration of the project has been considerably extended owing to several modifications of the Project and the repeated breaches of the

[337] FTI Report, Annex 3, tab Loss of profit.
[338] FTI Report, Annex 3, tab Loss of profit, D38.
[339] Claimant's Post-Hearing Submissions, p. 20.
[340] Cf. para. 340 above.
[341] Cf. para. 328 above.
[342] Cf. para. 357 above and para. 502 hereunder.
[343] Exhibit C31: Deposit repayment guarantee dated 20 July 2006.
[344] Statement of Claim, para. 269.
[345] Statement of Claim, para. 270.

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Respondent[346], which has not returned the guarantee or proceeded with its release (total or partial).

406. Consequently, the Claimant asserts that it has suffered two types of loss resulting from the failure of timely release of the guarantee:[347]

> "*- The Claimant has suffered additional costs in excess of what had been initially stipulated upon signing the Contract;*
>
> *- The sum held in escrow with the bank remains unusable insofar as the Respondent has not – in spite of the requests made to it – granted release of this guarantee deposit*."

407. FTI explained the methodology followed to calculate the loss suffered by the Claimant on this ground as follows:[348]

> "*5.7 I compared the financial situation in which Urbajet would have been within the framework of the normal performance of the Contract to its actual financial situation, deteriorated by the alleged breaches of the Republic of Equatorial Guinea.*
>
> *5.8 Within the framework of the normal performance of the Contract, I would have observed:*
>
> *- the issuance of total or partial release over the guarantee no later than at the end of the projects; and*
>
> *- the recovery of the amount held in escrow for the bank guarantee no later than at the end of the projects*."

408. FTI upheld the costs incurred by the Claimant from the date of 21 July 2010 which, according to the Claimant, was the planned date for release of the guarantee, which was 48 months after "*launch of the escrow*".[349]

409. FTI calculated the loss suffered by the Claimant in the sum of **75,755,625 MAD**, of which:

(i) 8,153,821 MAD in additional costs incurred beyond those initially stipulated upon signing the Contract, calculated from 21 July 2010, "*corresponding to the expected completion of the works initially stipulated*", until 29 September 2023, date of the FTI Report. FTI calculated these costs from the bank statements[350] and general

[346] Statement of Claim, para. 271.
[347] Statement of Claim, para. 272.
[348] FTI Report, paras. 5.7 and 5.8.
[349] FTI Report, Annex 3, tabs Bank guarantee, M20; and Financial immobilisation, C21.
[350] Exhibits FTI-5.4 to FTI-5.70.

ledgers of the Claimant, in compliance with the table below:[351]

Table 5-3: My costing of the costs linked to the maintenance of the bank guarantee from 21 July 2010

Year	Amounts in k MAD
2010 (from 21 July)	373
2011	838
2012	829
2013	834
2014	827
2015	700
2016	485
2017	492
2018	496
2019	486
2020	479
2021	472
2022	478
2023 (to 29 September 2023)	365
Total	**8,154**

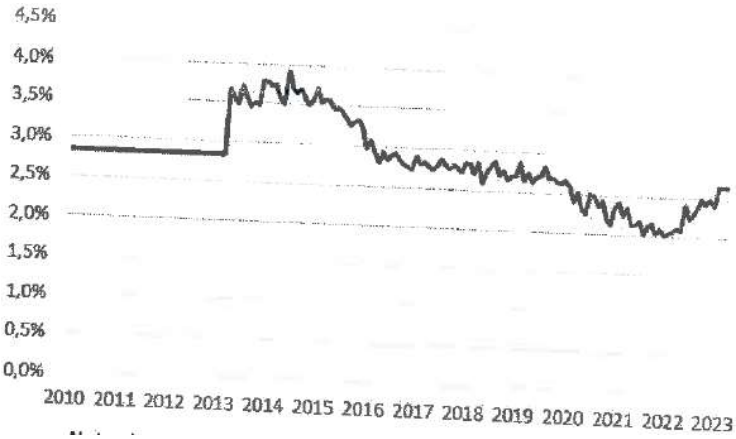
Note: The fees paid for the year 2023 integrate a provision for the third quarter up until 29 September 2023.
Source: Annex 3, tab 'Bank guarantee'

(ii) 67,601,840 MAD in interest relating to the financial immobilisation of the amount held in escrow between 21 July 2010 and 29 September 2023, which is the difference between (a) the amount initially held in escrow of 149,143,829 CFA Francs which, according to the Claimant, would have been released in full no later than July 2010 if the works had been completed within 48 months (4 years) as planned[352]; but which however has been the subject of prolonged unavailability with CIH BANK, which is equivalent to denial of funds of the Claimant; and (b) the amount of 216,745,633 CFA Francs[353], the amount held in escrow that the Claimant could have invested in term deposits until 29 September 2023 (date of the FTI Report). FTI applied the 6-month term deposit rates of the Central Bank of Morocco (BAM) of an average of around 2.85% over the period, as presented by FTI in the table below:[354]

[351] FTI Report, para. 5.6 and Annex 3, tab Bank guarantee, M24.
[352] FTI Report, Annex 3, tab Financial Immobilisation, D21.
[353] FTI Report, Annex 3, tab Financial Immobilisation, D179.
[354] FTI Report, para. 5.23 and Annex 3, tab Financial Immobilisation, D21 to D179; Exhibit 5.1, General ledger of the 2006 accounts of Urbajet.

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Graph 5-1: Evolution of the term deposit rate 6-month of the BAM



Note: The rates are only available from August 2013. I used the average rate of the 2013-2023 period for the period July 2010 to July 2013.
Source: Annex 3, tab 'Financial immobilisation'

410. Finally, FTI confirmed that in the absence of release of the guarantee deposit, the Claimant continues to incur fees relating to the maintenance of the bank guarantee after the date of the FTI Report, and that the amounts of the loss calculated should be updated.[355]

2. Decision of the Tribunal

411. The Tribunal will firstly consider the grounds of the claim concerning the fees relating to the maintenance of the guarantee, and then the amounts claimed in compliance with Articles 8, 32 and 35 of the Contract, which provide:

> "***ARTICLE 8 – GUARANTEE DEPOSITS AND INSURANCE***
>
> *The Property Developer must present to the Government a guarantee deposit equal to the advance, with the aim of ensuring and guaranteeing full accomplishment of the contractual obligations, which may be according to any of the conditions which established by this contract.*
>
> *This guarantee deposit must be a bank guarantee. It shall take effect once deposited in an escrow account with the correspondent bank mentioned in this Contract. Once the guarantee deposit takes effect, the account will be released.*
>
> *Furthermore, the Property Developer shall take out an insurance policy of several million EUROS to cover any damages that the site may cause to third parties.*

[355] FTI Report, paras. 5.17 and 5.25.

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These guarantee deposits and insurance policies may not be cancelled or amended without notification from the insurance company to the Government."

"***ARTICLE 32 – BASES FOR SETTLEMENT OF ACCOUNTS***

The amounts that the Government must satisfy following the monthly certifications of the constructions which [will be established][356] *in compliance with the provisions of Article 36 of this contract shall be reduced by the fraction in thousandths of the amount of the contract corresponding to the amount paid to the Property Developer as advance on account.*

This means that the result of the division of the amount received on account by the Property Developer on the total amount of the constructions shall be deducted from the certification, and by multiplying the result by that of the certification."

"***ARTICLE 35. – ADVANCES***

35.1 All works, auxiliary resources and materials necessary for the proper execution and completion of any unit of the constructions shall be considered to be included in its price, with the specifications, details and descriptions of the prices.

35.2 The Property Developer shall have the right to obtain advances on account at the level of FORTY (40) % of the value of the total price of the constructions.

35.3 Regardless of the cause, no advance on account shall be made before presentation to the Government of the guarantee referred to in Article 8 of this contract."

412. According to the abovementioned provisions, within the framework of the normal performance of the Contract, the works should have been completed and paid by the Respondent within a period of 48 months. In that case, pursuant to Article 32, part of each Interim Statement should have been paid by imputation of the advance paid by the Respondent. Consequently, at the time of completion of the works, the advance would have been fully used and the Respondent would have had to pronounce release of the guarantee deposit.

[356] Original in Spanish provided because in the sworn translation of the Contract submitted to the debates, Exhibit C1, the text between brackets in this paragraph is erased and therefore illegible:

"*ARTICULO 32. – BASES DE REGLAMENTO DE LAS CUENTAS*
De las cantidades que el Gobierno deba satisfacer como consecuencia de las certificaciones mensuales de obra que se confeccionen de acuerdo con lo previsto en el artículo 36 de este contrato, se deducirá la fracción milésima en relación con la cuantía del contrato correspondiente de la cantidad satisfecha al Contratista en concepto de anticipo a cuenta.
Es decir, de la certificación se deducirá el resultado de divider la cantidad recibida a cuenta por el Contratista por el total importe de la obra y multiplicar el resultado por el de la certificación."

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413. However, Article 35 of the Contract does not specify either the duration of validity of the guarantee or the release procedure, and Article 8 establishes that the guarantee cannot be cancelled or amended "*without notification from the insurance company to the Government*". The guarantee itself stipulates the need for a release:

> "*This guarantee deposit shall only take effect from the date of receipt in full of the amount of the down payment set out in the abovementioned contract on behalf of URBAJET opened on the books of Crédit Immobilier et Hôtelier under number 23078046937272210095003 4.*
>
> *This guarantee deposit shall remain in force until receipt of the release*."

414. Consequently, the Claimant requested release from the Respondent in order to avoid the guarantee deposit fees and to release the amount held in escrow of 149,143,829 CFA Francs. In the absence of said release, the Claimant contends that it has been forced to bear, for more than twelve years, the fees linked to the maintenance of the bank guarantee deposit with CIH BANK.

415. During the Hearing, the Tribunal asked the Parties to answer the Tribunal's questions on (a) the effective implementation of Article 32 of the Contract, (b) the text of the guarantee deposit opening agreement in which the Claimant undertook to produce "*a schedule of delivery of releases relating to the guarantee deposit as the works progress*", and (c) Annex 3 of the FTI Report, tab "unpaid Interim Statements", column H lines 37-47, which mentions deductions corresponding to the progress of the works. The Tribunal also asked the Parties to explain:[357]

(i) If the imputations of the progress to the works Interim Statements gave rise to one or more releases or requests for partial release of the progress guarantee sent by the Claimant to the bank and/or to the Respondent as the works progressed; and

(ii) If so, on what dates were the requests for release made and, where applicable, what documents in the case file show these requests; or

(iii) If not, why not, and indicate from when the claims set out in paragraph 172 of the Statement of Claim and referenced in Exhibit C7 (dated 18 May 2021 and mentioned in paragraph 174 of the Statement of Claim) date; and

(iv) In all cases, the date on which the advance of 40% of the amount of the Contract paid by the Respondent upon launch of the works was fully consumed for the works executed, if this happened.

[357] PO4, para. 12.

416. In its Post-Hearing Submissions, the Claimant asserts that:

(i) The guarantee deposit guaranteed the return of the advance, and was not a guarantee of completion of the works;[358]

(ii) In a scenario of normal performance of the Contract (without fault on the part of the Respondent), the works would have been completed and the whole of the advance would have been consumed in March 2020 (48 months after the escrow);[359]

(iii) The Respondent did not pay additional advances after the increase in the price of the Contract;[360]

(iv) Between 18 September 2008 and 15 September 2009, the Claimant sent four letters to the Respondent aiming to obtain partial releases, which it has not submitted to the debates; then ceased to request the partial releases given "*the persistent reluctance by the Respondent to produce any release*" and the need to manage other major priorities for the stabilisation of the Project and the payment of the Interim Statements; and repeated its request for release in its letter of 18 May 2021 and Notification of Termination of 14 September 2022;[361] and

(v) From Interim Statement 15 of 31 December 2016, the advance was "*entirely consumed by the works executed*", because the amount of the works completed, of 47,030,582,084 CFA Francs, exceeded the total payments made by the Respondent of 46,464,279,106 CFA Francs (including advance).[362]

417. In view of the aforementioned clarifications, and the conclusions set out in this Arbitral Award, the Tribunal records the grounds of the Claimant's claim concerning the fees relating to the maintenance of the guarantee for the following reasons:

(i) The works were not completed in 2010, which was within the 48 months set out in the Contract, owing to contractual breaches of the Respondent;[363]

(ii) The price of the Contract increased by more than four times, from 44,300,000,000 CFA Francs to a total amount of 205,293,678,182 CFA Francs, owing to changes to the Project and additional works

[358] Claimant's Observations, para. 10; Claimant's Post-Hearing Submissions, para. 85.
[359] Claimant's Observations, para. 10; Claimant's Post-Hearing Submissions, para. 87.
[360] Claimant's Post-Hearing Submissions, para. 87.
[361] Claimant's Observations, paras. 23 to 25.
[362] Claimant's Observations, paras. 31 to 33.
[363] Cf. Section XV above.

sought by the Respondent;[364] but the Respondent did not pay any additional advances equivalent to 40% of the price of the Contract upon each increase to it, in particular those resulting from SO90 and the Additional Works of 2013 and 2017;

(iii) The Respondent did not make payment of Interim Statements 10 to 18 relating to the Malabo subproject. From Interim Statement 15, dated 31 December 2016, the amount of the works executed, amounting to 47,030,582,084 CFA Francs, exceeded the total payments made by the Respondent, including the advance, which amounted to 46,464,279,106 CFA Francs;[365]

(iv) The Respondent, duly informed of the conditions of the guarantee deposit requiring it to pronounce a release, failed to produce the releases, both partial and total, in spite of the requests of the Claimant and even though the advance had been fully consumed; and

(v) Consequently, since the date initially stipulated for completion of the works in 2010 and to date, the Claimant has continued to bear all fees linked to maintaining the guarantee deposit, without having access to the amounts held in escrow.

418. Having regard to the aforementioned conclusions, the Tribunal accepts the date upheld by FTI for the start of calculation of the costs incurred by the Claimant, which is 21 July 2010, date corresponding to 48 months after "*launch of the escrow*"[366], and date initially stipulated for completion of the works. Furthermore, the Tribunal is satisfied with the calculations of FTI for the following reasons:

(i) FTI calculated the amount of 8,153,821 MAD concerning the fees of the guarantee deposit up to the date of the FTI Report (29 September 2023), from bank statements of the Claimant submitted to the case file[367] and the general ledgers of the Claimant's accounts, in compliance with the table reproduced above[368], reassuring the Tribunal over the reliability of the calculations. The Tribunal notes that the Claimant has not updated this amount after the FTI Report;[369] and

(ii) The losses relating to the interest of 67,601,840 MAD due to the financial immobilisation of the amount held in escrow have also been calculated up to the date of the FTI Report (29 September 2023). The Tribunal considers to be reasonable and reliable the rate of the 6-month term deposits of the Central Bank of Morocco, of an average of 2.85% per annum over the period,

[364] Cf. para. 41 above.
[365] Cf. para. 473 hereunder.
[366] FTI Report, Annex 3, tabs Bank guarantee, M20; and Financial immobilisation, C21.
[367] Exhibits FTI-5.4 to FTI-5.70.
[368] Cf. para. 409 above.
[369] FTI Report, para. 5.6 and Annex 3, tab Bank guarantee, M24.

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upheld by FTI for this calculation. Once the applicable rate was established, FTI correctly calculated the interest not received, which is the difference between the amount initially held in escrow of 149,143,829 CFA Francs, and said amount updated according to the chosen rate, which is 216,745,633 CFA Francs.[370]

419. On those grounds, the Tribunal concludes on the merits of the claim presented for losses relating to the guarantee, and consequently decides that the Respondent owes the Claimant the sum of 75,755,625 MAD including interest up to 29 September 2023.[371]

420. On that matter, the Tribunal note that one of the FTI Corrections relates specifically to the calculation of the interest on the fees relating to the bank guarantee. In its FTI Corrections, the expert indicated that "*the bank guarantee fees [75,755,625 MAD] had been valued up to the date of my FTI Report*", and therefore that no *additional* interest had to be applied before that date.[372]

421. The FTI Update, as detailed in the Claimant's Post-Hearing Submissions, raises the amount of the fees linked to the maintenance of the guarantee, due to the impact of interest of 5,744,000 MAD, to **81,500,000 MAD** as at 30 September 2024[373], which is **€7,579,000.00**.[374]

422. Furthermore, in compliance with the principle of compensation in full[375], the Tribunal decides that the interest concerning the amounts due for the fees relating to the maintenance of the guarantee must be updated from 30 September 2024 and up to the date of the Arbitral Award by applying the following rates: (i) the daily MLFR published by the BEAC for the amounts in CFA Francs;[376] and (ii) the weighted average rate of accounts and certificates of deposit to 6 months of the BAM for the amounts in MAD, both with annual capitalisation.[377]

H. THE ADDITIONAL OPERATING COSTS

1. Arguments and submissions of the Claimant

423. The Claimant contends that the wrongful behaviour of the Respondent forced it to incur substantial expenses during performance of the Contract, of an amount of **29,239,000 MAD** and **3,886,000 CFA Francs** before interest.[378] According to the Claimant, these amounts correspond:

[370] FTI Report, Annex 3, tab Financial Immobilisation, D179.
[371] FTI Report, Annex 3, tab Bank guarantee, M24, plus tab Financial Immobilisation, D179 minus D21.
[372] Claimant's Post-Hearing Submissions, para. 95.
[373] Post-Hearing Submissions, p. 20.
[374] Cf. para. 340 above.
[375] Cf. para. 328 above.
[376] Cf. para. 357 above.
[377] Cf. para. 418 (ii) above and para. 502 hereunder.
[378] Statement of Claim, paras. 277 and 283.

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(i) Firstly, numerous unexpected costs during the period of suspension of the works from 2018, notably comprising staff costs, consumables, taxes and costs of provision of services; and

(ii) Secondly, additional costs incurred since launch of the sites, notably (a) costs relating to the extraction of quarry materials, and (b) settlements paid to staff progressively made redundant from 2015, taking account of the slowdown of the sites.[379]

424. The Claimant explains that, after examination of the contractual and accounts documentation, FTI found that the additional costs resulting from those contractual breaches amounted, for the salary expenses alone (final settlements before 2018 and staff charges since 2018), to a significant amount. According to the Claimant, FTI also confirmed the additional costs linked to the logistics and security costs, and linked to the deterioration of its equipment, still attributable to the contractual faults of the Respondent.

425. FTI presented its conclusions in the table below:

Table 6-7: Summary of the costing relating to the additional operating costs

Category	k CFA F	k MAD	k EUR eq.
Staff costs		7,310	680
Operating costs		21,553	2,004
Logistics and security costs	3,886	376	41
Total	**3,886**	**29,239**	**2,725**

Note: Conversion into euros on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs) for the amounts in CFA Francs, and at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR) for the amounts in MAD.
Source: Annex 3, tab 'Summary'

426. In its report, FTI compared the financial situation in which the Claimant would have been within the framework of the normal performance of the Contract with its actual financial situation, deteriorated by the breaches of the Respondent (now ascertained by the Tribunal).[380] According to FTI, within the framework of the normal performance of the Contract, the Claimant would not have had to incur any of these additional operating costs.

427. In particular, FTI upheld that according to the Contract: (a) the Claimant would have to ensure the continuous cover during working hours of the management and the qualified staff necessary to guarantee the normal operation of the company and the progress of the works (Article 11);[381] (b) the Claimant was not permitted to relocate the

[379] Claimant's Post-Hearing Submissions, para. 93.
[380] FTI Report, para. 6.5.
[381] See para. 29 above.

machines allocated to the works without the permission of the Respondent (Article 11);[382] (iii) the Respondent would give the necessary permissions for the extraction free of charge of the quarry materials in the public land of the State (Article 17);[383] and (iv) the prices of the Contract included all direct and indirect costs of the Claimant (Article 31).[384]

428. FTI explained that it had used, to cost the staff costs and the operating costs, the general ledgers provided by the Claimant.[385] The FTI Report adopted a methodology of sampling to verify the data, notably to confirm whether the costs had been incurred in the amounts and periods claimed by the Claimant and within the framework of the Project.[386]

429. FTI then explained its calculation of the loss suffered by the Claimant as follows:

(i) **Staff Costs**: FTI calculated the staff costs incurred by the Claimant in the sum of **7,310,000 MAD** before interest, comprising (a) the final settlements relating to the premature redundancy of the Claimant's staff from 2015; and (b) the staff charges remaining linked to the Project since 2018, notably the staff necessary to a potential relaunch, as follows:[387]

Table 6-3: Costing of staff costs

Item	k MAD
Final settlements	2,978
Staff charges	4,332
Total staff charges	**7,310**

Source: Annex 3, tab 'Summary of additional costs'

For the final settlements, FTI audited 100% of the proofs of payment and obtained verification of the costs and dates as follows:[388]

Table 6-1: Summary of the verification of the final settlements

Item	Amounts verified	Costs verified	Date verified	Link to the Project verified
Final settlements	100.0%	94.5%	100.0%	100.0%

Source: Annex 3, tab 'Verification'

[382] See para. 29 above.
[383] See para. 29 above.
[384] See para. 29 above.
[385] FTI Report, para. 6.12.
[386] FTI Report, paras. 6.13 to 6.15.
[387] FTI Report, paras. 6.16 and 6.22.
[388] FTI Report, para. 6.18.

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For the staff charges, FTI audited cash exhibits corresponding to 34.1% of the amounts, with verification as follows:[389]

Table 6-2: Summary of the verification of the staff charges

Item	Amounts verified	Costs verified	Date verified	Link to the Project verified
Staff charges	34.1%	100.0%	99.0%	100.0%

Source: Annex 3, tab 'Verification'

(ii) **Operating costs**: FTI estimated at **21,533,000 MAD** the amount of the operating costs incurred by the Claimant – which is all operating costs that the Claimant incurred for the maintenance and possible resumption of the sites in the Republic of Equatorial Guinea – comprising the amounts detailed in the table below:[390]

Table 6-5: Costing of the operating costs

Item	k MAD
Extraction of quarry materials	20,415
Service providers	322
Taxes	267
Maintenance	234
Telephone costs	103
Fuel	103
Bank fees	48
Travel	47
Supplies	15
Total	**21,553**

Source: Annex 3, tab 'Summary of additional costs'

FTI explained that these costs represent the operating costs that the Claimant incurred in order to maintain the only two sites it possessed in the country[391], and informed the verification of the data in compliance with the table below:

Table 6-4: Summary of the verification of the operating costs

Item	Amounts verified	Costs verified	Date verified	Project verified
Extraction of quarry materials	51.8%	88.2%	90.3%	100.0%
Maintenance	26.4%	97.0%	99.9%	100.0%
Third party contractors	100.0%	100.0%	60.1%	100.0%
Fuel	61.8%	100.0%	99.5%	100.0%
Bank fees	17.8%	92.6%	93.6%	100.0%
Telephone costs	22.6%	100.0%	100.0%	100.0%
Travel	53.2%	100.0%	100.0%	100.0%
Supplies	18.1%	100.0%	100.0%	100.0%
Taxes	28.5%	100.0%	100.0%	100.0%
Weighted total	**51.8%**	**88.8%**	**89.6%**	**100.0%**

Source: Annex 3, tab 'Verification'

[389] FTI Report, para. 6.20.
[390] FTI Report, paras. 6.24 and 6.28.
[391] FTI Report, para. 6.24 and footnote 92.

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(iii) **Logistics and security costs**: FTI calculated the costs incurred by the Claimant for the logistics and the security of its assets (plant, equipment and materials) in Malabo and in Bata, which it estimated at the amounts of **3,886,000 CFA Francs and 376,000 MAD** before interest, comprising the amounts relating to the rents for storage of the materials and the salary of the caretakers. The breakdown is presented by FTI in the table below:[392]

Table 6-6: Costing of the logistics and security costs

Category	k CFA F	k MAD
Premises rent	N/A	376
Caretakers	3,886	N/A
Logistics and security costs	**3,886**	**376**

Source: Annex 3, tab 'Summary of additional costs'

FTI explained that these costs were calculated and verified from a lease agreement for the premises in question[393], and the salaries of the caretakers via monthly payslips.

430. The FTI Report summarised the amounts incurred in additional operating costs in euros as follows:

Table 6-7: Summary of the costing relating to the additional operating costs

Category	k CFA F	k MAD	k EUR eq.
Staff costs		7,310	680
Operating costs		21,553	2,004
Logistics and security costs	3,886	376	41
Total	**3,886**	**29,239**	**2,725**

Note: Conversion into euros on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs) for the amounts in CFA Francs, and at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR) for the amounts in MAD.
Source: Annex 3, tab 'Summary'

2. Decision of the Tribunal

431. In compliance with Section XV.G.2 above, it results from the exhibits submitted to the debates that the Claimant had grounds in terminating the Contract pursuant to Article 34 of the same Contract.

432. The Tribunal found, in view of the correspondence and exhibits produced, that the Notification of Termination was sent only after the Claimant had tried to continue the Project for several years after Interim Statement 18 of Malabo of 2018, without response from the Respondent to its reminders.[394]

[392] FTI Report, para. 6.32.
[393] FTI Report, para. 6.31; Exhibit FTI-6.3.1, Lease agreement for the premises.
[394] Cf. para. 322 above.

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433. In compliance with what was decided by the Tribunal in Section XVI.A of this Arbitral Award, the Claimant's right to compensation of the loss suffered, in this instance the reimbursement of its additional operating costs incurred owing to the contractual breaches of the Respondent, the interruption of the Project and the justified termination of the Contract, arises out of the systematic interpretation of the Contract; and also from the legal provisions of the law of the Republic of Equatorial Guinea, stipulating the right of the property developer to payment of the services executed, and compensation for lost earnings and losses suffered pursuant to the breach of the Contract by the Respondent, as well as the interruption of the works by the Administration.

434. Having regard to the Respondent's breaches ascertained in this Arbitral Award, concerning the obligation to establish addendums to the Contract and to pay for works not set out in the Contract, and given that the Claimant was unable to obtain an additional contract in compliance with Article 26 (notably given the absence of response by the Respondent), the Tribunal considers that the additional costs requested by the Claimant are recoverable, provided that they are duly established and costed.

435. The Claimant contends that the wrongful behaviour of the Respondent forced it to spend considerable sums, which it describes as additional costs, during the Contract (both before and during the period of suspension of the works). The assumption upheld to cost the claim for additional operating costs is, according to the FTI Report, that "*within the framework of the normal performance of the Contract, Urbajet would not have had to incur any additional operating costs*".[395] FTI therefore adopted the standard approach by comparing the financial situation in which the Claimant would have been within the framework of the normal performance of the Contract to its actual financial situation (deteriorated by the Respondent's breaches).[396]

436. The Tribunal furthermore considers that the sampling methodology adopted by FTI is reasonable, and the results of its verification of the dates and amounts of almost 90% are reassuring for a construction project with substantial documentation.[397] However, the operating costs that the Claimant would have had to incur within the framework of the normal performance of the Contract should not be integrated into that claim, notably because – by definition – they do not causally arise out of a contractual breach of the Claimant. This explains why, as detailed below, the Tribunal has not upheld certain items quantified by FTI.

437. Before analysing in detail the different heads of loss claimed under the category "additional operating costs", it should also be stated that, according to Article 31 of the Contract:

[395] FTI Report, para. 6.6.
[396] FTI Report, para. 6.5.
[397] Cf. para. 429 above.

"***ARTICLE 31. – GENERAL NATURE OF THE PRICES***

The prices of this Contract include all costs incurred directly and indirectly and necessary to the continuation of the constructions, and in particular:

- *The costs of staking out and marking of the constructions; costs of recruitment of labour.*

- *Costs of installation and removal of the materials of the constructions.*"

438. It results from this that the Claimant is not entitled to claim the direct and indirect costs necessary to the execution of the constructions that it would have incurred within the framework of the normal performance of the Contract, so for the 48 months of the site initially planned. Taking account of these premises, the Tribunal will move on to its decision on each of the costs claimed by the Claimant under additional operating costs.

439. ***Firstly*, concerning the staff costs (7,309,657 MAD** before interest), FTI calculated two heads of loss: the additional costs relating (a) to the final settlements relating to the premature redundancies of the Claimant's employees from 2015 owing to the slowdown of the sites[398], and (b) the staff charges linked to the Project since 2018, notably the staff necessary to a potential relaunch of the works, as follows:

Table 6-3: Costing of staff costs

Item	**k MAD**
Final settlements	2,978
Staff charges	4,332
Total staff charges	**7,310**

Source: Annex 3, tab 'Summary of additional costs'

440. *First*, regarding the costing of the amount of the **final settlements**, the Tribunal considers that the revision by FTI of 100% of the proofs of payment and verification of the costs and dates at 94.5% and 100% respectively, plus the verification that 100% of these relate to the Project, leave little doubt over the reality of those costs.[399]

441. This is not the case of its qualification as "*additional costs*" resulting from fault of the Respondent. Since this claim, in compliance with the applicable law and the assertions of the Claimant and its expert, can only rate to costs *additional* to those it would have had to incur within the framework of the normal performance of the Contract, the Claimant is only entitled to claim the difference between (i) the final settlements it would have had to pay upon finalisation of the sites in compliance with the contractual provisions, and (ii) the final settlements effectively paid. And yet FTI only costed the second

[398] Claimant's Post-Hearing Submissions, para. 93.
[399] FTI Report, para. 6.18.

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amount, which is the total amount paid by the Claimant to the employees made redundant, without deduction.

442. This results from the assertions of the FTI Report (and its calculations and supporting documents):[400]

> "*For my analysis and my costing of the **final settlements**, I have used the proofs of payment of the final settlements to verify the excerpt of general ledger provided by Urbajet*".

443. Indeed, the amount costed by FTI and claimed by the Claimant for final settlements (2,977,670.21 MAD) results from adding together the cheques (CHQ) issued to employees between 2015 and 2017, and listed in the tab "2015-2016-2017 STC-ok" of Annex 3 of the FTI Report. The 106 supporting documents of these cheques, in Annex FTI-6.1.1, confirm that the amount upheld by FTI is indeed the total of the payments to the employees (after conversion from CFA Francs to MAD) and not the difference (additional cost) with the amount that these employees would have received (or costs spent by the Claimant on that ground) within the framework of the normal performance of the Contract.

444. In its answers to the Tribunal's questions at the Hearing, notably about the links between the contractual breaches and the damages claimed, the Claimant indicated that:[401]

> "*regarding the additional costs, only the charges for the years 2015 to 2017 have been taken into account for the final settlements. Therefore, the amounts paid to the employees that URBAJET had to make redundant because the contract was suspended. It should be noted that URBAJET was forced to make these employees redundant since mostly they were employees of Equatorial Guinea nationality*".

445. This explanation confirms that within the framework of the normal performance of the Contract, the Claimant would have made these employees redundant, and consequently would have had to address redundancy costs, which costing FTI did not include.

446. In its Post-Hearing Submissions, the Claimant tries to justify its claim by indicating that, "*the premature redundancy of some staff can be likened to a mitigation measure put in place by Urbajet in order to minimise the losses linked to the Project*".[402] While it is true that the premature redundancy of the employees can constitute a measure of mitigation of the damage (as attested by the claim, analysed below, targeting the staff charges since 2018 – would could have been greater if some employees had not been made redundant before 2018), this does not however entail

[400] FTI Report, para. 6.17.
[401] Transcription, D2, p. 15, lines 37 to 47.
[402] Claimant's Post-Hearing Submissions, note 22.

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that the Claimant is entitled to claim all the costs of redundancy.

447. In the absence of demonstration by the Claimant of the costs incurred for the redundancy of its employees *in addition to* the costs it would have incurred within the framework of the normal performance of the Contract, the Tribunal dismisses the claim for reimbursement of the final settlements.

448. *Second*, regarding the costing of the amount of the **staff charges** since the cessation of the project in 2018, the Tribunal considers to be sufficient the audit of the cash documents corresponding to 34.1% of the amounts claimed because FTI was able to verify 100% of the amounts and 99% of the dates, and to confirm that they relate exclusively to the Project.[403] The analysis in Annex 3 of the FTI Report (tab Staff charges) mentions a total of 263 lines of charges, 68 of which were the subject of a detailed review by FTI, including by presentation of supporting documents for each of those lines (Exhibit FTI-6.1.2). The amount of these 68 lines corresponds to 34.1% of the amounts claimed.

449. The Tribunal is of the opinion that the costs claimed in this head of loss would not have been incurred by the Claimant in the absence of interruption of the works, and if said works had been completed within the contractual timeframe.[404]

450. In particular, it agrees with the Claimant in that it was supposed to observe certain obligations of the Contract even during the period of suspension of the works and until its termination, notably those of Article 11 which obliged it (a) to ensure continuous cover during working hours of the management and the qualified staff necessary to guarantee the normal operation of the company and the progress of the works, and (b) not to relocate the plant allocated to the works without the permission of the Respondent, as follows:

> "***ARTICLE 11. – CONTINUOUS COVER ON THE SITE***
>
> *The Property Developer shall ensure continuous cover during working hours of the management and the qualified staff necessary to guarantee the normal operation of the company and the progress of the works.*
>
> *In the same way, the plant allocated to a Contract may not be relocated when it is necessary for the works or posted as guarantee to another site or destined for another site, even belonging to the same Property Developer, without the prior written permission of the Government*."

[403] FTI Report, para. 6.20; Cf. para. 429 (i) above.
[404] FTI Report, paras. 2.2 and 2.3.

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451. ***Secondly*, regarding the operating costs** (**21,553,472 MAD** before interest), FTI calculated said costs as being those incurred by the Claimant (i) for the extraction of quarry materials throughout the works, and (ii) to maintain its only site in the Republic of Equatorial Guinea since the cessation of the sites in 2018 and until termination of the Contract in 2022[405], for a total amount of **21,553,472 MAD** before interest, comprising the amounts in the table below:[406]

Table 6-5: Costing of the operating costs

Item	k MAD
Extraction of quarry materials	20,415
Service providers	322
Taxes	267
Maintenance	234
Telephone costs	103
Fuel	103
Bank fees	48
Travel	47
Supplies	15
Total	**21,553**

Source: Annex 3, tab 'Summary of additional costs'

452. *First*, regarding the costing of the **additional costs for extraction of quarry materials** (around **20,415,002 MAD**), which represents 94.7% of the total amount of the operating costs claimed, the Claimant rightly states that Article 17 of the Contract obliged the Respondent to grant the authorisations for "*the extraction free of charge of the quarry materials in the public land of the State*". Thus, within the framework of the normal performance of the Contract, the Claimant would not have had to incur costs to buy quarry materials (such as sand and gravel).

453. Furthermore, the Tribunal considers to be sufficient the audit of the supporting documents corresponding to 51.8% of the amounts claimed because FTI was able to verify 88.2% of the amounts and 90.3% of the dates, and to confirm that 100% relate to the Project.[407] The analysis of Annex 3 of the FTI Report (tab Quarry recap) and the table attached as exhibit FTI-6.2.1.18 shows a total of 162 lines of expenses, of which 17 were the subject of a detailed audit by FTI, including by presentation of supporting documents for each of those lines (Exhibits FTI-6.2.1). The amount of those 17 lines corresponds to more than half (51.8%) of the amounts claimed.

[405] Claimant's Post-Hearing Submissions, para. 93; FTI Report, para. 6.24, and footnote 92.
[406] FTI Report, para. 6.28.
[407] FTI Report, para. 6.25.

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454. *Second*, regarding the **other operating costs** analysed by FTI (around **1,138,470 MAD** before interest), it results from Annex 3 of the FTI Report that the costs claimed were incurred between 2018 and 2022, so for the period between Interim Statement 18 and the termination of the Contract, well beyond the 48-month period set out in the Contract for the execution of the projects. The analysis carried out by FTI establishes that those costs, which were originally incurred in CFA Francs, relate exclusively to the Project, which constituted the Claimant's only project in the Republic of Equatorial Guinea since 2015. Furthermore, the results of the analysis of the supporting documents by sampling (more than 90% validation of the costs over all cost categories) carried out by FTI are sufficient, in the eyes of the Tribunal, to confirm the reliability of the amounts claimed.[408]

455. ***Finally, regarding the logistics and security costs*** claimed by the Claimant, FTI calculated the costs incurred for (i) rent of premises to store the equipment, and (ii) salary of the caretakers for security of the hangar, at **376,000 MAD** and **3,886,369 CFA Francs** respectively, as follows:[409]

Table 6-6: Costing of the logistics and security costs

Category	k CFA F	k MAD
Premises rent	N/A	376
Caretakers	3,886	N/A
Logistics and security costs	**3,886**	**376**

Source: Annex 3, tab 'Summary of additional costs'

456. The Tribunal finds that, as explained by FTI, these costs were calculated and verified from a lease agreement dated 20 July 2020[410] and payslips for four caretakers and one administrative agent upheld until 31 December 2024.[411]

457. Annex 3 of the FTI Report (in the tab Summary of additional costs) specifies that (i) the amount of 376,000 MAD corresponds to a monthly rent of 30,00 MAD for a period of 12.53 months, from 13 September 2022 to 29 September 2023 (date of the FTI Report), and that (ii) the amount of 3,886,000 CFA Francs corresponds to 2.97 months of salaries (from 30 June 2023 to 29 June 2023). On the second day of the Hearing, the Claimant was bound to specify that:[412]

[408] Cf. para. 429 (ii) above.
[409] FTI Report, para. 6.32.
[410] FTI Report, para. 6.31; Exhibit FTI-6.3.1, Lease agreement for the premises.
[411] FTI Report, para. 6.31; Exhibit FTI-6.3.2.
[412] Transcription, D2, p. 15, lines 56 to 71.

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> "*certain losses which continued after the date of the first FTI Report of the expert have not been updated. And URBAJET is not today seeking their compensation*."

458. Thus, there is no doubt that the logistics and security costs claimed correspond to the period *after* termination of the Contract. In its Post-Hearing Submissions, the Claimant confirmed that it is claiming:[413]

> "*additional costs incurred by URBAJET since termination of the Contract in 2022, corresponding to the costs of warehousing, caretaking and maintenance of its equipment and its plant, after URBAJET observed their deterioration owing to their prolonged immobilisation*".

459. The Claimant does not explain however what it considers to be the causal link between the costs of storage and security of its equipment after termination of the Contract and the alleged faults of the Respondent. After termination of the Contract, the Claimant was no longer bound by Article 11 to keep its equipment on the sites, and could freely dispose of it. Also, within the framework of the normal performance of the Contract, it could have freely disposed of its plant – with the related charges (such as storage, maintenance and caretaking) after finalisation of the sites.

460. In this case, the Tribunal does not find any factual or legal element making it possible to attach these costs to wrongdoing of the Respondent. The fact that the Claimant had observed a deterioration of its machinery "*owing to their prolonged immobilisation*" is not sufficient to establish the liability of its co-contractor in the costs of storage and caretaking *after* the Contract, particularly when the Claimant has already claimed – and the Tribunal has granted above – the costs of maintenance of its equipment up to termination of the Contract.

461. In the absence of demonstration by the Claimant of the liability of the Respondent regarding the logistics and security costs incurred for its equipment and its plant, and considering that these are costs *after* the termination of the Contract (which the Claimant would therefore have incurred even within the framework of the normal performance of the Contract), the Tribunal dismisses the claim for reimbursement of the logistics and security costs.

462. On those grounds, taking account of the above elements, the exhibits submitted to the debates by the Claimant, and the conclusions of FTI on the additional costs of staff, operating, logistics and security costs incurred by the Claimant, the Tribunal decides that the Respondent owes the Claimant the amounts indicated in green below, for a total of **25,885,000 MAD**, with the amounts in red being dismissed (excerpt of the tab Summary of additional costs of Annex 3 of the FTI Report):

[413] Claimant's Post-Hearing Submissions, para. 93.

Annex 3 – Fichier de calculs des dommages d'Urbajet VDEF.xlsx
Summary of additional costs

1 Costing of staff costs

Item	k MAD
Final settlements	2,978
Staff charges	4,332
Total staff charges	**7,310**

2 Costing of the operating costs

Categories	k MAD
Extraction of quarry materials	20,415
Service providers	322
Taxes	267
Maintenance	234
Telephone costs	103
Fuel	103
Bank fees	48
Travel	47
Supplies	15
Total	**21,553**

3 Costing of security and logistics costs

Item	Currency	Monthly costs	Start date	Date of report	Period	Amount
Rent	MAD	30,000	13/09/2022	29/09/2023	12.53	376,000
Salaries	CFA Francs	1,310,012	30/06/2023	29/09/2023	2.97	3,886,369

463. Consequently, in using the same Annex 3 produced by FTI (tab Summary with amounts to three decimal places), the Tribunal decides that the Respondent owes the Claimant **€ 2,407,348.00** (equivalent to 25,885.45 MAD) with interest owing to the contractual breaches of the Respondent:

Staff costs	4,331.987	402.875
Operating costs	21,553.472	2,004.473
Logistics and security costs	-	-
Additional operating costs	**25,885.459**	**2,407.348**

464. The interest calculated on the date of the FTI Report, which is 20 September 2023, is **€58,519.00**, as results from the tab Interest on losses suffered of Annex 3:

Annex 3 – Fichier de calculs des dommages d'Urbajet VDEF.xlsx
Interest on losses suffered

1 Interest on the losses – summary

Category	k CFA F	k MAD	k EUR eq.
Adjustment of prices	305,263.835	N/A	485,627
Loss of profit	1,992,278.697	N/A	3,038,877
Bank guarantee fees	N/A	198,205	18,433
Additional operating costs	-	629,232	58,519
Total	**2,297,542.533**	**827,438**	**3,581,456**

2 Interest on the losses

Heads of claim	Currency	Amount claimed in k CFA F	Amount claimed in k MAD	Date of termination	Date of report	CFA F rate	MAD rate	Period	k CFA F	k MAD
Revision of prices	CFA F	4,693,894		29/09/2022	29/09/2023	6.50%	2.43%	1.00	305,264	N/A
Loss of profit	CFA F	30,634,301		29/09/2022	29/09/2023	6.50%	2.43%	1.00	1,992,279	N/A
Bank guarantee	MAD		8,154	29/09/2022	29/09/2023	6.50%	2.43%	1.00	N/A	198
Additional operating costs	CFA F/MAD		25,885	29/09/2022	29/09/2023	6.50%	2.43%	1.00	-	629
Total									**2,297,543**	**827**

465. For the compensation of the loss to be complete, the Tribunal decides that the interest concerning the amounts due in additional operating costs must be updated from 30 September 2024 and until the date of the Arbitral Award, by applying the following rates: (i) the daily MLFR published by the BEAC for the amounts in CFA Francs[414]; and (ii) the weighted average rate of accounts and certificates of deposit to 6 months

[414] Cf. para. 357.

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accounts and certificates of deposit to 6 months of the BAM for the amounts in MAD, both with annual capitalisation.[415]

I. THE RELEASE OF THE GUARANTEE DEPOSIT

1. Arguments and submissions of the Claimant

466. The Claimant states that it gave the Respondent, in compliance with Article 8 of the Contract, a deposit repayment guarantee of the value of the advance of 17,720,000,000 CFA Francs, issued by CIH BANK.[416]

467. The Claimant cites that no sum is due to the Respondent under the performance of the Contract, and infers from this that there is cause to pronounce the release of said guarantee deposit.[417] The Claimant stated that the guarantee deposit issued by CIH BANK stipulates that "*This guarantee deposit shall remain in force until receipt of the release*."[418]

468. At the Hearing, the Tribunal invited the Claimant to explain the grounds of this claim, given that CIH BANK is not party to the Contract or to these proceedings, and to clarify the decision it is asking the Tribunal to render. In its Post-Hearing Submissions, the Claimant reworded its claim relating to the guarantee deposit as follows:

> "*Consequently, the Claimant asks the Arbitral Tribunal to find that said guarantee deposit is now null and void owing to the absence of any principal obligation remaining to be guaranteed*."

469. Furthermore, the Claimant explains in its Post-Hearing Submissions that according to Equatorial Guinea law, the extinction of the principal obligation entails extinction of the guarantee deposit, in compliance with Articles 4 and 36 of the OHADA Uniform Act on Securities of 2010, applicable in the Republic of Equatorial Guinea:[419]

> "4. *By this Act, a personal security shall consist in the undertaking by an obligor to discharge an obligation in default of the principal debtor or at the earliest request of the obligee*."

[415] Cf. para. 418 (ii) and para. 502 hereunder.
[416] Statement of Claim, paras. 27 and 285; Exhibit C31: Deposit repayment guarantee dated 20 July 2006.
[417] Statement of Claim, para. 286.
[418] Claimant's Post-Hearing Submissions, para. 67.
[419] Claimant's Post-Hearing Submissions, para. 69. In para. 70 of the same submission, the Claimant states that French law adopts an identical solution in Article 2313 of the French Civil Code ("T*he obligation of the guarantor is extinguished by the same causes as the other obligations. It is also extinguished following extinction of the obligation guaranteed*").

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"*36. The partial or total settlement of a principal debt shall to the same extent lead to the termination of the surety's commitment*."

470. The Claimant asserts that the whole of the advance was consumed in March 2010, which was 48 months after signing the Contract:[420]

"*86. The deposit repayment guarantee was given by CIH Bank after receipt of a launch advance by Equatorial Guinea.*

87. In a counterfactual scenario (deducting the delays in the site) owing to the faults of Equatorial Guinea (absence of provision of land free from any occupant, unilateral modification of the nature of the works to be executed, release of materials imported into Equatorial Guinea within normal timeframes), the project would have ended 48 months after signing the contract. In this context, the whole of the advance should have been consumed in March 2010."

471. The Claimant concludes from this that in the absence of the obligation to return the advance, the obligation to maintain the deposit repayment guarantee is also extinguished, as follows:[421]

"*71. Thus, in the situation where the obligation to return down payments had to be extinguished, it should be concluded from this that the obligation of the guarantor for the purposes of returning the down payments would also be extinguished.*

72. In this context, and in order to be able to obtain release of the sums frozen by CIH BANK, the Arbitral Tribunal is asked to pronounce the finding set out above."

2. Decision of the Tribunal

472. The Claimant establishes that it had given the deposit repayment guarantee issued by CIH BANK as required under Article 8 of the Contract.[422] The guarantor stipulates that "*This guarantee deposit shall remain in force until receipt of the release*."[423] Taking account of the modifications of the Project, the works executed, and the later suspension of the Project by the Respondent, the Claimant has asked several times, in vain, for release of the guarantee deposit.

[420] Claimant's Post-Hearing Submissions, paras. 86 and 87.
[421] Claimant's Post-Hearing Submissions, paras. 71 and 72.
[422] Statement of Claim, paras. 27 and 285; Exhibit C31: Deposit repayment guarantee dated 20 July 2006.
[423] Claimant's Post-Hearing Submissions, para. 67.

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473. The Claimant has established that, from Interim Statement 15 dated 31 December 2016, the amount of the works executed exceeded that of the total payments made by the Respondent, including the advance:[424]

> "*40. Furthermore, as stated within the framework of its Post-Hearing Submissions in clarification, the Claimant confirms that from 31 December 2016 (Interim Statement no. 15 of Malabo), the amount of the works executed exceeded the payments made by Equatorial Guinea to the Claimant, including the payment of the launch advance.*
>
> *41. Indeed, on that date:*
>
> *- The total amount of the works executed amounted to 47,030,582,084 CFA Francs*
>
> *- The total amount of the sums paid by the Respondent amounted to 46,464,279,106 CFA Francs*."

474. On 18 May 2021, the Claimant asked the Respondent for "*Production of a release of the deposit repayment guarantee to the due limit of its amortisation*."[425]

475. In the Notification of Termination and Formal Notice dated 14 September 2022, the Claimant reminded the Respondent that the Republic of Equatorial Guinea had to pay it 20,822,300,701 CFA Francs, after amortisation of the advance, and served formal notice on the Respondent to give release of the guarantee deposit as follows:[426]

> "*[…] URBAJET serves formal notice on the Republic of Equatorial Guinea to give, within the same period of time, full and final release of the deposit repayment guarantee issued by the Bank "Crédit Immobilier et Hôtelier" dated 20 July 2006 to the benefit of the Republic of Equatorial Guinea.*"

476. The Tribunal finds that the Respondent did not respond to the requests for release sent by the Claimant. The Tribunal has not identified any response to said requests in the exhibits submitted to the debates.

477. Furthermore, the Tribunal is of the opinion that, under Equatorial Guinea law, notably the OHADA Uniform Act on Securities of 2010, in force in the Republic of Equatorial Guinea, the obligation of the guarantor is secondary to the principal obligation (Article 4), without which the guarantee deposit is extinguished:

> "*36. The partial or total settlement of a principal debt shall to the same extent lead to the termination of the surety's commitment*."

[424] Claimant's Post-Hearing Submissions, paras. 40 *et seq*.
[425] Cf. para. 319 (v) above.
[426] Cf. para. 321 above.

478. Considering that it has been established that the advance has been entirely consumed by the works, in compliance with the Interim Statements certified by the Engineer, the Tribunal finds that the principal obligation guaranteed by the deposit repayment guarantee issued by CIH BANK is fully extinguished. Consequently, the Respondent breached its obligation to proceed with the necessary release, as the Claimant requested.

479. As a consequence, the Tribunal, finding that the principal obligation that the guarantee deposit had to cover is extinguished, orders the Respondent to release the deposit repayment guarantee within the period of time established in this Arbitral Award.

480. Given that CIH BANK is not party to the Contract or to these arbitral proceedings, the Tribunal does not have jurisdiction to pronounce on the status of the guarantee deposit.

J. THE HOLD HARMLESS CLAIM

1. Arguments and submissions of the Claimant

481. The Claimant has expressed its fear that the Respondent is seeking to manipulate its national courts in order to have the Claimant ordered to pay sums to the Respondent, with the aim of setting off with the amounts that the Respondent could be ordered to pay the Claimant within the framework of this arbitration.[427]

482. It is consequently asking the Tribunal to order the Respondent to hold the Claimant harmless against any sum, including costs, that it may have to pay pursuant to decisions handed down by the courts or administrations of the Republic of Equatorial Guinea within the framework of the Project.[428]

483. The Claimant has not specified the legal grounds of its claim relating to said guarantee, nor indicated to what proceedings instituted by the Respondent before the courts of the Republic of Equatorial Guinea it relates.

2. Decision of the Tribunal

484. The Tribunal states that, at the Hearing, the Claimant confirmed the absence of any court or administrative proceeding instituted against it in the Republic of Equatorial Guinea. The Claimant explained that "*its hold harmless claim is justified by the procedural behaviour of Equatorial Guinea in other cases*" (emphasis added).[429]

[427] Statement of Claim, para. 287.
[428] Statement of Claim, para. 288.
[429] Transcription, D1, p. 35, lines 32 *et seq*.

485. Furthermore, in response to the Tribunal's question during the Hearing on the "*legal grounds of the hold harmless claim*" requested, the Claimant asserted that:[430]

> "[…] *the grounds of this claim are the arbitration clause itself because we are seeking to protect ourselves from any spurious seisin of the Guinean courts against the company, because this would constitute a breach of the arbitration clause*."

486. Consequently the Tribunal understands that the hold harmless claim filed by the Claimant relates to proceedings that the Respondent could potentially institute, and that, according to the Claimant, such proceedings would constitute a breach of the arbitration clause.

487. In the absence of these potential proceedings, there is no possible breach of the arbitration clause. Consequently, the Tribunal dismisses the Claimant of its hold harmless claim filed preventively.

XVII. THE INTEREST ON THE LOSS SUFFERED

488. The Claimant has addressed the matter of interest in several sections of its submissions, and the Respondent has not presented a response on the subject. The Tribunal has dealt with the interest applicable to each head of loss in Section XVI above. In this section XVII, the Tribunal (i) reiterates its decisions concerning the updating of the late payment interest from 30 September 2024 to the date of notification of the Arbitral Award (A), and (ii) rules on the interest applicable after notification of the Arbitral Award (B).

A. INTEREST UP TO THE DATE OF THE ARBITRAL AWARD

1. Arguments and submissions of the Claimant

489. The Claimant states that, in its opinion, all sums claimed within the framework of this arbitration should be accompanied by an interest rate applicable according to the currency in which the losses were sustained, either CFA Francs or MAD, with compound interest.[431]

490. In its Section 7 dedicated to interest, the FTI Report states the methodology upheld and the interest rates applied to the different heads of loss.[432] FTI explains that the expert upheld:

(i) As starting point for capitalisation of the interest, the date of 29 September 2022, which is the date of notification of termination of 14 September 2022 plus 15 days of formal notice[433], for the following heads

[430] Transcription, D2, p. 3, lines 13 *et seq*.
[431] Statement of Claim, para. 289.
[432] FTI Report, Section 7.
[433] FTI Report, para. 7.7; Exhibit C29: Letter sent by the counsel for the Claimant to the Respondent dated 14 September 2022, where the Claimant explains the amounts claimed in which "*are liable to increase in case of failure to pay within 15 days*" (p. 4).

of loss: (a) the adjustment of the prices, (b) the loss of profit, (c) the bank guarantee fees, and (d) the additional operating costs; and

(ii) As end date of the calculations, the date of the FTI Update, which is 30 September 2024.

491. FTI stated that the applicable interest rate varies according to the currency of each head of loss as follows:[434]

Table 7-1: Distribution of the heads of loss by currency

Heads of loss	MAD	CFA Francs
Adjustment of the prices		x
Loss of profit		x
Bank guarantee fees	x	
Additional operating costs	x	x

Source: FTI analyses

492. The FTI Report summarises the rates upheld as follows:

(i) **Losses in CFA Francs**: the rate applicable to a supplier loan, or the MLFR, which, at the time of termination of the Contract in September 2022, was 6.25%:[435]

7.12 Indeed, I consider that the losses sustained by Urbajet can be likened to a supplier loan benefiting the Republic of Equatorial Guinea. This would not have been possible without resorting to bank finance.

7.13 I therefore uphold the MLFR for the calculation of the interest on the losses sustained in CFA Francs.

(ii) **Losses in MAD**: the interest rate on financial assets, namely the rate of the Central Bank of Morocco, because the amounts in MAD could have been invested in term deposit accounts and generated interest:[436]

7.15 The costs linked to the losses sustained constitute denial of funds for Urbajet. In fact, these amounts could have been invested in term deposit accounts and would have generated interest.

7.16 I therefore uphold the weighted average rate of accounts and certificates of deposit to 6 months of the BAM for the calculation of interest on the losses sustained in MAD. From September 2022 to September 2023[97] this was an average of 2.41%.

[434] FTI Report, paras. 7.9 and 7.10.
[435] FTI Report, paras. 7.12 and 7.13.
[436] FTI Report, paras. 7.15 and 7.16.

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493. It is on the basis of these rates that FTI updated its calculation of the interest by head of loss as follows:

Impact of the update of interest to 30 September 2024 on the losses suffered by Urbajet, valued in local currency:

	k CFA F			k MAD		
Category	**FTI Report**	***Impact of the update of interest***	**Loss as at 30/09/24**	**FTI Report**	***Impact of the update of interest***	**Loss as at 30/09/24**
Payment of works executed	22,837,504	*2,428,335*	25,265,839	N/A	-	N/A
Loss of profit	30,634,301	-	30,634,301	N/A	-	N/A
Financial costs	N/A	-	N/A	75,756	*5,535*	81,290
Additional operating costs	3,886	-	3,886	29,239	-	29,239
Interest on losses suffered	2,297,795	*2,547,485*	4,845,280	909	*970*	1,879
Total	**55,773,487**	***4,975,820***	**60,749,306**	**105,904**	***6,505***	**112,409**

494. In its Post-Hearing Submissions, the Claimant stated that it had received the FTI Corrections over some of the above interest calculations, which the Claimant reproduced in full.[437] FTI summarised the two "anomalies" as follows:

"*Upon rereading my FTI Report, I found two anomalies concerning the calculation of interest:*

- *Interest was wrongly calculated from the date of termination of the Contract (effective on 29 September 2022) up to the date of the FTI Report (29 September 2023) on the bank guarantee fees, while the bank guarantee fees were assessed on the date of my FTI Report[23];*
- *Interest was wrongly calculated over the period between the date of termination of the Contract (effective on 29 September 2022) up to the date of the FTI Report (29 September 2023) on the logistics and security costs, while these related precisely to that period[24].*"

495. The corrections to the interest relating to the bank guarantee fees and logistics and security additional costs had a limited impact, resulting in the reduction of the interest claimed, which is summarised in the table below (corrected amounts highlighted in blue in the original):[438]

Interest by head of loss as at 29 September 2023, before and after correction:

	FTI Report			After correction			Impact of the correction		
Category	**k CFA F**	**k MAD**	**k EUR eq.**	**k CFA F**	**k MAD**	**k EUR eq.**	**k CFA F**	**k MAD**	**k EUR eq.**
Adjustment of the prices	305,264	N/A	466	305,264	N/A	466	-	-	-
Loss of profit	1,992,279	N/A	3,039	1,992,279	N/A	3,039	-	-	-
Bank guarantee fees	-	198	18	-	-	-	-	(198)	(18)
Additional operating costs	253	711	66	-	692	64	(253)	(19)	(2)
Total	**2,297,795**	**909**	**3,589**	**2 297 543**	**692**	**3 569**	**(253)**	**(217)**	**(20)**

Note: Conversion into euros of the amounts in CFA Francs on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs), and of the amounts in MAD at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR)
Source: Annex 3, tab 'Interest on losses suffered'

[437] Claimant's Post-Hearing Submissions, para. 95.
[438] Claimant's Post-Hearing Submissions, para. 95.

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496. FTI then indicated the impact of these corrections on other calculations in the FTI Report concerning:

(i) The impact on the calculation of the amount in euros of the loss suffered by the Claimant in local currency (amounts corrected highlighted in blue in the original):[439]

Losses of URBAJET as at 29 September 2023 in local currency, after corrections:

	Principal [A]		Interest [B]		TOTAL [C] = [A] + [B]	
Category	**k CFA F**	**k MAD**	**k CFA F**	**k MAD**	**k CFA F**	**k MAD**
Interim Statements unpaid/paid late	5,738,179	0	12,405,432	0	18,143,610	-
Price adjustment	4,693,894	0	305,264	0	4,999,157	-
Payment of works executed	10,432,072	0	12,710,695	0	23,142,768	-
Loss of profit	30,534,301	0	1,992,279	0	32,626,580	-
Bank fees	-	8,154	-	-	-	8 154
Interest on amount in escrow	-	-	-	67,602	-	67,602
Loss linked to the bank guarantee	-	8,154	-	67,800	-	75 756
Additional operating costs	3,886	29,239	-	692	3 886	29 931
Total	**41,070,260**	**37,393**	**14 702 974**	**68 297**	**55 773 234**	**105 687**

Source: Annex 3 updated as at 30/09/2024

(ii) The impact on the calculation of the amounts claimed converted into euros on 29 September 2023, date of the FTI Report (amounts highlighted in blue in the original):[440]

Losses of URBAJET as at 29 September 2023 in k EUR, FTI Report:

Category	**Principal [A]**	**Interest [B]**	**TOTAL [A] + [B]**
Interim Statements unpaid/paid late	8,753	18,922	27,675
Price adjustment	7,160	466	7,625
Payment of works executed	**15,912**	**19,388**	**35,300**
Loss of profit	**46,727**	**3,039**	**49,766**
Bank fees	758	18	777
Interest on amount in escrow	-	6,287	6,287
Loss linked to the bank guarantee	**758**	**6,305**	**7,064**
Additional operating costs	**2,725**	**66**	**2,792**
Total	**66,123**	**28,799**	**94,922**

Note: Conversion into euros of the amounts in CFA Francs on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs), and of the amounts in MAD at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR)
Source: FTI Report, Annex 3

[439] Claimant's Post-Hearing Submissions, para. 95.
[440] Claimant's Post-Hearing Submissions, para. 95.

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Losses of URBAJET as at 29 September 2023 in k EUR, after corrections:

Category	Principal [A]	Interest [B]	TOTAL [C] = [A] + [B]
Interim Statements unpaid/paid late	8,753	18,922	27,675
Price adjustment	7,160	466	7,625
Payment of works executed	**15,912**	**19,388**	**35,300**
Loss of profit	**46,727**	**3,039**	**49,766**
Bank fees	758	-	758
Interest on amount in escrow	-	6,287	6,287
Loss linked to the bank guarantee	**758**	**6 287**	**7 045**
Additional operating costs	**2,725**	**64**	**2 790**
Total	**66,123**	**28 778**	**94 901**

Note: Conversion into euros of the amounts in CFA Francs on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs), and of the amounts in MAD at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR)
Source: Annex 3 updated as at 30/09/2024

497. Finally, FTI corrected its calculations in the FTI Update of 30 September 2024 concerning:[441]

(i) The loss in local currency:

Impact of the update of interest as at 30 September 2024 on the losses suffered by Urbajet, valued in local currency:

	Loss (corrected) as at 29/09/2023 [C]		Interest [D		Loss as at 30/09/2024 [E] = [C] + [D]	
Category	**k CFA F**	**k MAD**	**k CFA F**	**k MAD**	**k CFA F**	**k MAD**
Interim Statements unpaid/paid late	18,143,610	-	2,428,335	0	20,571,945	-
Price adjustment	4,999,157	-	338,435	0	5,337,593	-
Payment of works executed	**23,142,768**	-	**2,766,770**	0	**25,909,538**	-
Loss of profit	**32,626,580**	-	**2,208,769**	0	**34,835,349**	-
Bank fees	-	8,154	-	209	-	8,363
Interest on amount in escrow	-	67,602	-	5,535	-	73,137
Loss linked to the bank guarantee	-	**75,756**	-	**5,744**	-	**81,500**
Additional operating costs	**3,886**	**29,931**	**263**	**768**	**4,149**	**30,699**
Total	**55,773,234**	**105,687**	**4,975,802**	**6,512**	**60,749,037**	**112,199**

Source: Annex 3 updated as at 30/09/2024

[441] Claimant's Post-Hearing Submissions, para. 95.

(ii) The loss suffered converted into euros:

Impact of the update of interest as at 30 September 2024 on the losses suffered by Urbajet, valued in k EUR eq. (*):

Category	Loss (corrected) as at 29/09/2023 [C]	Interest [D]	Loss as at 30/09/2024 [E] = [C] + [D]
Interim Statements unpaid/paid late	27,675	3,704	31,379
Price adjustment	7,625	516	8,142
Payment of works executed	**35,300**	**4,220**	**39,521**
Loss of profit	**49,766**	**3,369**	**53,135**
Bank fees	758	19	778
Interest on amount in escrow	6,287	515	6,802
Loss linked to the bank guarantee	**7,045**	**534**	**7,579**
Additional operating costs	**2,790**	**72**	**2,861**
Total	**94,901**	**8,195**	**103,097**

Note: Conversion into euros of the amounts in CFA Francs on the basis of the exchange rate expressed in the Contract (1 EUR = 655,597 CFA Francs), and of the amounts in MAD at the MAD/EUR exchange rate on the date of the request for arbitration (1 MAD = 0.093 EUR)
Source: Annex 3 updated as at 30/09/2024

498. Taking account of the aforementioned corrections, FTI valued the losses suffered by the Claimant as at 30 September 2024 at an amount **of €103,097,000** (instead of €103,117,000 of the FTI Update).

2. Decision of the Tribunal

499. Exceptionally, the Tribunal has accepted the corrections made by FTI and submitted by the Claimant, having regard to the particular circumstances of these arbitral proceedings, notably the absence of submissions on the merits on the part of the Respondent, and the fact that said corrections did not relate to the principal of the claims, but on the contrary entail a reduction in the amounts claimed in interest.

500. Whereas, owing to its contractual breaches, the Respondent caused a loss to the Claimant, notably the unavailability of the sums due, such that there is cause to fix the compensatory interest due from the Notification and formal notice of 14 September 2022.

501. Concerning the rates and calculations of interest, the Tribunal considers that FTI has indeed founded its choice of adopted rates, and decides that for the amounts claimed in:

(i) CFA Francs, in the absence of a BEAC rate explicitly stipulated in the Contract, the applicable interest rate shall be that of the MLFR, published by the

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BEAC, in compliance with the decision of the Tribunal in Section XVI.D above; and

(ii) MAD, this will be the weighted average rate of accounts and certificates of deposit to 6 months of the BAM, applicable to term deposit accounts in Morocco, in compliance with the decision of the Tribunal in Section XVI.G above.

502. Having regard (a) to the principle of compensation in full of the loss suffered by the Claimant, (b) the commercial nature of the Contract, (c) the absence of founded objection of the Respondent to the compound interest, and (d) the absence of provision to the contrary in the Contract, the Tribunal decides that the interest must be calculated from the formal notice served on the Respondent in the Notification, and capitalised annually in compliance with the Claimant's claim, from 29 September 2022 (*dies a quo*).[442] Annual capitalisation is reasonable in this case because since 29 September 2022 the Claimant has been deprived of the sums due, which cash it could have invested and which would have generated interest, which would generally be paid by the banks at least at an annual periodicity. Capitalisation over a shorter duration would have led to an increase in the compensable loss.

503. On those grounds, the Tribunal orders the Respondent to pay the amounts of these losses updated and corrected, from the formal notice served on the Respondent through the Notification, by the MLFR or the weighted average rate of accounts and certificates of deposit to 6 months of the BAM, with annual capitalisation[443] up to the date of notification of the Arbitral Award by the Secretariat.

B. ORDER IN EUROS AND INTEREST AFTER THE ARBITRAL AWARD

1. Arguments and submissions of the Claimant

504. The Claimant has asked in the Terms of Reference, in its submissions and at the Hearing for the Respondent to be ordered to pay the sums due in euros[444], and in its Post-Hearing Submissions it asked "primarily" that the orders be pronounced by the Tribunal in euros rather than in CFA Francs or MAD.[445]

505. It furthermore asks that the following interest rates be applied to the orders pronounced against the Respondent in the Arbitral Award according to the currency upheld:[446]

(i) For orders in euros: the "EURIBOR rate +2%";

[442] Cf. para. 490 (i) above.
[443] Cf. para. 502 above.
[444] Terms of Reference, para. 152; Statement of Claim, para. 294; Submissions in Reply, para. 232; and, for example, Transcription, D1, pp. 17 to 19.
[445] Claimant's Post-Hearing Submissions, para. 102.
[446] Claimant's Post-Hearing Submissions, para. 102.

(ii) For orders in MAD: the BAM 6-month term deposit rate; and

(iii) For orders in CFA Francs: the MLFR of the BEAC.

506. The Respondent has not filed any defence or offered any comment concerning the currency of the orders and the applicable interest rates, whether in its submissions or at the Hearing. Such that for the arguments of law relating to the merits of the dispute, the Respondent's silence is not valid as acceptance of the Claimant's arguments and claims.[447] Consequently, the Tribunal cannot grant it without assessing the lawfulness and the grounds of the Claimant's claims on the currency of the orders, and the interest rates applicable after the Arbitral Award.

2. Decision of the Tribunal

507. The Tribunal has adopted the rates proposed by the Claimant for the losses suffered in CFA Francs and MAD, respectively the MLFR of the BEAC and the BAM 6-month term deposit rate, as indicated in Section XVI.D and Section XVI.G above.

508. It remains however for the Tribunal to examine the Claimant's claim for the Respondent to be ordered to make the payment in euros, with application of the "EURIBOR rate +2%" to calculate the interest on the orders pronounced in said currency for the period subsequent to the Arbitral Award.

509. The Tribunal has explained, in Section XVI.A of this Arbitral Award, that in compliance with the principle of compensation in full, it considers that the Claimant has grounds in filing its claims in euros, insofar as the most likely counterfactual situation would be that the Claimant, without other projects in the Republic of Equatorial Guinea, would not have kept the payments received from the Respondent in CFA Francs.[448] An order in CFA Francs, particularly if it is not swiftly satisfied, would risk encumbering the Claimant with the risk of fluctuating exchange rates, which would not allow for compensation in full of the loss suffered. The Respondent has participated in these arbitral proceedings and has benefited from ample opportunity to raise objections to the Claimant's claim for order in euros.

510. Consequently, given the principle of compensation in full under Equatorial Guinea law[449], the Tribunal determines that the Respondent must make the payments ordered by the Tribunal in euros. As a result, the Tribunal must fix an interest rate appropriate to the currency and the method of calculation upheld. The Claimant has contended that the applicable rate should be the "EURIBOR Rate +2%", without additional precision.

[447] Cf. para. 252 above.
[448] Cf. para. 329 above.
[449] Cf. para. 328 above.

The EURIBOR (*Euro Interbank Offered Rate*) is the reference interbank interest rate used in the eurozone.[450] Consequently, it is appropriate for an order expressed in euros. Taking account of the application of annual compound interest, the Tribunal considers that the EURIBOR 12 months rate is appropriate for a claim for annual capitalisation of interest. Considering the fact that the EURIBOR is an interbank rate, and that the risk represented by the Parties outside of the eurozone is greater than that considered for establishing rates between banks in the eurozone, the Tribunal considers to be reasonable the requested increase of two points on the abovementioned EURIBOR rate, corresponding to a rate of damages and a reasonable approximation of commercial loan rates.

511. Consequently, the amount of the orders must be updated according to the EURIBOR 12 months rate published by the European Money Markets Institute, increased by two points. Thus, for example, if the EURIBOR 12 months rate is published at 2.5%, the applicable rate shall be 4.5%.

512. To enable updating according to the EURIBOR, once updated in their original currency up to the date of the Arbitral Award, the amounts in CFA Francs and in MAD must be converted into euros at the rates determined by the Tribunal in paragraph 341 above. The updated amounts in CFA Francs must be converted into euros in compliance with the rate set out in Article 7 of the Contract (€1/655,597 CFA Francs)[451], and the updated amounts in MAD converted at the rate in force on the date of the Request, in compliance with the approach adopted by FTI and validated by the Tribunal (€1/0.093 MAD).[452]

513. Given that the Claimant granted a grace period of fourteen days for payment of the orders ordered in the Arbitral Award[453], it results from this that the updating of the amounts in euros must only take place from the fifteenth day after notification of this Arbitral Award by the Secretariat.

XVIII. THE PROVISIONAL EXECUTION OF THE AWARD

A. ARGUMENTS AND SUBMISSIONS OF THE CLAIMANT

514. The Claimant is asking the Tribunal for the Arbitral Award to be accompanied by provisional execution, without explaining the factual and legal basis of this claim.[454] The Respondent does not provide any response or objection to this claim.

[450] Published by the European Money Markets Institute, https://www.emmi-benchmarks.eu/benchmarks/euribor/rate/).
[451] Cf. para. 29 above.
[452] FTI Report, para. 5.26; Cf. para. 340 above.
[453] Cf. para. 249 above.
[454] Terms of Reference, para. 157; Statement of Claim, para. 294, paragraph (m).

515. However, the Tribunal will move on to the analysis of the grounds of this claim under French law and the elements submitted to the debates.

B. DECISION OF THE TRIBUNAL

516. Since the Tribunal has already ruled that this dispute is an international arbitration[455], Article 1526 of the Code of Civil Procedure (*lex arbitri*, taking account of the seat) applies. Said Article 1526 provides the following:

> "*Article 1526. The request for annulment filed against the award and the appeal against the order having granted exequatur are not suspensive. However, the first Presiding Judge ruling in interlocutory proceedings or, when seised, the Case Management Judge, may stop or organise the execution of the award if that execution is liable to seriously harm the rights of one of the parties*.

517. Thus, neither the introduction of a request for annulment against this Arbitral Award nor the appeal against the exequatur order will produce a suspensive effect on the execution of the Award in France, save in the exceptional cases laid down in the aforementioned article.

518. While ordering provisional execution could prove superfluous for execution in France, the Tribunal cannot rule out that the execution may be brought before foreign courts, where the provisional execution may prove necessary for the effectiveness of these arbitral proceedings. Under those circumstances, taking account of the fact that the Parties agreed to fix the seat of the arbitration in France, and consequently chose a law of international arbitration which provides for the provisional execution of international awards, the Tribunal orders the provisional execution of this Arbitral Award.

XIX. COSTS OF THE ARBITRATION

519. In compliance with Articles 38(1) and 38(5) of the Rules and with Procedural Order no. 4, the Parties were invited to submit their respective submissions on the fees and costs of the proceedings no later than 29 November 2024.[456]

520. The Claimant filed its Submissions on Costs on 29 November 2024. The Respondent has not filed submissions on the fees and costs of the arbitration and has offered no observation or objection to the Claimant's Submissions on Costs.

A. ARGUMENTS AND SUBMISSIONS OF THE CLAIMANT

521. The Claimant contends that, within the framework of the decision to be rendered on the costs of arbitration, the Tribunal must take account of the costs reasonably incurred by the Parties for their defence, as well as any relevant circumstance,

[455] Cf. para. 243 above; Article 1504 of the French Code of Civil Procedure ("*Arbitration which involves the interests of international trade is international*").
[456] Submissions on Costs, para. 1.

notably the behaviour of the Parties in the conduct of the proceedings.[457]

522. The Claimant states that the "*delaying tactics*" of the Respondent have had a considerable impact on the progress of the arbitral proceedings, by systematically delaying the key steps and by significantly increasing the costs it has had to bear, notably to finance said proceedings.[458] Without having demonstrated the extent of the additional costs borne, the Claimant contends that the Respondent should be ordered to pay it a sum equivalent to all costs of the proceedings.

523. According to the Claimant, the Tribunal should take into consideration all elements raised in the Submissions on Costs at the time of its decision on the division of costs, citing that the Respondent's acts imposed a disproportionate financial burden on it and that a fair division of costs should take account of this exceptional situation.[459]

524. Furthermore, it explains that the sums incurred by the Claimant are reasonable having regard to the stakes of the dispute and the delays attributable to the Respondent, and that said sums must consequently be payable by the Respondent.

525. The Claimant attested that these expenses were billed to it or to its counsel for the purposes of these proceedings.[460]

B. THE QUANTIFICATION OF THE COSTS

1. Costs and fees of the lawyers

526. The Claimant asserts that it has incurred expenses amounting to **€522,820.00** for its legal representation within the framework of these arbitral proceedings.[461]

527. The Tribunal considers the amounts of the fees incurred by the Claimant to be reasonable, given the presentation of the Request on 28 October 2022, its Statement of Claim of over seventy pages, accompanied by the FTI Report, Submissions in Reply of over fifty pages on the subject of the objection to jurisdiction raised by the Respondent, the preparation and participation in the Hearing, and the preparation of the Claimant's Observations, the Post-Hearing Submissions and the Submissions on Costs.

[457] Submissions on Costs, para. 3.
[458] Submissions on Costs, para. 11.
[459] Submissions on Costs, para. 12.
[460] Submissions on Costs, para. 7.
[461] Submissions on Costs, para. 6.

2. Costs and fees of the experts

528. The Claimant cites that it has incurred expenses of **€113,959.77** for experts within the framework of these arbitral proceedings.[462]

529. The Tribunal also judges in this case that these costs are reasonable for the FTI Report and the FTI Update submitted in this case, based on an extensive documentation, with an approach and methodology for the processing of large quantities of data, and the participation of FTI at the Hearing to answer the Tribunal's questions.

3. Costs of the Tribunal and the ICC

530. The Claimant adds that the entire sum of the **USD 370,000.00** provisioned by the Claimant to the ICC as advance on costs and fees relating to the costs and fees of the Tribunal, as well as the administrative costs of the ICC, must also be ordered payable by the Respondent.[463]

531. In its session of 2 October 2025, the Court of the ICC fixed the costs of arbitration at USD 633,600, with a reimbursement of USD 53,200 to each Party.[464] Consequently, each of the Parties advanced a total amount of USD 316,800 for costs of the Tribunal and the ICC.

532. The Claimant seeks "*in order to facilitate execution of the award to be rendered*" that the order of the Respondent to compensate it for the costs and fees of the ICC and the Arbitral Tribunal be also expressed in euros.

533. In the absence of objection on the part of the Respondent, and pursuant to the principle of compensation in full, the Tribunal has calculated the costs on this point in euros in the sum of **€274,014.08** (USD 316,800 x 0.8655), calculated on the date of the Arbitral Award.[465]

4. Costs of the Hearing

534. The Claimant states that it incurred expenses of **€11,889.25** to defend its interests within the framework of the Hearing within the framework of these arbitral proceedings, as follows:[466]

[462] Submissions on Costs, para. 6.
[463] Letter from the Secretariat of the Court to the Arbitral Tribunal of 9 January 2017, annexed to the "Financial table".
[464] Letter from the Secretariat of the Court to the Arbitral Tribunal of 3 October 2025, and updated "Financial table".
[465] Conversion rate of €1/USD 0.8681 published by the European Central Bank on 21 November 2025: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-usd.fr.html.
[466] Submissions on Costs, para. 6.

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(i) Costs of translation (half payable by the Claimant): **€2,348.06** (VAT at 20%);

(ii) Costs of stenography (half payable by the Claimant): **€4,872.00** (VAT at 20%);

(iii) Travel costs of the representatives of the Claimant and accommodation during the Hearing: **€4,669.19** (including VAT).

535. The President of the Tribunal did not claim the expenses of carrying out the Hearing at the premises of his law firm.

C. DECISION OF THE TRIBUNAL

536. Article 38 of the Rules establishes what constitutes costs of arbitration, and gives discretion to the Tribunal to decide on their division between the Parties, while taking account of the conduct of the Parties in the arbitration:

> "***ARTICLE 38 Decision as to the Costs of the Arbitration***
>
> *1. The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration. […]*
>
> *4. The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.*
>
> *5. In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner*."

537. The arbitral proceedings took place in a climate of courtesy and cooperation between the Parties, including agreements over the language of the arbitration, most of the timetable, and the effective participation of both Parties, without affecting the date of the Hearing fixed from PO1 dated 25 August 2023.

538. Firstly, regarding the proceedings, the Respondent raised the objection to jurisdiction at the first opportunity after the Terms of Reference, and decided not to file defences on the merits or counterclaim, enabling the Claimant to concentrate only on the objection to jurisdiction in its Submissions in Reply.

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539. Secondly, on the merits, the Claimant won the case for almost all of its claims, with the exception of certain additional costs[467] and its preventive hold harmless claim against the Respondent[468], which had not mobilised a significant amount of the time of the Parties and the Tribunal.

540. It therefore does not appear that the conduct of either of the Parties justifies a division of costs on the basis of a particular procedural behaviour. The Tribunal should consequently rule on costs according to the relative success of the claims and arguments of the Parties.

541. Taking account of the substantial success of almost all its claims, the Tribunal decides that the Respondent must reimburse all reasonable costs, expenses and disbursements of the Claimant on which the Tribunal pronounced in this Section XVII.B, which is € [●].

XX. OPERATIVE PART

542. Taking account of the decisions of the Tribunal in Sections XIV to XIX of this Arbitral Award, the Tribunal decides the claims of URBAJET (set out in paragraph 249 above) as follows:

(i) **Declares** admissible the objection to jurisdiction raised by the Respondent, but dismisses it on the merits, with the Tribunal having jurisdiction to hear the claims filed by URBAJET;

(ii) **Orders** the Republic of Equatorial Guinea to pay URBAJET, in euros, within a period of fourteen (14) days from notification of this Arbitral Award by the Secretariat in compliance with Article 35 of the Rules, the following sums calculated by FTI as at 30 September 2024, updated according to the original currency of the loss suffered by the MLFR, or by the weighted average rate of accounts and certificates of deposit to 6 months of the BAM, where applicable with annual capitalisation[469], up until the date of notification of the Arbitral Award:

(a) **€31,379,000.00** for the Interim Statements unpaid or paid late, being:[470]

i. **€8,753,000.00** in principal (Section XVI.C); and

ii. **€22,626,000.00** in late payment interest (Section XVI.D);

[467] Cf. Section XVI.H.2 above.
[468] Cf. Section XVI.J.2 above.
[469] Cf. para. 502 above.
[470] Cf. para. 364 above.

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(b) **€8,142,000.00** for the adjustment of the price of the Contract (Section XVI.E);[471]

(c) **€53,135,000.00** for loss of profit (XVI.F);[472]

(d) **€7,579,000.00** for fees linked to the maintenance of the bank guarantee (XVI.G);[473]

(iii) **Orders** the Republic of Equatorial Guinea to pay URBAJET, in euros, within a period of fourteen (14) days from notification of this Arbitral Award by the Secretariat in compliance with Article 35 of the Rules, the following sums calculated by FTI as at 30 September 2024, updated according to the original currency of the loss suffered (updated at the MLFR for amounts in CFA Francs and by the weighted average rate of accounts and certificates of deposit to 6 months of the BAM for amounts in MAD), with annual capitalisation, up to the date of notification of the Arbitral Award: **€2,465,867.00** for the additional operating costs, which is (Section 422):[474]

(a) **€2,407,348.00** in principal; and

(b) **€58,519.00** in interest.

(iv) **Orders** the Republic of Equatorial Guinea to pay URBAJET interest after this Arbitral Award, calculated from the 15th day after notification of this Arbitral Award by the Secretariat, in compliance with Article 35 of the Rules; on the amounts of the orders set out in paragraphs 542 (ii) and 542 (iii) above, duly updated and converted into euros on the date of the Arbitral Award (at the rates of €1/655,597 CFA Francs or €1/0.093 MAD, as applicable); at the EURIBOR 12 months rate, increased by two points, capitalised annually, until payment in full of the sums due (Section XVIII.B);

(v) **Finds** that the principal obligation guaranteed by the deposit repayment guarantee issued by CIH BANK dated 20 July 2006 is fully extinguished, and consequently orders the Republic of Equatorial Guinea to release the deposit repayment guarantee within a period of fourteen (14) days from notification of this Arbitral Award by the Secretariat (Section XVI.I);

[471] Cf. para. 380 above.
[472] Cf. para. 401 above.
[473] Cf. para. 421 above.
[474] Cf. paras. 463 and 464 above.

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(vi) **Orders** the Respondent to reimburse the Claimant **€992,859.02** for the costs of the arbitration (Section XIX), which is:

(a) **€522,820.00** for the fees and disbursements of the lawyers;

(b) **€113,959.77** for the fees and disbursements of the experts;

(c) **€274,190.00** for the costs of the Tribunal and the ICC; and

(d) **€11,889.25** for the costs of the Hearing.

(vii) **Orders** the provisional execution of this Arbitral Award (Section XVIII); and

(viii) **Dismisses** all other claims filed by the Parties.

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International Court of Arbitration – International Chamber of Commerce
ICC Arbitration no. 27340/SP/AJP/SP/ETT/SVE
Final Arbitral Award – signature page

Place of arbitration: Paris (France)

Date: *21 November 2025*

[*signature*]

José Manuel García-Represa
Co-Arbitrator

[*signature*]

Javier Fernández-Samaniego
Co-Arbitrator

[*signature*]

Luiz Aboim
President

[Stamp: CERTIFIED TRUE COPY OF THE ORIGINAL – PARIS, 06 FEBRUARY 2026 – Alexander G FESSAS – Secretary General – ICC International Court of Arbitration]

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