**(i) Republic of Guinea-Bissau's Answers to the Questions raised by the Tribunal on 6th September 2013, received on 14 September 2013, attached:**

**Case 19 - VIRGINIA G**

**REPUBLIC OF GUINEA-BISSAU'S ANSWERS TO THE QUESTIONS RAISED BY THE TRIBUNAL ON 6TH SEPTEMBER 2013.**

**Questions to Parties, I.**

**2. Did the Attorney General appeal the decision of the Regional Court of Bissau of 5 November 2009 suspending the confiscation of the vessel and any product on board? When was the appeal lodged and was it lodged in time? Did the appeal have a suspensive effect? What was the decision taken on the appeal?**

The Attorney General effectively appealed the decision of the Regional Court of Bissau suspending the confiscation of the vessel (***Annex 1***). The appeal was lodged on time, as there is a term of eight days to lodge the appeal after the decision is notified to the party. According to Articles 279º b) and 296º of the Guinean Civil Code in terms fixed by statute or by a court the first day of the term is not counted. Therefore, as the Public Prosecutor was notified of the decision in 11th November 2009, he was in time when he lodged the appeal on 19th November 2009, which is the last day of the term.

The appeal was in fact received by the Regional Court of Bissau. Although the judge has considered the appeal was out of time, he decided

nevertheless to submit it to the Superior Court of Guinea-Bissau. In fact, the final decision was to admit the appeal:

> "*However due to the superior and political interests of the country, I leave the files to your superior consideration, following a careful and prudent analysis of the facts presented in the file, we have considered that all the pleas of facts and pleas in law which lead us to the issue of the presente Order of rejection remain the same, reiterating the pleas herein described.*
> *Bearing in mind, however, that either revoking or confirming the appealed decision your Honours will do the due justice*".

The appeal has a suspensive effect of the decision as this is the rule in Guinean law to this kind of appeals (*agravos*). In fact, Article 740, paragraph (1) of the Civil Procedure Code states that "*the appeals that come up immediately in their own cases have suspensive effect*" (***Annex 2***).

There was no decision taken on the appeal by the Superior Court of Guinea-Bissau. In fact, due to the decision of the Government to release the vessel there was no need in the continuation of these proceedings.

**3. Did Panama or the owner of the vessel appeal the decision of the Interministerial Fisheries Commission to confiscate the vessel? If so, when was the appeal lodged and what was its outcome?**

Article 52 of Decree-Law 6-A/2000, in the wording of DL 1-A/2005, provides for a judicial appeal against the decision of the Interministerial Maritime Comission. The Guinean jurisprudence has often decided that any

judicial appeal (including injunctions) concerning administrative decisions applying fines or other sanctions under the General Law of Fisheries may only be brought within the period of 15 days provided for the payment. This follows from the combination of paragraphs 1 and 3 of Article 60 of Decree-Law 6-A/2000.

This decision No. 07/CIFM/09 of the Interministerial Maritime Comission was notified to the ship owner Representative on August 31, 2009. He did not appeal from this decision. Instead of doing that, he wrote, on September 4, 2009, a letter addressed to the member of the Government responsible for fisheries. In this letter he claimed that he has been authorized to provide fuel and asks for the review of the decision. He did not receive a favorable answer, as the supervisory authorities, on the contrary, confirmed the previous decision by the new Decision No. 09/CIFM/09 of 25 September.

The owner of the vessel did not even lodge an appeal from this confirmatory decision in the legal deadline of 15 days. Instead of doing so, he presented on 29 October 2009 an interim measure to suspend the enforceability of the decision (Case 74/09). This interim measure was granted without hearing the State, so the Public Prosecutor considered it null and void and appealed from this decision on November 19, 2009. According to Art. 382 (1) a) of the Civil Procedure Code, this kind of interim measure is dependent of a main action, which have to be presented in the deadline of 30 days.

On December 4, 2009, thus within the deadline, the owner of the vessel interposed that main action, called appeal for annulment proceedings

(*recurso contencioso de anulação*) - Case 96/09. However this action has not progressed since 11 March 2010, due to the negligence of the applicant to promote its terms. Therefore this action is still pending in the Regional Court of Bissau. According to Art. 382 (1) a) of the Civil Procedure Code, this situation implies that any interim measure dependent of this main action looses its effect.

Besides that, the owner of the vessel also submitted on December 7, 2009 (Case 98/2009) another interim measure against the decision of the Secretary of State of the Treasury to unload the cargo. This interim measure was once more granted without hearing the State on November 4, 2009. However this time the main action (Case 14/2010) was presented outside the deadline of 30 days, on January 18, 2010, which makes the interim measure without any effect. Probably knowing that, when notified to pay the judicial costs in this last action in March 3, 2010, the applicant failed to pay, which led to the suspension of the main action, which is still pending in the Regional Court of Bissau (***Annex 3***).

## Questions to Parties, II.

**Could the parties submit documents (including copy of invoices) in support of the amount of compensation claimed?**

As referred in paragraph 266 of the Counter-Memorial, Guinea-Bissau claimed an amount of USD 4,000,000, which considered as an adequate compensation for the costs caused by the VIRGINIA G in Bissau, the

damage caused to the environment and the plundering of marine resources in the EEZ.

Guinea-Bissau assumed that it could obtain this value with the auctioning of the vessel. In fact, according to the UNCTAD *Review of Maritime Transport*, 2006[1], p. 41-42 (***Annex* 4**) oil tankers, even when already used, have always a minimum value of at least USD 10,000,000. Due to the poor condition of the vessel VIRGINIA G, Guinea-Bissau considered that it could receive only 40% of this value. The last information obtained was however that the condition of this vessel is so bad that her value would be only around € 500.000 (USD 662,100).

However Guinea-Bissau has suffered costs as a direct result of the operation of VIRGINIA G in these amounts:
a) Fees due for the berth in the Port of Bissau between 22 AUG 2009 and 30 SEP 2010: XAF 152.186.292 (***Annexes 5 and 6***): USD 307,264.
b) Wages due to the inspectors and military personnel occupied between 22 AUG 2009 and 30 SEP 2010 with the surveillance of the VIRGINIA G: XAF 64.715.000 (***Annexes 7 and 8***): USD 130,660.

Naturally Guinea-Bissau ignores the precise impact caused by the unauthorized activities of the VIRGINIA G in the EEZ in relation to the damage caused to the environment in case of possible spillage of oil and the plundering of maritime resources. In the ***Annex 9*** FISCAP estimated these damages in the following figures:

[1] Accessible at http://unctad.org/en/Docs/rmt2006_en.pdf

a) Plundering of maritime resources resulting from the performance of non authorized refuelling operations: 800,000 USD.
b) Eventual spilling of gas oil in the sea: 15,000,000 USD.

Therefore Guinea-Bissau remains to consider as adequate compensation the amount of 4,000,000 claimed in paragraph 266 of the Counter-Memorial

Referring to the costs Guinea-Bissau had to bear related to the proceedings before the International Tribunal, according to the detailed registry of the Ministry of Fisheries (***Annex 10***), Guinea-Bissau has already spent at the present moment with these proceedings € 237.285,67, and there is still a prevision of further costs of € 14.149,23. The total amount of costs could be therefore of € 251.434,90.

# Annex 1
# Appeal, Prosecutor's Office of the State, Guinea-Bissau, to the Regional Criminal Court of Bissau (in Portuguese) (not reproduced) - English translation

Republic of Guinea-Bissau

Public Prosecutor of the Republic

Prosecutor's Office of the State

Proc. No. 74/2009

To His Honour, the Judge

of the Regional Crime Court of Bissau

APPEAL Of "AGRAVO"

Having been possible to take knowledge of an action of maritime transgressing against the Guinean State, involving a vessel identified with the name of Virginia-G, the Public Prosecutor's Office required the confidence of the referred case (Proc. No. 74/2009), through the Inter-ministerial Committee of Maritime Surveillance.

After analysing the case records, it was confirmed that it was a interim measure interposed by PENN LILAC TRADING, ship-owner of the Virginia-G vessel against the decision of the Inter-ministerial Committee of Maritime Surveillance, issued on September 25th, 2009, based on Article 52 of Law No. 6-A/00 of August, requiring the suspension of the effectiveness of the act.

In this context, the Public Prosecutor's Office, disagreeing with the judge's case decision, comes to aggravate it, under Article 401, paragraph 2, of the Code of Civil Procedure, with the following arguments:

I

Regarding the legality, or not, of the decision of the inter-ministerial committee of maritime surveillance, the question of the present cause, the logic imposes to relegate the discussion back to its own headquarters, in the exact extent that such is the matter of an action, which has a different nature from this obviously instrumental action;

II

Thus, one should, in this part and this part alone to agree with His Honour, the Judge, regarding the urgency and speed used in the conduction of the action subject of this application for a review, being that such is imposed by law;

III

What does not correspond to the present climate, is that His Honour, the Judge, wrongly cloaked himself with the referred urgency and speed to reduce to zero all the legal requirements relative to interim measures. Firstly:

A

Weighing, though, the desired speed of interim measures, the rule remains to be the respect for the adversarial principle. This is, therefore, what clearly emerges from Article 400, paragraph 2 of the Code of Civil Procedure. That means that, only when the accused's hearing puts at risk the effectiveness of the action, one can order the interim measure without hearing the accused, and not when the court sees fit;

IV

Moreover, the hearing claimed, not only does not jeopardize in any way the effectiveness of the action, it would also allow His Honour to balance and weigh the arguments and finally decide, according to the Law and for the sake of the Guinean justice;

V

It is well known that, is that it is up to the Public Prosecutor's Office to represent the State (Article 20, paragraph 1, Code of Civil Procedure). Especially as it is not the defense of a right or property managed by an autonomous entity, in which the Public Prosecutor's Office could intervene, by advising, and even so, in case of disagreement the position of the Public Prosecutor's Office would be predominant. In the present case, the prosecutor should intervene primarily, because it is a right and property managed by the State and not by an autonomous entity (see Article 20, paragraph 2, Code of Civil Procedure);

VI

This is to say that the citation the Public Prosecution Office was not only necessary in this case as mandatory, failing which the entire process after the petition would prove void, pursuant to Article 194 b) of the Code of Civil Procedure.

VII

To the nullity of this evidence, consequence of the vices from which the action of His Honour suffers, is still added the fact that, regardless of the need to allow the intervention of the Public Prosecutor as a defender of the public interests, through the Prosecutor's Office of the State, it is the Constitution which imposes that:

**The Public Prosecution's Office is the organ of the State, in charge of reviewing the legality, and representing the public and social interest before the courts and is the holder of criminal proceedings (Article 125, paragraph 1)**

VIII

The described precept has in the case in strife two lines of force in favor of the nullity of the whole process. Otherwise, let us consider the following:

A) As for the role of the review of legality:

1 - As already noted, the urgency of the interim measures does not dispense the legality. Quite the opposite. It is the law that says that this type of process should be expeditious, and it is the law that shows how such urgency must be processed (supremacy of the rule of law and preference of the law, as two variants that embody the principle of legality). That being so, it becomes legitimate to ask: who controls legality? The Judge? Since the Public Prosecutor has been marginalized.

2 – The Law states that it competes to the Public Prosecution Office the review of the legality and not to the Judge that applies it and reviews it at the same time. And how can the Public Prosecution Office review the legality if it has not been cited of the existence of the action.

**The citation of the Public Prosecutor and the notifications are mandatory, because only so can he perform his duties as fiscal of the legality. In any other way, this is not possible!**

3 - Not being cited or notified of the decision, one cannot fulfil the constitutional sense expressed in the article quoted above, thus resulting in the preponderance of the findings of the judge claims against the constitutional impositions, what is nonetheless a strange novelty in law and against the sacrosanct principles of the existent States.

B) On holding of criminal proceedings entrusted to the Public Prosecutor:

1 – First, one can witness here, what is in Latin summarized by the expression: **venire contra factum proprium non valet**;

2 - This happened because we deem that the consideration of the question on the crime courts is not consistent with the jurisdiction of that forum;

3 - There is no doubt that the object of the action is an administrative act. Now, despite the strange wording of Article 121, paragraph 2, point b), CRG, it is clear that the spirit of the law is to allow the creation of administrative courts for the trial of the matter of administrative litigation, and never the trial of any issue regarding crimes;

4 - It is in this sequence that it is transiently determined, in the Organic Law of the Courts, that the matters of administrative litigation should be appreciated in the ordinary courts (Article 80);

5 - However, the assignment of this matter to the ordinary courts should not be read as if It could be assigned to any court, section or chamber, but for the competent forum and in this case, never the crime court, as His Honour, the Judge wants to believe, but the civil court;

6 - In doing so and in an imprudent way, His Honour, The Judge allowed us to access to another strange novelty, which is:

**Starts and ends the process that, according to him, is a crime, forgetting that it is Article 125, paragraph 1 of the Constitution of the Republic, which states that: the Public Prosecutor is the holder of criminal proceedings.**

**Where is the holding of the criminal proceedings?**

7 - In fact, when the applicant requests the suspension of the administrative act, he expressly says that what is litigated revolves around an administrative act, at no time tried as a criminal act;

8 - Plus, when he interposes the interim measure, he demonstrates, although in an implicit form, that the question must be assessed in civil and not criminal courts

XIX

Regarding the providence itself, the fulfilment of one of its requirements has not been demonstrated – the serious probability of the existence of the right (*fumus bonni iuris*).

X

The appeal to the alleged lack of competence of the administrative authorities to proceed to the confiscation, besides not corresponding to our administration model, which is executive, is contrary to the provisions of the General Law of Fisheries (paragraph 1 of Article 52) and therefore cannot justify the fulfilment of "fumus bonni iuris".

XI

This is not about doing justice, but about the practice of an administrative act that could even be practiced by the Minister of Fisheries and nobody else. Simply as a matter of prudence of the Public Administration, it was decided to create a commission in order to allow better weighting before the practice of administrative acts, which are perfectly appreciable in court like any administrative act.

XII

Nowhere in the Constitution of the Republic of Guinea-Bissau exists a reservation of jurisdiction on confiscation. Also, because it is a simple administrative act.

XIII

It is in this sense that the General Law of Fisheries (LGP) assigns to the Minister responsible for fisheries the competence to confiscate ex officio "all industrial or crafting fishing vessels, domestic or foreign, engaged in fishing activities within the limits of national maritime waters without having the competent fishing authorization, in conformity with Articles 13 and 23 ... "

XIV

The applicant was caught in the act of practice of fishing related operations without being authorized to do so, according to the Article 23 of the LGP.

XV

The applicant did not join to the case files any license or authorization that allowed him to proceed with the refueling of other fishing vessels.

XVI

And the fact that supplied ships have authorization for this purpose brings no advantage to the applicant, since according to Article 23 of the LGP, the ship to supply and the supplier require both authorizations.

XVII

Now if the vessel of the applicant is not licensed to practice the fishing related operation in question, it will not escape the confiscation.

XVIII

If so, there is no semblance of a right not to be confiscated, because the confiscation is really imposed by the LGP, contrary to what one seems to want in the precautionary measure, where the judge considers not to have been proved the possibility of applying administrative fine instead of the confiscation.

XIX

Regarding the lack of the adversarial principle before the confiscation, it arises from the LGP, which imposes that the confiscation is ex officio, giving the person concerned the possibility of judicial appeal.

XX

In fact, the assumption of the confiscation - absence of license or authorization - waives any more delay with procedural formalities.

On these terms and on other in law, this aggravation ought to be upheld and, consequently:

Be annulled all pleadings practiced without the intervention of the Public Prosecutor, either as the defender of the public interest, or as fiscal of the legality, for the welfare of the whole Rule of Law and the proper administration of Justice.

The G.A.E.

(signature)

João Biague

(illegible stamp)

## Annex 2
## Articles 279 and 296 of the Civil Code (in Portuguese) (not reproduced) - English translation

### Civil Code

Article 279
(Computation of the term)

The following rules shall apply for fixing a term in case of doubt:

a) If the term is to refer to the beginning, middle or end of the month, it is understood as such, respectively, the first day, the 15th and last day of the month; if it is set at the beginning, middle or end of the year, it is understood, respectively, the first day of the year, the 30th June and 31st December;
b) In order to count any period nor the day nor the hour are included, if the term is hours, whichever is the event from which the period begins to run;
c) The period fixed in weeks, months or years after a certain date, ends at 24 hours of the day falling within the last week, month or year, to that date, but if in the last month there is no corresponding day, the period ends on the last day of that month;
d) It is, respectively, considered a term of one or two weeks, the term designated by eight to fifteen days, as it is one or two days the term designated as 24 or 48 hours;
e) The period that ends on a Sunday or holiday is transferred to the first working day; just like Sundays and public holidays are treated the judicial vacations, in case the act subject to term has to be practiced in court.

Article 296
(Calculation of time limits)

The rules in Article 279 shall apply in the absence of a specific provision to the contrary, the terms and conditions laid down by law, by the courts or by any other authority

## Annex 2 (continued)
## Articles 382, 401, 740 of the Civil Procedure Code (in Portuguese) (not reproduced)
## - English translation

**Civil Procedure Code**

Article 382
(Cases of measures' expiration)

1. Interim measures become ineffective:
a) If the applicant does not propose the action, from which the measures are dependent within 30 days from the date on which he is notified of the decision ordering the measures required or if, having proposed the action, the process is stopped for more than 30 days, because of the applicant's negligence in promoting the respective terms from which the progress of the cause depends on;
b) If the action is dismissed as unfounded by sentence with the force of res judicata;
c) If the defendant is acquitted of the proceedings and the applicant does not propose new action within the period prescribed in paragraph 2 of Article 289;
d) If the right one aims to protect is extinguished.
2. The seizure required as dependent from the condemnatory action is also void if obtained sentence with the force of res judicata, the applicant does not promote execution within the following six months, or, if the execution is promoted, the process is stopped for more than thirty days because of the execution creditor's negligence.
3. When the precautionary measure has been replaced by a guarantee, it would become void on the same terms that would void the measure replaced.
4. The substitution by guarantee does not prejudice the right of appeal against the decision that ordered the measure nor the faculty to deduct embargoes against it.

Article 401
(Grant of Interim Measure )

1. An interim measure is enacted, provided that the evidence shows a serious likelihood of the existence of the right and shows to be founded fear of his breach, unless the loss resulting from the measure exceeds the damage that it wants to avoid.
2. The applied may aggravate the order that grants the interim measure, or oppose embargoes to this under applicable articles of 405 and 406.
3. The interim measure decreed can be replaced at the request of the defendant, by adequate bond, whenever this one, after hearing the plaintiff, proves sufficient to prevent damage.

Article 740
(Appeals with suspensive effect)

1. The appeals that come up immediately in their own cases have suspensive effect.
2. For the others, suspensive effect only occurs when:
a) The appeals from orders that have applied fines;

b) The apeals of orders that may have ordered delivery of money or imprisonment; the court being safe with a deposit or bond;
c) The appeals from decisions that have ordered the cancellation of any registration;
d) The appeals to which the Judge has ordered for this purpose;
e) All the other that the law expressly grants this same purpose
3. The judge can only assign suspensive effect to the appeal, pursuant to paragraph d) above, when the applicant has requested it in the application for requiring the appeal and after hearing the appeallee, recognizes that the immediate execution of the order is likely to cause irreparable damage to the applicant or difficult to repair

## Annex 9
## Declaration, 9 September 2013, FISCAP Guinea-Bissau (in Portuguese) (not reproduced)
## - English translation

**Republic of Guinea-Bissau**

**Ministry of Fisheries and Halieutic Resources**

**National Service of Fiscalization and Control of Fishery Activities**

**Cabinet of FISCAP Coordinator**

**DECLARATION OF FISCAP**

The National Coordination of FISCAP declares without any reservation that the oil tanker, VIRGIA G, in the year two thousand and nine, 2009, was transporting around four hundred thousand liters of fuel, gas oil, in the waters under jurisdiction of Guinea-Bissau.

In the perspective of ocurring damages caused by the spillage of the fuel transported by the referred oil tanker, without any legal authorization for transhipment or unloading issued by the national authorities, the FISCAP, aware of the ecological, environmental and economic consequences that may cause in our sea, resulting in emerging damages from the operation, namely the destruction of marine ecosystems, loss of biodiversity and extinction of essential catches for the fishery activity, due to the pollution from these activity, in the calculation of the real value of environmental, ecological and economic damages, estimates the following monetary value:

First, for the not presentation of the transhipment autorization in the waters under jurisdiction of Guinea-Bissau, it is estimated around eight hundred thousand american dollars 800.000 USD;

Second, for the eventual spillage of oil, it is estimated around fifteen million american dollars 15.000.000 USD.

Done in the day nine of the month of September two thousand and thirteen.

[*Stamp with the references*: Guinea-Bissau Fiscap 140
Protect Surveil Control]

Coordinator of FISCAP
[*Illegible Signature*]
Ingenieur Pedro Mendes Viegas