

BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

ICSID Case No. ARB/21/29

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 In the Matter of Arbitration Between: :
 :
 Kaloti Metals & Logistics, LLC, :
 :
 Claimant, :
 :
 and :
 :
 THE REPUBLIC OF PERÚ, :
 :
 Respondent. :
 ----- x Volume 4

HEARING ON JURISDICTION AND THE MERITS

Thursday, July 27, 2023

The World Bank Group
1125 Connecticut Avenue, N.W.
Conference Room C1-450
Washington, D.C.

The Hearing in the above-entitled matter
came on at 9:02 a.m. before:

PROF. DONALD McRAE
President of the Tribunal

PROF. DR. JOSÉ CARLOS FERNÁNDEZ ROZAS
Co-Arbitrator

PROF. DR. ROLF KNIEPER
Co-Arbitrator

ALSO PRESENT:

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P R O C E E D I N G S

PRESIDENT McRAE: Good morning, everyone. I think we're ready to begin.

Before we start with the Experts, are there any procedural matters from the Claimant's side?

MR. DÍAZ-CANDIA: Good morning.
No, Mr. President.

PRESIDENT McRAE: From the Respondent?

MR. GRANÉ LABAT: Good morning. No, thank you.

PRESIDENT McRAE: Then let us start with Dr. Caro. Can you come to the witness stand, please.

DINO CARLOS CARO CORÍA, CLAIMANT'S WITNESS, CALLED

PRESIDENT McRAE: Good morning, Dr. Caro. I understand you're going to be giving your testimony in Spanish?

THE WITNESS: Spanish, please.

PRESIDENT McRAE: Pardon?

THE WITNESS: Pardon.

PRESIDENT McRAE: Yes.

I understand you're giving your testimony today in Spanish.

1 THE WITNESS: Yes, sir, in Spanish.

2 PRESIDENT McRAE: And it will be interpreted
3 into English.

4 You probably know the process. You saw it
5 yesterday, where it's similar for the experts as it
6 was for the Witnesses. You will start with making
7 your own Opening Presentation. Then you will be
8 cross-examined by counsel for the Respondent, and then
9 counsel for the Claimant will have an opportunity to
10 ask questions on redirect.

11 The Tribunal may ask you questions from time
12 to time as well. And if you could remember that,
13 since everything is being interpreted, when you
14 respond to a question, you should perhaps wait until
15 the question has been interpreted before responding.
16 You're listening to the interpretation, I assume, so
17 you will have to wait in any event. It's the
18 interpretation back to English that might be a bit
19 more problematic.

20 So, I think you should start--you should
21 have in front of you a declaration, and I will ask you
22 to read that out.

1 THE WITNESS: Thank you.

2 I solemnly declare upon my honor and
3 conscience that my statement will be in accordance
4 with my sincere belief.

5 PRESIDENT McRAE: Thank you very much.

6 Do you want to make any introduction of the
7 Expert?

8 MR. DEL VALLE-CORONA: Yes.

9 PRESIDENT McRAE: Do that and then he will
10 make his statement.

11 MR. DÍAZ-CANDIA: Thank you.

12 PRESIDENT McRAE: Thank you. Please, go
13 ahead.

14 MR. DEL VALLE-CORONA: Good morning. For
15 the record, my name is Mikel Del Valle-Corona, and I
16 represent Claimant in this Arbitration. It is our
17 honor to present Professor and Doctor Mr. Dino Carlos
18 Caro, one of the most renowned professors and doctors
19 in criminal law in Perú. Later, if needed, during the
20 cross-examination, I will switch languages and
21 intervene in Spanish.

22 Dr. Caro, please go ahead, sir.

1 PRESIDENT McRAE: Please go ahead, Dr. Caro,
2 with your statement.

3 DIRECT PRESENTATION

4 THE WITNESS: I thank the Members of the
5 Tribunal and also the colleagues participating in this
6 Hearing. I am appearing here as an expert for
7 Claimant, Kaloti Metals, to present the main problems
8 in the application of Peruvian criminal law and
9 criminal procedure in this matter.

10 As we know, I should mention that I was
11 contacted by WDA to provide a legal opinion to support
12 some concepts of procedural and criminal Peruvian law.
13 It is important, then, to bear in mind my experience.
14 I have a degree in law from the Pontificia Universidad
15 Católica del Perú. I have a Ph.D. in Law from the
16 University of Salamanca. I have also--I was granted a
17 special award for dissertation from the University of
18 Salamanca. I have 20 years of experience providing
19 legal advice. I have also work that has been
20 recognized and published. I have authored more than
21 100 specialized articles, and also as to the
22 general--I have also published on the general aspects

1 of criminal law.

2 I also have been practicing for more than
3 29 years, and I have defended public and private
4 agencies to provide counsel on these legal issues.

5 I am also a partner in my legal firm, Caro &
6 Associates, and I have been recognized by Chambers &
7 Partners, Legal 500, and Legal League, among others.

8 I appear here as an independent expert to
9 provide an objective opinion and a truthful opinion on
10 the subject that I was presented with for
11 consideration.

12 The key element here has to do, in my
13 opinion, with the fact that KML has conducted five
14 purchases of metal gold from the companies that we
15 heard these days, that is [REDACTED], [REDACTED], [REDACTED],
16 and [REDACTED]. I am not going to refer to the kilograms
17 or grams of those purchases. I do not think that is
18 necessary in this case. But it is here--the Peruvian
19 State initiated a series of administrative proceedings
20 at the level of SUNAT so as to immobilize the
21 Shipments, and coordinated manner, they were also
22 impacted by means of some petitions by the Office of

1 the Attorney General, and these were some
2 Precautionary Measures that were presented prior to
3 the proceeding. In arbitration , prior to the
4 constitution of the Tribunal, some laws allow for some
5 earlier measures. It is similar to what happens here
6 in the U.S.

7 So, this Criminal Proceeding, it started
8 with a decision by the Judge; but, since a long time
9 had to be--had to elapse between the investigation by
10 the Ministry and the Decision by the Judge, law 27379
11 was passed. I was one of the authors of that law in
12 the Year 2000, and then there were some reforms that
13 were introduced.

14 So, what is it that the Public Ministry had
15 to do? They had to present a petition before the
16 Judges to be able to seize the goods. The law is
17 quite clear: The Terms are 90 plus 90 days, that can
18 be extended 180 days, not more. Upon expiration of
19 that term, the State should have returned the goods to
20 their legitimate owner.

21 What we saw here is quite the contrary.
22 Between the termination of these terms, we are here in

1 a vacuum because this was issued months later, the
2 Decision was issued months later, and this is not only
3 recognized in my own Report, but also in the Report
4 drafted by Mr. Missiego, months after these Measures
5 were enforced. But, between 2015 and 2016, Kaloti
6 Metals presented a series of petitions before the
7 Tribunals, the Public Ministry, in order to gain
8 access to the information. And it is key because
9 Article 4(5) of the law 27379 expressly provides that
10 the Judge must notify the affected parties. The judge
11 "must." This is not optional, not something that
12 happens at random, nor something that can be seen in
13 the press. If they are going to seize something, they
14 need to let you know, but if no one knocked on your
15 door to let you know that they were going to do this,
16 this is illegal. Well, we are talking about public
17 law, we are talking about what is usually referred to
18 as the power of the police.

19 So, that is to say, if they are having--if
20 the Measures are having an impact on the assets, on
21 your assets, you need to be notified, you need to be
22 informed, so this is something that has an impact on

1 your rights, on your own rights. So, the Judge made a
2 decision without listening to any of the Parties
3 listening--they didn't listen to any of the Buyers and
4 the Parties. And then, with whatever they had, they
5 made a decision to enforce these seizures; but, based
6 on the evidence that I was able to review for this
7 Report, I haven't been able to observe the enforcement
8 or the compliance of the Judge with the duty to notify
9 Kaloti so that Kaloti may enforce their own rights.

10 So, as a result of the opinions by the
11 Peruvian expert, I saw some procedural documents of
12 unknown origin because the criminal proceedings are
13 reserved. No one has access to that information
14 except there is a legal order, and I have not seen any
15 notification, any notice tor Kaloti Metals that would
16 have enabled it to exercise its right.

17 There is not much to be said in connection
18 with the impairment of these four shipments in the
19 case of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. I
20 am saying that there is not much to discuss. I am
21 going to avoid going into details as regards numbers
22 of documents, file numbers...

1 MR. DEL VALLE-CORONA: I apologize for the
2 interruption. Can you speak a little bit slower?

3 THE WITNESS: Yes.

4 There is not much discussion surrounding
5 this because these are procedural issues that I
6 understand are not the subject matter of the dispute.
7 Based on the information that was presented in the
8 First and Second Report by Mr. Missiego that was also
9 provided to me. I have seen that there is not a
10 discussion on the path followed by these proceedings.

11 And, in the First Report, he, Mr. Missiego,
12 noticed that there were two prosecutorial filings, and
13 I don't know--and there were two others that were
14 underway. We do not know what the Prosecutor will be
15 deciding, and they are all of a sudden saying that
16 there were three cases presented. I have not had
17 access to that information, except for what he has
18 considered and explained in his reports.

19 I am going to move on to the questions and
20 the answers that I have addressed--that were addressed
21 in my First and Second Report.

22 As to the First Report, the question as to

1 whether the Seizure Measures and Immobilization
2 Measures against the gold owned by Kaloti Metals were
3 issued in accordance with Peruvian law. The answer is
4 "no." The Immobilization and Seizure Measures did not
5 comply with Peruvian legislation, and I am saying this
6 clearly because the Law 27379 demands not only the
7 appearance of an offense *fumus comissi delicti*, but
8 also there has to be some prejudice in the delay.

9 What is the reasoning behind this? This
10 could be administrative. We could discuss for several
11 hours for those who are familiar with mining sector in
12 Perú and those who know how work is done in this
13 sector. I have more than 20 years of experience in
14 the Mining Law sector where we could address each of
15 the administrative indicia given by SUNAT for the
16 Petition later on presented by the Prosecutor's
17 Office.

18 The Prosecutor's Office, almost like a table of
19 parties, copies and pastes the indicia listed by
20 SUNAT, the Prosecutor's Office then turns that into a
21 precautionary petition, and then the Judge decides
22 based on that information.

1 So, Mr. Missiego has also said that after
2 that, these Measures have been approved by the Judge
3 with new information, new data, but he does not refer
4 to what data it is. This is administrative indicia
5 for the administrative immobilization. And we can go
6 over that information, each of those pieces of
7 indicia, but I wouldn't do that because each of them
8 is contingent. And to understand them, once again, we
9 need to understand not only criminal law but also the
10 gold sector and how this works in the Peruvian market.

11 So, since there was no indicia of a criminal
12 offense but rather indicia of administrative
13 infractions, or maybe even crimes, but linked to the
14 sellers - public faith, etcetera, there is nothing
15 that is linked to illegal mining or money-laundering.

16 And now, as to the danger or the prejudice
17 that could be entailed in the delay, this is only
18 founded on the fact that gold cannot disappear, and
19 this is the gold that is in the hands of SUNAT.

20 Someone has to have it. If it is not Kaloti, it
21 cannot be someone else, so that appears to be the
22 justification.

1 There are also mentions and even some
2 boasting as regards the coordination among
3 administrative units, SUNAT, the Office of the Public
4 Prosecutor, and I think that the fight against
5 money-laundering, the fight against illegal mining
6 also requires institutional coordination, but there
7 needs to be transparency. And for transparency, there
8 has to be communication, communication records.

9 So, how have the SUNAT officials
10 communicated with officials from the Public
11 Prosecutor's Office? They must follow certain paths.
12 According to the criminal law, the Prosecutor needs to
13 reach out to private and public authorities, but they
14 need to have minutes, minutes of communications to see
15 what was communicated, how and when. So, there needs
16 to be coordination, and the State has to coordinate,
17 but there has to be transparency. That transparency
18 is absent throughout these proceedings, and that's why
19 I considered that these Measures are detrimental, are
20 prejudicial to the rights of Kaloti.

21 And as mentioned before, Article 4(5) of
22 Law 27379 is final. It's clear. The judge needs to

1 notify the affected Parties. And from the
2 documentation, we can clearly see that Kaloti Metals
3 was one of the Parties that was affected. From the
4 documents it is easy to see that one of the affected
5 parties is Kaloti Metals.

6 What did the State do? Nothing. Based on
7 the information we have and also in the responses and
8 also on the letter of Peruvian law, nothing is said
9 about the notification. Nothing is said about a
10 notice being served to be able to practice the law as
11 it should have been practiced.

12 Now, these Immobilization Measures need to
13 be temporary or permanent? This is a very old, dated
14 discussion. If we are talking about preliminary
15 measures, Law 27379 is a law that establishes a term,
16 90 days plus another 90-day term. A maximum of
17 180 days. This is like a detention. After 180 days,
18 if there was an extension, the gold had to be
19 released. A person cannot be in prison longer than
20 what is decided by the Judge; otherwise, it would be
21 an illegal detention. The next day, on the 181st day,
22 if both Terms had been used, the gold should have been

1 delivered to its rightful owner, and this is something
2 that I was unable to see in the relevant cases,
3 because the law establishes that the Judge may
4 validate the seizure, but the seizure has to be still
5 in force because, according to Article 94 of the
6 Procedural Code, the previous seizures have to still
7 be in force at the time in which the Judge makes a
8 decision. 803his is not something that we see here,
9 and this is something that is detrimental, detrimental
10 to the right to property and the right that Kaloti
11 Metals had.

12 Now, on the other hand, we also heard that
13 Article 94 allows the Judge deciding on the asset
14 forfeiture to maintain the Precautionary Measures, but
15 as long as an Asset Forfeiture Proceeding actually
16 exists. Article 94 cannot be cited in parts, or be
17 quoted on a skewed manner; it must be read in full.
18 Article 94 states that the Criminal Judge, if the
19 Judge considered that there is a potential asset
20 forfeiture case, would notify the Office of the
21 Prosecutor, and in that case, of the Public
22 Prosecutor; and then, if the Measures were still in

1 force, if the Measures were still in force, the Judge
2 may still maintain them from the Criminal Proceedings
3 to the Asset Forfeiture Proceedings. That is what the
4 law says. So, the law does not say that these
5 Measures will prevail forever.

6 We cannot normalize an eight-year
7 proceeding when procedural law is clear. This is a
8 proceeding that may only last in very complex cases,
9 and I agree with the Expert from Perú that this is a
10 complex case, but what does the law say? That in
11 complex cases a process this can only last up to
12 12 months. It does not provide for anything else.

13 And so, in this case, *we are dealing with*
14 *proceedings that have been going on for years and*
15 *there is jurisprudence from the Constitutional Court*
16 *where claims have been declared well-founded and the*
17 *proceedings have been shelved, as in the case of*
18 *Humberto Abanto Verástegui, with two years of*
19 *preliminary investigation. Or, in the case of*
20 *Chacon, the case came to an end because it was pending*
21 *for eight years, and never came to a conclusion.*

22 On the other hand, these Immobilizations led

1 to violations—did these Immobilizations violate
2 Kaloti's right? Yes. Because of the reasons that I
3 have mentioned, and only for purposes of listing:
4 violation of the principle of legality, because
5 procedural law requires credibility of the right
6 invoked, that is to say, there has to be an appearance
7 of offense, and secondly, there must be prejudice in
8 the delay. There is a series of procedural reasonings
9 behind the principle of proportionality. Peruvians
10 have inherited from German law, the proportionality
11 test of Jurgen Habermas; proportionality, in the
12 strict sense of the word, the principle of necessity,
13 and also the principle of having the least potential
14 impact, given the Precautionary Measures.

15 So, from a Constitutional point of view
16 there was no reasoning whatsoever. There is no
17 reasoning whatsoever as regards the observance of the
18 proportionality principle that has been widely
19 accepted under the Constitutional Court in Perú, and
20 also the Supreme Court of Perú. Effective procedural
21 protections have been violated because, as far as I
22 have been able to review as expert, Peru has not been

1 able to show any notification to Kaloti Metals
2 informing of the affectation of its right so as to
3 enable it to exercise the corresponding recourses. And
4 also, under Peruvian law, the State, the Peruvian
5 State, had the obligation to act in a proportional
6 manner because of the reasons that I just mentioned.
7 The principle of proportionality also leads us to
8 apply the test that I just mentioned a minute ago.

9 On the other hand, is it reasonable and
10 proportional to maintain the Seizure Measures of 2013?
11 No, because this is a violation of the reasonable
12 period. It is said that those Measures in the
13 proceeding may take--may be in force forever, and this
14 is like saying that the Criminal Proceeding will be
15 affecting your rights as long as it lasts. Almost as
16 saying that we can maintain a Precautionary Measure in
17 force for as long as it wants a process to last.

18 I am from Callao, Perú. There are people
19 who die on a daily basis, but this is not right. It
20 doesn't mean that--to have something that leads to
21 killings on a daily basis, in the city--or that it
22 happens in my country, in my city in Latin America, is

1 not something that can be taken as normal, as the
2 norm.

3 So, this is again--we cannot look into the
4 fallacy and say, "Okay, it happens in actual life, so
5 it becomes the norm." So, this is a fallacy. We're
6 talking about complying with legality, so this is a
7 discussion on the law.

8 The next question was whether KML had the
9 burden of proving the legality? Evidently not.
10 Clearly, the presumption of innocence implies that the
11 State has the burden of proving the case, and there
12 are some procedural standards, and the highest one is
13 beyond any reasonable doubt, that must be met in order
14 to declare the sellers guilty; not Kaloti Metals
15 because it has not been accused of any . And so far,
16 Kaloti has not been informed of any wrongdoing, even
17 when their rights were breached.

18 Legally, under Peruvian law, should Perú
19 return the immobilized gold? Yes, of course. and this
20 has lasted for more than eight years, and a
21 Precautionary Measure cannot extend forever and also
22 have something become normal when it is not. We

1 cannot resort to that ontological fallacy.

2 Now, what are the legal implications of the
3 Decisions by the Supreme Court of Justice of Lima?
4 Now, as part of the proceeding that discussed the
5 resolution of the--the resolution of the Contract or
6 of one of the Contracts between [REDACTED] and Kaloti. this
7 is a very interesting Decision, very interesting
8 Judgment, and I understand that, based on the Report
9 by Mr. Missiego, this is a case that has already been
10 settled because Kaloti Metal had the ownership of the
11 gold. Why go to the judicial authorities to request
12 the nullity of the Contract, or why request the
13 termination of a contract if you're not the owner? If
14 to [REDACTED], Kaloti was not the owner, why would
15 they go to the Judicial Power? Why go to a first
16 instance, second instance, annulment, return to
17 decision and first instance and decision in second
18 instance? This same reasoning applies to all the
19 shipments that are being discussed here.

20 Now I will move on to the questions on the
21 Second Report to come to an end.

22 So, how the transfer of the property is

1 carried out? This is basic law knowledge. There is
2 no need to be an expert on civil law. This is what we
3 see on a daily basis in particular when we're talking
4 about corporate law. The ownership of real estate,
5 and specially the sales agreement, is based on
6 consent. Agreement on the object, agreement on the
7 price; whether the payment was made or not, and also
8 there are some rules to resolve--to settle the
9 Contract, and this is already agreed. There is no need
10 for a written contract.

11 I can go to H&M and buy \$10,000 in clothing,
12 and I am not going to have a written contract but
13 obviously there is a sales agreement. It doesn't mean
14 that I'm going to have all of the rules applied for
15 the purchasing and the sale of goods, but--mass goods,
16 but I will be the owner of those clothing--of those
17 pieces of clothing, and the same applies here in Perú.

18 In Perú, in the gold business, there are
19 sales agreements with purchase orders, sometimes there
20 are formal contracts, that truly depends on the
21 practice of each company, but the law is free in the
22 sense that the mere consensus on the agreement, the

1 agreement on the price and the object already
2 generates, let's say, the transfer of the property.

3 So, there has to be consent and agreement on the
4 price and also on the subject matter, and that also
5 leads to the transfer of the property.

6 And, in the case of real estate, that also
7 implies the delivery or tradition, that could be an
8 actual delivery through third parties or even the
9 tradition fictiodocumentaria.

10 On the other hand, via documents and also
11 through third parties.

12 Was Kaloti Metals the legitimate owner of the Five
13 Shipments? I think that that is the case. I am
14 totally convinced about that, but also because
15 lawsuits as the one as--of [REDACTED] v. Kaloti means
16 that you need to resort to the judicial authorities to
17 terminate a Contract. If you were not the owner, it
18 means you didn't have the need to resort to the
19 judicial authorities.

20 What is the element that we need to have in
21 force so that we have good faith? Good faith is
22 assumed under the law. There is a presumption, a

1 legal presumption, of good faith, so the Party that
2 has to detect whether there is bad faith is the one
3 that is alleging bad faith, but no one has alleged bad
4 faith on behalf of Kaloti. There is no judicial
5 decision, there is no decision by the Office of the
6 Public Prosecutor where they say, "Okay, you
7 are"--where they say, "You are a purchaser in bad
8 faith because of this or that." There is none as far
9 as I have been able to check in the documentation--
10 So, to refer to "bad faith," bad faith would imply a
11 series of pieces of information and also knowledge,
12 and there has to be an accusation for bad faith to be
13 supported by a judicial decision. As long as bad
14 faith hasn't been shown, then you presume good faith.
15 If you say there is bad faith, then you need to show
16 it within or before a court.

17 There is also--is there a standard on due
18 diligence? Here I agree with our colleague from Perú,
19 the counsel from Perú, in the sense that Kaloti Metals
20 was not a regulated entity in the sense of the
21 application of the law that requires mandatory
22 compliance in the prevention of money laundering. If

1 they had been, then the financial investigation unit
2 would have said--knocked on their door and said "where
3 are your prevention systems?" That would have
4 happened and did not happen and that had not happened
5 during the years that the business was operating in
6 Peru until November 2018. So, that regulation is not
7 applicable to them. That is something we agree on.

8 What we agree on are the rules on due
9 diligence that are supposed to be self-regulating. The
10 self-regulation does not imply police due diligence. I
11 don't need to know the criminal history of someone
12 because there is also a protection on those of the law
13 of protection on personal data.

14 Having the criminal records of someone else
15 is a crime. To say: "Hey, don't you know the criminal
16 history of someone?". Having them is a crime in Perú,
17 and the data protection authority and the
18 Constitutional Court has established very strong and
19 harsh protections on getting to know someone's
20 records, someone's legal record. Companies that sell
21 a database such as Refinitiv, World Check and others,
22 that in their database include criminal record

1 information, they would be selling illegal
2 information. They will be committing a crime if they
3 spread that information and, even worse, you can't
4 make compliance by breaking the law.

5 Also, the Legal Expert from Perú, through
6 his Reports, has mentioned that there were several
7 ways for KML to enforce its rights. "Hey, I'm not
8 obligated to exercise self-defense. If someone comes
9 to kill me, they can't say it was my fault because I
10 did not defend myself." These are rights, not
11 obligations. There was discussion about a
12 re-examination that could be requested. I'm one of
13 authors of the new Criminal Procedure Code of 2004,
14 but it does not apply here. The old Code applies. The
15 new Code does mention re-examination. The
16 re/examination, the Plenary Agreement of 2010 that
17 supports it is made for that new Code, not for the old
18 one.

19 Now, if I go before a judge with the old
20 Code, as in this case, a code that is losing its
21 force, and I said: "Let's go to the re-examination",
22 he would say: "What re-examination, if there is no

1 procedural route?" That is for the new Code, the new
2 regulation. The new code brings many developments,
3 among them, the re-examination. That re-examination
4 is impossible here.

5 Now, also, they mentioned a petition that
6 you need to put before the Judge. You need to go to
7 the Judge and request. Yes, that's correct, you need
8 to go to the Judge and request. Kaloti tried to do
9 that in some cases. If they did it correctly or not,
10 we can discuss that, but that does not mean that the
11 article 4°, 5th Paragraph of Law 27379 compels the
12 Judge, that is, the proactivity needs to come from the
13 Judge by order of the law, 5th Paragraph of article 4°
14 of Law 27379. The Judge needs to notify the affected
15 Parties. Now, as far as I have been able to see, that
16 has not happened here. That has not happened here.

17 That Kaloti could have litigated better or
18 worse, we can discuss that. Then there is the amparo:
19 well, nobody is obligated to go for an amparo. The
20 amparo is a sort of extraprocedural challenge. It is a
21 challenge outside of the process. For the amparo, and
22 we all know that this is how it works in Perú and in

1 all systems with similar proceedings, the amparo
2 requires the exhaustion of the previous method, and
3 the previous method was the criminal procedure and
4 this had not taken place because the notification
5 hadn't taken place.

6 I'm almost done.

7 Bearing in mind the regulatory framework,
8 the judicial proceedings, have the judicial
9 proceedings been compliant with Peruvian law? For the
10 previously mentioned reasons, no. Taking into account
11 this legal framework, is it fair, proportional and
12 reasonable that this is maintained? This is now
13 nine years later, not eight as the Question says. The
14 answer is no, because this, of course, clearly goes
15 against any reasonable term.

16 The indicia that were used in the decisions
17 meant that the burden of proving the legality of the
18 gold was reverted? The answer is also no. First,
19 those indicia are contingent, as we can discuss, even
20 with the screen in front of us, one by one, we will
21 surely take several hours. These are indicia that
22 refer to the Sellers, not to Kaloti Metals. And these

1 indicia have never been used to make formal charges
2 against Kaloti Metals of which they can defend
3 themselves against. There is no formal criminal
4 charges against Kaloti but also no charges of bad
5 faith, as our colleague from Perú said in his first
6 and Second Report.

7 The charges of bad faith can't be in the
8 grammar or made verbally, they have to be presented
9 before a court, where they say to them "Kaloti, you
10 are bad faith purchaser. And I, the State, through the
11 government, the Prosecutors Office, the SUNAT, say to
12 you that you are a bad-faith Buyer because of these
13 reasons." I have not seen a document in the record
14 that I reviewed where this bad faith is being charged
15 because, as I said, the good faith is presumed . Who
16 says that there's bad faith needs to prove it before a
17 court.

18 With this I conclude.

19 As of November 30th, 2018, Kaloti was the
20 legal owner of the Five Shipments of gold. Now, a
21 potential indictment against the Sellers would not
22 change this conclusion, especially if we're talking

1 about good-faith purchases. The indicia contained in
2 the Report from the Perú Expert are contingent, and is
3 at most sufficient to initiate a criminal
4 investigation against the Sellers, not against Kaloti
5 Metals, who does not have proceedings. The burden of
6 proof is still on the government, on the State to
7 establish this criminal case that currently does not
8 exist and to establish bad faith, which hasn't been
9 done either, as far as I have been able to see in the
10 documents.

11 So, the Measures referring to the possession
12 of the gold continues to be strictly temporary under
13 Peruvian law, temporality that has turned into
14 something permanent, it seems. Kaloti acted
15 reasonably. In its exercise of its procedural rights,
16 they are not forced to exercise those ways that were
17 identified by the colleague from Perú, under Peruvian
18 law.

19 Thank you.

20 PRESIDENT McRAE: Thank you very much,
21 Dr. Caro.

22 We now turn to Respondents for the

1 cross-examination. Is it Ms. Arizmendi?

2 MR. GRANÉ LABAT: Thank you, Mr. President.

3 I will start the cross-examination.

4 PRESIDENT McRAE: Thank you. Please go
5 ahead.

6 MR. GRANÉ LABAT: Thank you.

7 CROSS-EXAMINATION

8 BY MR. GRANÉ LABAT:

9 Q. Good morning, Mr. Caro Coria. During this
10 cross examination I will ask you a number of questions
11 on your opinion, your two legal opinions as Legal
12 Expert, and the documents to which you refer Reports.

13 A. Can you speak a little bit louder, I can't
14 hear you. I'm sorry.

15 Q. If you have any difficulties you can also
16 use the headset.

17 If I ask you a question, I ask you to please
18 limit yourself to answering the question; if you
19 would like to expand on it, you will have another
20 opportunity to do so. I will ask you a few questions
21 where I need a "yes" or "no" answer. I'm simply
22 asking you to confirm something that you said or that

1 is in the document as we will do for subsequent
2 questions.

3 And I will tell you the source of the
4 documents that I will be citing, we'll be showing them
5 on the screen. You have a computer on your desk, and
6 you will be able to access all the documents on the
7 record there.

8 You understand the rules I have explained to
9 you.

10 A. I'm sorry?

11 Q. Do you understand the rules I have explained
12 to you?

13 A. I understand what you have said to me. I
14 don't know that they're rules necessarily, but I do
15 understand.

16 Q. Do you speak English?

17 A. No, not perfect English.

18 Q. What do you have on the table? I see that
19 you have some books and some notes.

20 A. It's the Criminal Code.

21 Q. And you also have a binder? I'm not asking
22 you to show me the contents. I just want to know what

1 you have on the table.

2 A. These are my Reports and the Reports from
3 Mr. Missiego that were given to me.

4 MR. GRANÉ LABAT: I will switch to English.

5 P04, Section 22, indicates that the Experts
6 can only have their reports and the annexes and notes
7 on their reports. We see that Mr. Caro Coria has a
8 book on the table. We will not raise an objection.
9 We are simply noting that for the record, and also in
10 the event that Mr. Missiego wishes to have also a book
11 on the table, then we would expect the same
12 flexibility in that respect. Just for the record.

13 PRESIDENT McRAE: Thank you, Mr. Grané. The
14 point is noted.

15 MR. DÍAZ-CANDIA: We also want to note we'll
16 take a look at Procedural Order No. 4, but we
17 understood that the Experts were allowed to have the
18 other Expert's Report on the table.

19 PRESIDENT McRAE: I think the point is not
20 an issue now and we just simply proceed on this basis.

21 THE WITNESS: I would like to clarify one
22 point, if I may.

1 It's not a book. It's criminal law,
2 procedural law, just to make it clear that it's not a
3 Manual on criminal law.

4 BY MR. GRANÉ LABAT:

5 Q. Have you been present at other
6 cross-examinations at other ICSID arbitrations?

7 A. Yes.

8 Q. And you have been there in person?

9 A. Yes.

10 Q. And you have posted something regarding that
11 on your Twitter account.

12 MR. GRANÉ LABAT: Let's show Exhibit R-364,
13 Page 2 on the screen.

14 And, for the record, I will read this in
15 Spanish. It says: "Dino Carlos Coria, week of
16 hearings at ICSID in Washington, D.C. for the third
17 time. All lawyers want to participate in the big
18 leagues, this is one of them."

19
20 BY MR. GRANÉ LABAT

21 Q. And then, you refer to some litigation
22 techniques and particular elements. And there, we see

1 that your name shows up on the image.

2 Do you confirm that this is from your
3 account?

4 A. Yes. In that occasion you were also present
5 in that hearing.

6 Q. Do you remember what case it was?

7 A. Yes, it was a case last year, but--.

8 PRESIDENT McRAE: Would you slow down. You
9 are speaking across each other, and it makes it
10 impossible for the interpretation to be carried out,
11 and it's very difficult for us to follow who's
12 actually speaking when actually the interpretation is
13 different from what we're hearing.

14 Thank you.

15 THE WITNESS: What was your question,
16 please?

17 BY MR. GRANÉ LABAT:

18 Q. Do you remember which case it was?

19 A. Yes, I do remember.

20 Q. Can you share that?

21 A. I can't because there are confidentiality
22 rules that apply to the case as they do to you, I

1 think, as well.

2 Q. In what capacity did you participate?

3 A. As a lawyer, accompanying the team
4 representing the Claimant.

5 Q. That case for the record is Enagás S.A.,
6 Enagás Internacional v. the Republic of Perú.

7 You participated as counsel for a Party;
8 correct?

9 A. No. I was not litigating at the ICSID
10 level. I was an auxiliary lawyer. I see that case
11 according to the Peruvian law.

12 Q. Do you remember the List of Participants for
13 that case?

14 A. No, I don't remember.

15 Q. You don't remember that you were on that
16 List of Participants as counsel for the Claimant?

17 A. That was not the question. The question was
18 whether I remembered the List of Participants, and I
19 don't. If the question is whether I was a
20 participating lawyer, the answer is yes, I was, you
21 and I have seen each other.

22 Q. Do you remember that, on that List of

1 Participants, you showed up as a lawyer for the
2 Claimant? "Yes" or "no."

3 A. No, because I was simply a lawyer who was
4 invited to join the group or the team, but I did not
5 participate in the examinations.

6 Q. But you were providing counsel to the
7 Claimant. You don't dispute that?

8 A. No. I was not providing advice. I provided
9 advice on a case of Peruvian law.

10 MR. GRANÉ LABAT: We are going to reserve
11 our right to introduce an exhibit as impeachment
12 evidence against this Witness in response to what he
13 has just said, but we will come back to this issue
14 later in the course of today or tomorrow.

15 PRESIDENT McRAE: I take note of that, and
16 just proceed with the examination.

17 BY MR. GRANÉ LABAT:

18 Q. In this same exhibit, let's go to Page 3.
19 We have another social media post from you. This is
20 in this case from Instagram; right?

21 Do you see it on the screen?

22 A. Yes, that's correct.

1 Q. Do you recognize this user name as yours,
2 "expensive.lawyer"?

3 A. I'm sorry, I didn't understand.

4 Q. Do you recognize Instagram? I'm not an
5 expert on social media, but I understand that on
6 Instagram you will have an account, and people can
7 create their profiles and their user names, and the
8 question I'm asking you is very simple: Do you
9 recognize that user name, "expensive.lawyer," as
10 yours?

11 A. To recognize digital evidence, according to
12 the rules for digital media, you would have to tell me
13 when that snapshot was taken. Do you have the date?

14 Q. I'm the one asking the questions. Please
15 don't interrupt. You've heard the indications from
16 the President. I'm the one asking the questions. I'm
17 asking for something very simple.

18 Do you recognize this image on the screen?

19 A. No, because that no longer alineates
20 (phonetic) with what exists.

21 Q. Did you post an image of this kind to your
22 account, "expensive.lawyer"? "Yes" or "no."

1 A. No, and I'll say why. That account has
2 changed.

3 Q. Did you at some point have an account with
4 this name, "expensive.lawyer", that was under your
5 control?

6 A. I had an account with that name, but it is
7 not an account that has that name at this time and has
8 not for several months.

9 Q. At some point you had that account; correct?

10 A. It's the same account with a different name.

11 Q. I think this is going to be a very long day
12 if you refuse to answer very simple questions that I'm
13 asking you.

14 Did you at some point have an account with
15 this name, "expensive.lawyer", which was under your
16 control? "Yes" or "no."

17 A. As I said before, it is the same account
18 that at some point had that name.

19 Q. Are you the person in the photo?

20 A. I'm sorry?

21 Q. Are you the person in the photo?

22 A. Yes, of course I am.

1 MR. GRANÉ LABAT: Please, let's zoom out and
2 let's look at the document in the photo. We can zoom
3 in a bit. C-0107, "Legal Opinion of Dr Dino Carlos
4 Coria, Claimant's Memorial, SPA."

5
6 BY MR. GRANÉ LABAT

7 Q. Do you recognize this cover page? Have you
8 seen a cover page of this kind?

9 A. Yes, of course.

10 Q. Is that your Expert Report?

11 A. Yes, in fact.

12 Q. Did you take this photo?

13 A. Yes, I took that photo.

14 Q. Did you post this photo to your Instagram
15 account?

16 A. When I had that account with that name, yes.

17 Q. It was an effort, but we got there.

18 Do you know the rules about this or about
19 publicity regarding this Arbitration?

20 A. Let's see, sir, I would like to
21 clarify.

22 Q. I haven't even asked the question yet. Do

1 you know the rules for publicity for this Hearing?

2 A. No, I don't.

3 Q. So, you didn't know that there are redacted
4 versions of the parties' pleadings that were published
5 in this case.

6 A. I don't understand your comment.

7 Q. So, you don't know that there are rules that
8 apply to this Arbitration regarding the redaction of
9 the documents by the Parties?.

10 A. What I do know is that there are
11 confidentiality rules, and that photo doesn't identify
12 the case or the proceeding.

13 Q. You're not answering my question.

14 A. I am answering because—

15 Q. You're not answering my question.

16 A. The world it's not always "yes" or
17 "no." Everything has an explanation, and the
18 context is important.

19 Q. You will have an opportunity to provide
20 explanations when the other Party asks the questions,
21 but please respect the instructions I gave you at the
22 beginning. Yes-or-no answers. It was a very simple

1 question. I'm not asking you to tell me whether
2 Confidential Information is being divulged in this
3 image. The question is, again, whether you knew that
4 for this Arbitration there are publicity rules that
5 apply to the redaction of any pleadings that can later
6 become public.

7 A. I don't know about those rules.

8 Q. Did you ask the Claimant to redact your name
9 from the pleadings?

10 A. No.

11 Q. I would like to know about your area of
12 expertise. You talk about Peruvian procedural and
13 criminal law; correct?

14 A. Yes.

15 Q. And you've also explained in your two
16 reports that you have broad experience in legal advice
17 on criminal, criminal procedural and compliance
18 matters; correct?

19 A. Yes.

20 Q. In this case, you present yourself as a
21 specialist on Mining Law; is that the case?

22 A. Well, let me explain.

1 Q. You can explain--you can explain, but first
2 I want you to give me the answer, then you can give me
3 the explanation.

4 A. I am an expert on criminal law, criminal
5 procedural law and I litigate on criminal mining law
6 for more than 20 years.

7 Q. You're not answering my question. I asked
8 you to please listen to my question. You are
9 presenting yourself in this arbitration as an expert
10 on Peruvian Mining Law?

11 A. No.

12 Q. Are you presenting yourself as a specialist
13 on Contract Law?

14 A. No.

15 Q. For your Second Report, did you review the
16 First Report of the Expert for Perú, Professor
17 Missiego?

18 A. Yes, that's correct.

19 Q. Did you also look at the exhibits to that
20 Report?

21 A. I didn't hear the last part.

22 Q. Did you also review the exhibits that were

1 attached to that Report by Professor Missiego?

2 A. Yes, I did.

3 Q. Please wait until I finish asking the
4 question before you answer; otherwise, we won't have
5 the transcription--the Transcript.

6 In preparation for this Hearing, did you
7 look at Professor Missiego's Second Report?

8 A. Yes, that's correct.

9 Q. Did you also look at the exhibits of said
10 report?

11 A. Yes.

12 Q. Have you also reviewed Perú's
13 Counter-Memorial for this Arbitration; is that
14 correct?

15 A. No.

16 Q. Please, let's look at your Second Report,
17 Pages 10 and 11. We can show them on screen.

18 I would like to have greater clarity about
19 what you looked at because it's important, given it's
20 the basis of your analysis and your conclusions.

21 Down at the bottom, short answer on Page 10,
22 the section, it says: "The circumstances recounted in

1 both KML's Memorial," they're the Claimant, "and
2 Perú's Memorial dated August 5th, 2022, and the
3 documents I have reviewed allow me to conclude," et
4 cetera.

5 Do you see that?

6 A. Yes, that's correct, yes.

7 Q. So, then you're referring to the
8 circumstances recounted in Perú's Memorial from
9 August 5th, 2022; correct?

10 A. Yes, that's correct.

11 Q. But you just said that you had not looked at
12 that brief.

13 A. You had not mentioned the date, that's why.

14 Q. There is only one Counter-Memorial.

15 A. Okay, then, I did review it.

16 Q. And have you looked at Perú's Rejoinder in
17 preparation for this Hearing?

18 A. Yes, I think I did. I'm not sure, but I
19 think I did.

20 Q. Don't you think you would remember whether
21 you read that pleading or not?

22 A. I've looked at many submissions, that's why

1 I don't exactly remember. If you show it to me, I can
2 tell you.

3 Q. Yes, we can show it on the screen, but do
4 you know that at this Hearing there are two main
5 submissions by Perú, the Counter-Memorial and the
6 Rejoinder? Do you know that?

7 A. Yes.

8 Q. You don't remember whether you looked at the
9 Rejoinder which is the only other significant
10 submission by Perú?

11 A. Yes, I have, as far as I remember.

12 Q. So, if I ask you questions about the
13 information contained in that Rejoinder, you'll be
14 able to answer?

15 A. No, because I'm not its author.

16 Q. I'm not asking you to say that you're the
17 author. I'm just saying that if I make reference to
18 that Rejoinder, to information about Peruvian criminal
19 law and I ask you a question regarding that
20 submission, you can answer me?

21 A. I can give you an opinion, yes.

22 Q. And the documents you reviewed for the

1 preparation of your Reports, are they all specifically
2 referenced in your two Reports?

3 A. Yes.

4 Q. Do you agree that if an impartial and
5 independent expert detects an error in the Report,
6 that person has a duty to rectify, to notify of that
7 and to rectify?

8 A. I'm sorry? Is that an opinion?

9 Q. If an impartial and independent expert
10 detects an error in the Report they have submitted to
11 Tribunal, do they have the obligation to say that and
12 to correct the error?

13 A. Obviously, to the extent that there is an
14 error.

15 Q. In preparing your First Report, did you look
16 at documents regarding the civil case initiated by
17 [REDACTED] against Kaloti regarding Shipment 5? Did you
18 look at it?

19 A. Yes, the information that was given to me.

20 Q. And you referred in your report to the
21 record of that case. That was a civil case by [REDACTED]
22 against Kaloti. I'm not going to give the file number

1 because it's a very long number, but you refer to it
2 specifically in Paragraph 10.1 of your First Report.

3 A. Yes

4 Q. Can we please show it again on the screen?
5 It's the First Report, 10.1, Page 31 of the PDF. Can
6 we please zoom in a bit?

7 That's the record, and I would like to ask
8 you some questions about judicial sentences regarding
9 this. There is a place where you say [REDACTED] instead
10 of [REDACTED]

11 A. It is [REDACTED].

12 Q. We understand that that's simply a
13 typographical error.

14 A. Yes, it is a mistake.

15 Q. But we're talking about the same thing, of
16 [REDACTED]. Did you read the October 11, 2018 Resolution by
17 the Third Civil Court in this proceeding initiated by
18 [REDACTED] against Kaloti?

19 A. It was an annulment, yes.

20 MR. GRANÉ LABAT: And that is Exhibit C-110
21 in this Arbitration, for the record.

22 BY MR. GRANÉ LABAT:

1 Q. And you say in your First Report that this
2 Resolution settled the Appeal filed by Kaloti against
3 another decision of December 11, 2015, which in first
4 instance declared that there were grounds for [REDACTED]
5 case or lawsuit against Kaloti. Remember? Is that
6 correct?

7 A. Yes.

8 Q. And for the benefit of the Tribunal, let's
9 please show C-110 on the screen. Let's go to Page 2.

10 This Decision of December 11th, 2015,
11 declared the termination of the Sales Contract for
12 almost 100 kilos of gold supplied by [REDACTED] correct?

13 A. Are you referring to that First Instance
14 Decision?

15 Q. Correct.

16 A. Yes

17 Q. But that Resolution from October 11th, 2018,
18 did not declare that Kaloti was the owner of those
19 almost 100 kilos of gold; correct?

20 A. Yes.

21 Q. In fact, you, yourself, explain in Paragraph
22 10.1 of your First Report that the effect of this

1 Resolution of October 11th, 2018, and I quote your
2 report, is that it said that another Judge would issue
3 a new decision?

4 A. Yes.

5 Q. And you're not wrong about this. Let's look
6 at 110, Page 7. Let's look at the Resolution, the
7 Resolutive Part. And let's go a little more slowly
8 because we have to highlight both the English and the
9 Spanish. We see there ordering the Judge to issue a
10 new ruling pursuant to the guidelines set forth in
11 this resolution".

12 Do you see that?

13 A. I do.

14 Q. This Resolution of 11 October 2018 did not
15 end the civil case between [REDACTED] and Kaloti; correct?

16 A. Correct.

17 Q. On 23 September 2019, this Court handed down
18 another ruling, Resolution 46. This is R-213.

19 Do you remember this other Resolution of
20 September 2019?

21 A. I do. It was a new Resolution.

22 Q. Let us look at the Decision. We will show

1 it on the screen.

2 Let me ask you another question before we
3 move on with this.

4 In your First Report dated
5 10 February 2022, you say that this Judgment of
6 September 2019 had not been notified to the Parties,
7 and you say that that's the reason why this ruling is
8 not efficient and it cannot be opposed to third
9 parties.

10 A. Can you show me the paragraph?

11 Q. Yes, it's 10.2, Page 32 of your First
12 Report.

13 And let's highlight where it says that
14 Decision has not been notified to the Parties of the
15 proceedings and, as such, is not currently effective
16 or enforceable. Do you remember that now?

17 A. Yes, I do.

18 Q. Then, you assert that as of 10
19 February 2022, when you prepared your Report, neither
20 you nor Kaloti had had access to this ruling and the
21 procedural paperwork related to it?

22 A. Correct.

1 Q. Let us now look at R-216 on the screen.

2 What we have on the screen is an appeals by
3 Kaloti against this ruling of 23 September 2019.

4 Did you have knowledge of this appeal
5 submitted by Kaloti?

6 A. No. I didn't have any knowledge of it.

7 Q. Let's see when this pleading was received.
8 18 October, 2019.

9 Do you see that?

10 A. It's not easy to read, but it appears that
11 it says 2019. Well, the translation in English says
12 October 18, 2019, and the date stamp apparently
13 matches that October 18, 2019.

14 Q. The translation indicates October 18, 2019,
15 and the stamp seems to match, October 18, 2019. In any
16 case, this is a document submitted by Kaloti. We see
17 it on the heading. Here, we have the number.

18 By 18 October 2019, two years and four
19 months before the issuance of your First Report,
20 Kaloti had knowledge of this ruling of
21 23 September 2019, and it had also filed an appeal
22 against the ruling; correct?

1 A. Let's see. Not necessarily. Why? Because I
2 don't know the origin of this document. I cannot
3 issue an opinion on a document I do not know. What I
4 do see is that one of the Parties is Kaloti Metals,
5 the other one is [REDACTED].

6 So, it calls my attention how the State of
7 Perú is not a party to this case. So, how can this be
8 included in the Report of an expert for Perú? I don't
9 know if this document is truthful or if it was
10 obtained through the correct legal means. I could
11 make a comment if I'm sure of the origin of this
12 document.

13 Q. Are you putting into question the
14 authenticity of this appeal by Kaloti against a
15 resolution of a court in Perú?

16 A. I am putting--calling into question the
17 origin of this document. The document may be
18 truthful, but I don't know its origin. In Perú, a
19 lawyer would be liable if we make pronouncements in
20 connection with documents whose lawful origin has not
21 been verified.

22 Q. Now, did you ask Kaloti if it had appealed

1 this ruling from September 2019?

2 A. I have not asked.

3 Q. Did Kaloti tell you that it had filed an
4 appeal? Please let me finish; otherwise, we're going
5 to miss the Transcript.

6 Again, did Kaloti tell you that it had filed
7 an appeal against this ruling of September 2019?

8 A. No. I was not informed of that.

9 Q. You didn't ask; right?

10 A. I did not ask, either.

11 Q. Didn't you think that this was relevant
12 information to ask Kaloti where it had filed an appeal
13 of this ruling that you said had no notice of?

14 A. No, because it wasn't conducting an
15 examination of civil-law matters or in connection with
16 this case. The mere existence of a court case that
17 discusses the potential termination of a contract,
18 already means that we have to accept that we need to
19 go to court to say that they're not the owners.

20 Q. In your Report, sir, you issue opinions in
21 connection with the legal consequences and the weight
22 and the validity of a ruling. You didn't think it was

1 relevant to ask your client whether this is a final
2 ruling or where an appeal has been lodged?

3 A. As you said, my testimony has to do with
4 procedural law and criminal law. I'm not talking
5 about civil law.

6 Q. Again, in your report, you make reference to
7 this Judgment. You say it is final. You said that
8 you do not know what happened later, no notice was
9 given to you. You reached conclusions in connection
10 with the assertion that you make, and you didn't think
11 it was relevant to ask whether an appeal was filed
12 against this Judgment?

13 A. No, because I was asked to examine only what
14 happened up until 2018. What happened later on,
15 that's a different issue. It is incidental.

16 Q. Now, you said that you had no knowledge, you
17 had been provided no notice of this, and that neither
18 you nor Kaloti, your client, had notice of this
19 ruling. Now, this is an appeal by, Kaloti, your
20 client. This was notified on October 3rd, 2019.

21 Do you see that?

22 A. Again, I cannot rule on documents whose

1 origin I do not know. I can read what the document
2 says. I can do that.

3 Q. You do see that this was notified on
4 October 3rd, 2019, on the basis of this document
5 included in the case file of this Arbitration, and
6 it's being shown?

7 A. No.

8 What I see here is a piece of paper with a
9 seal that says right here "we were notified."

10 Q. Again, sir, we're going to be here
11 for a long time if we cannot agree on a very
12 simple matter such as what a document says in
13 the file of this Arbitration.

14 A. Let's see.

15 Q. Do you see on this screen this document?
16 This document is in the file of this Arbitration, and
17 it says that on October 3rd, 2019, we were notified
18 via Resolution 46, and it says here that your office
19 has declared the claim to be founded in all matters.

20 A. That is what the document says.

21 Q. Very well. Let us try to make the next set
22 of questions easier.

1 You said that you had no knowledge of this
2 appeal; correct?

3 A. Correct.

4 Q. And that you had no knowledge that Kaloti
5 had been notified of the Judgment that was subject to
6 this appeal.

7 A. Correct.

8 Q. Let us move on. You indicated in your First
9 Report when you said that the Judgment had not been
10 notified and that Kaloti had had no access to this
11 September 23rd Judgment. It says here you were
12 notified, "we were notified."

13 A. What page are you on?

14 Q. Paragraph 10.2, page 32.

15 You used the plural in your Reports. I
16 would like to know who drafted this Report? Because
17 you use the plural form.

18 A. Again, where are you looking at?

19 Q. We can show it on the screen and highlight
20 it. 10.2, and it is a parenthetical. Perhaps we're
21 going to show it to you on the screen.

22 "We, and KML (as we were informed..." close

1 parenthesis, "...have not had access to the text of
2 that decision or its procedural documents".

3 Okay, I have two questions. You said that
4 "we were informed." What are you referring to?

5 A. I'm referring to my law firm, to me.

6 Q. Okay. You're referring to your law firm.

7 A. We were hired by WDA to prepare this Report,
8 so when I'm talking about us in the plural, "we" were
9 informed, I'm talking about my law firm.

10 Q. You're the author of the two Reports; right?

11 A. Yes.

12 Q. Did anyone else work with you?

13 A. Well, it was just me, but it's a way of
14 saying things in my country. We use the royal "we,"
15 if you will.

16 Q. Let us look at the decision that Kaloti was
17 appealing via that document we saw on the screen,
18 R-203. Please put it on the screen. R-213, rather.

19 Let us look at the Decision page 8 here of
20 this Judgment of 23 September 2019, and we see here
21 highlighted that the Judge decided to declare that
22 there were grounds for the claim and also that the

1 Contract between [REDACTED] and Kaloti was terminated.

2 Do you see that?

3 A. Yes, that's what I see here.

4 Q. This appeal by Kaloti was decided on by the
5 Third Civil Chamber on appeal via this Judgment R-212,
6 and it is dated 14 June 2022.

7 Let us look at Page 14 of that Decision,
8 which is R-212.

9 It says here: "It is resolved to confirm
10 the Judgment contained in Resolution 46 dated
11 September 23, 2009."

12 A. That is what the document says in front of
13 me.

14 Q. So, the Chamber confirmed the lower court's
15 Judgment that had decided that there was a termination
16 of the Contract between [REDACTED] and Kaloti.

17 A. I'm sorry if I insist, counsel. I cannot
18 rule on documents whose origin I have no knowledge of.
19 Lawyers in my country would be held liable, criminally
20 liable, even, if we referred to documents the origin
21 of which is not known to us. Could you please tell me
22 what the origin of this is?

1 Q. What do you mean by "origin"?

2 A. Well, I see reference here is made to two
3 parties to the proceedings, Kaloti Metals and [REDACTED].
4 How is it that the State of Perú has this information?
5 Was there a consent by Kaloti or by [REDACTED] for this
6 document to be shown and for me to rule on this
7 document with that bit of information?. Without that
8 information, I cannot really weigh on this, because
9 there would be doubts as to the origin and
10 authenticity.

11 In Perú, and I want to make that very clear,
12 there are actions against lawyers for corruption and
13 for violation of the attorney-client privilege when
14 they reveal information of a document and when they
15 cannot indicate the origin of the document. You show
16 me here documentation which origin I cannot explain or
17 give faith of its authenticity nor its origin, so
18 making a pronouncement would make me potentially
19 liable.

20 Q. This is a judgment handed down by the Third
21 Civil Chamber; right?

22 A. I don't know. I don't know what the origin

1 of this document.

2 Q. Let us look at the heading. I think this is
3 going to be very difficult if you provide those kinds
4 of answers.

5 Again, this is a ruling by the Third Civil
6 Chamber. Are they public?

7 A. No.

8 Q. So, you cannot have any access to any of the
9 Judgment in the Judicial system in Perú...?

10 A. (inaudible).

11 Q. I haven't finished. You cannot access any of
12 the Judgments handed down by the Third Civil Chamber
13 of Perú unless you are the lawyer for one of the
14 Parties?

15 A. That is correct.

16 Q. Okay. Kaloti is a party to a proceeding.
17 Kaloti gives you a number of documents, but not
18 others. Is that what you're saying?

19 A. I'm not saying that. What I'm saying is
20 that I have had no access to this information.

21 Q. Did you ask [REDACTED] permission to make a
22 decision on this 11 October 2018 Ruling?

1 A. That's not necessary because Kaloti is my
2 client through WDA. It is Party to those proceedings.

3 Q. Kaloti is also Party to these proceedings.

4 A. Yes, of course, it is.

5 Q. Kaloti did not provide to you this Judgment.

6 A. I have not seen this Judgment. That's my
7 answer.

8 Q. Okay. So, Kaloti didn't provide you with
9 this Judgment, okay. I understand.

10 Based on we see on the screen--and I'm not
11 asking you to certify the authenticity of a document
12 that was not provided to you by your client, but
13 evidently this is part of a case file, and your client
14 is a party to that proceeding, based on the Decision
15 made by the Chamber. It says here that it confirms
16 the Judgment contained in Resolution 46 of
17 23 September 2009, so then the Contract was terminated
18 between Kaloti and [REDACTED].

19 A. I cannot rule on documentation, the origin
20 of which I do not know. The State of Perú is not a
21 party to those proceedings. I'm being shown a
22 document by a party that was not a party to those

1 proceedings, so this would entail professional
2 liability for me.

3 Q. You've said that. Do you know where
4 Mr. Missiego refers to this in his First Report?

5 A. He mentions this in his Second Report.
6 Well, maybe in the First Report, I don't know, the
7 First or Second.

8 Q. I'm telling you it was the First Report,
9 sir. I can show it to you. Do you remember the
10 Professor Missiego made reference to this in detail,
11 in some detail in his Report?

12 A. Could you please show that to me?

13 Q. Yes, of course.

14 Let's look at Paragraph 149, 149 to 151, and
15 then the conclusions in 152.

16 You see that reference is made of this
17 Judgment of 14 June 2022.

18 A. Yes.

19 Q. Do you not see this in Mr. Missiego's
20 Report?

21 A. Yes.

22 Q. Didn't you think it was important to refer

1 to this in your Second Report and in your presentation
2 today?

3 A. No, because I'm not conducting an analysis
4 on the Civil Judgment handed down in that case. When
5 I read this in Mr. Missiego's Report, it struck me how
6 is it that Mr. Missiego had information of a case of
7 which he is not a party? This is a case between
8 Kaloti Metals and [REDACTED]. The State of Perú is not a
9 party to those proceedings. That is what Mr. Missiego
10 asserts and he is going to explain then the origin of
11 the document.

12 Q. You insist that you have not been called to
13 give an opinion on this, but you did give an opinion
14 on the effects of a Civil Judgment. Then you issued
15 an opinion in connection with the Civil Judgment, but
16 when I asked you about another proceeding, then you
17 said that you cannot opine on it. Am I understanding
18 this correctly?

19 A. No, you're not understanding this correctly.
20 When I examined this initially in my First Report, I
21 had access to the first ruling, but I cannot issue an
22 opinion on documents in the same case when the origin

1 is not clear. This would entail for me criminal
2 liability if I then issued an opinion on that.

3 Q. Okay. I think it's clear now of what you
4 received, what you didn't receive, what your client
5 provided to you, what it didn't, and you considered
6 that this limits your opinions.

7 Okay. Let's move on.

8 You're an expert on compliance; right?

9 A. Well, yes, but I haven't prepared a report
10 on compliance. I have prepared a report on criminal
11 and criminal procedure law.

12 Q. Okay, very well. Let's look at the Second
13 Report, paragraph 4.2, page 12.

14 A. First or Second Report?

15 Q. The Second Report.

16 A. What page?

17 Q. Page 12, Paragraph 42.

18 And here it says of the documents that were
19 provided in the case file of this arbitration, and
20 that we were able to examine to prepare this Report,
21 we were able to conclude that Kaloti took all the
22 Measures it had at its disposal to avoid enter into

1 contracts with illegal gold Suppliers. Let us see
2 what the Measures taken by Kaloti were.

3 But, before we do that, and before we look
4 at the facts, I would like to understand what Measures
5 you, as a legal expert and as a compliance expert,
6 consider should be taken by a purchaser of gold. If
7 you were to provide advice to a client that tells
8 you--that want to purchase gold, you're going to then
9 perhaps ask the Client a number of questions; right?
10 And you can say, "okay, I can tell the Client this or
11 this or it's not necessary, et cetera." Would you
12 advise the client to verify the origin of the ore?

13 A. I'm not understanding your question. You're
14 asking me questions as a mining law expert, as a
15 compliance expert, as a criminal law expert?.

16 Q. Well, I'm asking you in your areas of
17 expertise. The ones you just said and the ones you
18 said in your report which was the condition in which
19 you were appearing in this arbitration.

20 A. Okay. Let me try to answer your question.
21 I provided a criminal law report and criminal
22 procedure. I am not an expert in Mining Law. I'm not

1 an expert on Contract Law. I'm a compliance expert,
2 but my Report is not a Compliance Report.

3 But I can answer your question on the basis
4 of my experience.

5 Q. I'm asking you about your conclusions in
6 both of your Reports. We were able to conclude that
7 Kaloti took all the Measures available to it to avoid
8 contracting with Suppliers of illegal gold. So I want
9 to understand, in your opinion, what Measures Kaloti
10 took to make sure of that.

11 As a legal expert that reached this
12 conclusion, let me ask you this: If you have a client
13 that asks you for advice as to the Measures it has to
14 take to make sure of the origin of the gold, would you
15 advise to the Client to determine the origin of the
16 mineral?

17 A. Yes. That's fundamental.

18 Q. Also to ask for the RUC or identity
19 documents of the Seller?

20 A. Yes. Because of "know your client," you
21 need to have that information.

22 Q. Okay. So, your answer is "yes."

1 A. Yes.

2 Q. Also the date of the mining concession from
3 which the ore comes?

4 A. That depends.

5 Q. Okay, "depends." We'll come back to that.

6 The authorization to operate that mining
7 concession?

8 A. Depends.

9 Q. Okay, "depends" again.

10 The payment vouchers for the ore?

11 A. That depends on what do you call payment
12 vouchers.

13 Q. Okay. Weight, characteristics of the ore?.

14 A. That's something fundamental in a purchase
15 and sale, the identification of the good.

16 Q. Okay. And then the waybill and the
17 transportation used?.

18 A. That depends.

19 Q. What about keeping a record of all of the
20 information and the documents?

21 A. Yes, of course.

22 Q. Were you familiar with--and let's put on the

1 screen R-49.

2 This is Legislative Decree 1107. You're
3 familiar with this Legislative Decree; right?

4 A. Yes.

5 Q. And Article 11, you're familiar with it, of
6 course?

7 A. Yes. Of course.

8 Q. You do not cite this Article in any of the
9 Reports.

10 A. I have not provided a report on Mining Law.

11 Q. But you do know what Article 11 says.

12 A. Yes, of course.

13 Q. And all of the information that I indicated
14 to you, that's expressly shown in Article 11.

15 A. Can you please show it on the screen?

16 Q. Now, this is important, and I'm going to
17 read it for the record, and we need to contrast this
18 with what Kaloti does. "All purchasers of mining
19 products subject to control and supervision in the
20 framework of this Legislative Decree, regardless of
21 their condition, whether the acquisition is made
22 temporarily or permanently, must verify the origin of

1 such products, requesting the relevant documents, and
2 it must verify the authenticity of the data recorded
3 in the relevant information systems."

4 "The minimum data to be verified will be the
5 following: RUC, company name, given name and last
6 name, identity document, actual address of the Seller
7 of the mineral, unique Concession Code and its
8 validity from where the mineral comes from, and
9 exploitation authorization, the data contained in the
10 payment vouchers specifying their description and the
11 data of the traded good (weight, characteristics and
12 condition), and also data on the waybill and identity
13 of the carrier."

14 This is the framework, the context that I'm
15 giving you. Let us look at the Measures that Kaloti
16 took and that are included in the file and that you
17 said you reviewed.

18 You said that Kaloti--and, of course, I'm
19 making reference to Paragraph 4.2 of your Report, your
20 Second Report, Page 12, you said Kaloti invested time
21 in talks, seminars and trainings for Kaloti's team
22 members. And also it used resources for Compliance

1 Programs and for the detection of AML.

2 And you cite six exhibits here. Let us look
3 at C-25, first. You cite six exhibits. This is the
4 AML/CFT program. Do you remember that?

5 A. Yes.

6 Q. You reviewed this; right?

7 A. Yes.

8 Q. So, you know what Kaloti said should happen
9 internally.

10 A. Yes.

11 Q. Do you know the date of this Manual?

12 A. I do not recall the date.

13 Q. Please let's highlight it on the screen.

14 A. Yes.

15 Q. Did you see a Compliance Manual by Kaloti of
16 a different date?

17 A. No. That's the one I've seen.

18 Q. You don't know whether there was another
19 Compliance Manual that Kaloti had before this date?

20 A. No.

21 Q. So, you haven't looked at any other--you
22 haven't been provided with any other Manual?

1 A. No.

2 Q. Do you remember the date of the Five
3 Shipments, the subject matter of this Arbitration?

4 A. Yes, I remember.

5 Q. Let me repeat because I was told, it seems
6 that it's not on the record.

7 So, the date of the compliance manual is 2018, based
8 on what I see here on the screen and that Mr. Coria
9 confirmed, and again this is an attachment to his
10 Report, an Annex to his Report, and this is a Manual
11 in English, but you're telling me that you understand
12 English.

13 A. Yes.

14 Let us look at the second document, C-26.

15 MR. GRANÉ LABAT: We don't have this in
16 Spanish. I am being told that the cover page in
17 Spanish is not any different, and let's see what it
18 is.

19 BY MR. GRANÉ LABAT:

20 Q. And this is what you are citing in your
21 Report, and the Investment of Kaloti in training,
22 staff training. Let's see what we find. We see here

1 a picture of Mr. [REDACTED], and I assume other
2 representatives from the Kaloti firm. We also see the
3 logo, this seems to be a public event. We see some
4 people having a conversation, smiling. And then we
5 have some electronic emails, invoicing in connection
6 with the cost of Kaloti's participation in that
7 symposium.

8 Do you recall that?

9 A. Yes.

10 Q. And the date of the symposium, if we go to
11 Page 8 in the PDF, Page 8, let's see if we can
12 increase the font. The email, that is again--let's
13 see who is sending this. This is Kaloti Metals. This
14 was sent March 21st, 2014, and this is referring to a
15 symposium in Perú, and it is saying also sponsorship
16 payment, and here it says [REDACTED], we understand is
17 [REDACTED], who is an official with Kaloti and it
18 says information for the first payment for the
19 May 2014 symposium, but then there is "exhibition" as
20 a note. They rather clarified that this was an
21 exhibition.

22 Do you see that?

1 A. Yes.

2 Q. And now, let us look at another Annex, and
3 that is C-29. You also cite this in your Report.
4 Once again, I understand that the cover pages are the
5 same. And here it says "Kaloti assaying operations of
6 gold and silver in Peru". And if we scroll down, we
7 see some individuals in an office. We do not see
8 their faces. We see some gold ingots.

9 Do you recognize these pictures?

10 A. Yes. They are the ones that I saw before.

11 Q. Do you know who these individuals are?

12 A. I understand that they are SUNAT's
13 officials, are they?.

14 Q. I don't know. I'm asking you.

15 A. I would say so, yes.

16 Q. So, you are the one who attached these
17 pictures to your Report, so I assume you are familiar
18 with this?

19 A. I understand that that would be the case.

20 Q. So, you understand that they would be
21 SUNAT's officials.

22 A. Yes.

1 Q. Where were these pictures taken?

2 A. I do not know.

3 Q. But this is an attachment to your Report.

4 You did not ask your client before attaching this?

5 A. This is at the warehouses.

6 Q. At the warehouse.

7 A. I understand that the Company had the
8 warehouses in Hermes.

9 Q. So, this is Hermes' deposit warehouse;
10 correct?

11 A. Yes.

12 Q. What date were these pictures taken?

13 A. I don't know the date of this picture.

14 Q. So, you do not know whether these pictures
15 were taken, for example, in 2018, could it be?

16 A. I do not know.

17 (Pause.)

18 Q. Let us now look at the other annexes that
19 you referred in this paragraph.

20 PRESIDENT McRAE: Are you moving to another
21 topic? Because we should be taking a break around
22 now.

1 MR. GRANÉ LABAT: I think we can take the
2 break now, Mr. President, because I anticipate that we
3 will spend some time on the other annexes that we have
4 here. Thank you.

5 PRESIDENT McRAE: All right. Let's take a
6 break for 15 minutes.

7 And Dr. Caro, you are giving your testimony
8 and, therefore, according to your Declaration, you
9 should be independent and, therefore, cannot make any
10 contact with members of the Claimant's team. In fact,
11 I think there is a room, if you can be taken to so you
12 can get coffee and whatever you need to refresh
13 yourself. But we're back in 15 minutes.

14 THE WITNESS: Thanks.

15 (Recess.)

16 PRESIDENT McRAE: I think we're ready to
17 resume; but, in doing so, I would just like to
18 reiterate that the interpretation is having a lot of
19 difficulty because you're speaking together at the
20 same time. I'd really ask both counsel and the
21 Witness to pause after you've heard a response before
22 you ask the next question or before you make a

1 comment, wait after the question, Dr. Caro, wait after
2 the question for a short time so the interpretation
3 can finish. Otherwise, the interpretation is about
4 three or four sentences behind what is actually
5 happening between you, so it would certainly assist us
6 if could try to remember. I know it's difficult. I
7 understand it's not an easy thing to do, but please
8 try.

9 Thank you.

10 MR. GRANÉ LABAT: Thank you, Mr. President.
11 My apologies to the Tribunal, the Interpreters and the
12 Court Reporters, I will do my best. And it often
13 happens when you speak the same language with the
14 Witness or the Expert, so my apologies. Please do
15 shout if I'm not able to adhere to that rule.

16 Let me move on to Spanish.

17 BY MR. GRANÉ LABAT:

18 Q. We were going into some questions about what
19 you said at Paragraph 4.2, we see a list of exhibits
20 that you were referring to, to premise your
21 conclusion. But, before continuing with that line of
22 questions, I would like to go back briefly to

1 something that you said in response to this Decision
2 by the Civil Court, you said you didn't see it because
3 your client did not share with you the Decision or the
4 Judgment, rather..

5 I asked you, "is this a judgment by the
6 Third Chamber of the Civil Court? Are these Judgments
7 public?" And you said "no." And I asked you: "You
8 cannot have access to any Judgment by the Third
9 Chamber of the Civil Court if you are not an attorney
10 for any of the Parties?" And you said: "That is
11 correct." And this is at 10:14 this morning in the
12 Transcript. And I would like to understand this
13 better.

14 Are you familiar with the "consulta de
15 expedientes judiciales" ("consultation of judicial
16 files")? As a matter of fact, you referred to that
17 software to consult decisions, judgments, and you
18 refer to that at 10.2 in your Report. Did you have
19 access, or did you use that tool to consult these
20 legal judgments?

21 A. Could you please repeat your question?

22 Q. Since you did not have your mic on, I do not

1 think that they recorded your answer. I need to go
2 back to the first question.

3 My question is whether you are familiar with
4 the system called "consulta de expedientes judiciales"
5 ("consultation of judicial files")? The software to
6 consult, to query legal judicial judgments.

7 A. Yes.

8 Q. And you referred to this at Paragraph 10.2
9 of your First Report.

10 A. Yes.

11 Q. Now, my question is whether you entered into
12 that or you logged into that system before preparing
13 your Report.

14 A. Sorry, were you referring to 10.2 in my
15 Report?

16 Q. Yes, from your First Report.

17 A. Where?

18 Q. We can show it on the screen, but it's the
19 part that starts with: "it is important to know that
20 as a result of the inquiries made regarding..."
21 etcetera.

22 A. Yes.

1 Q. Then you inquired about this File 15.8.8.3,
2 and to that end, you used the computerized system of
3 the Superior Court of Justice of Lima; correct?

4 A. Correct.

5 Q. And based on that inquiry, you heard of that
6 Judgment of September 23rd, 2019?

7 A. Correct.

8 Q. And anyone in Perú may log into this system
9 to check; correct?

10 A. It depends.

11 Q. What does it depend on?

12 A. Let me explain to you: Judgments, criminal
13 judgments, are public. Civil-case judgments are not
14 public. They are only known to the Parties. And even
15 though the system may be used by third parties, that
16 does not mean that the decisions are public. So,
17 there is also a security breach that several counsel
18 have mentioned. There is not something that is
19 normal, for anyone to have access to information in
20 connection with the file in which they are not a
21 party. That's what I mean and why it depends.

22 Q. Let's try to be specific. We're talking

1 about 15883, that file, the first part. You said you
2 made inquiries on that.

3 A. The second part, yes. Correct.

4 Q. You said you conducted an inquiry on that.
5 That's the second part.

6 The third part is that you found out that,
7 on 23 September 2019, a judicial sentence was issued
8 in the context of that file. Do we agree so far?

9 A. That's correct.

10 Q. So, you did have access to this inquiry
11 system regarding judicial decisions issued in the
12 context of this file; correct?

13 A. Up to that point, yes.

14 Q. If you were to enter into this file
15 consultation system right now, would you be able to
16 find judgments from that same Third Chamber in the
17 context of this file for after September 23rd, 2019?

18 A. It's probable. It's likely.

19 Q. If we were to enter into the website of the
20 system now, do you know whether we would find
21 judgments from after September 23rd, 2019?

22 I'm not done yet.

1 A. I'm sorry.

2 Q. You don't know if there would be decisions
3 from after 23rd September 2019? That's what you say?

4 A. That's correct.

5 Q. Well, we could do that exercise. We could
6 go on to the website and do a search for those
7 judgments. That's something that I'm proposing for
8 the consideration of the Tribunal as well as for the
9 consideration of the other Party.

10 MR. DÍAZ-CANDIA: That would be actually
11 taking of evidence, practicing evidence during the
12 Hearing, and then we will have no way of controlling
13 or exercising or right to due process on that
14 evidence. This Hearing is for witnesses and experts,
15 not for actual taking of evidence that is not on the
16 file.

17 (Tribunal conferring.)

18 PRESIDENT McRAE: I'm not sure that it is
19 doing anything other than checking what is said in
20 this his Report, but on the other hand I'm not sure
21 that I think it's really necessary to do that. I
22 understand what he said, I understand the questions,

1 and you can both draw the conclusions you like in your
2 concluding statements about what the Witness has said,
3 and the implications of it, but I don't think we need
4 to go through that test. Thank you.

5 MR. GRANÉ LABAT: Thank you very much,
6 Mr. President. As always, we are happy to defer to
7 the Tribunal, and we will, therefore, move on. We
8 will not insist that therefore ongoing line based on
9 those considerations of efficiency.

10 Thank you.

11 BY MR. GRANÉ LABAT:

12 Q. Let's go back, then, to the Second Report
13 Paragraph 4.2, Page 12. We have seen some of the
14 exhibits already. Let's take a look at some of the
15 other ones.

16 You say--and here is the text for it--that
17 KML investigated--again, I'm sorry, I was referring to
18 Kaloti. "Kaloti investigated the gold Sellers and
19 requested documents regarding the origin of that
20 gold." That's the end of the quote. And then, you
21 cite some of the exhibits, and I would like us to
22 continue to look at them.

1 The first one is C-127. Please show it on
2 the screen. And as you can see, here, if we scroll
3 down a bit, please, these are certificates of deposit
4 in the custody of CONABI and the documentation for the
5 delivery of the gold shipments. And it says that
6 these were issued by the Banco de la Nación as a
7 consequence of SUNAT's Immobilization of Shipments 1
8 through 4; correct?

9 A. Yes, that's what I see.

10 Q. And for the benefit of the Tribunal, can you
11 explain what CONABI is, not the explanation of what
12 the institution is but what the abbreviation refers
13 to?

14 A. I don't remember exactly, but they are in
15 charge of the management of seized goods.

16 Q. It's the National Commission of seized
17 goods. Now, you will agree that this document is not
18 related to the alleged investigations or research by
19 Kaloti regarding the Sellers of the gold or the origin
20 of that gold; correct?

21 A. This document is related to custody.

22 Q. Okay. Let's show on the screen another

1 document you cite, C-130. These are documents on due
2 diligence prepared by Kaloti regarding the Company
3 known as "██████" And, as you probably know, they
4 delivered Shipment 2; is that correct?

5 A. Yes, that's correct.

6 Q. And the exhibit you see on the screen
7 contains three documents. Two are IDs of Shareholders
8 of ██████--and here, we can scroll down slowly on the
9 screen--and the RUC of that company.

10 A. That is correct.

11 Q. And, for the record, that is Perú's Taxpayer
12 Unique Registry.

13 A. Yes.

14 Q. This Exhibit C-130 contains waybills for
15 Shipment No. 2?

16 A. I'm sorry, what's the exhibit?

17 Q. It's C-130. It contains waybills for
18 Shipment 2?

19 A. No.

20 Q. Okay. It contains or indicates the
21 Concession Code for the mines from which Shipment 2
22 was coming?

1 A. No.

2 Q. Does it contain the authorization for the
3 operation of the mines from which Shipment 2
4 supposedly was extracted?

5 A. No.

6 Q. Does it contain the environmental
7 certification for the mines?

8 A. No.

9 Q. It has no information regarding the origin
10 of the gold contained in Shipment 2 to show and
11 demonstrate its origin?

12 A. I didn't understand the question.

13 Q. Does it contain a document to provide
14 support for the origin of the gold in Shipment 2?

15 A. No. These are ID documents for [REDACTED]
16 staff.

17 Q. You say you reviewed the documentation in
18 this file. Do you remember seeing some communication,
19 any documents that show that Kaloti requested
20 information about the origin of Shipment 2?

21 A. As I've mentioned, it was not a report on
22 compliance that I provided. I did not look for that

1 information because it wasn't the subject of my
2 Report.

3 Q. But, in your Report, you reached conclusions
4 regarding the origin of the gold and the due diligence
5 conducted by Kaloti, and you conclude that that due
6 diligence was adequate, satisfactory, and complies
7 with Peruvian law, so I ask you: In order to reach
8 those conclusions, did you ask Kaloti and have you
9 seen in the record for this Hearing any request by
10 Kaloti for information regarding the origin of the
11 mine--of the gold in Shipment 2?

12 A. Which one are you referring to?

13 Q. Well, we're still on Paragraph 4.2 of your
14 Second Report. Toward the end of the paragraph it
15 says: "KML also investigated the Sellers of the gold
16 and requested documents on the origin of the gold."
17 That's your conclusion, as I understand?

18 A. Yes. Correct.

19 Q. And you made that based on documents you
20 reviewed?

21 A. Yes, that's correct.

22 Q. And you cite the documents on which

1 you based that conclusion; correct?

2 A. Yes, that's correct.

3 Q. Then the question--I will repeat the
4 question--is: In order to reach that conclusion, did
5 you obtain any documents supplied by Kaloti that shows
6 that Kaloti requested information to prove the origin
7 of the gold in Shipment 2?

8 A. In addition to the documents that are
9 mentioned here, let's remember that there's more
10 information regarding the customs process that had
11 begun, so we need to take into account also that set
12 of documents that is in the corresponding records.

13 Q. But that wasn't my question. I'm asking you
14 about what you're citing here as the basis for your
15 conclusion. Let's continue looking at other
16 documents, but what I'm asking is for you to tell me
17 whether you got from Kaloti any information that shows
18 that Kaloti asked [REDACTED] to prove the origin of the
19 gold that was contained in Shipment 2.

20 A. No.

21 Q. Okay. Let's look at another example that
22 you cite, Exhibit C-132. These are due-diligence

1 files prepared by KML for the [REDACTED] Company. As
2 you know, that was the Supplier of Shipment 3. Do you
3 remember?

4 A. Yes.

5 Q. This exhibit--and we will show it on the
6 screen--let's please go to Page 7--it includes a
7 declaration of commitment related to the mine from
8 which the gold in this Shipment 3 was allegedly mined.
9 And it is under the name of "Manuel Valdiviezo
10 Guevara." Correct?

11 A. Yes, that's what I can see there.

12 Q. And that exhibit also contains a copy of the
13 RUC, the taxpayer registration of [REDACTED], listing
14 representatives and other people connected to the
15 Company? Correct?

16 A. Yes.

17 Q. And Mr. Manuel Valdiviezo Guevara is not
18 shown here. His name is not here as a representative
19 of [REDACTED]; correct?

20 A. Correct.

21 Q. When you look at this document, when you
22 reviewed it, did you notice that the titleholder

1 supposedly for the mine, the person under whose name
2 it was, was not related to [REDACTED]?

3 A. Is that a question or a statement?

4 Q. It's a question. You can answer "yes" or
5 "no."

6 A. Can you repeat the question?

7 Q. When you reviewed this document, did you
8 notice that the person, under whose name the mine
9 supposedly was, doesn't seem to have any relationship
10 with [REDACTED]?

11 A. Can we look at the document again?

12 Q. Yes, we can do that, and you can adjust the
13 speed through it--which we go through it.

14 A. Yes.

15 Okay. I see it, yes. He does show up
16 there, if I'm understanding correctly, as someone
17 linked to the Concession.

18 I'm sorry, just so I can answer your
19 question.

20 Q. Yes, I'm talking about links to [REDACTED].

21 A. Let me look at the entire document, please.

22 (Witness reviews document.)

1 A. Yes, that's correct, yes.

2 Q. Okay. The question refers to him being
3 shown as being linked to [REDACTED]; is that the
4 case?

5 A. Not on this document.

6 Q. This is a taxpayer registration--I think
7 it's Page 18--gives a starting operations date for [REDACTED]
8 [REDACTED] of June 7th, 2013; correct?

9 A. Give me a moment, please.

10 (Witness reviews document.)

11 A. That's what the document says, yes.

12 Q. And that's just seven months before Kaloti
13 allegedly acquired Shipment 3; correct?

14 A. Yes.

15 Q. Let's briefly go back to the Compliance
16 Manual you reviewed and that you cite in your Report
17 as a basis for your conclusion. That was C-25. Let's
18 go back to it.

19 You remember that Compliance Manual--and I
20 can show you the page--identified a red flag, if the
21 Supplier company was of recent creation. Do you
22 remember that?

1 A. Yes.

2 Q. Okay. Then there is no need to show it on
3 the screen.

4 And the single taxpayer registration, the
5 RUC shows that [REDACTED] had not had any foreign
6 trade activities.

7 Do you see that?

8 A. Where is it, please?

9 Q. On the right of the screen. We will
10 highlight it on the screen. It's in two places.
11 We're showing the first part, and it's highlighted on
12 the screen, where it says "sin actividad," no
13 activity.

14 We can also go to the next-to-last page,
15 please. Agustin, there on the right, also says
16 foreign trade activities "sin actividad," no activity.

17 A. Yes, correct.

18 Q. And you recall that the Compliance Manual of
19 Kaloti established as another red flag lack of
20 experience of the Supplier?

21 A. Yes, correct.

22 Q. Very well.

1 You conclude, or you consider--and correct
2 me if that's not your opinion--that there were slight
3 indicia, slight indications--that's something you
4 use--of the illicit origin of the gold, and these were
5 used to justify the seizure, and I'm telling you this
6 because I have a question about this. Is that your
7 opinion, that the indicia were slight?

8 A. Yes, that's correct.

9 Q. And you reviewed each one of the judicial
10 Decisions in the Criminal Proceedings against the
11 Suppliers before reaching that conclusion?

12 A. I reviewed the information that is attached.
13 For my First Report, I reviewed partial information.
14 For the Second Report, based on the information in the
15 Report of the Peruvian Expert, I've been able to look
16 at a very orderly sequence of each one of the
17 Decisions issues at the administrative and at the
18 judicial levels.

19 Q. Let's go, then, to some of those decisions,
20 and just to understand what it is that you looked at.

21 Have you looked at judicial decisions for
22 the preliminary seizure action during the Preliminary

1 Investigation phase?

2 A. Yes, that's correct.

3 Q. And you saw also the Orders for beginning a
4 Preliminary Investigation in the four proceedings?

5 A. Yes, that's correct. All of those were
6 attached to the Report by the Peruvian Expert.

7 Q. Fine, but I don't think that has any
8 relevance to what we're talking about, whether it was
9 attached by Professor Missiego or not to his Report
10 has nothing to do with whether you looked at these
11 exhibits.

12 A. Yes, I've reviewed them as exhibits. That's
13 correct.

14 Q. Let's look then at some of the ones that
15 you've reviewed. Let's look at the Order to initiate
16 an investigation for the Criminal Proceeding against
17 [REDACTED] and its representatives. That's Exhibit R-145.

18 On Page 3 of that judicial decision, there
19 is a section on indicia found in the inspection and/or
20 verification of the documentation submitted by the
21 Company, [REDACTED].

22 Do you see that?

1 A. Yes, that's correct.

2 Q. And, on Page 4, this Criminal Court
3 explains--and I'll read it, but I will wait until we
4 can see it on the screen, and I will read it slowly
5 for the Interpreters.

6 You see that the purchase of the
7 acquisitions was not done through the financial
8 system, so they have not entered the bank system, as
9 we can see in the following table. And there is a
10 table, and it shows eight transactions that were not
11 done through the bank systems for over
12 three-and-a-half million dollars.

13 Do you see it?

14 A. Yes.

15 Q. And you see on the next page, there's an
16 explanation that Peruvian law establishes that
17 operations for an amount greater than PEN 3,500,
18 that's the equivalent of about \$1,000, must be
19 recorded in the financial system through means of
20 payment.

21 Do you see that?

22 A. Yes.

1 Q. Again, with what the Court is telling us, on
2 Page 7, there is a list of those people who supposedly
3 mined that gold from mining concessions and delivered
4 it to [REDACTED]. Let's look, for example, at the name of
5 one Seller, Roberto Carlos Paría Navarro, who
6 supposedly mined and sold 12,257 grams of gold to
7 [REDACTED].

8 Do you see that on the screen?

9 A. Yes, that's correct.

10 Q. And on Page 9, continuing with this Order,
11 there is a reference to the Witness Statement of this
12 alleged Seller, Roberto Carlos Paría Navarro. Do you
13 remember what his statement was?

14 A. Let me read it, please.

15 (Witness reviews document.)

16 Q. And if that makes it easier for you, I can
17 tell you. If you don't remember--because this is not
18 a test of your memory, Mr. Coría, so if at any time
19 you need me to show a document, I can do it.

20 A. Okay. I read it.

21 Q. This man who supposedly sold gold to [REDACTED],
22 who later sold significant amounts to Kaloti, says

1 neither the signature nor fingerprint that appear in
2 the Declaration of Commitment Form filed with the
3 DREM, which was shown to him, belonged to him. So,
4 that's his statement, he says it did not belong to
5 him.

6 And I'll ask you, when you answer my
7 questions, to say "yes" or "no." Because if you say
8 um-hmm, then that can't be recorded.

9 A. Yes, I understand.

10 Q. And, in fact, this man, Mr. Paría, says that
11 he has not been involved in any mining activity; is
12 that correct?

13 A. From what I see here, yes.

14 Q. Let's look at another alleged Seller.

15 René Luis Huamán Talla. He says that the
16 signature and the fingerprint on the Declaration of
17 Commitment Form filed by [REDACTED] is his--he says that
18 neither one is his.

19 Do you see that?

20 A. Yes, I see that.

21 Q. And I'm spending some time on [REDACTED] because
22 [REDACTED] is a significant Supplier in terms of volume.

1 On Page 11, we see a reference to
2 another--Witness Statement by another alleged Seller,
3 Delfín Germán Calapuja Mamani. Let's look at the
4 second bullet point under that statement, and it
5 starts with "His Godfather."

6 "His Godfather told him they were going to
7 Puno, not telling him why, but he traveled with him
8 and they went to the Office of Energy and Mining," and
9 in said commitment document, "it reported that I had
10 extracted gold from the mining Concession 'Medalid
11 IV,' which had then been sold to the Company ██████████
12 ██████████, stating that I do not know this place."

13 That is to say, even the alleged Sellers to
14 ██████████, regarding Shipment 2, have declared that
15 neither one of them had mined gold from that mining
16 Concession, and that in some cases their signatures
17 and their fingerprints had been falsified, had been
18 faked, and the Seller admitted that he wasn't even
19 familiar with the mining concession from which,
20 supposedly, he had extracted that gold.

21 A. Correct.

22 Q. And then on Page 12 of that same decision,

1 you see that the Court refers to the fingerprint
2 report, Expert Report, issued by the Office on
3 Criminal Science.

4 A. Correct.

5 Q. And that test conducted by authorities
6 concludes that there is nothing that corresponds to
7 these people, Roberto Carlos Paría Navarro or the
8 others, which means that the names have been replaced
9 in order to be able to file before ICA that
10 Declaration of Commitments to justify or support in
11 some way a legal origin for the seized gold.

12 So, this concludes that the documents that
13 were provided to the Authorities by [REDACTED] were not
14 authentic, which confirms what was stated by the
15 alleged Sellers; correct?

16 A. That's correct.

17 Q. And this that we have seen in this legal
18 order that you've reviewed and you cite in your Expert
19 Opinion, this did not come from SUNAT; correct? These
20 were not documents that SUNAT took. They did not take
21 the Witness Statements, they did not conduct the
22 expert tests on the fingerprints or anything; correct?

1 A. I'm sorry, the documents and the files to
2 which they refer are from the Prosecutor's Office,
3 Public Prosecutor's Office, not before a judge.

4 Q. Thank you for specifying that.

5 On Page 15, number 3.5 of the same Order
6 regarding ██████, the Court refers to a document sent
7 by the Regional Office on Energy and Mines of Puno.

8 You know Ica and Puno are two different
9 regions. Correct?

10 A. Yes, of course.

11 Q. Do you know the distance between the two
12 regions, approximately?

13 A. Not exactly.

14 Q. Do you think it might be hundreds of
15 kilometers or thousands of kilometers?

16 A. Hundreds of kilometers between them.

17 Q. 400, 500?

18 A. 500, maybe a little bit more.

19 Q. This is not a test of your memory nor is it
20 a geography test. We just wanted to know
21 approximately, so for this distance you might need to
22 drive 17 hours?

1 A. Or one hour in a plane.

2 Q. Or one hour in a plane.

3 So, I was saying that we'll go to
4 Page 15, No. 3.5. I was saying that the Court refers
5 to a letter by the Directorate of Energy and Mines of
6 Puno, and they conclude that "Medalid IV," this mining
7 concession, has not been operating since October 26,
8 2012, so it's highly unlikely that any gold was
9 extracted from that Concession. Do you recall that?

10 A. Yes, I remember.

11 Q. It says also that, even more so, in the
12 unlikely assumption that--that is to say, assuming
13 that it wasn't canceled--if gold had been extracted,
14 that extraction will fall within the scope of the
15 crime of illegal mining.

16 A. Let me read it, please.

17 Q. Page 15, Paragraph 3.5.

18 A. Could you please scroll up. I wanted to
19 know how 3 begins, how Section 3 begins. I want to
20 see how Section 3 begins, the first paragraph of
21 Section 3.

22 Yes, that's correct. Right.

1 Q. Very well. I'm glad that you took us to
2 this paragraph, sir. It says: "To date, the legal
3 origin of the gold ore subject to seizure has not been
4 proven as documented from documentation collected and
5 procedures carried out at the police headquarters,"
6 "[REDACTED] HAS FAILED TO PROVE THE LEGAL
7 ORIGIN OF THE GOLD ORE SUBJECT TO SEIZURE." And that
8 is the heading that is the beginning of all these
9 pieces of evidence.

10 A. Yes.

11 Excuse me, just a small favor. Could we
12 look at the very beginning of this resolution?

13 Q. Yes, of course.

14 A. (Pause.) Yes, that's right. I just wanted
15 to have context.

16 Q. Yes, of course. It's important.

17 Let us look at the [REDACTED] proceedings and
18 the Order opening the investigation. Here, it says
19 that there are pieces of evidence that related to the
20 accused. Let us now go at Page 14.

21 There, the Court is making reference to an
22 inspection it conducted in the "Mi Buena Suerte"

1 Concession. And [REDACTED], as you remember, is Shipment
2 No. 1. Reference is made to the "Mi Buena Suerte"
3 Concession Area. This mine, "Mi Buena Suerte," is the
4 mine that was the origin of the gold in Shipment
5 No. 1. This is what [REDACTED] has said.

6 A. Yes, I recall that.

7 Q. Now, the Court indicated that, during the
8 inspection, no workers, equipment, or means of
9 transportation were found carrying out mining
10 activities in the "Mi Buena Suerte" Mining Concession.
11 This is at Page 14. I just read that quote.

12 Do you see that?

13 A. One moment.

14 Q. My colleague is highlighting it in the
15 Spanish. This is Page 14.

16 A. Yes, correct.

17 Q. It also explains that there are no tailings,
18 residues or metallurgical processes that prove that
19 gold ore has been processed in the inspected area.

20 Do you see that?

21 A. Yes, I read that.

22 Q. The Court included as another indicia, as a

1 fact that has been evidenced, in connection with the
2 Declaration for 2013 and 2012, that the Concession,
3 "Mi Buena Suerte," had been declared as a concession
4 with no mining activity; correct?

5 A. Yes, that's correct. That's what I read.

6 Q. I'm going to ask about the purpose of the
7 seizures. We cannot, of course, look at every single
8 piece of evidence in the case file but you have done
9 it, as you said in your Reports?

10 A. Yes, correct.

11 Q. In your Second Report, you say that the gold
12 is being kept by Perú. This is in your Second Report.
13 I can show it on the screen. If I misquote here, I
14 can show it on the screen, of course.

15 But you say that the gold is being kept by
16 Perú not because of an illegal acquisition, but a
17 guarantee that potential civil redress of the accused.
18 Is that your opinion? Do you recall that?

19 A. Yes, it is based on what the lawyer for Perú
20 indicated in the First Report, that the seizure had
21 the purpose of guaranteeing redress. But, in the
22 Second Report, he also said that it had to do with the

1 seizure of proceeds of the crime.

2 Q. Mr. Missiego will talk about that, but at
3 Page 7 of your Second Report, you made that statement.
4 That statement has to do with what you say Perú is
5 doing through its jurisdictional bodies. You're not
6 saying that, "according to Mr. Missiego," et cetera,
7 et cetera. That is your conclusion. That is an
8 appreciation of fact that you make. You say that the
9 gold is being kept by Perú not as an illegal
10 acquisition but to ensure the potential civil
11 liability of the accused.

12 A. Please show the Report on the screen.

13 Q. Yes, of course. It's the Second Report,
14 your Second Report, Page 7.

15 A. Just one moment, please.

16 Q. Take the time you need, sir.

17 (Witness reviews document.)

18 A. Yes, that's correct. That's right.

19 Q. Perhaps this was a misunderstanding. You
20 were responding to what Mr. Missiego was saying or you
21 were saying that the jurisdictional bodies of Perú
22 were keeping the gold, not in order to seize it but

1 for purposes of determining civil liability?.

2 A. Yes, but let me give you the context.

3 The law provides that there is a seizure to
4 determine the proceeds of the crime, and then the
5 seizure also for redress purposes. If we're talking
6 about the effects of the crime, we would have to
7 identify the perpetrator; and, when the Judgment is
8 rendered, then there could be a loss to the State--or,
9 rather, in favor of the State. Since Kaloti Metals
10 has not been charged of any crime, that possibility
11 cannot take place. There is no charges against Kaloti
12 Metals in the criminal procedures in the preliminary
13 stages or in the investigation stages. And also, that
14 did not happen in the criminal accusations issued.

15 So, the impairment that could exist for
16 Kaloti Metals, could only happen for redress purposes
17 because there is no criminal charges.

18 Q. Thank you for your explanation.

19 Let me try to understand what you're saying
20 before we move on to the document. The Court would
21 draw a distinction between the property that is being
22 seized because they are the product from an illicit

1 activity, in this case the illegal acquisition of the
2 gold, and then on the other hand, there would be
3 seized property to support a potential case of civil
4 liability; is that correct?

5 A. Yes, that is correct.

6 Q. Would that distinction be drawn in the
7 decision made by the Court?

8 A. Let me explain the grounds for this.
9 Article 102 of the Criminal Code, Paragraph 4--and I
10 can look at the paragraph. I can look at the law.

11 Q. Yes, of course, you can.

12 A. Yes. It is 102 of the Criminal Code
13 Paragraph 3. 102(3) of the Criminal Code clearly
14 provides that, for purposes of confiscation, we need
15 to draw a difference between lawful property and
16 unlawful property, and sometimes there is a mix of
17 those two, and this is not something that happens only
18 in the legislation in Perú, but there are other
19 provisions such as the Convention of the UN on
20 Organized Crime, the Convention Against Corruption, et
21 cetera.

22 So, the State must make a difference between

1 illicit property and licit property. So, the State
2 must say whether in the seizure is for purposes of
3 redress or for purposes of confiscation.

4 Q. Thank you.

5 Let's look back at the documents in this
6 case. You said that Mr. Missiego, in his Second
7 Report, clarifies something. I don't remember what
8 you said, perhaps you didn't say "clarify," perhaps
9 you said that a new argument was posited by him, but
10 in the Second Report by Mr. Missiego, Mr. Missiego
11 says that the purposes of the seizure are not only
12 related to civil redress, but they also have to do
13 with criminal matters. Is that what you said?

14 A. I don't remember in detail everything in the
15 reports of Mr. Missiego, but I remember that in his
16 First Report he emphasizes quite a bit the issue of a
17 seizure for redress purposes. In the Second Report,
18 he provides an answer to a comment made by me, and he
19 said that the seizure may also be related to a crime
20 for purposes of a seizure.

21 Q. Okay. Thank you very much. We can hear
22 Mr. Missiego this afternoon, but if we look at the

1 First Report of Mr. Missiego at Paragraph 154--

2 A. Can I look at his Report, Mr. Missiego's?

3 Q. Yes, of course.

4 If you look at the first sentence as
5 well--and I think we have that on the screen, and it
6 says here: "In this regard, as indicated above, the
7 seizure also fulfills the purpose of ensuring the
8 potential confiscation that could apply to the assets
9 that are the subject matter of the crime."

10 A. Yes, that's correct.

11 Q. So, Mr. Missiego does make reference to the
12 purpose that the seizure has, not only the purpose
13 related to civil redress.

14 Let us now look at other documents, R-224.
15 We're going to show it on the screen. This is a case
16 against [REDACTED] and the representatives of [REDACTED]
17 [REDACTED].

18 So, the seizure of the gold bars was made in
19 order to guarantee a civil redress. Is that your
20 opinion, still?

21 A. We looked at two Orders opening the
22 investigation. We've looked at them so far; right?

1 Q. Yes. We've looked at them so far; right?

2 A. Yes. So, this makes reference to two cases
3 in which the State of Perú is not a party. Here we
4 have the Office of the Public Prosecutor and the
5 accused. When you asked me about this document, I
6 said "yes," because that's what the document says.
7 But if we're going to talk about this document and if
8 I'm going to be able to provide an opinion, I would
9 have to be certain that the origin of these documents
10 is lawful. If you or the Tribunal can certify that
11 the origin of these documents is lawful, then that's
12 fine. I have read it, but for me to provide an expert
13 opinion, I would have to be sure of that.

14 And there is no security breach in the
15 computer system of the courts of Perú. The decisions
16 are not on the internet. The information is reserved
17 in accordance with the law, so you cannot really go
18 into the system to see if the information is there, so
19 I can give an appreciation, however I would need to
20 know whether the information's origin is lawful.

21 Q. Sir, in your Report, you cite and make
22 reference to this document, and you include this

1 document in your Report, and you used it to provide
2 conclusions.

3 A. Yes, because this is information that I was
4 able to read and review. But we're here at the
5 Hearing because the Reports come to life when an oral
6 statement is given, so we're at a Hearing, and these
7 considerations have to be taken into account, if we
8 look at Peruvian law.

9 Q. So, you think that your comment or your
10 clarification, warning, limitation--I don't know what
11 to call it, but you think that that's important?

12 A. It is critical, because...

13 Q. You have explained this over and over again.
14 We don't need to repeat ourselves. But you're saying
15 that it's fundamental, critical. But you have made
16 reference to these documents in your Reports, and in
17 your Reports you say nothing about this.

18 A. Let me clarify. That is why we're here at a
19 Hearing.

20 A moment ago--and I'm not going to repeat
21 what I said a moment ago, but a moment ago we
22 discussed the confidential nature of judicial cases,

1 and we talked about that in relation to a civil case.

2 Now, we are here dealing with a criminal case.

3 In a criminal case, all the files are
4 completely confidential until the oral trial, so I was
5 very surprised when I saw that these documents were
6 included in the Arbitration file. I thought that the
7 right time to explain these things was now. The law
8 says that, to have access to copies of a criminal
9 file, you need the authorization of a court, and the
10 Parties need to also discuss this. I don't know if
11 the accused have authorized the showing of these
12 documents. I don't know if there has been a court
13 order authorizing this.

14 In order for me to go line by line and
15 provide a substantial opinion, well, that's something
16 different. What I said is, okay, what you read is
17 correct, that's all. But otherwise, we would need a
18 court order saying that we have had access to this
19 information in this way. Does that exist? Does that
20 Order exist? Can you please help me with that?

21 Q. Mr. Caro Coría, you have explained this over
22 and over. My questions are very simple. You made

1 reference to documents in your First Report, and now,
2 you're saying that you cannot opine on these documents
3 because you do not know their origin. You have made
4 reference and included those documents in your Second
5 Report, but you're saying that you can no longer refer
6 to them or you cannot make comments about them because
7 you don't know the origin of those documents. Your
8 Reports contain categorical opinions.

9 A. Yes, I have categorical opinions.

10 Q. Your opinions are very categorical on those
11 documents. But when I asked you questions and I'm
12 trying to understand the reasoning behind your
13 conclusions on the basis of these documents, you're
14 saying now that you cannot make reference to these
15 matters, although you made reference to these things
16 in your Reports. And you're saying, okay, you were
17 waiting for the Hearing to make those clarifications
18 that are critical, in your opinion.

19 You know that a witness or an expert witness
20 may not be called to testify. That exists. The
21 possibility exists.

22 A. What's your question?

1 Q. I'm sure you know this because you have been
2 involved in other ICSID Arbitrations, you have been
3 here sitting in this room on the Claimant's side in a
4 different arbitration. Do you know that one of the
5 Parties has the right not to call an expert to
6 testify. So, the Expert will not have the possibility
7 of uttering fundamental aspects before the Tribunal?
8 Did you know that?

9 A. Yes, I did know that.

10 Q. In your First Report, you submitted C-90.
11 This is an Order opening the investigation in the case
12 of [REDACTED]. It is a decision of the Superior
13 Court of Justice of Callao Criminal Court dated
14 30 April 2014. This is in your First Report.

15 A. Can you please show it on the screen?

16 Q. Yes, of course.

17 You recall that this is a document that
18 you--appended to your First Report, it's an exhibit to
19 your First Report.

20 A. Yes, that's correct.

21 Q. This was not submitted by Perú; it was
22 submitted by Claimants; and it was appended to your

1 First Report; and it is an Order opening the
2 investigation?

3 A. Yes, that's correct.

4 Q. There are other decisions, court decisions,
5 submitted by the Claimants and appended to your
6 Reports--to your Report that are of a similar nature?

7 A. Yes, that's correct.

8 Q. Was Kaloti a Party to these proceedings?

9 A. No.

10 Let me explain.

11 When preparing my Report, when the set of
12 documents was given to me, I asked for them to tell me
13 whether that information was accessed in a lawful and
14 consented way. I was told that that was the case and
15 that is why I have made reference to those documents.

16 Q. What is the origin of those documents?

17 A. Well, the people from WDA should answer that
18 question. They were the ones who provided the
19 documents to me. They gave the documents to me, and I
20 asked for a confirmation that that information was
21 obtained using lawful means.

22 Q. And you were given an oral confirmation of

1 that?

2 A. Yes.

3 Q. And, for you, that was enough.

4 A. Yes. Because I work under the principle of
5 professional trust; and, when a colleague assures
6 something to me, I trust that information, the
7 veracity of that information. So, if they tell me,
8 okay, this was obtained lawfully, then that's fine, we
9 can go into the merits and look at things.

10 Q. You also appended C-94, another document
11 submitted by Claimant in the context of an Order
12 opening the investigation, a criminal investigation,
13 of 9 September 2014; and then C-91--it's a long list.
14 There is a series of documents that are similar to
15 these, and you're saying, "okay, I cannot answer
16 questions that you're--the question that you're posing
17 to me." But you're saying that you cannot answer it
18 about these documents but you can answer about other
19 documents, and you're saying that the Claimants said
20 that the origin of those documents was lawful. Is
21 that your testimony? "Yes" or "no." Please don't
22 repeat the explanation that you have provided to us.

1 I think it's very clear. You have made your
2 explanations very clear, but have I correctly
3 summarized the situation?

4 A. You're asking a concept question or a
5 factual question or an opinion question?

6 Q. Well, let's move on.

7 I'm going to show you R-224. I'm going to
8 ask questions. If you do not want to refer to this
9 document because you have not provided a warning in
10 writing, but you're presenting that warning now, I'm
11 sure you will let me know.

12 Let us look at Page 11 of this document 224.
13 This is an Order opening the investigation for [REDACTED]
14 [REDACTED]. It is the same case in connection with which
15 you submitted documents.

16 At Page 11--I'm going to show it on
17 the screen--it says that the representative
18 of [REDACTED] has not yet proven the legal
19 origin of the seized gold, and it is ordered
20 that the Precautionary Seizure continue to
21 ensure the further forfeiture of the seized
22 gold. Then, I want us to contrast that with

1 what is said above, which says: "Let a
2 preventive attachment be placed on the assets
3 owned by the prosecuted parties to cover a
4 future civil reparation".

5 Do you see the difference?

6 A. Yes, I do.

7 Q. Let us look at R-145, another Order opening
8 a criminal investigation.

9 A. Could you please show Page 1?

10 Q. This one or the other document?

11 A. This one.

12 Q. Okay. Let's show R-145, the first page.

13 Let us look at the full--

14 A. Just one moment, please.

15 I would like to see the last page. The very
16 last page, please, of this Order. Is that the last
17 page? I don't see the signature of the Judge. Am I
18 misreading this?

19 Q. Is this the last page?

20 It appears that this is the last page.

21 A. So, there's no signature by a Judge.

22 Q. Well, that's what we have on the screen.

1 A. Please scroll up. I saw a seal somewhere.
2 I thought I saw a seal in one of these pages. Please
3 scroll up.

4 It appears that there is no court seal, and
5 judicial orders, court orders, have to have the seal
6 of the Judge and of the Clerk, the Court Clerk.

7 Q. Okay. We take due note.

8 Let us now go to Page 24. It says
9 here, "in order to guarantee the payment of civil
10 damages" and it talks on the preventive attachment
11 "for the purpose of seizing assets that are known to
12 be the property of the defendants", correct?

13 A. That is what the document says.

14 Q. Okay. Let's look at Page 10 and 11. And it
15 says here "preventive seizure should be established on
16 assets property of the defendants to cover a future
17 civil reparation".

18 A. Okay, that's what the document says.

19 Q. So, you say that the Precautionary Measures
20 have to be temporarily limited; right?

21 A. In the preliminary stage, yes.

22 Q. You also maintain that by applying Article 6

1 of Law 27379, when an Order opening the criminal
2 investigation takes place, the Judge must make a
3 pronouncement about the continuation or the
4 termination of the Precautionary Measures?

5 A. That's what the law says.

6 Q. And when you looked at the Orders opening
7 the criminal investigation against the four cases
8 against the Suppliers, the Judge made a decision in
9 connection with the continuation of the seizures?

10 A. I'm making reference to the documents that
11 were appended as exhibits. I don't see the seal of
12 the Court or of the Court Clerk, so I don't know how
13 truthful those documents are, but, yes, that is what
14 the document says.

15 Q. However, you say that in the seizure that
16 was ordered under the Order opening the criminal
17 investigation, there has to be a timeline established
18 for the duration of that seizure; correct?

19 A. Yes, correct.

20 Q. And then you say that the law is very clear
21 and it allows us to see that the law does not allow us
22 to have a seizure that is valid indefinitely, that is,

1 it has indefinite duration?

2 A. Yes, that's right.

3 Q. I would like to see where this is indicated
4 expressly and clearly. Let us look at Article 6 of
5 this Law 27379.

6 MR. GRANÉ LABAT: For the record, this is
7 JM-25.

8 THE WITNESS: May I please take a look at
9 the law text?

10 BY MR. GRANÉ LABAT

11 Q. What is your version? Because there are
12 different versions, and I just want to make sure that
13 we're looking at the same one. Let us put it on the
14 screen and so you can tell us whether what you're
15 looking at is different or not.

16 A. Just a second.

17 It is same one because it was never
18 modified.

19 Q. Then could you please tell me where in
20 Article 6 you can clearly see that a Precautionary
21 Measure may not extend during the final proceeding and
22 up to the issuance or the handing down of a judgment?

1 A. This law only governs the Measures that were
2 issued in the preliminary stage. The rest is governed
3 by the Criminal Code, Criminal Proceedings Code.
4 Article 6 does not need to include a regulation to
5 that end. Article 6 is not relevant after the
6 preliminary phase.

7 Q. So, you're differentiating between the
8 preliminary phase of a Precautionary Measure and then
9 other Precautionary Measures during a different stage
10 of the proceeding; correct?

11 A. Yes.

12 Q. Now, in connection with this stage, I make a
13 note of what you just said. It is important the
14 difference, as you just mentioned. Now, let us look
15 at Article 6 as applied to the preliminary stage.
16 Where does it provide that that Measure may not be
17 maintained?

18 A. Article 6 only refers to the Criminal
19 Proceedings Code. It doesn't govern those Measures.

20 Q. You also mentioned in your First Report that
21 the subsistence of the Precautionary Measure of
22 seizure now in the Criminal Proceeding is unreasonable

1 since it goes beyond the time provided for under the
2 law. But in neither report, you refer to any law that
3 determines the period for Precautionary Measure after
4 initiation of the proceeding. Or could you please
5 tell me where you refer to that law in your Reports?

6 A. I do not refer to any law setting a period
7 of time. But, as you may know, Precautionary Measures
8 are provisional. It is a Precautionary Measure
9 provisional when it lasts nine years? As I said in my
10 initial presentation, the Constitutional Court has
11 declared null and void all types of Precautionary
12 Measures that have exceeded reasonable terms.

13 Q. Would you please mention a law in Perú that
14 prevents a Precautionary Measure from being maintained
15 by an Order of the Tribunal up to the end of the legal
16 proceeding?

17 A. There cannot be any because Precautionary
18 Measures are the exception, not the rule. Therefore,
19 there should be a law that says otherwise, that
20 expressly states: "Precautionary Measures may last up
21 to the end of the proceeding, even at the cassation
22 stage". We are talking about restrictions of rights

1 and, by definition, rights are restricted by express
2 norm. So, you do not need to have a law to indicate
3 the contrary, but here we're talking about the general
4 characteristics of these Precautionary Measures that
5 it is of a provisional nature.

6 Q. So, there is no law in Perú preventing the
7 maintenance or the survival of a Precautionary Measure
8 up to the end to guarantee the seizure in case it is
9 an illicit good or seizure for civil reparation. And
10 if there is any, please let me know.

11 A. There is no law to that end, and if there
12 was any, it would be unconstitutional.

13 Q. Okay. Let us look at JM-34--no, rather--I
14 think it is--this is properly established, so now in
15 the interest of time, let us look at the applications
16 presented by Kaloti in the proceeding.

17 PRESIDENT McRAE: You mentioned time, and so
18 I thought maybe I should--that's an appropriate time
19 to check where we are going here because the original
20 schedule finished the cross-examination at 12:50. I'm
21 not suggesting you stop, I'm just asking where we're
22 going and what the time will be.

1 MR. GRANÉ LABAT: Thank you very much,
2 Mr. President.

3 We have on the Schedule today only Mr. Caro
4 Coría's presentation and cross-examination; and then
5 Mr. Missiego's presentation and cross-examination.
6 Our understanding, and Ms. Kettlewell will correct me
7 if I'm wrong, is that we have available for our
8 cross-examinations and Closing Statements roughly
9 about almost I believe eight hours, Ms. Kettlewell, as
10 of last night. So, what we have done is distribute
11 our time accordingly between the cross-examination of
12 Mr. Caro Coría and the cross-examination of the
13 damages experts, but we are mindful that we must
14 conclude the examination of both experts today. We
15 are, as always, in the hands of the Tribunal as to
16 when to take the appropriate breaks, but we are aware
17 that we have to distribute our time accordingly within
18 the overall time that has been available to the
19 Parties.

20 PRESIDENT McRAE: You expect to finish--I
21 know you can't predict this, but you expect to finish
22 by the lunch break?

1 MR. GRANÉ LABAT: Highly doubtful,
2 Mr. President. I hesitate because as always, it's
3 difficult to ascertain. If the lunch break is at 1
4 p.m., I think that that would be difficult, but I can
5 do my best.

6 PRESIDENT McRAE: Okay. Please proceed.

7 MR. DÍAZ-CANDIA: With your permission,
8 Mr. President. Just a note, we're not protesting
9 anything that Mr. Grané just said, but if both Parties
10 use all the time they have allocated for
11 cross-examination of the legal experts and the Quantum
12 Experts, we're not going to finish tomorrow. We have
13 no problem, but we don't want to be put in a position
14 tomorrow or this afternoon also limiting our time
15 because their right to use their time. Just take into
16 account that we then may not finish tomorrow. That's
17 all.

18 PRESIDENT McRAE: I think that they have a
19 right to the time and so do you. And if that means
20 continuing, then we'll have to continue. We can check
21 that--we can check where we're at the end of the day,
22 but I think that we should just proceed with both

1 having the full opportunity to cross-examine the
2 Experts.

3 MR. GRANÉ LABAT: Thank you, Mr. President.
4 I appreciate that.

5 And we're also happy to confirm with our
6 distinguished colleagues during the break to make sure
7 that we come to a cooperative approach to the
8 distribution of time to make sure that we do not
9 extend the sessions beyond what is humane for the
10 Court Reporters and the Interpreters, but we will seek
11 a practical resolution to the distribution of time.

12 PRESIDENT McRAE: Thank you.

13 Please proceed.

14 MR. GRANÉ LABAT: Thank you.

15 BY MR. GRANÉ LABAT:

16 Q. Mr. Carlos Coría, I will try to speed up to
17 avoid prolonging this, and I thank you for your
18 specific concrete answers without going over too long
19 of an answer.

20 you referred in your first report to three
21 pleadings presented by Kaloti before the Judiciary in
22 the company by means of those pleadings requested the

1 return of the seized gold. And in your Report you did
2 not refer, you did not cite or for the record, those
3 are Exhibits C-13, C-14, and C-15. And I will ask you
4 questions about those exhibits. But before then, I
5 would like to confirm that you did not cite any other
6 pleading presented by Kaloti in the Criminal
7 Proceedings requesting the return of the gold
8 shipments.

9 A. Correct.

10 Q. And another point for confirmation, is that
11 the three pleadings, the three pleadings that you
12 attach to your Reports, were presented before the
13 Courts in charge of the Criminal Proceedings against
14 [REDACTED] and its representatives; correct?

15 A. Yes.

16 Q. And that is the Criminal Proceeding that is
17 under file 3306-2014.

18 A. I do not recall the number of the file, but
19 I think it is correct.

20 Q. We will show it on the screen, and you will
21 be able to confirm and if I'm wrong, you can correct
22 me then.

1 So, the three requests made by Kaloti, the
2 three petitions before the Courts only refer to the
3 [REDACTED] shipment.

4 A. Correct.

5 Q. And you did not mention any other attempt to
6 participate or present a petition in connection with
7 the other four shipments.

8 A. As I just said, that is correct.

9 Q. I apologize for asking you again, there are
10 some issues that are so important that they need to be
11 completely clear as to what your position is and as to
12 what the facts are, so please bear with me.

13 Do you know, in spite of the fact that
14 you're not referring to them, you have not attached
15 them to your Report, do you know of any other attempt
16 to participate by Kaloti in connection with the other
17 shipments?

18 A. As a result of the Second Report by
19 Mr. Missiego, I saw that there is reference to two
20 other pleadings. I do not remember it by heart, but
21 they were not given to me for me to issue an opinion.

22 Q. Did you ask your client to give you all of

1 the documents presented before the Criminal Courts in
2 connection with these proceedings for the--on the
3 shipment?

4 A. Correct.

5 Q. And you were only given three?

6 A. Correct.

7 Q. In your reports, you're not referring to
8 pleadings presented by Kaloti before the Office of the
9 Public Prosecutor or the Ministry; correct?

10 A. Could you please show me because I do not
11 recall?

12 Q. Yes.

13 I am--if you're asking for the list of
14 exhibits, you have two Reports. They're at the
15 beginning of your Report--

16 A. Yes, yes.

17 Q. Mr. Coría--

18 A. You're correct, yes, that's correct. 13,
19 14, 15.

20 Q. And you also referred to this in your
21 presentation, and let me ask you about the resources
22 that were available to Kaloti under the Peruvian

1 criminal system or general procedural Peruvian system.

2 In your Report, you said--and I think that
3 you reiterated it today--that Kaloti was not forced to
4 use the channels mentioned by Mr. Missiego in his
5 Report, and they are appeal, amparo and re-
6 examination.

7 A. Yes, that's right. That's a right, not an
8 obligation.

9 Q. But those channels or paths were also
10 available to Kaloti. There may be discussion about the
11 re-examination, but, do you discuss that there are
12 paths available under Peruvian law to appear before
13 the various jurisdictional bodies?

14 A. Once again, there is no discussion, it does
15 not exist a re-examination in the procedural law,
16 that is discarded. I mention this because you have
17 stated it. I understand the issue of the appeal, okay?
18 To activate the right to appeal--

19 Q. I'm not asking you to explain the process.

20 MR. DEL VALLE-CORONA: Objection,
21 Mr. President. The Witness may be allowed to
22 cooperate with the Tribunal in his areas of expertise,

1 that's what he is doing.

2 MR. GRANÉ LABAT: If you want the Witness to
3 expand, to elaborate, he can do so during the
4 redirect. I only asked him whether there are pathways
5 or general channels that could have been used by
6 Kaloti under Peruvian criminal law or procedural law
7 in Perú.

8 THE WITNESS: Are you asking me about the
9 appeal phase?

10 BY MR. GRANÉ LABAT:

11 Q. In general. Any resources, any remedies
12 that Kaloti had.

13 A. According to the law, there are several
14 mechanisms.

15 Q. Now, let us look at what Kaloti presented,
16 and this can be done in a positive or negative
17 fashion. Let us start in a negative fashion. You
18 would recognize that Kaloti did not file an amparo
19 against the Seizure Orders of the Court?

20 A. Would you please repeat?

21 Q. Certainly. You recognize that Kaloti did
22 not file an amparo, a constitutional amparo, against

1 the Seizure Measures ordered by any of the Peruvian
2 courts in connection with the shipments?

3 A. I'm not aware of any amparo proceeding.

4 Q. And did Kaloti appeal any of the Seizure
5 Measures?

6 A. I do not know of any appeal proceeding.

7 Q. And you said that they did not--or rather,
8 no, you do not say that. You acknowledge that Kaloti
9 did not present a request for re-examination.

10 Did Kaloti present a re-examination against
11 this judicial decisions?

12 A. No, they did not because it was not part of
13 the procedural phases available.

14 Q. Now, let us look at C-0013, 14, and 15. Let
15 us look at 13. You will see--and you can confirm if I
16 was wrong at the outset when I said that these
17 pleadings were part of the file 3306 of 2014.

18 A. What is your question?

19 Q. I will get there. I just want to offer you
20 some context. As part of this pleading that you read
21 and attached, this is about [REDACTED], and it is the
22 only case in which Kaloti appeared to request the

1 devolution, the return of attachment--of Shipment
2 No. 3 saying that they were the owners.

3 A. Correct.

4 Q. And this is not a long document. I would
5 like to ask you where you see a reference, or is there
6 a reference in this pleading to any exhibit--

7 A. Would you please scroll down?

8 Q. Certainly.

9 A. Would you please go to the end?

10 At least I do not see any exhibit list.

11 Q. And, in this text, do you see any reference
12 to an exhibit or file number?

13 A. Please let's move on to the beginning of the
14 document.

15 No, I do not see any reference to an
16 exhibit.

17 Q. Let us look at the second pleading, C-14.

18 This is Spanish. And in English that would be R-228.

19 Once again, the same file, 3306 of 2014, [REDACTED]
20 [REDACTED]. And here Kaloti's requesting to set aside
21 the Seizure Order on Shipment No. 3, and here there is
22 a reference to an exhibit, on the last page.

1 A. Yes.

2 Q. And that reference there is the Notice to
3 file a case to arbitration against the Republic of
4 Perú presented by Kaloti on May 3rd, 2016. This is a
5 Notice of Intent.

6 And then the seizure are supported by Kaloti
7 is that this is breaching the Investment protection to
8 foreign investments under the Free Trade Agreement,
9 and that's why it is attaching this Notice of Intent;
10 correct?

11 A. That's what the text said.

12 Q. Also in connection with this, do you see any
13 other reference to any other document that Kaloti has
14 provided?

15 A. No.

16 Q. Do you see any other reference to an
17 exhibit?

18 A. No.

19 Q. This pleading is dated May 25th, 2016.
20 Correct?

21 A. Let me look at the stamp.

22 Q. The stamp is difficult to read. It may look

1 like June 7th, but the date of the pleading is
2 May 25th, 2016; correct?

3 A. Yes. That is the date of the document.

4 Q. And if I am correct, this is not even two
5 years up to April 30, 2018; correct?

6 A. Yes.

7 Q. Let us look at Page 2. And, here--rather,
8 here Kaloti is saying that they acquired this shipment
9 in good faith and by means of bank payment.

10 Do you see it?

11 A. That they acquired this in good faith? Yes.

12 Q. But you would know that Kaloti never paid
13 for this shipment, Shipment No. 3 of [REDACTED].

14 A. That's what I saw as part of this
15 proceeding.

16 Q. In the interest of time, I'm not going to
17 take you to the documents confirming that, but for the
18 record, Exhibit C-22--that is the Notice of Intent of
19 April 8, 2019, Paragraph 33, and then the Reply by the
20 Claimant, Paragraph 35, where Kaloti states that they
21 were unable to pay for Shipment 3 and 5.

22 Let us now look at the third pleading

1 presented by Kaloti, which is quite similar to the one
2 that we just saw, and I am going to ask you to put on
3 the screen C-15. And, in English, that would be
4 R-229.

5 And here, once again, Kaloti is requesting
6 the return of Shipment No. 3. Part of the same
7 file 3306.

8 Let us look at the last page. This pleading
9 is also referring to an exhibit. It is the same
10 exhibit. The Notice of Intent on May 3rd, 2016, and I
11 have the same question: Do you see any reference to
12 any other document?

13 A. No.

14 Q. Do you see any other reference to any
15 exhibit or any other document on the shipment?

16 A. No.

17 Q. A question again--and we're trying to speed
18 up. If you would like, we can show you the documents,
19 but I am not trying to rush you.

20 Did you review these pleadings? we saw
21 that in two of them the only exhibit was the Notice of
22 Intent. Did you review the Notice of Intent?

1 A. No, I did not. Just the pleadings.

2 Q. But you did read the pleading whereby Kaloti
3 sums up for the jurisdictional body their arguments?

4 A. Yes, clearly, what you're showing on the
5 screen.

6 Q. And you would recall that, according to
7 Kaloti, in 2016, they stated--Kaloti stated that they
8 are claiming for a violation of Article 5 under the
9 Perú-U.S. BIT, and you would know that Article 5 is
10 the provision that establishes the minimum standard of
11 treatment under international customary law?

12 A. I do not know, but I do know that that rule
13 exists.

14 Q. Let us look at the response by the
15 judiciary, and I am going to ask you very specific
16 questions, and you have already referred to this in
17 your Report. Exhibit C-100 is a response to Kaloti's
18 intervention, as we have seen and as part of that
19 decision, the Criminal Court responded to Kaloti's
20 pleading, and they rejected that request because they
21 felt that Kaloti had not proven that they were the
22 owners of the seized gold ingots, and this is at

1 Page 3. You also referred to this--this is at Page 3
2 of C-100. You already referred to this also in your
3 Report, and my question is whether you know whether
4 the other Party has informed you whether Kaloti
5 presented, filed any application in connection with
6 C-100.

7 A. I have not been informed of that.

8 Q. Do you know, based on the information that
9 you received and also considering the documents on
10 file, do you know whether Kaloti presented again a
11 pleading before the Peruvian court within the context
12 of this file, Shipment 3, [REDACTED], in which they
13 stated that they were the owners of the gold, and this
14 is the evidence of that, do you know if there is
15 something like that, that presentation before the
16 courts?

17 A. I only saw the three documents that I
18 mentioned.

19 And based on my experience, let me clarify
20 something.

21 Q. Certainly.

22 A. This Resolution, that is hereby mentioned,

1 is--does not include--any motivation.

2 (Overlapping speakers.)

3 Q. I asked you a very specific question about
4 what Kaloti did. I am not asking you about reasoning.
5 You have already expressed your opinion at Page 16.
6 The Tribunal has read that. If you would like to
7 expand or elaborate, you can do that in due course,
8 but I only asked you about what Kaloti did after
9 filing this, and let us--

10 A. I want to clarify something in connection
11 with the last question because you're asking whether I
12 knew that Kaloti had appealed this. My answer is that
13 I do not have information, but it was not something
14 that they could appeal because you can only appeal
15 reasoned decisions, and this has received the
16 treatment of just a decree.

17 So, they're going to say you're not party to
18 this, and that's the end of it.

19 Q. The amparo remedy protects fundamental
20 rights; correct?

21 A. Yes.

22 Q. And it can be filed at the request "of any

1 public body"; correct?

2 A. This is subject to many conditions that need
3 to be analyzed.

4 Q. But the amparo is the remedy to question, to
5 challenge Measures by any State organ.

6 A. As a general rule, yes. But then it requires
7 specific study.

8 Q. And then it also requires fundamental
9 rights; correct?

10 A. Yes.

11 MR. GRANÉ LABAT: If things move along at
12 this pace, I think we will be able to conclude before
13 the lunch break, but as always, Mr. President, I'm in
14 your hands as to whether you think it's appropriate to
15 take a short break, but we are happy to continue.

16 PRESIDENT McRAE: The Schedule originally
17 contemplated that we would break for lunch at 12:40,
18 and the timing was predicated on that basis. If we
19 continue until 1:00, that means adding an extra half
20 hour on to that time. So, I have no--it's really a
21 matter for the Court Reporters. If we take a short
22 break now will you continue until 1:00?

1 REALTIME STENOGRAPHER: Yes.

2 PRESIDENT McRAE: Let's do that. As short
3 break and then continue to 1:00 and then take the
4 lunch break at 1:00.

5 (Brief recess.)

6 PRESIDENT McRAE: I think when you're ready,
7 we can resume.

8 MR. GRANÉ LABAT: Thank you very much,
9 Mr. President.

10 During the break, having consulted with the
11 team and in the interest of hopefully releasing
12 Mr. Caro Coría before the lunch break, we have decided
13 to conclude our cross-examination at this stage.

14 PRESIDENT McRAE: Thank you very much.

15 That means we now move to the re-examination
16 by--direct examination by the Claimant.

17 So, you're still under the Declaration you
18 made earlier, and we will now ask the Claimants to ask
19 any questions they have of you.

20 MR. DEL VALLE-CORONA: Thank you,
21 Mr. President. I will proceed in Spanish now.

22 REDIRECT EXAMINATION

1 BY MR. DEL VALLE-CORONA:

2 Q. Dr. Caro, your written reports for this case
3 are confidential. Did you know that?

4 A. Yes, that's correct.

5 Q. However, the Transcript of this Hearing will
6 be public. Did you know that?

7 A. Yes, that's correct.

8 Q. Thank you.

9 Going on to another topic. During your
10 professional career--30 years if I remember
11 correctly--have you issued opinions or reports that
12 favor the Peruvian State?

13 A. Many.

14 Q. Can you elaborate on that.

15 A. I have issued different reports for public
16 entities of Perú and some of them for free, many in
17 terms of legislative matters. I was part of the
18 Commission that reviewed the Criminal Code for the
19 2004 project, and for the one that reviewed the
20 Criminal Procedure Code in 2004 as well, reviewing the
21 laws in effect in terms of mining, one against
22 organized crime.

1 And I have also participated in the defense
2 of multiple public entities regarding matters that I
3 specialize in, economic criminal law of businesses. I
4 have defended Ministers, Vice Ministers, Directors, et
5 cetera, and the entities themselves.

6 Q. since we're talking about laws, can you
7 explain whether the requirements of Decree 1107 were
8 affected or were they made more lax during the process
9 of formalizing to the small miners and artisanal
10 miners in Perú?

11 PRESIDENT McRAE: I'm afraid the translation
12 was going on, so I'm way behind in the discussion
13 between you two, so I understand there is an objection
14 to the question.

15 Do you have a response to that?

16 MR. DEL VALLE-CORONA: It's strictly related
17 to the 1107 Decree, which was exhibit--

18 PRESIDENT McRAE: Can you repeat the
19 question to me, so that I--

20 MR. DEL VALLE-CORONA: Yeah, sure.

21 BY MR. DEL VALLE-CORONA:

22 Q. Can you explain whether the requirements of

1 Decree 1107 that was shown to you by the Peruvian
2 counsel were effected or were they made more lax
3 during the period of formalizing small miners or
4 artisanal miners in Perú?

5 MR. GRANÉ LABAT: And my objection,
6 Mr. President, is while we speak about 1107, that does
7 not open the doors to ask any question under the
8 umbrella of 1107. We had no discussion about
9 artisanal miners. I never uttered those words
10 throughout my cross-examination.

11 So, if citing a Decree or law then allows
12 the other Party to then initiate a new line of
13 questioning, then the scope of redirect is so broad
14 that it's an entirely new presentation.

15 PRESIDENT McRAE: So, what was the link that
16 you were planning to make?

17 MR. DEL VALLE-CORONA: With your permission,
18 Mr. President, Mr. Grané referred to the requisites
19 that were mentioned in 1107 Decree.

20 PRESIDENT McRAE: But your question was
21 about--

22 (Overlapping speakers.)

1 MR. DEL VALLE-CORONA: And my question is
2 related to the application of those requisites.

3 PRESIDENT McRAE: Let's continue with that
4 question and see whether it actually gets back to what
5 we were discussing. If it does, we can pursue that,
6 but otherwise, that might be a short and brief
7 response.

8 MR. DEL VALLE-CORONA: Thank you.

9 PRESIDENT McRAE: I think you might have to
10 pose the question again before you ask him to answer.

11 BY MR. DEL VALLE-CORONA:

12 Q. Dr. Caro, can you explain whether the
13 requirements of Decree 1107 which were shown to you by
14 Perú's representatives were impacted or made more lax
15 during the process of formalizing small and artisanal
16 miners in Perú?

17 A. Just to clarify, you're talking about
18 Article 11 which was shown to me?

19 Q. Yes.

20 A. The answer is "yes."

21 And here, we need to clarify something
22 that's important. There is a difference between

1 artisanal mining, informal mining and illegal mining.
2 Most illegal and informal miners are artisanal. So,
3 we're talking about the same thing, there are miners
4 who, let's put it this way, do their work on a small
5 scale, so the process of formalizing them, to be very
6 brief, involves their registration. In the Registry
7 of informal miners that are in the process of
8 formalizing their business, and that process has not
9 come to an end. That's why the requirements of
10 Article 11 have been made more flexible.

11 Thank you.

12 PRESIDENT McRAE: I think we've heard enough
13 about that subject. Move on to something else.

14 MR. DEL VALLE-CORONA: We will move on.

15 PRESIDENT McRAE: Thank you.

16 BY MR. DEL VALLE-CORONA:

17 Q. Additionally, Mr. Caro, someone mentioned to
18 you the file review system for Peruvian cases. Does
19 this consultation system contain the entirety of the
20 decisions or just when they were issued?

21 A. Well, in terms of these criminal files, it
22 doesn't contain any of that. The only way to have

1 access to that is through a decision, Court Decision.
2 If we're talking about Civil Proceedings, as I said,
3 it's not for me to explain why, but there is a digital
4 gap. Some people have access to some decisions in the
5 system, and that can be a part of the process.

6 Q. Thank you very much.

7 Also during your examination, you saw
8 Exhibit R-145, and they talked about fingerprints. In
9 terms of the Order initiating Criminal Proceedings, is
10 this something that is usually done for private due
11 diligence? Comparing fingerprints?

12 A. Well, as I said, I can't refer to the
13 details of these criminal documents, but I can make
14 general comments.

15 In general terms, the Compliance in Perú
16 it's not police. Officer does not have police
17 functions. They use the information that they have
18 available to them. This does not include access to
19 databases or fingerprints. Only the State can have
20 access to that due to privacy of personal data. They
21 also don't have access to data on ongoing Criminal
22 Proceedings because there is a lot of false positives.

1 I won't elaborate on this because I have written about
2 this, I have given conferences about this.

3 Q. Thank you.

4 Going on to the next question, with the
5 information in the file and the record and that you
6 have been shown today, in your experience, what
7 likelihood is there that Kaloti would be found liable
8 regarding their due diligence?

9 A. At this time, there is no likelihood of that
10 because none of the employees have been formally
11 charged nor has the existence of bad faith been
12 established, so the probability or the likelihood of a
13 said negative sentence is zero.

14 Q. In the interest of time and to conclude,
15 before you finished your examination, counsel for Perú
16 did not allow you to finish at 12:15 when you were
17 talking about the appeals or the amparo recourse for
18 Kaloti. Can you finish, if it's still fresh in your
19 mind?

20 A. Yes, because it was part of my initial
21 presentation.

22 All of this is made possible if there is one

1 rule that is being followed by the judicial system,
2 and this is in Article 4(5) of the law 23739, which
3 says that the Judge must notify affected Parties
4 regarding that preliminary Order. And from what I
5 have seen up until now during this examination, I have
6 not seen a single document from the judicial
7 authorities addressed to Kaloti where they were told
8 "we are impacting your rights for these reasons."
9 That is what activates that due process and that right
10 to defense.

11 So, from my perspective, there is a failure
12 in the procedure here that has its origin in the
13 preliminary phase with those Precautionary Measures of
14 Law 23739, and that's what voids the entire process
15 because it is a violation of the right to defense of
16 the affected Party; and this is not just for the
17 Measures, it's regarding evidence and documents, so
18 that the right to defense can be activated.

19 Q. Thank you very much.

20 Two questions, two additional questions. In
21 Perú, amparo, is it a way to obtain civil reparations?

22 A. No. It's just to bring things back to their

1 previous phase. It is not a reparation. There is no
2 obligation to go to amparo.

3 When you file an amparo, and that's why when
4 I gave my answer, I said there was a special exam
5 because--a special test. First, you have to exhaust
6 all other recourses; otherwise, it can be inadmissible
7 because there is a proceeding in course, and that's
8 when the decisions have to be made about the metals
9 and the merits.

10 Q. Amparo is limited to the application of the
11 Peruvian Constitution; correct?

12 A. The Constitution of Perú and the
13 constitutional Procedural Code.

14 Q. Thank you. That's all.

15 PRESIDENT McRAE: Do you have further
16 redirect?

17 Please, go ahead.

18 MR. GRANÉ LABAT: Yes, Mr. President. We
19 are going to do recross. Can we please--I'm going to
20 switch to Spanish.

21 RECCROSS-EXAMINATION

22 BY MR. GRANÉ LABAT:

1 Q. You were asked about Legislative Decree 1107
2 and artisanal or informal miners were mentioned, even
3 though I had not mentioned it, but since the opposing
4 side mentioned it, then we can talk about it.

5 Let's start with what the Claimant alleges
6 in this case.

7 Did you have a chance to read also the
8 statements of the Claimant's witnesses?

9 A. Which statements are you talking about?

10 Q. I'm asking you the general question first,
11 and then I can be more specific.

12 So, I'll repeat the question. Have you read
13 the testimony of the Claimant's witnesses? "Yes" or
14 "no."

15 A. No.

16 Q. Okay. Then, let's look at the statement of
17 Mr. [REDACTED]. Let's look at Paragraph 9, the last page.

18 I'm sorry, the Second Witness Statement,
19 Paragraph 10. That was my mistake.

20 Good. There you see that Mr. [REDACTED], the
21 principal on the Claimant's side, says that the
22 Suppliers, in this case, are not artisanal but are

1 considered to be medium-sized. In spite of that, we
2 will see which procedure applies for informal miners.

3 In case--which they aren't--but in the event
4 they were informal miners, let's look at C-0044 on the
5 screen, just the first page for now because I want to
6 ask, Mr. Caro Coría, are you an expert on the process
7 of regularization of informal or artisanal mining,
8 miners who want to regularize their situation?

9 A. I'm not an expert. But, in the exercise of
10 my career, I have dealt with a lot of mining companies
11 that have been affected by informal mining, so I'm
12 familiar with the legislation, but that does not make
13 me an expert.

14 Q. But you know the procedure that applies for
15 informal miners, first of all?

16 It's two question, so I will divide it into
17 two.

18 Are you familiar with the regularization
19 process for informal miners under Peruvian
20 legislation?

21 A. Yes. In general terms, not as an expert.

22 Q. That's the first question.

1 The second question is whether you are an
2 expert in or are familiar with the obligations that
3 apply for these artisanal miners who wish to
4 regularize their status. Do you know the
5 requirements? in general terms?

6 A. In general terms, yes.

7 Q. Okay, then I can show you Page 36 of this
8 document.

9 I want to ask you a few questions. Can we
10 look at the first page, just to show for the record
11 what we are talking about. This is the national plan
12 for the formalization of artisanal mining in Perú from
13 the Multisectoral Technical Commission. And this is
14 from 2011 as you can see on the cover.

15 Let's go to Page 36 now. This is an image
16 that shows the stages, the steps that are necessary
17 for the formalization process, and you'll see
18 here--let's go step-by-step.

19 You'll see here first, that you have to file
20 a Declaration of Commitment.

21 Do you see that?

22 A. Yes.

1 Q. Do you know in this case or have you seen,
2 have you reviewed any document in the records for this
3 case regarding those Suppliers of the Five Shipments
4 that shows that there was a filing of a Declaration of
5 Commitment?

6 A. Only what was shown to me during the
7 examination.

8 Q. It's not an exhibit that you refer to in
9 your Reports?

10 A. Not as far as I remember, no.

11 Q. Which is the shipment that you say, when you
12 showed a document during examination?

13 A. There was one entitled "Declaration of
14 Commitments" where you said that the name did not
15 correspond to the Concession.

16 Q. Correct, yes.

17 Which was the Supplier? Can we confirm
18 which shipments that document that you're referring to
19 is for?

20 We're going to show it on the screen in
21 order to confirm which shipment it refers to. And
22 while they're looking for that, I can ask a question.

1 Have you seen another document that refers
2 to a Declaration of Commitments for any of the other
3 shipments?

4 A. I don't remember right now.

5 Q. I want us to look at that document again on
6 the screen, and then we will go back to this
7 illustration because I want to focus--there we go.

8 Thank you. [REDACTED].

9 So, this refers to [REDACTED]. Let's go
10 back, then, to the relevant page where there is a
11 reference to this commitment. It's C-132, Page 17.

12 And you'll recall we had gone through this,
13 who the person filing this--is Mr. Manuel Valdiviezo
14 Guevara. And I asked you, what connection does he
15 have with [REDACTED], do you recall that?

16 A. You asked me whether this document, the
17 Declaration of Commitment, had something to do with
18 the taxpayer number of [REDACTED].

19 Q. No, sir. I have this written down. I asked
20 you whether Mr. Manuel Valdiviezo Guevara is a
21 representative of [REDACTED], and you said "no."
22 That wasn't what you were seeing on the document. You

1 want to look at your response?

2 A. Just to clarify, this commitment Declaration
3 is for a natural person, so there is no relationship
4 to a legal entity.

5 Q. That was my question. That was your answer,
6 and you're confirming it. I thank you for confirming
7 it.

8 So, having established that, regarding [REDACTED]
9 [REDACTED], I repeat my previous question--and let's go
10 back, please, to the illustration. There is no other
11 document that you have seen in the record for this
12 Arbitration that refers to any other shipment where
13 that information is present; correct?

14 A. Correct.

15 Q. Have you seen any information in this
16 Arbitration or have you mentioned in your two reports
17 any document that show ownership or an operation
18 contract or a mining concession, for any of the
19 Suppliers for the Five Shipments, the four Suppliers?

20 A. No, I have not seen that.

21 Q. Now, the same question regarding ownership,
22 use of the land surface.

1 A. No.

2 Q. Just for the record, you're going to
3 say--again, for the four Suppliers, have you seen
4 anything showing ownership authorization to use the
5 land; correct?

6 A. Correct.

7 Q. The same question regarding the other
8 requirement for formalizing the status of artisanal
9 miners, have you seen anything about an approved
10 environmental certification for any of the four
11 Suppliers?

12 A. No, I have not seen that.

13 Q. In the interest of time, I won't continue,
14 but there is another step, approval of the instrument
15 and authorization for the initiation or re-initiation
16 of exploration, exploitation and/or profit from the
17 minerals, and there are no documents regarding these
18 two requirements for the four Kaloti Suppliers of the
19 Five Shipments; correct?

20 A. Correct, but with a clarification.

21 This document from the State is from 2013,
22 and it refers to a formalization term up until April

1 of 2014, so it's not a current document those Terms
2 have been extended. So, we would need to compare it
3 to the legislation that is in force today.

4 Q. That's fine, but this is not in the record?

5 A. Correct.

6 Q. Very well.

7 THE INTERPRETER: That I do not know. The
8 Interpreter apologizes. "That I do not know."

9 MR. GRANÉ LABAT: Thank you, Mr. President.
10 No further questions on redirect.

11 PRESIDENT McRAE: Thank you.

12 MR. GRANÉ LABAT: Recross. Sorry.

13 PRESIDENT McRAE: Sorry, I led you astray
14 when you invited you to speak.

15 We now would ask the Tribunal Members if
16 they have any questions for you, so let me--do you
17 have questions?

18 We do have questions for you.

19 So, I think you want to go first?

20 QUESTIONS FROM THE TRIBUNAL

21 ARBITRATOR FERNÁNDEZ: Good morning. How
22 are you?

1 THE WITNESS: Good morning. How are you?

2 ARBITRATOR FERNÁNDEZ: I wanted to ask you a
3 few questions that are general in nature in connection
4 with your statement, your written statement, your legal
5 opinion, to clarify some doubts that I have.

6 I come from Spanish law, and Precautionary
7 Measures have been developed quite a bit, but there
8 are some differences, substantial differences with the
9 Peruvian system, so I wanted to have firm criteria to
10 guide me on this matter.

11 First, in connection with the different
12 remedies, in connection with precautionary
13 resolutions--or, rather, precautionary
14 resolutions/remedy, do they refer exclusively to the
15 main proceedings? Is there in Peruvian legislation a
16 specific system of remedies for Precautionary
17 Measures, or are they included in the General Law?

18 THE WITNESS: Thank you very much.

19 Everything is included in the General Law.
20 We don't have specialized courts. The same courts
21 deal with the remedies.

22 ARBITRATOR FERNÁNDEZ: My second question

1 has to do with the responsibility of the public
2 administration. You have indicated that there are
3 some cases when the State of Perú has seized property.
4 So, following this thesis of the general procedure, in
5 your experience have there been rulings in connection
6 with the liability of the administration when the
7 administration uses these Measures inappropriately,
8 and does that happen frequently?

9 THE WITNESS: In Peru, we have a law in
10 connection with arbitrary arrests and judicial errors,
11 but it's not used very much because of lack of budget.

12 ARBITRATOR FERNÁNDEZ: In connection with
13 the Claims, have there been substantial penalties? Is
14 there case law in that regard?

15 THE WITNESS: I do not remember any case in
16 which the State has been held liable in this regard.

17 ARBITRATOR FERNÁNDEZ: Let us now look at
18 the amparo. You know amparo is different in each
19 country. You have said that Kaloti could or could not
20 resort to an appeal when a decision is not reasoned.
21 You said that reasoned decisions cannot be appealed.
22 Is that something common?

1 THE WITNESS: In Perú, according to the
2 regulation and practice, we have Decrees that are
3 simple, that are just procedural in nature and then we
4 have the orders and the merits judgments. In this
5 case, the Court should have issued an Order, and that
6 means that the Order should have been reasoned in
7 connection with the intervention or lack of
8 intervention of Kaloti. But here, they said that
9 since Kaloti was not a party, then it could not
10 intervene, and that is just a procedural ruling.

11 According to Article 4(5) of Law 27329, the
12 Court had the duty to provide Notice to Kaloti Metals
13 of the impairment of Kaloti Metals's rights because of
14 the Preliminary Measures. That has not happened as
15 far as I could see in this Hearing. This has violated
16 the law. And in accordance with the legal system in
17 Perú, the right of defense starts when you argue the
18 Notice of the requirement, and that has not happened.

19 ARBITRATOR FERNÁNDEZ: Now, the amparo
20 remedies that are submitted, are they all studied or
21 some of the amparo petitions are systematically
22 rejected?

1 THE WITNESS: They're systematically
2 rejected for a simple reason: The procedural
3 Constitutional Law that was in force at the time--not
4 the one that is current now--indicated that when there
5 is a judicial case that is pending, then the amparo
6 should be rejected.

7 So, once there is res judicata in a case,
8 you can bring an Amparo. No amparo would have been
9 admitted here because there were other cases pending.
10 No amparo court is going to want to rule in connection
11 with such important matters when there was another
12 case that was still pending and that was criminal in
13 nature because of alleged crimes.

14 ARBITRATOR FERNÁNDEZ: Thank you very much
15 for your answers.

16 THE WITNESS: You're welcome.

17 PRESIDENT McRAE: Thank you.

18 Go ahead.

19 ARBITRATOR KNIEPER: Thank you very much.
20 One question.

21 I would like to put you to your Second
22 Report in Paragraph 2.5. There, you quote an article,

1 Article 948 of the Peruvian Civil Code.

2 Perhaps can you bring it up to the screen?

3 And I'm aware of the fact that you're not an
4 expert in civil law, but since you quote this Article
5 and you interpreted it, I dare to ask this question
6 since I want to know exactly what the interpretation
7 of this Article 948 is. We have in German law a very
8 similar norm, of course I only have the English
9 translation, this is a caveat. I want to know whether
10 I understand this correctly.

11 You say in 2.7 that Article 948 is not
12 applicable here because KML acted in good faith and
13 did not commit any crime.

14 Now, my understanding of Article 948--and
15 that may be biased by my conception and knowledge of
16 the German law--is that the good faith or bad faith or
17 criminal action of the Buyer is completely irrelevant.
18 What is relevant is that an object has been either
19 lost or subject and object had been subject to a
20 criminal act, and this sticks to the object.

21 So, a lost or an object which is acquired by
22 a criminal act can never be acquired in good faith.

1 It is not the question whether the Buyer is in good
2 faith, or good faith a criminal or whatever. It is
3 the object which has been subject of a criminal act,
4 and that's why it is outside the possibility of a
5 good-faith acquisition.

6 This is my understanding, and I repeat, of
7 an English translation of Article 948 of the Peruvian
8 Civil Code, and perhaps inspired by my prejudice borne
9 from my education as a German lawyer.

10 If my interpretation is correct and you
11 would confirm it, then I believe that your statement
12 in Article--in your Paragraph 2.7 would not be
13 correct. Can you elaborate on that? Have you
14 understood my question and my worries?

15 THE WITNESS: I understood it very well.
16 Thank you very much.

17 Article 948 of the Civil Code of Perú is
18 based on German law, but also on Roman law, the Code
19 of Justin, the Justinian Code; right? So, whomever
20 committed a crime or is not the Owner, well, then it's
21 not--and committed a crime, then what you said is
22 correct. If you acquire a piece of property from the

1 thief, from the offender, well, that acquisition is
2 wrong but it entails a number of things. When this
3 law was approved in Perú in 1984, the 1984 Civil Code
4 was in force. But at that time there was no law on
5 AML, and 1106, the Legislative Decree, was not in
6 existence, and 27765 also is the background as a 2002
7 Law.

8 So, 948, after 1984, 948 has to be read in
9 concordance with the Law on Asset Forfeiture and the
10 law on AML.

11 How can we read this when we compare the
12 different provisions? Okay. 948 affords a protection
13 to the good-faith purchaser. The Law on Asset
14 Forfeiture is very specific in this regard. The bona
15 fide Acquirer has to have qualified good faith, has to
16 have a special type of good faith. In this context,
17 the State, whether via a forfeiture case or a criminal
18 case, what the State has to do is to attribute bad
19 faith to the Buyer. There is no accusation by the
20 State to Kaloti Metals saying that it was done in good
21 faith, saying, "okay, the Seller committed a crime,"
22 but 948 of the Civil Code, it's not a self-applied

1 provision. It can only be applied when there is a
2 judgment that says, "okay, the Sellers are the ones
3 who committed the crime."

4 There are three accusations. There is a
5 trial now. And there is another case that is at the
6 intermediate stages, procedurally speaking.

7 Thank you.

8 THE INTERPRETER: Please speak closer to the
9 mic, sir.

10 ARBITRATOR KNIEPER: I have to specify my
11 question again. Let's go to the text. And perhaps,
12 when you go to the Spanish text, it is different from
13 the English text. When I read the text, I read in
14 Paragraph 1 in Sentence 1 of Paragraph 948, I read
15 what you say. It is a protection of a good-faith
16 Acquirer. That is Sentence 1.

17 And Sentence 2 makes, like in German law,
18 like in the Code of Justinian, there are two
19 exceptions. The first exception is good faith by the
20 Buyer is not protected. If either the object had been
21 lost or it had been somehow a subject of a criminal
22 act. Once an object is subject to a criminal act, it

1 is not any more covered by Article 948.

2 This is Roman law, by the way, which the
3 Germans and the Peruvians simply copied.

4 So, even in a long row of Acquirers, I'm the
5 thief, I sell it to a good faith Acquirer, Mr. McRae.
6 Good faith Acquirer. He will not be protected and he
7 will not be the Owner, and he sells it on to
8 Mr. Fernández. And again, he will not be protected
9 because the fact of being lost or stolen, for
10 instance, or by other means of criminality, sticks to
11 the object, so it cannot be acquired in good faith.

12 We had this very importantly in the enforced
13 sales of Jewish property during Fascism. There have
14 been many odd objects which have been where Jewish
15 people had to be forced, more or less, to sell things
16 in the 1930s, and they very often came to the United
17 States and other countries, and they changed owners
18 seven, eight, nine times, and it ended up, for
19 instance, in the Museum of Modern Art in New York.
20 The Museum of Modern Art in New York being a
21 good-faith Acquirer, and all these others, except the
22 first, were in good faith, could not wipe the criminal

1 activity of the first act out.

2 So, the Museum of Modern Art will not become
3 an Acquirer or Owner, although it is perfectly in good
4 faith.

5 So, in my understanding, Article 948--and I
6 ask you to confirm or to say no, it's different in
7 Perú--Kaloti could be a perfectly good faith. It
8 doesn't matter whether Kaloti is in good faith or not
9 because the gold is--I don't say that, I don't want to
10 refer, forget--it could not acquire in good faith
11 property of the gold, if the gold--and I don't want to
12 qualify that--if the gold, the first miner or supplier
13 had acquired the gold through a criminal act, would
14 you say you have the same interpretation in Perú or
15 are we different?

16 Did you understand that question?

17 THE WITNESS: I understood the question
18 perfectly well.

19 My initial response is "yes," but there are
20 some nuances that I wanted you to consider.

21 In effect, 948 tarnishes the subsequent
22 acquisition, and this is a discussion that civil

1 lawyers and criminal lawyer have.

2 What is--what information do you need to
3 decide if it was good faith or bad faith? You have to
4 look at the ex ante and the ex post. The ex ante
5 during the purchase and the ex post today. We know of
6 all of these proceedings and all these cases, so to
7 decide whether there is good faith or bad faith, you
8 have to take into account these two moments in time.
9 This is a provision that is preventive in nature. I
10 will not protect you if you have good faith. I
11 presume bad faith if this comes from a crime. So, you
12 need to be diligent, diligent when you acquire the
13 object, to try to avoid that situation.

14 So, 948 does not protect the stealer of a
15 piece of property, so then the purchaser has to
16 conduct a due diligence and see whether that was
17 acquired unlawfully.

18 So, we cannot really look at what happened
19 in 2013 and 2014 with all the information we have now.
20 That would be an ex post perspective, and this would
21 have no relevance from a preventative viewpoint.

22 I have to go back and decide on things based

1 on the information that you had at the time of the
2 acquisitions in 2012 or 2013 or 2014.

3 You have been very clear. What would happen
4 if this, in fact, is the fruit of a crime? Well,
5 then, you apply 948. You cannot afford protection to
6 the Acquirer, and there would be bad faith. But,
7 here, in Germany, we would need a judgment that says,
8 "okay, this was born of a crime, so we need to wait
9 for the Judgment to be handed down." If there was a
10 judgment that said, "okay, this was born of a crime,
11 it is res judicata, it is clear that this is the fruit
12 of a crime, and there is a conviction, then we could
13 afford--we could apply 948 and say there is no
14 protection." There is a legal presumption that bad
15 faith is established *luris et de iure* without any need
16 for proof to the contrary.

17 ARBITRATOR KNIEPER: Sorry for that, but I
18 believe it is not a question of substantive law or
19 procedural law, whether there is a court judgment or
20 not court judgment. It doesn't matter. How I read
21 Article 948 is it doesn't matter whether the Acquirer
22 is of good faith or bad faith. It doesn't matter

1 whether it has conducted due diligence or not. It
2 doesn't matter because whatever the Acquirer does, he
3 can never become Owner of this object if the object
4 was subject to a criminal act when it was first
5 acquired.

6 So, the protection of the good faith
7 Acquirer which is clearly foreseen in the first
8 sentence of Paragraph 948, is wiped out in Sentence 2,
9 and it is not relevant whether the Acquirer, the final
10 Acquirer in this case, KML, has been in good faith,
11 bad faith, conducted due diligence or not. He
12 cannot--it cannot become a legal Owner. That is how I
13 read 948 of the Peruvian Civil Code--admittedly,
14 perhaps prejudiced by my interpretation of German law.
15 And would you agree with that?

16 THE WITNESS: I would agree, but you are
17 setting different situations, and we have to draw a
18 difference here.

19 I agree with you when you mentioned that,
20 for 948, when the property is the fruit of a crime, it
21 doesn't matter whether there is good faith or bad
22 faith. We agree on that. That's why I was saying

1 that when an object is the fruit of a crime, then, of
2 course, there is no protection. When I was talking
3 about due diligence, I was talking about something
4 else.

5 The legal non-protection means that the
6 Acquirer needs to conduct due diligence to protect
7 itself from a potential object that is the fruit of a
8 crime. 948 applies when there is a crime, there is no
9 protection, but the exception applies.

10 So, you need to have a court decision to
11 know whether a crime was committed or not. It's not
12 something that you can presume. You need a
13 conviction, a criminal conviction, against someone, in
14 this case the Seller, for us to be able to know that
15 the exception will apply. That's what I was referring
16 to.

17 ARBITRATOR KNIEPER: Thank you.

18 THE WITNESS: Thank you.

19 PRESIDENT McRAE: Dr. Fernández would like
20 to join in the discussion. We are in the middle of a
21 seminar that we started earlier.

22 ARBITRATOR FERNÁNDEZ: It's not in

1 connection with this matter that I wanted to ask
2 about, but I will, of course, participate in this
3 seminar because of the brilliant comments made by
4 Mr. Knieper.

5 So, a general question was asked yesterday,
6 and I have something that I wanted to know about this.
7 This morning, we have talked about the scope of
8 Provisional Measures, and we talked about a
9 Precautionary Measure, it is translated into French as
10 well, and so this is temporary in nature. These
11 Measures are temporary in nature on the basis of a
12 series of circumstances that have been established
13 here, such as *fumus bomos iuris*, the *periculum in*
14 *mora*, *fumus comissi delicti*, et cetera.

15 But, you said, that in the normal course of
16 a Precautionary Measure, we would have the Measure in
17 force for 90 days and exceptionally you talked about a
18 year, so we have waited for an answer for nine years,
19 and you wondered why. So, why is it that nine years
20 have gone by and we would then ask ourselves what is
21 the nature of a Precautionary Measure?

22 THE WITNESS: Yes, of course. We're talking

1 about the Spanish system. In the Spanish system, you
2 have a period of investigation. In the old Criminal
3 Code, we also had an investigation stage. In the case
4 of Spain, the evidence of the public prosecutor
5 conducts an investigation and could go to the
6 investigative judge and ask for Precautionary
7 Measures. According to 27379, the Precautionary
8 Measures are going to be in force for 180 days at the
9 most.

10 The Measures were applied in this case, but
11 the Rule of Article 4(5) were not abided by. Kaloti
12 was not given Notice on the application of these
13 Measures.

14 These Measures expired after Day 180. All
15 of the Orders opening the investigation happened many
16 months later, almost a year later.

17 So, what happened when the expired
18 Precautionary Measure took place at Day 180, at 180
19 the expiration took place. Well, what happened there?
20 What happened between Day 180 and the opening of the
21 investigation? Well, there was a legal vacuum. There
22 was a legal gap. There was no Notice given to Kaloti,

1 and the Measure, although it had expired, the seizure
2 had expired, then the gold was kept in the vaults of
3 the Banco de la Nación.

4 So, why the delay? That is the
5 responsibility of the State. The State is the one
6 that has to conduct these proceedings during a
7 reasonable period of time. And in the case of Buresti
8 (phonetic), he's a lawyer that litigated the most
9 complex case in AML in Perú, the Sánchez case, and it
10 obtained a judgment from the Constitutional Court in
11 2009 or 2010, in connection with the termination of
12 the criminal case against him because of a violation
13 of the reasonable period of time.

14 And then there was the Chacon Case. It was
15 a very complex case as well. It took eight years.
16 So, it doesn't matter that the State wants to
17 normalize things. There has to be a reasonable period
18 of time for the Measures to be in force.

19 PRESIDENT McRAE: Thank you very much.

20 Yes, Dr. Caro?

21 THE WITNESS: Yes, I just wanted to say
22 something that is perhaps collateral in nature. At

1 the beginning of my cross-examination, reference was
2 made to the social media. I'm very thankful to
3 everyone that is interested in my social media. My
4 last name is Caro. Caro in Spanish means "expensive,"
5 so that's what my friends call me. And that is why
6 that is the name of that social media account.

7 PRESIDENT McRAE: Thank you very much. That
8 brings to a close the testimony. You're now relieved.
9 Now, you can leave.

10 (Witness steps down.)

11 PRESIDENT McRAE: And that brings us to the
12 lunch break, which we're now close to 1:30, so I guess
13 we'll have a break until 2:30 and resume with the
14 cross-examination of the next witness.

15 So, until 2:30.

16 (Whereupon, at 1:27 p.m., the Hearing was
17 adjourned until 2:30 p.m., the same day.)

18 AFTERNOON SESSION

19 PRESIDENT McRAE: I think we're ready to
20 start.

21 Are there any matters that counsel wish to
22 raise before we start this afternoon session?

1 MR. DÍAZ-CANDIA: Not on our side, thank
2 you.

3 MR. GRANÉ LABAT: There is one issue,
4 Mr. President, and we can raise it now, we can raise
5 it during a break or at the end of the day. It
6 concerns a new document that we would like to
7 introduce which is something that came up at the start
8 of Mr. Caro Coría's cross-examination pertaining to
9 his participation as counsel in an ongoing arbitration
10 administered by ICSID against the Republic of Perú.

11 Mr. Caro Coría suggested or even declared
12 that he is not acting as counsel in that proceeding
13 and that the List of Participants from that
14 proceeding, so we're happy to discuss it now or defer
15 the discussion until later, but we would like to
16 submit that into evidence to show that he is counsel
17 for Claimant.

18 PRESIDENT McRAE: If there is no reason to
19 have it dealt with now, I suppose my initial
20 preference would be to move ahead and deal with it
21 later, at the end of the day.

22 Mr. Díaz-Candia, do you have a different

1 view?

2 MR. DÍAZ-CANDIA: I would prefer to leave it
3 for later, if that's okay with the Tribunal.

4 PRESIDENT McRAE: Thank you.

5 JOAQUÍN MANUEL MISSIEGO DEL SOLER,

6 RESPONDENT'S WITNESS, CALLED

7 PRESIDENT McRAE: We are ready to start with
8 the testimony of Expert Professor Missiego.

9 Good afternoon, Professor Missiego.

10 THE WITNESS: Good afternoon.

11 THE INTERPRETER: We could only hear him
12 now. We couldn't hear him before.

13 PRESIDENT McRAE: You heard this morning,
14 and you probably understand the process that's
15 involved. You will make a statement for a period of
16 time, then you will be cross-examined by counsel for
17 Claimants and then redirect by Respondents, and
18 perhaps, further cross by the Claimants, and questions
19 from the Tribunal.

20 I know it's difficult but we have to try to
21 ensure that there is enough space between questions
22 and answers for the Interpreters to complete what they

1 say, because when the Interpreters are interpreting
2 it's usually several seconds after they finish before
3 it's time to start interpreting again. So, I would
4 ask you and also counsel for Claimants particularly in
5 cross-examination to try and keep that in mind. I
6 know it's impossible to keep it completely in mind,
7 because human nature wants to respond quickly, but
8 just a matter to keep in mind.

9 Perhaps we could start by you making the
10 Declaration that is in front of you. I think you
11 should have a form, a written Declaration in front of
12 you, if you could read that, please.

13 THE WITNESS: I solemnly declare upon my
14 honor and conscience that my statement will be in
15 accordance with my sincere belief.

16 PRESIDENT McRAE: Thank you.

17 Counsel of the Respondents wish to start?

18 MR. GRANÉ LABAT: We can ask him whether he
19 has any corrections to the two reports.

20 DIRECT EXAMINATION

21 BY MR. GRANÉ LABAT:

22 Q. Good afternoon, Mr. Missiego. I just want

1 to ask you a couple of questions.

2 First, you have submitted two expert reports
3 in this Arbitration. The first one is dated
4 August 4th, 2022. And I would like to confirm whether
5 you have it with you.

6 A. Yes.

7 Q. And my question is whether you would like to
8 introduce any correction to the figures or anything in
9 the 2022 Report?

10 A. None.

11 Q. Thank you. And same question regarding the
12 Second Report that is dated May 7th, 2023. Would you
13 like to make any correction?

14 A. No, none.

15 Q. Very well. The other issue, and here I'm
16 going to switch to English.

17 MR. GRANÉ LABAT: Members of the Tribunal,
18 Mr. Missiego has slides that he will use throughout
19 his presentation. They are in English for the benefit
20 of the Tribunal. He has, however, a Spanish
21 translation of his presentation with him on the table.
22 That's something that I wanted to bring to the

1 attention of the Tribunal and to opposing counsel.

2 PRESIDENT McRAE: We have been given copies
3 of the slides in English, and I assume in Spanish.
4 Are you displaying both languages on the screen or
5 just English?

6 MR. GRANÉ LABAT: He will only display
7 English but he will have a Spanish translation of
8 those slides on the table.

9 PRESIDENT McRAE: Thank you.

10 MR. GRANÉ LABAT: With that, we have no
11 further comments or questions.

12 PRESIDENT McRAE: Turn to Claimants for
13 cross-examination.

14 MR. DÍAZ-CANDIA: What?

15 PRESIDENT McRAE: Sorry. We hear his
16 statement first. Yes. I'm running ahead of myself.

17 Mr. Missiego, can you please proceed with
18 your statement.

19 DIRECT PRESENTATION

20 THE WITNESS: Thank you.

21 Mr. President, Members of the Tribunal,
22 counsel for Claimant Kaloti, counsel for the

1 Respondent State Perú. My name is Joaquín Missiego
2 Del Solar. I am an attorney. I am also a professor
3 at the law school at the Lima University. I've been
4 there for more than 20 years. I also practice as an
5 independent lawyer and I have done so for the last
6 20 years and I focus on procedural criminal--and
7 criminal law. I also have Master's degree in
8 procedural law from the University of Rosario in
9 Argentina. I also have a specialization from the
10 Salamanca University in Spain. I am also coordinator
11 of the Criminal Law Department at the University of
12 Lima. And the other pieces of information as to my
13 professional or academic background can be found in
14 the first appendix to my Report.

15 During my presentation, I will be addressing
16 the topics--I will be addressing topics related to the
17 Criminal Proceedings that are undertaken in Perú
18 against Suppliers of Kaloti, [REDACTED], [REDACTED], [REDACTED]
19 [REDACTED], and the [REDACTED]. Throughout this
20 Hearing, you were able to hear reference to these
21 companies, and this has been the subject matter of the
22 Arbitration of the last couple of days.

1 Now, at the outset, I should state that, as
2 an expert, I consider that the Precautionary Measures
3 that had been issued in these four proceedings are in
4 accordance with the law in Perú. I will be dividing
5 my presentation into five sections:

6 The first one is related to Perú's fight
7 against illegal mining and money-laundering.

8 The second section will refer to the
9 Criminal Proceedings in Perú.

10 Third, I will be referring to the
11 Precautionary Measures that are issued as part of the
12 Peruvian, the criminal Peruvian process.

13 And, fourth, I will be analyzing the
14 Petitions presented by Kaloti as a company before the
15 Authorities, the judiciary.

16 And the fifth section will cover the Asset
17 Forfeiture Proceeding and also the legality
18 requirement for the protection of ownership rights
19 under Peruvian law.

20 The first topic: Perú's fight against
21 illegal mining and money-laundering.

22 Money-laundering is an activity intended to

1 disguise, create hurdles, and hide the illicit origin
2 of assets that are intended to be introduced into the
3 financial system. This activity, unfortunately, is a
4 scourge that has a very serious problem as a
5 consequence for the Peruvian society.

6 The Peruvian State has faced issues relating
7 to money-laundering and illegal mining for several
8 years now, so much so that, in 2012, it was necessary
9 to amend our legislation to address the current
10 situation given this type of offenses. You may look
11 at the name of the law, and that is Decree on the
12 efficient fight against--effective fight against
13 money-laundering and other crimes related to illegal
14 mining and organized crime, so this gives you an early
15 idea of the fight and also the area whereby Perú is
16 showing concern about these activities and also the
17 consequences they may have.

18 On Monday, during the First Session of this
19 Hearing, we were able to see how the representative of
20 the Peruvian State explained the irreparable damages
21 produced by illegal mining in the system, and that
22 goes from the environmental problems up to an impact

1 on human life due to indiscriminate use of the
2 resources--rather, mercury.

3 It is important for you to understand the
4 context so that we can all understand the reasons why,
5 not only in this case but also in other cases, there
6 were interventions against Kaloti's Suppliers but all
7 of the other processes underway in the country to
8 combat illegal mining.

9 A Criminal Proceeding in Perú takes place as
10 follows: First, we need to identify various stages.
11 We have a stage that is the Preliminary Investigation.
12 We have another one that is called "Pre-Trial Phase,"
13 "Preparatory Acts," and then "Trial." You may see
14 here on the screen that they are all identified in
15 red.

16 In blue, we see the Authorities in charge of
17 each of these phases within the procedure in the
18 country.

19 The Preliminary Investigation is results of
20 a criminal notice. That is to say, the existence of
21 suspicion indicia regarding the commission of an
22 offense. And then, as the Prosecutor's Office starts

1 to channel the investigation of that offense and upon
2 learning of it as the process moves forward, more
3 evidence is found that help determine the initial
4 suspicion. And during the pre-trial phase under the
5 old Code--that is to say, this is the way in which
6 something that the Claimant's Expert and myself agree,
7 this pre-trial phase is, under the purview of the
8 Judge and it is a judicial stage in which various
9 measures may be issued such as Precautionary Measures
10 for the prevention of having the effects of the
11 process consolidate.

12 The stage known as "preparatory acts" is
13 quite important to the proceeding because, at that
14 point in time, the Public Prosecutor will make a
15 decision whether there will be an accusation or not.
16 That's when they determine whether evidence is enough
17 so as to determine that those individuals that are
18 suspected of an offense to be considered the actual
19 offenders. And it is for the Judge to determine
20 whether those individuals will be liable for those
21 offenses.

22 To the right, you can see the names of the

1 Suppliers--rather, below and to the right you can see
2 the names of the Suppliers, and that allows you to see
3 where in the proceedings they are. In the case of
4 ██████, ██████, and ██████, there has already
5 been an indictment. And the case of ██████ is already
6 in the trial phase. In the case of ██████, the
7 pre-trial phase has come to an end, and a decision is
8 being made whether there will be an indictment.

9 Now, the Precautionary Measures that may be
10 issued during a Criminal Proceeding are personal or of
11 an actual nature. That is to say, this is, in this
12 phase, we're talking about Precautionary Measures that
13 have an impact on things, on the goods. And, here we
14 have different measures *fumus bomi iuris* that is
15 reflected in the reasoning of the Seizure Measure that
16 I have shown here on the screen in connection with
17 Shipment No. 1. And as you can also see, to the left
18 you have a relation to the other cases.

19 Now, what is the procedure? It is quite
20 simple. The Office of the Public Prosecutor is asking
21 the Judge to issue a Seizure Order. This request has
22 to be properly reasoned, and upon analyzing the case,

1 based on the petition received, the Judge
2 independently, because the request to the Public
3 Prosecutor is not binding. The Judge has to make a
4 decision. , the Adjudicator has to make a decision.
5 And this is what we have seen these processes. As to
6 the duration of these Precautionary Measures, we need
7 to determine them as different from the Precautionary
8 Measures on property or the personal Precautionary
9 Measures.

10 We have heard that Claimant's expert has
11 indicated that when a person has been in prison
12 because of a Precautionary Measure, upon completing
13 that term, the person has to be released. Yes, we
14 agree. The door is open and the person is let free.
15 But given the complexity of the issues upon
16 termination of that Precautionary Measure, the Judge
17 may not open the doors to the vault and say, "okay,
18 come and get it." So, there has to be some--this has
19 to be done in compliance with some requirements to
20 make sure that the gold is actually returned, but we
21 cannot use the same principles for a Precautionary
22 Measure on property or a personal Precautionary

1 Measure.

2 So, here you have the Decision, the Judgment
3 by the Constitutional Court that showed you that the
4 Precautionary Measure may last in time as long as
5 there are no reasons to modify the facts or the
6 reasons that warranted their issuance. And here we
7 have a citation referring to Mr. César San Martín,
8 former Peruvian Supreme Court President, who has an
9 opinion similar to the one issued by the
10 Constitutional Court that the situation--it preserved
11 the situation that existed when the crime was
12 committed as long as the facts, the underlying facts,
13 do not change.

14 And, finally, there has to be made a
15 decision about its relevance or not.

16 MR. GRANÉ LABAT: Would you please slow
17 down. This is for the benefit of the Interpreters.

18 THE WITNESS: At the time that the Judge
19 decides to start with the pre-trial phase or at any
20 stage of the proceeding, the Public Prosecutor may
21 request the enforcement of a Precautionary Measure,
22 and at any stage of the proceeding, that Measure may

1 be revoked. And the reason is to maintain--this may
2 be based on the maintenance or not or the survival of
3 the reasons that led to the Precautionary Measures.
4 Based on the information that I had at hand in the
5 documents, the reasons that led to the Precautionary
6 Measures maintained throughout the process. They have
7 not changed, so there has been no reason for them to
8 be revoked.

9 Now, when we are referring to a seizure, we
10 are referring to the suspicion about the existence of
11 goods of illicit origin, and that's the reason why the
12 State makes a decision such as the one that we're
13 discussing.

14 On the screen, you have a slide showing a
15 table with the name of each of the Suppliers. The
16 intent here is to leave you with an example since I
17 cannot refer to all of them. I can leave you with the
18 an example of the indicia, the reasons that finally
19 reasoned the Precautionary Measures. Among
20 others--and you have already heard some of them, let
21 me repeat. One of the legal representatives of one of
22 the companies said that no document was signed, the

1 digital signature was not the same, this was also
2 evidenced in the work done to confirm the facts and
3 also the area where the mineral--the mining took place
4 was impossible to be confirmed, so there are some
5 reasons that motivate--that support, the issuance of
6 these Precautionary Measures.

7 As to the request for intervention by
8 Kaloti, we have already seen those documents
9 throughout this morning when Caro, as an Expert, had
10 the opportunity to analyze the request before the
11 judiciary. And I agree with him on the fact that we
12 do not see in any of those requests any documents in
13 which Kaloti evidences the property that they claimed
14 they had. This is the first comment that, in my
15 opinion, should be mentioned.

16 Now, as to the possibility that the Company
17 Kaloti had to bring a case before the Peruvian courts,
18 we agree that there is an option. That is an option.

19 You can also see that there are three
20 options on the screen: One, there was the
21 re-examination. The second one, appeal. Both can be
22 part of a preliminary agreement that is the one found

1 at R-0152, that is 5 of 2010, Agreement 5 of 2010, and
2 then the Amparo Request.

3 In connection with the last topic, I would
4 like to indicate that I was able to see that Kaloti
5 does file an amparo, but it was dismissed before it
6 was even admitted.

7 The request for intervention in the various
8 proceedings by Kaloti, and these are the ones you have
9 on the screen and the ones that I have mentioned, once
10 again, did not provide the Criminal Courts enough
11 evidence for them to support the property they said
12 they had. This is important to bear in mind because
13 the only one that can lift a Precautionary Measure is
14 the Criminal Proceedings Judge; and, if that Judge
15 does not receive the proper information, he or she
16 won't be able to do so.

17 And Kaloti also presented before the Office
18 of the Public Prosecutor a petition to reject the
19 petition by SUNAT; and, in my opinion this is not the
20 proper document, this is not a document that was
21 presented based on the legal parameters because the
22 one lifting the Precautionary Measure would be the

1 Judge.

2 Now, the reasoning used by Kaloti given
3 their presentation before the Judges is not only one
4 proving that they are the owners, but they also stated
5 that, in case there is no revocation of the Measure,
6 there will be an application for arbitration since
7 Kaloti is indicating that the mechanisms to protect
8 Investment under the BIT are deactivated. So, their
9 ownership of the goods is not evidenced, and they're
10 saying "if you do not lift those Measures, I will file
11 for arbitration, I will take the Peruvian State to
12 arbitration." And this is not an element that is
13 efficient to prove property.

14 And now, I am moving on to the end--to the
15 conclusion, to the fifth section. And here, I would
16 like to relate this to the first section. You should
17 not forget the importance, the concern--of the concern
18 the Peruvian has in their fight against illegal mining
19 and money-laundering, and you should not forget also
20 the changes in the Peruvian legislation to give
21 competent authorities better tools and more tools for
22 them to legally combat this type of activity.

1 And within that, we also find the Asset
2 Forfeiture Proceeding. This Proceeding is just a
3 legal consequence that has an impact on the object, on
4 the property, the goods that had been obtained in an
5 illicit manner. Here, we're not referring to a
6 criminal process that is aiming at identifying
7 personal liability. Here, we're talking about a
8 proceeding in which the Office of the Public
9 Prosecutor has to present charges before a judge to
10 prove the existence of facts that allow us to assume
11 the illegality of the goods that are the subject
12 matter of the Proceeding, and the Respondent has to
13 prove that the goods are licit; that the goods are
14 legal, are lawful; that they have an origin that is in
15 accordance with the parameters under the law.

16 It is important to bear in mind that
17 property rights are recognized, and they are not--no
18 one would deny that, but to invoke that, we also need
19 to be acting with legality. Legality is a key
20 condition for someone to have property rights.

21 So, all of those acts that are contrary to
22 the legal rules and regulations are null and void ab

1 initio, so there couldn't be any protection in which
2 there are goods that have not been properly obtained
3 with just title or that are--or that are not
4 compatible with the legal system.

5 Now, as to the acquisition of mining
6 products, I am not an expert on Mining Law. My
7 Reports do not address Mining Law, but I did review
8 that the Mining Law in one of the Articles, that is
9 Article 4, if my memory serves me right, indicates
10 that any purchaser of mining products needs to verify,
11 must verify the origin of such products, request the
12 corresponding documents and so as to have certainty
13 regarding the products and their authenticity.

14 It is also important to bear in mind that
15 the purchaser of mineral products is also bound to
16 verify the origin of the Mineral Resources. This is
17 stated under the General Mining Law.

18 Finally, Mr. President, Members of the
19 arbitral Tribunal, to conclude, I think that the four
20 Criminal Proceedings, as an expert, that are being
21 pursued against Kaloti, have been conducted in
22 accordance with due process and in compliance with

1 Peruvian law.

2 The Precautionary Seizure Measures that were
3 issued against Kaloti's Suppliers were issued
4 correctly, in a proportional manner, and they are
5 manners--they are measures that are suitable to
6 guarantee compliance with an eventual Judgment.

7 Kaloti's requests before the Peruvian
8 authorities did not comply with the formalities under
9 the law, and they were properly rejected.

10 Peruvian law only protects those rights over
11 property obtained with a good title in good faith;
12 that is to say, lawfully.

13 And, finally, in application of the Asset
14 Forfeiture Law, the General Mining Law, and also
15 Legislative Decree 1107, Kaloti should not or could
16 not be considered as a bona fide third party.

17 And I thank you all for your attention, and
18 I will be happy to answer any questions that Claimant
19 may have, the Arbitrators, and even Respondent.

20 Thank you very much, Mr. President.

21 PRESIDENT McRAE: Thank you very much.

22 I turn to the Claimant.

1 MR. DÍAZ-CANDIA: Thank you, Mr. President.
2 First of all, we are very happy to finally have the
3 opportunity to cross-examine someone since Perú
4 produced no witnesses of fact in this Arbitration.

5 With your grace, I'm going to switch to
6 Spanish.

7 CROSS-EXAMINATION

8 BY MR. DÍAZ-CANDIA:

9 Q. Good afternoon, Mr. Missiego. We have
10 coincided in these Hearings before, I'm Hernando Díaz-
11 Candia, I will not insist on rules for you. I'm sure
12 we may have some differences during our conversation,
13 but I am sure, and I hope that we can resolve them in
14 a civil fashion.

15 A. If I may, I need to ask a question, there is
16 a code to have access to my materials. May I get some
17 help with that?

18 Q. Yes, of course.

19 A. And if you could leave the password for me,
20 so it doesn't happen again.

21 (Pause.)

22 A. Thank you very much.

1 Q. Very well.

2 We will start again. I'm not going to
3 impose too many rules because I am sure that any
4 differences we might have, I'm sure that we can
5 resolve in a friendly and civilized way.

6 My first questions have to do with
7 credentials and credibility regarding you and your
8 information. I know you have said on several
9 occasions that you believe that some of the
10 conclusions reached by Dr. Caro are incorrect, and we
11 respect that. I wanted to ask you at the same time
12 whether you consider that some of those conclusions
13 are absurd, that they have no scientific basis, or
14 have been outside of any scientific method? We have
15 seen the credentials of Dr. Caro. I simply wanted to
16 ask you a little bit about the context and the scope
17 of your disagreement with him.

18 A. Sure. I've had a chance to look at the
19 Reports of Dr. Caro and, based on that, there are some
20 differences of opinion between what he has said and
21 what I see as far as reality for some these matters.
22 In my perspective, I base on what you have seen in my

1 Report. Even though we do speak the same language,
2 perhaps there are some words that don't have the same
3 meaning for both of us, and the terms that you have
4 referred to are terms that might be misunderstood in
5 my country, so in no way would I want to be
6 interpreted from my answer that I feel in the way that
7 you have said. It is a different opinion from a legal
8 perspective regarding some of these same matters that
9 we've both looked into.

10 Q. That's fine.

11 In your First Expert Report, in Paragraph 2,
12 and during your presentations--your presentation,
13 rather, a few minutes ago, you have said that you did
14 some postgraduate studies in Argentina. And when you
15 referred to what you specialized in, you simply say
16 that you have that degree.

17 Now, did you achieve the full Master's?

18 A. No.

19 When I talk about studies, Master-level
20 studies--and maybe that's an issue of language
21 again--in my country, you say that you have studied,
22 you say you have gone some of the way along that

1 study. That's why I didn't say I had Master.

2 Q. Of course. And if you don't have the
3 Master's then you don't have a Ph.D. either, a
4 Doctorate?

5 A. No.

6 Q. So, the highest level of education, the
7 highest degree you've obtained is specialist, which is
8 below Master's?

9 A. Yes, in fact.

10 Q. Thank you.

11 Paragraph 4 of your First Report makes--or
12 highlights, probably, a case in which you represented
13 Perú before the Inter-American Court of Human Rights.
14 We will show it on the screen. Could you tell us
15 which case that was?

16 A. Yes.

17 In fact, and I want to underline that
18 because that was a very important case for my country,
19 and I had the honor of having been an alternate
20 representative for Perú before the Inter-American
21 Court of Human Rights, and it has to do with the
22 rescue of the hostages from the Japanese Embassy. The

1 case is known as Cruz Sánchez. That was about
2 10 years ago.

3 Q. Thank you.

4 And, in that case, the Inter-American Human
5 Rights Convention and how it applies to Perú was
6 discussed; correct?

7 A. Yes.

8 Q. And Article 8 of that Convention establishes
9 the right to be--go through trial within a reasonable
10 period of time?

11 A. Yes.

12 Q. In that case, as far as you remember and to
13 the extent that this does not infringe upon any public
14 decisions--I know you have some confidentiality
15 matters to take care of with your client, but I
16 believe that Perú lost that case?

17 A. No. I will explain. It was a decision made
18 up of various parts. One held that the Peruvian State
19 had made use of legitimate defense, and thus had the
20 right to conduct that rescue operation in favor of the
21 hostages.

22 The other point that is related to what you

1 have just said is the deaths of one of the terrorists
2 was not fully clarified, and it was said that Perú,
3 instead, needed to initiate or continue the judicial
4 proceedings in order to understand the responsibility
5 of those who had participated in the death of this
6 person whose name was Cruz Sánchez. So, there were
7 several aspects to this Judgment. It was not totally
8 negative for the Peruvian State.

9 And based on that case -- In Perú we know it
10 as the Chavín de Huántar commands case, because the
11 Armed Forces--members of the Armed Forces who
12 participated were released of any responsibility, and
13 it wasn't the commandos who had been involved in this
14 action with Cruz Sánchez, and that's what needed to be
15 investigated.

16 Q. So, was Perú, under international law,
17 declared liable?

18 A. In the case of Cruz Sánchez, yes. In the
19 case of the use of legitimate force or legitimate use
20 of force, again, I also wanted to point it out.

21 Q. It was also declared..

22 A. No. It was declared that they had the right;

1 there's one aspect of the Judgment that does go
2 against Perú.

3 PRESIDENT McRAE: Wait a little bit because
4 we're still trying to catch up with the interruption,
5 three or seconds before the question. Thank you.

6 (No interpretation.)

7 BY MR. DÍAZ-CANDIA:

8 Q. In your First Expert Report, in Paragraph 6,
9 you referred to criminal law and criminal procedure
10 law. That exam has taken into account, I suppose, at
11 least as something that informs the interpretation of
12 these standards, the Constitution of Peru.

13 A. I'm sorry, I don't understand the question.

14 Q. Did you take into account the Constitution
15 of the Republic of Perú when you referred in your
16 Expert Report to Peruvian criminal law and criminal
17 procedure law?

18 A. For the preparation of these reports?

19 Q. The Constitution.

20 A. Yes.

21 Q. Is it correct or not that the Peruvian
22 Constitutional Courts have recognized that that

1 Constitution includes--and I don't know which Article
2 it is or whether it's just a consequence of an
3 article--the right to be judged or to undergo trial
4 within a reasonable period of time?

5 A. Yes. Without mentioning an article, what
6 you say is true.

7 Q. Let's go for a moment to Paragraph 153 of
8 your First Report, where you cite Article 102 of the
9 Criminal Code.

10 I would like to know whether we are in
11 agreement about the fact that there is a part missing
12 in your quote, in your citation of that Article.
13 There's a part that's missing.

14 A. If I may, in the last two lines refer to the
15 seizure determining the transfer of the goods, so yes,
16 the Article continues.

17 Q. I will read to you how it continues, and you
18 can tell me whether you agree or have any objections
19 or if that's not how you remember.

20 If the seizure of the results of the crime
21 cannot be seized because they have destroyed,
22 consumed, or had been hidden or transferred to bona

1 fide third parties under a title or for any other
2 similar reason.

3 So, this Article suggests that the transfer
4 to bona fide third parties can prevent the seizure of
5 the goods or assets. Do you agree?

6 A. Yes.

7 Q. So, this complements an article from the
8 Civil Code about which Professor Knieper was asking
9 today.

10 So, you would agree that this has effects
11 that are in favor of the good-faith Buyer, even when
12 there is a seizure of the results or the proceeds of
13 that crime.

14 A. Yes, as long as we're talking about a
15 good-faith Buyer.

16 Q. Okay. Thank you very much.

17 In Paragraphs 8 and 9 of your First Report,
18 you refer to crimes such as money-laundering and
19 illegal mining.

20 In your Report, you also explain that the
21 crime of money-laundering is autonomous, separate from
22 that of illegal mining. And we know and we are aware

1 that judicial resolution, some of them refer to
2 money-laundering related to illegal mining. But, in
3 the strictest sense, you also point out that it is not
4 necessary, it's not even necessary to investigate
5 illegal mining in order to reach a sentence on money
6 laundering; is that correct?

7 A. Yes, and it's based on Article 10 of the
8 Decree 1106, I'm sure you will ask about that later.

9 Q. Thank you. And in these proceedings against
10 the four Kaloti Suppliers, what is being investigated,
11 strictly speaking, is money-laundering; correct? The
12 crime of which some of the Suppliers are accused is
13 money-laundering.

14 A. Let me think back.

15 The case that is already in the trial phase
16 is money-laundering with an aggravating factor, which
17 is illegal mining. But, if we're talking strictly
18 about money-laundering cases, then yes.

19 Q. Please go ahead.

20 A. No, that's it.

21 Q. So, in those cases, is the illegal mining
22 itself being investigated, and can there be a sentence

1 for money-laundering without even determining whether
2 there has been illegal mining?

3 A. Yes, that can be done.

4 Q. Thank you.

5 Gold that was mined and showed in full
6 compliance with Peruvian law, there is no doubt that
7 the gold is legal, of legal origin, it can later be
8 used by a Buyer for money-laundering. "Yes" or "no"?

9 A. In general terms, yes.

10 Q. Thank you very much.

11 It's true that, for a conviction based on
12 money-laundering, evidence is required that goes
13 beyond any reasonable doubt, as you say in
14 Paragraph 12 of your First Report and then in Page 3
15 of your Second Report at Paragraph 9. That's the
16 standard for evidence, "beyond any reasonable doubt."

17 A. And I would say, if I may, that it's not
18 just for this crime for any conviction, there is a
19 standard of proof that is beyond any reasonable doubt.

20 Q. Thank you very much.

21 In your Report at Paragraph 11, you refer to
22 suspicions on some of Kaloti's Suppliers; is that

1 correct?

2 A. Yes, but if I may?

3 Q. Go ahead.

4 A. The standard you just asked me about in the
5 previous question for a conviction is one thing.
6 Another thing is a standard for an investigation to be
7 initiated. I said that during my presentation.

8 As the process develops, a higher level of
9 evidence is required in order to confirm the initial
10 hypothesis.

11 Q. So, the standard for initiating an
12 investigation is lower, then it increases for the
13 indictment, and then it's even higher for that of
14 final conviction?

15 A. That's correct what you say.

16 Q. Thank you.

17 In Paragraph 142 of your Second Report, you
18 refer to a decision from 2022 by a Civil Court that
19 held in favor of ██████, with a ██████ at the end, and
20 declared a contract to be terminated; correct?

21 A. Are you talking about Paragraph 142 of the
22 Second Report?

1 Q. There is a decision from December 22nd.

2 A. I do mention that Decision that you are now
3 referring to, but I don't use the word "Contract."

4 Q. What did the action by [REDACTED] against Kaloti,
5 what was it? It was a civil action regarding Shipment
6 No. 5.

7 A. No, I understand that, but in your question
8 you say that I have used the word "Contract." What I
9 want to say is that the word "Contract" is not there.
10 It was a Civil Proceeding and as we all heard this
11 morning, we know what it was about. It was a dispute
12 among private parties between [REDACTED] and Kaloti.

13 And, in this particular case, from what I
14 could see in that Resolution, in that Decision--

15 Q. No, finish reading then let us know, and
16 we're going to show another paragraph on the screen.

17 A. Could you repeat the question, please?

18 Q. Let me show the First Report Paragraph 152
19 or 153. It says: "Thus, the Contract signed by both
20 Parties regarding Shipment No. 5 is now terminated."

21 Which Contract specifically was terminated
22 then?

1 A. What I'm doing there is citing what the
2 Resolution says: The Courts made this decision, and
3 what did they state? That that Contract signed by both
4 parties regarding shipment 5 was terminated. That's
5 what the Court's Resolution says.

6 Q. That means that there was a contract on
7 Shipment No. 5 between [REDACTED] and Kaloti.

8 A. Yes.

9 Q. Was there a contract, yes or no?

10 A. Yes. I haven't seen it. What I'm telling
11 you is what I'm reading in this Resolution.

12 Q. And you read the Decision?

13 A. Yes.

14 Q. In your First Report in Paragraph 13
15 regarding the Precautionary Measures, you refer to
16 goods that are the property of third parties; is that
17 correct?

18 A. Yes.

19 Q. It doesn't say "assets in the possession of
20 third parties"; correct?

21 A. Correct.

22 Q. In Paragraph 14 of that same First Report,

1 you say that gold--the gold can go into the possession
2 of the State after the conclusion of the Criminal
3 Proceeding, it says: "At the end of the Criminal
4 Proceeding". What is that? A final decision?

5 A. When it ends, as you say, with a definitive
6 decision.

7 Q. Conviction?

8 A. Yes, of course.

9 Q. In the four investigations, and we will see
10 later if the investigation on [REDACTED] includes
11 Shipment 4 or also Shipment 5. In one of those, has
12 there been a final decision as far as you know?

13 A. No. As I explained in my presentation,
14 these proceedings are still in progress.

15 Q. So, those four or Five Shipments, under
16 Peruvian law, have not continued on to the possession
17 of the State?

18 A. Correct.

19 Q. In Paragraph 15, you later refer to a number
20 of rights that third parties might have when they are
21 impacted by Precautionary Measures issued in the
22 context of a Criminal Proceeding. These are--

1 A. Yes.

2 Q. These are not obligations or burdens of
3 those Parties?

4 A. No. I'm talking about rights. That's
5 clear.

6 Q. Great, thank you very much.

7 In Paragraph 155 of your First Report, you
8 literally point out that, in the case that Shipments 1
9 through 5 are determined to have been the subject of a
10 money-laundering crime, so this says clearly 1 to 5,
11 so I'm not clear because, in other paragraphs of the
12 same report, it's not clear whether Shipment 5 is
13 being investigated in this proceeding against [REDACTED] or
14 not.

15 A. Well, in principle, what I'm saying--and
16 you've highlighted it in yellow--is that, in the
17 event--in the event that it is determined that the
18 shipments you've said were determined to be the object
19 of a money-laundering crime--I'm not saying it has
20 been done; I'm saying in the event that this should
21 happen--and what we need to bear in mind here is that,
22 in the Asset Forfeiture Proceeding, as I said during

1 my presentation, we're not talking about individual
2 criminal liability, even if there is a Civil
3 Proceeding as there has been. If it is later
4 determined that the asset is the result of a crime,
5 through the Asset Forfeiture Law the State has the
6 right to initiate the relevant legal action.

7 So, in the event that it is determined that
8 these were the object--these shipments were the object
9 of a crime, then it is perfectly viable for Kaloti, or
10 whoever may have the right, would not receive those
11 assets, and those would go into the possession of the
12 State.

13 Q. But your Report refers to judicial decisions
14 on four shipments. My specific question is about
15 Shipment 5 because here you refer to Shipments 1
16 through 5. Is it being investigated or not?

17 A. Let me see.

18 I understand that Shipment 5 was included
19 within the Criminal Proceeding along with 4. That's
20 what I remember.

21 Q. Perfect. Thank you very much.

22 In Paragraph 23 of your First Report you say

1 that the Prosecutor's--Public Prosecutor's Office
2 conducts an analysis that is objective and
3 independent, or that's what it did; is that correct?

4 A. Yes.

5 Q. Did you have access to the entire record
6 from the Public Prosecutor's Office, and did you see
7 everything that is in that record regarding those
8 Criminal Proceedings?

9 A. The entire record, no.

10 Q. So, you formed an opinion on what they did
11 without knowing whether there are other documents from
12 the Public Prosecutor's Office?

13 A. On the basis of the documentation that I was
14 able to review in this case, the initiation of the
15 action where it is explained what there was, and in
16 the Constitution which also recognizes the Public
17 Prosecutor's Office as the entity that has the
18 authority to initiate and direct the investigation,
19 that's why I say that they decided formally to start
20 these Preliminary Investigations, and that provides
21 better context for the paragraph.

22 Q. Thank you very much.

1 In Paragraph 134 of your First Report, you
2 refer to the reserve of the investigations; and, in
3 Paragraph 135, you say that the files or the records
4 are reserved in order to protect the investigated
5 party privacy.

6 A. What paragraph is that?

7 Q. 134 of the First Report and Paragraph 135 of
8 the Second Report--of the same Report, rather.
9 They're on the screen.

10 A. Yes. It says it there.

11 "It should be noted that the investigation
12 stage in Criminal Proceedings in Perú is, according to
13 the law, reserved or confidential", but that is not
14 the phase we are in as I explained with my slides,
15 that phase has passed, and now it's a different phase.
16 And what we have is a Prosecutor that's making a
17 decision about whether to file a formal accusation or
18 not. So, it's the investigation stage.

19 Q. So, there is no formal accusation?

20 A. There is no accusation, maybe other
21 actions--sorry, there is no formal accusation and no
22 other requests--the Public Prosecutor's Office is

1 independent and can make a decision in that regard.
2 But what I'm talking about here is the investigation
3 phase where the Prosecutor decides whether to file
4 that formal accusation or not. That phase is done,
5 and now we are in the phase, it's an intermediary
6 phase in the new Code. What I say here, and I think
7 that's what you're talking about, is the investigation
8 phase in Criminal Proceedings.

9 Q. And then you talk about the reserved or
10 confidential nature of the process with the goal of
11 protecting the integrity of the investigation and the
12 rights of those being investigated.

13 A. Yes. And again, this is confidential nature
14 is orientated for the investigation, for the
15 investigated.

16 Q. Exactly, but let's imagine that in 2014 or
17 2015, these four files were confidential and reserved.

18 A. My Reports are from August 2022, so, on the
19 basis of what you said, I would answer "yes," but now,
20 in connection with the documents that I have examined,
21 well, those documents were prepared in 2022 or late
22 2021. So, in 2022, that was under seal. They were

1 confidential.

2 Q. Okay, then we can agree that in 2014 they
3 were confidential or, at least, in your words, they
4 were reserved if they hadn't gone to the phase to
5 decide on the accusation.

6 A. Sir, to be clear, any proceeding during the
7 investigation stage.

8 Q. Okay, but these four files--

9 A. In 2014, they were being investigated.

10 Q. Okay. So, in 2014 they were confidential?

11 A. Yes. They were confidential.
12 They were under seal.

13 A. Well, confidential nobody can see it.
14 Reserved, the Parties are the only ones who can see
15 it.

16 Q. The parties. Very well, so, not the press.

17 A. Well, the press would not be able to see the
18 documents, but sometimes in my country, like in other
19 countries, the press provides information of
20 proceedings that are happening. But if you say that
21 in 2014 they were under seal, they were under seal.

22 Q. That's fine.

1 If they were under seal, how is it that the
2 information on those four cases got to the hands of El
3 Comercio, the press?

4 A. I don't know.

5 Q. The State of Perú had, the court and the
6 Prosecutor had an obligation of confidentiality.

7 A. Yes.

8 That is not the only case in which this
9 happened. Every Sunday, we have the same thing.

10 Q. So, confidentiality of Criminal Proceedings
11 is violated every Sunday?

12 A. No. That's not right. The Parties
13 themselves can leak the information to the press, but
14 that would be speculation on my part.

15 Q. Why would a party that is being investigated
16 leak information? The Party wants the press to know
17 this?

18 A. Well, maybe they do it to exert pressure.

19 Q. Perhaps the Civil Tribunal, the Court or the
20 Prosecutor leaked the information to the press?

21 A. Yes. Any of those things can happen?

22 Q. At Paragraph 25 of your First Report--and

1 going back to your question: How is it that you had
2 access to the documents that were appended to your
3 Report in connection with the four cases?

4 I think you've heard this morning the
5 statement by Mr. Caro. Was there a decision by the
6 Court or the Prosecutor granting you access to those
7 files?

8 A. The documents I was able to obtain were
9 documents that I asked the lawyers for Perú to provide
10 to me. I've had no direct communication with the
11 Authorities in Perú. Any information that I deemed
12 necessary, I requested directly from Perú's lawyers.

13 Q. Are you making reference to the Commission
14 representing the State or Arnold & Porter's counsel?

15 A. I'm referring to Arnold & Porter's lawyers.

16 Q. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED]

1 [REDACTED] [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED] [REDACTED]
2 [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] [REDACTED] [REDACTED]
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17 [REDACTED] [REDACTED]
18 [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED]
21 [REDACTED]
22 [REDACTED] [REDACTED] [REDACTED]

1 BY MR. DÍAZ-CANDIA:

2 Q. We determined before that the judiciary
3 conducted an exhaustive analysis of each case before
4 showing the Precautionary Measures. That is at
5 Paragraph 25 of your First Report. You also told me
6 that you did not have access to all of the documents
7 from those cases.

8 These are not questions. I'm just telling
9 you what happened today.

10 How can one conclude that the judiciary
11 examined everything exhaustively if you do not know
12 what "everything" is?

13 A. It says here, "after exhaustively
14 analyzing." It doesn't say "everything." But apart
15 from that, the judicial decision that brought about
16 the Precautionary Measures, that is a decision that
17 provides the reasons why the Measures were issued, and
18 that is what I am making reference to. If we look at
19 the judicial decisions that I'm making reference to,
20 you're going to see that those decisions contain an
21 explanation of the background of each case, the
22 evidence and indications that was obtained to arrive

1 at the Decision made at that time.

2 Q. Yes, but, in theory, in that file, perhaps
3 there is evidence submitted by the four investigated
4 parties that you may not have seen?

5 A. Yes.

6 Q. Okay. Thank you.

7 At Paragraph 21 of your First Report, you
8 talk about an attachment against Shipment 5.

9 Do you know who was the custodian or
10 guardian of that shipment via that attachment?

11 A. I do not recall. I don't have that
12 information.

13 Q. Do you know or has someone told you during
14 your investigations where Shipment 5 is today?

15 A. No.

16 Q. Let us look at C-0141. It says here--and
17 correct me if I'm wrong--"a Precautionary Measure is
18 issued on the merits as an attachment on
19 99.843 kilograms of gold." Well, it says "kilograms"
20 here but it was "grams." "99 kilos, that are
21 deposited on behalf of Kaloti Metals & Logistics in
22 the facilities of Hermes located at," and then it says

1 "the Banco de la Nación is the depository of the
2 seized property"; is that correct?

3 A. This is correct, on the basis of this
4 decision that we've read.

5 Q. Thank you.

6 At Paragraph 37 of your First Report, you
7 also say that the unlawful origin of the property must
8 be known or presumed by the offender, and you cite
9 R-0218. We see that. Is that correct?

10 A. Indeed.

11 Legislative Decree 1106 has two Articles.
12 The first one--and the drafting is very similar, and
13 the phrase matches here. It talks about money,
14 effects, or goods, the illicit origin of which is
15 known by that person.

16 So, here they talk about a certain level of
17 diligence. Diligence that must be exerted from the
18 individual participating in these activities. That is
19 why I'm making reference to the language in the law.
20 This is at Articles 1 and 2.

21 Q. Yes. I'm showing those on the screen.
22 That's on the Hearing Bundle. Here it says: "Anyone

1 who converts or transfers money, goods, effects or
2 profits who's illicit origin he or she knows or should
3 presume, in order to avoid the identification of its
4 origin, seizure or confiscation will be punished with
5 the custodial sentence of no less than eight and no
6 more than 15 years and with a penalty."

7 A. Yes.

8 Q. Is it your opinion--and correct me if I'm
9 wrong--that KML knew or should presume that the gold
10 it purchased from the four Suppliers was of an illicit
11 origin?

12 A. I think that at least it should have
13 presumed so. since we have this on the screen, let's
14 look at Article 10.

15 Q. Yes, let's go ahead.

16 A. Article 10 says that money-laundering is an
17 autonomous offense for its investigation and
18 prosecution. It is not necessary for the criminal
19 activities that produce the money, property or effects
20 of properties to have been discovered, be subject to
21 investigation, judicial proceedings or have previously
22 been subject to evidence or conviction.

1 My understanding is that both Article 1 and
2 Article 2 that you referred to, well, we cannot read
3 them in isolation without looking at the first part of
4 Article 10.

5 Here, they're indicating to us the standards
6 that must be met. An investigation in the matter was
7 no longer necessary or proceedings in that regard.
8 This Article requires a certain level of diligence.

9 In answer to your question, that is what I
10 can say.

11 Q. You consider that KML committed this crime?
12 "Yes" or "no."

13 A. What I think is that, on the basis of the
14 documents I have been able to review, there wasn't a
15 sufficient level of diligence by Kaloti, and I cannot
16 affirm this 100 percent, but when Kaloti started
17 dealing with this group, this group that is now being
18 criminally prosecuted.

19 Q. Okay. Very well. Just to
20 understand--please correct me if I'm wrong--KML knew
21 or should have known the illicit origin of those Five
22 Shipments?

1 A. From what I have seen, it should have at
2 least presumed that it was facing a strange situation.

3 Q. Under criminal law in Perú, KML should have
4 been subject to seizure--or, rather, should have been
5 accused.

6 A. At least it should have been included in the
7 proceedings.

8 Q. Okay. And we agree that it wasn't.

9 A. It wasn't.

10 Q. We understand that you have called into
11 question the suitability of certain communications or
12 miscommunication used by Kaloti to communicate with
13 the Courts, with the Prosecutor, et cetera. KML told
14 the Peruvian authorities--and there is a letter that
15 is being used here in connection with the temporal
16 limitations of the Treaty, but KML gave notice to the
17 Peruvian Government that--and I understand you said
18 Kaloti Metals was not the Owner, but KML indicated
19 that it was the Owner of those Five Shipments, and
20 you're saying that Kaloti Metals should have presumed
21 the legal origin of those Five Shipments, so Kaloti
22 Metals should have been accused or charged at least,

1 no?

2 A. The fact that KML was not included in the
3 proceedings does not mean that it had the right to
4 sue, and I explained this during my presentation.
5 What I am calling into question, in connection with
6 this second issue, is that it didn't so in an
7 appropriate manner.

8 I don't think that someone who comes to an
9 authority by simply saying "I am the owner" or by
10 simply stating something, I don't think that is enough
11 for the authority to presume or declare it the owner.

12 If Kaloti submits documents to the
13 authorities, not to the Government. Remember there is
14 a separation of powers in Perú. But if KML submits
15 documents to the judiciary, to the Courts, and to the
16 Public Prosecutor's Office and it says "I am the
17 owner" but it does not evidence that, the judicial
18 decisions have indicated this that KML has not
19 evidenced the ownership that it claims it has, I do
20 not find any reason on the basis of the file that
21 Kaloti should have been included in those proceedings.

22 Q. But you said that it should have been

1 included.

2 A. Well, in my personal opinion, it could have
3 been included in the proceedings if the name of the
4 Company appeared in the initial documents.

5 Q. Okay. That satisfies us.

6 You just said that there is perfect
7 separation of powers in Perú. In our file, we have
8 alleged that Pedro Castillo is currently incarcerated
9 because it tried to undermine the independence of the
10 judiciary.

11 A. Yes.

12 That proves Perú's separation of powers,
13 since he tried to respect that, he's now incarcerated.

14 Q. Or because he didn't respect it; right?

15 A. Okay.

16 Q. I don't think that this is a matter that is
17 included in your Report.

18 Let us look at Article 94 of the Criminal
19 Procedure Code of 1936. Let us look at the full text.

20 You agree that this Article contains two
21 subparagraphs that are different: (a) talks about
22 preventive Attachments that are sufficient to cover

1 the payment in the case of civil redress, so this is a
2 specific assumption that doesn't necessarily include
3 crimes that are potentially the fruit of--rather,
4 property that is potentially the fruit of crimes.

5 And then, in subparagraph (b), there is
6 another case completely different that says the
7 seizure may be ordered of the objects of the offense
8 or of the instruments with which it was committed, as
9 well as the effects, be they goods, money, profits,
10 etc. The seizure of the effects or instruments of the
11 crime or any product of the criminal offense even if
12 they can be in the hands of third parties. It doesn't
13 say here that are the property of third parties but
14 are in the hands of third parties. Correct? What does
15 "in hands of third parties" mean?

16 A. Yes, that can be possessors.

17 Q. So, no mention is made here of ownership

18 A. Well, "in the hands" may mean a number of
19 things.

20 Q. Yes, I think we understand what this means.

21 We understand that here they are not
22 referring to ownership; right?

1 A. Yes.

2 Q. Let us now look at (c).

3 I understand that you have said that there
4 is a difference between reservation of ownership and
5 asset forfeiture. You said, first you have to finish
6 the Criminal Proceedings, and then you can start the
7 asset forfeiture. There was a reform after that that
8 allows for the forfeiture to start without a final
9 ruling or a final judgment.

10 So, in 2014 or 2015, you could not start
11 asset forfeiture without a final judgment; is that
12 right?

13 A. Yes. That is part of the evolution of
14 criminal law.

15 In the past, any consequence had to do with
16 determining the liability of an individual, but now
17 there are other alternatives. Without necessarily
18 convicting an individual, you can go after the
19 proceeds of the crime, so this is an evolution of
20 criminal law in time.

21 Q. Very well.

22 Let's look at (c), regardless of your

1 position that, back then, one could not formally start
2 asset forfeiture procedures.

3 (c), which comes after (b), and, of course,
4 Article 94 is not in the section on termination of the
5 case of final judgment. This has to do with
6 Provisional Measures; right?

7 A. Yes. It has to deal with attachments and
8 seizures.

9 Q. Okay. The whole Article has to do with
10 Provisionary Measures, not final judgments?

11 A. Yes. It has to do with attachment, et
12 cetera.

13 Q. And here it says, the Judge shall give
14 Notice to the provincial prosecutor, criminal
15 prosecutor, on duty of the existence of the effects,
16 objects or instruments of fruit of the crime or any
17 kind of element that is born of a criminal infraction.

18 the courts of the four or five
19 investigations, did they let the provincial prosecutor
20 know about the existence of instruments of the crime?

21 A. No. The reverse happened. The Prosecutors
22 asked the courts to issue a seizure measure.

1 Q. Okay. The Court ordered the seizure, and
2 your position is that it did so because it was
3 presumed that these crimes were--these pieces of
4 property were the fruit of crimes.

5 A. Yes.

6 Q. So, after the seizure was ordered, the Judge
7 had to give Notice to the provincial prosecutor on
8 criminal matters on duty the existence of instruments
9 was a crime; right?

10 A. Yes.

11 Q. Have you seen any document that allows you
12 to conclude that that communication to the provincial
13 prosecutor on duty was made?

14 A. Not out of the documents that I was able to
15 see.

16 Q. Okay. Thank you. We also
17 agree--right?--that the asset forfeiture procedure
18 started in 2022, and only in connection with one of
19 the shipments. Is that correct?

20 A. Yes.

21 If you allow me, if we can continue calling
22 it that, but in the past it was called in a different

1 manner, but it's now called "asset forfeiture," so I
2 don't want the Spanish terms to be misinterpreted,
3 "pérdida" or "extinción" are the two terms in Spanish.

4 Q. Okay. So, whether you call it "pérdida" or
5 "extinción," it only happened in connection with four
6 or five of the shipments?

7 A. That's right.

8 Q. Let us look at Paragraph 43 of the Second
9 Memorial by Perú, the Rejoinder on the merits. This
10 is a Legislative Decree, Legislative Decree 1373,
11 Asset Forfeiture Regulations.

12 And it says that, in accordance with these
13 regulations, Claimant--Kaloti, in this case--had to
14 prove that Kaloti acquired the property and the legal
15 title of the gold and that during the purchase, it
16 acted in a faithful and honest manner.

17 Let us look at Footnote No. 19. In your
18 Second Report at Page 119--or rather Paragraph 119,
19 you talk about that same Decree, the Legislative
20 Decree, which is Number 1373, on asset forfeiture,
21 which came into force on 2 February 2019. How could
22 this Decree apply to what Kaloti Metals had to do in

1 2013 or 2014, if this is a 2019 Decree?

2 A. Could you please show the other citation in
3 English?

4 Q. Yes. It is Paragraph 43 of the Second
5 Memorial by Perú.

6 A. It is true that I showed my presentation in
7 English because there are some arbitrators who do not
8 speak Spanish fluently, but I do need to read this now
9 slowly.

10 Q. Of course. Go ahead.

11 A. Thank you. Agreed.

12 And you told me it was 119 in
13 your Second Report.

14 A. what was your question?

15 Q. The Decree that Peruvian lawyers referred to
16 in this arbitration, you were saying that it was--it
17 was enforced in 2019.

18 A. Yes, indeed.

19 Q. How could this Decree apply to what Kaloti
20 had to do in 2013 or 2014?

21 A. I do not understand your question. What is
22 it when you're saying, how could this be applied? I

1 understand that it couldn't be applied.

2 Q. This Decree--

3 A. By 2014, the Decree of 2019 cannot be
4 applied. I think that we agree, but now the question
5 is not clear to me.

6 Q. You already responded. Nothing else is
7 needed. Thank you.

8 PRESIDENT McRAE: Mr. Díaz-Candia, can we
9 talk about timing? Because we're at the point where
10 we'd normally take a break. It's not in accordance
11 with the Schedule.

12 MR. DÍAZ-CANDIA: At least one more hour.

13 PRESIDENT McRAE: So, we should take a break
14 now?

15 MR. DÍAZ-CANDIA: Whatever you say.

16 PRESIDENT McRAE: So, why don't we take a
17 break now. So, a 15 minute break, and come back at
18 4:15 or 4:17, if you want to be precise about 15
19 minutes.

20 THE WITNESS: Thank you.

21 (Recess.)

22 PRESIDENT McRAE: When you're ready.

1 Mr. Díaz-Candia, whenever you're ready.

2 MR. DÍAZ-CANDIA: Thank you.

3 BY MR. DÍAZ-CANDIA:

4 Q. We continue, Mr. Missiego. We are about to
5 finish. Just bear with me.

6 This is Exhibit R-0013. That is the General
7 Mining Law, and I will be referring to Article 4
8 because you cite it in your Reports.

9 This Article reads that the mineral products
10 bought from authorized individuals are not claimable.
11 The purchase carried out to a nonauthorized person
12 subject to the responsibility of the purchaser, and
13 then you're saying that the Buyer is compelled to
14 verify the origin of the mineral substances.

15 So, first, the breach of this Article, is it
16 of a criminal nature?

17 A. Is that your question?

18 Q. Yes.

19 A. In principle, as I mentioned, I was citing
20 to this Article without being a mining expert.

21 Clearly, it is not a criminal law. There is no legal
22 consequence. We're talking about Mining Law. That's

1 all I can tell you.

2 Q. And then, do we agree that the problem with
3 this Article is - that the gold is purchased from an
4 unauthorized person? However, as far as we have seen,
5 the four Sellers of the Five Shipments were registered
6 with RECPO at the time the purchase took place, and
7 even they were registered with RECPO in 2018 or 2019.
8 The RECPO authorizes them.- Someone may understand
9 that they were authorized. Is it correct or not?

10 A. Yes, but I would like to see that at
11 Article 4, the reference in my Report is based on the
12 last line. The obligation the purchaser has to verify
13 the origin of the mineral substances. The context in
14 which I am presenting this Article indeed is related
15 to the questions I have as to the operation.

16 Q. Sure, but I am trying -to get to the legal
17 consequence of this Article. When it refers to the
18 transfer of the property right, the problem here with
19 the Article or the assumption is that it is bought
20 from an unauthorized person. And later on, it says
21 that the purchaser has to verify the origin of the
22 Mineral Resources, and you're saying that this is not

1 of any criminal effect but what is the consequence of
2 not verifying the origin of the Mineral Resources?

3 That's- where I would like to get.

4 A. Under criminal law, we hear about complete,
5 incomplete criminal provisions and blank criminal
6 provisions. When we're saying that they are blank, it
7 means that the criminal law has to resort to a law
8 outside the criminal scope to understand the concept
9 of the criminal -of- a potential Criminal Code.

10 So, legislative decree 1106, as you
11 mentioned a couple of minutes, indicated that the
12 person that would know, should know, or assume.

13 So, within that context, I place Article 4,
14 the last section of Article 4 in connection with the
15 obligation to verify the origin of mineral substances.
16 As to the rest of the Article, there is no reference
17 to that. I am not referring-I'm referring here to the
18 link between "should be -s'med." So, what am I being
19 asked for me to be able to assume something? At
20 least, to verify the origin of the mineral substances.
21 This is the context of the phrase. And then, what
22 you're saying that is already here in the law is not

1 the subject matter of my Report, is not my area of
2 specialty. I wouldn't be able to go beyond the
3 reference I made to the comment related to Article 4.

4 Q. I understand, but so that the Transcript
5 reflects this and so as not to put in your mouth words
6 that you have not said, you said a couple of minutes
7 ago that someone may interpret that if the person is
8 registered in the RECPO, the person is authorized to
9 sell gold.

10 A. I have not talked about the RECPO or
11 authorization to sell gold. I never mentioned the
12 word "Registry." You did.

13 Q. Yes.

14 And I asked you whether it would be
15 reasonable to interpret that someone, an authorized
16 person, is the one that is registered with RECPO.
17 That is the question that you answered in the
18 affirmative fashion. This is at-and it is true that I
19 am the one who referred to RECPO first.

20 A: Agreed.

21 I said, before The four Sellers of the Five
22 Shipments were registered with RECPO at the time the

1 sale took place with Kaloti, and they were even in the
2 Registry in 2018-2019.

3 So, RECPO authorizes them or at least
4 someone could assume that they are authorized to sell
5 gold. "Yes" or "no"? You said "yes." But then, you
6 expanded with an explanation saying that, in
7 Article 4, there is reference to a report, but you
8 answered -your answer to my question was in the
9 affirmative. -Thank you.

10
11 A: Ok.

12 Q:You just mentioned Decree 1106. We're
13 going to look at that.

14 I apologize. It's 1107, rather. 1107.
15 There, it is referring to the responsibility of the
16 purchaser, and we have heard several references to
17 this from Perú and also by Mr. Caro.

18 My question in connection with this Article
19 and this Decree is that you are aware of any other
20 decree from 2013 and you do not refer to it in your
21 report ----, and I am just asking you whether you're
22 familiar with 032/2013/EM of August 2013. This

1 decree, refers to strengthen the plan, the miner's
2 plan. And I don't- know if you are familiar with this
3 Decree. As we have read it, and if you do not know
4 this decree you do not have to answer me if you do not
5 feel comfortable with the answer.

6
7 This Decree has extended certain-has
8 provided or expanded certain terms for the miners to
9 present documentation, and this also allowed them to
10 continue to operate at least until mid-2014 with just
11 a Declaration of commitment.

12 Do you have any idea about this? What can
13 you tell us about what I just mentioned or whether, in
14 general terms, this plan had any impact, any temporary
15 impact on Article 11 of 1107?

16 A. I wouldn't be able to answer that question.
17 This is something that is not within my area of
18 specialization. I heard that you said "miner."
19 Correct?

20 Q: Correct.

21 R: "EM," EM. This is not my area of specialty. "M"
22 stands for mining.

1 Q. But could we agree that in 2013, early 2014,
2 the process for regularizing miners was underway?

3 A: Agreed.

4
5 Q: So, now we're going to look at
6 Law 27.379, Article 4, that you referred to this
7 morning that -rather, Dr. Caro mentioned this morning.
8 This is an Article- -and before that, please confirm
9 me if I am wrong. -The four shipments, the four
10 seizures of the shipments referred to Article 2 of
11 this law, and then it says that the adjudicator should
12 reason their Judgment; that there can be an appeal
13 within 24hours, and that both proceedings will be
14 confidential; and that the adjudicator will also
15 determine the deadline for the Measures; that it
16 cannot exceed 90 days; that this will be also
17 communicated to the Public Prosecutor; that there will
18 be reference to the name of the person investigated
19 and other data to complete the Proceeding. And then,
20 also, the adjudicator will enforce the Measures, the
21 Criminal Judge will enforce the Measures, and
22 also- complete the process.

1 So, once the Measures are enforced, the
2 Criminal Judge will communicate this to the affected
3 Party who, within three days, will be able to appeal.

4 And I understand that you're saying that
5 this appeal was one of the remedies at hand for
6 Kaloti.

7 MR. GRANÉ LABAT: Before the Expert answers,
8 I would like to note that there is a discrepancy
9 between the Parties as to this law because there is a
10 different version, and this has been presented by this
11 Expert as JM-025, so we think that it is proper to
12 show him the current version of the law that is the
13 attachment, the exhibit or the appendix to
14 Mr. Missiego's Report.

15 MR. DÍAZ-CANDIA: CL-044 is where this law
16 is in the record and has been there for some time, so
17 far nobody had questioned its veracity.

18 MR. GRANÉ LABAT: It's not a matter of
19 veracity. It's just about whether it is a current law
20 or has it been derogated totally or in part.

21 MR. DÍAZ-CANDIA: But as the President has
22 said several times, you can present this argument

1 later. I'm referring to what is in the record, and I
2 think I have a right to that.

3 MR. GRANÉ LABAT: You have a right to refer
4 to the current one, and that is JM-025. If you want
5 to ask questions about a law that has been derogated,
6 please, I want the record to show that that law is not
7 current.

8 MR. DÍAZ-CANDIA: I ask on the record. He
9 cannot limit my questions that I ask, if the document
10 is on the file.

11 MR. GRANÉ LABAT: If you want to provide
12 false information for the Tribunal, that's great, but
13 we're not interested in doing that.

14 PRESIDENT McRAE: I'm not quite sure that
15 we've caught up here.

16 So, your concern is that this is not a
17 current law, and Mr. Díaz-Candia, you may disagree as
18 to whether that's current?

19 MR. DÍAZ-CANDIA: We will drop it. We're
20 not interested in adding this Arbitration with petty
21 stuff. We referred to the law that Mr. Grané wants.

22 Can you project it?

1 Let's go to the last paragraph of Article 4,
2 and you can tell us if this is the correct exhibit,
3 please, Mr. Grané.

4 MR. GRANÉ LABAT: JM-25?

5 MR. DÍAZ-CANDIA: Yes.

6 The Article. Okay.

7 This paragraph in the law you cite says that
8 the Criminal Judge will immediately make this known to
9 the Party affected by the Measure who within three
10 days will be able to file an appeal questioning the
11 legality of the Resolution.

12 BY MR. DÍAZ-CANDIA:

13 Q. That appeal remedy regarding those Measures
14 is something you've said is something that Kaloti had
15 access to. "Yes" or "no"?

16 A. Yes.

17 Q. Do you know whether Kaloti --and the Article
18 clearly says that-, in order for that appeal period to
19 start running, there has to- be a notification first.
20 Have you seen any document showing that these Measures
21 were notified to Kaloti?

22 A. No.

1 Q. Thank you.

2 Let's refer now to something you said during
3 your presentation. You talked about recourse that
4 Kaloti filed before 2016 regarding two shipments.
5 That Constitutional Amparo Judge, under Peruvian law,
6 had jurisdiction and authority to convict the Peruvian
7 State over a violation of the Free Trade Agreement,
8 the TPA between the United States and Perú.

9 A. I'm going to give you a rather general
10 response based on what I understand. I understand
11 that what is being argued is an attack on the right to
12 property. A judge that looks at an amparo action
13 looks at whether a constitutional guarantee has or has
14 not been violated.

15 And now I'm speculating.

16 Q. Go ahead.

17 A. I don't think a constitutional judge would
18 have gone into analyzing the scope of a treaty.

19 Q. Thank you. We consider that response to be
20 sufficient.

21 Let's talk, then, about the duration of this
22 proceeding, and specifically the judicial seizure of

1 four or Five Shipments.

2 Somewhere in your Report, you say that
3 periods of time that are not in the law cannot be
4 imposed. However, we agree that the Peruvian
5 Constitution establishes a right to have Judgment
6 within a reasonable period of time; correct?

7 A. Yes. I see what you're saying, but I would
8 like you to show me the part of the Report or, as you
9 have been doing, to show me which -or tell me which
10 paragraph. I have no doubt about what you're- saying,
11 but I would like to see the context.

12 Q. Don't worry. We have it in this morning's
13 Transcript and in the Closing Arguments, we can
14 discuss whether what you said is what is there or not.

15 If a law does not establish a temporal
16 limit, a time limit, to Precautionary Measures, does
17 it mean they can be eternal?

18 A. In the case of a Precautionary Measure,
19 which is what I think we're talking about -now, it's a
20 Precautionary Measure on -property-I haven't found
21 anything that says- -a law that says that there is a
22 specific period of time for that law once initiated-.

1 Q. and these Precautionary Measures are
2 accessory to the merits, -once a definitive Judgment
3 is issued, that Precautionary Measure is lifted, and
4 that asset is returned to the owner or the affected
5 Party or the effects become permanent. But the
6 Precautionary Measure cannot last longer in its effect
7 or beyond the final Judgment. It cannot be effective
8 after that Judgment. -Do we agree on that?

9 A. Yes.

10 Q. Peruvian law, in the criminal procedure law
11 and the criminal Procedural Code, established, both
12 establish a maximum duration for a Criminal
13 Proceeding. "Yes" or "no"?

14 A. Yes.

15 Q. So, a Precautionary Measure, according to
16 Peruvian legislation, cannot last longer than the
17 period of time for the proceedings that the Peruvian
18 Constitution says based on the Criminal Procedural
19 Codes.

20 A. I would say that I agree with you. On what
21 we said earlier, the effect can last as long as the
22 proceedings last.

1 Q: Correct.

2 A: But the second conclusion with respect to if that
3 process has a duration of X, then the Precautionary
4 Measure has to last that period of time as well, I
5 don't find that in the law, and I don't share your
6 point of view.

7 Q. Yes, but you said that that definitive
8 judgment --causes the Precautionary Measure to cease.

9 A. Yes, indeed.

10 Q. And you also said that the Criminal
11 Procedural Code and the Criminal Code establish a
12 maximum duration for the proceeding? "Yes" or "no"?

13 A. Yes, indeed.

14 Q. Thank you.

15 Then, regarding the duration of the
16 investigations or of the seizures and the proceedings
17 that have been conducted against Kaloti's four
18 Suppliers, where we established that Kaloti was not a
19 party and was not notified so it could make use of its
20 right to appeal, it was said that these proceedings
21 were confidential. So, we understand that, under
22 Peruvian law, Kaloti had no access to those records

1 because they were not a party. We do not understand
2 how can a company fight something if it doesn't know
3 its contents, but, that's a separate matter.

4 Q. But in any case, your Exhibit JM-0042, it is
5 an Excel Table. It's a spreadsheet. You conducted a
6 field investigation for this; correct?

7 A. -Can- I explain the contents of that
8 document?

9 Q. Yes.

10 A. Thank you.

11 In principle, this spreadsheet was because
12 we wanted to show that Criminal Proceedings can last
13 longer than the periods of time established in the
14 law, and that can be seen by doing a practical
15 comparison.

16 Secondly, if you see, all the records are
17 from the Third Appeals Chamber, and it's also an
18 enforcement Chamber.

19 We are talking about a chamber that is called
20 more of a liquidating chamber.

21 And what does that mean? You, yourself, had
22 talked about the Procedural Criminal Code and The Code

1 of Criminal Procedures. Dr. Caro also referred to the
2 new Code and the old Code, so these are cases that are
3 under the old Code. They have remained in progress,
4 and they are still within the scope of the older Code.

5 So, the coincidence, the overlap that I find
6 here is trying to show that, in that same Chamber,
7 where those proceedings on the Kaloti Suppliers are
8 being dealt with, there are other Criminal Proceedings
9 where we can see on the record also have been going on
10 for some years.

11 Now, if I may anticipate your question,

12 Q: Sure.

13 A: when you talk about fieldwork, are you going to ask
14 me what kind of case each was,? Was it homicide or
15 theft? I'm going to say, no, this was a reference I
16 got from the information service of the Judicial
17 Branch regarding cases.

18 But what I can say, Doctor -and I think all
19 of us here would agree- -is that a money- laundering
20 case is very complex; and, as such, the investigations
21 sometimes have to be extended. Those periods of time
22 have to be extended. Those -money laundering cases

1 are more complex probably than the ones we're- looking
2 at here.

3 And to conclude my answer, and thank you for
4 letting me explain this, we have to think about the
5 context, the place where we are. You said you have
6 been in Perú. We're talking about Callao, and there
7 is not just the airport, there is the port, so the
8 number of cases that can be initiated as a consequence
9 of potential activities of this case is a lot. It's a
10 city where there is a lot happening, and I think this
11 is a true, a real reflection of the existence that we
12 cannot doubt of Criminal Proceedings in my country
13 where there is a temporal overlap with what we are
14 discussing now.

15 Q. Are you done?

16 A. Yes.

17 Q. Thank you.

18 You said the Code of Criminal Procedures, I
19 think it's from 1939 --is the one that is applied to
20 these cases?

21 A. Yes, I agree.

22 Q. So, we can conclude that these cases have

1 had a longer duration than what is established in
2 terms of duration by the Code of Criminal Procedures
3 of 1939?

4 A. That's correct.

5 Q. So, what happens in practice in these courts
6 does not modify what the law says.

7 A. Correct.

8 Q. How many of the proceedings against Kaloti's
9 Suppliers are in the oral trial phase? I think you
10 said one.

11 A. Yes, one. To date, there is one where there
12 is a formal accusation already. This means that
13 they're going to go on to an oral trial, according to
14 the information I have -I'm- sorry.

15 Q. Thank you.

16 A: To date, from the reports, I see there
17 were two others that were in a transitional period
18 toward trial, and there is one more that is still
19 being analyzed and the Decision needs to be made about
20 whether there will a formal accusation or a dismissal.

21 Q: So, to sum up, only one of those four is
22 in that phase going toward the oral trial?

1 A. Yes.

2 Q. And all the ones on this spreadsheet are in
3 that phase, oral trial.

4 A. From what we can see in the first group that
5 says "continuation of oral trial," - it is evident
6 that they are in oral trial. The ones that say
7 "hearing of the case", that could be an appeal or an
8 oral-a report requested by counsel.

9 Q. That comes after the oral trial?

10 A. Not necessarily. It can be--have something
11 to do with appeal or have something be a consequence
12 of a judgment.

13 Q. And that's after the oral trial.

14 A. Correct.

15 Q. So, as a minimum, other ones that say
16 "Continuación JO" are more advanced than three of the
17 investigations against the four Suppliers; correct?

18 A. Correct.

19 Q. And you said, just to clarify, that you
20 don't know whether these are money laundering cases.

21 A. No.

22 Q. You don't know.

1 A. No, my reference has been, as I said, based
2 on the Chamber of the Court and based on the record so
3 we could link them to the years.

4 Q. So total, you had access -between this
5 exhibit- and others, I understand, access to 160
6 cases?

7 A. As I said, this is public information, you
8 can obtain it by entering the website of the judicial
9 branch.

10 Q. But these cases that you included are
11 approximately 160?

12 A. I haven't counted them, but it's all the
13 ones that you see there.

14 Q. Well, we did add them up, and we got 160.

15 A. Yes, I have no problem with it. Maybe three
16 more, but around there.

17 Q. How many cases per year are decided in this
18 jurisdiction of el Callao?

19 A. That's not information I have.

20 Q. Would it surprise you if I told you it's
21 over 3,000?

22 A. When you tell me that these cases are

1 decided, are you telling me a final decision is made
2 or they are in progress?

3 Q. It includes both things.

4 A. Well, that is my point. What I'm not
5 surprised by is the burden that--

6 Q. I'm sorry, just to correct what I said. I
7 was referring to the number of cases that enter into
8 the system every year.

9 Would it surprise you or would it sound
10 unreasonable to you if I told you that just in this
11 specific jurisdiction it's 3,500? As far as we
12 understood, it's over 20,000 in the entire country,
13 almost 30,000 per year. Does that sound reasonable to
14 you or not?

15 A. I will be honest, I'm speculating, 3,000,
16 2,000, 5,000, what doesn't surprise me is that high
17 burden on the judicial system. What we do agree on is
18 that it is a very heavy load for our judges.

19 Q. Maybe they're very busy and that's why
20 they can't fulfill or complete the processes within
21 the periods established by law. Is that what you're
22 saying?

1 A. No. What I'm saying is that it's a high
2 burden, whether it's 2,000, 3,000, 5,000. I don't
3 know, I don't have that information.

4 Q. But let's assume ---well, you also said
5 3,500 just in this jurisdiction doesn't- seem strange
6 to you?

7 A. I'm not surprised by the number of cases,
8 the volume of cases in these jurisdictions in Perú.
9 It's a high load.

10 Q. What I'm talking about is about the
11 statistical significance of this sample. If I'm
12 correct, 160 cases out of 3,500--and that's not the
13 cases that are pending, that's the approximate number
14 of cases that enter through this jurisdiction in one
15 year. And, in Perú, as far as we understand--and I'm
16 not asking you to confirm what I'm saying, but I'm
17 simply saying that we understand that it is at least
18 25,000 per year in all of Perú. And this is one of
19 the jurisdictions, I understand, that the one with the
20 heaviest burden of cases is the Lima jurisdiction--.

21 So, can we draw any conclusions out of this
22 very small sample, is what I'm concerned about. In

1 almost all the records you cite -first of all, we
2 don't know if they're about money- laundering, and
3 second, as we know, most of them are further along
4 than three of the four cases that involve Kaloti's
5 shipments. That was my point. I don't know if you
6 would like to make a comment, and if you don't want
7 to, that's- fine.

8 A. No.

9 Q. Okay. Thank you very much.

10 I think we have only two more questions and
11 we will conclude.

12 You conducted an analysis of the indicia
13 referred to in the orders to start the proceedings and
14 the resolutions as well, where the seizures were
15 determined. There were at least, that we know of,
16 five seizures. There was a discussion as to the fifth
17 shipment and whether that seizure is still effective
18 and how long it lasted.

19 But my question is: All those clues, all
20 those indications which are in the record, in and of
21 themselves, are they enough for a conviction, a
22 decision to convict on money laundering charges?

1 A. Let's me see, I may. We discussed this a
2 few minutes ago, and the parameters vary as the
3 process moves forward.

4 Q: Yes.

5 A: If the indicia are not confirmed, if they are
6 dismissed, then there wouldn't even be a formal
7 accusation. There would be request to dismiss.

8 As these indications are confirmed or as new
9 elements of evidence come up -I'm talking in general
10 terms- -then- the case becomes more solid for the
11 Prosecutor; and, based on that, that Prosecutor's
12 formal accusation can be filed.

13 If you're asking me just about this case, or
14 actually-- Q. In general terms. In general terms

15 with those first indications that arrive
16 in the beginning of a criminal proceeding,
17 based just on that, is a person going to be
18 convicted, I would say it's not likely. But
19 that is why everything is developed. It's a
20 whole process where evidence is collected,
21 and the Parties also submit evidence, and
22 that's when we can confirm or not confirm

1 criminal liabilities.

2 Out of the accusations that I have been able
3 to review, could these have, as a result, a conviction
4 as Dr. Caro said? I don't have a crystal ball, but my
5 experience would lead me to think that the answer
6 would be yes.

7 Q. Are you done?

8 A. Yes, sir.

9 Q. Let me ask you in a different way to see if
10 we can agree.

11 I understand that you're saying that the
12 files, in general, these cases can lead to a
13 definitive conviction against the Suppliers, not
14 against Kaloti?

15 A. Yes.

16 Q. Because it's the four Suppliers, and this
17 we've discussed, it's the four Suppliers who are the
18 subject of these proceedings. You are not going to
19 convict someone who is not part of the proceeding.

20 Q: So, you are issuing an opinion
21 regarding what you think is going to happen with these
22 cases which leads you to believe that, with what comes

1 later, there might be a conviction?

2 A. If I may, with all due respect--

3 Q. And it's reciprocal, it's mutual.

4 A. Thank you very much.

5 I understand that you, with your experience
6 as a lawyer, can look at a case and foresee what the
7 outcome might be. We're talking about general terms,
8 but neither you nor I are the Judge who is going to
9 issue the Final Decision.

10 But what I'm saying and what I confirm now
11 is that, based on my reading of the Prosecutor's
12 accusations and my Expert Opinion, I believe there is
13 a high likelihood of a conviction in these cases.

14 Q. Understood. I will not argue on that
15 answer, which is your personal answer.

16 Let me ask you another question: If nothing
17 further happens with these cases, only these indicia
18 which were the trigger for the initiation of the
19 investigations, those that were documented and were
20 submitted as evidence for this Arbitration, in and of
21 themselves, are they enough for a conviction?

22 A. Well, let's see. I'm going to repeat what I

1 said earlier. Please don't take this the wrong way,
2 but you're talking about indications or indicia, and I
3 have just given my presentation, and I said a few
4 minutes ago that these indications need to be
5 reinforced, and in due time we will be talking about
6 evidence and not just indicia. If you -ask me
7 whether the evidence that's in the Arbitration
8 according to my point of view can have as an outcome a
9 conviction? my answer is yes. But if you ask me if
10 it's just with the clues just with the indications as
11 with any Criminal Proceeding, am I going to convict
12 based just on what we have the first day? -No.

13 So, that's why we have to be very careful
14 with that term "indicia" because that can lead us to
15 the response that you want, and I thank you for
16 allowing me to expand on this because it's one thing
17 to have an initial suspicion and indication, and it's
18 another thing to have all the evidence that you can
19 compile throughout the whole process.

20 So, I reiterate my response that: The
21 evidence that we have support for the Prosecutor's
22 accusation generate a pretty high likelihood of

1 conviction.

2 Q. But all the evidence that we have in the
3 documents in this Arbitration are only indicia.

4 A. No, they're not just indicia. They're
5 elements. They are elements of proof that have
6 allowed the Prosecutor to file an accusation, and
7 that's a very serious matter.

8 It's one thing if a prosecutor decides to
9 investigate a person. Evidence is going to be taken,
10 and it's different when that prosecutor decides to
11 file an accusation. He's not investigating anymore.

12 Now, I'm going to say it in very simple
13 terms that if that's the case that all that evidence
14 is there, that person needs to go to the jail, and
15 that's a sanction, that's a punishment and being
16 deprived of freedom. Maybe it can be suspended,
17 that's another thing. But I want to be very clear on
18 this.

19 If you insist on using the word "indicia,"
20 what I'm saying is that we need evidence. The indicia
21 are the starting point, but then those suspicions,
22 those indicia, are confirmed as the process continues.

1 I don't know if we have been able to look at the
2 accusation of a prosecutor, but when the prosecutor
3 files that accusation, he doesn't say I'm presenting
4 indicia, he says I'm presenting evidence. Then that's
5 a higher standard that lead him and that those
6 requirements were met to the level that that person
7 decided to file that accusation.

8 Q. In terms of what we have in the record for
9 this Arbitration, have you seen any evidence -and- I
10 understand what you are saying is your point of view
11 in terms of what the Prosecutor needs to have in his
12 hands, but in terms of what is in this Arbitration, is
13 there any evidence beyond indicia for any of the four
14 proceedings?

15 A. I want to find the exhibit.

16 What causes me to speculate -and I underline
17 that word "speculate"- -that these proceedings have a
18 high likelihood of leading to a conviction, the
19 Prosecutor's accusations that you see, and based on
20 which I'm giving you my answer. If you ask me where
21 do I see that evidence in the record, precisely there,
22 with those prosecutor's accusations. There is another

1 one, R---212, there are others that are also in the
2 record.

3 Q. I personally have not seen in the record of
4 this Arbitration anything that hasn't been described
5 as "indicia" but we're not going to argue that because
6 what's in the record is in the record. At least we
7 can agree that, after that indictment or accusation,
8 the right to the defense of the four accused Parties
9 begins, and they can submit evidence in their defense,
10 and that is not in the record yet, and that's why you
11 haven't seen it.

12 A. The right to defense starts when -the person
13 is arrested or cited by the authority. That's when it
14 starts, so their right to defend themselves does not
15 begin on the first day of the oral trial or in the
16 cases that are already in that phase or when
17 it's- being decided. It starts on the first day.

18 The investigation is a stage that looks for
19 collecting evidence. At that time, the Parties should
20 provide sufficient evidence. This is their evidence.

21 If during the proceedings new
22 evidence arises, well, the Parties are going

1 to be able to contribute that evidence, but
2 the right of defense begins not when you are
3 accused. It begins before. They have the
4 right to defend the four providers from the
5 first day that everything started.

6 Q. Now, the taking of evidence during a
7 proceeding for the accused, when does that happen?

8 A. Well, the weighing of the evidence is during
9 the trial, but the presentation of the evidence can
10 come at the investigation stage. When you used the
11 phrase "right of defense"--

12 Q. Excuse me for the confusion. I thought you
13 told me that the case files were initially under seal,
14 not even the investigated Party has access to it.

15 A. No. The investigated Party does have access
16 to them. They're under seal for the Parties.

17 Q: When are they confidential?

18 A: The term "confidential" could be linked to
19 secrecy when a judicial resolution is issued
20 in that sense to carry out certain
21 proceedings so that people do not become
22 aware of what is happening within the

1 investigation. Which I have not observed in
2 this case.

3 Q. When is it that the investigated Party have
4 access to that?

5 A. Well, when a decision is issued by the Judge
6 to take certain procedural steps. The idea, of
7 course, is for people not to have--

8 Q. The individuals that have no knowledge of
9 the case, could those also be the investigated
10 Parties?

11 A. Well, in general, yes, but I haven't seen
12 those Measures here.

13 Q. Okay. We're going to get to that.

14 The accused, -I don't remember who the
15 accused were now; the four investigated Parties, let's
16 just say- -they still have the right to submit- new
17 evidence; right?

18 A. Yes.

19 Q. You cannot assess those pieces of evidence
20 because you don't know those pieces of evidence. You
21 don't know what they are?

22 A. Right. But when you mention the fact that

1 they would only have the right of defense at a certain
2 point, that may lead to confusion.

3 Q. No, I think that was clarified. They can
4 submit evident on file, and they can bring additional
5 documents?

6 A. Yes, they can do that.

7 They have had no limitations, Mr. Díaz-
8 Candia. This happens in all Criminal Proceedings when
9 you have an accused individual.

10 Q. I have a couple more questions.

11 In Peruvian civil law-and I understand that
12 you're not an expert on civil law, but my question is
13 very basic, it relates to law in general in
14 Perú- -are- oral contracts allowed?

15 A. Yes.

16 Q. Are there cases where you need to have a
17 piece of paper called "Contract" signed by both
18 Parties and perhaps it has to be filed with a
19 registry, for example, in the purchase and sale of
20 Real Property? That's a regular in many countries.

21 A. Agreed.

22 Q. But if the law does not specifically provide

1 for formalities in a contract, a contract may be
2 entered into orally -right?- --without any kind of
3 document.

4 A. Agreed.

5 Q. Even when you are seeking for evidence in a
6 contract. For example, the delivery of the asset, the
7 payment of the price, an invoice, those can be pieces
8 of evidence for a contract?

9 A. Yes.

10 When you talk about evidence in general
11 terms, not only for contracts, the evidence needs to
12 create conviction. It has to get to that parameter.

13 Q. Do you know if the five gold shipments
14 investigated in this case were delivered to Kaloti at
15 the offices that Kaloti had in Hermes?

16 A. I'm not sure whether they were delivered to
17 Kaloti. That's not clear in my mind.

18 Q. If they had been delivered to Kaloti in
19 Hermes, that would be a potential evidence of the
20 existence of a contract?

21 A. I would be speculating. I don't know. That
22 is not clear in my mind. I've reviewed the documents,

1 but it's not clear in my mind.

2 Q. But, in basic civil law, the delivery of the
3 asset is that an element that evidences the existence
4 of a contract?

5 A. Yes, it may be one of the elements that
6 prove the existence of a contract.

7 Q. Thank you. Thank you very much for your
8 patience, Mr. Missiego.

9 A. You're welcome.

10 MR. DÍAZ-CANDIA: That finishes the
11 cross-examination. Thank you.

12 PRESIDENT McRAE: Thank you. Do you have
13 redirect?

14 MR. GRANÉ LABAT: No, Mr. President. Thank
15 you.

16 PRESIDENT McRAE: Thank you. Questions?

17 QUESTIONS FROM THE TRIBUNAL

18 ARBITRATOR FERNÁNDEZ: I do have a question.
19 It's a very specific question related to Peruvian law.

20 You stated that Kaloti submitted three
21 pleadings in the Criminal Court in the case of [REDACTED]

22 [REDACTED], but none of those pleadings met the

1 substantial and formal requirements to have Kaloti
2 appeal; is that true? You talked about "practice" in
3 your statement. Could you please indicate what
4 procedural provisions are there that support your
5 statements?

6 THE WITNESS: Let us see. In principle, I
7 would look at the evidentiary aspect of things. I
8 don't remember the provision but generally.

9 In the case of Kaloti and in any specific
10 case, when you go to a court and you are claiming a
11 certain right, I think that when you have a standard,
12 what you need to do is to evidence your right. What I
13 was able to see out of the pleadings that I've
14 reviewed and that were filed with the judiciary and
15 that were shown this morning to Claimant's Expert,
16 well, those pleadings indicate that Kaloti asks for
17 the return of the gold, but it does not attach to
18 those pleadings evidence that shows Kaloti's status as
19 an Owner.

20 In two of those cases, more than speaking
21 about a property right or trying to evidence the
22 property right, they don't do that. What they say is,

1 well, if the Request is not granted, what they're
2 going to do, they say, is submit the case to
3 arbitration. If I want to evidence that I am the
4 Owner of something, the least I have to do is show
5 documents evidencing my ownership. That is what I was
6 referencing when I made my statements. And I think
7 your question is in that connection.

8 ARBITRATOR FERNÁNDEZ: Okay. If we have
9 provisions before us, so perhaps we can cure these
10 deficiencies; right?

11 THE WITNESS: In my expert opinion, I think
12 that Kaloti could have filed a new pleading supported
13 by evidence showing the ownership it claimed it had.
14 The fact that the request was not granted, give me my
15 property back, well, that would have caused Kaloti to
16 maybe issue a new pleading or file a new pleading.

17 And also the amparo, they could have filed
18 an amparo. An amparo, of course, entails the
19 exhaustion of other remedies.

20 Kaloti may understand that the possibility
21 of going to the general courts has been exhausted, and
22 then you could ask for an amparo. You can file an

1 amparo under the Constitution. There is no obligation
2 to do it, they said here. But, for us lawyers, well,
3 we don't have an obligation to submit something. But,
4 if I want to have a favorable result when I lodge a
5 claim, I need to be diligent, I need to file
6 documents. I cannot say, since I have no obligation,
7 I will submit nothing.

8 ARBITRATOR FERNÁNDEZ: Okay. Thank you very
9 much.

10 THE WITNESS: You're welcome.

11 PRESIDENT McRAE: Thank you very much,
12 Mr. Missiego. We appreciate your testimony, that
13 you've given your testimony today, and there are no
14 further questions, and you're now relieved from your
15 obligations as a witness.

16 (Witness steps down.)

17 PRESIDENT McRAE: That brings us to the end
18 of today's--

19 MR. DÍAZ-CANDIA: Mr. President, a very
20 minor issue with your permission.

21 PRESIDENT McRAE: I beg your pardon?

22 MR. DÍAZ-CANDIA: A very minor issue with

1 your permission.

2 PRESIDENT McRAE: I was going to ask if
3 there's anything procedurally to be raised. I know
4 there's one issue that's going to be raised by the--

5 MR. DÍAZ-CANDIA: At minute 14:45:10 of the
6 Transcript in English, "juicio" was translated as
7 "adjudication."

8 REALTIME STENOGRAPHER: Can you say that
9 again, please?

10 MR. DÍAZ-CANDIA: At minute 14:45:10 of the
11 English Transcript, I understand that "juicio" was
12 translated that there has been an "adjudication," and
13 we believe that's not correct. If you can take a look
14 or if not, we can deal with it when we are revising
15 the--when we propose the corrections to the
16 Transcript. Just to make the point now, if it's
17 easier.

18 That's it.

19 PRESIDENT McRAE: So, you want to correct
20 the Transcript at the point?

21 MR. DÍAZ-CANDIA: We would invite the Court
22 Reporter to look again at that and decide if he

1 believes that the--it's probably more an issue for the
2 Translator than you, but we invite them to confirm
3 that. If not, we will deal with that when we propose
4 corrections to the Transcript.

5 PRESIDENT McRAE: Right. Thank you. I
6 assume Respondent has no problem with that issue.

7 And that's your one issue? So, we move to
8 the Respondent--you're free to go now, if you'd like.
9 I'm sorry, we shouldn't make you continue to sit and
10 listen to this.

11 So, now I give the floor to the Respondent.
12 Could you describe precisely what the issue is and
13 what you want to be done.

14 MR. GRANÉ LABAT: Thank you very much,
15 Mr. President.

16 During the cross-examination, at the
17 beginning of the cross-examination, we asked Mr. Caro
18 Coría whether he had participated in other ICSID
19 arbitrations, and he admitted that he did. We
20 proceeded to point out which arbitration that was.
21 It's Enegás v. Perú. He admitted that he had
22 participated in a Hearing that took place in this very

1 same room, and that happened in September of last
2 year.

3 However, Mr. Caro Coría refused to admit
4 that he participated as counsel for Claimant. And
5 that, in the light of that assertion, we are
6 requesting a leave to submit the List of Participants
7 to that Hearing which lists Mr. Caro Coría as counsel
8 for Claimant in that ongoing arbitration. That is our
9 request. Now, that was the point that we indicated
10 before we started.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

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[REDACTED]

PRESIDENT McRAE: If I understand correctly,
before I ask for a comment from the Claimant, if I
understand correctly you're asking for permission to
submit that document and you're reserving your rights?

MR. GRANÉ LABAT: That's correct [REDACTED]

Mr. Díaz-Candia?
MR. DÍAZ-CANDIA: Thank you, Mr. President.
With respect to Mr. Grané's procedure, we
have no objection on him submitting the List of

1 Attendees to that Hearing as long as after that
2 submission we are given an opportunity to respond.
3 So, we're basically saying that, in our view, he
4 doesn't need the leave from the Tribunal. He as oral
5 agreement to make the submission as long as you let us
6 respond to that submission after it is made.

7 [REDACTED]
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11

PRESIDENT McRAE: Is there anything further?

12

So, that brings us to a close for the day.

13

Tomorrow morning it's 9:00 again for the Experts on

14

quantum. If there's no problem with that, we'll start

15

at 9:00 with those Experts. Thank you.

16

(Whereupon, at 5:23 p.m., the Hearing was

17

adjourned until 9:00 a.m. the following day.)

POST-HEARING REVISIONS
CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted to me by the Parties, were revised and re-submitted to the Parties per their instructions.

I further certify that I am neither counsel for, related to, nor employed by any of the Parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "David A. Kasdan". The signature is written in black ink and is positioned above a horizontal line.

DAVID A. KASDAN