

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

Case No. ARB/18/21

Video conference
via Zoom

Wednesday, 23rd June 2021

Hearing on Jurisdiction and the Merits

Before:

RT HON LORD PHILLIPS KG PC
MR J TRUMAN BIDWELL JR
MS BARBARA DOHMANN QC

BAY VIEW GROUP LLC
and
THE SPALENA COMPANY LLC

Claimants

-v-

GOVERNMENT OF RWANDA

Respondent

Secretary to the Tribunal: ALEX B KAPLAN

Transcript produced by Anne-Marie Stallard
and Georgina Vaughn on behalf of Trevor McGowan

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<p>12:00 1 Wednesday, 23rd June 2021 2 (Transcript times are British Summer Time) 3 (12.00 pm) 4 THE PRESIDENT: Yes, let's see if there are any matters of 5 housekeeping. 6 MR HILL: There's one matter from my side, Mr President. 7 THE PRESIDENT: Yes, Mr Hill. 8 MR HILL: There was a request yesterday from Mr Cowley for 9 metadata in relation to three documents. That was, if 10 you like, put reciprocally, because we had asked for 11 metadata in relation to one document. 12 THE PRESIDENT: Yes. 13 MR HILL: We have provided the metadata in relation to three 14 documents -- sorry, I should say we have provided the 15 metadata that we have in relation to two documents, the 16 other one is in hard copy so there is no metadata, and 17 we provided that a little while ago to both ICSID, so it 18 should get to the Tribunal, and also to Mr Cowley. So 19 that's just the housekeeping. So we obviously await his 20 version as soon as possible. One point that emerges -- 21 THE PRESIDENT: Excuse me, just before -- I'm very ignorant. 22 I'm not quite sure what metadata is. I imagine it's the 23 data that tells you the genesis of the electronic 24 document? 25 MR HILL: Exactly, it tells you the information in</p> <p style="text-align: center;">Page 1</p>	<p>12:03 1 the Tribunal. We requested metadata for these 2 documents. We made the request directly of the 3 Respondent. They refused. We had to put the dispute to 4 the Tribunal, and the Tribunal made no ruling. They 5 stood by their dispute, they said absolutely not, it 6 wasn't appropriate, it wasn't relevant, it wasn't 7 reasonable to request them to get it and they weren't 8 going to provide it. The Tribunal specifically made the 9 decision that it was not going to make a decision, and 10 instead it was going to leave to cross-examination our 11 exploration of, you know, that fact. 12 So having come to the hearings expressly refusing to 13 give us any notice of metadata, refusing to let us look 14 at it, test it, analyse it, Mr Marshall has tried to get 15 access to this and prepare for the hearings and they 16 refused, and then now to say that they believe it's 17 uncontested, that they can just throw it at us without 18 him reviewing it and then question him on it, I think is 19 highly inappropriate. 20 It was a request we made for them to send it to us. 21 They say they did. We'll look at it, we'll talk to 22 them. If they want to make a request to submit it at 23 some time to the Tribunal, we'll talk to them about that 24 because we may have a similar request for our own 25 metadata on documents that they challenged, but this</p> <p style="text-align: center;">Page 3</p>
<p>12:01 1 particular when it was created or worked on. 2 THE PRESIDENT: Yes, thanks, yes. 3 MR HILL: And one point just arises out of that, which is 4 that one of the documents -- we've asked for the 5 documents to be uploaded in native form onto the system 6 so that in cross-examination or submission, anyone who 7 wants to can ask FTI to actually pull up the native form 8 and demonstrate the metadata. We assumed that would be 9 uncontentious, but Mr Cowley has put in an objection. 10 Now, it may well be, and I completely understand, he 11 simply hasn't had time to digest or think, but I would 12 like to put, or perhaps put, one of the documents in its 13 native form to Mr Marshall while he is in the witness 14 stand, so if Mr Cowley could confirm his consent in the 15 course of today, that would be helpful. 16 THE PRESIDENT: Hi, Mr Cowley. Have you any comments to 17 make about that? 18 MR COWLEY: At 6.46 we received an email with a letter, and 19 the letter apparently refers -- I won't challenge what 20 Mr Hill says it says, or what it contains, we haven't 21 even opened it. We have no idea what it really contains 22 and I can't possibly comment on it. 23 But I can say this: in 2020 -- what was the date of 24 our request? At the latest early last year, and perhaps 25 before, there were a number of discovery disputes put to</p> <p style="text-align: center;">Page 2</p>	<p>12:04 1 should be a subject of discussion between the parties 2 and not an ambush of Mr Marshall at these hearings. 3 THE PRESIDENT: My understanding of the request that's been 4 made to you is that it's a request in relation to the 5 form in which one document is put in cross-examination 6 to your witness. What I suggest is, we're going to have 7 a half an hour break after an hour and three-quarters. 8 In that break, that will give you a chance to open the 9 envelope, see what's in it, and decide on your response 10 to it; is that fair enough? 11 MR COWLEY: But Mr Marshall will not, as I understand it, 12 and the only reason they don't have our metadata yet is 13 because we're not permitted to speak with Mr Marshall 14 about our evidence. Our evidence includes the document 15 that they want in metadata form, so no one from our firm 16 has sat down and worked with Mr Marshall to obtain it in 17 native format yet. We were expressly told not to talk 18 to him about such records. We're waiting for the 19 opportunity to do so and we'll provide it to them. 20 I never had the chance to review -- 21 THE PRESIDENT: Just pausing there, I think if we have a 22 word with Mr Hill he certainly will make no objection to 23 your discussing that matter with Mr Marshall. 24 MR HILL: Yes, two points. If it were a real point we 25 certainly wouldn't object to that limited discussion,</p> <p style="text-align: center;">Page 4</p>

12:05 1 but we don't actually understand that point because he
 2 has the document on email which means he has the
 3 document in its native form. There's nothing to discuss
 4 with Mr Marshall.
 5 THE PRESIDENT: Yes, Mr Cowley, I think there may be some
 6 crossed wires at the moment. What is being requested
 7 is, as I understand it, a very simple request in
 8 relation to one document. There will be no objection to
 9 your discussing that request with Mr Marshall in the
 10 30-minute break that we will be having in just under
 11 an hour and three-quarters now, so let's leave it until
 12 then. If you have further problems, we'll look at them
 13 after the break.
 14 MR HILL: No other housekeeping from me, Mr President.
 15 THE PRESIDENT: Right.
 16 Anything else you wish to raise, Mr Cowley?
 17 MR COWLEY: No, your Honour.
 18 THE PRESIDENT: No. In that case let us invite Mr Marshall
 19 to return.
 20 MR WATKINS: Okay, bringing in the witness right now.
 21 MR RODERICK MARSHALL (continued)
 22 Cross-examination by MR HILL (continued)
 23 MR HILL: Mr Marshall, good morning. We were looking
 24 yesterday at R-040. Can we call that back up? You will
 25 recall that that was Mr Imena's evaluation in May 2012.

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12:09 1 I don't know, some time after being a tag manager to
 2 work in the GMD office.
 3 He never contacted us. It is not the procedure in
 4 Rwanda for anybody to be preparing documents based on
 5 somebody else's evaluation. It's always very much
 6 hands-on, they always come and talk to you, so I don't
 7 believe it.
 8 Q. During the course of yesterday's cross-examination, you
 9 also gave evidence that the Nyatubindi mine had been
 10 closed since the Starck time, and you said maybe before
 11 Starck.
 12 Now, I'm just going to ask you to go to bundle
 13 C-035?
 14 A. Can we go back to point 4 on this document or are we
 15 moving away from this document now?
 16 Q. Yes, if you want to make a point about point 4,
 17 I'm happy to, because that is the assessment of
 18 Dr Michael Biryabarema which is referred to in
 19 the May 2012 document. Is there something you wanted to
 20 say about it?
 21 A. No, that's section 0.4., I'm talking about section 4
 22 "The management", is it? Section 5.
 23 Q. Yes, that's the point you made yesterday, and I asked
 24 you, you will recall, whether you were aware of any
 25 letter that actually did have the correct date from

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12:07 1 Do you recall that yesterday you made an allegation that
 2 this was a fabricated document, fabricated for this
 3 arbitration; yes? Do you recall that?
 4 A. I don't believe it was written in May 2012, definitely
 5 not.
 6 Q. Well, in the light of what you were saying in your
 7 evidence, we have been back to that document and
 8 provided your lawyers, and indeed the Tribunal, with
 9 electronic information of that document, establishing
 10 that it was in existence in May 2012. Do you have any
 11 basis for your allegation that this was a document not
 12 in existence in May 2012?
 13 MR COWLEY: Mr President, unfortunately I have to lodge
 14 an objection to a representation on the record that we
 15 just explored in our housekeeping discussion. No one
 16 has seen this document, that representation cannot
 17 possibly be contested, and to spring it at Mr Marshall
 18 as if it's truth established with us is simply
 19 inappropriate.
 20 MR HILL: Well, I'm in the Tribunal's hands. I see this
 21 question as an appropriate one. I am asking if he has
 22 any basis for his allegation that this is a fabricated
 23 document?
 24 A. I don't believe that Evode was in that position at that
 25 time. He had been a tag manager, he had come over,

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12:10 1 the chairman of NRD of 14th October 2012; do you recall
 2 that?
 3 A. Do you recall my answer was that I don't know, because
 4 I don't have the documents in front of me? I would have
 5 to look to see what that was.
 6 Q. But you are not aware of any document?
 7 A. I'm aware of lots of documents, but --
 8 Q. No doubt if you are --
 9 A. One which is dated October 14th, 2012, I can't say which
 10 one it would have been, and whether it's the chairman's
 11 letter to MINIRENA I can't be sure without looking at
 12 the documents.
 13 My point was different. My point was that's a date
 14 after he claims to have written this report.
 15 Q. And that's why I asked you if you were aware of any
 16 document with the correct date of 14th October 2012. No
 17 doubt if there is one, your attorney can put it to you
 18 in re-direct.
 19 No, I was asking you about the Nyatubindi mine, and
 20 during the course of yesterday's cross-examination, as
 21 I said, you gave evidence that this mine had been closed
 22 since before Starck's time or maybe even before Starck,
 23 you said, and I'm going to ask FTI to call up bundle
 24 C-035 and go to page 11. This was the November 2010
 25 application, which we've already looked at before, and

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12:11 1 page 11 it says near the top:
 2 "At Nyatubindi three massive dam walls were raised
 3 in sequence along the Nyatubindi River to retain
 4 suspended material that is introduced through mining
 5 activities ..."
 6 And perhaps just to be clear on what we're talking
 7 about, if FTI could go one page back, so it's
 8 environmental mitigation 2011 to 2015.
 9 So back on the page we were on:
 10 "At Nyatubindi three massive dam walls were raised
 11 in sequence along the Nyatubindi River to retain
 12 suspended material that is introduced through mining
 13 activities ... further upstream."
 14 Nyatubindi I to V. So just pausing there, it is
 15 quite clear, isn't it, that in the period being dealt
 16 with there are continuing mining activities as a result
 17 of which environmental action is proposed; yes?
 18 A. No. My understanding at that time, and certainly during
 19 the period we were there we were doing a lot of
 20 environmental work. This is what I referred to
 21 yesterday as where the Belgians had done a lot of what
 22 they called ground sluice mining, which means they
 23 literally turn on fire hoses and wash down the hillside,
 24 and there was no mining going on there specifically
 25 because it was too complicated to try and dam up the

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12:15 1 figures are included in the aggregate production figures
 2 from January 2010, aren't they?
 3 A. Yes, but, you know, you're confusing terms. Nyatubindi
 4 is reference to an area. The whole area is maybe,
 5 I don't know, 15 kilometres by 10 kilometres. There are
 6 some particularly sensitive areas where the ground
 7 sluicing is going on, there was something going on in
 8 some other part of it which was not going into the
 9 Sebeya River catchment, possibly. Not during my time,
 10 but possibly before. But certainly not contributing --
 11 everybody is -- for NRD, this was the most sensitive
 12 area because everybody knew that the Belgians had left
 13 a mess -- not just the Belgians. The Belgian and the
 14 national mining industry when it was owned by the State
 15 continued it (overspeaking) --
 16 Q. I suggest to you -- sorry, carry on?
 17 A. -- it's a very sensitive issue and very sensitive place.
 18 Q. Well, I would suggest to you that it's quite clear that
 19 there was continuing mining on Nyatubindi and that
 20 Minister Kamanzi's letter, to which you gave an
 21 intemperate response was a fair one, and that is
 22 reflected by your subsequent, more moderate response to
 23 the Mayor that we looked at yesterday.
 24 A. No, no, I think you're mistaken. The Mayor went
 25 immediately in front of a crowd of 300 people, riled

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12:13 1 silt that would have come down if we were continuing
 2 that approach. It's a large site of 3 kilometres wide.
 3 To my knowledge there may be some illegals, I mean, this
 4 is not a small area, which were stirring up the area and
 5 thereby creating silt. Our work there was remedial. We
 6 were, at this time, before 2010 and during our time,
 7 this is why we brought over the team of environmental
 8 management from Olomouc University, and that team was
 9 specifically focused on environmental works. There was
 10 no mining going on.
 11 Q. Just to be clear, this document is an NRD document, it's
 12 talking about dam walls being raised to retain suspended
 13 material that is introduced through mining activities.
 14 So it's dealing with continuing mining activities, isn't
 15 it?
 16 A. You need to go visit. It's illegal mining activities
 17 which is increasing the suspension of silt, not legal
 18 mining activities. We --
 19 Q. Can you go to page 83 of this document?
 20 A. We were not mining there and it would be irresponsible
 21 to do it.
 22 Q. At page 83 of this document, we have production on the
 23 Nemba site there, and if you go on to page 85, still in
 24 production we have production aggregated for Rutsiro,
 25 Sebeya, Kabaya, Nyatubindi and Mara. So Nyatubindi

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12:16 1 them up, caused us a great deal of worry whether we were
 2 going to be harmed or killed. It was a political rally.
 3 He was not talking about Nyatubindi -- he was not
 4 talking about Rutsiro, which is where he claimed he was,
 5 it was Nyatubindi which is an entirely different place,
 6 and he went so far as to threaten to take away all of
 7 our concessions if we didn't clean up the Belgian works
 8 within, I forget what he said, a month or two months.
 9 Q. We've looked at exactly what he said in his letter and
 10 we can look at a fair characterisation in his letter.
 11 Now, I'm going to move on. We were dealing
 12 yesterday evening with the Benzinge story
 13 in August 2012. Can we go to bundle R-231. And this is
 14 your letter complaining on 3rd August to the RDB, and
 15 can FTI go on in this letter, please. A bit more. Keep
 16 going. My apologies, one back, FTI, please.
 17 Thank you. So you're complaining about RDB being
 18 taken in by Mr Benzinge, and you say, fourth paragraph:
 19 "I am sorry to tell you this, but what Ben Benzinge
 20 has argued to you and your staff is breathtaking in its
 21 absurdity. It is astounding that your staff believes
 22 him, or, indeed, that they think that it is their job to
 23 make determinations on issues where the Rwanda courts
 24 have already made their decision. The facts are
 25 these ..."

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12:18 1 And so on. So you are going in quite hard in this
 2 letter, but not suggesting for a moment that there have
 3 been physical threats to the RDB staff which was
 4 a suggestion you made in your testimony yesterday?
 5 A. No, not to the staff, to the registrar herself. That
 6 was -- what she told us was the reason she made the
 7 change. I'm not sure you understand how --
 8 Q. You're dealing -- just to interrupt -- I'm sorry to
 9 interrupt, but just to be clear --
 10 A. -- (overspeaking) I answered this.
 11 Q. -- I'm going to take it a stage at a time, you can give
 12 your answer in a minute. You are dealing in this letter
 13 with your complaint at the RDB staff for making this
 14 change. So if you had a complaint that it was a
 15 registrar who was responsible because she was
 16 threatened, you would have said so in this letter,
 17 wouldn't you?
 18 A. We didn't know how it was decided at this time. What we
 19 knew was we were owners of a company, we were management
 20 of a company, we have a group of foreign investors, and
 21 now it's all gone. All of it.
 22 Q. That's now a different version of events from your
 23 version of events yesterday --
 24 A. I'm sorry. I'm sorry, can I finish please?
 25 Q. Please finish?

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12:19 1 A. Please don't keep interrupting me, it's very --
 2 Q. But please try and keep your answers concise, then.
 3 A. Thank you. The reason that this was such an emotional
 4 moment for us was we had done, as far as we knew,
 5 everything right, we had checked with the US Embassy on
 6 everything, we had done every step according to Rwandan
 7 law, and all of a sudden we were informed, not by the
 8 Ministry, not by the registry, but by Ben Benzinge who
 9 shows up in our office and says "I own your company".
 10 This was a very frightening moment for us.
 11 Q. I let you run on, but that was not in fact an answer to
 12 my question. My question was, this is a different
 13 version of events from your version yesterday. Your
 14 version yesterday was that you did know, on your case,
 15 that some member of staff had been threatened, but you
 16 were choosing not to mention it in your letter to the
 17 RDB and your version of events today is that you didn't
 18 know. Which is true?
 19 A. You're intentionally mixing up the timeline for purposes
 20 of not getting the facts right.
 21 This letter was written before we knew how
 22 Ben Benzinge had persuaded them, or threatened them in
 23 this case, to remove us from the commercial registrar
 24 certificate. The only identification so far as I know
 25 as to who owns property, company property, is that

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12:20 1 registrar. At the time that I wrote this letter, we
 2 didn't know how that had come about. Ben Benzinge had
 3 showed up in our office and said: you guys go home,
 4 I now own everything.
 5 Q. Well, Mr Marshall --
 6 A. This was a very frightening prospect for us --
 7 Q. Mr Marshall --
 8 A. We had a series of meetings and in those series of
 9 meetings we came to find out that the registrar had been
 10 threatened by Ben Benzinge.
 11 Q. Mr Marshall, I'm going to suggest that is a different
 12 version of events to yesterday's and we can all go and
 13 look at yesterday's transcript to confirm that.
 14 I'm going to move on. Only three days after this
 15 letter on 3rd August, the RDB responded to you with
 16 a letter that we have at C-146. This is a letter from
 17 the Rwanda Development Board and they say:
 18 "Reference is made to our previous discussions
 19 regarding the status of Natural Resources Development.
 20 Following our recent meeting with you and your lawyer,
 21 we have received documentation ..."
 22 I should say, this is addressed to Mr Benzinge, not
 23 to you:
 24 " ... from the majority shareholder; Natural
 25 Resources Holding GmbH ... this documentation shows the

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12:22 1 legal representative and sole Managing Director of the
 2 holding company to be Mr Roderick Marshall. In this
 3 capacity, he is mandated to secure the interests of the
 4 holding company in the Rwandan subsidiary ..."
 5 He then explains about:
 6 "... he has forwarded a written complaint company
 7 (herewith attached) ... you have transferred a
 8 significant amount of company assets ... please note
 9 that as the Managing Director, you have fiduciary duties
 10 towards the company and therefore may not embark on any
 11 actions that are either to the detriment of the company
 12 or against the express interests or consent of the
 13 shareholders. Failure to respect these duties may
 14 result in civil liabilities.
 15 "Due to these complaints from the authorised
 16 representative of the holding company protesting that
 17 the interests of the majority shareholder are being
 18 jeopardised, we hereby inform you that the position of
 19 Managing Director has been suspended and no person shall
 20 hold this position in the company until we have further
 21 investigated these complaints to ensure that the
 22 interests of all the shareholders in NRD Rwanda are
 23 secure."
 24 So, just pausing there, the RDB have been faced with
 25 at this stage competing positions, and in the light of

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12:23 1 that they are warning Mr Benzinge about his fiduciary
 2 duties and suspending the position of managing director
 3 until further investigation is taken; do you recall
 4 that?
 5 A. I recall the letter. I still don't understand what it
 6 really means.
 7 Q. Well, it's a fair and reasonable position for them to
 8 take, isn't it?
 9 A. I understand, but maybe you can explain to me what it
 10 means.
 11 Q. Well, I'll go on. Now go to bundle R-114.
 12 A. But what does this letter mean? You know, you can't --
 13 somebody has to be running the company.
 14 Q. Now go to bundle R-114.
 15 A. What we understood the letter to mean was that they were
 16 saying: we're embarrassed by what has happened so we're
 17 going to suspend Mr Benzinge.
 18 Q. Yes, they were suspending him and suspending the
 19 position of managing director altogether for what you
 20 will see is a short time while they investigate.
 21 Then you go to bundle R-114. So the last letter we
 22 looked at was 6th August and here we have a letter the
 23 next day, 7th August, from the RDB, so 24 hours later:
 24 "We refer to your letter to the Rwanda Development
 25 Board ... in which you question the Registrar General's

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12:24 1 decision to rectify the registration of Managing
 2 Director from Roderick Marshall to Ben Benzinge. You
 3 make misrepresentations about RDB's role and/or
 4 intention in this matter and I would like to emphasise
 5 that RDB is a facilitator of shareholders' wishes and
 6 cannot appoint or remove a Managing Director as that is
 7 within the remit of shareholders.
 8 "I have, nonetheless, raised the issues in your
 9 letter to the Registrar General, who is empowered by law
 10 to oversee company registration matters. I take note
 11 that she has written to you and Mr Benzinge; copies of
 12 which are attached hereto, and decided to suspend any
 13 holder of that title until you furnish her with
 14 information currently absent in your file. I am
 15 therefore confident that the existing issues will be
 16 resolved. Please do cooperation with the Registrar
 17 General until it is ... resolved."
 18 And that is, again, a fair position for the RDB to
 19 take, isn't it, given the absence of material in your
 20 file and given that there are competing claims from
 21 people purporting to be shareholders?
 22 A. Well, that's exactly the point. There was no absence of
 23 material, in fact, they had a stack of materials which
 24 at the time they claimed were missing. They
 25 subsequently found those materials and then reappointed

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12:25 1 me, but what was interesting -- and I don't think you're
 2 recognising here -- the first letter from the RDB --
 3 sorry -- the registrar's office is under the auspices of
 4 the RDB and that's why you saw in the other letter RDB
 5 Office of the Registrar as the heading. There was some
 6 confusion at this time whether -- Ben Benzinge seemed to
 7 believe that being the managing director meant being the
 8 owner of the company, not that the owners of the company
 9 appoint a managing director, and so this was part of the
 10 ongoing confusion. It's not that there was Ben Benzinge
 11 who was considered the majority shareholder: he
 12 interpreted it as being ownership, and that's why it
 13 went back and forth and became very heated, because we
 14 had been dispossessed without explanation, without
 15 notice.
 16 Q. I'm asking you to focus on the position of the RDB,
 17 faced with these competing claims, and the position
 18 they've taken so far, which is they're suspending the
 19 position of managing director pending investigation is
 20 a fair one to take, isn't it?
 21 A. And what I'm trying to explain to you is what the
 22 meaning of those words are. There was no lack of
 23 documentation. There was no competing claim by
 24 Ben Benzinge. Ben Benzinge did not have ownership in
 25 our opinion. He claimed to have a 15% ownership. In

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12:26 1 either case it didn't give him the right to appoint
 2 himself as managing director.
 3 Q. Well now let's go to bundle C-070.
 4 A. Not only managing director; he claimed to own 100% of
 5 the company.
 6 Q. Now we go to C-070. Same day, so they're obviously
 7 continuing investigations, and on the same day the RDB
 8 write to the Mayor of Bugesera, and they say:
 9 "We have recently received legal and authenticated
 10 documentation showing that the holding company of
 11 NRD Ltd... is wholly owned by Spalena ... an American
 12 company, incorporated in Delaware ...
 13 "In his capacity therefore as the sole shareholder
 14 of the holding company, he submitted copies of a
 15 notarised resolution appointing an acting managing
 16 director for the company. The appointed Managing
 17 Director is Roderick Marshall (please find attached all
 18 the relevant documentation ...)
 19 "In this regard, we therefore request that you
 20 facilitate the transfer of the company property
 21 including keys to the premise of the company to
 22 Mr Roderick Marshall."
 23 So within five days of your initial complaint, RDB
 24 had responded to your representations and, based on the
 25 information you provided, they had taken steps to ensure

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12:28 1 company and property and access was returned to you;
 2 correct?
 3 A. Partly correct. The documentation says that we were
 4 not -- the assets and our bank accounts were not
 5 returned so quickly, but they had made a written
 6 decision within five days, yes.
 7 Q. Now, you have a complaint about actions that you suggest
 8 Mr Benzinge took in the few days after the registration
 9 information was changed, and before the position was
 10 restored, but you accept, don't you, that those were the
 11 actions of Mr Benzinge and not of the RDB or of any
 12 state body; correct?
 13 A. Without the enablement of the body, he could not have
 14 done those things.
 15 Q. Can we go to bundle C-048. This is a letter you wrote
 16 after these events, copied to a number of people. Can
 17 we just look at the last page of the letter. This is on
 18 10th August. You say:
 19 "It is clear to me and our investors that the RDB
 20 staff was completely misled by the threats and illegal
 21 actions of this man, Ben Benzinge. It appears that he
 22 has taken advantage of RDB's goodwill and exploited
 23 a gap in Rwanda's laws. This is not a civil matter, it
 24 is a criminal matter."
 25 So your view at the time, on 10th August, was that

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12:31 1 there, in your Memorial, that Ben Benzinge, second
 2 sentence, was:
 3 "... inexplicably and falsely credited by the RDB as
 4 the managing director of NRD."
 5 Then you explain about your complaints about what
 6 Mr Benzinge did, and you say:
 7 "In essence, Respondent, by and through the RDB,
 8 used Benzinge as a pawn to make clear to Claimants that
 9 they could be stripped of their entire investment on
 10 a whim."
 11 Now, that is not at all what you thought at the time
 12 was happening?
 13 A. It was absolutely what I thought at the time.
 14 Q. Because we've seen your letters where you accepted at
 15 the time that RDB had been misled by Mr Benzinge, and
 16 we've also seen that RDB, as soon as you made the
 17 complaint, investigated and corrected matters; yes?
 18 A. No. Mr Benzinge, in collusion with some people of the
 19 RDB, did these things. Who they were, I don't know.
 20 All our files, as I say, went missing. As a way of
 21 enabling the registrar to have some kind of face-saving,
 22 I used the phrase that "somebody had been misled". That
 23 was a courtesy, an indulgence on my part. These were
 24 criminal acts. We had been dispossessed, we were not
 25 sure that we were going to get it back. I had a very

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12:29 1 the RDB had been misled by Mr Benzinge; yes?
 2 A. I couldn't perform my own investigation, it was some
 3 combination. Was I giving them an out? I was certainly
 4 trying to.
 5 Q. You weren't suggesting at the time the proposition you
 6 advanced in your testimony yesterday, that there had
 7 been some registrar or member of staff who had been
 8 physically threatened; correct?
 9 A. There was. Just ask her, call her up, she's not going
 10 to deny it. This was a terrible time.
 11 Q. Nor are you suggesting that RDB were in any way
 12 collusive in Mr Benzinge's actions, or behaving
 13 corruptly, or anything like that?
 14 A. Whatever actions Ben Benzinge took to get them to
 15 pretend that they had lost all our files, which were
 16 subsequently all rediscovered, yes, somebody, or some
 17 people, were participating in this scam, and they
 18 were --
 19 Q. Could you -- sorry, I interrupted. You finish.
 20 A. They were certainly surprised that we objected to losing
 21 all of our property.
 22 Q. Could you go to the Claimants' Counter-Memorial on
 23 preliminary objections at paragraph 35. So
 24 paragraph 35. Sorry not to give you a page number.
 25 Thank you. You deal here with this episode and you say

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12:33 1 difficult and very unpleasant conversation with the head
 2 of the RDB, Clare Akamanzi, who was explaining to me why
 3 I was no longer the owner the company. That's not
 4 unintentional; that's very intentional. We wouldn't
 5 have had that ongoing dispute if that hadn't been the
 6 case.
 7 Q. Now, again you are introducing allegations that have
 8 never been said before, in any witness statement of
 9 yours, or even in your Memorial, and you are making it
 10 up as you go along, aren't you, Mr Marshall?
 11 A. No. If it was a thousand pages, maybe you would get
 12 more of this kind of information, but for you to dismiss
 13 it is very unfair.
 14 Q. No, it's right to say, isn't it, that Mr Benzinge
 15 subsequently lodged an appeal against the RDB decision
 16 to suspend him; do you recall that?
 17 A. No, I didn't know that.
 18 Q. And he subsequently -- well, don't worry, because
 19 I'm going to try and press on -- he subsequently
 20 launched arbitration proceedings in October of that
 21 year, so that's 2012, to vindicate what he saw as his
 22 rights; you recall that, yes?
 23 A. Yes.
 24 Q. I'm going to come back to that arbitration, and first,
 25 because I'm going to try to keep it broadly

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12:34 1 chronological so we can all follow, I'm first going to
 2 come to something else that happened in the second half
 3 of 2012, and you have a complaint about this period
 4 about what you say are military arrests and seizures of
 5 minerals in Sebeya.
 6 Now, can you go to Mr Niyonsaba's second witness
 7 statement where he has an annex, and can I ask you to be
 8 shown the annex to his second witness statement.
 9 MR BRODSKY: Can you say that name one more time?
 10 MR HILL: Yes, Niyonsaba, and his second witness statement.
 11 Mr Niyonsaba, of course, is the man who was working
 12 in the Pact ITRI programme. I just want to look at the
 13 annex to this, there's an annexure 1 at the end of the
 14 statement, it's on the seventh page.
 15 So this is dealing with the complaint by you that
 16 you see in the summary in the second row:
 17 "NRD had informed iTSCi that the Rwandan military
 18 had allegedly come to the site, seized minerals, and
 19 arrested 5 employees. Subsequent iTSCi investigations
 20 revealed that NRD has been suspended by the Government
 21 for environmental reasons. Reports of the seizure of
 22 minerals could not be confirmed."
 23 Then the iTSCi report has "Actions ... to be taken":
 24 "GMD was informed. Joint field visit by GMD/iTSCi
 25 to be done next month. The site was visited on

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12:36 1 13 March 2013. The site manager Mr Gaspard said that
 2 the police commander came on site and seized around
 3 750kg of wolfram at Bucyangenda's house in Bwiza center,
 4 Murundi sector. The police was alerted by the neighbour
 5 of Bucyangenda. Contacted, the police commander in
 6 Rutsiro district said that the minerals were seized but
 7 no people arrested; the report was done and it's ready
 8 to be sent to Gihango court. In the meantime, the
 9 mineral is still kept at Rutsiro police station. During
 10 the visit, it was observed that lots of illegal miners
 11 are on the site. The company manager tries to resolve
 12 this ..."
 13 And just going over the page:
 14 "... situation but face difficulty. During the day
 15 of the visit, the iTSCi technician attended a meeting
 16 organised by the district environment officer Mr Olivier
 17 Kabanda Manzi, the NRD representative, during which it
 18 was agreed that illegal miners for a cooperative.
 19 However, iTSCi reminded that the site was still
 20 suspended. August 2016: NRD suspended by GMD and no
 21 tags and logbooks. No further action possible."
 22 So that gives a different complexion, doesn't it, to
 23 your story of military arrests and seizures?
 24 A. No, those are unrelated. This is a different
 25 description of a different series of events.

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12:37 1 Q. Now, staying in the second half of 2012, I'm going to
 2 come back to the licence --
 3 A. Can I explain where your error is, or do you want to
 4 move on?
 5 Q. I may be coming back to that so you may get another
 6 chance, or if not it can be picked up in re-direct,
 7 I really need to try and move on because I want to try
 8 and --
 9 A. You can't throw out -- I'm sorry but I thought this was
 10 getting to the truth --
 11 Q. But I'm asking you, and I'm happy to take your evidence.
 12 A. -- and the way of getting to the truth is being able to
 13 respond to concrete allegations. You say -- if you go
 14 back one page, I can explain to you why the military
 15 arrests was in a completely different location than the
 16 area described here.
 17 Q. Well, you have just said that. I am going to move on.
 18 Could we go to bundle C-045. I'm going to come back to
 19 the licence issue, and here we have -- we're now at --
 20 so we're in the second half of 2012. Yes, they are
 21 in September of 2012.
 22 A. Sorry, what's the date? September what?
 23 Q. 13th September 2012.
 24 A. Okay.
 25 Q. And it's a letter from Mr Kamanzi and he says:

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12:39 1 "Reference is made to my letter dated
 2 20th February 2012, extending the previous licence of
 3 Natural Resources Development (NRD) for three months
 4 which expired in May 2012.
 5 "In view of the ongoing work on reorganising the
 6 mining sector which will have a bearing on the new
 7 contracts that will be negotiated as has been
 8 communicated to all the existing concession holders,
 9 I have the pleasure to extend your licence up to October
 10 2012, to allow for the ongoing work to be completed."
 11 And --
 12 A. But this struck us as particularly odd because as you
 13 pointed out, the letter is dated September 13th, and
 14 it's the licence up to October 2012, so for roughly two
 15 weeks' extension, and we couldn't understand why he
 16 would send that when there was no communications between
 17 us at that point.
 18 I mean, it was very nice, very pleasant of him to
 19 send a two-week extension, but it was meaningless to us.
 20 Q. But you're saying meaningless; by this stage your
 21 previous extension had expired?
 22 A. No --
 23 Q. You were operating without a licence?
 24 A. It's something political. All other concession holders
 25 were in progress negotiating long-term concession

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12:40 1 licences. We were the only one at this point who was
 2 not actively in negotiations because they wouldn't, and
 3 we don't know why to this day. We got this letter in
 4 the middle of that saying: okay, you're extended for two
 5 weeks.
 6 Q. Now, I would like you just to focus, rather than making
 7 speeches, Mr Marshall, I want you to answer my question.
 8 A. (Overspeaking) information.
 9 Q. Just please focus on my questions and answer them.
 10 The reason you needed to have a letter of this kind
 11 is that your last licence extension had expired, and for
 12 you not to be an unlicensed operator, you needed to be
 13 given a licence extension; correct?
 14 A. Our licence was an ongoing -- for all concession
 15 holders, we were all treated the same in this respect,
 16 that all of them were deemed to be continuing
 17 licences --
 18 Q. No, it's not a question of deemed to be continuing.
 19 You've seen the correspondence.
 20 A. There are specific -- there are specific rights and
 21 responsibilities of a concession holder. At all times
 22 we were treated to have those rights and
 23 responsibilities as a concession holder. It never
 24 changed.
 25 Q. We've seen the correspondence where there was a previous

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12:41 1 licence extension. You needed to be a licensed
 2 operator, and this licence was granted -- here we have
 3 another licence extension granted until October 2012;
 4 yes?
 5 A. Yes. So a two-week extension.
 6 Q. And it's making sure you are a licensed operator over
 7 until October 2012, otherwise you would not be
 8 a licensed operator.
 9 A. Up to October 2012.
 10 Q. And there's nothing in here promising that a long-term
 11 licence is going to result, is there?
 12 A. No. All concession holders at this time in 2012 were in
 13 active negotiations for the terms and conditions of that
 14 long-term licence. We never had that opportunity.
 15 Q. So I think you're agreeing with me, there's nothing in
 16 this letter indicating that a long-term licence is going
 17 to result, is there?
 18 A. There's nothing which contradicts it, and there are lots
 19 of other forms of communication which you've decided to
 20 take from our -- your client has decided to take from
 21 our offices.
 22 Q. Well, you keep saying that, and just, I should make
 23 clear that's not accepted, that Rwanda has removed
 24 anything from your offices, and it's also not accepted
 25 that you do not have access to vast amounts of material.

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12:42 1 I just want to make that clear.
 2 Now, by this stage, you had not made any application
 3 for a long-term licence, had you?
 4 A. Yes, we had.
 5 Q. Subject to your point about your argument that
 6 the November 2010 application counted?
 7 A. That was deemed an application for a long-term licence
 8 according to the staff at the licensing and supervision
 9 division.
 10 Q. Now let's keep that page on the screen, if we can, and
 11 look at paragraph 34 of your witness statement. You say
 12 at paragraph 34:
 13 "On September 13, 2012, Minister Kamanzi wrote to
 14 NRD granting another extension of the NRD mining
 15 licences, stating that the long term contracts 'will be
 16 negotiated'.
 17 Could you just show me where in the letter from
 18 Mr Kamanzi he says that the long-term contracts will be
 19 negotiated?
 20 A. It says "new contracts", referring to long-term
 21 contracts, "that will be negotiated".
 22 Q. Why do you say that's referring to long-term contracts?
 23 A. Because everybody was being treated the same.
 24 Q. You had no basis for thinking long-term contracts were
 25 being negotiated because all you had applied for was

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12:44 1 a five-year contract by this time; is that not true?
 2 A. No.
 3 Q. Now, that licence extension has expired, as we see here,
 4 in October 2012, and it's right to say that at no point
 5 after that did you have any actual extensions to your
 6 licence granted by the Minister, or anyone; correct?
 7 A. I don't recall.
 8 Q. Now, we are still in September 2012. Mr Sindayigaya
 9 left in September 2012, didn't he?
 10 A. He was fired in -- after a criminal investigation
 11 in August or September 2012.
 12 Q. Well, the accurate position is that he left in
 13 circumstances where he had not been paid for some time
 14 and had had enough; correct?
 15 A. That is entirely inaccurate.
 16 Q. And at that point, you made a number of serious but
 17 unfounded allegations against Mr Sindayigaya, didn't
 18 you?
 19 A. No, we had a detailed criminal investigation, the police
 20 came, they interviewed him, they interviewed others.
 21 They agreed with what had happened and money was
 22 missing. In fact --
 23 Q. Let's go to bundle C-182. This is a purported letter
 24 from you to the police in September 2012. Now, you
 25 never actually sent this letter, did you?

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12:46 1 A. I don't know. Are you claiming that it was not
2 received?
3 Q. Yes. It was not received because it was not sent.
4 A. I would have to go back and check whatever logs we have.
5 Can you show me the signature page?
6 Q. Yes. It's going to be the last page of the letter, and
7 you will see it's signed although there's no company
8 stamp on the document?
9 A. Yes, it would be very unusual if I hadn't -- you would
10 have to check with Zuzana. I would guess that I had.
11 There's no reason for us not to. We came, we had
12 several meetings with them explaining what had happened.
13 So I don't know what the content of the letter was, it
14 may have been -- if you believe that it had not been
15 sent, there may be a different version, you know, which
16 was sent, but it would be very unusual for me to sign
17 a document and not have sent it.
18 Q. Can we go to Mr Sindayigaya's second witness statement
19 at paragraph 15.
20 A. I believe the statement in the document to be true, by
21 the way.
22 Q. In Mr Sindayigaya's second witness statement at
23 paragraph 15, Mr Sindayigaya gives evidence on this
24 document. He says in paragraph 15:
25 "I have never seen this document before, and all of

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12:47 1 the allegations made in it against me are false. I also
2 do not believe that this letter was ever sent to the
3 police, for the following reasons.
4 "The letter is addressed 'Kigali Chief Police
5 Supervisor'..."
6 And then he goes on at 15.1, if FTI could pull that
7 up:
8 "The letter is addressed 'Kigali Police Chief
9 Supervisor' at 'Kigali Police'. I do not believe such
10 a position exists, or that there is such a thing as
11 'Kigali Police'. Each district has its own police
12 station, and that is where complaints are made.
13 Whenever we had complaints to make to the police, we
14 would submit them to either the Remera or Kimihurura
15 Police Stations in Kigali which were the nearest to the
16 NRD offices. When complaint documents are presented at
17 the police station, they are stamped stating the date of
18 reception and the name of the receiving officer and a
19 copy provided to the person making the complaint. The
20 September 2012 Letter is not stamped and therefore does
21 not appear to have been presented to any police station
22 at all.
23 "15.2. I believe that Mr Marshall was familiar with
24 this process of submitting complaints to the police as
25 I understood that he had filed complaints against ...

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12:48 1 former employees of NRD including William Quam ...
2 Julius Kabera ... and Valery Mpongo..."
3 "15.3 If the September 2012 Letter had been
4 submitted to the police, I would have been summoned to a
5 police station and interviewed about the allegations
6 which on the face of the letter are very serious. This
7 never happened. Nor did Mr Marshall ever raise these
8 allegations with me in person. Instead, I had only
9 attended the Remera Police Station the previous month to
10 give a witness testimony concerning the wrongful actions
11 of Mr Mpongo, which I discuss in further detail below.
12 In fact, during my employment with NRD, my only
13 involvement with the police was as a whistleblower in
14 two cases that led to the firing of employees and police
15 investigations ..."
16 And, contrary to what you just said in an earlier
17 answer, Mr Sindayigaya wasn't interviewed by the police,
18 was he?
19 A. I'm sure he was interviewed by the police. I can't
20 imagine that we would have presented the letter to him
21 prior to our filing it with the police, and whether, you
22 know, we had addressed it to the right location, you
23 know, we delivered everything by hand, there is no mail
24 service. So you go there, ordinarily there would have
25 been the stamp, and there is not a stamp on the front of

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12:50 1 this, so that would not -- sorry, let me back up.
2 When you're delivering a letter to any government
3 ministry you deliver a copy and you get them to stamp
4 your copy as evidence that you have delivered that
5 letter.
6 The version -- the copy of the letter you have
7 provided to me doesn't have any of those stamps on it,
8 so my guess is that it's a different version that would
9 have had the record of it being distributed. It
10 certainly never would have been shown to Aime before it
11 was placed there. The police had an ongoing
12 investigation, because they came more than once, to see
13 what Aime had been doing, both in the books and with
14 regard to self-dealing by renting company bulldozers and
15 other equipment for his own personal gain.
16 Q. Now, we can see what you're doing here, which is
17 conflating different stories. Firstly, you did not send
18 this letter and Mr Sindayigaya was not interviewed by
19 the police; that's right, isn't it?
20 A. I can't imagine -- I wasn't involved with an interview
21 between him and the police, so I can't say for sure.
22 100% this was delivered. It was the basis on which we
23 fired him. We did an investigation, we found out that
24 he had been cooking the books, we found out that he had
25 been self-dealing and with certainty he was fired.

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12:51 1 Q. Secondly --
 2 A. (Overspeaking) the police filing, whether it's this copy
 3 or a different copy, I can't say.
 4 Q. Secondly, you are conflating two different stories in
 5 that you do have complaints about a bulldozer and money
 6 that had been made from the hire of it, but
 7 Mr Sindayigaya had actually been the whistleblower on
 8 that complaint, and you and Mr Sindayigaya had made
 9 a complaint to the police about the actions of the other
 10 employee, and that's correct?
 11 A. Valery Mpongo was doing it with Aime.
 12 Q. Well, Mr Sindayigaya had been the whistleblower and
 13 assisting you in the complaint to the police about
 14 Mr Mpongo, that's correct, isn't it?
 15 A. Not that I know of. He certainly never shared to me
 16 that he was, in effect, fingering his partner.
 17 Q. And you and he had jointly made a complaint to the
 18 police about the hire of the bulldozer; correct?
 19 A. He was the one who was leasing it. I personally went to
 20 find where the bulldozer was because it was missing, and
 21 it was at a woman's house and it had been leased to her
 22 by Aime.
 23 Q. What you have done in this complaint is used
 24 Mr Sindayigaya's assistance in explaining the story
 25 about the other employee and reworked it into a false

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12:52 1 complaint against Mr Sindayigaya, haven't you?
 2 A. No, that's not true.
 3 Q. And you've also in this document made a number of other
 4 serious false allegations. We don't have time to pick
 5 them all up, I'm just going to pick up some. Can we go
 6 to the penultimate page?
 7 A. If I could suggest, you should speak to our CFO who was
 8 handling the matter, including the internal
 9 investigation at that time.
 10 Q. I'm going to just pick up some of the complaints in this
 11 document. Can we go to the second to the last page of
 12 the letter.
 13 MR BRODSKY: Which document number?
 14 MR HILL: Still in the letter, sorry, I'm still in C-182.
 15 MR BRODSKY: Thank you.
 16 MR HILL: And I'm going to the second to last page, it's not
 17 numbered, or at least in my version it isn't. Thank
 18 you.
 19 These are other complaints you make to the police.
 20 In item 12 you say:
 21 "His role in the situation regarding illegal Actros
 22 sale and his relationship to Mr Kayomba which resulted
 23 in 150 million Rwf loss."
 24 Can we keep that up and also have Mr Sindayigaya's
 25 second witness statement up at paragraph 23.12. Now,

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12:54 1 Mr Sindayigaya deals with all your allegation. I'm only
 2 picking out some of them. 23.12:
 3 "Mr Marshall states that he wants an explanation to
 4 my 'role in the situation regarding illegal Actros sale
 5 and [the] relationship with Mr Kayomba which resulted
 6 in 150 million Rwf loss'. The sale of the Actros truck
 7 was arranged by Mr Julius Kabera, NRD's CFO who sold the
 8 truck at a substantial undervalue -- he sold it at its
 9 book (ie depreciation) value rather than at market value
 10 which was substantially higher. I was not involved in
 11 the transaction. In fact, I reported ..."
 12 FTI, could you go over.
 13 "... [this] irregularity to Mr Marshall and am now
 14 shocked to see him trying to blame me for this."
 15 That's correct, isn't it?
 16 A. No.
 17 Q. Can we go --
 18 A. I would refer you to Zuzana Mruskovicova who was
 19 handling these transactions and the internal
 20 investigation. I don't have direct -- at the moment
 21 a direct memory of this.
 22 Q. Can we go on into item 15. Your next complaint is:
 23 "His role in the Motorcycles business resulting in
 24 15 million loss to NRD."
 25 And then we can see Mr Sindayigaya's response:

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12:55 1 "Mr Marshall asked for an explanation as to my 'role
 2 in the Motorcycles business resulting in 15 million loss
 3 to NRD'. I assume this is a reference to the fact that
 4 each supervisor had a motorcycle purchased for them so
 5 that they could travel to remote areas. These
 6 transactions were executed before I joined NRD."
 7 And that's correct, isn't it?
 8 A. Just one moment, please. (Pause).
 9 I don't recollect this issue, so I have to refer you
 10 to Ms Zuzana Mruskovicova.
 11 Q. And then item 18:
 12 "His role in the situation regarding accident of
 13 workers."
 14 Let's look at what Mr Sindayigaya says about that:
 15 "Mr Marshall states that he seeks an explanation as
 16 to my 'role in the situation regarding accident of
 17 workers'. There were some accidents in the mines during
 18 my time at NRD, and each site manager would be
 19 responsible for responding in the appropriate way to
 20 these. As an accountant, I had no involvement in
 21 this -- it was not my area of responsibility."
 22 And that's correct, isn't it?
 23 A. I don't have a recollection. I would refer you to
 24 Zuzana Mruskovicova about the CFO who was handling the
 25 internal investigation.

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12:56 1 Q. And if you had sent this letter to the police, which
2 I don't accept, you wouldn't have any basis, would you,
3 for making a complaint to the police, for example, about
4 Mr Sindayigaya's role in the situation regarding
5 accidents of workers?
6 A. I don't recall what the issue is or what it was
7 referring to when it says "Regarding accident of
8 workers", so I can't help you on that.
9 Q. It's just an example, isn't it, Mr Marshall, of how you
10 make unfounded allegations against anyone who you
11 disagree with; correct?
12 A. That's slanderous and outrageous and really not helpful
13 in trying to elicit truth in this process.
14 Q. Let's move on.
15 THE PRESIDENT: Mr Hill.
16 MR HILL: Yes.
17 THE PRESIDENT: It's not clear to me -- and I doubt if it's
18 clear to Mr Marshall -- whether you are suggesting that
19 this letter was not typed on 20th September 2012 but has
20 been produced much more recently for the purpose of this
21 arbitration.
22 MR HILL: Mr Marshall, would you like to give -- you've
23 heard the President's question. Would you like to say
24 your understanding of whether this letter has been typed
25 more recently, or not?

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12:59 1 Whether it was typed -- I'm sorry, I don't know what
2 the date on it is, I can't see it.
3 THE PRESIDENT: Well, the date is 20th September.
4 A. Yes, if this was a draft and we decided not to send it,
5 we sent a different version, I don't know.
6 20th September.
7 But I would refer you to Zuzana Mruskovicova about
8 this. This would have been, you know, her
9 investigation, her preparation of these materials.
10 So this was certainly a draft. Whether it was
11 actually delivered in this form or a different form,
12 I couldn't be sure unless I had the copy which had the
13 stamp on it.
14 THE PRESIDENT: Well, I understand your answer that this is
15 a contemporaneous document --
16 A. Yes.
17 THE PRESIDENT: -- produced with the date that it bears.
18 A. Yes. It's certainly contemporaneous.
19 THE PRESIDENT: Thank you, Mr Hill.
20 MR HILL: I'm going to move on now to a different
21 topic. September 2012, Minister Kamanzi suspended all
22 mining activities in the Sebeya catchment in the
23 Western Provinces; correct?
24 A. Am I looking at --
25 Q. Do you recall that? I hope it isn't contentious, I just

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12:58 1 A. You mean is it a fraudulent document?
2 Q. Is it a late document?
3 A. It's certainly not a fraudulent document, no, we don't
4 do that.
5 Q. Well, you have presented it as something that was sent
6 to the Kigali police, and that's not true, is it?
7 A. As far as I know it would have been sent to the police,
8 but I refer you to Zuzana Mruskovicova who was handling
9 it. This would be unlikely to be a copy that would have
10 been confirmed by the police. As I say, when we
11 delivered letters to the police or any ministry, we
12 would take a copy, a signed copy, but photocopy, and
13 take it to wherever we were delivering it and have them
14 put the stamp on it to indicate that it had been
15 received.
16 So this is not that copy. I don't know what this
17 copy is, it may be --
18 THE PRESIDENT: Mr Marshall, is it your signature on that
19 letter?
20 A. Yes.
21 THE PRESIDENT: And was that letter typed on the day that --
22 of the date it bears, or has it been typed more
23 recently?
24 A. It certainly was not in preparation -- if you mean in
25 preparation for these hearings, 100% not true.

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13:00 1 want to help everyone on the timeline.
2 So September 2012 was when Minister Kamanzi suspended
3 mining activities in the Sebeya catchment?
4 A. I don't know what month it was. He did suspend them in
5 2012, yes.
6 Q. Yes. And that was as a result of concerns about
7 environmental damage, as well as illegal mining; yes?
8 A. That's what his letter says, as I recall.
9 Q. Now, by the end of 2012, where one gets to is that by
10 that stage your licences have expired, haven't they,
11 because the October extension had now expired; correct?
12 A. They're all being treated the same and they're all being
13 deemed to be still large-scale mining concession
14 holders --
15 Q. And by that stage --
16 A. -- (overspeaking) statutes.
17 Q. -- by that stage, end of October, your November 2010
18 application had not been accepted; correct?
19 A. Yes, it had been accepted. We had not been told that it
20 had been refused.
21 Q. Well, it was clear, I would suggest, from
22 your August 2011 letter you received from Mr Kamanzi
23 what the position was; correct?
24 A. No. No, because we -- at that point we were negotiating
25 the language of the long-term concession with the

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13:02 1 licensing and regulation department.
 2 Q. And by this stage, the end of 2012, subject to your
 3 argument about the November 2010 application, you hadn't
 4 otherwise applied for any long-term licences, had you?
 5 A. We were -- no one had said we were not in compliance.
 6 We had the same kind of application as every other
 7 concession holder and every other concession holder at
 8 that time was in active negotiations for a long-term
 9 licence. We were the only ones who were not at that
 10 point --
 11 Q. And we know --
 12 A. -- because we had already been through that process in
 13 2011.
 14 Q. But we know, for instance, from Mr Kamanzi's letter that
 15 we looked at yesterday that from the beginning of 2012
 16 you had been asked to focus on two concessions and there
 17 was no possibility of you just getting a long-term
 18 licence for all your concessions.
 19 A. That's not how that was resolved. We went back to
 20 Minister Kamanzi's office and explained that he had been
 21 misled by Dr Michael in saying that Dr Michael had
 22 offered two concessions instead of five. That
 23 conversation had not happened.
 24 So his letter was mistaken in its premise, because
 25 he had been misled by Dr Michael and we would like to

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13:04 1 concession so that each of them should be evaluated
 2 separately.
 3 "The [key] activities of the company have been
 4 temporarily stopped in the concessions of Rutsiro and
 5 Sebeya because of serious environment degradation.
 6 However, negotiations could begin with concessions that
 7 currently have no serious issues. I will ... appreciate
 8 your prompt response to conclude these negotiations as
 9 soon as possible."
 10 So he is still of the view that he expressed to you
 11 in the correspondence we saw yesterday that you should
 12 press ahead with those concessions that you had -- that
 13 you could make a viable application for; correct?
 14 A. I've never seen this letter. I've never had that
 15 discussion. I don't even know how this came up, or what
 16 they mean by "serious environmental degradation". The
 17 only area where the government had asked us to make
 18 environmental repairs is in Giciye, not in Rutsiro or
 19 Sebeya, and it's at the Nyatubindi site where the ground
 20 sluicing had occurred for 50 years, and we were not
 21 mining. There were no other allegations of
 22 environmental degradation against us at that time.
 23 Q. You just suggested that somehow Mr Kamanzi had been
 24 corrected in discussion with you after his position he
 25 articulated in 2012, and it's quite clear the reality is

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13:03 1 have a meeting to talk about going forward, negotiating
 2 long-term concession agreements. We were waiting for
 3 an invitation.
 4 Q. Let's look at C-160. This is a letter from the Minister
 5 of Natural Resources, Mr Kamanzi, to the acting CEO,
 6 Ms Akamanzi, of the RDB, and it says:
 7 "This is to request you to initiate negotiations
 8 with the above company."
 9 A. I'm sorry, can you go back to the top for a second?
 10 Q. Yes. So it's January 2013, so we're now at the
 11 beginning of 2013.
 12 A. So this is a letter to the RDB?
 13 Q. Yes, from Mr Kamanzi, as I said.
 14 A. Okay, sorry.
 15 Q. So:
 16 "This is to request you to initiate negotiations
 17 with the above company. Its initial licence for four
 18 years expired some time back. The company has been
 19 operating on short term extensions as we wait for the
 20 conclusion of the new type of agreement with them, if
 21 any.
 22 "Their existing licence incorporated five former
 23 government concessions of Nemba, Rutsiro, Giciye, Sebeya
 24 and Mara, which were too many for one licence. The way
 25 forward should be to negotiate a licence for each

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13:06 1 that he remains of the same view, which is that if any
 2 new licences were to be obtained, they should be
 3 negotiated for on a concession by concession basis;
 4 correct?
 5 A. This is all new information for me. I'd never seen this
 6 document.
 7 Q. The same information as he had already given you in
 8 2012; correct?
 9 A. No.
 10 Q. And by that point you hadn't put in an application on
 11 a concession by concession basis, as he had asked, had
 12 you?
 13 A. I put in the same kind of application as everybody else
 14 did, and everybody else was in negotiation.
 15 Q. Can we go to bundle C-054. Now, this is an application
 16 that you put in in January 2013, and this is
 17 an application for a long-term licence; do you recall
 18 that?
 19 A. I recall we got called by the Ministry to say: yes, we
 20 have your application from 2010, here's what we want you
 21 to do, and we sat down with them and they said: please
 22 make this a high level, if you will, sort of a summary
 23 of a number of items, and send it to us now.
 24 Q. Now, that, again, is something you've just made up and
 25 is not in any of your witness statements, is it?

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13:07 1 A. It is not what I've made up, and that's exactly what
 2 happened.
 3 Q. And let's look at the covering letter. You start off by
 4 saying:
 5 "This letter is to provide you with an update of the
 6 amended application of [NRD] for a long-term mining
 7 concession licence. The original NRD request for the
 8 long-term mining licence was submitted to your office on
 9 or about 11/29/2010 (a copy is enclosed for your
 10 convenience)."
 11 Now, that was trying to give the false impression,
 12 wasn't it, that the previous application had been for
 13 a long-term licence; yes?
 14 A. No.
 15 Q. Let's go on.
 16 A. This was -- this was at their request. This was not our
 17 initiative.
 18 Q. If it had been at their request you would no doubt have
 19 said:
 20 "Further to your request, here is an application."
 21 Correct?
 22 A. No.
 23 Q. And if it had been at their request, you would have
 24 mentioned that at some point previously in these
 25 proceedings, either in one of your memorials or in your

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13:08 1 witness statements?
 2 A. There is lots and lots of communication that are not
 3 reflected in this narrow thread of sentences that you're
 4 trying to hook together to come up with your own
 5 narrative.
 6 Q. Now, if you look at the next paragraph, you refer to
 7 an investment of approximately €15 million. Can we go
 8 to page 4 of the document. You describe there
 9 achievements in research, production and processing
 10 versus targets, and then you talk about the original
 11 business plan being submitted by NRD in 2006, and you
 12 refer to the 39 million figure, and you say in the last
 13 sentence of that paragraph:
 14 "The targets outlined in the original business plan
 15 and the operating practices that have since been
 16 discovered were seriously flawed and inappropriate."
 17 And that's a rehash of something that was said in
 18 the November 2010 application; correct?
 19 A. That was addressing Zarnacks' proposal to build
 20 a tantalum processing refinery which cost many hundreds
 21 of millions of dollars.
 22 Q. Just in answer to my question: that is a rehash of
 23 something that that was said in the 2010 application;
 24 correct?
 25 A. I don't know that it's a rehash; it's a reference to

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13:09 1 Mr Zarnack's original business plan proposal.
 2 Q. It's virtually the same words, isn't it?
 3 A. I don't know.
 4 Q. Then look at the next paragraph:
 5 "When the management of NRD was changed in the end
 6 of 2010, the focus of activities and investments changed
 7 to support realistic projects to support and
 8 significantly increase semi-industrial mining in a way
 9 that will also greatly small-scale artisanal mining in
 10 multiple places, with an emphasis on increasing the
 11 standards of safety in the workplace and protecting the
 12 environment. During the period 2008 through 2012, total
 13 capital investment and other expenditures of more than
 14 €15 million were made and are evident of a commitment to
 15 the development of a sustainable mining industry of
 16 Rwanda and its people."
 17 So you're claiming an increase of €6 million on the
 18 €9 million said to have been invested in the 2010
 19 application; yes?
 20 A. I don't recall what the numbers were, but that's what
 21 this says.
 22 Q. And then if you go to the next page, you can see the
 23 figures, and these are the figures I took you to on the
 24 first day of your cross-examination.
 25 A. Yes.

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13:11 1 Q. Or I think it was the first day, earlier, anyway. And
 2 it's the €6 million that you referred to is wholly
 3 represented by your estimate for foreign consulting and
 4 engineering costs; correct?
 5 A. That's what that line reads, yes.
 6 Q. And for the reasons we discussed earlier, that was
 7 a fictitious number, wasn't it?
 8 A. For the reasons we discussed earlier, it is a -- wholly
 9 accurate, but an estimate.
 10 Q. It's right to say, isn't it, that this update was
 11 essentially a short, nine-page rehash of
 12 the November 2010 application; correct?
 13 A. All I recall is that we were doing what they sat down
 14 and asked us to do to prepare this document.
 15 Q. You didn't identify any new --
 16 A. There's no misrepresentation here, Mr [Hill], and
 17 I object to your insinuation.
 18 Q. You didn't identify any new material investment or
 19 exploration in this document, did you?
 20 A. I am not prepared to answer that question because we
 21 didn't go through this in anticipation that this would
 22 be an issue to be dealt with in the calculation of
 23 damages.
 24 Q. Let's look at page 3 of this document. This deals with
 25 exploration highlights, and you don't, in your

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13:12 1 exploration highlights, identify any material new
 2 exploration since the 2010 application; that's correct,
 3 isn't it?
 4 A. This is what we were told to put here, yes.
 5 Q. And then the exploration that you had identified had
 6 previously been considered deficient, hadn't it --
 7 A. No.
 8 Q. -- on the previous occasion?
 9 A. No.
 10 Q. Let's go to page 5 of the document.
 11 A. We had an ongoing sampling programme, we were the only
 12 mining company that had our own laboratory, so every day
 13 that we were mining, we were sampling the minerals, so
 14 we had a much better idea than virtually any other
 15 mining company in the country because we had
 16 a laboratory and we were unique in that regard.
 17 Q. If you had any material information derived from
 18 sampling that was new from the 2010 application, you
 19 would certainly have included it in this application or
 20 one of your other applications, wouldn't you?
 21 A. No. We got called to the Ministry, as I recall, we got
 22 called and said: here's what we need you to do, you
 23 don't need to rewrite it, here's what we need to be able
 24 to resubmit it, and so we did what we were told.
 25 Q. Now let's look at pages 5 and 6 of the document?

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13:13 1 A. This was not an open-ended: please tell us the history
 2 of your company. This was very narrowly targeted by the
 3 advisor to the Minister.
 4 Q. If you look at -- so pages 5 and 6 you set out your
 5 proposed activity plan for the period 2013 to 2018. If
 6 we look at page 6 we can see that the reserve -- that
 7 for your plan for 2013 to 2018, involved a number of
 8 projects and deposits prioritised and earmarked for
 9 follow-up investigation. Then you have a list there:
 10 "Rutsiro: Detailed calculation of reserves of
 11 Rutsiro primary wolframite deposits.
 12 "Nemba: Detailed calculation of Nyatubindi Laterite
 13 deposit...
 14 "Nemba: Reserve calculation of all other secondary
 15 cassiterite deposits.
 16 "Nyatubindi: Detailed reserve calculation..."
 17 Now, two points here. Firstly, these are the same
 18 proposals, aren't they, as was proposed in the 2010
 19 application; correct?
 20 A. I don't know. We were under instruction. As far as
 21 I know, these tables were provided to us by the Ministry
 22 for inclusion. I can ask --
 23 Q. Just to be clear, I'm not looking at the table,
 24 I'm looking at the bullet points underneath "Reserve
 25 calculations".

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13:15 1 A. The same formulation. These sources, both technical
 2 information and the expectations for production were
 3 provided to us by the Ministry. This was not our
 4 document in that sense. This is --
 5 Q. Well, that's simply not the case.
 6 A. This is what the Minister wanted from us for this to be
 7 proposed.
 8 Q. Mr Marshall, that is simply not the case --
 9 A. 100%.
 10 Q. -- this is just a rehash, a rehash, isn't it, of your
 11 proposals, or the company's proposals, in the 2010
 12 application; that's correct, isn't it?
 13 A. It's not the way Rwanda works, until the 2014
 14 application, or 2015 application process, when they
 15 started sending us one-line requests without giving us
 16 any detailed background or information or idea of their
 17 expectation, it's all done on a cooperative basis, all
 18 of these are, with all concession holders.
 19 Q. And that's, again, simply a made-up story, Mr Marshall,
 20 that if it were true, would have featured before in this
 21 arbitration.
 22 A. No, I think your client hasn't informed you about how
 23 the process works.
 24 Q. Well, if you had really thought that the content of your
 25 applications had been dictated to you by the government,

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13:16 1 you would have said so loud and clear when you said it
 2 was unfair that the applications hadn't been accepted.
 3 A. No, there are two issues. The applications that weren't
 4 accepted were those where we didn't have the technical
 5 information because our offices had been seized.
 6 This document, and the original 2010 application, in
 7 fact going back to the 2007 application for a mining
 8 licence, all that technical information is provided by
 9 the Ministry. That's what they expect. It's their way
 10 of saying what they expect from the mining companies,
 11 and if the mining companies can't fulfil that
 12 expectation, then there would be some negotiation. You
 13 could even lose your licence. But the process is very
 14 cooperative throughout, until the 2014/2015 one-liners.
 15 Q. Mr Marshall, the reality here, and we can see it from
 16 the other document, is that all you have done is
 17 rehashed material that was in the 2010 application, and
 18 that shows a number of things, Mr Marshall --
 19 A. You're not listening, I'm sorry, I'm explaining it's all
 20 an interactive process, this is what the Ministry says,
 21 this is what they identify, the deposit area, and they
 22 say: well, this is what we think you should be able to
 23 get out of it, and that's what we expect to be able to
 24 hold you to.
 25 Q. And this shows a number of things, Mr Marshall --

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13:18 1 A. (Overspeaking) negotiation in that respect.
 2 Q. One of the things this shows is that no further material
 3 exploratory research or calculating of reserves had been
 4 done since you acquired the company at the end of 2010,
 5 even though we're now in 2013; correct?
 6 A. No.
 7 Q. Because all you're doing is giving the same programme --
 8 A. You're asking me why the material wasn't included, and
 9 that would have been a question for them: do you want
 10 this other information included? We had a whole series
 11 of teams of geologists, consulting geologists coming
 12 from Europe, who were performing a number of tests in
 13 opening up additional deposit areas for exploitation.
 14 Nobody ever asked us for that. This is at their
 15 instruction.
 16 Q. Mr Marshall, the other thing this shows is that you must
 17 have known that this was not a viable application for
 18 a long-term licence because this is showing exactly the
 19 kind of thing that should have been done in the
 20 four-year period and hadn't been done; correct?
 21 A. No, and I have to refer you back to this whole
 22 principle, you know: they asked us to come, please take
 23 a risk, please invest money, we know that this is
 24 nothing like what the ordinary arrangement is in the
 25 mining industry, do this as an indulgence to us, you

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13:21 1 although this was in fact the first application that it
 2 had made for a 30-year concession at all, because the
 3 application made in November 2010 was for new five-year
 4 licences. The January 2013 application was entirely
 5 inadequate -- it contained none of the detail that would
 6 have been required even for short term licences, let
 7 alone the 30-year licences now being requested."
 8 And that's a fair and reasonable view and summary,
 9 isn't it?
 10 A. Absolutely outrageous and completely inconsistent with
 11 everybody else we spoke to at the Ministry.
 12 Q. Well, Dr Biryabarema, as you know, was one of the people
 13 who would have been evaluating this?
 14 A. He was also under criminal investigation for most of the
 15 period we were there.
 16 Q. Mr Marshall, this is yet another extravagant claim from
 17 you, isn't it?
 18 A. No. We spent many meetings discussing Dr Michael's
 19 corruption with internal intelligence, indeed, external
 20 intelligence.
 21 Q. Until you got into the witness box you have never
 22 suggested that Dr Michael Biryabarema was corrupt in any
 23 way, have you?
 24 A. Yes, I did. In fact, I think I told you that he was
 25 being bribed by Anthony Ehlers or Anthony Ehlers had

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13:19 1 will be given a commercially reasonable long-term
 2 licence agreement. Everybody else was in negotiation
 3 for what that commercially reasonable long-term licence
 4 agreement would say; we were not.
 5 Q. And this was work that needed to be done under Article 2
 6 of the contract, and you were told in August that it
 7 hadn't been done, August 2011 hadn't been done?
 8 A. You're making stuff up now. We were told to put this
 9 document together in this format. They did not ask for
 10 the other geological research which was ongoing by our
 11 European, Czech and Slovak geologists and their team.
 12 Q. Can we go back to the bottom of --
 13 A. We had more ex-pat geologists working in Rwanda than any
 14 other company.
 15 Q. Can we go back to the bottom of page 3. We have
 16 "Production highlights" and you give production figures
 17 for 2007 to 2011, and it's right to say, isn't it, that
 18 the reason you don't give production figures for 2012 is
 19 that they were so low under your watch; correct?
 20 A. I don't know that that would have been the reason.
 21 I don't know why it's not here.
 22 Q. Can we go to Dr Biryabarema's witness statement at
 23 paragraph 15. He says:
 24 "On 30 January 2013, NRD made what it called
 25 an updated application for a 30-year concession,

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13:22 1 disclosed to us that (overspeaking) --
 2 Q. Until you got into the witness stand, you have never
 3 made any allegation of this kind, have you?
 4 A. To the Rwandan authorities, yes. You should talk to
 5 them.
 6 Q. In this arbitration you've never made any allegation of
 7 this kind, have you?
 8 A. I don't know whether it's included in any of our other
 9 documents but it's true.
 10 Q. It's not, and the reason it's not is because you have
 11 just made that up, speaking from the witness stand?
 12 A. No, that's not true. Talk to internal intelligence,
 13 talk to external intelligence. I suspected that he was
 14 going to be gone before we were.
 15 Q. Let's look at Mr Imena's witness statement at
 16 paragraph 23.
 17 A. The military people that we were working for just asked
 18 us to be patient, do nothing precipitous, but he was
 19 being investigated for corruption. We fully expected
 20 him to be removed from his position. He's known
 21 throughout the community for corruption.
 22 Q. Let's look at paragraph 23. This is Mr Imena's reaction
 23 to your application:
 24 "That draft agreement had been sent with what was
 25 described as an 'investment plan report summary' in

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13:23 1 relation to a 30-year concession. The letter itself
 2 referred to it as an 'update' of the amended application
 3 of a long-term mining concession licence, and
 4 mischaracterised the November 2010 Application for
 5 five-year licences as 'the original NRD request for the
 6 long-term mining licence ...'. The 'investment plan
 7 report summary' was only nine pages long, contained very
 8 little detail and much of it appeared to have been
 9 copied or pasted from the November 2010 Report. There
 10 was no proper analysis or supporting documentation with
 11 it at all. If Mr Marshall really considered this to be
 12 a serious application for a 30-year licence -- the first
 13 made by NRD at all -- then it demonstrated his
 14 fundamental lack of understanding of what was required."
 15 And that is entirely fair, isn't it?
 16 A. It's entirely outrageous. Nothing like that was ever
 17 communicated to us. The people who said, who were
 18 responsible on the licensing and supervision board
 19 always told us that of all the applications, and we read
 20 many of them from many of the other concession holders,
 21 ours was far superior to any other application. So
 22 I think this was just prepared for the arbitration and
 23 nothing else.
 24 Q. Well, these people who you say said it was far superior,
 25 who are they? Mr Bidega has gone by then.

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13:24 1 A. Well, you would have to ask Mr Bidega who the staff were
 2 at that time and others who were there at that time.
 3 Q. That doesn't work. He had left by then. He was with
 4 you. He had joined your organisation shortly after the
 5 correspondence that we were looking at.
 6 A. You're really talking about several things, right?
 7 You're talking about the 2010 application. That was
 8 reviewed by the application licensing and supervision
 9 board as being the best of all the applications.
 10 Q. Mr Marshall, I'm looking at this application. You
 11 say --
 12 A. But you're saying that it was later deemed to be
 13 insufficient for some reason. That was never
 14 communicated to us.
 15 Q. We've already seen in this testimony over the last days
 16 various examples of you being told it was insufficient.
 17 So it was communicated to you?
 18 A. Yes, and I think I have told you in response, most of
 19 those are due to bias because of allegations of
 20 corruption and other matters.
 21 Q. Let's go back to Mr Imena's witness statement --
 22 A. As far as we knew our application had not been surpassed
 23 by anybody else and nobody else had done more research
 24 than we had.
 25 Q. Mr Marshall, I don't want to argue with you but you

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13:25 1 could not possibly have thought that given the
 2 correspondence you were in fact receiving.
 3 A. I absolutely knew it because I'd been to all the other
 4 sites.
 5 Q. And the only things you rely on to support your
 6 suggestion you took a different view is conversations,
 7 or some parallel stream of communication, that are not
 8 supported by the material that we have; correct?
 9 A. No, it's -- those conversations occurred, we were having
 10 regular, several times a week meeting with senior grade
 11 officers from the military who repeatedly assured us
 12 just to be patient. We visited every other concession.
 13 We viewed every other concession application.
 14 You know, the only application I think which was
 15 superior in some respects was Rutongo, and for the very
 16 simple reason that they had had access to all of the
 17 Belgian resources and research for their 40 years of
 18 working at Rutongo, so it was an additional process that
 19 they were doing, not a greenfield site like we were
 20 doing.
 21 Q. Staying in Mr Imena's witness statement, can we just go
 22 back to paragraph 22. He is dealing there with the
 23 draft contract that you attach to this application. He
 24 says:
 25 "At paragraph 36 of his witness statement

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13:27 1 Mr Marshall suggests that the draft long-term licence
 2 agreement that was enclosed with his 30 January 2013
 3 letter to Minister Kamanzi had been agreed with us.
 4 That is not correct -- in fact we never actually reached
 5 the point of discussing contractual terms with NRD
 6 because we never got to the point in their application
 7 process at which it was necessary to do so. I do not
 8 know the origin of the draft agreement enclosed with
 9 Mr Marshall's 30 January 2013 letter, but I do not
 10 believe it was prepared or produced by the Government.
 11 Although Mr Marshall states that it is 'in conformity
 12 with the template which your Ministry provided to us',
 13 it is not in a style or format that we would use and
 14 includes information, for example, investment and
 15 profitability estimates, that I do not believe we ever
 16 include in the body of our agreements."
 17 And that is entirely correct, isn't it?
 18 A. No, I would say that's entirely made up for the purposes
 19 of this arbitration. We negotiated in good faith with
 20 Dominique Bidega and his staff, they gave us the
 21 template, as I think I explained to you yesterday or the
 22 day before, it was the Gifurwe -- you can check it --
 23 Gifurwe Mining concession template that they gave us to
 24 make changes to, and so we did, and we reached the end
 25 of that negotiation, he explained to us that it had been

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13:28 1 referred up to Dr Michael and that then Minister Kamanzi
 2 and it had been approved and had been sent to the
 3 cabinet with a positive recommendation.
 4 Q. I don't want to go back round on that, but it's quite
 5 obvious if that had been remotely true, you would have
 6 been saying so in the letter to Mr Kamanzi, saying this
 7 has already been agreed, approved by Dr Biryabarema,
 8 approved by you, Mr Kamanzi, and sent to cabinet. None
 9 of that happened because none of that is true; correct?
 10 A. No, of course it happened, and they knew it perfectly.
 11 Q. Why didn't you say so in your letter?
 12 A. I obviously didn't think it was necessary. There's
 13 nothing that they didn't know about this process.
 14 Q. Why didn't you mention in your letter that Mr Kamanzi
 15 has already approved this, Minister Kamanzi has already
 16 approved this contract and it is sitting with cabinet?
 17 A. I don't know that it was sitting at cabinet at that
 18 point.
 19 Q. What's the purpose of the application on your case?
 20 What's the purpose of this letter at all if he had
 21 already agreed this contract and it's gone up to
 22 cabinet?
 23 A. He's renegotiating, that's my point.
 24 Q. That's volunteered by you, isn't it?
 25 A. He knows the language of the original agreement, he

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13:29 1 knows it's been agreed, he knows it's gone to cabinet.
 2 It was not rejected by the cabinet, as I understand it,
 3 it was simply tabled and no action was ever taken.
 4 Q. Mr Marshall, he is not negotiating; you volunteered?
 5 MR COWLEY: May I ask Mr Hill just please to let him finish
 6 before you start the next question.
 7 MR HILL: Yes.
 8 A. It was tabled that no action was taken, I interpreted
 9 that to mean that okay, this meant there was going to be
 10 another round of negotiations, so I expected that
 11 template, that agreed-upon language to be the basis on
 12 which we would continue and find terms that were
 13 acceptable, since obviously that was not acceptable but
 14 I had not been told why or what provisions were
 15 unacceptable.
 16 So to me this was already understood, we were
 17 working from this template. If they were going to bring
 18 in the new agreement, then we would have taken a look at
 19 it and started that negotiation.
 20 In fact, we did get a new draft agreement, which was
 21 substantially different from the one that had been
 22 submitted at the end of 2011.
 23 Q. So, Mr Marshall, you don't have any answer, do you, to
 24 why, on your case, if Minister Kamanzi had approved this
 25 long-term licence already and was prepared to submit it

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13:31 1 to cabinet, you are making an application for
 2 a long-term licence and trying to justify one and
 3 providing a new draft -- providing a draft agreement?
 4 A. No, things are often less than regular in Rwanda. So
 5 the fact that they were asking us to negotiate from
 6 a new template was not particularly surprising to me.
 7 We had hoped that the original one was going to be
 8 accepted. They had approved it, sent it to Parliament.
 9 Now they wanted to do a renegotiation. Okay, let's see
 10 what you have to say.
 11 Q. Let's look at paragraph 35 of your witness statement.
 12 You say:
 13 "Following each of the extensions, I continued to
 14 expect that NRD would be awarded a long term contract.
 15 Throughout all of these extensions, the Rwandan
 16 Government representatives we interacted with always
 17 referred to long term contracts for the Concessions as
 18 a guarantee or a foregone conclusion. They never
 19 suggested to us that Rwanda may not honour the
 20 Concessions with long term contracts. I continued to
 21 invest in NRD with the understanding that the long term
 22 contracts were forthcoming."
 23 None of that is true, is it?
 24 A. No, all of that is true.
 25 Q. Now, we were referring earlier to the fact you had been

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13:32 1 prevented from mining the western concessions due to
 2 environmental concerns. Can you now please go to C-056.
 3 A. Not all of the western concessions were closed, by the
 4 way, just to alert you.
 5 Q. Can we just look at C-056. This is from Dr Biryabarema
 6 in February 2013. He says:
 7 "Reference is made to your letter dated
 8 6th February 2013, requesting for the resumption of
 9 mining activities in Rutsiro, Sebeya and Giciye
 10 Concessions of NRD and also have the opportunity to
 11 remedy the harm been done in those concessions by
 12 illegal miners. Following our conversation with you on
 13 [6 February 2013] we recognise and appreciate your
 14 suggestions to curb illegal mining practices by using
 15 demobilised soldiers ... to provide security for these
 16 concessions. As you informed us this group has proved
 17 effective in Nemba, another NRD controlled concession.
 18 "We agree with your proposal and request you to
 19 proceed with discussions with the demobilised soldiers
 20 and work out a security strategy. On the strength of
 21 this strategy, NRD will be permitted to resume
 22 activities in the short term as we proceed with
 23 negotiations on your request for new contracts for the
 24 concessions. For any other support, please do not
 25 hesitate to contact us."

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13:33 1 So you were allowed to resume activities in the
 2 short term while negotiations progressed, correct?
 3 A. That's what it reads, that negotiations did not
 4 progress, but that's what it reads.
 5 Q. And this wasn't a letter from the Minister which would
 6 have been granting an actual extension; this is from
 7 Dr Biryabarema giving you, if you like, an ad hoc,
 8 informal permission to remain on the concessions;
 9 correct?
 10 A. No, we were always treated as mining concession holders
 11 as defined by law, except with respect -- no, always
 12 treated as mining concession holders. In a few select
 13 instances like this issue of the Sebeya River catchment,
 14 there was a declaration that the catchment was closed,
 15 but we were always treated with respect as long-term
 16 concession holders.
 17 Q. But this didn't involve an extension of the licence,
 18 that's my -- just focus on my question: this didn't
 19 involve an extension of the licence, did it?
 20 A. Your question was whether we had independent rights, and
 21 my point is, we were always treated like long-term
 22 concession holders, it's the course of dealing.
 23 Q. Right, you're relying on a course of dealing?
 24 A. May I finish, please? We never changed from when we got
 25 the licences in 2007, we were always treated with both

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13:35 1 rights and responsibilities, except that in certain
 2 cases, like Sebeya River catchment, things were closed
 3 because of, in this case, environmental degradation.
 4 Q. And nothing on this letter gave you any assurance that
 5 any long-term licence would be given; correct?
 6 A. "... Proceed with [the] negotiation on your request for
 7 new contracts..."
 8 Q. Exactly. And this permission was given on the strength
 9 of your assurance that you would curb illegal mining on
 10 the concessions through the hiring of demobilised
 11 soldiers; yes?
 12 A. I would point out to you, you were accusing us earlier
 13 of mining in this area, and here this letter is talking
 14 about mining by illegal miners, not by NRD miners in
 15 this area.
 16 Q. This permission was given on the strength of your
 17 assurance that you would curb illegal mining on your
 18 concessions through the use of -- the hire of
 19 demobilised soldiers; yes?
 20 A. That's what they wanted us to do, yes.
 21 Q. And that reflected, didn't it, that it was NRD's
 22 responsibility to maintain order on its concessions and
 23 prevent damage on its concessions?
 24 A. No, that's not true in Rwanda. You can make reasonable
 25 efforts. The country is so crowded that you cannot --

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13:36 1 it's not like in many countries where you can fence off
 2 a mining area. The areas in the concessions are large,
 3 they're in some cases hundreds of thousands of people.
 4 So people do come and mine selectively where they want,
 5 and you can't control it.
 6 Q. Well, it was --
 7 A. Rutongo was able to get support from the military.
 8 We don't know why. We tried to get support from the
 9 military, and two brigades -- two entire brigades were
 10 posted at their concessions to stop the illegal mining.
 11 Q. Well, your concessions were particularly --
 12 A. (Overspeaking).
 13 Q. Mr Marshall, your concessions were particularly large
 14 and that was one of the problems you faced: was that you
 15 couldn't control activity on your concessions; correct?
 16 A. No. The concession areas are established by law. It's
 17 not something that anybody had an option to, unless they
 18 were going to change the law before granting them to us.
 19 The concession areas, as a matter of practice, are
 20 always handled as a police matter. It's not like you
 21 can control someone going in or coming out; these are
 22 widely scattered, very small deposits, and what you do
 23 is you provide those artisan miners with various kinds
 24 of support.
 25 Q. Plainly, Mr Marshall, the government thought that you

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13:37 1 could curb illegal mining, and it was your
 2 responsibility --
 3 A. No, that's --
 4 Q. -- because the basis on which you're allowed back onto
 5 the concessions, as we can see, is your assurance you
 6 will hire demobilised soldiers to get in control of
 7 illegal mining; yes?
 8 A. That hadn't been tried before, so we proposed it to the
 9 government, maybe what we can do, because this is
 10 a mutual problem, it's a police problem, it's a security
 11 problem, but these are not mines where long-term --
 12 large-scale mining concession holders ever had
 13 a responsibility for that. They have some security
 14 responsibilities for immediate dangers, like making sure
 15 people don't fall into holes, and that kind of thing.
 16 But for policing of illegal mining, nowhere in the
 17 country is that solved by the concession holder.
 18 Q. Well, that's exactly what's happening here, and your
 19 undertaking to hire demobilised soldiers arose because
 20 you accepted it was your responsibility; correct?
 21 A. So, you know, you're attributing bad intentions by my
 22 not including some phrases in documents, and here you're
 23 interpreting a bad intention by saying: well, you had
 24 to, because you had no other choice.
 25 We did this out of good faith. The police could not

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13:39 1 handle this problem. So we were unique among the mining
 2 concession holders and said: why don't we set up
 3 a programme to hire these demobilised soldiers, it
 4 solves a government problem of what to do with
 5 demobilised soldiers who may be difficult to deal with,
 6 and we can give them work.
 7 Q. Mr Marshall, something that --
 8 A. So a jobs programme, from our point of view, and
 9 innovative: nobody else had done that.
 10 Q. Mr Marshall, something that was happening as a matter of
 11 good faith was that the Rwandan Government were granting
 12 you an indulgence by permitting you to remain on the
 13 concessions after your licences had expired; correct?
 14 A. No, we had -- we were deemed to be long-term mining
 15 concession holders, which is a defined term under Rwanda
 16 statute. That never varied. Concession --
 17 Q. Come on, Mr Marshall, you were not deemed to be
 18 long-term concession holders, were you?
 19 A. Yes, we were.
 20 Q. You never had a long-term concession.
 21 A. Everybody was --
 22 Q. You had a contract for four years, which by this stage
 23 was no longer extant --
 24 A. Everybody --
 25 Q. Just listen to my question. You had a contract for four

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13:40 1 years, which was no longer extant, and you had licences
 2 which were expired. You were never deemed to be
 3 long-term concession holders, were you?
 4 A. No, our contracts were executory. We had done -- we had
 5 granted the indulgence that the Rwanda Government had
 6 asked us, we had set up operations, we had invested
 7 considerable amounts, with the expectation that we would
 8 be granted this long-term commercially reasonable
 9 contract, and as a matter of law we were deemed to be
 10 long-term concession holders, and specifically holders
 11 of those concessions, by statute, not by right. We had
 12 fully performed under the contract, we had done what
 13 we had promised to do. They promised to give us
 14 a commercially reasonable long-term licence agreement,
 15 and that was the negotiation and the agreement we were
 16 waiting for.
 17 MR HILL: Mr President, I wonder if that is a convenient
 18 moment for a break?
 19 THE PRESIDENT: Yes, I think it's a very convenient moment
 20 and we'll have an extra five minutes, I think, and come
 21 back in 35 minutes, at quarter-past.
 22 (1.41 pm)
 23 (A short break)
 24 (2.16 pm)
 25

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14:16 1 THE PRESIDENT: Yes, could I just ask Mr Cowley?
 2 MR COWLEY: Yes.
 3 THE PRESIDENT: Did you have time to open the envelope and
 4 consider its contents?
 5 MR COWLEY: We opened the original email. The
 6 representation to us was we were going to be asked to
 7 confer with our client about one document.
 8 THE PRESIDENT: Yes.
 9 MR COWLEY: And admitting it today for questioning of Rod
 10 Marshall. I never received such a request. I took it
 11 as probably indicative of the fact that the questions
 12 they asked have already been asked, but if not, I still
 13 did two things: I looked into -- our IT staff has
 14 received the package, they have the metadata that was
 15 submitted to us by letter this morning.
 16 I've got follow-up questions for them about what --
 17 their comments. They don't know anything about the
 18 trial, the background, they don't know what to really be
 19 looking for. So I have follow-up questions with them,
 20 and I may answer all my questions, or those follow-up
 21 questions may have to be answered by Respondent's
 22 counsel.
 23 I also have questions for them about what this new
 24 ability to produce metadata by the Respondent covers
 25 beyond what we're holding, so I have additional

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14:18 1 questions and, in any event, I ask Mr Marshall as
 2 an academic matter, should anybody have an email in
 3 native format or another document in Word format, PDF
 4 format, in native as opposed to electronic or PDF, does
 5 he have any ability to talk about the differences
 6 between the two, does he have any ability to talk about
 7 metadata in native compared to something else, and he
 8 says absolutely not. I confirmed with him that in order
 9 for him to even talk about what is in metadata or in
 10 a particular document in metadata, he has to confer with
 11 an IT professional.
 12 So there is no substantive testimony from the
 13 witness that could be obtained today in any event,
 14 regarding metadata, so I suggest this change in position
 15 with regard to discovery and production of documents
 16 should be a subject of actual discussion between the
 17 parties' counsel -- we've never had any -- and we report
 18 back to the Tribunal, probably not today, but we report
 19 back after we have had an actual conversation.
 20 THE PRESIDENT: Right. Thank you.
 21 Mr Hill, that sounds sensible.
 22 MR HILL: Well, we certainly can't deal with it now.
 23 THE PRESIDENT: Yes.
 24 MR HILL: So let's park it now, I think.
 25 THE PRESIDENT: Thank you.

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14:19 1 Then let us have Mr Marshall back, please.
 2 MR WATKINS: Okay, bringing the witness in right now.
 3 MR HILL: Mr Marshall, can you be given C-057. This is
 4 a letter from the RDB to NRD setting out its position in
 5 respect of the licences, and the RDB note in the first
 6 paragraph that the contract expired in 2011, and the
 7 company has been working on a short-term extensions;
 8 yes, do you see that?
 9 A. Yes.
 10 Q. And as they say there:
 11 "As the Government of Rwanda has taken the decision
 12 to negotiate licence agreements separately for each
 13 mining site, we wish to initiate negotiations with the
 14 company for the issuance of a small mine exploitation
 15 licence for the Nemba site."
 16 So at this stage the government is making it clear,
 17 isn't it, that they want to negotiate licence agreements
 18 separately for each concession, and at this stage
 19 they're interested in negotiating a small mine licence
 20 for Nemba; correct?
 21 A. Possibly. It also may be that they were not
 22 articulating the situation well and that they were in
 23 error. For example, right at the top of the page, it's
 24 addressed to Mr Zarnack, who hadn't been associated with
 25 the company for many years.

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14:21 1 I don't know, we were certainly -- we took it as
 2 an invitation to come and negotiate a long-term
 3 concession licence --
 4 Q. How could you have taken it as that, Mr Marshall, given
 5 they're telling you they want to negotiate each one
 6 separately and they're inviting you to negotiate for
 7 a five-year small mine licence for one concession?
 8 A. Well, I don't know that that's truly what they meant.
 9 All the other concession holders were in long-term
 10 licence concession holder agreements.
 11 Q. But it is truly what they said, isn't it?
 12 A. Sorry?
 13 Q. It's truly what they said in this letter.
 14 A. You mean the sentence you're reading?
 15 Q. That's what they're saying.
 16 A. They're contradicting me; is that what you mean?
 17 Q. Yes. Are you saying you don't know what that's meant,
 18 but it's exactly what they said.
 19 A. Yes, and my point is that everybody is at this point
 20 going through a negotiation for long-term concession
 21 licence. We had no reason to believe that we were going
 22 to be treated any differently even though it is written
 23 inartfully here.
 24 Q. You say everybody at this point, but that is simply not
 25 the case, is it? They're explaining what they're

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14:22 1 prepared to negotiate and it is not long-term concession
 2 licences; correct?
 3 A. As far as I know, all large-scale mining concession
 4 holders were being brought in for long-term licence
 5 contracts, and all of them are negotiating what both
 6 parties would hopefully find to be a commercially
 7 reasonable agreement.
 8 Q. Shall we look at your response to this?
 9 A. For Rutongo, for example, it took them three years of
 10 negotiation, I don't know why, but we hadn't even begun.
 11 So we were -- we were glad to find somebody willing to
 12 talk about what had happened to us and what the original
 13 long-term licence agreement text had been.
 14 Q. You say you hadn't even begun, but I thought your
 15 evidence elsewhere was that you had begun and indeed you
 16 had an agreed contract which had been agreed by the
 17 Minister and gone to cabinet.
 18 A. You're trying to twist my words, I think, sir, so excuse
 19 me. What I'm trying to say is I think you will
 20 appreciate we had negotiated a long-term contract, it
 21 had gone to the Parliament, cabinet, so we were told, it
 22 was tabled, it had not gone ahead. We saw that this
 23 was -- this letter we were optimistic that we were going
 24 to be able to be like everybody else, like every other
 25 large-scale concession holder negotiating for

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14:23 1 a long-term concession agreement.
 2 Q. Let's look at your response to this, Mr Marshall.
 3 C-058?
 4 A. By the way, let me give you just one important side to
 5 this. They had all the leverage in the world because
 6 they had our assets --
 7 Q. I'm going to stop you there, Mr Marshall, because that
 8 is not beginning to be an answer to any of my questions
 9 and we must get on and I'm not going to allow you to
 10 digress into matters which are not answers to my
 11 questions. So will you please go to C-058.
 12 Now, this is your response to the letter from the
 13 RDB, and we pick up in the beginning, first paragraph,
 14 a point about the addressee. I'm not going to bother
 15 you with that. I'm going to look at your next
 16 paragraph:
 17 "I perhaps should add that, as you note in CEO
 18 Akamanzi 'invitation letter', the term of the original
 19 'Contract' has passed without NRD receiving the agreed
 20 upon 'Long Term Licence' and we would like to express
 21 our appreciation that we can now discuss that."
 22 Just pausing there, you knew that there was no
 23 agreed-upon long-term licence and you knew that you were
 24 not being invited to discuss a long-term licence, didn't
 25 you?

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14:25 1 A. No. As you said before, this is the plain language. We
 2 expected to be negotiating for a long-term licence,
 3 similarly to how we had been negotiating it with
 4 Dominique Bidega in 2011.
 5 Q. So this is a deliberate, I would suggest,
 6 misinterpretation of a letter which you have copied,
 7 amongst other things, amongst other people, to the US
 8 Ambassador; yes?
 9 A. That's the double question. Can I answer the first one
 10 first, please?
 11 Q. Yes, please.
 12 A. What we understood was that we were being finally
 13 invited to negotiate commercially reasonable long-term
 14 licences. We hadn't had anybody to talk to about the
 15 terms of that licence. From our perspective, we had
 16 fully performed. We had negotiated the agreement once,
 17 it had been sent to the cabinet, tabled, and it hadn't
 18 gone ahead. Now we were given a second opportunity to
 19 be able to negotiate what the language of that long-term
 20 licence would be --
 21 Q. You wanted to give a full -- yes, carry on?
 22 A. What was your second question?
 23 Q. Yes, you sent it to -- and I suggested, and it's the
 24 same suggestion I'm making again now, you sent this
 25 letter to a number of other recipients in order to give

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14:26 1 a false impression that there was some agreement of
 2 a long-term licence, didn't you?
 3 A. This is a very small community. Everybody knew
 4 everything about what was going on. If the Rwandan
 5 Government -- if these people in the Rwandan Government
 6 were jockeying to be able to say: okay, we did have
 7 an agreement, we're now going to breach that agreement
 8 by offering you something different than what we
 9 promised, then everybody needs to know what that process
 10 is. We were trying to play with all the cards face-up.
 11 That was the only reason.
 12 THE PRESIDENT: Could I just intervene to ask a question
 13 which has been puzzling me from the outset. When we
 14 look at this letter it has, by the Ministry of Natural
 15 Resources, the Rwanda Development Board, and the
 16 American Embassy. How is it that one document bears
 17 these three stamps of receipt?
 18 A. Ordinarily what we do is that it's an administrative
 19 practice in Rwanda where you deliver the original to the
 20 named recipient, and when you're delivering copies, you
 21 get a -- you go to their office and they give you
 22 a stamp on your copy, so that you have a record of
 23 everywhere you delivered it.
 24 THE PRESIDENT: So all these documents were delivered by
 25 hand in hard copy; is that right?

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14:28 1 A. All documents in Rwanda are delivered by hand. There's
 2 really no meaningful mail service. So, for example, the
 3 stamp there next to the addressee, I don't see others,
 4 the Rwanda Natural Resources Authority, that meant that
 5 we took it to them, and our copy we were keeping, we got
 6 them to stamp it as evidence that they had received it.
 7 THE PRESIDENT: Thank you. I understand.
 8 MR HILL: Thank you, Mr President. I'm just seeing if I can
 9 skip the next thing just to try and move things along
 10 a bit. If you just give me one moment.
 11 A. I would add, Mr President, two additional administrative
 12 practices in Rwanda is, one, that all documents, all
 13 received letters are entered into a logbook, so when
 14 they stamp it they also enter it into their logbook, and
 15 every letter that they send out, where the minister
 16 sends out a letter, for example, they also enter that
 17 into a logbook, so it's like the US Army, where they
 18 keep a record of every communication, and then there's
 19 some dispute about whether it's seven days, or seven
 20 business days, you have to respond to that letter on
 21 both sides.
 22 THE PRESIDENT: Thank you. That's the practice.
 23 A. That's the practice, sir.
 24 MR HILL: Yes. Can you now go to C-159. This is a meeting
 25 of the RDB that you attended, and you see at the

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14:29 1 beginning of the note of the meeting it says, second
 2 sentence:
 3 "Ms Rusagara informed NRD that it had not received
 4 any comments from the Company on the Mining Agreement
 5 and the due diligence questions that it had submitted to
 6 NRD on 4th April 2013 ... Ms Rusagara noted that in the
 7 absence of comments from NRD, the meeting could be used
 8 to focus on broader issues [relating] to the Agreement
 9 and due diligence questions, or addressing
 10 clarifications in connection with that Agreement."
 11 So the RDB went into this meeting wanting to
 12 negotiate or to discuss the agreement which you had not
 13 yet commented on, and that was the five-year Nemba
 14 agreement; correct?
 15 A. I don't know what the draft was. I don't recall.
 16 Q. And what happened at this meeting is you weren't ready
 17 to discuss that draft, and I don't want to go to the
 18 detail of the minute, but it's clear from the minute
 19 that you raised a number of complaints, and it was
 20 agreed that there would be a meeting with Mr Imena,
 21 which took place subsequently; do you recall that?
 22 A. I recall that there was no meeting with Dr Imena
 23 subsequently, that this was a preliminary meeting for
 24 purposes of negotiating a long-term contract. That was
 25 my recollection.

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14:31 1 Q. Well, I'll just interrupt you there -- sorry, I don't
 2 mean to interrupt -- following up on you there: it
 3 wasn't a preliminary meeting for discussing the
 4 long-term licence, it's quite clear that from RDB's
 5 point of view it was a preliminary meeting for
 6 discussing the short-term licence that you were not in
 7 a position to discuss; correct?
 8 A. I don't ever recall that there was a conversation of us
 9 having a discussion about a short-term agreement at all,
 10 so, that's my recollection.
 11 Q. Then we have your letter to Mr Imena.
 12 A. Can I read the rest of this --
 13 Q. And you say --
 14 A. Can I read the rest of this? It may remind me.
 15 Q. Well, no, because I simply need to move on. I don't
 16 have a question on it and we are not going to finish
 17 your cross-examination if you read every letter.
 18 A. I want to give you a more complete answer, if you want
 19 a more complete answer.
 20 Q. No, I don't want a more complete answer, I want to move
 21 on or we don't finish this cross-examination. Can we go
 22 to C-059. This is your letter to Mr Imena where you
 23 say:
 24 "In our joint discussions with RDB, it was suggested
 25 that we have a meeting directly with you and RDB about

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14:32 1 the business/legal/regulate situation facing NRD. All
 2 at the meeting agreed that if these issues can be
 3 resolved, the negotiation for the long-term concession
 4 would be easier and more straightforward."
 5 And just pausing there, again, that is you twisting
 6 things to try to give the impression that there was some
 7 discussion and negotiation for a long-term concession
 8 that everyone thought would be more straightforward if
 9 you had a discussion with Mr Imena, which is not what
 10 took place; correct?
 11 A. I don't believe there was any inconsistency between that
 12 and the prior minutes, but you wouldn't let me read the
 13 prior minutes so I'm not sure what you're referring to.
 14 Q. Now you then say --
 15 A. (overspeaking) we weren't twisting any language, we
 16 weren't misrepresenting anything.
 17 Q. Now, I would suggest to you this is one of a very large
 18 number of examples where you seek to give the impression
 19 in your correspondence that there was some agreement or
 20 negotiation as to a long-term concession when that
 21 wasn't in fact happening; correct?
 22 A. We were treated as long-term concession holders from the
 23 beginning, with a mandatory 30-year period. We expected
 24 that was what was going to be the subject of
 25 a commercially reasonable long-term licence agreement.

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14:33 1 Q. You then say:
 2 "We had originally understood that the topics for
 3 discussion should be presented to you through RDB. We
 4 now understand that we are to present the list of topics
 5 to you ..."
 6 And then you attach a list, and this is another
 7 letter that you copy to the US Ambassador; correct?
 8 A. We were in constant communication with the US Embassy,
 9 about everything, particularly at this time because we
 10 were also working for the Rwanda military.
 11 Q. Now, let's just look at some of the items on your list.
 12 If you go on to page 2, the second page of this
 13 document.
 14 MR BRODSKY: I'm sorry, including the cover email, the
 15 second page of the PDF or the second page of the letter?
 16 MR HILL: That's right, where you are, that's fine.
 17 MR BRODSKY: Okay, thank you.
 18 MR HILL: So you pick out some issues that you want to
 19 discuss with Mr Imena, starting with A at the bottom of
 20 the page:
 21 "The continuing harassment of NRD, which includes
 22 the de facto closure of NRD's western mining concessions
 23 as a result of the lack of security and of the actions
 24 taken by the Rwanda Natural Resources Authority."
 25 Now, that itself is a very unfair characterisation,

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14:35 1 isn't it, because the western concessions were closed
 2 down for environmental reasons and only opened up on the
 3 basis of your assurance that you could hire demobilised
 4 soldiers to curb the problems?
 5 A. No, the area that was closed, don't forget, was the
 6 Sebeya River catchment, not all of the western
 7 concessions were closed. Just so you're aware, as
 8 an administrative matter, when we send a letter like
 9 this, they have seven days to respond if there's
 10 anything which is incorrect. Their lack of response
 11 suggested that they agreed with what is written here.
 12 Q. Is that one of the reasons, Mr Marshall, why we can see
 13 so often you put "distorted information" in the letter
 14 so you can somehow rely on it and say against the
 15 minister that there was something they hadn't responded
 16 to within seven days?
 17 A. That's their administrative practice. We write what we
 18 believe to be the truth and they respond as they believe
 19 to be the truth.
 20 Q. Now let's look at the next page of the letter. We can
 21 see what you're asking for. You say:
 22 "[We] would respectfully ask the Ministry of Natural
 23 Resources to do the following.
 24 "1. Explain why NRD alone among the mining
 25 companies is the 'target' of official and unofficial

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14:36 1 State action. Is it because RNRA wants to compel NRD
 2 investors to give up their investment in the Rwanda
 3 mining industry?"
 4 So this is a letter that emerges from you to the
 5 Minister in response to the request to negotiate
 6 a five-year licence for Nemba, and do you consider this
 7 is an appropriate request to make of the Minister?
 8 A. I think you're mischaracterising it again. The issue
 9 that was decided was that we would be raising issues
 10 that were impediments to our ongoing ability to work in
 11 Rwanda of any kind, and so these were an opportunity to
 12 discuss issues we wanted to discuss with Minister Imena
 13 who, until this point, was really unwilling to speak to
 14 us.
 15 Q. The reality is, there hadn't been any --
 16 A. In fact, I would like to make one last point: there are
 17 maximum 10 large concession mining companies in the
 18 whole country. The fact that he did not find time to
 19 talk to us meant that he was avoiding us, not that he
 20 was too busy with other matters.
 21 Q. And far from being the target of any official or
 22 unofficial state action, all of NRD's problems are ones
 23 it had brought upon itself, for example, by being unable
 24 to curb illegal mining on its large concessions;
 25 correct?

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14:39 1 commercially reasonable long-term licence say and that
 2 was the sole reason for their delaying it.
 3 Q. And there had been no, as you say, manipulation, by the
 4 RNRA, had there? The first application by you for a
 5 long-term licence was not until January 2013, and that
 6 was the nine-pager that we looked at earlier; correct?
 7 A. No, this is your fanciful narrative and I understand
 8 that you are trying to thread together lines from
 9 different sentences, but that is not what was happening
 10 on the ground.
 11 Q. And then you say that NRD had fully performed under the
 12 agreement, but you had already been told repeatedly by
 13 the government that NRD had not fully performed under
 14 the agreement, hadn't you?
 15 A. That's not true. We had been given some letters from
 16 Dr Michael, Minister Kamanzi, and later from
 17 Minister Evode, but virtually everybody else in the
 18 Ministry had confirmed that we had fully performed -- in
 19 fact, performed better than anybody else.
 20 Q. So all your letters --
 21 A. And more than that -- if I may finish, please -- and
 22 more than that we had a parallel line of negotiation
 23 with the government through the Rwanda military and they
 24 were telling us that we had fully performed and there
 25 was a corruption problem that their internal security

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14:37 1 A. No.
 2 Q. Let's look at the next item, paragraph 2.
 3 A. Other mining concession holders had much more difficulty
 4 with illegal mining than we did. Rutongo was among the
 5 biggest complainers about that.
 6 Q. Let's look at the next item:
 7 "Grant to NRD the long-term 30-year mining
 8 concession provided by Rwandan law and promised under
 9 the 2006 exploration and exploitation Agreement, which
 10 grant has been repeatedly delayed and manipulated by
 11 RNRA. NRD has fully performed under the 2006 Agreement
 12 and, in accordance with that Agreement, NRD has
 13 confirmed that it is satisfied by its exploration
 14 results in some concessions and, in some areas within
 15 a concession, wishes to continue exploration."
 16 Now, let's take this in stages. There's no 30-year
 17 licence promised under the 2006 contract, is there, that
 18 was a distortion of the contract; correct?
 19 A. No, at all times we were the statutorily defined
 20 long-term large-scale mining concession holder, which is
 21 a defined term under Rwanda statute, and there it
 22 specifies as the long-term holder it is for a mandatory
 23 30 years, there's no lesser period. And the Rwanda
 24 Government always was making the argument: we would like
 25 to be sure of what the terms of the so-called

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14:40 1 was working on.
 2 Q. All the letters from the people with senior
 3 responsibility and authority were against that position,
 4 but you're relying, are you, on conversations with
 5 people like Mr Bidega who joined your organisation; yes?
 6 A. I'm -- it's an ongoing negotiation. We knew what people
 7 thought. We knew that they were investigating
 8 corruption. We believed Dr Michael and Minister Evode
 9 were going to be removed almost immediately. In fact,
 10 Evode was removed, but six months after we left the
 11 country.
 12 Q. And this was a wholly distorted position --
 13 A. No.
 14 Q. -- that you were presenting to the Minister and copying
 15 to the US Ambassador so that he himself --
 16 A. The US Ambassador --
 17 Q. Just let me finish -- so that he himself would have
 18 a false impression of what was going on; that is fair,
 19 isn't it?
 20 A. No. He has his own sources of information, he is fully
 21 part of the community, everybody in the US Embassy is
 22 fully part of the community. We played with all of the
 23 cards facing up. They knew what was good, what was bad,
 24 what was happening day-by-day, and they always, always
 25 provided a representative from the US Embassy to go with

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14:41 1 us to those meetings. That's very unusual. Very rarely
 2 does an US Embassy official go with a private citizen to
 3 a business meeting, but they came with us dozens and
 4 dozens of times because they could see how unfair this
 5 was.
 6 Q. They were being told by you, inaccurately --
 7 A. (Overspeaking).
 8 Q. -- they were being told by you inaccurately how unfair
 9 things were; correct?
 10 A. I think you're overjudging my capabilities. They are
 11 very adept people, they understand the Rwanda community,
 12 they knew what they were doing, they knew who they were
 13 talking to, and that yes, we were being treated much
 14 less fairly than anybody else.
 15 Q. Now, we've arrived in the story at the second half of
 16 2013. Mr Kagubare joined NRD in the second half of
 17 2013, didn't he; yes? Remember him?
 18 A. He started, I want to say, November, but it was -- he
 19 was a consultant, not an employee, and his real job was
 20 for the Directorate of Military Intelligence, and he was
 21 sort of our go-between with General Jack Nziza to
 22 prepare memoranda for him on topics that were
 23 interesting.
 24 Q. Let's look at what he says, following his arrival.
 25 Paragraph 9 of his witness statement. So he explains

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14:43 1 his witness statement, he's a mechanical and civil
 2 engineer by profession. And he says at paragraph 9:
 3 "I started work in the second half of 2013 and very
 4 quickly discovered that the company was not being run in
 5 a professional manner, but rather that Mr Marshall and
 6 Ms Mruskovicova were effectively running NRD as
 7 a 'briefcase' company. For example, although the
 8 company had an office in Kigali, its own staff were 2
 9 women whose job was to prepare accounts that could be
 10 presented to the ... RRA in the event that the RRA asked
 11 for the company's records. The business itself was
 12 mostly run out of Mr Marshall's and Ms Mruskovicova's
 13 apartment and Mr Marshall and Ms Mruskovicova rarely
 14 visited the Kigali office."
 15 That's fair, isn't it?
 16 A. No, it's completely outrageous, we were running the
 17 business from the office, we were at the office every
 18 day, our staff were there every day. I don't know about
 19 John's professional background, if I may go back to
 20 that. I know that he was a construction worker in the
 21 UK for a number of years, and ran a taxi, until he came
 22 back for better opportunities in Rwanda. He was working
 23 for the Directorate of Military Intelligence, he was our
 24 liaison with General Jack Nziza who wanted very concrete
 25 information about the mining industry and how it should

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14:44 1 be run and what kinds of recommendations we would
 2 propose or we thought would be appropriate, and then he
 3 had a shift into military procurement. John Kagubare
 4 came with us as his representative to meet with the
 5 armaments companies in Czech and Slovakia.
 6 Q. That was all a very long answer to a question about what
 7 he found in relation to the way you ran the company.
 8 Can you please try to keep yourself to the answers to my
 9 questions or we will not finish this cross-examination.
 10 Next question, please go to paragraph 15 of
 11 Mr Kagubare's witness statement. He says that what he
 12 found is although -- as he arrived at the end of 2013:
 13 "Although the company was entirely dependent on
 14 artisanal mining, it did not manage its staff and
 15 contractors in an effective way. Ms Mruskovicova had
 16 a habit of firing people at will. It was not uncommon
 17 for her to walk up to an employee or miner and fire them
 18 for allegedly stealing, or because she thought they were
 19 lazy. Ms Mruskovicova also seemed to regard payments
 20 due to the artisanal miners as discretionary rather than
 21 obligatory, and would sometimes decide that they should
 22 not be paid as agreed (after every sale) claiming there
 23 were more urgent issues to sort out. An excuse
 24 I disapproved and got to learn was the cause of the
 25 company's many legal problems with its employees and

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14:45 1 contractors and it was involved in a large number of
 2 court cases concerning claims for unpaid salary,
 3 wrongful dismissal or failing to pay the artisanal
 4 miners for their minerals. I remember at least one court
 5 case that was brought by a group of miners who had not
 6 been paid -- although a settlement was eventually agreed
 7 and a payment programme implemented, NRD did not comply
 8 with the payment programme and the miners went unpaid.
 9 So far as I can [tell], NRD lost almost all of the cases
 10 brought against it but still refused to pay their former
 11 employees and the miners the amounts that were due to
 12 them."
 13 And that fairly sums up the position: NRD did not
 14 manage its staff and miners in a professional way, did
 15 it?
 16 A. That's a wholly fabricated statement, completely untrue.
 17 All companies are dependent on giving support to groups
 18 of artisanal miners. That's the fact in Rwanda. We
 19 managed them in an effective way, I would say we were
 20 better at managing them than most companies, I don't
 21 have a clear parameter for that, but I know our staff
 22 were always paid and always paid in full.
 23 To the extent that there may have been any legal
 24 problems with any miners, the only ones that I know
 25 about were from the Starck period, and I don't even know

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14:47 1 that they know that these people had sued the company.
 2 We could never find out any information about who they
 3 were or what they sued for. As far as I know, we never
 4 had a lawsuit for unlawful dismissal, except in those
 5 cases where there was a perfunctory lawsuit where we had
 6 fired someone for theft or embezzlement, like Aime, for
 7 example, he may have brought a claim. As far as I know,
 8 those would have been dismissed, although the courts are
 9 very reluctant not to give some kind of damages, even as
 10 nominal damages (overspeaking) --
 11 Q. Mr Marshall, we know there were lots of court cases --
 12 A. -- unfair dismissal claim.
 13 Q. Mr Marshall, we know there are lots of court cases and
 14 judgments, including judgment for unfair dismissal --
 15 A. No, it's a gross misrepresentation. No, it's not true.
 16 The bailiff came to us with a list of so-called
 17 employees from maybe the west, we don't know where, we
 18 couldn't -- we never get -- wait a second. He would
 19 never give us a judgment, he would never give us a court
 20 document. We don't know who they were.
 21 Q. The more accurate position is that the bailiff came and
 22 he had judgments that he was enforcing?
 23 A. If he did, he wasn't showing them. That's my point.
 24 Q. We'll come back to that. Can we go back to
 25 paragraph 16?

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14:49 1 Q. We know it's accurate, Mr Marshall, because it coincides
 2 with the documents you have produced, which show the
 3 company -- which are the company's documents which show
 4 an absence of investment in the period of NRD --
 5 A. That's not true.
 6 Q. -- and we've been through that material.
 7 A. That's not true. You bifurcated the proceedings, you
 8 did not want that information until the second part.
 9 With regard to this specifically, "I believed this
 10 involved industrialising mining", he knows well that
 11 industrialising mining in Rwanda is interpreted to mean
 12 giving more and more assistance and support to artisan
 13 miners and their mining activities; it's not to create
 14 massive open-pit mining operations, and it's
 15 a misrepresentation to say that we were happy to
 16 continue buying minerals from artisan miners. That's
 17 what every mining company does. Everybody -- no, there
 18 are no full-time miners. There are full-time support
 19 staff, but there are no full-time miners. Everybody
 20 buys from the miners and sells that production to the
 21 comptoirs or traders.
 22 Q. Now let's look at page 18 of his statement, dealing with
 23 Rutsiro.
 24 A. Well, you go through a sentence -- excuse me, just to
 25 make an observation --

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14:48 1 A. All of this is fraudulent and I would ask you to address
 2 these issues to Ms Mruskovicova.
 3 Q. Back to paragraph 16:
 4 "Although I had been hired on the understanding that
 5 I would assist NRD in its production strategies and
 6 security, which I believed involved industrialising its
 7 operations, none of the sort happened as Mr Marshall and
 8 Ms Mruskovicova were not willing to invest any money in
 9 the company. It quickly became apparent to me that NRD
 10 was happy to continue buying minerals from artisanal
 11 miners and reselling those minerals for a profit rather
 12 than investing in and developing the company's
 13 operations. During the time that I worked for the
 14 company, it made very little capital investment. It did
 15 not make any investment into industrialising its
 16 operations".
 17 And that is accurate, isn't it?
 18 A. No, it is not. He was a full-time employee of the
 19 Directorate of Military Intelligence, he was giving us
 20 assistance on security matters. It was represented to
 21 me by a mutual friend that he could help because he
 22 carried the weight of the Directorate of Military
 23 Intelligence to be able to stop some of the harassment
 24 we were getting by small communities and small mafia
 25 groups. All of this is creative writing, at best.

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14:50 1 Q. No, I'm not allowing you to make an observation,
 2 Mr Marshall, you have answered my question. Please go
 3 to paragraph 18 --
 4 A. Can I interject a comment, please? You read a paragraph
 5 and you say "That's all true, isn't it", and you don't
 6 let me respond to it item by item, and that's not very
 7 fair.
 8 Q. I've given you a long opportunity -- very many
 9 opportunities for long answers, Mr Marshall, I need to
 10 move on.
 11 A. You can't -- you're reading six or eight sentences and
 12 you don't give me an opportunity to answer each of those
 13 allegations.
 14 Q. Let's look at paragraph 18, Mr Marshall. He deals there
 15 with the Rutsiro plant and what he says in the middle of
 16 the paragraph is:
 17 "That plant at Rutsiro was not operational and I was
 18 told by employees that had worked for NRD when it was
 19 owned by HC Starck, that the plant had never worked and
 20 could not process any minerals because it had several
 21 missing parts."
 22 He's dealing here with 2013 now, and it's right to
 23 say, isn't it, that that plant was not operational?
 24 A. The plant was absolutely operational. It's a farcical
 25 statement, it's so bluntly untrue. Not only were we

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14:51 1 operating it -- we were certainly operating it once
 2 a month, but sometimes more often if we had a major load
 3 of material to put through it. It was always available
 4 for artisan miners to use some part of it like the
 5 washing tables. Again, you're misrepresenting what
 6 a processing plant is: it's a group of processing
 7 equipment organised so that it can be most efficient and
 8 minimising labour. That's not the biggest problem in
 9 Rwanda. It is the only plant in Rwanda at this time.
 10 Q. Now let's go back to the licence story now. Mr Imena,
 11 now a State Minister of Mining, invited you to a meeting
 12 in October 2013; do you recall that?
 13 A. Yes.
 14 Q. Can we go to the invitation, which is at C-060. He
 15 says:
 16 "I am pleased to invite you to a discussion meeting
 17 between your Company and the Ministry of Natural
 18 Resources to be held in the Ministry's meeting room on
 19 Tuesday October 29, 2013, at 9.00 am.
 20 "During this meeting we will discuss several issues
 21 related to mining activities of your company including:
 22 "Mining licences;
 23 "Environment, safety and security concerns in NRD's
 24 western mining perimeters;
 25 "and complaints against NRD raised by Districts'

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14:53 1 authorities."
 2 So he wasn't avoiding you, was he; he was inviting
 3 you to a meeting, correct?
 4 A. I don't remember receiving this message. He was
 5 avoiding us. The sole purpose of the meeting was the
 6 OECD delegation that was coming to Kigali, I would say,
 7 within a matter of four or five days. He was very
 8 worried about -- and this was to deal with the tagging
 9 process and whether it was causing undue harm in the
 10 DRC, and whether there was a knock-on effect in Rwanda.
 11 The OECD meeting had never been held in Rwanda
 12 before. They were very worried about what was going to
 13 be said, and whether we, as the mining association, were
 14 going to be able to sufficiently articulate that there
 15 were challenges to the tagging process which were not
 16 being addressed. That was the sole topic of the
 17 meeting. If he sent this, I don't remember, but 100% we
 18 didn't discuss any of these issues because he had a much
 19 more important thing to worry about.
 20 Q. None of this is true, and we're about to go and look at
 21 what was discussed at the meeting, but let's start --
 22 before we get there, let's start by seeing what you say
 23 in your witness statement about this letter. You say --
 24 you've just given evidence that you don't remember
 25 receiving this message, but you in fact deal with it in

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14:54 1 your witness statement.
 2 A. Okay.
 3 Q. Paragraph 38. So why did you tell the Tribunal you
 4 don't remember receiving this message when it's one you
 5 actually deal with? So it's the first sentence --
 6 A. Yes, okay. I had misremembered.
 7 Q. So first sentence.
 8 A. "... we received a letter inviting us ..."
 9 Yes, fair enough.
 10 Q. Well it says -- what you say in fact is:
 11 " ... inviting us to discuss the terms of the long
 12 term concession agreement ..."
 13 But of course, if FTI can pull that letter back up,
 14 this is your witness statement, you can explain to the
 15 Tribunal where in this letter there is an invitation to
 16 discuss a long-term concession agreement.
 17 A. Well, it says:
 18 "During this meeting we will discuss several issues
 19 related to mining activities of your company including:
 20 "Mining licences..."
 21 Q. Well, that's not an invitation to discussion a long-term
 22 concession agreement, is it?
 23 A. That's your distinction.
 24 Q. Especially as you know --
 25 A. (overspeaking).

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14:55 1 Q. Especially as you know that RDB had only invited you to
 2 discuss at this point a five-year concession agreement
 3 for Nemba. It's a misreading of a letter, isn't it?
 4 A. No. I was leading the mining association discussions
 5 with the OECD. He had one concern. We believed we were
 6 going to be included -- as all the other long-term
 7 mining concession holders were in negotiations, we
 8 expected that we were going to be brought into that same
 9 kind of process. As far as I know, I'm 100% sure that
 10 the majority of the discussion was about what was going
 11 to be said, what our presentation was. We went through
 12 the presentation with him, to the OECD meeting, it was
 13 very controversial at the time. He wished us luck, he
 14 needed us very badly. We were arguing that the tagging
 15 system created a de facto embargo and he needed
 16 an explanation of what a de facto embargo was, and so
 17 that was the subject of this meeting.
 18 Whether you can parse his sentence to say mining
 19 licences means it's not a long-term concession
 20 agreement, I disagree with that.
 21 Q. Now, you just gave another answer about the subject of
 22 the OECD meeting and tagging, and that's also something
 23 you said a little earlier in your evidence a few answers
 24 ago where you said:
 25 "They were very worried about what was going to be

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14:57 1 said, whether we the mining association were going to be
 2 able to sufficiently articulate that there were
 3 challenges to the tagging process which were not being
 4 addressed. That was the sole topic of the meeting."
 5 That's what you just told the Tribunal.
 6 But even on the basis of your witness statement, if
 7 we look at paragraph 38, you are dealing with
 8 a different topic of the meeting because it's about
 9 licences, on this version of events, and negotiations
 10 for a long-term licence.
 11 MR COWLEY: Mr Hill, if I might be permitted, I hate to
 12 interrupt you, but yesterday you were reminded about
 13 talking quickly. You talked so quickly that time
 14 I didn't catch much of what you said. That's not as
 15 important as me just reminding you, again, when you talk
 16 so quickly it's very hard to follow a whole question
 17 like that.
 18 MR HILL: Thank you, Mr Cowley.
 19 So, Mr Marshall, to ask this question again, the
 20 answer you gave to the Tribunal a moment ago about this
 21 meeting and its topic, you said:
 22 "They were very worried about what was going to be
 23 said and whether we as the mining association were going
 24 to be able to sufficiently articulate that there were
 25 challenges to the tagging process, which were not being

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14:58 1 addressed. That was the sole topic of the meeting."
 2 But when we go to paragraph 38 of your witness
 3 statement you describe a completely different topic of
 4 the meeting.
 5 A. Well, with regard to the topic of the licences, this was
 6 said: the meeting was almost entirely about the OECD
 7 delegation.
 8 Q. Can we go to --
 9 A. It was enough for us because it was very reassuring, he
 10 needed our help, he reassured us that the language of
 11 the agreement would be continuing shortly, the
 12 discussion of the language of the agreement would be
 13 continuing shortly.
 14 Q. What in fact was said at this meeting was a number of
 15 things: first, he told you you had been operating
 16 without a licence since October 2012; correct?
 17 A. No. He never said that.
 18 Q. Secondly, he told you that that could not continue, and
 19 you needed to make a compliant application for
 20 a licence?
 21 A. Not at this meeting, he never said anything like that.
 22 Q. Thirdly, he told you that he considered that NRD did not
 23 have the capacity for five sites and should focus on
 24 two, Nemba and Rutsiro, with redrawn mapping to exclude
 25 protected areas; yes?

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14:59 1 A. No, never happened. That was never discussed in this
 2 meeting. This meeting was almost exclusive about the
 3 OECD meeting coming up within a few days, it may have
 4 been a week, I don't recall. He did give us assurances
 5 as a way to assure us: look, please, we know that you
 6 are helping us out here, be patient, everything is
 7 working out.
 8 Q. Can you go to bundle R-112.
 9 A. Part of the reason for that by the way is they had
 10 nobody else to articulate a position for the Rwanda
 11 Government on the tagging process.
 12 Q. This is R-112, this is a minute of the meeting, and if
 13 you look at the second page, you can see it was prepared
 14 by Mr -- yes, we have both pages open. We can see this
 15 minute was prepared by the third gentleman on the list,
 16 Mr Peter Martin Niyigena, who was an advisor to the
 17 Minister, so its meeting minute. Of the three points
 18 that I just suggested to you, we can see them in the
 19 minute, we see at the bottom of the page, having first
 20 recited the same points as were in the invitation
 21 letter, it says:
 22 "[Honourable] Imena continued his remarks by
 23 acknowledging the efforts done by NRD Ltd, eg
 24 construction of the plant; however he added on that NRD
 25 licence was expired and not yet renewed. It is now time

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15:01 1 to get new one."
 2 So you were told, weren't you, that you needed to
 3 apply for a new licence, yes?
 4 A. I believe that this is a fraudulent document. Some of
 5 the information in this document I believe is true, but
 6 not at this meeting.
 7 Q. He also said --
 8 A. Minister Evode never told us it's now time to get a new
 9 one, except in the context of: we can tell you that the
 10 negotiations will shortly begin with the RDB. It was
 11 not his staff; it was the RDB that was negotiating these
 12 things.
 13 Q. Next paragraph of the minute, there's a point about
 14 production:
 15 "[NRD's] production considerably decreased all along
 16 this year. For this reason, NRD effort should focus to
 17 only two mine sites; Rutsiro, where the plant has been
 18 installed, and Nemba, however the first mine site will
 19 be remapped to exclude the protected areas such as
 20 rivers and forests."
 21 So it's right, isn't it, as I said, that you were
 22 told to focus on two areas because of your capacity;
 23 yes?
 24 A. It certainly didn't come up in this meeting, and I don't
 25 know that this came up in any meeting, as articulated by

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15:02 1 Minister Evode. There are some elements in here, but
2 they're from a later meeting after the OECD meeting.
3 I can only think that maybe Mr Peter Martin got his
4 dates confused and what was discussed confused. Before
5 these proceedings I had never seen these minutes.
6 Q. Well, we can see --
7 A. Ordinarily -- ordinarily you circulate them to both
8 sides, and he did not circulate this to us.
9 Q. Well, we can see that what was discussed is precisely
10 the agenda in the invitation letter that he had sent to
11 you shortly before the meeting; correct?
12 A. I don't know if it's precisely, but it covers some of
13 the topics that are in the agenda, but they were not
14 discussed at that OECD meeting, at that precursor to the
15 OECD meeting, sorry.
16 Q. Then if we look at the paragraphs that follow, we can
17 see that you and Ms Mruskovicova explain the steps that
18 are being taken to try and gain control of your
19 concessions with guards; yes?
20 A. Yes, as I say, there are elements of truth to this but
21 this is not how it was discussed and it was certainly
22 not at this meeting.
23 Q. And it was envisaged at this meeting that there would be
24 a series of follow-up meetings, although in fact only
25 one follow-up meeting took place; do you recall that?

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15:05 1 " ... we met Minister Evode and again asked when we
2 would be issued the long term licence agreement. He
3 assured us that negotiations on the language of the
4 agreement would be continuing shortly at the RDB
5 offices."
6 Just pausing there, that evidence is inaccurate,
7 isn't it, because we can see from the minute that he in
8 fact told you it was time to get a new licence and that
9 you should focus on two concessions; yes?
10 A. You're sticking to a false narrative. The language in
11 this paragraph talks about what was going to happen with
12 the long-term licence. The purpose of the October 30th
13 meeting was only OECD. He may have made comment: Rod,
14 please be patient, you know, this is going to all work
15 out. The minutes that you have from the October 30th
16 meeting never happened, not on October 30th, and I think
17 they are mischaracterisations of a later meeting.
18 Q. Now, we agree, I think, that there was only one
19 follow-up meeting and the reason that there was only one
20 follow-up meeting was that at that meeting you were
21 insistent that NRD should try and hold out for all five
22 concessions for future licences?
23 A. That never came up in any meeting I've ever had. Nobody
24 ever said: Rod, we want you to take two instead of five
25 or four instead of five or one instead of five. Nobody

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15:04 1 A. I recall a meeting where it was discussed there would be
2 follow-up meetings, and in fact, it is true only one
3 follow-up meeting occurred.
4 Q. And nowhere in this meeting --
5 A. I recollect.
6 Q. -- is there a discussion of OECD and tags and so on
7 which you suggested to the Tribunal a moment ago was the
8 sole topic of this meeting?
9 A. I'm talking about the meeting on October 30th. It seems
10 to be a hodgepodge of a number of meetings.
11 The October 30th meeting, we were completely consumed
12 with the OECD delegation coming to Kigali and what the
13 message was on the Rwanda side, and us as the mining
14 association, how we would be representing those issues.
15 Q. You say that, but that's not even --
16 A. (overspeaking) -- I'm sorry.
17 Q. You say that, Mr Marshall, but that's not even
18 consistent with your witness statement. Let's go back
19 to paragraph 38. Nothing to do with OECD and tags and
20 so on, not even mentioned in paragraph 38. All you do
21 is make a suggestion, an inaccurate one --
22 A. We're addressing here the long-term licence issues. We
23 had other meetings, we had other discussions with him
24 which are not referred to in the witness statement.
25 Q. You say on October 30th, that's the same date:

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15:06 1 ever did that.
2 Q. Well, they did.
3 A. Dr Michael's letter from 2012 says that he had that
4 conversation with me in his report to the Minister.
5 That conversation never happened.
6 Q. Well, it was confirmed --
7 A. (Overspeaking) deferred.
8 Q. That conversation was confirmed --
9 A. It was not confirmed.
10 Q. -- (overspeaking) in time going backwards, Mr Marshall,
11 but that conversation --
12 A. It was not confirmed.
13 Q. Listen to the question --
14 A. He said "I prefer(?) it", as you read in my letter.
15 It's not the same thing.
16 Q. That conversation was confirmed and that position on the
17 part of the government was confirmed by
18 Minister Kamanzi's letter in January 2013 that we looked
19 at, and it's being confirmed again at this meeting by
20 Mr Imena; correct?
21 A. No. No. As you'll recall, Minister Kamanzi's letter
22 says: I understand from Dr Michael you were offered two
23 of the five or you would take nothing, is the threat,
24 and therefore since you're not willing to take two of
25 the five, then you take nothing. And that never

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15:07 1 happened. That conversation with Dr Michael, the
2 precursor conversation never happened. I was never
3 offered two. I was never offered five. I was never
4 offered any of them. I was offered a long-term
5 concession licence.
6 You can include lots of things in a commercially
7 reasonable long term concession licence, but that's not
8 what this process was.
9 Q. Now, despite Mr Imena telling you again in October 2013
10 that your licence had expired and you needed to be
11 applying for new licences --
12 A. No, 100% he did not say that in that meeting.
13 Q. -- you didn't in fact do so for nearly a year; that's
14 correct, isn't it?
15 A. No, that never happened. That conversation never
16 happened in that meeting.
17 Q. Now, I'm going to move to 2014 and you're aware, aren't
18 you, that between February and May 2014, the previous
19 2008 Mining Law was repealed and a new 2014 Mining Law
20 came into effect; correct?
21 A. I'll take your word for it.
22 Q. Don't worry, this isn't a memory test in that respect.
23 By 2014, you accept, don't you, that you didn't have
24 any existing licence because your last extensions
25 expired in October 2012?

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15:10 1 hadn't applied for any new licences, had you?
2 A. We fully applied for long-term mining licences under the
3 old law. I see that he is making a representation that
4 under the new law that those contracts are deemed void.
5 That was not our interpretation. As far as we were
6 concerned, our contract was fully executory. We had
7 performed. We were waiting for Rwanda to perform.
8 Q. Now, can we go to paragraph 39 of your witness
9 statement, and keeping that -- FTI, if you could keep
10 the previous letter on the screen as well so we can see
11 both at the same time. You say in paragraph 39:
12 "On April 2, 2014, Minister Evode invited NRD to
13 negotiate the terms of the long term contract."
14 Where do you say in this letter Minister Evode is
15 inviting you to negotiate the terms of a long-term
16 contract?
17 A. "In this regard, the Minister of Natural Resources would
18 like to call your company ... to renegotiate new mining
19 agreements..."
20 Q. He's not saying anything about a long-term contract, is
21 he?
22 A. Well, do you mean does it say the words "long-term
23 contract"? No, it does not say the words "long-term
24 contract".
25 Q. And you didn't apply --

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15:08 1 A. No, we were treated for all purposes of law as long-term
2 concession holder as all other long-term concession
3 holders were being treated. We were de facto long term
4 concession holders. We were waiting for performance by
5 the Rwanda Government.
6 At this time, I should add, Minister Evode decided
7 that Ben Benzinge was the owner, so he stopped our
8 tagging. We couldn't understand it. We were shut down
9 and we were the only people that that process applied
10 to. Nobody else was ever --
11 Q. Again, Mr Marshall, I'm going to stop you, because that
12 is not remotely connected to an answer to my question.
13 We are going to come onto the tagging questions, so you
14 will get your opportunity. Please focus on my
15 questions.
16 Now let's go to C-063. This is a letter from
17 Mr Imena written to you in April 2014 inviting you to
18 negotiate new mining agreements under the new law. Do
19 you see he says in the second paragraph:
20 "In this regard, the Ministry of Natural Resources
21 would like to call your company (NRD ... Limited), as
22 a former holder of mining licences over the above
23 mentioned concessions, to renegotiate new mining
24 agreements, under the terms of the new regulations."
25 So we're now in April 2014, and by that stage you

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15:11 1 A. (Overspeaking) before that under our existing contract,
2 we were still treated, for all legal purposes as
3 a long-term large-scale mining concession holder as
4 defined by the law.
5 Q. And you did not apply for new licences in response to
6 that letter, did you, and had to be chased in August
7 before making a new application in September of that
8 year; correct?
9 A. We certainly were never asked for a new application.
10 I don't think this letter is a request for a new
11 application.
12 Q. Now, I'm going to come back to that point, but I first
13 want to deal again with Mr Benzinge, because by this
14 stage we're in the middle of the --
15 A. The negotiations would be chaired by the Rwanda
16 Development Board for renegotiation of the mining
17 licences -- mining agreements.
18 Q. I'm going to come back to that point in a moment. First
19 I want to go to Mr Benzinge, because we're now in
20 mid-August -- sorry, the middle of 2014. Now, you will
21 recall, we were looking at documents relating to
22 Mr Benzinge's attempts to have the RDB change the
23 registered information in August 2012, and as we agreed,
24 he subsequently commenced an arbitration. That
25 arbitration came up for hearing in April 2013; correct?

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15:13 1 A. Yes.
 2 Q. And if you go to C-144, there's a letter here from you
 3 to the Arbitration Centre in Kigali, addressed to the
 4 chairman of the Arbitration Centre, in which you sought
 5 to object to the arbitration hearing by this letter
 6 which you sent only the day before the hearing; correct?
 7 A. That was the process.
 8 Q. You had been on notice of the hearing for some time
 9 before --
 10 A. Our lawyer, Alloys Mutabingwa was giving us instruction
 11 on what this letter should say. As far as I can recall
 12 it, he actually drafted this letter and it was submitted
 13 timely.
 14 Q. You had been on notice of the hearing for some time
 15 before that, hadn't you?
 16 A. Yes.
 17 Q. And having sent this letter to the chairman of the
 18 Arbitration Centre, you didn't then attend the
 19 arbitration hearing, did you?
 20 A. That was the process. You submitted an objection the
 21 day before the hearing, under their law, and you do not
 22 appear.
 23 Q. You also -- NRD had been aware of the arbitration itself
 24 from an early stage, hadn't you, and you had
 25 participated in court proceedings relating to the

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15:15 1 I had been told, said: no, there will be an arbitration.
 2 Fine, then we went back and objected as to what
 3 constituted -- who the arbitrators should be.
 4 Q. Now, if we go to the award itself, we have that in
 5 R-013.
 6 A. So, just to be clear, we objected to Nelly, we were
 7 informed that we should not attend, and then Nelly
 8 issued this order after listening to Mr Benzinge alone.
 9 Q. Let's go to the award, R-013. Now, starting on the
 10 second page of the award, you see there that the --
 11 excuse me one moment.
 12 A. Ordinarily the arbitration authority would suspend the
 13 arbitration until a determination could be made about
 14 whether our objection to the suitability of Nelly was
 15 appropriate or not. They did not do that, and that's
 16 the reason that the arbitration went ahead without us.
 17 Q. You can see what the arbitrator found, which is that the
 18 arbitrator -- just pausing there, this suggestion that
 19 you went through the right procedure to notify
 20 the chairman of your objection and then didn't appear,
 21 and that's your justification, that wasn't something you
 22 pursued on appeal, as part of your grounds of appeal to
 23 either of the appellate courts, is it?
 24 A. I think we did, but I -- I don't remember concretely.
 25 It's not something --

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15:14 1 constitution of the panel; correct?
 2 A. I'm sorry, where are you reading from?
 3 Q. I'm not reading from anything, I'm asking if you
 4 remember?
 5 A. I'm sorry, you'll have to ask me again.
 6 Q. I'll put it again. NRD had been aware of the
 7 arbitration from the outset; correct, and it had
 8 participated in court proceedings relating to the
 9 constitution of a Tribunal?
 10 A. Yes. Both. We had objected on numerous grounds because
 11 it was without merit and we went to court to be able to
 12 argue that it was without merit, and no basis for
 13 an arbitration.
 14 Q. Just to be clear, you didn't object to the idea of there
 15 being an arbitration. The dispute, we can see from the
 16 description of it, was as to the constitution of the
 17 panel, in particular, NRD's --
 18 A. No --
 19 Q. Sorry, just let me finish the question and you can tell
 20 me if you think I'm wrong.
 21 NRD's position was that there should be three
 22 arbitrators, Mr Benzinge's position was that there
 23 should be one.
 24 A. Two separate issues. First, we objected that there
 25 should be any arbitration. Secondly, the court, as

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15:17 1 Q. We have the judgments on both appellate courts in the
 2 bundle and that point was never suggested as being
 3 a point.
 4 A. I would be very surprised.
 5 Q. So if you had made the correct ground of objection to
 6 the arbitrator and it had not been considered, then
 7 that's obviously a point that would have been
 8 an available point of appeal, but it's one you didn't
 9 take; correct?
 10 A. No, that's hypothetical. I don't know about it.
 11 Q. Let's look at what actually happened. We can see from
 12 the arbitration award:
 13 "The arbitrator summoned both parties but the
 14 defendant neither appeared before the court nor notified
 15 the court [by which that is meant the arbitrator] of the
 16 legal reason for his absence before the Arbitration
 17 tribunal."
 18 So you didn't notify the arbitrator herself, did
 19 you, of your objection?
 20 A. That would have been our lawyer. I can't, I don't know
 21 who was notified, what the appropriate process is.
 22 Q. Then what happens in this award, and we don't need to go
 23 to the detail of it, is that in substance, first the
 24 award found in favour of NRD and against Mr Benzinge in
 25 an application for summary judgment, effectively,

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15:18 1 summary relief. Then it went on to consider the
 2 substantive claims, and it found in favour of
 3 Mr Benzinge and against NRD; fair summary, or do you
 4 just not know?
 5 A. The determinations in favour of Ben Benzinge were very
 6 limited and did not affect the ownership of the company,
 7 which was the most significant issue.
 8 Q. Now, the upshot was that NRD had an award against them
 9 in an arbitration which you had been notified of but
 10 chose not to participate in; correct?
 11 A. No, which we timely gave notice of objection to, and as
 12 you can tell, I'm not a litigator, but our lawyers
 13 provided the necessary objection in accordance with
 14 Rwanda law. We believed that they had performed their
 15 services properly. We had no reason to know otherwise.
 16 Q. And it's right, isn't it, that the effect of the award
 17 was that the transfers of a shareholding to NRD GmbH and
 18 HC Starck were ruled null and void; correct? Those
 19 transfers.
 20 A. The wording is something to that effect, although it is
 21 not clear what is meant by it --
 22 Q. Well -- sorry, you finish.
 23 A. Yes. We took this judgment to Mr Sangano at the RDB who
 24 is their in-house legal counsel specifically for the
 25 commercial registry. He prepared an analysis for us

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15:20 1 about what the effect of the decision was, and those
 2 determinations did not change the shareholding of the
 3 company. They did, for reasons which are not clear,
 4 appoint Ben Benzinge as managing director. Ben Benzinge
 5 had a fundamental problem with understanding that
 6 there's a difference between being managing director and
 7 being owner. So what the registry instructed us to
 8 do -- and I think it's one of the exhibits to this
 9 process -- was to have a shareholder meeting before the
 10 judgment was to come in effect, and that was to remove
 11 Ben Benzinge as managing director even before he came
 12 managing director under the order.
 13 Q. Now --
 14 A. So, therefore, it was all -- it had actually no effect
 15 on the company.
 16 Q. The effect of the judgment, the arbitration award, was
 17 that the shareholding reverted back to the Zarnacks and
 18 Benzinge and the position of managing director reverted
 19 back to Mr Benzinge. That was the consequence of the
 20 arbitration award, wasn't it?
 21 A. That's not the way the commercial registry interpreted
 22 it.
 23 Q. And can you go to bundle R-014.
 24 A. He makes very odd sort of undiplomatic comments like:
 25 I don't know what these people are doing here so this is

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15:21 1 illegal. So for me that was the reason we took it to
 2 the registry to say: how do we interpret this, what does
 3 it mean? We also took it to the Ministry of Justice and
 4 got the same instruction.
 5 Q. We're going to come back to that evidence you've given
 6 but first let's look at the decision of the Commercial
 7 High Court, R-014, this is dismissing NRD's appeal
 8 against the arbitration award, and I'm going to pick it
 9 up at paragraph 16 on the sixth page of the document.
 10 And what the court finds is that:
 11 "Later on, the Arbitrator once again through the
 12 court bailiff notified the party of the hearing date but
 13 NRD did not appear before the court: this is proved by
 14 hearing setting orders ... the declarations made by the
 15 representative of NRD according to which the company was
 16 not notified of the hearing date shall not be considered
 17 as true ..."
 18 So just pausing there, one of the grounds of appeal
 19 that you in fact advanced was that you hadn't been
 20 notified of the hearing date, even though you have
 21 accepted today that you were and the court rightly found
 22 that you were?
 23 A. I wasn't involved in this preparation or in his
 24 presentation at the court, so I was not aware of this --
 25 Q. Then at paragraph 17:

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15:22 1 "Referring to the aforementioned explanations, the
 2 courts finds that it cannot base on article 47 ... on
 3 arbitration and conciliation in commercial matters to
 4 annul the decision taken by the arbitrator because NRD
 5 was notified of her appointment in accordance with the
 6 law in force, and the company did not start any
 7 procedures opposing her appointment as provided for in
 8 the aforementioned law."
 9 Now, it's also right to say, isn't it, that the
 10 allegation of bias against the arbitrator that you have
 11 made in these proceedings is not one of the grounds on
 12 which you appealed this arbitration award?
 13 A. I was not handling this. I don't know what was said in
 14 those pleadings. I can read them and respond if you
 15 want to take the time.
 16 Q. No.
 17 A. But I don't recall any of this, so ...
 18 Q. Yes, and in May 2014, the Rwandan Supreme Court also
 19 upheld the arbitration award and it's right to say --
 20 say if you just don't recall, but I'm going to suggest
 21 it's right to say that no allegation of bias against the
 22 arbitrator was advanced in front of that court either?
 23 A. That may well be. The court decided that procedurally
 24 it had been handled properly and so we had to live with
 25 the judgment. It was on the procedural grounds that

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15:24 1 apparently appeal had been made and the court affirmed
 2 that judgment, that ruling by the arbitration court.
 3 Q. Can you go to bundle R-032. This is a letter from you
 4 to the minister at the RDB.
 5 A. Yes.
 6 Q. Can you go to page 4 of the letter. You see, again,
 7 this is another letter copied very widely, including to
 8 the Ambassador.
 9 A. Yes.
 10 Q. And if we go to page 3 of the letter now. I'm just
 11 going to look at items (c) and (d) on this page. You
 12 say there:
 13 "The NRD company statutes require that there be
 14 three arbitrators of 'international reputation'
 15 appointed to arbitrate between the parties.
 16 Ben Benzinge has both a personal relationship with
 17 Ms Nelly Umugwaneza and she has no international
 18 experience, this makes her unfit to arbitrate in this
 19 matter."
 20 Then you say:
 21 "NRD notified Ms Nelly Umuqwaneza, the Kigali
 22 Arbitration Centre and the Ombudsman's Office and the US
 23 Embassy of our objections. And yet Ms Nelly claims to
 24 have had an 'Arbitration' meeting without our presence
 25 and issued her 'decision'. Obviously it is

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15:25 1 incomprehensible how there can have been an
 2 'arbitration' when only Benzinge was meeting with the
 3 arbitrator."
 4 Now, what you're not making clear here is that you
 5 did not challenge the appointment of the arbitrator
 6 through proper channels and you did not make, on appeal,
 7 this allegation of bias that you're putting in this
 8 letter.
 9 A. Yes, I was not sufficiently familiar with what was being
 10 pled by our lawyers to know whether we had alleged bias
 11 in the case or not. I was not aware of it.
 12 Q. And you don't make -- I'm sorry, I interrupted.
 13 You also don't make clear in your letter to all
 14 these people that you in fact appealed this decision
 15 twice and you didn't raise the allegation of bias;
 16 correct?
 17 A. I can't comment on it. I didn't know that we didn't
 18 raise the issue of bias. This is the first I've heard
 19 of it.
 20 Q. And you don't make clear that you were in fact notified
 21 of this arbitration hearing, chose not to attend it, and
 22 the Rwandan court was satisfied that you were notified;
 23 yes?
 24 A. Yes. Well, no, you saw the letter where we were
 25 objecting to Nelly and we wanted a different arbitrator.

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15:26 1 We were instructed by our then counsel that we should
 2 not attend that meeting, which we did not attend, and
 3 then she went ahead and issued -- listened to
 4 Ben Benzinge and issued her decision.
 5 Q. I would suggest to you this is a misleading and
 6 tendentious letter sent to the RDB minister and copied
 7 to all these other individuals.
 8 A. Well, that's the best I understood it at the moment. If
 9 I was misinformed by my staff about what had happened,
 10 then I was.
 11 Q. Now, you also met with Mr Imena in a meeting at which
 12 you discussed the Benzinge issue; correct?
 13 A. Yes.
 14 Q. And contrary to what you have alleged, he did not say
 15 that he had decided that Mr Benzinge owned 100% of NRD,
 16 did he?
 17 A. I disagree with you. He absolutely insisted Ben was the
 18 owner of our company.
 19 Q. And you wrote a follow-up letter to him which is very
 20 similar to the letter we've just looked at, in which
 21 again you did not make clear that Benzinge had an award
 22 from an arbitration which you had been notified of but
 23 which you had chosen not to attend.
 24 A. Sorry, the arbitration award does not say that
 25 Ben Benzinge is the owner of our company.

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15:28 1 Q. No, I'm not on that point. All I'm saying is you wrote
 2 a follow-up letter to Mr Imena, similar to the one we've
 3 just looked at, in which you, again, did not make clear
 4 that Mr Benzinge had an award from an arbitration which
 5 you had been notified of but chosen not to attend;
 6 correct?
 7 A. Everybody was aware of the arbitration award. I'm not
 8 hiding anything. If you would show me the letter, I can
 9 respond specifically to your question.
 10 Q. It's very similar to the one we just looked at and you
 11 similarly repeated allegations of bias which were
 12 (overspeaking) --
 13 A. Well, show it to me then. Let me respond in
 14 a meaningful way.
 15 Q. Well, I'm trying to save time. You essentially cut and
 16 pasted the same point?
 17 A. Well, then don't make the point if you are not going to
 18 back it up with something I can respond to.
 19 Q. Well, okay, then let's look at C-090. This is the
 20 letter.
 21 A. Yes.
 22 Q. If you go to -- it's a long letter, so I'm not going to
 23 take time on it. We can start with the fifth page?
 24 A. It's an important letter. In fact, this is one of the
 25 most important letters of all, I think, don't you?

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15:29 1 Q. It's the same letter as we've seen and it's one in which
 2 you make a number of points, but what you do not do is
 3 make clear that this was -- the position you were in
 4 resulted from an award in an arbitration which you had
 5 been notified of, but had chosen not to attend first.
 6 Just let me finish.
 7 Two points you don't make clear at any point in this
 8 letter: first, that you had an award from an arbitration
 9 you had been notified of but chosen not to attend;
 10 secondly, that the allegations of bias you had made in
 11 your letters are not ones you had pursued before the
 12 courts.
 13 MR COWLEY: Mr President, I would ask if we could get a
 14 clarification or correction. A number of these
 15 questions started with "chose not to attend". This line
 16 of questioning put in front of the witness, objections
 17 that were raised, talked about hearings, talked about
 18 appeals, obviously there was a defence. At some point
 19 the questions, and perhaps unintentionally, changed the
 20 word "attend" to "defend", and I would ask that Mr Hill
 21 really reconsider whether he intends to use the word
 22 "defend" after establishing it was defended and instead
 23 revert back to "attend".
 24 MR HILL: Can I -- I don't normally like Mr Cowley to
 25 interrupt, but I had certainly meant to say attend and

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15:31 1 telling us we were dispossessed, the company was now
 2 going to be in the ownership of Ben Benzinge. We
 3 maintained he didn't have the authority to make that
 4 decision. We also maintained that it was a nonsensical
 5 discussion because it was not what the arbitration
 6 had -- what the arbitration decision said, even though
 7 Ben Benzinge and his lawyer were waving a document
 8 saying: no, Ben's the owners, Ben's the owner, and he
 9 got credulous people to believe it.
 10 So we were closed from our offices, we were shut out
 11 on June 11th, this is a letter of June 13th, and we were
 12 shut out from our concessions.
 13 Q. Mr Marshall, the consequence of the award was that the
 14 shareholding reverted to Zarnacks, to the original
 15 shareholdings. So what you -- the representation you
 16 just made about shareholdings was inaccurate; correct?
 17 A. No, I think you are putting your judgment over that of
 18 the Ministry and the RDB, who caved to us and said: no,
 19 we agree, this doesn't change the ownership. We don't
 20 know who the Zarnacks are. We don't know who HC Starck
 21 are. Why would they come back at this point?
 22 Nobody said Ben Benzinge had more than a 15%
 23 shareholding. They were saying that somebody unknown
 24 hadn't bought, with a bona fide transaction, this
 25 company.

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15:30 1 I thought I had said attend at each point. I'm not sure
 2 I ever said defend, and if I did, if it's appeared on
 3 the transcripts, I certainly withdraw that and I meant
 4 "attend".
 5 THE PRESIDENT: That's absolutely clear. Occasionally one
 6 makes a slip of the tongue in a lengthy case like this.
 7 MR COWLEY: I'm happy that an interruption actually served
 8 a good purpose.
 9 THE PRESIDENT: Yes, it has in this instance.
 10 A. I think it's important we are not rushed through this
 11 section because this is the point when the company gets
 12 taken from us, expropriated from us, whether you can say
 13 it's by Benzinge or the RDB or the Minister, this is
 14 where it's taken.
 15 MR HILL: Okay, so just pausing there, your evidence, your
 16 position is that the expropriation has happened by this
 17 point; yes?
 18 A. No, you're missing the point. We are not in possession
 19 of our asset. You can use whatever word you want and
 20 I don't want to be biasing the proceedings by saying
 21 it's a different word. We were owners of this company
 22 and it was given to Ben Benzinge, okay. For reasons we
 23 don't know, the Minister announced in the meeting, which
 24 you have skipped over, the Minister announced in the
 25 meeting, it got very hot and contentious because he was

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15:33 1 Q. No, you are quite right. You're quite right about that,
 2 Mr Marshall, no one is saying Mr Benzinge had more than
 3 a 15% shareholding. That's common ground in this
 4 arbitration, there's no argument about that.
 5 Let's move on and go to R --
 6 A. No, I think this is the critical point, I have to be
 7 able to say --
 8 Q. That is, I am afraid, not how the process works,
 9 Mr Marshall. The way the process works is you answer my
 10 questions.
 11 A. I'm answering your questions but you are rushing through
 12 the most critical aspect of this.
 13 Q. No doubt more time can be taken in re-direct by your
 14 attorney.
 15 Let's go to R-036, which is on a different topic.
 16 This relates to a grant and it's a letter from you to
 17 Mr Imena, and you say:
 18 "Dear Honourable Minister,
 19 "As you are aware, NRD has received preliminary
 20 approval for a (approximately) 1 million USD grant from
 21 the Dutch Government's PSI program for the
 22 Giciye/Nyatubindi area. This is a key element of the
 23 two million USD funding for the project and will bring
 24 jobs, economic growth and development to one of the
 25 poorest areas of Rwanda. This, as you know, is in

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15:34 1 conformity with EDPRS 2, Millennium Development Goals
2 and African Mining Vision.
3 "We were greatly surprised when Dutch Embassy called
4 us and said that you have sent a letter to the Dutch
5 Embassy which informed them that the NRD concessions are
6 'expired'. We met at length with the Dutch Embassy and
7 Prime Minister's Office. We have found that your letter
8 was unfortunately misleading because it did not explain
9 that all Concession licences are 'expired' but that NRD
10 retains its mining rights pending receipt of the
11 'Long-term licence' (all being defined terms under
12 Rwanda law)."

13 Now, what Mr -- you describe something that Mr Imena
14 has said as being misleading because it didn't explain
15 that all concession licences had expired, but the truth
16 is that your licence had expired, licences had expired,
17 and Mr Imena, by this stage, had been repeatedly
18 requesting you to apply for new licences; isn't that
19 right?

20 A. He never -- no, never, he never asked us once to apply
21 for a new licence, that's wholly apocryphal, and
22 particularly at this time, he was, I would say, not
23 responsive at all. We had been working diligently for
24 months with this Dutch grant agency, it's a very lengthy
25 and involved process, we were chosen the seventh-most--

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15:37 1 And that's fair, isn't it, because at this point,
2 we're only in June 2014, there are essentially competing
3 claims, both as to who is the correct management, and as
4 to what the right shareholdings are as a result of
5 Mr Benzinge's award?
6 A. I'm sorry, but that's nonsensical. There was never any
7 claim by Ben Benzinge that he had a right -- I mean, he
8 may have thought he had a right to be the managing
9 director, but he owned, according to the RDB, 0.2% of
10 all shares.
11 Q. The effect of the award was that the position of
12 managing director, as a result of the award, reverted to
13 him; correct?
14 A. And it's equally correct that the RDB instructed us to
15 file shareholder minutes instructing that Ben Benzinge
16 not take that position, as owners of the company. They
17 recognised us as owners, they accepted our shareholders'
18 resolution, effective as of the moment Ben Benzinge was
19 to be appointed they instructed us and we provided the
20 corporate minutes saying that he was not going to be the
21 managing director.
22 Q. Now, you also wrote about the Benzinge situation to the
23 Minister of Justice, Mr Busingye. Can we have that at
24 R-198?
25 A. Notwithstanding that he was not the owner and he was not

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15:35 1 best opportunity for funding in the world. They were
2 very excited about this because they had not invested in
3 mining anywhere so we were very excited, Minister Evode
4 had said that they were excited, it expired, we were in
5 the same position as all other large-scale mining
6 concession holders.

7 Q. He had made clear, hadn't he, as long ago as October of
8 the previous year, that it was not appropriate for you
9 to remain mining your concessions without applying for
10 a licence?

11 A. It never happened.

12 Q. That's correct, isn't it?

13 A. No, that's a narrative that was developed later.

14 Q. Well, that's something that's evident from the minute of
15 the meeting that we looked at, isn't it?

16 A. I understand, and I'm telling you that those minutes are
17 not an accurate reflection of what was in the meeting.
18 They were never given to me, and under Rwanda practice,
19 both sides have to approve the minutes.

20 Q. Now let's look at C-155. This is from Mr Imena. He
21 says he understands your concern in relation to the
22 grant but:

23 "... the Ministry could not engage in any discussion
24 with NRD unless its issues of ownership and management
25 are sorted out."

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15:38 1 the managing director, he had possession of -- well,
2 together with the bailiff -- our concessions and our
3 corporate offices.
4 Q. This is your letter to --
5 A. For reasons we still don't know.
6 Q. This is your letter to the Minister of Justice, R-198,
7 and we can see a number of copies, we can see on the
8 second page you also sent the same letter to
9 Mr Ambassador, to the Ambassador, we see that on page 2,
10 if FTI could go to page 2. It's a note from you and you
11 deal with the arbitration proceedings at item 5 of your
12 note which is the last page of the exhibit?
13 A. Sorry, just so you're aware, this is an honorary
14 title -- sorry, I have lost the ambassador letter, if
15 you could go back. That's an honorary title for the
16 head of the Cabinet Office, that's not an actual
17 ambassador, he was not serving at this time as a Rwanda
18 ambassador in any foreign country. That's an honorary
19 title that he keeps whatever his position. The
20 primature is the cabinet, as I understand, or perhaps
21 it's the Prime Minister's office, I'm not sure which.
22 Q. Let's look at the last page where you deal with your
23 complaint about the arbitration.
24 A. But just so you're aware, at this time we have nothing.
25 We have lost all of our assets. We are being told by

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15:40 1 the police and the military and the bailiff, we have no
 2 rights to anything anymore.
 3 Q. Now, you say there, this is item 5:
 4 "Benzinge convinced the Arbitrator and the Rwanda
 5 Courts that NRD had harmed him. Benzinge did not claim
 6 against the NRD shareholders themselves because then he
 7 could not 'seize' NRD as his prize. Benzinge convinced
 8 the Arbitrator to give him a 'Default Arbitral Award'
 9 when NRD refused to participate in a false arbitration
 10 proceedings. This was affirmed by the Supreme Court."
 11 Now, a number of points there. You don't explain
 12 there that what you describe as a false arbitration
 13 proceeding is one in which the arbitrator was appointed
 14 by the Rwandan court; correct?
 15 A. It was not appointed by the Rwanda court; it was
 16 Ben Benzinge's personal selection. Under our corporate
 17 articles there are supposed to be three arbitrators.
 18 Ben had chosen Ms Nelly, I think her name was. He would
 19 not accept any additional arbitrators to be appointed.
 20 That was the basis for our objection, and the basis on
 21 which we didn't show up as her hearing.
 22 Q. It was a court-appointed arbitrator, wasn't it,
 23 Mr Marshall? But you're right in saying there was
 24 an objection which you lodged in court, about whether
 25 there should be three or one, but other than that, your

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15:42 1 litigation, but we objected to her as an arbitrator. We
 2 understood and were instructed that the process, when
 3 you do object, is you do not appear at the hearing, and
 4 that the hearing is automatic by rule -- automatically
 5 suspended until the head of the mediation panel can make
 6 a determination about it. That never happened.
 7 Instead, the arbitration, such as it was, went ahead.
 8 Nelly, who was a friend of Ben Benzinge's, issued the
 9 award she did. We objected to it on fairness grounds.
 10 Q. Well, again, you make this point about Nelly being
 11 a friend of Ben Benzinge's but again, that's not a point
 12 you pursued on appeal, is it?
 13 A. I don't know that. If I knew, I certainly don't recall
 14 it now.
 15 Q. Now, you sent another letter to the Minister, which we
 16 have at R-201. Just scroll down the page because
 17 I'm going to come to the answer at the top. So you
 18 asked the Minister, you see in this email this is from
 19 you to the Minister of Justice. You make a number of
 20 recommendations about Benzinge's civil claim against
 21 NRD, including, if we go onto the next page,
 22 a recommendation at item 5 that:
 23 "The Supreme Court decision should be 'vacated' and
 24 cancelled because it is based upon a mistake of fact
 25 about who is the correct defendant."

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15:41 1 answer is inaccurate?
 2 A. I don't know that we lost that point. It was overcome
 3 by events. It was not a court-appointed; it was
 4 a court-affirmed. It was Benzinge's choice. He went to
 5 the court, he said: this is my choice, and the court
 6 affirmed it, nothing more. Didn't look at her --
 7 I don't know what the process is --
 8 Q. She was on a list of court-appointed arbitrators, wasn't
 9 she?
 10 A. I have no idea.
 11 Q. And you don't explain in this letter, which goes to
 12 a lot of people, that what you describe as the false
 13 arbitration was the subject of court hearings which
 14 approved and determined the constitution of the panel;
 15 correct?
 16 A. I'm sorry, you'll have to ask me again.
 17 Q. Yes, there were court hearings which determined,
 18 resolved on what the constitution of the panel would be;
 19 yes?
 20 A. Yes. Yes.
 21 Q. And you also don't explain in this item that this was
 22 not a default award; it was, in fact, a reasoned award
 23 on the merits. They rejected -- the arbitrator actually
 24 rejected the application for summary judgment.
 25 A. Well, okay, I'm -- again, I plead ignorance to

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15:44 1 And so what you are seeking to do is, because
 2 there's a result in an arbitration that you didn't
 3 participate in, you are now -- which is upheld on
 4 appeal, you are now asking the Minister of Justice to
 5 cancel or vacate the Supreme Court judgment; yes?
 6 A. I was -- certainly I was asking him to examine the
 7 issues carefully. He's a far more capable arbitrator,
 8 litigator, than I will ever be, so I was giving him
 9 instances of what I considered to be unfair behaviour.
 10 If you think that he's not capable of assessing those
 11 things, you know, I think you're wrong. I think he's
 12 very capable of assessing what I say and what it means
 13 and whether it's appropriate or not.
 14 Q. Let's go back to the first --
 15 A. It's not false and it was not misleading. I was
 16 addressing the issues as best I understood them.
 17 Q. Let's look at the first page.
 18 A. Yes.
 19 Q. At the top, please, FTL. You see the response on behalf
 20 of the Minister:
 21 "Dear Mr Marshall,
 22 "The point I have made through my assistant very
 23 many times is that the Attorney General cannot choose,
 24 decide or file any civil claims on behalf of any private
 25 individuals or companies."

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15:45 1 "I am hoping that your company lawyers can translate
 2 what is contained in your email as 'civil claims' into
 3 one or more civil actions, cite the relevant provisions
 4 of the law, build the evidence to prove your claims and
 5 file them in the appropriate courts.
 6 "Secondly, what you think are criminal activities
 7 can only remain potential criminal cases until again
 8 your company files criminal complaints with the relevant
 9 agency/agencies as by law required."
 10 And that's a fair and reasonable response from the
 11 Minister of Justice, isn't it, to your request?
 12 A. Well, obviously I thought it was unfair.
 13 Q. Now, I'm going to change topics and pick up some points
 14 about the bailiff, Mr Bosco.
 15 THE PRESIDENT: Mr Hill, before you leave this topic, can
 16 you help me with it?
 17 MR HILL: Yes.
 18 THE PRESIDENT: As I understand it, or my understanding was
 19 that the issue in relation to this part of the story was
 20 whether Rwanda, the state, was complicit in the
 21 activities of Mr Benzinge.
 22 MR HILL: Yes.
 23 THE PRESIDENT: That issue I fully understand. But the
 24 decision of the Supreme Court purports to find that the
 25 transfers of shares, upon which the Claimants rely in

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15:47 1 this case, were ineffective; that the Zarnacks remain
 2 the ultimate owners of NRD, and if that's right, then
 3 Spalena has no locus of any kind.
 4 MR HILL: Yes.
 5 THE PRESIDENT: Now, we are going to need some help as to
 6 whether we look beyond what I would call the pleaded
 7 issue in relation to Mr Benzinge, because it seems to me
 8 that nobody is really focused on the nature of these
 9 proceedings beyond the issue being whether the ultimate
 10 authority for what Mr Benzinge was doing was the court
 11 or was the State.
 12 Now, if no point is being taken beyond that issue,
 13 I'm sure we can deal with that issue.
 14 MR HILL: I think probably the answer is I may come back to
 15 you at some point if I need to. I think the answer is,
 16 we made a number of points by way of preliminary
 17 objection, which go to standing. I have to accept
 18 we have not run that point, as a result of which it has
 19 not been debated, the memorials haven't covered it as
 20 an objection from us, and in those circumstances, unless
 21 I come back to you, we are resting our objections on all
 22 the other points we have been taking and we're not going
 23 to belatedly say: this is a knockout blow and that's it.
 24 THE PRESIDENT: At the end of the story, Rwanda seem to have
 25 been treating Mr Marshall as being the gentleman with

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15:49 1 authority to take decisions for NRD, not Mr Benzinge.
 2 MR HILL: And I'm obviously proceeding in all my questions
 3 on that assumption. So I'm not advancing that as
 4 a belated knockout blow, and no doubt, Mr Cowley would
 5 say it's rather unfair for me to bring it up now if
 6 I were to try and run it late.
 7 MS DOHMANN: Mr Hill, I would be grateful also if you would
 8 revisit your submissions under the heading "lack of
 9 jurisdiction *ratione personae*", and really sort out
 10 exactly what the case is in relation to Benzinge.
 11 MR HILL: Yes.
 12 MS DOHMANN: Because I do find it difficult to ignore what
 13 appears to be in evidence in relation to a very
 14 important point.
 15 MR HILL: Understood.
 16 THE PRESIDENT: This is probably a good time to take
 17 a break.
 18 MR HILL: Yes, exactly. Let's take a break.
 19 THE PRESIDENT: 30 minutes.
 20 (3.50 pm)
 21 (Adjourned until 4.20 pm).
 22 (4.17 pm)
 23 MR HILL: Can I just raise one point of housekeeping?
 24 THE PRESIDENT: Yes, of course, sure.
 25 MR HILL: This is just on the outstanding request from

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16:19 1 Mr Cowley in relation to the metadata on his side. The
 2 reason it arises is, we've got an obligation to put in
 3 a witness statement from Mr Ehlers about the document.
 4 THE PRESIDENT: Yes.
 5 MR HILL: Mr Ehlers's position is that he said in his first
 6 witness statement he didn't recall. That is still his
 7 position, and it is fair that he gets to see the full
 8 document and the native form in order that he can
 9 grapple with it in his witness statement.
 10 MR COWLEY: You're asking -- I'm sorry, the question to me
 11 is what's the timing of our transmitting that over?
 12 THE PRESIDENT: Yes, I think so.
 13 MR COWLEY: Yes. Then after this hearing, I've scheduled
 14 a meeting with our -- well, an online meeting.
 15 Mr Marshall will be logged into our computer system,
 16 which he is not now, and our IT staff, which happen to
 17 be situated in Philadelphia, will work with Mr Marshall
 18 on our computers, so they'll make it happen for him,
 19 a downloading of the email, his emails with metadata.
 20 You made the point yesterday that you thought we already
 21 had the email with metadata. We don't: we have an email
 22 to us with metadata and, as I understand it, at a very
 23 high level. The metadata on our system for the email
 24 sent to us is not going to -- it's going to have some
 25 differences between the metadata of the original email.

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16:19 1 So it's not the same. We need to get that, and it's
 2 scheduled to happen after this hearing, and we will
 3 follow right up.
 4 MR HILL: I wonder if I could just have an extension for
 5 Ehlers's witness statement until Friday, then? At least
 6 that gives us a chance to get the document and then deal
 7 with it.
 8 THE PRESIDENT: I think that's alright.
 9 MR COWLEY: No objection.
 10 MR HILL: I'm grateful. Nothing else from me, Mr President.
 11 THE PRESIDENT: No, then let's carry on.
 12 MR WATKINS: Okay, we are bringing in the witness back in.
 13 MR HILL: Mr Marshall, I was going to pick up some points
 14 with you about Jean Bosco Nsengiyuma, the bailiff. Now,
 15 I'm going to try and take it in stages. You accept,
 16 don't you, that he was instructed to enforce the
 17 judgment debt for a salary claim on the part of a former
 18 employee, Pascal; yes?
 19 A. That's my understanding.
 20 Q. Yes.
 21 A. Pascal, it's not clear on what the judgment was based
 22 on, but that's not your question, so please go ahead.
 23 Q. Yes. And one of his actions as bailiff was to seize
 24 some minerals -- this is in connection with that
 25 judgment -- was to seize some minerals which were stored

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16:20 1 in the warehouse of Minerals Supply Africa; correct? Do
 2 you recall that?
 3 A. He had several seizures. That was not the first one.
 4 His seizure of -- I'm sorry.
 5 Q. Yes, it's quite a convoluted story, I'm not going to try
 6 and cover all of it with you, I'm just going to capture
 7 some elements of it. One of his actions was to seize
 8 some minerals which he considered to be NRD minerals
 9 stored in the warehouse of Minerals Supply Africa; yes?
 10 A. At what date?
 11 Q. I think it was 2013, but I will -- I'm not sure of that.
 12 Before -- certainly before 2014 when he came back in in
 13 connection with Mr Benzinge's judgment and the judgment
 14 of some 25 other employees, that's 2014. So I'm dealing
 15 with before that.
 16 A. I don't think so, but that's the reason I asked.
 17 I think that it was all at the same time, but please, if
 18 you would check it.
 19 Q. I will check. I'm going to continue -- I think you are
 20 right, Mr Marshall, it's also 2014.
 21 A. But do you know what month? (Pause).
 22 Q. No, I'm going to come back on the exact month. I'm just
 23 going to ask if you recall the events. You may be able
 24 to help me on the right month. So the story is that the
 25 minerals have been moved there by Mr Kibelinka of NRD,

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16:22 1 NRD and certain of the individual miners, took court
 2 proceedings to challenge the enforcement on the basis
 3 that the minerals were not NRD's at all, but were still
 4 in the ownership of the individual miners because they
 5 hadn't been paid; do you recall that saga?
 6 A. Yes, but that's not the way it works. Kibelinka was
 7 gone at this point so it must have been somebody else.
 8 I do recall a saga where Bailiff Bosco attempted to
 9 seize minerals that belonged to the miners at MSA, and
 10 where the ambiguity comes in is all mining, as I say, is
 11 artisan support mining. As a matter of law I understand
 12 the minerals belong to them until they are sold to the
 13 trader.
 14 Q. Exactly, we're talking about the same thing, so the
 15 dispute which the court eventually ruled on related to
 16 whether the minerals that had been moved to the
 17 warehouse belonged to NRD who had tagged them or still
 18 belonged to the miners up until the point they were
 19 paid.
 20 A. Up until the point of the sale.
 21 Q. Up until the point of sale, sorry. And in the end, the
 22 court ruled against the bailiff -- yes, sorry, it was
 23 2013, and we can go to a document in a minute. The
 24 court ruled against the bailiff and decided that the
 25 minerals were ultimately still under the ownership of

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16:24 1 the miners; yes? So, in a sense, NRD and the miners won
 2 that court battle?
 3 A. Okay, I would have to see the documents but I get the
 4 gist of what you are saying.
 5 Q. You can see, just so you can see the judgment, it's at
 6 R-055, this is where NRD and the miners succeeded in
 7 their claim that the -- so this is the:
 8 "Claim: suspension of seizure and auctioning of
 9 minerals currently in the hands of MSA."
 10 Then if you go to the end of the judgment, it's on
 11 the last page, what happens is the court -- this is
 12 an April 2013 judgment, the court ultimately confirms
 13 the validity of the miner's assertions to title to the
 14 minerals. It orders a suspension of the execution on
 15 those minerals, and that's the order of the court?
 16 A. Yes.
 17 Q. And the reason I'm taking you to it is that there was no
 18 impropriety at any stage or anything corrupt or improper
 19 or wrong in anything Mr Bosco was doing. His position
 20 was clear in that he was only purporting to execute on
 21 the minerals on the basis that they were NRD's property,
 22 and all that happened was someone was able -- NRD and
 23 the miners acting together with the same lawyer were
 24 able to establish that the miners had personal title;
 25 yes?

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16:26 1 A. No, not with regard to this case. Bailiff Bosco was
 2 exceeding his authority for several months already at
 3 this point. Pascal had been a contract employee of
 4 HC Starck before we got there, so this was a Starck
 5 liability that was now our responsibility. He is the
 6 nephew of the Minister of Defence, and he brought
 7 a claim for wrongful dismissal and was awarded the
 8 unprecedented sum of \$120,000, when an average judgment
 9 for such claims is \$2,000. He was by far the largest
 10 recipient of a wrongful termination claim.
 11 So Jean Bosco, Bailiff Bosco, began seizing
 12 different assets from NRD, claiming that they all had to
 13 be -- to satisfy this debt which was largely, as we saw
 14 it, a political calculation by James Kabarebe and
 15 therefore we objected and we were not cooperating with
 16 the bailiff at that point.
 17 Q. Now just looking at what you said there --
 18 A. At the time he had already seized more than \$120,000 at
 19 this point.
 20 Q. -- from the position of the bailiff he was at all points
 21 acting lawfully and on the basis of court judgments that
 22 he had, wasn't he?
 23 A. No, he was not.
 24 Q. And afterwards, leaving aside that claim, he was also
 25 appointed in 2014 as bailiff to execute on Mr Benzinge's

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16:29 1 A. No, we had a line of credit with Minerals Supply Africa.
 2 We did not owe them money. There was nothing due under
 3 that line of credit.
 4 Q. If you go to R-115, this is a legal letter, essentially
 5 a letter before action, from Minerals Supply Africa. If
 6 you could scroll down, please:
 7 "We act for and on behalf of our Client Minerals
 8 Supply Africa ..."
 9 And:
 10 "With reference to a reliable documentation, it
 11 appears to us that you have failed to reimburse to our
 12 Client the outstanding balance of USD 601,836..."
 13 So by this point, you have run up a debt to Minerals
 14 Supply Africa of US\$601,000; correct?
 15 A. That's what it says but that's not correct.
 16 Q. Coming back to Mr Bosco, can you go to R-074?
 17 A. Can I explain what this is about or do you want to move
 18 on?
 19 Q. I would like to move on. Could you go to Mr Bosco,
 20 R-074. This is a notice from Mr Bosco to all of you,
 21 Ms Mruskovicova, and also Mr Benzinge, as
 22 representatives of the company, requesting that you
 23 present a letter of attorney, which would permit you to
 24 speak on behalf of the company. And what he is doing in
 25 this letter -- can you just scroll down, please, FTI --

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16:27 1 judgment and the judgment of some 25 former employees;
 2 correct?
 3 A. Well, but your characterisation is a little misleading.
 4 He is hired as a debt collector by these individuals.
 5 He has a contract with them. It's not
 6 a court-appointed -- while his function is
 7 court-appointed, his job on behalf of any debt-holder is
 8 by matter of contract. So he went around and was able
 9 to gather up these individuals. As I say, he would
 10 never provide us with any court documents or any
 11 judgment information. We never knew what it was about.
 12 Q. He was enforcing on judgments that he had, wasn't he?
 13 A. He had been contracted by some debt holders to enforce
 14 on judgments and went way beyond his authority. He
 15 didn't follow any of the due process rules.
 16 Q. And I'm going to suggest that at every stage, Mr Bosco
 17 was following the due process rules and he was acting
 18 entirely within his authority as bailiff executing
 19 judgments, and that's right, isn't it?
 20 A. Sorry, you said you're going to make that argument.
 21 It's not possible, but you can try.
 22 Q. Well, let's look at paragraph -- first, I'll say the
 23 creditors who instructed Mr Bosco were not the only
 24 creditors. NRD also owed money to Minerals Supply
 25 Africa; correct? We've looked at that yesterday.

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16:30 1 he's informing you about an auction that he intends to
 2 hold, and he identifies indebtedness he is seeking to
 3 satisfy, and it includes 28 people with individual
 4 claims, and a claim from the Rwanda Revenue Authority
 5 representing over a million francs; yes? Do you recall
 6 that?
 7 A. Absolutely not. This was prepared in preparation for
 8 this hearing.
 9 Q. So you're suggesting that this was another fabricated
 10 document, are you?
 11 A. Yes, I do. And it was certainly never delivered to us.
 12 If he prepared it and put it into his filing cabinet
 13 I wouldn't know. I was never, until this very moment,
 14 aware that he claimed to represent the Rwanda Revenue
 15 Authority.
 16 Q. He was -- this is one of many examples and he explains
 17 them in a witness statement, where he is acting in
 18 a regular manner and observing his duties as bailiff;
 19 yes?
 20 A. All bailiffs are contract bailiffs. Did he receive
 21 a contract from the Rwanda Revenue Authority? I never
 22 heard it. I don't know -- and I'm sure that the 28
 23 people -- we don't know any of these. He never
 24 delivered any document to us which would give us
 25 evidence of any indebtedness. The Pascal decision we

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16:32 1 knew from the court, but all the rest we did not.
 2 Q. Can we go to C-071. This is a letter from you to
 3 Mr Busingye.
 4 A. No, this is to Johnston. This is the Minister of
 5 Justice.
 6 Q. Sorry, Mr Marshall. So, looking at the first three
 7 paragraphs of this letter, you are updating Mr Busingye
 8 on what you describe as the criminal acts of
 9 Ben Benzinge and others, and you refer to taking
 10 possession of the property, and then you refer to
 11 complaints to the Ombudsman office, and then you say:
 12 "We had discussions there today and as a result of
 13 these discussions we were advised to send you this
 14 request. Bailiff Nsengiyuma tried to have an auction of
 15 the entire property of Natural Resources Development
 16 Rwanda Ltd last Friday. That auction was cancelled
 17 because nobody came to the announced place."
 18 Now, just pausing there, you were aware of this
 19 auction that I've just taken you to in the letter
 20 because you deal with it in this letter from you?
 21 MR COWLEY: Mr Hill, before he answers, I think you are
 22 going to like this interruption again, I think you want
 23 to correct, you started that question by saying the
 24 letter was to Mr Benzinge. I don't think you meant
 25 that. You might want to just look at the transcript.

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16:35 1 He then has to give notice of an auction. There are
 2 commercial terms for that auction. And there has to be
 3 so many participants, there has to be such and such
 4 a percentage to the value. Following up that if there
 5 is a sale, pursuant to such an auction, he has to
 6 provide details and evidence of what happened to the
 7 proceeds.
 8 Never did he do even the first of those steps. He
 9 comes around and is -- acts like mafia and waves
 10 a document and says: I have a list of people who you or
 11 Starck before you owe, and that's as far as he ever
 12 went. There was never a legitimate process with Bailiff
 13 Bosco.
 14 Q. Can you go over the page here. You say:
 15 "This letter is also to respectfully request that
 16 your office suspend the mandate of Bailiff Nsengiyuma
 17 Jean Bosco with respect to NRD and its assets until the
 18 matter of the Bailiff's fraudulent sale of NRD minerals,
 19 as reflected in the attached Court decision, is fully
 20 investigated and resolved."
 21 And that's a reference, isn't it, what you call the
 22 fraudulent sale of minerals, isn't that a reference to
 23 the MSA story that we've already looked at where Bosco
 24 was in fact --
 25 A. No.

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16:33 1 MR HILL: I hope I said Mr Busingye.
 2 MR COWLEY: I'm sorry, I apologise. I misheard you.
 3 A. It's easier to call him Johnston, that's what he's
 4 colloquially called.
 5 MR HILL: Then you say:
 6 "Ombudsman office told us to write you a formal
 7 request to suspend the auction until this case is
 8 solved. If the auction goes ahead and all assets are
 9 sold the damage will be un-repairable.
 10 "This is a formal request to suspend the auction of
 11 the property of Natural Resources ... "
 12 And what you neglect to mention in this letter was
 13 that Mr Bosco was simply acting as a bailiff enforcing
 14 court judgments that he had; yes?
 15 A. No, sorry, two corrections: one, his job is to act as
 16 a debt collector. His title is bailiff. He collects on
 17 behalf of any -- in his function, he could be collecting
 18 on behalf of any legal debt. In this case, he claimed
 19 that they were court orders. There's a highly
 20 regimented process in Rwanda where you are given notice,
 21 you are given information about what the claim is,
 22 you're given the opportunity to discuss with whoever the
 23 claimant may be. That has its own internal formal
 24 process. He then has to give additional notice. He has
 25 to be able to say whether agreement was reached or not.

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16:36 1 Q. No?
 2 A. No, that's a different transaction.
 3 Q. But at all times --
 4 A. In that case he was able to seize the minerals, bring
 5 them outside the compound, the MSA compound, and he
 6 claims to have had an auction and we were never given
 7 notice or information about it, and he went off with the
 8 money. We don't know what happened to the proceeds.
 9 Q. Well, that's not right. We know that the MSA minerals
 10 is just one story. We know how it ends in the end, but
 11 we also know at all stages in that story, Bosco was
 12 acting in accordance with his duties, and his perception
 13 that these were NRD minerals because they had been
 14 tagged by NRD; correct?
 15 A. No, you're confusing two incidents. He tried -- it's my
 16 recollection, it may have been more than twice -- but he
 17 tried to seize minerals at the MSA compound on more than
 18 one occasion.
 19 This one I think is referring to that instance where
 20 he had -- he was able to get the minerals outside of the
 21 MSA compound and he had an auction on the street. We
 22 were never informed, we were never consulted on any --
 23 we have no idea what happened to the proceeds.
 24 Q. Now, after receiving this letter from you with your
 25 description of what Mr Bosco was up to, Mr Busingye, the

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16:37 1 Justice Minister, did in fact suspend Mr Bosco's powers
2 to carry on with his execution, didn't he? We can see
3 that at bundle C-072; do you remember that?
4 A. He did temporarily.
5 Q. And if we look at this document, C-072, that's in
6 Kinyarwanda, I'm not sure if the English is in the same
7 tab or not. It is. I think it might be in the same
8 tab.
9 A. Don't forget, I want to alert you that this date, so
10 this is July, they're still in possession of our entire
11 company. So --
12 Q. Just focus on my questions, if you would?
13 A. I have to interject, because I'm not even sure that they
14 consider us to be owners of the company at this point.
15 You can say that: well, fine, you made these complaints,
16 but I'm not sure we were recognised as the owner at this
17 time.
18 Q. Just looking at here, what the Justice Minister in fact
19 says is he addresses Bosco and he says:
20 "Based on the letter of 14 July 2014 [that is the
21 letter we just looked at] addressed to me by NRD Rwanda
22 ... asking me to stop the auction of their assets that
23 you were anticipating to carry ... on ... and to stop
24 your projects."
25 And then he says:

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16:40 1 A. That's right. We're very grateful that he was willing,
2 for this purpose, to consider us at that time the owner
3 of NRD.
4 Q. And then we go to C-073. This is a letter from -- this
5 is after further investigation from the Minister of
6 Justice. He says --
7 A. What's the date of it, can you tell me?
8 Q. This is 26 August. So it's about -- just over a month
9 later.
10 A. 26 August.
11 Q. He says:
12 "Dear Madam/Sir.
13 "Reference is made to my letter ... dated
14 [23 July 2014] which suspended temporarily the execution
15 of judgments and arbitration award rendered against NRD
16 Rwanda Ltd.
17 "Reference is also made to a number of judgments
18 (around fifteen) and an arbitration award pronounced
19 against NRD Rwanda Ltd annexed to the present letter.
20 "Further reference is made to lots of correspondence
21 that you have addressed or copied to me recently;
22 "In light of the above, we have studied the problem
23 and come to the conclusion that NRD Rwanda ... has:
24 "(a) Corporate governance issues which it is their
25 duty to settle or seek resolution of the pending ones

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16:39 1 "After examining all issues that are based on the
2 way execution of judgments lost by NRD is being carried
3 out; after hearing what different bodies who observed by
4 closer the activities you have carried out related to
5 the execution of judgments between NRD and Ben Benzinge
6 and others that they mention, I find it concerning in
7 the way these judgments are being executed.
8 "For that reason, based on the responsibility of the
9 Ministry of Justice/Services of the Attorney General to
10 establish and inspect the execution of laws and justice
11 to all, and in order to respect justice for all
12 beneficiaries of the execution of judgments against NRD,
13 namely NRD themselves, Ben Benzinge, employees who
14 brought and won legal cases against the company ...
15 "You are currently suspended from all activities to
16 do with execution of judgments against NRD Rwanda ... so
17 that the status of issues in question may be examined to
18 know if they are disputes to be brought to the courts,
19 or functionality and management, or mindsets among all
20 who had interests in the case so that you will be able
21 to continue in peace the activities you are carrying
22 out."
23 So it's a temporary suspension, based on, in part,
24 your letter, and while further investigation is carried
25 out; correct?

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16:41 1 through legal channels. Over this the Attorney General
2 has no power.
3 "(b) Legitimate judgment creditors who won cases
4 against the company and must be paid.
5 "In respect of (a) above, I find the Attorney
6 General has no power to enforce solutions. Legal
7 channels exist."
8 And Mr Bosco's powers -- sorry, I should just say:
9 "In respect of (b) you are kindly advised to
10 voluntarily execute the judgments and award because,
11 short of that, the company's seized assets will be
12 liquidated to settle these judgments debts."
13 So he was explaining that on investigation the
14 Ministry of Justice was satisfied that these were
15 legitimate judgment creditors and therefore that Bosco
16 was entitled to execute; correct?
17 A. No, because you've lost the timeline here. What has
18 happened -- our company was seized about June 11th, 2014
19 by Bosco and Ben Benzinge. During the next
20 three months, they looted our concessions, they stole
21 our assets, and whether he called it execution or not,
22 he sold our assets.
23 By the end -- by the middle of August -- at the same
24 time as this is going on we're giving assistance to the
25 military because they were interested in procurement of

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16:42 1 military assets from the west, and that will become
2 important in a second. The military was with Bosco and
3 the bailiff. We were dispossessed of our entire
4 company, we were not recognised as owners for any
5 purposes, so the fact that at least nominally the
6 Minister was willing to recognise us for purposes of
7 these communications, we were appreciative.
8 During that 90 days or -- sorry, 60 days, they
9 looted the concessions, they looted our office, they had
10 riots, one man was -- (answer cut off by questioning).
11 Q. Mr Marshall, I'm going to stop you --
12 A. I have to insist --
13 Q. -- because this is not an answer to my question?
14 A. -- I have to insist -- you won't understand this letter
15 unless I explain this, please bear with me for two more
16 minutes.
17 Q. No, it's not the question --
18 A. I'm sorry, you have to understand what happened. This
19 came -- this letter is after we got our concession back
20 and after the killing stopped. 40 people were murdered.
21 40. We were out of the concession area, we were left
22 alone. Do we suspect that maybe the military took us
23 out of there and gave it to Benzinge while the killing
24 was going on? We don't know. It was absolutely the
25 most terrifying time in my life.

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16:45 1 responsibility for your concessions, and at that point
2 the killing stopped.
3 Q. That answer, I don't accept any of that at all, but it
4 has nothing to do with the questions I asked, and
5 I'm going to move on.
6 I'm now going to go back to the topic of --
7 A. It's a bailiff seizure; isn't that responsive?
8 Q. I'm going to go back to the topic of the licences.
9 You will recall that you had been invited
10 in April 2014 to apply for licences under the new rules.
11 We looked at that earlier; yes? Do you recall that
12 letter?
13 By August 2014 --
14 A. Nothing came up, I'm sorry.
15 Q. By August 2014, you had not made any application for new
16 licences, had you?
17 A. We had been making -- our application goes all the way
18 back to 2010. No document came up. I don't know what
19 you're referring to.
20 Q. Please go to C-064.
21 This is a letter from Mr Imena to NRD in August
22 2014, and you can see that it is addressed to the
23 company and not to any individual at the company in
24 particular; do you see that?
25 A. Yes.

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16:44 1 Q. Mr Marshall, what the Minister of Justice is explaining
2 is that his department have examined the issues and they
3 are satisfied that these were legitimate judgment
4 creditors and therefore that Bosco was entitled to
5 execute; correct?
6 A. No. Their execution was on our concessions. They took
7 over \$800,000 worth of equipment, fencing, other
8 supplies. That was an execution.
9 Q. And all of Mr Bosco's actions at each stage were the
10 lawful actions of a bailiff, weren't they?
11 A. No. We never got one notice. We still don't know what
12 those claims were. We know the Pascal claim.
13 Q. And they arose because of a series of judgments against
14 NRD as a result of which NRD was a judgment debtor?
15 A. A series of so-called judgments which were not made
16 available to us. We have no idea who they were or what
17 those claims were, and the seizure of our NRD
18 concessions wasn't taken, in the sense of that was how
19 he was going to auction assets to pay the creditors, and
20 it was far less, it was maybe \$30,000 in total, and
21 instead they took the whole concession and sold some by
22 auction, some by theft, some by whatever means, and only
23 on August 22nd did we get it back. The delegation
24 arrives with the military on the 24th, and the military
25 calls us up and says: please come and take

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16:46 1 Q. He refers in the second paragraph to the fact that the
2 licence has expired:
3 "Further reference is made to the Letter of the
4 Honourable Minister of Natural Resources,
5 dated September 13, 2012, extending NRD's ..."
6 A. Sorry, what's the date of the letter?
7 Q. This is August 2014.
8 A. What day in August?
9 Q. I will come back to you and tell you the answer to that.
10 I don't think it matters for my questions but tell me if
11 you think it does when I ask them. 18 August.
12 Now, he says:
13 "Further reference is made to the Letter of the
14 Honourable Minister of Natural Resources,
15 dated September 13, 2012, extending NRD's licence for
16 three months expiring in October 2012."
17 So he's referring there to the fact that the licence
18 has expired, yes, in October 2012?
19 A. He says that that extension expired in October 2012.
20 Q. Yes. And then a little lower down the page --
21 A. I don't know that he's saying that all of the licences
22 have expired. We interpreted it as executory, as
23 I think I told you.
24 Q. A little further down the page, he then says:
25 "Considering the fact that the negotiating process

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16:48 1 for the possible renewal of the mining licence for the
 2 above mentioned concessions has stalled and did not
 3 yield any positive result since its initiation in
 4 2012 ..."
 5 Then he refers to the new Mining Law, and then he
 6 says at the bottom:
 7 "... I am requesting NRD Ltd to re-apply for the
 8 licences of some or all of the former mining areas. The
 9 list of what is required in this application is attached
 10 to this letter. Each concession is a separate entity
 11 and should be applied for individually ... this
 12 application should be done within 30 days ... each
 13 application will be assessed on its own merit. It is
 14 key to note while applying that the government is
 15 looking for optimal investment in each of the mining
 16 areas mentioned above."
 17 So he's requesting you again to apply for licences;
 18 correct?
 19 A. It reads that way, under the new law.
 20 Q. He makes clear that the application should be made
 21 within 30 days, will be assessed on its merits, and
 22 should be done separately for each of the concessions;
 23 correct?
 24 A. That's what I read.
 25 Q. And he also provided an annex, didn't he, which gave you

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16:49 1 a detailed list of what was required to support the
 2 application; correct?
 3 A. I don't see it, but he may have.
 4 Q. We can go to it. If FTI could keep going down, you'll
 5 see the annex, which might prompt your memory. Do you
 6 see there?
 7 A. Okay.
 8 Q. So that was the list of targets you had to hit for the
 9 application?
 10 A. It may well be. But you will understand, of course,
 11 that there were two issues we were facing at this time.
 12 One, we did not have any access to any of our
 13 documentation. We were strictly custodians of the
 14 mining concession at the instruction of the Rwanda
 15 military. We had no other documentary evidence of
 16 anything. This letter was sent to many companies but
 17 not to the concession holders, except for us. Rutongo
 18 was in exactly the same position and did not have to
 19 re-apply.
 20 Q. Rutongo, by this point, had a well advanced licence
 21 application which had been on the cusp of receiving --
 22 for some time, had been on the cusp of receiving
 23 long-term licences. They were in a completely different
 24 position from you?
 25 A. That's absolutely untrue. They didn't receive their

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16:50 1 licence until the beginning of 2015 and you can question
 2 Kevin on it.
 3 Q. And you've alleged that Minister Biruta told you that
 4 the re-application was a formality, but that's not true,
 5 is it?
 6 A. We had the conversation with him, he absolutely assured
 7 us that we had been mistreated, and in fact, his words
 8 were, as I recall: as long I am minister, you are not
 9 going to lose your long-term concessions.
 10 Q. What he in fact would have said is as long as you comply
 11 with the law you would be treated fairly?
 12 A. No, he did not. It was a very different conversation.
 13 I beg to differ with you. You were not there.
 14 Q. And Mr Imena's letter made it clear that each
 15 application would be assessed on its own merits, so you
 16 had to make an application that hit the targets that he
 17 had identified and would be considered on its own
 18 merits; correct?
 19 A. I don't see that, but --
 20 Q. That's what he said in the letter: each application
 21 would be assessed on its own merit.
 22 A. Yes, you know, for me, we were being treated
 23 differently. We were being asked to re-apply for
 24 something that we had already fully satisfied our
 25 obligations under.

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16:51 1 Q. And you had no doubt at all, did you, what was required,
 2 because you were told specifically what was required?
 3 A. No, that's simply not true and you weren't there. You
 4 know, we had a terrible time with Minister Evode because
 5 he was off on his own frolic. We had started with
 6 an indulgence, yes, we'll bring money, we'll bring
 7 investment, and now they're again looking for
 8 an opportunity, an excuse, to be able to say: oh, you
 9 failed and now we're going to keep everything, without
 10 compensation.
 11 Q. Well --
 12 A. Rutongo, for legal purposes --
 13 Q. Just to be clear, Mr Marshall, my question is you had no
 14 doubt about what was required because he told you in
 15 this letter what you had to do, and gave you a list of
 16 targets to hit, didn't he?
 17 A. I understand, and I'm telling you that we had
 18 communications with his office that this is not -- it
 19 must be intended for other people but not for us because
 20 you know us, you know what we have invested, you know
 21 what research we've done and what is this formality.
 22 Q. Now you've just invented that?
 23 A. No, that's why we went to Minister Biruta and asked him
 24 the question. He gave us absolute unconditional
 25 assurance we were not going to lose our licences.

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16:52 1 Q. You just invented this story about other people in
2 Minister Imena's office telling you it was a formality
3 or whatever you just said, because the only evidence
4 you've given before is that Minister Biruta said
5 something, and now you've invented something about other
6 people in Minister Imena's office --
7 A. I'm sorry, what was my quote, I don't ...
8 Q. Let's look at your quote. You said:
9 "I understand and I'm telling you that we had
10 communications with his office that this must be
11 intended for other people but not for us."
12 You have just invented that, haven't you?
13 A. No, we believe that to be true. This is a generic
14 letter written for people who have just arrived in the
15 country, not for somebody who has already been here for,
16 at this point it was seven years. It's written as if
17 they don't even know who we are or what our name is.
18 I would like to point out to you that, for example,
19 Musha, another concession holder, arrived and three
20 months later was awarded the 30-year concession without
21 any investment or any research so there's very disparate
22 treatment between people who are applying for licences.
23 At this point we had a problem with Dr Michael and
24 they were trying to create a false test process which
25 they would then declare we failed.

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16:55 1 fully kicked in and we were completely out of tags.
2 Q. Now, the tagging system was intended for licensed
3 operators, wasn't it?
4 A. All operating mines had tags.
5 Q. No, just answer my question. The tagging system was
6 intended for licensed operators, wasn't it?
7 A. All companies in our position had tags.
8 Q. If you go to Mr Niyonsaba's supplemental witness
9 statement at paragraph 16.
10 MR BRODSKY: Forgive me, that name one more time?
11 MR HILL: Niyonsaba.
12 MR BRODSKY: Thank you.
13 MR HILL: Paragraph 16. He is the man who is the Pact ITRI
14 man. He explains in paragraph 16 --
15 MR BRODSKY: Supplemental?
16 MR HILL: Sorry, supplemental, I'm so sorry.
17 MR BRODSKY: That is, this is the supplemental.
18 MR HILL: Exactly:
19 "Tags are only issued to licensed mining
20 operations."
21 So the way the scheme works is you need to be a
22 licensed operator in order to have tags; yes?
23 A. We were the only mining operation in the history of ITRI
24 that had our tags withheld from us for no reason.
25 Q. Well, your licence had expired and you had been asked to

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16:54 1 Q. You say a false test process, but you've just said, even
2 on your own evidence, that this is something that other
3 people were required to comply with. It's not bespoke
4 to you, is it?
5 A. As if you'd never known them before. They've known us,
6 they've seen our work, they've seen our investment.
7 Q. But your work has been considered inadequate before and
8 you have been repeatedly told to apply to licences,
9 which you haven't done.
10 A. If your point were true then you would think that they
11 would have a narrowly tailored conversation about what
12 needed to be done differently. Not: please tell us your
13 name and do you have any bank accounts.
14 Q. I'm going to come back to the application you made.
15 Let's go onto the story of tagging because we're now in
16 the summer of 2014, and one of your complaints in this
17 arbitration is that from the summer of 2014, Mr Imena
18 was unwilling to provide tags to NRD for the mineral
19 tagging system; yes? That's one of your complaints?
20 A. Yes, I think it began in March -- well, the way the
21 tagging process worked is that some tags were --
22 a quantity of tags, if there was a secure place in the
23 mine, would be kept at that mine site. So even though
24 Minister Imena instructed that no tagging be done on any
25 of our concessions anymore, it took some weeks before it

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16:57 1 apply for new licences and you hadn't done so.
2 A. All licences had expired. We were in exactly the same
3 position as every other company.
4 Q. You had been asked to apply for new licences and you had
5 not done so?
6 A. Rutongo was in the same position, they had no licence.
7 Q. Rutongo had applied for new licences, hadn't they?
8 A. With the same application we had given.
9 Q. Not remotely the same application you had given, because
10 your application had not been accepted and you had made
11 no renewed application as you had been asked to do by
12 this stage repeatedly, correct?
13 A. No, it's completely a misrepresentation of the fact
14 pattern and, more than that, you know, as Dr Michael
15 kept saying, look, these are half of all the mining
16 areas in Rwanda are being held by NRD, and by
17 withholding tagging from us, that meant effectively the
18 tagging system had no effect in Rwanda.
19 Q. And by the summer of 2014 you should have been applying
20 for a licence, shouldn't you, and you had been asked to;
21 correct?
22 A. You're misrepresenting, he didn't ask us for anything.
23 He said: Ben Benzinge owns your mines and therefore
24 we're not going to give you the tags. He later came up
25 with the argument that the tagging licence hadn't been

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16:58 1 applied for and he wanted to, as he put it, regularise
 2 our licensing position.
 3 Q. And one of the points about making an application for
 4 a licence is that that's the process by which the
 5 government gets to determine whether you're entitled to
 6 a licence and whether you're a worthy licence-holder;
 7 correct?
 8 A. You'll have to rephrase the question, I'm sorry.
 9 Q. One of the points of having a licence is it's a process
 10 by which the government can make an assessment about
 11 whether you deserve a licence and you are a worthy
 12 licence-holder; correct?
 13 A. Yes. Within the indulgence that we started off with
 14 from the beginning: please come and invest and the
 15 licence will follow.
 16 Q. Mr Imena -- I'm sorry, I cut across you. Had you
 17 finished?
 18 A. Please.
 19 Q. Mr Imena explained to you in September 2014 that there
 20 were two impediments to him providing the tags. The
 21 first one was that you did not have a licence, and
 22 providing you with tags would just be encouraging you to
 23 carry on as an unlicensed operator, making money out of
 24 non-industrialised artisanal mining and not bothering to
 25 apply for a licence, and that's --

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16:59 1 A. That's completely (overspeaking) --
 2 Q. -- that fairly summarises what you're up to, doesn't it?
 3 A. Absolutely not.
 4 Q. And that would be contrary to the scheme of the iTSCi
 5 system, isn't it?
 6 A. No, the iTSCi system is -- and I'm sorry, I don't want
 7 to lecture you -- but the iTSCi system is tags are
 8 withdrawn from those companies who violate iTSCi rules,
 9 no other reason. We are the only company who on
 10 Mr Evode's say so, had the tags withdrawn. No other
 11 company in the history of the iTSCi programme did that
 12 happen to.
 13 Q. Now, the second point that Mr Imena made is that
 14 Mr Benzinge had the benefit of this arbitral award,
 15 supported by court decisions, and the effect of that was
 16 that you were neither the lawful management nor the
 17 correct shareholders of NRD, and that was a fair summary
 18 of the consequence of the arbitral award, wasn't it?
 19 A. No, obviously not, because the registrar didn't change
 20 the registration.
 21 Q. And Mr Benzinge --
 22 A. Mr Benzinge, at the end, before and after the
 23 arbitration, still held 0.2% of all shares. Nothing
 24 more.
 25 Q. And at that point, Mr Benzinge was himself threatening

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17:00 1 proceedings if GMD issued tags to you, or to you as
 2 purported controllers of the company, such that Mr Imena
 3 was at that stage faced with competing claims, wasn't
 4 he?
 5 A. No, I never heard he was going to bring a claim but
 6 I wonder if I had threatened to bring a claim whether he
 7 would have reversed himself. So as I take it from your
 8 comment, if you threaten suit, then they buckle and say
 9 the owner is not the owner and we're not going to give
 10 tags to anybody?
 11 Q. It isn't a question of threatening suit, is it,
 12 Mr Marshall --
 13 A. Well, it sounds like he's threatening suit.
 14 Q. -- Mr Benzinge at that point had a Supreme Court
 15 judgment which validated his possession, didn't he?
 16 A. No, you just said that Mr Evode was faced with the
 17 threat of a suit from Benzinge.
 18 Q. Yes, he was faced with competing claims and one of the
 19 claims on the other side to you was a claim from someone
 20 who said he shouldn't be issuing tags to you because you
 21 weren't the lawful controller of the company and he had
 22 a Supreme Court judgment to back him up; that's fair?
 23 A. No. Under Rwanda law, the registrar of a company
 24 registry is the one who records who owns what. It's not
 25 a matter of ongoing debate to be determined by

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17:02 1 a minister of mining.
 2 Q. Now, that's your legal --
 3 A. We were the owners of the company; Ben Benzinge was not
 4 the owner of the company.
 5 Q. Mr Marshall that's your legal proposition about the
 6 effect of Rwandan law, but that's actually not the
 7 effect of the Rwandan law, is it? The judgment of the
 8 RDB is not determinative, is it?
 9 A. It's the first I've heard of it.
 10 Q. Now, let's go to --
 11 A. On what basis do you say that?
 12 Q. -- R-203. This is the note of a meeting with Mr Imena
 13 in September, and can we look at what --
 14 A. Can we say that the reverse is true, by your
 15 supposition?
 16 Q. I'm not answering your questions, and that issue on
 17 Rwandan law is actually one of the legal matters for the
 18 Tribunal so I can move on.
 19 A. I just don't understand the point. What you're saying
 20 is --
 21 Q. No, no, I'm not going to engage on debate in this,
 22 Mr Marshall, I'm going to ask you about the next
 23 document, which is R-203, and this is the note of the
 24 meeting which you held --
 25 A. Well, no, I need to understand -- you're going to ask

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17:03 1 questions that's based on that question. What's the
 2 point --
 3 Q. No, I'm not, I'm just asking you about what happened at
 4 a meeting and I'm going to ask you to now go to the
 5 minute of the meeting. R-203, this is the note of the
 6 meeting with Mr Imena in September, and I'm going to
 7 look at what you said at this meeting, and you can see
 8 that the first discussion is about NRD and Benzinge.
 9 I'm going to ask, can we go to page 2 of this minute.
 10 We have here:
 11 "Next discussed point was ... tags. NRD in its
 12 letter (as attached) asked the Minister to provide tags
 13 for the NRD concessions. Minister said that he will not
 14 approve to provide the tags if NRD doesn't have licence.
 15 NRD pointed out that from 2011 there is no licence and
 16 NRD was allowed to mine and tag. Invitation for the
 17 negotiations for the long term licence was sent from
 18 Minister in April 2014."
 19 And that's right.
 20 "Then the Minister said that he received letter last
 21 week from Benzinge that Benzinge doesn't want the
 22 Minister to give NRD tags. Benzinge signed it as
 23 'Managing Director of NRD'. NRD said that it makes no
 24 sense if individual is sending letter and Minister
 25 ignores the letter sent by Minister of Justice in which

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17:04 1 the bailiff, awards and judgments were suspended."
 2 Now, just looking at that, you -- this idea NRD says
 3 it makes no sense, you're referring there to the letter
 4 that we looked at earlier where the Justice Minister
 5 suspended execution; yes? We saw that earlier.
 6 A. I wasn't at this meeting and I don't know. I would
 7 prefer if you asked Ms Mruskovicova.
 8 Q. Do you want me to -- that's fair enough. You weren't at
 9 the meeting, I will -- it enables me to save some time,
 10 I'll move on and I'll ask Ms Mruskovicova.
 11 Now, in this meeting you'll see that what was
 12 requested was an extension of time for making a licence
 13 application, and the Minister refused the extension
 14 saying that your problems were your own, not his, and
 15 you should provide what you're able to in accordance
 16 with the deadline and supplement it as necessary.
 17 A. Well, I would suppose -- not being there, I can't be
 18 sure, but I would suppose that that was a reference to
 19 the fact that the government still had our offices and
 20 we had no access to the documents that were being sought
 21 in the application.
 22 Q. Just so you can see, it's on the first page, this
 23 particular part of the meeting is dealt with, and
 24 that's -- it's just dealt with something at the second
 25 half of that second paragraph.

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17:06 1 Now, it's right, isn't it, that you didn't request
 2 this extension until this meeting which was on
 3 16 September, only two days before the deadline; yes?
 4 A. My recollection is they couldn't get a meeting until two
 5 days before it was due.
 6 Q. And you didn't request an extension until then, either
 7 by correspondence or in a meeting; correct?
 8 A. You'll have to ask Ms Mruskovicova, I don't know that.
 9 Q. And the problems, as the Minister said, the problems of
 10 getting into your Kigali office were indeed your own
 11 problems, weren't they, because they resulted from
 12 lawful court rulings that NRD was subject to; correct?
 13 A. No. No. We were the only company in Rwandan history,
 14 as far as we know, that was seized in its entirety for
 15 a debt which was a tiny, tiny fraction of some of the
 16 value of its assets.
 17 Q. And the reality was that you and Ms Mruskovicova ran
 18 much of this operation anyway as a briefcase operation,
 19 largely out of your accommodation in Kigali, so you had
 20 a great deal of access to material in any event;
 21 correct?
 22 A. No.
 23 Q. And much of the material that was required, and we
 24 can -- we'll go to some of it in a moment, but it didn't
 25 even need access to company files because it involved

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17:07 1 acquiring it from third parties; correct?
 2 A. No.
 3 Q. For example, you were required to obtain tax clearances
 4 and that was just a question of seeking confirmation
 5 from the Rwandan Revenue Authority; yes?
 6 A. No. We were not recognised at that time as the owner of
 7 the company, you will recall. RRA would not speak to
 8 us.
 9 Q. And the reason that you did not obtain tax clearances is
 10 not for that reason, nor because you didn't have access
 11 to your office, but because NRD hadn't been paying its
 12 taxes and owed unpaid debts to the Revenue and you could
 13 never have got a clearance from the Revenue, could you?
 14 A. No, that's a gross misrepresentation and that's slander.
 15 Q. You knew very well that the Revenue regarded you as
 16 having outstanding debts to it, didn't they?
 17 A. No, as we talked about yesterday or the day before,
 18 there was an allegation from the Rwandan Revenue
 19 Authority that HC Starck had not accounted for some of
 20 the money that it had paid to casual labourers, and
 21 pursuant to which some amount of social security tax
 22 would be due. That was the beginning and the end of the
 23 dispute. There was no -- I'm sure that HC Starck
 24 accountants and others were not wrong in their judgment.
 25 The agreement we had reached with the Rwanda Revenue

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17:08 1 Authority was that they would come in and do a proper
 2 audit, which they had still not yet done, and the matter
 3 was being left to that. There was no other outstanding
 4 debt, as far as I know.
 5 Q. They regarded you as having outstanding unpaid debts and
 6 would never have given you a Revenue clearance, would
 7 they?
 8 A. That's untrue and slanderous.
 9 Q. Let's look at the application you did put in on
 10 18th September 2014. We have it at C-084. Now,
 11 although it's dated 18th August on its face, it's common
 12 ground, and there's no dispute, that that's supposed to
 13 read 18th September 2014, so this is a September
 14 application.
 15 If we look at the first paragraph, you say:
 16 "This letter and the attached information are
 17 submitted to you based upon the discussion you had in
 18 your office on Tuesday, 16 September ... with our
 19 Finance Director ... and our Director of Operations ...
 20 By way of short explanation, the instruction in your
 21 letter dated 18 August 2014 that the investors in NRD
 22 should submit 'requirements' to you was puzzling. We
 23 were glad to receive the letter by email (to our
 24 personal accounts) but had been informed that this was a
 25 mass-mailing to all licence-holders and that the

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17:10 1 information requested from us, as investors, would wait
 2 for resolution of the claims by Mr Benzinge."
 3 Now, you knew very well, didn't you, that the
 4 request for the application had been directed at NRD, as
 5 a company, and Mr Imena was not concerning himself with
 6 any particular investors; correct?
 7 A. No. Our understanding that that was a letter that was
 8 being sent to everybody, that this was how they were
 9 going to proceed with new licence applications and it
 10 was a new process, for new arrivals to Rwanda.
 11 Q. You knew very well, didn't you, that -- well, let's look
 12 at the second page. So this is the information that you
 13 give. You say, starting with the third paragraph --
 14 well, you start in the second paragraph:
 15 "The contract provides for purpose of the agreement
 16 and for the rights and obligations of the parties to the
 17 agreement and authorises NRD to proceed with its
 18 obligated activities ..."
 19 And then you say:
 20 "Article 2 sets out certain of the obligations of
 21 the parties and Article 3/4 provides for NRD's rights to
 22 obtain an automatic and exclusive right to mine for
 23 cassiterite, wolframite and tantalum anywhere within the
 24 mining concession areas for a minimum period defined by
 25 statute for 'mining concessions' of a minimum of

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17:11 1 35 years, renewable. The definition of 'mining
 2 concessions' is specifically noted in Article 10 as
 3 being defined under 'existing Rwandan legislation'.
 4 "NRD has completed its obligations under Article 2
 5 and 3/4 and the agreement has endured to date and has
 6 not been terminated.
 7 "It is therefore, respectfully, incumbent now on the
 8 part of the Government of the Republic of Rwanda to
 9 grant the necessary mining rights for a period of
 10 35 years renewable to NRD, hereinafter referred to as
 11 the 'long-term licence'.
 12 Now you didn't think at all that it was the case
 13 that the contract provided for automatic right to mine
 14 for 35 years, did you?
 15 A. I think it's an error, it should say 30 years.
 16 Q. You didn't think that either, did you?
 17 A. Yes, "It shall have the right" is the language of the
 18 original contract.
 19 Q. And you knew that you had not satisfied the requirements
 20 of Article 2 of the contract in respect of the reserves
 21 and feasibility report, didn't you?
 22 A. The representations from the beginning were the same.
 23 We were always treated as the long-term licence-holder
 24 as defined by law, we, as an indulgence started the
 25 investment before we were granted the long-term

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17:12 1 concession agreement which we expected them to be
 2 commercially reasonable.
 3 Q. Nor had you submitted at any point --
 4 A. Everybody else got a long-term concession licence except
 5 us.
 6 Q. Nor had you submitted at any point a feasibility report
 7 that was at all likely to be seen positively by the
 8 government; correct?
 9 A. No, we had submitted a feasibility report. The
 10 feasibility report was for us to be able to determine,
 11 as in any long-term licence application in the mining
 12 industry, as the basis on which we determined whether we
 13 would want to go ahead with our investment.
 14 Q. You also knew, didn't you, it was wrong to say the
 15 agreement had endured to date; correct?
 16 A. No, we believed it had been endured to date. We had
 17 fully performed on our side of the agreement and we were
 18 just waiting for performance on their side.
 19 Q. Now, coming on to the next paragraph, you refer to the
 20 injection of funds. You say:
 21 "In a period starting before the signing of the
 22 above named contract to this date, NRD has to date
 23 invested funds in excess of US\$20 million into the
 24 project."
 25 We've been through the amounts invested and that

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17:14 1 statement was untrue; correct?
 2 A. No, it was correct.
 3 Q. You then attached some limited documents, and we'll go
 4 through those in a minute, but it's right, isn't it,
 5 that you didn't even purport to put in an application on
 6 a concession by concession basis as you had been
 7 requested to, correct?
 8 A. We had fulfilled the terms of the original arrangement.
 9 We had submitted an application in 2010. The
 10 application was deemed sufficient. If they were asking
 11 for additional breakdown of information then it had
 12 never been clearly articulated to us in a way that said
 13 it's an amendment to the original agreement where we had
 14 fully executed.
 15 Q. You were told what to do, which is to apply on
 16 a concession by concession basis, providing the
 17 information requested, and you didn't even attempt to do
 18 so, did you?
 19 A. I'm sorry, where are you reading from, or what period?
 20 Q. I'm reminding you of a letter we looked at only a few
 21 moments ago, which is Mr Imena's letter in August,
 22 telling you specifically you had 30 days to apply on a
 23 concession by concession basis and to provide the
 24 information requested?
 25 A. The agreement we had with the government was that we

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17:15 1 submitted an application, then we start negotiating the
 2 terms of a long-term concession. If there was some
 3 reason, business reason for changing that procedure, we
 4 would be happy to do it.
 5 Q. So you just chose to ignore Mr Imena's letter?
 6 A. We were not subject to this. Everybody else was treated
 7 as a long-term concession holder and invited to
 8 a negotiated agreement. If they wanted to at some point
 9 be able to say in that negotiation: no, this concession
 10 is too large or we need to allow you to focus on these
 11 areas, that would be part of the long-term concession
 12 agreement.
 13 Q. He was telling you you were subject to it, and he sent
 14 you a letter telling you what to do and you chose to
 15 ignore it; that's fair, isn't it?
 16 A. No. No. It's not fair. We disputed that we were
 17 subject to it, we wanted to be treated the same as all
 18 other holders. We had all of our documentation and
 19 research and expertise in our office, and he was not
 20 giving it to us, so we assumed that this was a set-up.
 21 He just wanted to be able to say: you failed. Otherwise
 22 he would have given us our office back.
 23 Q. You provided what -- Mr Imena had no ability to give you
 24 your office back, did he?
 25 A. He absolutely did. He was in charge of the mining

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17:16 1 industry. He alone had the ability.
 2 Q. Now, you provided what purported to be a feasibility
 3 report, which we have at C-085, and can we go to that
 4 document. Can we go to page 40.
 5 A. This, by the way, is the environmental problem I was
 6 telling you about where they did the ground sluicing.
 7 The picture on the front.
 8 Q. Page 40. This is a page summarising NRD's investments
 9 in respect of infrastructure, where you identified two
 10 particular pieces of infrastructure.
 11 Sorry, FTI, could you make it slightly smaller so
 12 I can just see the page. Thank you.
 13 Yes, I'm looking at the bottom paragraph. I'm happy
 14 for you to blow it up again. So it's the bottom
 15 paragraph we're looking at, so this is under "NRD's
 16 Investments Leading to Enhanced Exploration and Mining
 17 Capacity" and you say:
 18 "NRD investments in respect of the plants themselves
 19 are summarised in the NRD Application 2010."
 20 And if we just scroll a little further up, we can
 21 see that that's dealing with two plants, the Rutsiro
 22 plant and then further up the Nemba plant. See that
 23 paragraph, including constructing the Rutsiro plant and
 24 the Nemba plant.
 25 So what you are saying in this application is that

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17:18 1 the investment that's been done was done
 2 before November 2010 because the details about it are to
 3 be found in the November 2010 application; correct?
 4 A. No, the investments were ongoing.
 5 Q. Well, you don't identify in this application, in this
 6 feasibility study, any material new investment in
 7 infrastructure, do you?
 8 A. No, all investments were ongoing. The Nemba plant
 9 didn't exist in 2010 so, you know, with regard to that
 10 item alone, but all upgrades have to -- it's a work in
 11 progress. You can't stop investing in the mining.
 12 Q. Let's go back to that bottom paragraph and look at it
 13 again.
 14 A. Okay.
 15 Q. "NRD's investments in respect of the plants themselves
 16 are summarised in the NRD Application 2010."
 17 Making it quite clear that the investment had taken
 18 place before November 2010 and is summarised in that
 19 document; yes?
 20 A. In Nemba? No.
 21 Q. That's what your document says that you submitted;
 22 correct?
 23 A. It may be inartfully worded, but the Nemba plant wasn't
 24 built until after 2010.
 25 Q. Can we go to page 71. This is a section dealing with

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17:19 1 exploration works. It actually starts, if you could go
2 back one page, if FTI can put the previous page up as
3 well at the same time. We've got a section dealing with
4 satellite image tools, and then on page 71, it says,
5 three paragraphs down:
6 "In addition to the research reflected in the
7 supplemental materials to this Feasibility Study ...
8 several field campaigns of exploration works were
9 performed..."
10 And then you say:
11 "In the text below we roughly summarise performed
12 work."
13 Can you see where I'm reading from? It's
14 immediately above the 4.9:
15 "For detail we refer on report NRD 2010 and
16 2008-2010 Annual Status Reports and supporting
17 materials."
18 So it's clear, isn't it, that as regards this work
19 also, surveying work, this feasibility study identified
20 no material new work that had not been identified in
21 the November 2010 application?
22 A. No -- well, I'm not saying that it's directly stated,
23 but certainly we had teams of geologists permanently in
24 Rwanda from the Czech and Slovak Republics.
25 Q. If you had done any material new surveying work you

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17:22 1 Q. Now, let's look at paragraph 88. This is dealing with
2 mineral reserve modelling. Can we start with --
3 starting with exploration and sampling, and at the
4 beginning of the first paragraph it says:
5 "Wolframite sampling: initial reserve estimates were
6 carried out (pre-2010) for the primary wolframite
7 deposits at Rutsiro and their associated secondary
8 tailings deposits."
9 So again there, the work done for reserve estimates
10 was pre-2010; yes?
11 A. No, that says initial reserve estimates were carried out
12 then.
13 Q. And no other work is identified; correct?
14 A. Well, you'll have to let me read it. If you want me to
15 read it, I'll double-check, but ...
16 Q. It's just describing the work that we see in
17 the November 2010 application?
18 A. Yes, but all of the sampling was ongoing. As we're
19 mining, we're sampling. We were unique among all mining
20 companies in the ability to do that because we were the
21 only mining company with a lab. I beg to differ with
22 you about what this means. If you are saying that we
23 failed because we didn't specify much of the exploratory
24 work after 2010, that's not to say it didn't happen.
25 I think your staff, your client's staff would be able to

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17:21 1 would have identified it in this application, wouldn't
2 you, and not just directed the reader to
3 the November 2010 application; correct?
4 A. No.
5 Q. Let's go to page 88.
6 A. It may be less promotional than it should be, it may be
7 less of a statement to show how great we are, but that's
8 what we wrote.
9 Q. And the reality is, also, Mr Marshall, it's not just
10 this document, although we'll keep going to it, you had
11 other opportunities to supplement your material, you
12 were given a number of opportunities by the government
13 and you never produced any updated investment or
14 surveying data, did you?
15 A. I beg to differ. I think we did provide -- every time
16 the geologists did work they spoke with their
17 counterparts at the Ministry, they would have provided
18 them with those studies --
19 Q. You never --
20 A. -- (overspeaking) not providing them to us today doesn't
21 mean that the work wasn't done.
22 Q. You never improved this part of your application, even
23 though you were given repeated attempts to improve on
24 your application, did you?
25 A. No, we did improve on this part of the application.

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17:24 1 verify it. We took thousands of samples.
2 Q. If you had done that, you would have identified them.
3 Let's go to Mr Imena's witness statement at
4 paragraph 33.
5 A. These seem to be questions of fact to me, you know, and
6 I would urge you to go back and do a more detailed
7 investigation, since you are accusing me of not doing
8 something when you have the information to be able to
9 demonstrate whether it's true or not.
10 Q. Now, Mr Imena deals with this application, and he
11 summarises his take on it. He says:
12 "On 18 September 2014, NRD submitted a partially
13 complete application for the issuance of long-term
14 licences. It included a 'feasibility study update'
15 which, although some 90 pages in length, contributed
16 almost nothing new -- it was largely a reworking of
17 the November 2010 Application with some generic
18 geological reports obtained from public records."
19 And that is a fair assessment, isn't it, of the
20 feasibility report that you submitted?
21 A. It's entirely unfair, because I know that our staff
22 spent hundreds of hours on it, and I wish you would do
23 a close comparison rather than referring to conclusory
24 remarks by somebody who is very biased.
25 Q. We're very happy to do a close comparison of this

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17:25 1 document and the November 2010 application and, indeed,
 2 one has been done, and you cannot identify any material
 3 new investment in your November 2010 report. Sorry, in
 4 your 2014 -- or exploration in your 2014 report.
 5 A. I beg to differ. I know that the work was done. You
 6 can make a claim -- but, by the way, I would also
 7 encourage you to compare it to all other applications.
 8 Other than Rutongo, ours was far superior.
 9 Q. Let's go on in Mr Imena's witness statement, he says:
 10 "The application overall (and despite the terms of
 11 my letter of 18 August 2014, one application was made,
 12 rather than a separate application for each individual
 13 concession area with specific plans and studies relating
 14 to that concession) was evaluated by the Licence ...
 15 Team ..."
 16 Now, just taking that in stages, it's right to say
 17 you hadn't addressed the concession singly, as you had
 18 been asked to; correct?
 19 A. I stand by our position that Mr Evode had possession of
 20 our offices and would not give us access to exactly the
 21 information he has requested.
 22 Q. You're not -- you didn't mean to suggest that Mr Evode
 23 had possession of your offices, did you?
 24 A. I mean the government had possession of our offices,
 25 under the auspices of Mr Evode, yes.

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17:26 1 Q. You don't mean to suggest that either, do you?
 2 A. I do.
 3 Q. Given that the previous feasibility study was considered
 4 insufficient for the five-year licence application in
 5 2010 and 2011, this was never going to be considered
 6 adequate for a long-term licence, was it? You must have
 7 known that.
 8 A. I'm sorry, repeat the question again.
 9 Q. You must have known that this feasibility report was
 10 never going to be considered sufficient for a long-term
 11 licence because the last one hadn't been?
 12 A. Far superior to all other applications, other than
 13 Rutongo. We saw Gifurwe, we saw Rwinkwavu, we saw
 14 New Bugarama. Our documents far exceeded those and
 15 I would invite you to provide those other proposals to
 16 the panel for a point of comparison for them.
 17 Q. Can you look at your third witness statement, or your
 18 second supplemental witness statement, as it's called,
 19 paragraph 19. Sorry, paragraph 25, I should say. You
 20 say there:
 21 "NRD was the only company doing sampling on a daily
 22 basis using the then new XRF spectrometers, which
 23 enabled NRD to sample thousands of minerals on site."
 24 Can we just see what Mr Imena says about that in his
 25 supplemental report at paragraph 19.

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17:28 1 MR BRODSKY: Did you say Imena supplemental?
 2 MR HILL: Imena supplemental, paragraph 19.
 3 MR BRODSKY: Thank you.
 4 MR HILL: He says:
 5 "In my first statement at paragraphs 12 to 13 and
 6 71, I explain how the sampling done by NRD was
 7 superficial and that they had only obtained 115 samples
 8 for three concessions, which equated to 1 sample for
 9 every 191 hectares. At paragraph 25 of the second
 10 supplemental statement of Mr Marshall, he claims that
 11 NRD was the only company doing sampling on a daily basis
 12 using new XRF spectrometers. This cannot be true, and
 13 is not consistent with my understanding at the time.
 14 First, if NRD was taking samples on a daily basis
 15 I believe this would have been recorded in
 16 their November 2010 Application (or indeed any later
 17 applications) -- but it was not. The November 2010
 18 Application states only that 'a total of 115 samples
 19 were collected' and this is consistent with the
 20 explanation I gave in my first statement. Second, NRD
 21 was not the only company using a XRF spectrometer and in
 22 fact they were commonly used in Rwanda."
 23 And what he says is right, isn't it?
 24 A. No, it's entirely untrue. A couple of traders, MSA and
 25 Phoenix, had an XRF and I think those were the only

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17:29 1 three in the country, perhaps Chris Huber as a trader
 2 also had an XRF, but other than that. They're
 3 expensive, about \$50,000 with the related equipment, and
 4 so for most companies they would rather rely on the
 5 judgment of the trader of -- for the value of the
 6 minerals they were selling. We did not -- I would say
 7 that he has also made several other conclusions which
 8 are, you know, not based in reality -- not based in
 9 truth. There were detailed samples that HC Starck sent
 10 back to Europe for additional analysis, and as I recall,
 11 and I would have to go back and look at the application,
 12 those were the 115 samples, so it's a bag of 20 kilos
 13 and 115 sent back for that specific purpose.
 14 But they were ongoing -- they were doing ongoing
 15 sampling and the XRF was a Bay View asset, Bay View
 16 Group asset which was being used by NRD, I think, at
 17 that point.
 18 Q. Mr Marshall, if there had been lots and lots of samples,
 19 as you suggest, you would have made that clear in your
 20 application, but you didn't suggest that in your
 21 application, did you?
 22 A. No, I think you're making a mistake about what I thought
 23 was relevant in the application and what you, with 20/20
 24 hindsight, claimed is relevant.
 25 Q. Now, you also supported this application with the

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17:31 1 document we have at C-092 as an indication of your
 2 financial resources, and can we just look at C-092.
 3 A. No, our financial resources was the investment we'd
 4 already made.
 5 Q. They are interested, the government are interested in
 6 what investment you can make going forward in support of
 7 your application for a long-term licence, aren't they?
 8 That's what they're interested in?
 9 A. No, they're interested in whether we're going to be able
 10 to make any investment. Remember, this is a new
 11 application. This is a list of transactions for me as
 12 a professional. It's nothing to do with financial
 13 capability. The investment they're interested in is can
 14 you make any financial investment in Rwanda, and we'd
 15 already made \$20 million in investments.
 16 Q. Well, this might be your answer. Let's just look at
 17 this document. This is what you put in as being
 18 relevant to your application to support the idea that
 19 you had financial resources in order to make you
 20 a worthy applicant for a long-term licence.
 21 Let's look at what this document is. It's headed
 22 "Jillson and Marshall Associates, Counselors at Law".
 23 A. Can you show us the requirement, what provision this is
 24 supposed to be responsive to, because this is not my
 25 memory that this would have been submitted as responsive

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17:32 1 to a question of whether we had financial capability?
 2 Q. Why do you think you submitted it?
 3 A. I don't know that it was submitted.
 4 Q. It was. This is one of the documents you relied on in
 5 support of the application.
 6 A. What does the language say, and then maybe I can give
 7 you an explanation?
 8 Q. It's your explanation and we don't have a description
 9 from you why you're submitting it.
 10 A. What does the government say the requirement was? What
 11 were they asking for?
 12 Q. It doesn't matter. You tell us why --
 13 A. It does matter, because I need to know what you're
 14 claiming I'm responsive to. This is prepared by my
 15 staff, I was not in the country, as you saw from the
 16 meeting on the 16th.
 17 Q. So you say you didn't read the application and the
 18 supporting material?
 19 A. I was not in the country. They were responding to all
 20 of these provisions themselves. Did they make
 21 a mistake? Entirely possible. But I'm asking you what
 22 it says.
 23 Q. You tell us what you think this document is.
 24 A. This is a list of our transactions as a law firm.
 25 Q. Yes. That's what I thought. This is a list of the

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17:33 1 transactions done by -- you've advised on as lawyers;
 2 correct?
 3 A. Yes.
 4 Q. Thank you.
 5 So it wouldn't assist at all, would it, do you
 6 accept -- it may be your answer to this is it wasn't
 7 intended to, but it wouldn't assist at all, would it, on
 8 the question of NRD's financial capacity, or those of
 9 its backers, to execute proposed activities during the
 10 period of a licence; correct?
 11 A. No, we may be unique in that we had already satisfied
 12 this question. It's not what are you going to bring,
 13 it's we already have satisfied that.
 14 Q. So you considered that your application for a long-term
 15 licence was sufficiently satisfied in terms of
 16 resourcing and investment by the historic investment
 17 that had been done; is that right?
 18 A. That's what we were told was the deal.
 19 Q. But that was your position --
 20 A. That was the representations that had been made to us
 21 and the basis on which we invested.
 22 Q. And you were not, then --
 23 A. We're not --
 24 Q. -- attempting to persuade the government that you could
 25 bring anything else to the table for your long-term

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17:34 1 licence beyond the historic investment that had already
 2 been done?
 3 A. We had no ability to talk with anybody about what their
 4 expectations might be over and above what we had already
 5 invested. There was no dialogue. There was no -- all
 6 of these processes are iterative. They're all done on
 7 a colloquial -- collegial basis, we had no chance to
 8 talk to anybody about what was expected in any item on
 9 this list. As I say, I was out of the country at the
 10 time, but I don't even understand why we were having
 11 that discussion. We had an agreement. We had fulfilled
 12 our part of the agreement, and now they're changing the
 13 rules.
 14 Q. Let's go to R-020. This is an evaluation provided of
 15 your application -- that was made of your application by
 16 a license application -- licence evaluation team, and
 17 you can see that at the top of page 1. So it's to the
 18 "Honourable Minister", from "Licence Evaluation Team",
 19 and if you look at the -- just to see who the team are,
 20 if you look at the last page of the document, page 8,
 21 you can see there are four names as being the team. Do
 22 you see that?
 23 A. Yes.
 24 Q. And then were you aware that there had been
 25 an evaluation of your application by a team which made

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17:36 1 a recommendation to the Minister?
 2 A. Of course not.
 3 Q. Can we look at page 7 of the document. This is the
 4 recommendation:
 5 "After all observations seen above, the technical
 6 evaluation team recommends that Natural Resources
 7 Development (NRD) may not be granted five concessions,
 8 namely Nemba, Rutsiro, Giciye, Mara and Sebeya. This is
 9 because NRD did not submit all the requirements
 10 requested, and even those that were submitted are deemed
 11 not satisfactory according to request letter for the
 12 Minister of State in charge of Mining, which requested
 13 NRD to re-apply for some or all former mining areas by
 14 NRD.
 15 "The Evaluation ... team analysed documents
 16 submitted by NRD and the team found that in the
 17 motivation letter for the application of the licence,
 18 NRD Rwanda ltd [did] not indicate which kind of Mining
 19 Concession NRD Rwanda Ltd was willing to operate in, the
 20 type of the licence was also not mentioned according to
 21 the new law. And also the company did not indicate the
 22 licence period it wanted."
 23 And their recommendation was not to grant the
 24 licences; yes? Do you see that?
 25 A. I see the language you're pointing to. This is all new

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17:38 1 government that there is in fact a tax liability; do you
 2 see that?
 3 A. I see the language. It's not correct.
 4 Q. And then we look at the bottom of page 5.
 5 A. This is the first I've seen this document.
 6 THE PRESIDENT: Today? Today? That's the first time you've
 7 seen it?
 8 A. No, I never saw it during this period, sorry.
 9 MR HILL: So you have seen it in preparation for this case,
 10 presumably?
 11 A. In preparation of this case, but not at that time.
 12 I question whether it was contemporaneous. It's
 13 surprising to me, and the reason I say that, it would be
 14 very unusual for the government to prepare this kind of
 15 document without sharing it with the party who is
 16 applying. They ordinarily are very meticulous in going
 17 through each item so they fairly give people a chance to
 18 respond.
 19 Q. Looking onto page 5, there's a section "Requirements of
 20 Mining and Exploration Plan", and in a section which
 21 says:
 22 "Minimum investment commitment on each Mining area".
 23 The answer:
 24 "No. The company did not submit the requested
 25 Minimum investment on each of the mining area ie Nemba,

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17:37 1 to me, and this is the first time I'm aware that they
 2 ever held this kind of evaluation without simultaneously
 3 conferring with people like us who might have been the
 4 recipient of the licence.
 5 Q. And between pages 3 and 6 of the document, if FTI could
 6 go to page 3. What you will see is between pages 3 and
 7 6, the team listed all the items Mr Imena had been
 8 requested to be provided. Perhaps if 3 and 4 could come
 9 up, thank you. In the letter of 18 August, and they
 10 commented on whether they were provided and they made
 11 observations on their content.
 12 So, for example, if you look at the bottom of
 13 page 3, there was "Tax Clearance Certificate from the
 14 Rwanda Revenue Authority", "submitted: no", and then
 15 their observation is that:
 16 "The company is said to have [294] million Rwandan
 17 francs as a tax liability to the Government of Rwanda.
 18 This is according to the audit from
 19 PricewaterhouseCoopers which can be evidenced in the
 20 letter addressed to the commissioner general on
 21 7 December 2010. See page 3 under summary of tax
 22 liabilities. Further consultation can be done with RRA
 23 to know the accurate liability."
 24 So that's just one example of your failure to
 25 provide a tax clearance and the perception by the

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17:40 1 Giciye, Rutsiro, Mara and Sebeya. However in the
 2 document submitted the company shows that it will spend
 3 €382,000 to exploration over the five concessions. From
 4 2011 to 2015. The evaluation team found out that that
 5 this information is not an updated information rather
 6 old one and there is no expenditures allocated to
 7 Mining/exploitation."
 8 And that's a fair analysis of the feasibility study
 9 you submitted, isn't it?
 10 A. No, as a practical matter, the Ministry provides the
 11 applicant with the amount of the expected investment at
 12 each and every location, and the expected amount of
 13 production that would come from the mining.
 14 The reason for that, just so you understand, is that
 15 that's part of a commercially reasonable long-term
 16 concession licence so that there are performance
 17 characteristics, goals, requirements, in the contract
 18 itself, which could lead to termination if you didn't
 19 meet it.
 20 But for us to -- we would never presume, and it's
 21 always been the dialogue in the past: what do you think
 22 this can provide, what do you think is the amount of
 23 investment required. If we hadn't had that conversation
 24 in recent couple of years, then we would have
 25 necessarily gone back to the information that the

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17:41 1 Ministry had provided to us before.
 2 Q. Well, you knew, didn't you, that this was one of the
 3 items on Mr Imena's list, because this report is going
 4 through the list. I'm going to pick up another one. Do
 5 you want to answer that?
 6 A. But my point is that by this process, they've changed
 7 their approach. It's no longer a collegial give and
 8 take about these issues. From what I'm hearing from you
 9 is: he sent you these requirements, you didn't answer,
 10 or you didn't answer in the way that he expected,
 11 therefore you failed. That was never the process in
 12 Rwanda before this time.
 13 Q. Let's go to page 5. Let's go to page 5. You were asked
 14 to provide minimum work commitment on each mining area,
 15 to which their response is:
 16 "No. The company did not submit the information
 17 requested, however the company in its document that seem
 18 to be not updated shows some proposed activity in
 19 research, production, reserve, calculation, processing
 20 environmental mitigation and work safety for the
 21 period [January 2011] to [January 2015]."
 22 And, again, your work proposal hadn't been updated
 23 since the November 2010 application, had it?
 24 A. No, you have the office, you have the documents, I can't
 25 be sure because, again, this is the first time that this

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17:43 1 kind of comment would be made. In fact, I've never
 2 heard of it being made without a consultation with the
 3 applicant.
 4 Q. Then the next bit, a little lower down on the same page,
 5 the penultimate row:
 6 "The financial capacity to support each commitment
 7 with supporting documents to prove such a capacity, for
 8 example a bank guarantee from any financial recognised
 9 institution by the Rwandan Government."
 10 So, again, you're being asked to demonstrate
 11 financial capacity and their answer is no, their
 12 evaluation is:
 13 "No. The company did not submit any kind of proof
 14 for financial capacity to support any of their
 15 activities planned."
 16 That, again, is a fair assessment of the application
 17 you put in, isn't it?
 18 A. No, it's very unfair.
 19 Q. Are you suggesting you did submit proof of your
 20 financial capacity to support the planned activities?
 21 A. Correct me if I am wrong, but this is for all new
 22 applicants, for people they don't know anything about,
 23 not somebody that has invested significant amounts of
 24 money already.
 25 Q. In answer to my question --

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17:44 1 A. So where's the category for what has already been done?
 2 Q. In answer to my question: you did not submit any kind of
 3 proof for financial capacity to support any of the
 4 activities planned, did you?
 5 A. Well, I'm sorry, I don't mean to be rude, but we've
 6 already invested. We've already invested \$20 million,
 7 isn't that proof of financial capacity? Why does it
 8 start from zero? Why does the application suggest that
 9 anything you've done so far is meaningless? Now tell us
 10 what you're going to do and what it means in the future
 11 without even talking to us?
 12 Q. So the answer to my question is in terms of the planned
 13 activities going forward, which is what this document
 14 was supposed to indicate, you did not provide proof of
 15 financial capacity, did you?
 16 A. I have -- we were never asked in that context.
 17 Q. You were asked specifically because it was one of the
 18 items on the list; correct?
 19 A. No. No. No, we were asked do we have the ability to
 20 build out these concessions. We've invested \$20 million
 21 and now we -- we assume that that's to address that
 22 question. What is your financial capacity? \$20 million
 23 this year. What more do you need? Nobody has invested
 24 \$20 million in the industry even since then. I don't
 25 think there are three companies in Rwanda right now with

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17:45 1 more than a million dollars investment.
 2 Q. No, I don't accept that \$20 million figure for a moment
 3 and we have been through that, but now let's look at
 4 what Mr Imena says about your report.
 5 A. Pick a number then. We've already invested. What
 6 you're saying, if you follow the logical conclusion of
 7 your question, what you're saying is everything that's
 8 done doesn't count anymore, it's only about what you're
 9 going to do now. That's a very -- "thank you very much,
 10 you've given that to us".
 11 Q. Mr Imena received this recommendation, can we look at
 12 what he says at paragraph 33 of his witness statement.
 13 And in the second half of that document he refers to the
 14 evaluation by this team and he says:
 15 "They found that NRD had failed to provide numerous
 16 documents that were required of them including a Tax
 17 Clearance Certificate ... a recommendation from the
 18 Rwanda Environmental Management Authority on the status
 19 of the environment at the five concession areas; proof
 20 of financial capacity to support each commitment, ie to
 21 invest and develop the mines; and work plans in relation
 22 to each mining area, ie plans as to what they were
 23 planning at each of the five concession areas and how
 24 they would go about this. These documents were critical
 25 to our evaluation of NRD's application; for example, the

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17:46 1 tax clearance certificate was necessary to demonstrate
 2 that NRD had been paying taxes; and the recommendation
 3 from REMA as to the status of the environment was
 4 critical because we had concerns about environmental
 5 damage occurring at NRD's sites."
 6 And that was a fair evaluation of the flaws or some
 7 of the flaws in your application, isn't it?
 8 A. No, I think you're fundamentally mistaken. First of
 9 all, we could not get anything from the Rwanda Revenue
 10 Authority, they didn't recognise us, for whatever
 11 reasons they had, as the owner. There was no basis on
 12 which we could get them to negotiate anything. Would
 13 not recognise us. We tried.
 14 With regard to the Rwandan Environment Management
 15 Authority, we went there to talk about what regions they
 16 could either do or support, consult, to look at whether
 17 there are environmental challenges that had to be met.
 18 Their official position is, they don't do any work until
 19 a licence is awarded. None, zero. They don't --
 20 they're not going to do speculative work. They say if
 21 you own that licence for that specific area, then yes,
 22 we will come and review it. So we were stymied there,
 23 we had nothing more we could ask.
 24 Q. Mr Marshall, you are again coming up with points which
 25 are a fiction, aren't you?

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17:47 1 A. No, I am afraid your client hasn't informed you of the
 2 full nature of what's going on in Rwanda.
 3 Q. Can we look at paragraph 34?
 4 A. This -- again, this was not presented to us at that
 5 time, so these complaints we had no ability to discuss
 6 with them.
 7 Q. So here Mr Imena says:
 8 "I have seen the document headed 'Selected financial
 9 transactions from 1996' submitted by NRD as part of its
 10 18 September 2014 application allegedly as evidence of
 11 NRD's financial resources. That document contains no
 12 information regarding NRD's financial resources or its
 13 ability to finance the investment and development of the
 14 five concession areas. On the face of it, the document
 15 has no relationship to NRD at all. As evidence of NRD's
 16 financial resources it was completely worthless. The
 17 fact that NRD chose to submit this document as evidence
 18 of its financial resources was further evidence to me
 19 that neither NRD nor Mr Marshall were taking the
 20 application process seriously. I do not believe that
 21 NRD can have been under any doubt as to what was
 22 required."
 23 And that is a fair comment on the list of
 24 transactions by your law firm that you provided, isn't
 25 it?

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17:49 1 A. No, and I think he has entirely misunderstood what we
 2 took to be the principle: that we should be like any new
 3 investor, if you were considering us as a new investor,
 4 that the \$20 million that's already invested be credited
 5 to us. What additional proof do you need of our
 6 financial capability?
 7 Q. Now, just a couple more questions on this area before
 8 I move on, or before we have a break, in fact.
 9 Paragraph 35 of this statement, Mr Imena summarises
 10 his response, that the evaluation team determined that
 11 many of the documents were:
 12 "... unsatisfactory, including the financial
 13 document I have referred to ... and that NRD had
 14 [failed] to provide any tangible document that proved
 15 its financial capacity to develop mines. Accordingly,
 16 by letter dated 28 October 2014, I advised NRD that had
 17 a decision had been made not to grant it any mining
 18 licences, but that NRD had seven days to file an appeal
 19 against this decision. I gave NRD this right to appeal
 20 despite being under no obligation to do so."
 21 And it's right, isn't it, that he gave you
 22 a seven-day opportunity to appeal, despite not being
 23 required to; yes?
 24 A. My understanding from the Minister at that time was that
 25 it was mandatory; that he, as part of due process

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17:50 1 rights, we had the right of appeal, and we took that
 2 opportunity to appeal.
 3 Q. And there has been nothing unfair, has there, in any
 4 part of this process? You were told what you needed to
 5 do, you didn't do it as you were asked to, there was
 6 an evaluation by a team looking at things objectively,
 7 and the Minister accepted the recommendation of his
 8 team; that's fair, isn't it?
 9 A. It's entirely unfair and entirely unreasonable. We
 10 should have been treated exactly the same as all other
 11 large-scale concession holders, and we were not. We
 12 were singled out for this treatment. And the only one
 13 among them singled out for this treatment.
 14 Q. And by the time we get to 28 October, so some time after
 15 you put in the application, when Mr Imena communicates
 16 his refusal, you still hadn't attempted to supplement
 17 the application in any way, had you?
 18 A. I'm sorry?
 19 Q. You hadn't attempted to supplement the application in
 20 any way?
 21 A. I think we submitted additional detail. He knew what he
 22 was doing. He knew that we were not able to get access
 23 to the office, he knew we had no tags, he knew we had no
 24 rights to be able to mine. So this was, in our mind,
 25 a perfect set-up, which is why we continued to rely on

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17:51 1 the advice of the military people who encouraged us to
 2 wait for the internal investigations to play out.
 3 Q. You did submit some very limited additional information,
 4 but that was only in response to a request to do so from
 5 Mr Imena which comes later, and I'm going to come to
 6 that.
 7 I wonder if now is a convenient moment,
 8 Mr President?
 9 THE PRESIDENT: Yes, let's break for 15 minutes.
 10 (5.52 pm)
 11 (A short break)
 12 (6.07 pm)
 13 MR COWLEY: I have a housekeeping issue, Mr President, and
 14 I think Mr Hill, so do you, you may not be informed of
 15 this because it doesn't immediately impact your schedule
 16 with your witnesses, but it impacts the schedule for
 17 questioning our witnesses.
 18 We've been informed by FTI that there are two
 19 packages trying to make their way through customs,
 20 Rwandan customs, one package of materials that are
 21 necessary to participate that holds all of the equipment
 22 for Claimants' witnesses, one package holds all of the
 23 equipment for Respondent's witnesses. Both packages are
 24 still held up in customs, they're not through.
 25 The next witness after re-direct of Mr Marshall is

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18:09 1 Mr Hill, do you think your clients could do their
 2 best to unblock the customs so that this stuff gets
 3 through?
 4 MR HILL: Yes, I hadn't, I am afraid, heard of this at all.
 5 It hadn't got to me. I will take instructions and see
 6 what can be done. I am afraid it's a complete unknown
 7 to me, but I will certainly take instructions and see
 8 what can be done.
 9 THE PRESIDENT: Good. Thank you very much.
 10 MR COWLEY: And just to be clear, I feel defensive here, but
 11 I shouldn't be, but there are so many allegations being
 12 thrown around. I'm not suggesting anybody has done
 13 something wrong, I'm just pointing out what I heard. So
 14 I'm just asking for help, not blaming anybody for the
 15 situation we are all in, I think both packages are in
 16 the same place.
 17 THE PRESIDENT: Yes, understood, and I hadn't inferred any
 18 criticism on your part.
 19 MR HILL: No, nor me.
 20 THE PRESIDENT: Right, let us continue, please, with the
 21 last round of cross-examination for Mr Marshall.
 22 MR WATKINS: Okay, we're bringing the witness in right now.
 23 MR HILL: Mr Marshall, carrying on with the licence
 24 application, we just dealt with Mr Imena's refusal of
 25 your application following a recommendation from his

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18:08 1 completed is Mr Buyskes, and I don't have the schedule
 2 committed to memory, but I think it impacts the next
 3 witness, though they may skip -- I bring it to the
 4 Tribunal's attention not because I think the Tribunal
 5 can solve it, but if there's any ability to suggest that
 6 members of the Respondent who may not already know, but
 7 that assistance may be needed and can probably be
 8 helpfully provided by representatives of the Respondent
 9 to get the packages through.
 10 THE PRESIDENT: This is hardware, is it, to do with the
 11 actual filming?
 12 MR COWLEY: It's the computers and cameras. There's the 360
 13 camera is --
 14 THE PRESIDENT: Yes.
 15 MR COWLEY: So a computer that's connected to the internet,
 16 whether it's FTI's or not, has the capability to link
 17 in, but they don't necessarily have the same capability
 18 to allow FTI to do everything they may need to do to
 19 help people or other things, I'll let FTI explain the
 20 difference between just anybody's computer and theirs.
 21 The one big difference is most people don't have
 22 available to them an equivalent 360-degree camera, that
 23 make-do or workarounds for that might be far more
 24 limited, and those are the two things I know.
 25 THE PRESIDENT: Yes.

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18:11 1 team, and I would like to look at your response to
 2 Mr Imena's refusal, which is at bundle C-165. This is
 3 a letter from you to the Rwandan police; yes? That's
 4 "CG, CID", isn't it?
 5 A. Yes, that's the police.
 6 Q. And it's headed "Formal Complaint Against Apparent
 7 Corruption", and in this letter you are, on its face,
 8 complaining to the police, aren't you, that Mr Imena has
 9 been corrupt?
 10 A. Yes. I haven't read this letter, but I do recall
 11 sending a letter informing the police about Mr Imena's
 12 corruption.
 13 Q. And this is --
 14 A. That's not the only one.
 15 Q. -- this is not stamped and doesn't have the company's
 16 seal, this letter, and I'm just asking you, are you sure
 17 you sent this letter? It seems unclear that you did?
 18 A. I'm sure we sent the letter to the police about his
 19 corruption.
 20 Q. And can we look at the last page of the letter? We can
 21 see that you copied the letter, if you did send it, to
 22 the President, the Prime Minister, other ministers and
 23 the US Ambassador?
 24 A. Yes.
 25 Q. You were seeking to do maximum damage, weren't you, to

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18:13 1 Mr Imena?
 2 A. I don't recall that, but it's possible.
 3 Q. Well, it says CC, and you were seeking to do maximum
 4 damage to Mr Imena, weren't you?
 5 A. No, my objective was to get fair treatment for our
 6 investors and I knew Mr Imena was corrupt.
 7 Q. Let's look at some of the points you make. Can you go
 8 to the first page of your letter. We have this
 9 complaint, and under the complaint you say:
 10 "A. We have lost our mining business through what
 11 appears to be a State 'taking' or nationalisation of our
 12 company's assets, including mining licences ... which
 13 was announced by Minister Evode on 28 October 2014."
 14 So you are describing his notification that your
 15 licence application has been unsuccessful as a State
 16 "taking" or nationalisation of the company's assets,
 17 which is a crime on his part; is that what you're
 18 saying?
 19 A. No, I think you're taking it out of context. I think
 20 the seizure of our business, the closure of our office,
 21 the shifting of an application from one that had already
 22 been in process for a long time to a new one where there
 23 was no communication other than a written response, of
 24 which there was then no follow-up or no discussion, we
 25 saw, to use the vernacular, we thought the fix was in.

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18:16 1 bailiff process, so to me that was corrupt.
 2 Q. You then at E -- and I'm not going to take every point
 3 in this letter, because it's a long letter. Taking up E
 4 you say:
 5 "We have lost millions of USD of income, beginning
 6 more than 5 months ago, because Minister Evode illegally
 7 shut down our business. He shut us down by refusing us
 8 the ITRI 'control tags' which are required by law before
 9 any minerals can be sold. This was illegal and without
 10 due process: we had no hearing, received no notice of
 11 closure, and were repeatedly refused an audience with
 12 Minister Evode."
 13 But, as we've seen, and as you don't explain here,
 14 NRD had no licence, and Mr Imena was also facing
 15 a competing claim; yes?
 16 A. The licence issue as an excuse didn't come up until much
 17 later.
 18 Q. That's not right. Just stop there, Mr Marshall. That's
 19 not right, because we've already been to the meeting
 20 with you at which this was discussed, Mr Imena set out
 21 his position in relation to the licence and that is
 22 before this October letter. We've been to that meeting.
 23 A. You're missing the timeline I'm referring to, I'm sorry.
 24 Q. Well, you carry on.
 25 A. He stopped the tagging in March. The tagging took full

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18:14 1 Q. You are saying, and you're referring to this taking or
 2 nationalisation being announced by Minister Evode on
 3 28 October 2014. That's his letter declining your
 4 application for licences, and you are saying to the
 5 police that this is a corrupt nationalisation of your
 6 assets, aren't you?
 7 A. I was giving the whole context for what had happened and
 8 why we believed it to be corrupt, yes.
 9 Q. And then underneath that, you say:
 10 "There has been systematic stripping of our capital
 11 investment assets by numerous criminal scams, including
 12 Bailiff 'seizure' scams, which the authorities refuse or
 13 are unable to stop."
 14 But again, you had raised that with the Minister of
 15 Justice and he had told you that on investigation that
 16 these are lawful judgments that you should be getting on
 17 and settling; correct?
 18 A. No, no, that wasn't how we understood it. We did have
 19 several meetings with the Minister of Justice. He, at
 20 first, was very sympathetic. We were told that he had
 21 gotten some political guidance and he changed his mind.
 22 The bailiff was, you know, not behaving like a bailiff
 23 should or could. We still had no information about,
 24 other than the Pascal seizure, what any of the seizures
 25 were, no court orders, and he followed none of the

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18:17 1 bite in the beginning of April 2014. And we didn't hear
 2 from him what it was about or why, just he refused.
 3 Then we had a meeting late May, you can tell me what the
 4 date was, where he explained that Ben Benzinge was the
 5 owner of our concessions. So there was no -- as of that
 6 point, there was no discussion about "regularising", as
 7 he called it, licences. Ben was the owner, we were out.
 8 We were losing everything and being told in no uncertain
 9 terms to go home.
 10 So for us this was a very frustrating process. He
 11 did refer to it as a piece of plastic and you should
 12 just continue mining and storing, which was a very hard
 13 concept for him to suggest we should follow.
 14 Q. Contrary to what you say in this letter to the police,
 15 you had had meetings with Minister Evode, hadn't you?
 16 A. Not meaningful ones. We had a meeting with
 17 Minister Evode in March with his lawyer, I mean May,
 18 this is the exciting one where Isaac, formerly our
 19 lawyer, announced that Ben was the owner and the
 20 Minister agreed with him.
 21 Q. Then you had a meeting in September, didn't you?
 22 A. Well, we could have.
 23 Q. We've been to that today.
 24 A. Which was that -- oh, Zuzana had a meeting with him
 25 in September, I'm sorry, I see what you're saying.

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18:18 1 Q. Minister Evode did meet with you, and what you said in
 2 this letter is inaccurate?
 3 A. Look, this is a very small community. Ordinarily we
 4 would have near daily contact with these people. We had
 5 been put out into the cold. No other mining company was
 6 treated this way. We simply didn't know things. We had
 7 to find things from the other mining concession holders
 8 what was going on. In earlier periods, we had simply
 9 stopped by, they would stop by our mine, it was very
 10 collegial. It's a small group trying to solve a handful
 11 of problems.
 12 Q. Let's look at what's then said in item 2 of your
 13 complaint:
 14 "The letter dated 28 October 2014 from
 15 Minister Evode to NRD is drafted to read as if
 16 Minister Evode is merely denying a 'mining licence
 17 application'. Minister Evode has selectively used the
 18 facts to pretend that the relationship between NRD and
 19 the Government of Rwanda is only in respect of
 20 an application for a mining licence. This is not true.
 21 In fact, it appears that because Minister Evode's letter
 22 cancels 'all' relationships, he is 'taking' or
 23 nationalising the NRD business. Minister Evode's letter
 24 does not follow the usual and customary Rwandan
 25 administrative practices."

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18:20 1 Minister Evode's letter, and we can go to it, if you
 2 like, was simply declining your mining licence
 3 application, wasn't it?
 4 A. No, I think in the second paragraph, if you go to it, he
 5 says this letter constitutes something like that,
 6 cancelling of all relationships between NRD and the
 7 Rwanda Government.
 8 Q. Well, you didn't have any relationships beyond your
 9 ability to mine on the concession, did you? That was
 10 the contractual relationships that you had; correct?
 11 A. No. No, of course not.
 12 Q. You had an expired contract and you had expired
 13 licences.
 14 A. We'd been referring to -- we've made endless references
 15 to you about that relationship with the Rwandan
 16 military. We were -- with the closing down of our mines
 17 we shifted over to terrible work and we shifted over to
 18 primarily to working for the Rwandan military and the
 19 Rwandan intelligence services. That's what we were
 20 asked to do and that's what we were happy to do.
 21 Q. Let's look at R-022.
 22 A. This is why we knew about all of the smuggling going on
 23 of the minerals from Congo. This was part of our work,
 24 was understanding how to improve Rwanda's reputation in
 25 the international community. They asked for help on

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18:21 1 acquiring arms. We helped them on acquiring arms. We
 2 don't know what they ultimately purchased, but we set up
 3 relationships they didn't otherwise have.
 4 Q. Can you look at the second page. So this is from the
 5 Ministry of Natural Resources. He says:
 6 "This letter serves also to inform you that the
 7 Ministry has terminated all prior working relations with
 8 your company. Consequently, if no any other contrary
 9 decision is taken within the notification period
 10 mentioned ... you are requested to proceed with the
 11 closure process of mining operations ..."
 12 It's quite clear, isn't it, that what he is
 13 regarding as at an end is your relationships with regard
 14 the concession and the mining. Nothing to do with the
 15 military or anything else, is it?
 16 A. That's not the way we read it.
 17 Q. That's what the letter says.
 18 A. And that's why we asked our colleagues in the military
 19 how we should handle it, and they advised us to raise it
 20 as part of this letter that we prepared at that time.
 21 Q. And this is a complete distortion, isn't it, that you're
 22 putting forward to the police of what has happened in
 23 Minister Evode's letter?
 24 A. No, it's not. It's the truth.
 25 Q. It's a long letter, I can't pick up all of it. Can we

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18:22 1 go to the fourth page of the letter, and I'm going to go
 2 to item G.
 3 MR BRODSKY: I'm sorry, in this same document?
 4 MR HILL: Yes. It's the same -- sorry, I apologise, we're
 5 back in C-165.
 6 MR BRODSKY: Thank you.
 7 MR HILL: Fourth page, item (g) at the bottom. You say:
 8 "There are many instances where Minister Evode
 9 indirectly threatened NRD and its management and owners.
 10 Among these, on (or about) August 14th, 2014, he told
 11 NRD business partner, David Bensusan ... that he 'will
 12 nationalise NRD as a help to MSA' ..."
 13 And then you go on:
 14 "According to Bensusan, Minister Evode separately
 15 told him that he will 'stop NRD from having income,
 16 bankrupt them and take the mining licences'..."
 17 And Mr Bensusan was shocked.
 18 Now, none of that is true, is it?
 19 A. It's absolutely true.
 20 Q. We have Mr Bensusan's evidence on it and he gives
 21 evidence, can we go to paragraph 8 of Mr Bensusan's
 22 witness statement. He says:
 23 "I have been shown a copy of Mr Marshall's letter to
 24 the CID dated 30 October 2014 ..."
 25 And then he quotes the bit I have just read out, and

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18:24 1 then he says at paragraph 9:
 2 "These statements are false. Minister Imena did not
 3 ever make [those] comments to me, and I certainly never
 4 told Mr Marshall that he did."
 5 Then if we go on to paragraph 10:
 6 "Further, the suggestion that Minister Imena would
 7 have made such statements to me is completely
 8 implausible. I met Minister Imena on numerous occasions
 9 through my position at MSA and always found him to be
 10 highly professional. It is simply not credible that he
 11 would have made such statements to me about any mining
 12 company, including NRD."
 13 And the truth is, you have invented this allegation
 14 for the purposes of this letter, haven't you?
 15 A. Absolutely not, and what you're saying is slanderous.
 16 David is not mistaken, he is lying here. David had the
 17 biggest concession comptoir in Rwanda, he was partners
 18 with General James Kabarebe who was the then Minister of
 19 Defence. I met with them on some occasions. Every
 20 weekend they were meeting to talk about bringing
 21 minerals in from Congo. They wanted our mining
 22 concessions. He made repeated proposals to me at
 23 various times, none of them were so that we could get
 24 out. I was terribly worried if we merged with his
 25 company he would squeeze us out and we might not be able

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18:25 1 to pay any of the investors back.
 2 His effort, to use Evode, I would be guessing at,
 3 but I know that he would tell me things when we were
 4 good friends. We found him to be duplicitous, after
 5 several years, it took a long time before we understood
 6 it. We found that his business with General Kabarebe
 7 and moving minerals and pretending that they were of
 8 Rwandan origin was something we could never be part of
 9 anyway, but for us --
 10 Q. Just pausing there, this is yet another person in a very
 11 long list, Mr Marshall, who says something you disagree
 12 with and you immediately launch into accusations of
 13 criminality; yes?
 14 A. No. We and several other investors in the Rwanda mining
 15 community went to his parent company, Cronimet, a German
 16 company owned by the Pilarski family. We all shared
 17 information on the duplicitousness and he would do
 18 things like he would change the internal computer in the
 19 Niton so that he would get a different reading and
 20 therefore didn't have to pay the miners the full amount
 21 due to them.
 22 Q. Mr Marshall, you are simply digressing into a series of
 23 allegations you have never made before which are not
 24 true and are simply illustrating your propensity to slur
 25 anyone who you disagree with.

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18:26 1 A. They fired him. They closed the business. They left
 2 the country. He was the biggest exporter at over
 3 \$150 million a year and they closed the company because
 4 of his corruption.
 5 Q. Let's go on in the letter to item 3:
 6 "Minister Evode has also apparently conspired with
 7 others to harass and intimidate NRD management and
 8 investors ..."
 9 And you are suggesting in these paragraphs that
 10 Minister Evode has conspired, criminally conspired with
 11 Ben Benzinge, and that's the representation you are
 12 making to the police, isn't it?
 13 A. I believe that there was a criminal conspiracy to harm
 14 NRD, when Ben Benzinge had no valid claim to owning 100%
 15 of the company, and yet he was treated like a 100% owner
 16 of the company.
 17 Q. You had no justification at all, did you, for the
 18 allegation to the police that Mr Imena had criminally
 19 conspired with Mr Benzinge.
 20 A. That was the only explanation I could see for what was
 21 happening to us.
 22 Q. Mr Imena, as he explained to you, was faced with a claim
 23 from Mr Benzinge; yes?
 24 A. But the claim was that he be recognised as a 0.2%
 25 shareholder; not that he be given ownership of 100% of

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18:28 1 the company.
 2 Q. Mr Imena was faced with a claim from Mr Benzinge that he
 3 was entitled to represent the company and you were not,
 4 and that claim accorded with the Supreme Court judgment
 5 that Mr Benzinge had; correct?
 6 A. No. You're misreading it. He -- the arbitrator said
 7 that Ben Benzinge shall be appointed the managing
 8 director. We went to the commercial registry and the
 9 commercial registrar, legal counsel, gave us advice:
 10 fine, they can effect that for the 20 seconds of that
 11 day, and then the owners of the company will remove him.
 12 Q. Now, I'm not accepting the evidence that you just gave,
 13 but leaving all that aside, Mr Imena, from his
 14 perspective, was faced with a claim from Mr Benzinge who
 15 was holding a Supreme Court judgment that validated his
 16 claim, and you knew that when you wrote this letter?
 17 A. Nobody interpreted the judgment to read that way. The
 18 arbitration judgment, in operable language, said
 19 "I don't understand what Mr Marshall is doing here",
 20 not: "he's not the owner". She said "I don't know what
 21 he's doing here". A very different concept. And
 22 Mr Evode in his wisdom decided that meant that Ben was
 23 the owner of the entire company. That's the basis of
 24 their claim.
 25 Q. He did not. He never said to you that he decided that

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18:29 1 Ben was the owner of the company. He was facing a claim
 2 and he regarded there as being management issues that
 3 needed to be resolved before he would issue tags.
 4 A. No.
 5 Q. And you had no basis whatsoever, did you, for your
 6 allegation of criminal conspiracy?
 7 A. No, you're being mean-spirited. Other concession
 8 holders had internal disputes too; ours was the only one
 9 where the Minister took a side in it and dispossessed us
 10 from both our offices and our concessions. Those
 11 decisions cannot be made without his authority.
 12 Q. Now let's look at (c) in this, down at the bottom of the
 13 page:
 14 "Minister Evode has refused to give 'control tags'
 15 to NRD because, according to him, the ownership of NRD
 16 is in what he says is a 'dispute'. He has not provided
 17 any evidence of that so-called 'dispute' other than by
 18 repeating Benzinge's unsubstantiated allegations."
 19 Now, what you describe as the unsubstantiated
 20 allegations are, in fact, an award from an arbitrator
 21 backed by judgment from the Supreme Court; correct?
 22 A. That's not what the award says, which is where you're
 23 misreading this.
 24 Q. And this is a distortion of the position which you are
 25 giving to the police, isn't it?

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18:32 1 say that Mr Bosco was enforcing on judgments which were
 2 fully satisfied?
 3 A. Yes, it is.
 4 Q. This was a point which was taken up in a meeting, wasn't
 5 it, by the police and Mr Bosco and Ms Mruskovicova, and
 6 she declined to provide any substantiation for this
 7 assertion?
 8 A. I'm sorry, you've got it backwards. It's the bailiff
 9 that has to be able to substantiate what the claim is.
 10 Q. No, he --
 11 A. We never got a document from the bailiff showing what
 12 the orders were or on what basis he could make the
 13 claim, never.
 14 Q. Mr Marshall, you have it the wrong way around. The
 15 bailiff had valid claims. You complained to the
 16 Minister of Justice who told you to pay up on the valid
 17 claims. Your next line of defence which was raised at a
 18 meeting with the police attending was that somehow these
 19 claims had already been paid off and you were asked to
 20 provide substantiation for that and you did not do so,
 21 and that's the correct position, isn't it?
 22 A. You can ask Zuzana, I think some of the names were
 23 recognised. We never got orders from the court to say
 24 what those claims were, never. I'm repeating myself 100
 25 times and I apologise for it, but you're missing the

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18:30 1 A. No, the reason they gave it back to us in August 22 was
 2 because they said: yes, you are the owner.
 3 Q. Now, let's go to item 4.
 4 A. It was only Minister Evode who was claiming, along with
 5 Bailiff Bosco, that Ben was the owner.
 6 Q. Let's go to item 4:
 7 "In addition to the evident malfeasance by
 8 Minister Evode, other State officials have apparently
 9 'targeted' us and are victimising NRD. It would appear
 10 that Minister Evode's harassment of NRD and its
 11 management and investors has 'emboldened' others to
 12 attack NRD and its assets.
 13 "Most prominent amongst these is State Court Bailiff
 14 Jean Bosco Nsengiyuma, who has committed several crimes
 15 against NRD but who is apparently 'protected' by the
 16 police and other State authorities."
 17 You then go on and say that:
 18 "Last Friday we were informed by Metropolitan Police
 19 authorities that the Court Bailiff, Jean Bosco, has
 20 announced to them that he will begin auctioning more NRD
 21 assets to collect (approximately) \$82,000 in alleged
 22 court judgments. And yet these are the same Court
 23 Judgments which he has already executed upon and fully
 24 satisfied."
 25 Now, this was a point -- it was not true, was it, to

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18:33 1 point. We don't know what those claims were. We
 2 recognised some of the names and we sat down with some
 3 of the people, not me, but Zuzana, and please ask her.
 4 We don't know.
 5 Q. This letter of yours contains a series of extreme and
 6 unsubstantiated criminal allegations against Mr Imena,
 7 doesn't it?
 8 A. No, these are all factual.
 9 Q. And do you consider this the kind of behaviour for a
 10 realistic professional applicant for a long-term mining
 11 licence?
 12 A. No, we were being dispossessed of everything. They were
 13 taking it from us. They've stripped Nemba from \$800,000
 14 worth of property without legal process, with a
 15 so-called legal process but which was not a valid legal
 16 process. There was never an accounting. Nobody ever
 17 was coming to us to explain where the equipment or
 18 minerals went that were stolen or the damages that were
 19 done or how we were going to be compensated. It was as
 20 if we stopped existing.
 21 Q. Now, on the Respondent's side we don't accept for
 22 a moment you have any valid claims at all, but if you
 23 did consider you had claims to have been expropriated or
 24 harshly treated, in contradiction to the treaty, it's
 25 quite clear from this letter that that was all apparent

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18:34 1 to you at that point; yes?
 2 A. That was --
 3 Q. You're complaining vociferously about what you describe
 4 as your mistreatment, so the claims that you now pursue
 5 in this arbitration were all apparent to you at this
 6 point, weren't they?
 7 A. Were all apparent?
 8 Q. Were apparent to you at this point: you were aware of
 9 the points that you now advance as claims in this
 10 arbitration. We can see it from a letter, because you
 11 are --
 12 A. I'm sorry, please ask the question a different way.
 13 Q. You were aware --
 14 A. Yes.
 15 Q. -- you were aware of the matters that you now complain
 16 about in this arbitration, because you are complaining
 17 about them in this letter. So you were already fully
 18 aware of this proposition that you had been expropriated
 19 by virtue of being declined licences, you were aware of
 20 the suggestion you've been expropriated by or harshly
 21 treated by reference to Mr Benzinge's actions and
 22 Mr Bosco's actions, it's all there in this letter, isn't
 23 it?
 24 A. No, I disagree. You know, we wanted to be able to do
 25 the right thing. We had a great relationship with the

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18:35 1 Rwanda military, they were very enthusiastic and
 2 conveyed to us how much they valued our services.
 3 They, in the Rwanda cultural hierarchy, are far
 4 higher than anything to do with the Ministry or whatever
 5 petty corruption was going on there. They were
 6 instructing me to wait and be patient. I was addressing
 7 here concrete examples of crimes which had been
 8 committed against us, and our disappointment that the
 9 police had not taken action in what was clearly theft,
 10 no more.
 11 Q. Now let's go to C-086.
 12 A. Under the colour of law, but theft.
 13 Q. Let's go to C-086. This is your next letter to
 14 Mr Imena, which contains your appeal, and re-application
 15 for a licence. Just underneath the italicised part:
 16 "After giving us only 2 days to prepare the
 17 so-called 'application', we expected inquiries from your
 18 office as well as additional communications -- and not
 19 a termination letter. We take the opportunity of seven
 20 days to lodge this appeal against your decision."
 21 Now, it's not true, is it, to say you were only
 22 given two days; you were given 30 days to make this
 23 application?
 24 A. Yes, well, you are sort of right. The letter came but
 25 it was a form letter that we understood was being sent

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18:37 1 to everybody. We had assumed that it was not applicable
 2 to us because our offices were closed and that -- as
 3 were our concessions. So we were already out of
 4 business. We assumed that this letter was a mass
 5 mailing and not specifically addressed to us, but we did
 6 take the step of setting up a meeting with Minister
 7 Biruta who had just taken on his functions roughly
 8 a week before, and this was the first day we could speak
 9 to him. Evode was not willing to speak to us at this
 10 time. We got that meeting two days -- because of his
 11 availability, two days before it was due, but you're
 12 right, the mass mailing came out 30 days before the
 13 18th.
 14 Q. Go to the next page. You talk about another company
 15 being given two years, but by this point you hadn't had
 16 a licence, had you, since October 2012, so you have been
 17 out of licence for more than two years; correct?
 18 A. They were in exactly the same position: they had been
 19 out of a licence for two years as well. This is Rutongo
 20 I'm referring to.
 21 Q. You had been out of licence for two years since your
 22 licence had expired in October 2012; yes?
 23 A. And they had been the same.
 24 Q. And you had not made any application at all in that
 25 licence period until this licence application; correct?

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18:38 1 A. This is a new argument that started much later. When we
 2 submitted the application, it was by far the best, we
 3 saw the other applications, we knew --
 4 Q. That's just not right, is it? We'll come onto Rutongo
 5 a little later, but the reality is that Rutongo were in
 6 a completely different position and that they had a well
 7 advanced licence application which had already been
 8 favourably received by the government, entirely
 9 different from you who had no licence application on
 10 foot until you launched this one in the autumn of 2014.
 11 A. You are being casual about your terms. Their licences,
 12 by your standard, expired the same time ours did.
 13 I don't agree that they expired at all, but the
 14 four-year period ended about the same time that ours
 15 did. They had two side-by-side applications, Rutongo
 16 and Tinco -- ETI, sorry.
 17 Q. Don't worry, we're going to come to it because we have
 18 evidence from Mr Imena explaining what happened at
 19 Rutongo so I can show you exactly what happened.
 20 MR COWLEY: Mr President, I would ask, the question was put
 21 to him challenging him to disagree with Rutongo was in
 22 a much better situation.
 23 Now, when he tried to answer that, cutting him off
 24 as if that's not responsive and moving on is not fair.
 25 I would suggest the path forward is either to withdraw

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18:40 1 the question he asked, or to let him answer the question
 2 he asked, but not to just say he's done answering it and
 3 move on.
 4 MR HILL: I don't mind if Mr Marshall wants to continue the
 5 answer now, but we are coming back to this topic later,
 6 so I hope he doesn't repeat it later.
 7 A. You made the point that somehow you think Rutongo or
 8 ETI, which is Nyakabingo, were somehow in a different
 9 position. They were in exactly the same position we
 10 were. Both of them were under long-term negotiation at
 11 this point. They'd been talking about them for two
 12 years.
 13 But the terms of those licences were essentially
 14 identical to ours, they were four-year agreements, they
 15 had that four-year period, and I'm not agreeing it's at
 16 termination, but that four-year period had ended
 17 two years before.
 18 They were being treated as a negotiation partner,
 19 the negotiations were ongoing, and we had no chance to
 20 negotiate our agreement, much less the two agreements
 21 that they were negotiating side-by-side.
 22 Q. Rutongo had 20 times your production levels, didn't
 23 they?
 24 A. I don't know that.
 25 Q. Well, there is a document from you that confirms exactly

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18:41 1 that. Do you want me to show it to you?
 2 A. Yes, please.
 3 Q. Go to R-107.
 4 A. What am I looking for?
 5 Q. Just give me one moment. (Pause).
 6 I'll come back to that question. I said I would
 7 deal with Rutongo later, and I will.
 8 No, let's go back to the letter we were on. So
 9 we're in C-086, second page. And under "Prior
 10 negotiations" you say:
 11 "Note that NRD submitted the application for a long
 12 term mining licence in 2010 and had to wait for 4 years
 13 for this so-called 'opportunity' to 're-apply'."
 14 Now, that is simply not correct, is it, because you
 15 had been invited specifically to re-apply and you could
 16 have re-applied at any point prior to now?
 17 A. No. Those forms were not created until that time when
 18 they requested the information. There was no process
 19 before this, I think you're mistaken. You need to go
 20 back and talk to your client. I'm certain about that.
 21 Q. Well, Mr Marshall, the difficulty with that is you did
 22 make an application, a very defective one,
 23 in January 2013, didn't you?
 24 A. Whatever application process we adhered to was at their
 25 instruction.

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18:43 1 Q. You knew you could re-apply?
 2 A. You started this question by saying we did not do
 3 something which we ought to have done, and my point to
 4 you is we were following all instructions at all times.
 5 Q. You knew you could re-apply because you had an attempt
 6 at re-applying in January 2013, which was the nine-pager
 7 that we looked at; correct?
 8 A. No, we follow the instructions of the Ministry. If the
 9 Ministry calls up and says: we need an application,
 10 which says X, Y, Z, that's what we put together. It's
 11 not a question of our taking the initiative or not.
 12 That's not the way the system works. They come to us
 13 and say this is what you need to do now.
 14 Q. And you had been specifically asked to re-apply by
 15 Mr Imena at the end of -- in late 2013, and you hadn't
 16 done so; correct?
 17 A. I don't know what you're talking about.
 18 Q. We looked at the meeting minute of the meeting in which
 19 he asked you to re-apply.
 20 A. I think I specifically told you that that meeting did
 21 not cover that topic. 100%, I'm quite certain he did
 22 not ask us to re-apply at that meeting.
 23 Q. It is entirely wrong to say you have had to wait four
 24 years --
 25 A. You're creating an assumption based on something that

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18:44 1 I disagreed with before.
 2 Q. It's entirely wrong, isn't it, to say you had to wait
 3 four years for an opportunity to re-apply for licences?
 4 A. We had applied in 2010. We were waiting for the
 5 negotiation which was ongoing for Rutongo. Why was
 6 Rutongo given the opportunity to negotiate the long-term
 7 agreement and instead we have to so-called re-apply.
 8 Why didn't Rutongo have to re-apply, or Nyakabingo, or
 9 any of the others?
 10 Q. Let's go to the next page.
 11 A. We were treated like we had just arrived and they didn't
 12 know anything about it and it was very unfair.
 13 Q. Let's go to the next page, first bullet.
 14 A. (overspeaking) it was an excuse to be able to set us up
 15 for taking our assets. That's the bottom line here.
 16 It's not like neutral: okay, you can't invest here,
 17 fine, you can go home. No, we've already invested and
 18 they're trying to take it, and it was very upsetting.
 19 Q. That's the point we are about to come to. Top of this
 20 page, this bullet:
 21 "Our investors invested over US\$20 million of new
 22 invested money (not reinvested from operational cash
 23 flows)."
 24 Now, that is a representation that there has been
 25 \$20 million of new invested money, and that is simply

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18:46 1 incorrect, isn't it?
 2 A. Well, I think you need to, as you said, you are going to
 3 bifurcate this process, and then you'll know that.
 4 Q. We already have looked at that \$20 million?
 5 A. You keep announcing that it's untrue. I haven't
 6 conceded that point.
 7 Q. That \$20 million figure is the figure in dollar
 8 conversion that we've already looked at?
 9 A. No, it is not a figure we've already looked at --
 10 Q. It's the lion's share of --
 11 A. -- we have not already agreed. We contributed from NRD,
 12 I mean they (inaudible) to NRD. We already had the
 13 investment which was made by HC Starck, and we intend to
 14 be able to show you that that is the money. But you --
 15 Q. Now, the lion's share -- just listen to my question.
 16 A. -- (overspeaking) process and bifurcated from this.
 17 Q. If you listen to my question. The lion's share of that
 18 money, as we saw earlier in this cross-examination, came
 19 in from HC Starck, and even that money, there's no basis
 20 for saying it's new invested money as opposed to
 21 re-investment from operational cash flows; correct? We
 22 talked about that earlier?
 23 A. No, without going through that research I can't tell you
 24 that.
 25 Q. And then the other --

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18:48 1 A. No, it's not an invention. Is there a mistake? I doubt
 2 it, but you have to be able to let us go through that
 3 process.
 4 Q. Can someone pull up your skeleton argument --
 5 A. (Overspeaking) conclusions and then accuse me of being
 6 a liar and that's just slanderous.
 7 Q. Let's have a look at your own side's pre-hearing brief,
 8 for this arbitration, at paragraph 9. What's said in
 9 this paragraph in the second half after explaining about
 10 investments:
 11 "Most of this investment came from retained
 12 earnings."
 13 So your own position is that such investment as you
 14 did provide mostly came from retained earnings; correct?
 15 A. I can't comment on it without going through the
 16 exercise. I don't know.
 17 Q. And what was put in this letter in response to
 18 Minister Imena was simply untrue, wasn't it?
 19 A. No, and it's slanderous for you to say it's untrue.
 20 There was significant investment. What that number was
 21 I cannot précis, and we won't be able to précis until we
 22 go through that exercise.
 23 Q. And just staying with that letter, can we look at the
 24 next paragraph? We're back to the letter.
 25 A. If I may draw an example for you. I don't know of one

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18:47 1 A. (overspeaking).
 2 Q. -- smaller portion of the \$20 million is the estimated
 3 €6 million that you put in, in square brackets, as
 4 foreign consultants and engineering fees, and you got
 5 no -- and two points about that: first, that money was
 6 not invested at all; secondly, it certainly wasn't
 7 invested as net new money, was it?
 8 A. Well, I appreciate that you are raising issues for the
 9 Government of Rwanda. The Government of Rwanda came,
 10 they saw our books, they saw our investments, and they
 11 never objected, and I wish you would give us the chance
 12 to be able to go through those amounts and be able to
 13 demonstrate what that number was, but I understand it's
 14 a bifurcated process so we can do it then, or whatever
 15 you suggest, but for me, this is a question of being
 16 able to show that information, not reach it on
 17 a conclusory basis.
 18 Q. You have made in your correspondence along the way
 19 a number of allegations about the \$20 million
 20 investment. Not until this point did you ever suggest
 21 that this was \$20 million of new invested money not
 22 reinvested from operational cash flows; correct?
 23 A. No. I can't tell you the answer to that information
 24 without going through that exercise.
 25 Q. That is an invention, isn't it, on your part?

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18:50 1 other company other than Rutongo who invested \$1, any
 2 money. Maybe Musha Piran maybe has invested \$1 million
 3 or \$2 million, I don't know it, but I don't know any
 4 other mining company who has invested at all at this
 5 point. All those that have invested for their own
 6 reasons have left.
 7 Q. So FTI, we're C-086, and now going to the next
 8 paragraph. So I was just looking at -- yes, sorry,
 9 we're on the next -- oh no, sorry, that's right.
 10 Underneath that. Sorry, just give me one moment.
 11 Yes, can you go to the next page, please. Yes, this
 12 was the paragraph we were on. Thank you. You then say:
 13 "And last but not least -- we have existing
 14 agreements beginning in 2006, later amended and added
 15 to, which created the base for our large investment and
 16 for the future long term mining licence. We fully
 17 performed under these contracts and have a right to
 18 a long term mining licence. You make no mention of
 19 these agreements except to announce that they are
 20 'terminated'. Your termination, of course, is a breach
 21 of those agreements in violation of the Bilateral
 22 Investment Treaty ..."
 23 And you regarded at that stage Rwanda's actions as
 24 being a breach of the bilateral agreement treaty, do
 25 you?

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18:51 1 A. I'm making an argument, you know, for me. For them to
2 say that you now have to go home and you have to leave
3 your assets behind, that has a practical monetary result
4 for us. So, you know, if that's what they were going to
5 do, and that's what I was afraid they were going to do,
6 I wanted to alert them that there would be other people
7 looking at this, and hopefully somebody would review it
8 and at least encourage them to behave properly.
9 Q. That was on 1st November. You wrote another letter on
10 5th November, which we have at C-171, to
11 Minister Biruta. Let's look at that. And you say in
12 the first paragraph you've been.
13 "... victimised..."
14 A. Yes.
15 Q. "... by the acts of Minister of State Evode Imena and we
16 ask that you intervene..."
17 A. Yes.
18 Q. Then two paragraphs down you say:
19 "... Minister of State for Mining Evode has
20 maliciously targeted NRD..."
21 A. Yes.
22 Q. Then in the next line you refer to "abuse of powers"?
23 A. Yes.
24 Q. Then you have in this letter a list of accusations
25 against Mr Imena.

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18:54 1 Q. Let's look at item 8.
2 A. Sorry, it also begs the question of why he stopped us
3 from tagging if there was an investment dispute. The
4 tagging goes to the business, not to the individuals.
5 Q. Item 8.
6 A. Why would he stop the company being tagged if it was
7 a person-to-person or a group-to-group dispute? It made
8 no sense to us. That's --
9 Q. It does make sense because you have different people
10 claiming to be in control of the company. Now let's go
11 to item 8. Minister Evode --
12 A. You're misunderstanding the ITRI rules. The ITRI rules
13 are that the tags are issued to companies, companies
14 function -- if there is an internal dispute within the
15 company, that's not an ITRI issue.
16 Q. Let's go to item 8.
17 A. No ITRI participant was ever cancelled for that reason
18 other than us.
19 Q. Let's go to item 8:
20 "Minister Evode demanded a 're-application' from us
21 for all of the NRD mining areas and maliciously violated
22 normal Rwanda administrative procedures:
23 "(a) Minister Evode refuses to acknowledge ... that
24 agreements exist between the Government of Rwanda and
25 NRD dating back to 2006 ..."

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18:53 1 A. Yes.
2 Q. And if we look at item 2, for instance, you say:
3 "NRD has been out of business since that time. We
4 have repeatedly asked Minister Evode to allow NRD to
5 resume business but Minister Evode has refused, arguing
6 that there is a 'dispute' about the ownership of NRD...
7 please note that the so-called 'dispute' is only
8 recognised by Minister Evode himself."
9 And again, as in other letters, ignoring the fact
10 that Mr Benzinge was confronting Mr Imena with an
11 arbitration award and a Supreme Court judgment; correct?
12 A. Yes, but you're again assuming what that judgment says,
13 you're not going into the detail of whether that
14 judgment means anything. For the arbitrator to say:
15 I don't know what Rod Marshall is doing here, and that
16 to be interpreted by Benzinge and only Minister Evode as
17 meaning Rod Marshall is no longer a shareholder but
18 Benzinge is the sole remaining shareholder, is not
19 a fair reading of that judgment. And for me that --
20 I fully agree that these are very emotional terms, but
21 we were facing losing everything, and I was very
22 emotional, but my point being that there's no way you
23 could read that arbitration decision and say: Rod
24 Marshall and his investors are not the owners, it's
25 Ben Benzinge.

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18:56 1 Do you see that?
2 A. Yes.
3 Q. Now, that agreement was no longer extant and you had not
4 met your obligations under it; correct?
5 A. It was fully executory; correct?
6 Q. No, that agreement was defunct because you had failed to
7 meet your obligations under it?
8 A. We had fully performed and we were waiting for the
9 negotiation for the language of the commercially
10 reasonable long-term licence.
11 Q. Item (b) in your complaint to Minister Biruta:
12 "(b) Minister Evode insisted that we 're-apply' for
13 the mining licences on 2-days notice ..."
14 That's simply incorrect, isn't it? He gave you 30
15 days' notice to apply?
16 A. We assumed that it did not apply to us for all the
17 reasons I've already given you. We had two days in
18 which to reply when we were told that yes, you have to
19 reply despite the fact you don't have access to your
20 files --
21 Q. This is what you were putting forward to another
22 minister, incorrectly, as evidence of corruption on the
23 part of Minister Evode; correct?
24 A. No, I think it's absolutely correct: Minister Evode
25 would not meet with us, period.

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18:57 1 Q. Could you look at now C-098 --
 2 A. Until two days before.
 3 Q. Let's look at C-098. This is the response from
 4 Minister Biruta:
 5 "Reference is made to your letter of 5 November 2014
 6 requesting for urgent help in connection with your
 7 company being victimised and seeking for my
 8 intervention.
 9 "Recalling different open dialogues the Ministry had
 10 with you where you raised issues concerning your company
 11 of re-application process for the expired mining
 12 licence; the Ministry advised that you don't personalise
 13 issues but rather comply with the mining law
 14 requirements.
 15 "Therefore, the Ministry takes this opportunity to
 16 clarify that (1) Minister of State Evode Imena made
 17 decisions on behalf of the Ministry and in his capacity
 18 as State representative in charge of mining industry
 19 developments in Rwanda; (2) the services you requested
 20 cannot be accessed without a valid mining licence; (3)
 21 you have gone beyond your boundaries to raise serious
 22 baseless allegations against the Minister of State and
 23 this is unacceptable.
 24 "In this case, you are hereby requested to respect
 25 the Government of Rwanda institutions and comply with

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18:59 1 A. They didn't -- you were too quick for me. Can you
 2 scroll up?
 3 Q. I just read the second paragraph.
 4 A. I understand. November 12th, 2014. And who is it from?
 5 Q. This is from the Ministry of Natural Resources to you.
 6 A. I understand, but who, particularly? Is this from
 7 Minister Imena?
 8 Q. This is from Imena, yes. So the first point he is
 9 making is that, contrary to the suggestion in your
 10 letter --
 11 A. We disagreed, it's clear.
 12 Q. Now, the next point, if you go over the page, and in
 13 fact if FTI could get up that second page, and also the
 14 third page of the document, the next page of the
 15 document, you can see that the Ministry gave you a list
 16 of the missing documents and gave you an express
 17 opportunity to improve your application; yes?
 18 A. Yes.
 19 Q. So, again --
 20 A. But we didn't see it as a question of improving
 21 an application when we were being treated differently
 22 from everybody else --
 23 Q. Again, fair --
 24 A. -- we could not (overspeaking) the process continue.
 25 Q. Fair and transparent and more than they were required to

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18:58 1 the mining laws as other operators in the mining sector
 2 do.
 3 "Once again, your company is requested to comply
 4 with the mining laws and regulations and go ahead to
 5 submit the documents required for mining licence
 6 re-application process being mindful of the specified
 7 timeframe."
 8 And that is an entirely fair response, isn't it, to
 9 your (overspeaking)?
 10 A. No, that's entirely unfair and ignoring all the issues
 11 we were presenting to him.
 12 Q. Now can we go to bundle C-087. This is a letter to you
 13 on 12 November 2014 from the Ministry in response to
 14 your letter to them that we've looked at, and I'm going
 15 to read the second paragraph:
 16 "As stated in your letters, I would like to clarify
 17 that the terms of the above mentioned contract did not
 18 give NRD the rights to obtain an automatic and exclusive
 19 right for long term mining licences. However, as
 20 specified in Articles 4 and 5 of the contract; granting
 21 of mining licence is subject to a positive evaluation of
 22 the submitted feasibility study, and fulfilment of
 23 obligations under the article 2 of this contract."
 24 So they were reminding you, correctly, that there
 25 was no automatic right to long-term licences; yes?

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19:01 1 do given you had made a defective application.
 2 A. Not fair, not transparent, we were being treated
 3 distinctly differently from all other concession
 4 holders.
 5 Q. Now let's go --
 6 A. We were the only ones being asked to provide this
 7 additional detail as if they had never met us before.
 8 Q. Let's look at the letter you wrote two days later in
 9 response to this. This is R-214. This is a letter
 10 you're now writing to the President of Rwanda.
 11 A. Yes, I don't think this letter was sent. This letter
 12 was contemporaneous, but I don't think this letter was
 13 sent.
 14 Q. Well, it may not be, it's not signed. You're suggesting
 15 this one was not sent? (overspeaking) wasn't signed?
 16 A. (overspeaking) I would have written -- it was
 17 contemporaneous, I'm sure, I do remember writing it, but
 18 we were very reluctant on what to write to the Minister
 19 so I don't know that I sent this letter. We don't have
 20 any document -- particularly with the President's office
 21 we would certainly have gotten a stamp and that makes me
 22 think I was just blowing off steam on this letter.
 23 Q. In that case I won't take time on it. Let's go to
 24 C-088. This is your letter providing further
 25 information to Mr Imena.

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19:02 1 A. Yes.
 2 Q. And we've been told at paragraph 88 what the totality of
 3 the package of information you provided to Mr Imena was.
 4 So we've already looked at C-085, which was the 2014
 5 feasibility study update. We've looked at C-092, which
 6 was your Jillson and Marshall transaction document, and
 7 in addition to that, there was a company corporate
 8 social responsibility plan, a CSI plan, and there was
 9 an environmental impact study.
 10 Now, that was the material that you provided by way
 11 of totality by this stage, and that's clear from your
 12 own side's Memorial.
 13 Now, we're now going to ask you to go to C-095,
 14 which is the letter from Mr Imena in December 2014,
 15 following a further review of the material. And he
 16 tells you that the material is still insufficient, and
 17 if we look at the second paragraph he says:
 18 "[Based] on the documents you submitted and on
 19 explanations you gave and considering the requirements
 20 of the Law ... we would like to inform you that there
 21 are important information and documents which were
 22 either lacking or for which you did not submit complete
 23 information and yet they are the minimum requirement for
 24 any further step."
 25 And then he says:
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19:03 1 "The missing documents are into two categories: (1)
 2 proofs of your company's capacity to develop the
 3 concessions; and (2) Detailed plans for the period of
 4 the licence being applied for."
 5 And then he goes on and asks you to provide "in the
 6 nature and form mentioned, the following", and he gives
 7 you a list of what is missing. If we can scroll down:
 8 "Clear evidence of NRD Rwanda ... financial
 9 viability from supporting bank(s) or any other reputable
 10 financial institution(s);
 11 "Financial statements of NRD Rwanda Ltd's and
 12 financial statements of NRD's parent company(ies), or
 13 financial statement of the company(ies) owning NRD's
 14 parent company;
 15 "Any tangible documented proof showing the current
 16 financial viability of either NRD's parent company of
 17 the parent of its parent company;
 18 "A tax clearance certificate issued by Rwanda
 19 Revenue Authority.
 20 "You are also requested to provide, separately for
 21 each concession, the following:
 22 "Detailed proposals with clear timeframe for work
 23 plans and business plans for the period of the licence
 24 being applied for. The planned activities and
 25 investments needed shall be detailed enough."
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19:05 1 Can we scroll down, please, FTI:
 2 "It is [also] important to note that only will be
 3 considered valid the proofs of financial statements and
 4 viability for NRD Rwanda, its parent company(ies) and
 5 the parent of its parent company(ies) if they are
 6 companies duly recognised in the certificate of company
 7 registration issued by [RWB].
 8 "All the documents mentioned above should not
 9 submitted not later than January 16 ...
 10 "Please be also informed that it is of concern and
 11 it doesn't help at all to say that 'Rutsiro plant is
 12 operational and that it is the most successful design of
 13 its kind in Rwanda and that it is designed to serve all
 14 NRD's Western concessions' when it is known and obvious
 15 that the plant barely worked in the several years it has
 16 been in place."
 17 So all of this is a fair and transparent approach,
 18 isn't it?
 19 A. No, I would say it is slanderous, manipulative, if they
 20 had given us our office back -- we knew we couldn't
 21 respond to many of these questions, and we didn't even
 22 understand the point of it.
 23 Q. He has identified --
 24 A. Why were we singled out for this kind of treatment and
 25 why did they double down -- why not just give us our
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19:06 1 office back and then see what we could produce.
 2 Q. He has identified genuine gaps in the material you have
 3 provided and given you an opportunity to remedy it,
 4 hasn't he?
 5 A. No. You take away our office, you say: look, if you
 6 happen to have it at your home we can use the material
 7 that you have at your home, then you can apply,
 8 otherwise, I'm sorry, too bad, you don't deserve to have
 9 your office back and be able to supply a meaningful
 10 application, much less the fact that nobody else among
 11 the concession holders had to provide these kinds of
 12 materials, nobody, not one.
 13 Q. You didn't need your office to be able to give financial
 14 information of the backers and the parent of NRD, did
 15 you?
 16 A. Yes, we do.
 17 Q. No, you don't, Mr Marshall, because it's you and your --
 18 A. How can you possibly presume to know what's in our
 19 office or not?
 20 Q. Because it's you and your investors that you are being
 21 asked to provide financial information in respect of,
 22 that's the request, and you didn't need your office to
 23 do that?
 24 A. I'm sorry, but we understood the fix to be in and we
 25 understood that it was sort of pro forma: yes, we will
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19:07 1 provide you the documentation that we have access to,
 2 tax office, as you say, the environmental office are not
 3 going to provide us with anything. We knew that you
 4 were setting us up for failure. We knew.
 5 Q. This is an opportunity Mr Imena didn't even need to give
 6 and he is giving you a third chance and identifying the
 7 missing material, isn't he?
 8 A. You tell me. I don't know what Mr Imena by rule or
 9 practice or law had to do or not do, all I know is we
 10 were unfairly prevented from getting access to any of
 11 our documentation for reasons I still don't know to this
 12 day, and then yet unceremoniously, you know, four months
 13 after you say we lose everything, you give us our office
 14 back. What was the point of that?
 15 Q. Let's see your response at C-096 on 16th January 2015.
 16 A. I can well imagine they become increasingly intemperate.
 17 Q. So you say at item 1, the company's financial viability:
 18 "As per our previous correspondence, we mentioned to
 19 you that in the recent past, although without a mining
 20 licence, we were able to raise 2 million USD with
 21 participation from the Dutch Government ... we also have
 22 firm funding commitments from other internationally
 23 recognised entities, and all this is as a result of our
 24 impeccable investment reputation and track record."
 25 Now, if you had had -- genuinely had firm funding

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19:08 1 commitments from internationally recognised entities,
 2 you could have actually provided evidence of that and
 3 rather than just asserted it in your letter, couldn't
 4 you? Yes?
 5 A. No, I -- I mean, there's no reason for us to do this.
 6 You know, for us, did we believe that we could raise
 7 funds to increasingly build it out? Yes, but we had to
 8 have the long-term concession.
 9 Q. You didn't have firm funding commitments from other
 10 internationally recognised entities, did you?
 11 A. Yes, I'm sure we did. I wouldn't have written it if we
 12 hadn't.
 13 Q. It was untrue when you wrote it, wasn't it?
 14 A. No, and it's slanderous for you to say so.
 15 Q. And if you had had firm funding commitments, you would
 16 have been able to identify them and produce them in
 17 support of this application, wouldn't you?
 18 A. I'm sorry, but you're suggesting that we would share
 19 everything we knew with the minister. At this point we
 20 could see what was happening.
 21 Q. And this is nothing to do with what is or is not in your
 22 Kigali office because if you had had firm funding
 23 commitments from internationally recognised entities
 24 there would have been no impediment from the Kigali
 25 office --

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19:09 1 A. What makes you think that that would have made the
 2 slightest bit of difference at this point? We're being
 3 set up. We understand that. We just don't know what
 4 the next step is going to be.
 5 Q. You then said in the next paragraph:
 6 "In addition, we submitted to you our list of
 7 successful investment transactions of over 40 billion
 8 USD. These investors would gladly bear testimony of our
 9 trustworthiness."
 10 Now, that is a reference to the list of transactions
 11 to which your legal firm gave transactional legal
 12 advice; yes?
 13 A. Yes.
 14 Q. So that you were, as I put to you earlier, relying on
 15 that as evidence of the company's financial viability?
 16 A. This goes to trustworthiness, not to whether they were
 17 going to provide cash for it. I don't know on what
 18 basis or what the thinking was at the time. Is it
 19 responsive, or it goes to our trustworthiness, certainly
 20 more trustworthy than many of the people who are in the
 21 mining industry in Rwanda, and we thought that that
 22 would be helpful for the minister to understand who
 23 he was dealing with. Maybe I was mistaken and, if so,
 24 you know, so be it.
 25 Q. Then if you go down --

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19:11 1 A. We weren't trying to mislead anybody. This is a very
 2 difficult business.
 3 Q. We then go down, you have "current financial viability".
 4 So you say you were barred from the offices, but in fact
 5 you were able to retrieve copies of NRD's financial
 6 statements, so there is, in fact, no difficulty in
 7 relation to NRD's financial statements, and then there's
 8 a reference to --
 9 A. We had some -- as I think I mentioned to you, we have
 10 the office computers and we have our home computers, and
 11 if by chance we happened to have documents on our home
 12 computers, yes, we had access. That was -- that's the
 13 material we submitted.
 14 Q. But what this is all showing is that the important
 15 deficiencies in your application, which had been
 16 identified to you, none of the problems arose from
 17 having -- from the documents being in the Kigali office.
 18 A. I couldn't --
 19 Q. We've dealt with company -- parent company.
 20 A. I couldn't --
 21 Q. We're now looking at current financial viability.
 22 A. Couldn't disagree more. From our point of view the
 23 financial viability question had already -- nobody has
 24 invested. Nobody. From our point of view we were the
 25 sole standing investors who remained in the country, and

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19:12 1 that was proof. You didn't need additional proof.
 2 Did they come back to us and say: well, what we want
 3 to know is, okay, you've invested whatever disputed
 4 amount you want to say, you've invested this much but
 5 now we need to know that you're going to be able to
 6 invest X more. Those conversations never happened.
 7 We couldn't find anybody to talk to at this point.
 8 Q. And the other point --
 9 A. I believe a political decision had been made.
 10 Q. The other point that you make, in the next paragraph, is
 11 about Spalena. You say:
 12 "NRD's investors created The Spalena Company LLC.
 13 An LLC is a legal entity widely used in the United
 14 States where each investor is responsible for their own
 15 taxes worldwide."
 16 And beyond saying that, you're not providing any
 17 further information, are you?
 18 A. Because we didn't need to. We fully satisfied it by the
 19 \$20 million we had already put in.
 20 Q. Let's look at the third item, which deals with tax
 21 clearance.
 22 "As to the tax clearance from Rwanda Revenue
 23 Authority:
 24 "Much as with other State institutions, Rwanda
 25 Revenue Authority no longer considers us to be in

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19:15 1 been resolved. The only outstanding issue, as
 2 I understood it, was the company had incurred expenses
 3 for casuals, and by that I mean somebody would do a job
 4 at a mine site and they would give them 5,000 francs, or
 5 something. So it was very much what they called casual
 6 labour, and Starck had not been properly documenting it,
 7 and I don't know if the problem was in the field or it
 8 was at the headquarters, but the complaint from the tax
 9 office was that we had not set aside social security
 10 contributions in respect of that one-time payment.
 11 And it was a large amount of one-time payments, but
 12 it was all accumulative of what they just called
 13 payments for casuals.
 14 Q. As a result of that you would not have been able to get
 15 a tax clearance at that point in time; would you?
 16 A. Zuzana's answer is the correct one. We went there and
 17 they were told we're not a company and they don't
 18 recognise us, so we were not able to get one.
 19 Q. I don't accept that but, leaving that aside, you would
 20 not have been able to get a clean bill of health, would
 21 you, because they regarded you as owing tax; correct?
 22 A. No. No. It was under -- the agreement we had reached
 23 with them -- and this was 2011 -- that they would come
 24 in and perform a true audit. They had done some kind of
 25 superficial audit with Anthony Ehlers and not properly

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19:13 1 business. It is only once we are granted a mining
 2 licence ... we will be able to apply for the tax
 3 clearance."
 4 That was simply untrue, wasn't it? The reason you
 5 didn't apply for a tax clearance is because you would
 6 have been unable to get one because you owed tax?
 7 A. Now you are accusing us of lying. No, my assistant --
 8 Zuzana Mruskovicova, our CFO, went to the tax office
 9 and, as I understand it, that's the explanation for why
 10 they would not give her a tax clearance. You can ask
 11 her directly, but I'm sure she's not lying.
 12 I wish you could find a different phrase of "You
 13 were lying", because it's really distracting.
 14 Q. Could you go to bundle C-179. This is an email from you
 15 we looked at earlier. It's the email we looked at some
 16 time ago to Mr Ehlers dealing with the financial
 17 position. Can you just scroll down a bit, FTI. Stop
 18 there. And amongst the other points you make, you
 19 say -- do you see, in the bottom of the big paragraph:
 20 "And this does not contemplate the tax obligations
 21 identified by PwC for withholding on ex-pats."
 22 A. Yes.
 23 Q. And that was part of a tax issue which had never been
 24 resolved by this point; correct?
 25 A. It was partly resolved. The withholding on expats had

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19:16 1 looked at the books. They agreed. And we were waiting
 2 for them.
 3 Q. Well --
 4 A. So this is four years later and we're still waiting for
 5 them to --
 6 Q. Even on your version of events they regarded you as
 7 owing tax, but they might have been prepared to
 8 recalculate the amount; yes?
 9 A. I don't know whether we're owed anything. It could have
 10 been zero. In fact our point was that they owed us
 11 because they held a \$100,000 deposit from us.
 12 Q. Let's go to R-023.
 13 A. Zuzana had the direct -- participated in the
 14 conversation with the tax office, so please ask her that
 15 question.
 16 Q. R-023, this is the MINIRENA team assessment of your
 17 further round of information, and if we could just look
 18 at item 1 on "Assessment and Comments":
 19 "Item 1: Clear evidence of NRD[s] ... financial
 20 viability ...
 21 "The company has provided no evidence at all as
 22 regards its financial viability supported by any bank(s)
 23 or financial institution(s) for its present and future
 24 mining operations. Indeed, among documents submitted
 25 none had any information with supporting elements as

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19:17 1 regards the company's financial viability.
 2 "Rather, the company just mentioned its previous
 3 financial investments and investment transactions which
 4 have no supporting evidence."
 5 That's a fair summary, isn't it?
 6 A. No. We had already satisfied the requirement by
 7 investing \$20 million, and this was an exercise to be
 8 able to try to say: oh, it's not enough, or whatever the
 9 standard would be.
 10 Q. And then at item 2 they deal with:
 11 "NRD[s] ... financial statements, financial
 12 statements of NRD's parent company, or financial
 13 statement of the company (ies) owning NRD's parent
 14 company."
 15 And they identify that partial financial statements
 16 had been provided for the company, but then they
 17 identify no material for anything above the company, and
 18 that's accurate as well, isn't it?
 19 A. I'm sorry. Tell me again?
 20 Q. It's -- I'm going to move on because I've actually shown
 21 you the documents and I've put it to you by reference to
 22 your application. Let's go to item 3.
 23 A. I didn't understand the question.
 24 Q. Don't worry, I'm going to move on.
 25 "Item 3: Tangible documented proof showing the

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19:20 1 Q. So you chose to ignore it because you regarded it as not
 2 being --
 3 A. We believed it was fully satisfied. Somebody's invested
 4 \$20 million bucks. You don't say: oh, you have nothing,
 5 goodbye.
 6 Q. Let's look at item 5:
 7 "Detailed work and business plans for each mining
 8 perimeters and clear timeframe.
 9 "There were no separate applications for each
 10 'concession' as per the requirement in the Minister's
 11 letter which would indicate the merits to consider when
 12 assessing the application for each 'concession'. The
 13 technical report submitted was of a very general nature
 14 and did not present details on the work done in every
 15 'concession'. It is, however, necessary to note here
 16 that there was some useful information presented in the
 17 session called 'Nemba Project' which provided a general
 18 assessment of the resource (cassiterite and coltan) in
 19 Nemba 'Concession' and the possibility of putting up
 20 a processing plant. However, the information is
 21 insufficient as regards proper mine development for the
 22 Nemba mining perimeter.
 23 "The company did not submit a detailed work and
 24 business plan for each of the mining 'concessions' as
 25 requested in the Minister's letter and there is no

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19:18 1 current financial viability of either the company's
 2 parent company [or] the parent of the parent company.
 3 "No documents have been submitted in this
 4 respect ..."
 5 And it's fair to say, isn't it, that despite being
 6 given opportunity after opportunity, you had not met the
 7 requirements given to you by the ministry?
 8 A. Please, I'm sorry, again I'm going to repeat myself:
 9 this is a question for a new investor who has just
 10 appeared, they don't know anything about him, please
 11 give us some proof of something so that we know or have
 12 some idea. Not somebody who has been in the country for
 13 eight years, invested \$20 million, or whatever you claim
 14 the disputed amount is. This is for a new person that
 15 they don't know anything about. So for them to say: oh,
 16 well your \$20 million doesn't count so we need to see
 17 something else. We interpreted this to mean: no, we've
 18 proven our financial viability. If they're asking for
 19 additional financial viability, that would make us
 20 different from these guys, but that's not what's
 21 happening here.
 22 Q. Well, you knew what you were being asked because it was
 23 being specifically identified to you in the letters?
 24 A. And this is a question for a first-time applicant that
 25 they don't know.

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19:21 1 mentioning of the timeframe for operations for each
 2 mining 'concession'.
 3 And that is a fair summary, isn't it, of the
 4 material you submitted?
 5 A. No, I -- may I repeat my former points: we didn't have
 6 our office, we didn't have access to any of that
 7 information. This is for a new mining concession
 8 applicant and this is the more detailed kind of
 9 assessment that you would have expected from him. They
 10 knew what we did, we met with them frequently prior to
 11 this so-called dispute period, and this was not really
 12 applicable, but if it was applicable then they needed to
 13 give us our office so that we could respond.
 14 Q. Let's go to R-024. This is Dr Biryabarema's review
 15 from February 2015, and if you go to page 2, you can see
 16 that he makes -- he deals also with NRD Rwanda Limited
 17 financial statements, and essentially he makes the same
 18 points as the previous reviewing team but adds his own
 19 in relation to the financial statements, you can see at
 20 2.2.1. So you can see he conducts an analysis of what
 21 you have provided; yes?
 22 A. I see his words and I -- he's certainly mistaken.
 23 Q. Can you go to section 2.5 in his report.
 24 A. You know, again, you can see by the tone, by the veiled
 25 accusations, that it appears they don't want us there.

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19:23 1 Not: how do we help this company to follow the usual
2 administrative process of let's sit down and figure out
3 what we need and what they need and come up with
4 a solution.
5 Q. That's not fair at all is it, Mr Marshall? We just
6 looked at the evaluating team's assessment of your work
7 and business plan and they made a fair point that in
8 relation to the Nemba concession there was some useful
9 material. So where there is useful material, they do
10 say so.
11 A. No, I disagree with you, because they're giving credence
12 to one small application in one small respect. They
13 knew about our company. Some of them had spent many
14 hours with us, and that's the usual, as I say, collegial
15 process that everybody goes through until now. It's not
16 only a new process which gets applied to us as a holder
17 and not to anybody else. But it's a whole different
18 process where a list is given: oh, you didn't answer it
19 the way we wanted or what we expected, so sorry, you are
20 insufficient, and therefore not worthy of a license, so
21 goodbye.
22 Q. Then you have paragraph --
23 A. This is (inaudible) extracting our mining assets from us
24 and not compensating for it.
25 Q. Then you have paragraph 2.5 from Mr Biryabarema's

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19:25 1 Technically NRD Ltd did not apply for any 'concession'.
2 It was clearly stated in the Minister's letter that each
3 'concession' should be applied for as an entity.
4 Secondly the documents submitted were insufficient and
5 not specific to any 'concession'.
6 "The company has not shown any financial or
7 technical viability and is therefore not qualified to
8 such a large and potential area. If it had been
9 cooperative, negotiations for one concession, say Nemba,
10 would be viable and reasonable.
11 "The company has publicly and on several occasions
12 stated that it has so far invested 20M US\$ in the
13 concessions. A look at the list of expenditures
14 includes huge payables without documentation, like
15 a reported foreign consultation fees of about five
16 billion [Rwandan francs]. There might be need to
17 request the Auditor General's Office to audit the
18 finances of the company to stop it from making any
19 unsubstantiated claims."
20 And that is all a fair summary of the position,
21 isn't it?
22 A. No, I would suggest that they have retained British
23 counsel to come up with these arguments and this
24 language, because this is not the way they write and,
25 until this time, not the way they've ever communicated

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19:24 1 review. And he starts off by essentially saying the
2 same thing as his previous reviewing team, but he adds
3 to it, you can see in the middle of the paragraph:
4 "However, the information is insufficient as regards
5 the development of a proper mine plan for that
6 'concession'. There are no substantive technical
7 reports, either submitted in the past or in the recent
8 submitted documents that show advanced exploration work
9 done in any of the five 'concessions'. The reports on
10 exploration works in Rutsiro and Nemba (submitted in the
11 past) and the 'Nemba Project' provided in the current
12 documents are all of a reconnaissance nature. There has
13 never been any exploration report (past and recent) on
14 Mara, Giciye or Sebeya 'concessions'.
15 And that's all a fair summary, isn't it?
16 A. No, of course not. It's slanderous, and it begs the
17 question if they're so confident about our lack of
18 having performed in any respect, why didn't they give us
19 the office back?
20 Q. And if you go to his recommendations.
21 A. Or perhaps they knew that there was nothing left in the
22 office.
23 Q. In his recommendations he says:
24 "There is no basis for MINIRENA to grant a mining
25 licence to NRD (Rwanda) for the five 'concessions'.

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19:26 1 with us, and certainly not the words they ever would
2 have used with us. This is very confrontational, very
3 litigation-focused, and very distilled, entirely unlike
4 their usual writing style. Perhaps you gave him some
5 help in preparing this, but this is not what we've ever
6 seen, and not what I believe is their own work.
7 Q. And you know fully well, Mr Marshall, that this is
8 an entirely fair and objective review of the
9 deficiencies of your application, which we've seen by
10 looking at the application ourselves; correct?
11 A. No, absolutely not. I would say that this is a well
12 prepared and well documented effort to be able to
13 substantiate a decision they've already made.
14 Q. And you're aware, aren't you, that Mr Imena's further
15 refusal of your application in May came after further
16 consideration of the material, both by the reviewing
17 team and by Dr Biryabarema, and a negative
18 recommendation; yes?
19 A. If you tell me that's the case. These documents I have
20 not seen until this litigation, this arbitration.
21 Q. Can you go to --
22 A. All this is new, and that's highly unusual in a country
23 like Rwanda where everything is done on a consultative
24 basis.
25 Q. Can you go to R-079. This is a statement of seizure of

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19:28 1 a car, done by Mr Bosco, and you can see it's done at
 2 the request of the Rwanda Revenue Authority; do you see
 3 that? Second line.
 4 A. I had understood that the process from the Rwanda
 5 Revenue Authority is if they have some claim against you
 6 they give you notice. So, you know, until this process,
 7 I was never aware that that was even possible.
 8 Q. You knew, didn't you, that you had unpaid debts to the
 9 Revenue and, indeed, they were seizing your assets; yes?
 10 A. Definitely not. 100%. Not 99%, 100%. We had been told
 11 that all our accounts were frozen until such time
 12 a determination had been made about who was the owner.
 13 That's why we also couldn't get a tax certificate.
 14 Q. And, as I said earlier, the reason you couldn't get the
 15 tax certificate is because you had unpaid debts and this
 16 is just another example of how that it so.
 17 A. I put it to you that in fact what you've been doing all
 18 day long is trying to say what I say is the truth and
 19 you say is a lie, and it's simply unreasonable. It's,
 20 in fact, slanderous.
 21 Q. Let's go to another document. We're going to go to the
 22 RDB minute at C-101.
 23 A. Certainly there was never any notice to us. If there
 24 was ever a notice from the RRA to anybody, it didn't
 25 come to us.

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19:29 1 MR HILL: Mr President --
 2 THE PRESIDENT: Mr Hill, it's 7.30.
 3 MR HILL: Exactly, Mr President. I haven't finished, as you
 4 can see. I know this is obviously eating into my time
 5 with other witnesses. I think I will be less than
 6 an hour, I think, I hope considerably less than an hour,
 7 but less than an hour with Mr Marshall tomorrow morning,
 8 and I know it's on my head and that we've got a chess
 9 clock and it takes away my time with other witnesses.
 10 I'm close, but not -- I hoped to finish today but
 11 I haven't managed to.
 12 THE PRESIDENT: Very well. We'll adjourn until midday
 13 tomorrow.
 14 (7.30 pm)
 15 (The hearing adjourned until 12 noon the following day)

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<p>A</p> <p>Aaronson 2:7,7,8,8 ability 75:24 76:5,6 89:10 186:23 187:1 191:20 200:3 207:19 210:5,13 214:5 222:9 able 27:12 53:23 56:22,23 71:7 79:24 81:19 82:6 98:23 102:14 105:2,24 118:11 132:7 146:23 148:22,24 150:8 154:25 156:4 156:20 158:20 168:8 178:15 184:10 186:9,21 191:25 192:8 197:9 212:22,24 225:25 231:9 233:24 240:14 241:14 242:12,12,16 243:2 243:21 256:9,13 257:20 258:16 260:5 261:5 262:2 263:14,18,20 265:8 272:12 above 46:8,17 114:22 159:22 160:5 165:2 165:16 184:22 189:14 200:4 201:5 250:17 255:8 265:17 absence 18:19,22 84:7 99:4 120:16 absent 18:14 absolute 168:24 absolutely 3:5 23:13 59:10 63:3 76:8 100:24 127:17 130:5 152:7 161:24 166:25 167:6 174:3 186:25 224:19 225:15 248:24 272:11 absurdity 12:21 abuse 245:22 academic 76:2 accept 21:10 41:2 113:23 137:19 142:17 145:15 163:3 199:6 208:2 232:21 263:19 acceptable 66:13,13 accepted 23:14 30:23 30:24 44:18,19 56:2 56:4 67:8 72:20 123:21 135:17 172:10 212:7 accepting 228:12 access 3:15 21:1 30:25 63:16 166:12 178:20 179:20,25 180:10 193:20 212:22 248:19 257:1,10 260:12 268:6</p>	<p>accessed 249:20 accident 40:12,16 41:7 accidents 40:17 41:5 accommodation 179:19 accordance 90:12 121:13 124:5 156:12 178:15 accorded 228:4 according 14:6 31:8 123:15 135:9 201:11,20 202:18 224:14 229:15 Accordingly 211:15 accountant 40:20 accountants 180:24 accounted 180:19 accounting 232:16 accounts 21:4 94:9 170:13 181:24 273:11 accumulative 263:12 accurate 32:12 52:9 97:21 98:17 99:1 134:17 202:23 265:18 accusations 226:12 245:24 268:25 accuse 243:5 accusing 70:12 192:7 262:7 achievements 50:9 acknowledge 247:23 acknowledging 107:23 acquired 57:4 acquiring 180:1 223:1 223:1 across 173:16 act 151:7 154:15 acting 20:15 46:5 148:23 149:21 150:17 152:17 154:13 156:12 action 9:17 26:21 66:3 66:8 89:1,22 151:5 234:9 actions 16:11 21:7,11 21:21 22:12,14 25:23 35:10 37:9 87:23 141:3 145:23 146:7 162:9,10 233:21,22 244:23 active 30:13 45:8 actively 29:2 activities 9:5,13,16 10:13,14,16,18 43:22 44:3 47:3 51:6 68:9,22 69:1 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