

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

Monday, 28th 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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INDEX

	PAGE
Discussion re procedural matters	1
MR ANTHONY EHLERS (continued)	9
Cross-examination by MR COWLEY (continued)	9
Re-direct examination by MR HILL	27
MR JOHN BOSCO NSENGIYUMA (called)	29
Direct examination by MR HILL	29
Cross-examination by MR COWLEY	31
Re-direct examination by MR HILL	78
MR EVODE IMENA (called)	80
Direct examination by MR HILL	81
Cross-examination by MR COWLEY	82
Tribunal questions	158

<p>12:06 1 Monday, 28th June 2021 2 (Transcript times are British Summer Time) 3 (12.06 pm) 4 MR KAPLAN: Mr President, we are ready to begin Day 6. 5 (Pause) 6 THE PRESIDENT: Good morning, Mr Cowley and Mr Hill. 7 (Pause) 8 The Tribunal has been debating the Claimants' 9 request to introduce an additional letter and the 10 Respondent's response to this, seeking in their turn to 11 introduce a further letter should the Claimants' request 12 be granted. We would propose, subject to hearing any 13 objection from counsel, that both of these letters 14 should be placed on the record, without prejudice to the 15 question of whether they are relevant. 16 I see Mr Hill nodding. 17 MR HILL: Yes, we're content with that. We're content. 18 THE PRESIDENT: Yes. 19 MR COWLEY: Your Honour, may I ask for a slight modification 20 of that? Can we ask that they put on the record subject 21 to a discussion, if there's time, in this hearing as to 22 the differences we perceive as to the grounds on which 23 these two requests are made, such that one or both may 24 be subject to being stricken; in other words, not 25 a final decision to admit, and revisit the issue if</p> <p style="text-align: center;">Page 1</p>	<p>12:10 1 turned it over to him and his son, who speaks English, 2 and his son and he went through it and whatever edits 3 they had or changes they had before coming back to us 4 were made. 5 So we were not in the active discussion in which he 6 signed it; it was he and his son, at least, sitting down 7 and going over it. 8 THE PRESIDENT: Well, what I particularly wanted to ask you 9 about was the position of Mr Rwamasirabo, because we 10 have had put on the record a declaration from him, and 11 he declares, "I am independent of the parties, their 12 counsel and the Tribunal". The Tribunal would just like 13 to know precisely what role he has been playing in these 14 proceedings, and the basis on which he is retained. 15 MR COWLEY: We have not retained him, and I don't have any 16 more information about it than that. Mr Rwamasirabo, 17 for the purposes of Mr Bidega's witness statement and 18 then later the conversation which I was involved in, the 19 preparation for this hearing, going over the details of 20 how it would happen, I know set up the discussion, you 21 know, contacted Mr Bidega to bring him into the 22 discussion with us. I thought it was in his office, so 23 he was playing a facilitator to make sure the 24 conversation could happen, and was there to answer any 25 questions about the interpretation. We had to make sure</p> <p style="text-align: center;">Page 3</p>
<p>12:08 1 there's a difference, but not take up that time right 2 now? 3 THE PRESIDENT: I'm not minded to do that. If they're 4 placed on the record without prejudice to the question 5 of whether they are relevant, if they're not relevant 6 they will carry no weight whatsoever and it will be as 7 if they were not on the record. But we can defer that 8 discussion to later. 9 But, Mr Cowley, there's one matter I would like 10 a little assistance with. As I understand what you told 11 me when Mr Bidega had ceased giving his evidence, his 12 statement was prepared with assistance from 13 Mr Rwamasirabo. Is that right? 14 MR COWLEY: Mr Rwamasirabo assisted us in setting up 15 a discussion with him. I believe it was -- as 16 I understand it, because I wasn't on the initial 17 discussions with regard to the drafting of a witness 18 statement -- that they were in his office; if they were 19 not in his office, that they were set up by 20 Mr Rwamasirabo, wherever they occurred. 21 He was present to help explain what we were saying 22 and explain to us what Mr Bidega was saying. But then 23 we took to try to write it up, submit it to him so he 24 could understand it, and we were told by Mr Rwamasirabo 25 that he read it to him, told him what it said, but then</p> <p style="text-align: center;">Page 2</p>	<p>12:11 1 he understood what we were saying, and Mr Rwamasirabo 2 was there. 3 But it wasn't anything more than -- you know, in 4 that instance, it wasn't anything more than, for lack of 5 a better term, an informal interpreter, making sure he 6 understood what we were telling him, timing, what we 7 were doing, making sure he had copies of his witness 8 statement. And we went through Mr Rwamasirabo's 9 communication, I believe it was in his office, a Zoom 10 meeting. So that's the role that I know he played with 11 this: a facilitator. 12 THE PRESIDENT: Well, thank you. We'll leave that there for 13 the moment. 14 MR HILL: Mr President, could I just pick up on one part of 15 the answer from Mr Cowley, where he said that, as 16 I understood, his firm haven't retained Mr Rwamasirabo. 17 THE PRESIDENT: Yes. 18 MR HILL: We are still rather perplexed about whether he is 19 or is not being presented as essentially an expert 20 witness in these proceedings. It seems to be becoming 21 even more confusing as a result of that answer. 22 I wonder if Mr Cowley could be clear whether he is 23 purporting to be an expert in these proceedings or not. 24 MR COWLEY: Shall I respond, your Honour? 25 THE PRESIDENT: Yes, please.</p> <p style="text-align: center;">Page 4</p>

<p>12:13 1 MR COWLEY: The discussions happened long before Mr Hill 2 became involved, and they haven't changed because we've 3 never discussed any open issues. But the issue was 4 raised initially by a challenge to us whether we could 5 submit the second witness statement of Mr Rwamasirabo, 6 and a position was taken that he would need to be 7 an expert; it wasn't accepted that we could submit the 8 witness statement. 9 So we began a discussion that -- we disagreed. We 10 explained our position. We did not believe -- we hadn't 11 retained him as an expert. He was not opining as to the 12 law; he was defending his initial statement as to what 13 he did, what he analysed, and his work with the 14 Claimants that did not go forward. He wasn't retained 15 to bring a case in Rwanda, so he wasn't hired in that 16 capacity. But he did review the file, and he's someone 17 who has the practical experience of representing other 18 concession holders. 19 So that's how NRD came to initially contact him. 20 They did not go forward with him. And he provided 21 a witness statement as to what he had in his file with 22 regard to NRD's application and his own experience as to 23 how the concession process works. He's talking about 24 his practical experience. 25 So we said he was a fact witness. And if challenged</p> <p style="text-align: center;">Page 5</p>	<p>12:15 1 again. And we heard at that time that the Respondent 2 did not have any concern about putting him at the end, 3 leaving him in the position to possibly testify as to 4 opinion, but I guess they were still reserving the 5 argument as to what capacity he would be in. 6 Then we heard from Mr Hill, in answer to your 7 question whether there's anything that hinges on the 8 designation of him being an expert, the answer that we 9 suspected was true all along, which is: nothing. We 10 weren't proposing anything more than the witness 11 statements we submitted. They weren't actually 12 proposing to go forward with trying to strike them. 13 So nothing hinges on it. He's simply testifying, 14 and we don't intend him to do anything more than 15 testify, like any fact witness. When it comes to 16 cross-examination, he will be cross-examined on his 17 witness statement. That's all we intend, and that's all 18 we ever intended. But we never had that discussion; not 19 because we've been unclear about it, but because it 20 simply has never been picked up again. We invited the 21 discussion and we got no response. 22 We're happy just to leave it that he's got witness 23 statements on file and will testify like other fact 24 witnesses in examination of them, and we're not asking 25 for anything more. We did not have him sit through the</p> <p style="text-align: center;">Page 7</p>
<p>12:14 1 in terms of his statements as to what he does and how he 2 works with concession holders and what they do, what 3 they expect, on an idea that he has misunderstood the 4 law or doesn't appreciate the law, he's perfectly free 5 to explain his understanding of the law, and he doesn't 6 need to be an expert. And Respondent's counsel said: 7 no, they disagree. 8 So we said, "Well, then we're prepared to engage him 9 as an expert", and we gave them a statement that he was 10 prepared to go forward in that capacity and we asked 11 them, "Let's have a discussion. We think he can do what 12 he's done just as a fact witness. If you disagree" -- 13 we gave them the materials that they said were lacking 14 for an expert. We said, "We can discuss you having more 15 time, us going back and redoing, engaging him fully as 16 an expert, to analyse the law more broadly than the 17 narrow issues he discussed", and they never -- we never 18 picked up the discussion, ever. So it was just left as 19 an open issue, and we were waiting to see if they were 20 going to go forward with a challenge to his witness 21 statements. 22 As it came to be, when we had the initial hearings 23 in this case, there was no further -- excuse me, the 24 scheduling hearings before this proceeding -- that was 25 one of the open issues, because it was never discussed</p> <p style="text-align: center;">Page 6</p>	<p>12:17 1 hearings and listen, as experts are allowed; we're not 2 proposing to have him make a presentation on his own. 3 We didn't ask for any of those things. 4 MR HILL: Well, I'm grateful for the clarification, but 5 I would just put down my marker in light of that. 6 Mr Cowley has confirmed he is put forward as 7 a factual witness. We will be saying he doesn't really 8 have any relevant, admissible factual evidence he can 9 give. And he's not being tendered as an expert, and 10 that would also mean he doesn't have any evidence on 11 which he can really assist this Tribunal. I just put 12 down that marker. 13 THE PRESIDENT: Yes, you've put down the marker. 14 So far as the Tribunal is concerned, we agreed that 15 his evidence could be called because there was no issue 16 as to that. When a witness gives evidence, there's 17 always the opportunity for counsel to challenge the 18 admissibility or the relevance of the evidence given. 19 When we come to that evidence, then there may be 20 challenges to it on the basis that it is irrelevant. 21 But having looked at the evidence, it did seem to 22 the Tribunal that some of it was evidence of law. So if 23 one is trying to categorise his statement, it seems to 24 the Tribunal that it is, at least in part, expert 25 evidence of Rwandan law, and the Tribunal wouldn't wish</p> <p style="text-align: center;">Page 8</p>

12:18 1 to shut that out on the technical ground that he's being
 2 called as a witness of fact and not as a witness of law.
 3 So let us proceed.
 4 MR COWLEY: May I ask Mr Kaplan: is Mr Ehlers available now?
 5 MR KAPLAN: Yes, Mr Ehlers is in the waiting room, and it
 6 sounds like we're ready for him and to continue.
 7 MR COWLEY: May I have just two minutes? Because when we
 8 were informed he wasn't available, I brought up all the
 9 exhibits on my laptop for the other witness. So let me
 10 just bring the right ones up.
 11 THE PRESIDENT: Alright. Put your house in order. (Pause)
 12 (12.20 pm)
 13 MR ANTHONY EHLERS (continued)
 14 MR COWLEY: Thank you for the opportunity to get the right
 15 exhibits up on my computer. I'm ready to go forward.
 16 MR EHLERS: Good afternoon.
 17 MR COWLEY: Good afternoon, Mr Ehlers.
 18 (12.20 pm)
 19 Cross-examination by MR COWLEY (continued)
 20 Q. In 2011, shortly after being terminated by NRD's new
 21 owners, you immediately began working on an application
 22 to obtain one of their concessions out from under them;
 23 correct?
 24 A. That's correct.
 25 Q. And the entity that you worked through, or under the

Page 9

12:21 1 name of, was Mountain Valley Mining; is that correct?
 2 A. That's correct. It's an Australian company.
 3 Q. And the concession that you went after to try to get
 4 away from NRD is the Nemba concession; is that correct?
 5 A. That's correct.
 6 Q. If I could ask FTI to bring up Exhibit C-181.
 7 As a result of the efforts you made with Mountain
 8 Valley Mining to pursue the Nemba -- excuse me, let me
 9 restate the question I started.
 10 As part of the efforts you made with Mountain Valley
 11 Mining to go after NRD's Nemba concession, you
 12 submitted, on June 13th 2011, an application for that
 13 concession; correct?
 14 A. Correct.
 15 Q. Now, at this time the Ministry of Mines had not publicly
 16 announced that they were accepting applications from
 17 others for the award of the Nemba concession; correct?
 18 A. I'd heard very strong rumours, and I wanted to put us on
 19 the list.
 20 Q. In fact, you were creating the rumours; correct?
 21 A. I beg your pardon?
 22 Q. You were creating the rumours; correct?
 23 A. Sorry, you're breaking up. I was doing what?
 24 Q. You were creating the rumours that NRD was in trouble
 25 with the Nemba concession; correct?

Page 10

12:23 1 A. Not at all.
 2 Q. You will agree that you did not respond to a public
 3 announcement that the ministry was accepting
 4 applications for a Nemba concession; correct?
 5 A. No, I didn't respond to a public announcement.
 6 Q. And the application that's attached to this cover
 7 letter, you prepared; correct?
 8 A. Yes, I submitted it.
 9 Q. You prepared the application for the allocation of Nemba
 10 vast mining and exploration licence to MVM. You
 11 prepared that document; correct?
 12 A. Yes.
 13 Q. And to do so, you relied on the information, data and
 14 documents on your laptop that you have been holding
 15 since leaving NRD; correct?
 16 A. Yes, correct.
 17 Q. You admit that you knew it was NRD's information that
 18 you were using; correct?
 19 A. Yes.
 20 Q. In your supplemental witness statement -- if I could ask
 21 that FTI bring that up as well, and focus specifically
 22 on paragraph 33.
 23 In this paragraph you explain, if I could draw your
 24 attention to the last sentence of the paragraph, that
 25 you "accept that it may have been wrong" to use that

Page 11

12:25 1 information, to use NRD's information, for the purpose
 2 of submitting an application for a concession owned by
 3 NRD; you acknowledge that, right?
 4 A. Yes, I do.
 5 Q. But you justify it by saying you thought you were owed
 6 money, so it was appropriate; correct? (Pause)
 7 Mr Ehlers --
 8 A. Did you hear me?
 9 Q. I didn't hear any answer, so I'll ask the question
 10 again?
 11 A. I heard you.
 12 Q. Could I ask the question again, so it's clear what
 13 you're answering?
 14 A. Yes, sure, sure, sure.
 15 Q. You justify using the NRD data and information on your
 16 laptop in order to pursue an application to get one of
 17 the concessions out from under NRD because you say you
 18 were owed money by NRD and you felt aggrieved by how
 19 Mr Marshall treated you; correct?
 20 A. Yes, that's correct.
 21 Q. You admit that as of this time, as of June 2011, you
 22 hadn't filed a claim for unpaid wages in any court
 23 proceeding in Rwanda; correct?
 24 A. The -- my wages, or my salary, I never used -- I never
 25 had ever submitted an invoice; it was paid automatically

Page 12

12:27 1 into my bank account. But by -- I'm not quite sure
 2 exactly when I started action against NRD, but it must
 3 be round -- it must be -- I'm sure I'd started the
 4 action long before that.
 5 Q. You'll agree that you don't present any evidence of
 6 an action against NRD in your witness statements;
 7 correct?
 8 A. Yes. I don't have evidence of that.
 9 Q. You'll agree, won't you, that the value of whatever
 10 wages weren't paid for a month or so, that you say the
 11 money didn't go into your bank account, pales in
 12 comparison to the value of owning the licence rights to
 13 the Nemba concession; don't you?
 14 A. Yes, that's correct.
 15 Q. And because your focus immediately upon being
 16 terminated -- and if I could ask FTI to close the
 17 witness statement document and if you bring up C-181,
 18 just so that the witness can look at it if he needs to
 19 refer to it. I don't have a specific question.
 20 You'll agree that because your attention was turned,
 21 almost immediately upon termination, to preparing that
 22 document, C-181, the "Application for the Allocation of
 23 Nemba Vast Mining and Exploration Licence", that in
 24 order to give that application any meaning, in order to
 25 get in line or put your name in, as you suggested

Page 13

12:29 1 earlier, you needed to create vulnerability for NRD's
 2 continued holding of the Nemba concession; right?
 3 A. Sorry, I'm not following you. What do you mean by
 4 "vulnerability"?
 5 Q. You needed to create the rumours and questions about
 6 whether NRD was going to be able to hold the Nemba
 7 concession because you wanted to get it; correct?
 8 A. Yes, I wanted it, but I didn't have any need to create
 9 rumours.
 10 Q. Well, you'll agree, sir, that while you were managing --
 11 let's take a step back.
 12 The status in June 2011 was that NRD had pending
 13 with the Ministry of Mines an application for licences
 14 going forward in the Nemba concession and the four
 15 others that NRD was originally awarded; correct?
 16 A. Correct.
 17 Q. That application was submitted in November 2010;
 18 correct?
 19 A. Correct.
 20 Q. At the time, in November 2010, you were the managing
 21 director of NRD; correct?
 22 That's correct.
 23 Q. And you had no hint that you were going to be fired in
 24 a few months; correct?
 25 A. Yes, correct.

Page 14

12:31 1 Q. Mr Marshall wasn't even owner or engaged at that time in
 2 the sale transaction; correct?
 3 A. That's correct.
 4 Q. You oversaw the preparation of the November 2010
 5 application; correct?
 6 A. That's correct.
 7 Q. When you did that, you didn't say to the Ministry of
 8 Mines, "We concede that we're not entitled to licences
 9 going forward for these concessions", did you?
 10 A. Just repeat that, please. You broke up a bit.
 11 Q. Sure. Sorry.
 12 When you were managing director of NRD, and
 13 overseeing the submission of the November 2010
 14 application, you didn't communicate to the Ministry of
 15 Mines on behalf of NRD, "We concede that we're not
 16 entitled to licences going forward", did you?
 17 A. No, I did not.
 18 Q. Your position was, as managing director of NRD, that the
 19 application you were submitting was sufficient to be
 20 awarded the licences going forward for those five
 21 concessions; correct?
 22 A. No, that's not correct. The -- very soon after
 23 I submitted that application, I had a meeting with
 24 Dr Michael from OGM, and he told me that NRD had not
 25 done enough exploration and there was still a lot of

Page 15

12:32 1 work required.
 2 Q. And if that happened --
 3 A. Rather than --
 4 Q. I'm sorry. I didn't know you were still talking, sorry.
 5 A. Yes, there was a lot more work required and the
 6 environmental impact assessment had not been completed,
 7 if I remember correctly.
 8 Q. Well --
 9 A. So Dr Michael specifically asked me to finish the EIA.
 10 But the company had not done sufficient exploration,
 11 according to Dr Michael.
 12 Q. If that had happened -- well, strike the question, I'll
 13 start again.
 14 At the time of this conversation you were still
 15 managing director of NRD, you said; correct?
 16 A. That's correct.
 17 Q. You reported to the owner of the holding company, which
 18 was a Starck subsidiary; correct?
 19 A. Correct.
 20 Q. So the people who were paying you were at Starck, and
 21 they expected you to carry out and protect their
 22 interests and their investment in Rwanda through NRD;
 23 correct? (Pause)
 24 I believe we may have lost -- I'm sorry, sir, but if
 25 you answered, it was all lost, in terms of the audio

Page 16

12:34 1 transcript. So I'm going to ask the question again --
 2 A. Yes, it's correct. I was -- as MD, I was still looking
 3 after Starck's interests.
 4 Q. So you knew --
 5 A. After my meeting with Dr Michael -- after my meeting
 6 with Dr Michael, I immediately spoke to Starck and
 7 explained to them that not sufficient exploration had
 8 been done.
 9 Q. You've not produced any document from your laptop
 10 supporting the idea that there were communications
 11 between you and Starck after November 10th 2010 in which
 12 you reported upon the so-called "discussion" with
 13 Dr Mike; correct?
 14 A. Yes, that laptop has been stolen a long time ago: it was
 15 stolen out of my car. So I don't have that information.
 16 But that type of communication would have been
 17 telephonic and in writing.
 18 Q. And you never produced a copy of the writing, from
 19 whatever source, in which you told Starck about
 20 a meeting you had with Dr Mike; correct?
 21 A. Yes, because I don't -- I don't have that information.
 22 I -- can I carry on?
 23 Q. Well, I have to ask another question.
 24 A. I think --
 25 Q. I'm sorry?

Page 17

12:38 1 A. No. I can't remember exactly when we started the
 2 environmental work. I can't remember. But yes --
 3 Q. But NRD didn't give you access --
 4 A. -- it was ... NRD did not give me access?
 5 Q. Sir, I just want to apologise for speaking over you and
 6 try to explain it, in case it helps us to limit it.
 7 A. No, I'm listening. It's -- we are breaking up a bit.
 8 Q. That's the problem. So if I do start talking over you,
 9 I apologise. I will try to stop and have you pick back
 10 up what you were talking about. Just let me know.
 11 A. Sure.
 12 Q. You'll agree that you had no access to the Nemba
 13 concession, after being terminated and before submitting
 14 the application to Mountain Valley Mining, to improve on
 15 any of the data or information that was included in the
 16 November 2010 application for NRD; correct?
 17 A. That's correct.
 18 Q. But you thought that same data and information in
 19 June 2011 was good enough to get the Nemba concession
 20 awarded to you on behalf of Mountain Valley Mining?
 21 A. I think ... yes.
 22 Q. Isn't it true that your discussion --
 23 A. I hadn't --
 24 Q. I apologise.
 25 A. I'm listening.

Page 19

12:36 1 A. Sure.
 2 Q. I was going to ask another question and then we can go
 3 forward.
 4 A. Yes, sure. I'm listening.
 5 Q. You submitted the application on behalf of Mountain
 6 Valley Mining that's been marked C-181 based solely on
 7 the information on your laptop that you had to use for
 8 the NRD application in November 2010; correct?
 9 A. Correct.
 10 Q. So your testimony is that after submitting the
 11 application for NRD, you were told that the data
 12 provided did not show sufficient exploration; and yet
 13 you submitted the same data again in June 2011,
 14 expecting to receive the concession on behalf of another
 15 company. Correct?
 16 A. Yes, but I was -- we were prepared to do the exploration
 17 which was required.
 18 Q. But you hadn't done any exploration between getting
 19 fired by Mr Marshall and submitting the June 2011
 20 application on behalf of Mountain Valley Mining;
 21 correct?
 22 A. That's correct. There was no way that I could go and
 23 explore or do drilling on that concession.
 24 Q. You couldn't go and do an environmental impact
 25 assessment on the Nemba concession either; correct?

Page 18

12:39 1 Q. I think I cut off what you had to say, so I'm sorry,
 2 sir. But I don't think, if you did say something, it's
 3 recorded.
 4 A. No, that's alright. If you carry on, I can add.
 5 Q. So isn't it true that your discussion with Dr Mike was
 6 not about things that needed to be improved on for NRD,
 7 but how you and he could work together so that the
 8 concession could be taken from NRD and given to
 9 a company you controlled?
 10 A. No, I never had any of that discussion of that nature
 11 with Dr Michael. I don't know who has met Dr Michael,
 12 but Dr Michael is a very, very honourable man, and
 13 Rwanda isn't a country where the head of geology would
 14 be giving away tenders or be giving away concessions
 15 based on some underhand dealings. Dr Michael -- that is
 16 not Dr Michael's character. And in Rwanda, if you had
 17 to do that, you would end up in jail very, very quick.
 18 It is a country with zero corruption, or perhaps one of
 19 the less corrupt countries in Africa.
 20 No, I never had any discussion of that nature with
 21 Dr Michael.
 22 Q. You've seen the information and exhibits that were put
 23 forward by Respondent, or at least you've seen some of
 24 the exhibits and information that had been put forward
 25 by Respondent that relate to you, and you used some of

Page 20

12:41 1 them or referred to some of them in doing your witness
 2 statements in this case; correct?
 3 A. Yes.
 4 Q. And you've never seen from the Respondent any document
 5 from Dr Mike, internally or externally, to NRD or
 6 someone else, memorialising a conversation he had with
 7 you about the things that needed to be improved upon
 8 after the November 2010 submission of the application;
 9 correct?
 10 A. We had a verbal discussion on that, but I didn't see any
 11 more documentation.
 12 Q. You'll agree with me that, based on your work with
 13 Respondent to prepare your witness statements, it's fair
 14 to expect, if Rwanda actually had a document
 15 memorialising such a conversation from Dr Mike's side,
 16 it would be part of your witness statement, wouldn't it?
 17 A. Could you repeat that, please?
 18 Q. You'll agree that based on working with the Respondent
 19 to prepare your witness statements, you would have
 20 expected, if there was a document confirming the
 21 discussion you say you had with Dr Mike after
 22 November 10th, Respondent would have put it as
 23 an exhibit to your witness statement; correct?
 24 A. Well, I can't -- I can't say what they would have done.
 25 But I didn't know any document like that. I still can't

Page 21

12:45 1 document, not your signature, not aware that any
 2 cooperation agreement existed at all; correct?
 3 A. That's correct. It's a long time ago, and I couldn't
 4 remember that we had an agreement in place.
 5 Q. In fact, you do --
 6 A. What I do -- what I did say in my statement -- what
 7 I did say in my statement is that Mr Marshall and I had
 8 discussed it in November, and that's it. We had
 9 discussed it. I couldn't remember signing a document.
 10 Q. If I could ask that Mr Ehlers's supplemental witness
 11 statement be brought up and paragraph 23.1 be focused
 12 on.
 13 In fact, the first thing you said when informed of
 14 the document we just looked at is in paragraph 23.1;
 15 correct?
 16 A. Correct.
 17 Q. You said you never saw a written cooperation agreement
 18 at all before; correct?
 19 A. That's correct.
 20 Q. You had discussions, but you didn't mean to say you had
 21 discussions about a document in your answer just
 22 a moment ago, right? You meant to say in this witness
 23 statement you didn't believe there was such a document
 24 ever prepared; isn't that correct?
 25 A. That is correct. I couldn't remember a document being

Page 23

12:43 1 remember a document like that.
 2 Q. If I could ask, if you scroll -- I'm sorry, it's the
 3 document on the left. And because he's on an iPad, if
 4 we could make it just one page, so that it's big enough
 5 for him to see.
 6 So this is the transmittal letter, sir. The "Cc",
 7 is that intended to read "[Head of]" -- well, you tell
 8 me: what does the "Cc" refer to? Who did you deliver
 9 the copy to?
 10 A. That "HoD" would have been the HoD in the Department of
 11 Geology and Mines.
 12 Q. And what did you understand that to refer to when you
 13 sent this?
 14 A. I would have understood it to refer to Dr Michael.
 15 Q. You in fact worked with Dr Michael in preparing this
 16 application before it was sent, didn't you?
 17 A. No, I did not. No, I never worked with Dr Michael.
 18 Q. If I could ask that C-122 be brought up.
 19 You were informed that as part of their submission,
 20 Claimants provided this document, a cooperation
 21 agreement between BVG, when it was independent of NRD,
 22 and NRD, from the 2010 time period; correct?
 23 A. Yes.
 24 Q. You worked with Respondent and you prepared a witness
 25 statement that said you're not aware of any such

Page 22

12:47 1 prepared.
 2 Q. And that's because you want very much to call
 3 Mr Marshall a liar, don't you?
 4 A. No, I have no reason to call him a liar. If he's not
 5 telling the truth, it will come out in his witness
 6 statement.
 7 Q. Then if I could ask that C-210 be brought up. (Pause)
 8 You were made aware, sir, that after you submitted
 9 your supplemental witness statement, the Claimants, in
 10 response, provided a copy of this email and its
 11 attachment.
 12 If you could scroll down so the witness can see.
 13 (Pause) Can I ask that the email be scrolled down, so
 14 that the attachment can be brought up.
 15 So you're aware that the next thing that happened
 16 relating to a cooperation agreement was that Claimants
 17 responded with a version of such an agreement that you
 18 signed and sent by email to Mr Marshall, asking him to
 19 countersign and send back; correct?
 20 A. Yes. I didn't remember that. But after I've seen this,
 21 that's correct.
 22 Q. And as a result of seeing this, you went further to ask
 23 to see the metadata, because you questioned the truth of
 24 the email and whether that was faked; isn't that right?
 25 A. Could you repeat, please?

Page 24

12:50 1 Q. Yes. As a result of learning that this document was
 2 presented, you challenged whether this document, the
 3 email and its attachment, was legitimate, and you asked
 4 to review the metadata, the computer information about
 5 this document, didn't you?
 6 A. Yes, because I had no recollection of signing this
 7 document.
 8 Q. And you were --
 9 A. I had no recollection that we'd set out these points.
 10 Q. You were looking for another way to call Mr Marshall
 11 a liar: you were trying to challenge the veracity of
 12 what he represented; correct?
 13 A. No, I certainly wasn't doing that. I just didn't recall
 14 signing this, I didn't recall this document.
 15 Q. And you --
 16 A. I think that's reasonable, to say -- if you don't recall
 17 it, you'd like to say: well, show me.
 18 Q. And Claimants did show you the metadata; correct?
 19 A. No, I didn't see any metadata. I saw this.
 20 Q. You know the Claimants provided metadata to the
 21 Respondent's counsel, don't you?
 22 A. Possibly they could have. I didn't see it.
 23 Q. You have not reviewed the metadata and have any
 24 challenge to the information in such metadata as to when
 25 this document was sent and by whom; correct?

Page 25

12:51 1 A. Yes, I have not had access to that.
 2 Q. You'll agree, sir, that --
 3 A. I --
 4 Q. I'm sorry, I didn't mean to speak over you. Please.
 5 A. No, no, sorry. I'm listening.
 6 Q. Okay. You'll agree, won't you, that in November 2010
 7 you had a better memory of what discussions you were
 8 having with the then third party, BVG, and Mr Marshall
 9 at that time than you do today; correct?
 10 A. Yes.
 11 Q. You were paying attention to this --
 12 A. Some things stick out in your memory, some don't.
 13 Q. I understand. I'm moving on, suggesting -- I want you
 14 to focus back on November 2010.
 15 This was something that you were focusing on getting
 16 done with Mr Marshall on behalf of Starck and NRD. You
 17 were involved; correct?
 18 A. That's correct.
 19 Q. Okay. So at that time you were aware better than you
 20 are today of what was agreed to and what was supposed to
 21 be done; correct?
 22 A. Yes --
 23 Q. And you'll agree, sir, that --
 24 MR HILL: If I just could ask Mr Cowley just to give him
 25 a chance to give his answer, because there you are

Page 26

12:53 1 cutting him off a little.
 2 MR COWLEY: I apologise. I'm just trying to speed up. And
 3 I agree, Mr Ehlers, I'm not trying to cut you off. So
 4 please, if I did prevent you from saying anything,
 5 please finish.
 6 A. No, and I understand: we've got time lag. I understand
 7 perfectly.
 8 Q. You'll agree, sir, given your role as managing director
 9 and whose interests you were looking out for at the
 10 time, if BVG did not provide the \$100,000, you would
 11 have called them out on it and demanded that they
 12 perform, wouldn't you?
 13 A. Yes, I would have.
 14 Q. And you've provided no such documentation in connection
 15 with your witness statements; correct?
 16 A. Correct.
 17 MR COWLEY: No further questions.
 18 (12.54 pm)
 19 Re-direct examination by MR HILL
 20 Q. Mr Ehlers, just on your last point, do you recall under
 21 the agreement that the \$100,000 was there as a loan to
 22 provide to NRD for purchasing equipment to be used for
 23 the work that NRD was to do on the Bisesero concession?
 24 A. That's correct.
 25 Q. Did NRD do work or not do work on the Bisesero

Page 27

12:54 1 concession under this cooperation agreement?
 2 A. As far as I remember, we -- as far as I remember, NRD
 3 never did any work on Bisesero. If you look at the
 4 dates of these things, the company -- the company was
 5 bought by Mr Marshall at the end of December, a month
 6 later, almost. So there was never any work done at
 7 Bisesero that I remember.
 8 Q. So in those circumstances, do you think it would have
 9 been necessary or not necessary to bother to chase for
 10 the \$100,000 for equipment for that work?
 11 A. Yes, the -- what I envisaged for that \$100,000 was more
 12 like site establishment. We had the equipment in NRD
 13 which we were not using fully, but we had to hire
 14 low-beds and trailers for transport, and we would have
 15 to establish ourselves on Bisesero. It was more like
 16 a site establishment I envisaged at Bisesero.
 17 MR HILL: Thank you, Mr Ehlers.
 18 THE PRESIDENT: Thank you very much, Mr Ehlers, for coming
 19 to assist us. You are now free to go.
 20 MR EHLERS: Thank you very much.
 21 (The witness withdrew)
 22 MR HILL: We now have Mr Nsengiyuma.
 23 THE PRESIDENT: Yes. I understand he will be giving his
 24 evidence in French.
 25 MR WATKINS: Just a reminder for everyone to choose the

Page 28

12:56 1 proper interpretation channel: obviously English if
 2 you're a native English speaker.
 3 Would you like me to bring him in, Mr President?
 4 THE PRESIDENT: Yes, please. (Pause)
 5 (12.59 pm)
 6 MR JOHN BOSCO NSENGIYUMA (called)
 7 (Evidence interpreted)
 8 THE PRESIDENT: Good morning, and thank you for coming to
 9 give evidence today.
 10 MR NSENGIYUMA: Bonjour.
 11 THE PRESIDENT: You will see on the screen a déclaration de
 12 témoin: would you please read it?
 13 MR NSENGIYUMA: (In English) Read it.
 14 THE PRESIDENT: On the screen in front of you, you see
 15 a déclaration: could you please read it?
 16 MR NSENGIYUMA: Okay.
 17 THE PRESIDENT: Aloud.
 18 MR NSENGIYUMA: (Interpreted) Witness statement: I solemnly
 19 swear on my honour and conscience to speak the truth,
 20 the whole truth, and nothing but the truth.
 21 THE PRESIDENT: Thank you.
 22 MR NSENGIYUMA: Thank you.
 23 (1.00 pm)
 24 Direct examination by MR HILL
 25 Q. Mr Nsengiyuma, could you be shown paragraph 8 of your

Page 29

13:00 1 supplemental witness statement, your second witness
 2 statement.
 3 I understand you have a correction or amendment you
 4 would like to make to that paragraph?
 5 A. Indeed. I would like to make a change on the second
 6 line.
 7 I passed on my communications to the head of Spedag
 8 for her to pass them on to Mrs Zuzana Mruskovicova.
 9 Ever since the first contact with Zuzana Mruskovicova,
 10 they had refused to speak to me directly, and every time
 11 I had to go through a third party who would then pass on
 12 my message, or Mrs Mruskovicova would go through a third
 13 party who then would pass on her message.
 14 So there was no direct contact; there was always
 15 a third party in between. That was our work
 16 environment.
 17 Q. You explain in your witness statement that you were
 18 executing on certain judgments. One of the questions
 19 that has come up in this case is whether or not you
 20 provided copies of those judgments to NRD or to
 21 Mr Marshall or to Ms Mruskovicova. Can you just give
 22 your evidence on that question?
 23 A. I passed on my documents through the reception of the
 24 NRD office. They had a secretary there whose name was
 25 Barbara, and she would take in all the mail.

Page 30

13:03 1 Now, under Rwandan law, the bailiff is expected to
 2 leave the document with the secretariat of the company;
 3 there's no direct contact with the executives of the
 4 company.
 5 MR HILL: Thank you, Mr Nsengiyuma. Mr Cowley, who
 6 represents the Claimants, will now ask you some
 7 questions.
 8 MR NSENGIYUMA: Thank you.
 9 (1.04 pm)
 10 Cross-examination by MR COWLEY
 11 Q. Mr Nsengiyuma, I'm sorry if I mispronounce your name
 12 during the course of this questioning. It won't be
 13 intentional, but I seem to unintentionally do that
 14 a lot, and I apologise in advance.
 15 A. [No problem].
 16 Q. A professional bailiff in Rwanda is required to maintain
 17 an accounting of the value of recoveries received after
 18 seizure of property against debt being enforced;
 19 correct?
 20 A. That's correct.
 21 Q. A professional bailiff in Rwanda is required to maintain
 22 a log identifying all property seized or locked up for
 23 collection against a debt; correct?
 24 A. It is true, it is correct.
 25 Q. A professional bailiff in Rwanda is required to maintain

Page 31

13:05 1 the security of property seized or locked up before it
 2 could be safely disposed of and credited against the
 3 debt; correct?
 4 A. That's correct.
 5 Q. A professional bailiff in Rwanda is required to obtain
 6 independent appraisals of value for the property seized
 7 before selling it; correct?
 8 A. That's correct too.
 9 Q. A professional bailiff in Rwanda is required to report
 10 back to the court as to the results of any court-ordered
 11 or permitted auction of seized assets to inform the
 12 court what was obtained or other results of the auction;
 13 correct?
 14 A. Well, the bailiff does not report to the court. The law
 15 says that you have to report to the person who gave you
 16 your order, you have to provide the copy of the
 17 judgment, of the ruling; and should the person or the
 18 company disagree with what was done, well, that company
 19 or person can turn to court or to the police. And that
 20 was the case with Mr Marshall and Zuzana. Whenever
 21 there was an auction, there was -- the police were
 22 involved, and I had to go to the police and explain
 23 myself.
 24 Q. In the situations where a professional bailiff in Rwanda
 25 seeks approval of a court or permission from a court to

Page 32

13:07 1 hold a specific auction of specific property, that
 2 bailiff is then required to report back to that court as
 3 to the results of that auction; correct?
 4 A. No, no, the Rwandan law, when you have to seize
 5 property, the property -- the mechanism is as follows:
 6 the client comes with a copy of the ruling with
 7 a command from the court. Now, there's a contract
 8 between the person who provided a copy of the judgment
 9 and the bailiff.
 10 Q. Mr Nsengiyuma, I just would like you to focus on one
 11 incident and one aspect only in my question.
 12 I appreciate that there's more to the work of a bailiff
 13 than collecting on a debt than I'm specifically asking
 14 about now. But I asked you to focus only on one
 15 instance, one circumstance that might come up, and that
 16 is a situation where, while working to collect debt,
 17 a bailiff in Rwanda, for some reason, asks for and
 18 obtains permission of the court to hold a specific
 19 auction.
 20 In that instance, the bailiff is required to report
 21 back to that court that gave the permission as to the
 22 results of that auction; correct?
 23 A. Well, the bailiff doesn't request authorisation from the
 24 court. He simply publishes dispatches -- that is,
 25 announcements -- on the media, in papers or on the

Page 33

13:09 1 radio, and on the indicated dates he acts upon the
 2 order. That's the way it works.
 3 Q. A professional bailiff in Rwanda is required to provide
 4 a written report to the judgment debtor as to the status
 5 of all credits and all receipts obtained from the
 6 seizure and sale of assets taken from that debtor;
 7 correct?
 8 A. Well, yes, to the debtor and the creditor.
 9 Q. Now, you provided an initial witness statement in this
 10 case. If I could ask that that be brought up and refer
 11 to it at points.
 12 Through the course of this witness statement you
 13 discuss events relating to your seizure and auction of
 14 minerals tagged in NRD's name at the entity called
 15 Mineral Supply Africa in order to collect on a judgment
 16 in favour of your then client, Pascal Rwakirenga, and
 17 I'm sure I mispronounced his name. Is that correct?
 18 A. Yes, I recollect the case.
 19 Q. In collecting on that debt -- and if you'll permit me,
 20 I would like to refer to that client of yours as
 21 "Mr Pascal": I'll be less likely to mispronounce that.
 22 In collecting on Mr Pascal's debt, you also seized
 23 other assets of NRD beyond those minerals you referred
 24 to in this witness statement; correct?
 25 A. Well, there were only two auctions conducted by myself.

Page 34

13:11 1 Now, other property was seized by the other bailiff, but
 2 I myself only conducted two auctions. So there were the
 3 minerals to MSA, and Mr Marshall's car. And other
 4 bailiffs were involved in selling other things, but
 5 I only conducted these two auctions.
 6 Q. Mr Marshall's car was seized and auctioned in what year?
 7 A. I'm afraid I don't recollect the year, but it must be in
 8 the documents.
 9 Q. You seized a number of other assets from NRD, including
 10 trucks, heavy equipment, machine equipment; correct?
 11 A. What I seized at a certain time, Mr Marshall lodged
 12 a complaint with the Ministry of Justice claiming that
 13 I was using forged or falsified court documents. And
 14 the Minister of Justice at the time ordered me, in fact,
 15 to put an end, to put a halt to what I was supposed to
 16 do -- that is the execution against NRD -- and asked me
 17 to leave that case. So I did so. And so when I left
 18 the file, my bailiff colleagues took over the selfsame
 19 case and they continued the work I was supposed to do.
 20 Q. You're talking about the collection case from Mr Pascal;
 21 correct?
 22 A. Well, there were as many as 28 NRD employees who hadn't
 23 been paid their wages. This was unlawful termination.
 24 And so this entire group of NRD workers -- I think there
 25 were 28 of them; the exact number is in the document --

Page 35

13:14 1 Pascal was just one of them. He was one of these
 2 terminated employees.
 3 Q. I would like to focus on that case and that collection
 4 for that client.
 5 You seized a number of assets in order to collect on
 6 behalf of Mr Pascal -- I'm not asking about the others
 7 yet -- correct?
 8 A. Alright.
 9 Q. And you say included among the assets you seized,
 10 collected for Mr Pascal, was Mr Marshall's car; correct?
 11 A. Well, first there were the minerals, which were located
 12 at IPC. This was the first seizure. And indeed, it was
 13 Pascal who was able to benefit from the proceeds of
 14 that.
 15 Q. My question was about the car. We talked about the
 16 minerals, and I said: other than the minerals, you
 17 seized other assets? You brought up Mr Marshall's car.
 18 I'm trying to confirm with you that you brought up
 19 Mr Marshall's car as another asset you seized in order
 20 to collect on behalf of Mr Pascal; correct?
 21 A. Well, not as Mr Pascal. It was Mr Pascal and other past
 22 workers.
 23 Q. Well, whose debt did you credit the sale price of the
 24 car against?
 25 A. Well, part of it was indeed for Pascal.

Page 36

13:16 1 Q. I appreciate. Let me walk through a little bit more --
 2 A. But for the minerals, that went all to Pascal.
 3 Q. Okay. I'm going to possibly return to that question
 4 about the distinction, but let me take it in order of
 5 your witness statement. It might be easier for you to
 6 follow my questions if you have your own witness
 7 statement to track along with.
 8 Can I ask FTI to focus on paragraph 10.
 9 In this paragraph of your initial witness statement
 10 you discuss the first efforts to collect on behalf of
 11 Mr Pascal; correct?
 12 MR NSENGIYUMA: (Not interpreted).
 13 THE INTERPRETER: Apparently he didn't receive the
 14 translation. I'll start again.
 15 MR NSENGIYUMA: [The translation in French.]
 16 THE INTERPRETER: Apparently Mr Nsengiyuma didn't receive
 17 the translation. Can we try again? Can you ask the
 18 question again, please?
 19 MR COWLEY: Oh, you asked me. I'm sorry. Of course.
 20 Paragraph 10 of your witness statement, sir, is the
 21 discussion of your first efforts taken on behalf of
 22 Mr Pascal to collect his alleged debt against NRD?
 23 A. That's correct, yes.
 24 Q. And in this paragraph -- well, to be clear now, because
 25 I did bring up the topic of distinguishing between the

Page 37

13:18 1 two. At this time, whatever number of the other
 2 clients -- you characterised sometimes as 26, sometimes
 3 as 28 in your documents -- that hadn't started yet at
 4 all. At this time, the only debt you were collecting
 5 against NRD was Mr Pascal; correct?
 6 A. Well, you have to look at the year. Here we're looking
 7 at 2013. 2013 was indeed the first order I executed.
 8 But after 2013, other employees came forward.
 9 Q. So we can agree that at the time referenced in
 10 paragraph 10, the only client you were working [for] to
 11 collect debt against NRD was Mr Pascal, and no one else
 12 at that time; correct?
 13 A. That's correct: it was Pascal.
 14 Q. And you say that you served notice of the debt you were
 15 going to collect on so that NRD could pay in order to
 16 avoid your seizing assets; you say that in paragraph 10,
 17 right?
 18 MR NSENGIYUMA: [Hello? There is no translation.]
 19 MR KAPLAN: The witness is not hearing the translation, the
 20 interpretation.
 21 MR COWLEY: I note, Mr President, that I've gone past 8.15,
 22 and if memory serves, that was the time for the --
 23 A. If I may answer? When you pass on copies of the
 24 judgment to NRD, the company is required or it's
 25 requested to pay, to come up and settle the debt. And

Page 38

13:20 1 if it doesn't do so voluntarily, well, then the property
 2 is seized and auctioned off.
 3 MR COWLEY: Mr President, is this a good time for the
 4 Tribunal to take a break?
 5 THE PRESIDENT: I don't think it is, because we only have
 6 the interpreter for the first three hours of this day.
 7 So I would propose we continue until this witness is
 8 finished before we break. Having regard to your
 9 estimate of the time you would need, I imagine that's
 10 likely to be before 2 o'clock.
 11 MR NSENGIYUMA: There's no problem on our side.
 12 MR COWLEY: Now, your witness statement cites -- in support
 13 of your statement that you provided notice of the amount
 14 to be paid, you cite to R-051, a document with the
 15 number R-051. Do you see that?
 16 A. I thought we saw the document just now, just before this
 17 one. It was a table, I believe that was it. Could we
 18 see that again?
 19 Q. I'll go to R-051 in one second. But before we leave
 20 your witness statement, do you agree that you testified
 21 you left the notice about the amount owed for this debt
 22 that had to be paid immediately or in order to avoid
 23 seizure of assets, that you provided it to the
 24 administrative assistant you refer to in paragraph 10 as
 25 "Shema"? Do you see that?

Page 39

13:22 1 If I could ask FTI to go back up to paragraph 10.
 2 A. Can I see the document that I ... yes. Usually when you
 3 are in contact with the company, well, the secretary
 4 receives the document noted. Now, it may happen that
 5 the secretary will not be certain, will hesitate, and
 6 will ask her boss to sign off, to sign the document.
 7 But it is for the reception office, whoever is there
 8 manning that office, to receive -- to acknowledge
 9 receipt of the document.
 10 Q. Rather than hypothetically, I'm asking specifically,
 11 because paragraph 10 of your witness statement is
 12 specific. Your testimony is that the notice that
 13 Mr Pascal --
 14 A. Shema was the secretary then.
 15 Q. And you claim that the document identified as R-051 is
 16 what you gave Shema; do you agree with that?
 17 A. I know it was through Barbara.
 18 Q. Can I ask FTI to bring up R-051.
 19 That's the document you cite to, and say in your
 20 witness statement at paragraph 10 you gave to Shema in
 21 order to provide notice to NRD as to the amount it had
 22 to pay to avoid seizure of assets; correct?
 23 A. Yes.
 24 Q. If I could ask FTI to --
 25 A. Well, I did give the document -- the document was left

Page 40

13:24 1 at the reception. I mean, Barbara took the document,
 2 and Barbara in turn placed the document with her boss,
 3 whose name was Shema. But it was Barbara who took the
 4 document and passed it on, but indeed it was Shema who
 5 signed the document, who signed -- not the document, but
 6 acknowledged receipt of the document.
 7 Q. If I could ask FTI to scroll down, so that the witness
 8 can see the full document.
 9 Do you see the full document that you cite to are
 10 these two pages?
 11 A. That's correct.
 12 Q. You'll agree, sir, that the document you've testified
 13 that you provided to the company for notice of your
 14 collection efforts of this claimant, Mr Pascal, did not
 15 attach any judgment in favour of Mr Pascal, just these
 16 two pages; correct?
 17 A. Well, it says so. There's a reference to the judgment.
 18 There's a -- all the judgments and the rulings are
 19 referred to on that document.
 20 Q. And you'll agree that you didn't give a copy of the
 21 judgment; you gave these two pages. That's your
 22 testimony; correct?
 23 A. They were annexed, the documents. They only signed the
 24 first page, the cover page.
 25 Q. But you didn't provide your copy of the notice that

Page 41

13:26 1 includes any attachment --
 2 A. Well, everything was annexed.
 3 Q. Sir, you kept your own copy of what Shema signed;
 4 correct?
 5 A. I keep the originals and I produced photocopies.
 6 Q. And your testimony --
 7 A. Because --
 8 Q. I'm sorry, I didn't mean to speak over you.
 9 A. Go ahead.
 10 Q. Your testimony, in paragraph 10 of your witness
 11 statement, is: this is a copy of what you left with
 12 Shema; correct? You said that.
 13 A. Yes, but every time --
 14 MR HILL: That's not a fair characterisation -- could I just
 15 interrupt. That's not a fair characterisation of the
 16 witness statement. If he's going to tell him what is in
 17 his witness statement, Mr Cowley must do so accurately.
 18 There's no inconsistency between what the witness is
 19 saying now and his witness statement.
 20 MR COWLEY: I strongly object to the coaching. I have shown
 21 the witness his statement. He's perfectly capable of
 22 answering this question. I believe it's fair.
 23 Sorry, sir, we spoke over you. Do you have
 24 an answer?
 25 A. On what question, sorry?

Page 42

13:28 1 Q. The document you put forward in support of your
 2 statement that you gave notice to the company, that
 3 Shema received notice, only includes these two pages.
 4 You did not provide a copy of a document that includes
 5 any judgment attached to these two pages; correct?
 6 A. Well, as soon as there's a command to pay, you give the
 7 original. And in the annex we indicate the rulings that
 8 are to be executed should the company, or the legal
 9 representative, disagree with what is written on the
 10 commandment to pay.
 11 Q. And --
 12 A. And the company can produce a letter of protest, but
 13 that never happened.
 14 Q. And the reason, sir, there's no annex to the document
 15 designated R-051 is because there's no annex to the copy
 16 of the original in your files; correct?
 17 A. Well, the photocopies are always annexed. You say that,
 18 "I am to execute the ruling [so-and-so]", you attach --
 19 you have to attach a copy of the rulings. Should the
 20 person who lost the case decline to execute, that person
 21 can challenge the accuracy of the ruling. But that was
 22 never challenged; that never happened.
 23 Q. So you'll agree that there is no copy of the judgments
 24 produced in support of your witness statement at
 25 paragraph 10?

Page 43

13:30 1 Can we go back to the witness statement. I don't
 2 want him to be misled.
 3 A. I did say that -- well, in these documents you always
 4 say that in the annex, the rulings are there. These
 5 documents are annexed, just to prove that we're not
 6 fabricating this.
 7 Q. But they're not in the document you attached to your
 8 witness statement? That's all I'm asking you, sir. You
 9 can't agree with that?
 10 Again, if I could ask FTI to bring up the witness
 11 statement, so he doesn't have to answer this question
 12 without seeing it. Thank you.
 13 I can't tell if ...
 14 A. No, automatically the rulings must have been annexed,
 15 but you can be happy with producing just the two pages.
 16 But when you serve a demand, you produce a letter with
 17 the signature of the bailiff and an annex to that
 18 letter: you include the photocopies of the rulings
 19 themselves, the rulings that are to be executed.
 20 Q. Sir, could I ask: when you prepared your original
 21 witness statement, you understood that one of its
 22 purposes was to establish for this Tribunal that you
 23 complied with Rwandan law in everything you say you did
 24 to collect judgments against NRD?
 25 A. Well, yes, I executed according to the law. And

Page 44

13:33 1 Mr Marshall took me to court about ten -- at least ten
 2 times, and he never won. He never won any of his
 3 lawsuits.
 4 Q. I'm going to ask you again my question, and I'm going to
 5 ask you to focus on what I'm saying is the purpose. I'd
 6 like to make sure we're in agreement.
 7 You understood when you prepared your witness
 8 statement that your purpose -- one of your purposes --
 9 was to explain to the Tribunal that you complied with
 10 Rwandan law in what you did to collect judgments against
 11 NRD?
 12 A. Well, it is not for me to establish what they are doing.
 13 What happens is in Rwanda, bailiffs are independent.
 14 The bailiff stands in his office: when he receives
 15 a copy of a ruling, he then drafts a demand. And
 16 I don't have to -- well, unless I'm being sued to say
 17 that I didn't follow the procedure: well, then there's
 18 a lawsuit.
 19 But in this particular case, the person who won the
 20 case went to the bailiff, the bailiff served a demand to
 21 pay, that is passed on to the company, and that's what
 22 I did here. It took these two pages, the two pages with
 23 the annex, the copies of the rulings, referred to on
 24 these two pages.
 25 Q. Sir, your witness statement in paragraph 11, which then

Page 45

13:35 1 goes on to the next page for a few more paragraphs,
 2 describes the seizure of minerals at Mineral Supply
 3 Africa in the name of NRD to collect on Mr Pascal's
 4 judgment; correct?
 5 A. That's correct.
 6 Q. Please scroll down so that he can see the page.
 7 Mr Pascal, I'm going to ask you: if, in order to
 8 answer this question, you need to look further, at
 9 further paragraphs above or below in your witness
 10 statement, please say so and it will happen.
 11 My question to you, sir, is: do you agree your
 12 witness statement doesn't provide any evidence
 13 whatsoever of your providing a statement to either
 14 Mr Pascal or NRD as to the amount received at the
 15 auction and how much was credited against his debt?
 16 A. You're referring to the auction?
 17 Q. Yes, sir.
 18 A. Well, the report was drawn up, and immediately after the
 19 auction, Marshall -- Mr Marshall [summoned] me to the
 20 police station, and it all happened in front of me at
 21 the police station to say how the auction went.
 22 Q. Sir, that's not discussed in your witness statement,
 23 is it?
 24 A. Well, I wasn't asked. But Marshall dragged me to the
 25 police station about ten times, and every time we had to

Page 46

13:37 1 give explanations in front of the police officer.
 2 Q. You talk about all the various times that you did
 3 recall, when writing your witness statement, that there
 4 were challenges, and what you had to do to overcome
 5 those challenges. But you don't say anything in your
 6 witness statement about being drawn to the police
 7 station following the auction of minerals in NRD's name
 8 at MSA, sold to pay Mr Pascal's debt, do you?
 9 A. Well, on the documents it's always -- the reference is
 10 made to that. All you have to do is go through the
 11 documents: you'll find the references.
 12 Q. Sir, I asked you about your witness statement. Please
 13 just answer the question I asked.
 14 You'll agree you did not recite such fact of being
 15 drawn to the police station after this mineral auction
 16 in your witness statement; correct?
 17 A. Maybe if you go to the bottom of the page --
 18 Q. FTL, please.
 19 A. -- there are the documents I drafted. (Pause)
 20 Okay, very good.
 21 THE INTERPRETER: Sorry, I overlapped a bit.
 22 MR COWLEY: Please answer the question.
 23 A. I said that each time I made my report, I wrote down at
 24 the bottom of the page to whom it was addressed. Each
 25 time, it was written at the bottom of the page on my

Page 47

13:39 1 report; my report on the auction.
 2 Q. Sir, I'm asking about your witness statement; do you
 3 understand that?
 4 A. Yes, I do understand.
 5 Q. Can you agree with me that your witness statement
 6 doesn't say [that] after the auction was held of the
 7 minerals at MSA, you were called to the police station
 8 and had to fill out such a report, does it?
 9 A. As soon as the auction took place next to MSA, the next
 10 day Marshall initiated legal proceedings against me and
 11 I went to provide an explanation. In the report, it is
 12 said that that was done.
 13 Q. Can I ask a question: are you able to read your witness
 14 statement written in English?
 15 A. I speak French better than I speak English.
 16 Q. But are you able to --
 17 A. If you read me in French, I will understand.
 18 Q. But the interpreter can tell you in French what I'm
 19 saying in English, but I don't have a written
 20 translation of this witness statement to French. I'm
 21 just trying to establish: when I point to something in
 22 this witness statement written in English, are you able
 23 to read it?
 24 A. No, not correctly. And I prefer in French: I understand
 25 the nuances. But I really don't speak English well.

Page 48

13:41 1 MR COWLEY: I ask Respondent's counsel: is there a version
 2 of this witness statement in French that was signed off
 3 on before or after the English version was prepared?
 4 MR HILL: I will need to take instructions. I can't answer
 5 that now.
 6 THE PRESIDENT: Mr Cowley --
 7 MR COWLEY: Yes.
 8 THE PRESIDENT: -- whether something is or is not in the
 9 witness statement is a matter of record: it's something
 10 that we can all see. It might shorten the
 11 cross-examination if, instead of asking the witness to
 12 agree it's not in the witness statement, to ask, "Why
 13 did you not put this in your witness statement?"
 14 MR COWLEY: I appreciate that. I had wanted to confirm
 15 whether he could check --
 16 THE PRESIDENT: Yes, well, it's taking a very, very long
 17 time, without any result.
 18 MR COWLEY: Thank you, your Honour.
 19 Mr Nsengiyuma, can you explain why you did not
 20 attach to your witness statement any report given to the
 21 creditor, Mr Pascal, or NRD, the debtor, as to the
 22 results of the sale of minerals and how much debt, if
 23 any, remained owed to Mr Pascal?
 24 A. This is in the final report.
 25 Q. Can you explain why you didn't attach such a report to

Page 49

13:43 1 your witness statements?
 2 A. I gave a document of about 100 pages: everything I did,
 3 my work report. It's a very large document, about
 4 100 pages long, and it's in there.
 5 Q. So do you agree that you gave all of the documents in
 6 your possession that related to your actions concerning
 7 the collection on behalf of Mr Pascal to the Respondent
 8 when preparing your witness statement?
 9 A. I gave the whole document. And everything that I did
 10 was in that document, but in my own language,
 11 Kinyarwanda. (Pause)
 12 Q. May I ask that paragraph 17 of the witness statement be
 13 brought up.
 14 Paragraph 17 of your witness statement, sir, reads:
 15 "In early 2014 shortly after I had finished
 16 Mr Rwakirenga's case, a group of 26 people, mostly
 17 former NRD employees, asked me to help them enforce
 18 judgments against NRD. The total amount owed to this
 19 group by NRD was RwF 85,761,624."
 20 Do you agree that it's your testimony that you did
 21 not start working to collect any of the other employees'
 22 debts until after you had finished Mr Rwakirenga's case?
 23 A. No. I started Mr Rwakirenga -- that is Pascal
 24 Rwakirenga -- and along the way his colleagues received
 25 a copy of the judgments in their favour. So they came

Page 50

13:46 1 to see me and ask, "While you're executing the judgment
 2 for Mr Rwakirenga, would you please handle our
 3 judgments?" And this is how the 26 people basically
 4 joined in to the group with Pascal Rwakirenga. So the
 5 two actually were handled at the same time.
 6 Q. Sir, when using the phrase "finishing a client's case",
 7 by that, do you mean: collected their full debt and your
 8 work is done?
 9 A. No.
 10 Q. When you use the phrase "finishing a client's case",
 11 what does it mean?
 12 A. We enforce a judgment. And when there are cases that
 13 are similar -- there's the case of Pascal Rwakirenga,
 14 who is asking for enforcement of the judgment against
 15 NRD; at the same time, the other employees are asking
 16 for enforcement of a judgment against NRD -- the two
 17 cases get combined, get joined, and the enforcement done
 18 against the same person or company. So the objects were
 19 seized accordingly, and then they will be paid out
 20 progressively; progressively, but at the same time.
 21 So it's not that we completely complete one case and
 22 start on the second. If they're close, if they're
 23 similar, then we combine them, we join them.
 24 Q. Sir, please appreciate that I'm not asking you to speak
 25 about Mr Pascal's case and the other employees' case

Page 51

13:49 1 right now; I'm asking you how you use the term "complete
 2 the client's case".
 3 When you use that term, by "completing a client's
 4 case", do you mean you have collected their judgment,
 5 there's no more work to be done?
 6 A. With an auction, we had -- the whole amount was not
 7 covered; we had to continue with the seizures to reach
 8 the full amount. And that was not done by me; it was
 9 done by other bailiffs.
 10 Q. And those other bailiffs would need to see a statement
 11 of how much was recovered at the auction and credited
 12 against the debt to know how much was left to be
 13 collected; correct?
 14 A. The documents are available, or were available.
 15 A bailiff, when he finishes with his work, then the
 16 bailiff who takes over, takes over where he left off.
 17 When I enforced the judgment for Mr Rwakirenga,
 18 I was the second bailiff to step in. There had been
 19 a first bailiff who had sold something, and then I took
 20 over. Then a third bailiff carried on after me. And
 21 it's always on the basis of documents and on the basis
 22 of a copy of the judgment. And there's information, and
 23 NRD is informed as the process goes on.
 24 Q. The group of additional creditors with related judgments
 25 against NRD, as you described them here as 26, included

Page 52

13:51 1 Mr Benzinge; correct?
 2 A. I'm sorry, can you mention the name again? Including
 3 whom? I didn't understand the name.
 4 Q. Mr Benzinge.
 5 A. He also brought his claim or the copy of the judgment to
 6 be enforced against NRD.
 7 Q. If I could ask that the witness statement be scrolled
 8 down to paragraph 20.
 9 Sir, paragraph 20 of your witness statement says:
 10 "On 9 June 2014 I wrote to NRD and made a formal
 11 demand that they pay Mr Benzinge the RwF 16.3 million
 12 they had been ordered to pay to him in the arbitration
 13 proceedings."
 14 Do you recall saying that as part of your witness
 15 statement?
 16 A. Yes.
 17 Q. And that cites to document R-063, your witness statement
 18 cites to that in footnote 25. If I could ask that that
 19 be shown to him.
 20 Mr [Nsengiyuma], you agree that the document that
 21 you put forward in your witness statement at the notice
 22 of Mr Benzinge's claim does not include a judgment?
 23 A. It's marked -- you see the number of the document of
 24 May 2nd 2014: that's the judgment that was being
 25 enforced. You see the reference ...

Page 53

13:54 1 THE INTERPRETER: The interpreter's apologies: I didn't hear
 2 the number of the reference.
 3 MR COWLEY: Yes, I see it referred to in the document.
 4 I'm simply asking: do you recall that when you gave the
 5 document you called notice of Mr Benzinge's judgment,
 6 you did not give such document with a judgment attached
 7 to it?
 8 A. No, it's automatically annexed.
 9 Q. If I could ask you to go back --
 10 A. As soon as you say "judgment" and you reference it, it
 11 is annexed. So if there is any possible challenge
 12 subsequently. You cannot simply give the number of
 13 a judgment without actually showing the judgment; you
 14 have to show the judgment. And that's annexed, the
 15 photocopy is annexed.
 16 Q. If I could ask FTI to go back up to paragraph 20 of your
 17 witness statement. Your witness statement goes on:
 18 "On [that] same day I also wrote to NRD and
 19 Mr Benzinge and made a formal demand for the amounts due
 20 to the 25 former NRD employees that I was also
 21 representing. I sent the demand letter to Mr Benzinge
 22 as I understood that he was still a shareholder in NRD
 23 and therefore liable for its debts."
 24 Do you see that?
 25 A. Yes, I do.

Page 54

13:55 1 Q. Is that accurate? That's what you believed at that
 2 time: Mr Benzinge was liable for the debts owed to the
 3 other 25 clients on whose behalf you were collecting?
 4 A. I was enforcing the copies of the judgments of the
 5 workers that they held against NRD. And at that time
 6 Mr Benzinge was part of NRD, and NRD was to pay the
 7 amount of 16.3 million.
 8 Q. Mr Nsengiyuma, I'm asking you to focus on the statement
 9 that you served the demand relating to 25 other
 10 employees' debts on Mr Benzinge because, as
 11 a shareholder, he was responsible for NRD debts. Was
 12 that your understanding as you took actions in
 13 June 2014?
 14 A. In June, Mr Benzinge was part of the board of NRD. When
 15 I was there at NRD's office, Barbara and Mr Benzinge
 16 were there, they were together.
 17 Q. My question, sir, was: in June 2014, did you think
 18 Mr Benzinge had to pay NRD's debts to your other
 19 25 clients?
 20 A. No, not Ben. NRD was to pay.
 21 Q. Please explain why it's included in your witness
 22 statement that you considered Mr Benzinge liable for
 23 NRD's debts, so you served a notice of the amount
 24 demanded on Mr Benzinge on June 9th 2014.
 25 A. I gave it to the secretariat, the administrative

Page 55

13:58 1 assistant, the whole dossier stating that NRD had to pay
 2 all of the workers who had not been paid. And
 3 Mr Benzinge was a shareholder of NRD's. On the sheet of
 4 Rwanda Development Board, there are the officials of the
 5 company, and Mr Benzinge's name is amongst those names
 6 as a shareholder.
 7 Q. Why didn't you attach --
 8 THE PRESIDENT: Mr Cowley, could I intervene. Can you give
 9 us some assistance as to how long you're going to be
 10 with this witness? Because you've already substantially
 11 exceeded the estimate and I'm getting rather hungry.
 12 MR COWLEY: Yes, sir. I do believe it's going to be
 13 an hour. That's what I ask.
 14 THE PRESIDENT: Will we have interpreters available until
 15 this witness is finished? Can you --
 16 MR KAPLAN: Mr President, I do believe we have the
 17 interpreters for another hour. I can speak to them
 18 offline as to their availability.
 19 THE PRESIDENT: Can you just enquire. Because if they are
 20 able to stay longer, we can have some lunch.
 21 THE INTERPRETER: Thank you. If we could have an offline
 22 chat, that would be very useful. This is one of the
 23 interpreters speaking.
 24 MR KAPLAN: Yes. FTI, can you please place me in a breakout
 25 room with the interpreters?

Page 56

14:00 1 MR WATKINS: Yes, certainly. Would everyone else like to go
 2 into the breakout room, or would you like to have
 3 everyone stay here while you go into the breakout room
 4 and have an offline discussion?
 5 MR KAPLAN: I think just an offline discussion. We'll be
 6 brief.
 7 MR WATKINS: One moment.
 8 MR KAPLAN: Thank you.
 9 (2.00 pm)
 10 (Pause)
 11 (2.04 pm)
 12 MR KAPLAN: Thank you, members of the Tribunal. (Pause)
 13 Okay, I have conferred with the interpreters and
 14 they have a hard stop of 3.30 London time, which will
 15 give a half-hour break plus one hour remaining for
 16 cross-examination. But it is a hard stop. We will have
 17 one of the interpreters leaving at 3.00, as was
 18 originally planned, and then there will be one
 19 interpreter who will remain solo for another half-hour,
 20 and she cannot exceed a half-hour solo simultaneous
 21 interpretation.
 22 THE PRESIDENT: Very well. We will adjourn now until 2.30
 23 London time. That will give one hour for this witness
 24 to be completed, and the witness must be completed in
 25 that hour.

Page 57

14:05 1 MR COWLEY: Thank you.
 2 (2.06 pm)
 3 (A short break)
 4 (2.35 pm)
 5 MR COWLEY: May I proceed, your Honour?
 6 THE PRESIDENT: Yes.
 7 MR COWLEY: May I ask that the first witness statement be
 8 brought back up and paragraph 20 again be highlighted.
 9 Mr Nsengiyuma, I want to draw your attention in
 10 paragraph 20 to the day that you're speaking to here,
 11 June 9th 2014. In this paragraph you explain serving
 12 notice on NRD for the debt to Mr Benzinge and you talk
 13 about serving notice on NRD and Mr Benzinge of the debt
 14 to 25 other clients. And if I could point out to you
 15 that in your witness statement you say:
 16 "I sent the demand letter to Mr Benzinge as
 17 I understood that he was still a shareholder in NRD and
 18 therefore liable for its debts [and] I hand-delivered
 19 the second letter to the NRD office -- Barbara the
 20 secretary in the office accepted the document but
 21 refused to sign for it."
 22 Why is no copy of a notice of debt owed to 25 other
 23 employees attached anywhere to your witness statement?
 24 A. You have to read the order to pay that is referred to
 25 here.

Page 58

14:37 1 Q. My question is simply: why is no copy of this notice
 2 attached to your witness statement?
 3 A. I gave three orders: the first to pay to Pascal, the
 4 second one to pay Mr Benzinge, and the third order was
 5 to pay the other employees. These are different orders
 6 that are based on different copies of judgments: three
 7 orders to pay.
 8 Q. And that's your answer to my question?
 9 A. Yes.
 10 Q. In the next paragraph -- if I could ask FTI to scroll to
 11 21. I address paragraph 21 not because I'm going to ask
 12 a lot of specific questions about it, but I want to make
 13 sure you're oriented in time. You say the next day --
 14 I'm sorry, you say on June 11th 2014, you then seized
 15 minerals and equipment at NRD's Kigali office because
 16 payments of those debts had not been made. Do you
 17 recall giving that statement?
 18 A. Yes.
 19 Q. And by seizing the Kigali office, that meant that you
 20 locked it up and posted a security firm outside the
 21 office to prevent others from getting in until you were
 22 able to sell the assets inside; correct?
 23 A. That is correct.
 24 Q. And you recall that in the Kigali office when you seized
 25 it, there was both minerals and equipment?

Page 59

14:40 1 A. Yes.
 2 Q. Why is no inventory of the minerals held within the
 3 Kigali office when you seized it, identifying the
 4 minerals and their weight, provided with your witness
 5 statement?
 6 A. In my basic document, those documents are included.
 7 Everything that was found in the office, including the
 8 tables and chairs, everything was inventoried in that
 9 report.
 10 Q. My question again is: why is that inventory not attached
 11 to your witness statement, if it really exists?
 12 A. As I have already told you, I gave a document about
 13 100 pages long. And the particular document that you're
 14 referring to, which is a seizure report drafted by
 15 myself, was included in that 100-page document.
 16 Q. And the document you say exists, it's your position that
 17 it also includes an inventory of exactly what the
 18 equipment consisted of?
 19 A. The equipment that was seized and the mineral that was
 20 seized, then locked up in NRD's office.
 21 Q. If I could ask paragraph 22 to be brought up.
 22 In paragraph 22 of your statement you discuss the
 23 events of the next day, June 12th 2014, in which you
 24 describe similar actions, this time at the offices at
 25 the Nemba concession. Do you recall providing testimony

Page 60

14:42 1 about those events in your witness statement?
 2 A. Yes, I do.
 3 Q. And you say again: after seizing -- which means locking
 4 up -- the Nemba offices, you posted security outside, so
 5 that the materials inside could be secure for sale later
 6 to assess against the debt; correct?
 7 A. That is correct.
 8 Q. Why was no inventory of the minerals and equipment
 9 seized at the Nemba offices attached to your witness
 10 statement?
 11 A. Everything is annexed, everything that I did is annexed.
 12 Q. So --
 13 THE PRESIDENT: Mr Cowley, could I intervene. You are
 14 asking this witness repeatedly why matters are not in
 15 his witness statement. If it is your intention to
 16 invite the Tribunal to infer that matters not in his
 17 witness statement, but spoken to, represent evidence
 18 that is untrue, it would be fair to this witness to make
 19 that plain to him.
 20 MR COWLEY: Certainly.
 21 Mr Nsengiyuma, if in fact you had created
 22 an inventory of the minerals and equipment that were
 23 seized by your locking up the Nemba facility's offices,
 24 that document would have been attached to your witness
 25 statement; correct?

Page 61

14:44 1 A. It is appended in the annex.
 2 Q. Can you identify that, please? And if you could show
 3 him the whole page. Which footnote --
 4 A. It's in the document that I submitted. That's where it
 5 is.
 6 Q. I'm asking you about the witness statement; I'm not
 7 asking you about what you gave to Respondent or their
 8 counsel. So when you say "submitted", I want to be very
 9 clear: are you using that term to refer to what you
 10 attached to your witness statement or what you gave to
 11 Respondent's counsel, or something different?
 12 A. In the witness statement, annexed are all of the
 13 documents that justify what I did, and the reports --
 14 including the reports, reports on the seizures.
 15 Q. Can I ask you to identify, in the footnotes or by title,
 16 the document annexed to your witness statement that you
 17 say constitutes the inventory of the minerals and
 18 equipment seized at the Nemba facility's offices?
 19 A. Can I see the whole document?
 20 Q. Certainly. If you could make it side-by-side pages.
 21 Mr Nsengiyuma, the controller will put up two pages
 22 at a time. We were talking about paragraph 21 a moment
 23 ago with regard to Kigali, and now paragraph 22, which
 24 goes over these two pages. There are footnotes at the
 25 bottom of each page. If you need to go on to any other

Page 62

14:47 1 page, before or after, please let us know and they will
 2 turn to that page.
 3 So the question, again, is: identify the document,
 4 by either footnote number or the title of the document,
 5 that constitutes the inventory of minerals and equipment
 6 that you created when seizing the offices at the Nemba
 7 facility.
 8 A. Well, the thing is, you have to look up the reference
 9 and then produce the corresponding document. The
 10 reports that I produced, both in the Kigali and the
 11 Nemba office, it was handwritten on both occasions. And
 12 so you just have to produce these documents: you'll find
 13 all the details that I did.
 14 Q. Sir, I'm asking you to identify the reference in this
 15 witness statement, and we will call up that document
 16 number.
 17 A. You'll find this at the bottom of the page. You just
 18 need to ...
 19 Q. Can you find it, sir, please? And if you can't find it,
 20 just let me know, and I'll accept that answer to the
 21 question and move on.
 22 A. But the numbers are written there. All you have to do
 23 is produce the document with the number on it, and then
 24 on that document you will see everything, black and
 25 white.

Page 63

14:48 1 Q. Okay. I'm going to ask this one last time, sir, because
 2 I want to be very clear: I don't believe it exists,
 3 I don't believe it is referenced. You say it is. So
 4 I'm asking you: since you believe it is, you tell me
 5 which document reference to have them call up.
 6 A. At the bottom of the page, you have a number: you have
 7 the number of the document, you have the reference
 8 number. And then if you take that document, you'll have
 9 the answer to your question.
 10 Q. May I ask that FTI controller please focus on
 11 paragraph 23, enlarge that.
 12 In paragraph 23, witness your statement says:
 13 "A day or so after I had been to Nemba and sealed
 14 the NRD offices with the minerals inside, I was told by
 15 the two RGL security guards that I had left on the site
 16 in Nemba, that NRD's employees had broken into the
 17 office and stolen the minerals."
 18 Do you remember giving that testimony as part of
 19 a witness statement?
 20 A. I recall this, yes.
 21 Q. Do you also recall, at the beginning of your testimony,
 22 acknowledging that a professional bailiff in Rwanda is
 23 liable to secure the property they seized, so that it
 24 could be sold and credited against the debt?
 25 A. That's correct, yes.

Page 64

14:50 1 Q. Isn't it true, sir, that if any inventory of the Nemba
 2 facility's offices contents existed, you don't want
 3 anyone to see it, because you are liable for the loss of
 4 those materials while they were under your control as
 5 seizing them?
 6 A. When the two employees stole the minerals, we took them
 7 to the police station in Nemba and there was a record
 8 that we signed there.
 9 Q. So you weren't there when anybody took the minerals or
 10 any equipment out of the Nemba facility, right?
 11 A. Well, the next day a security guard called me and
 12 I lodged a complaint with the police.
 13 Q. And you can't name anybody that you say stole those
 14 materials; correct? You can't identify them by name?
 15 A. Well, in my record I wrote down the names.
 16 Q. Excuse me?
 17 A. In my record I wrote down the names.
 18 Q. And that record, if it existed, would be attached to
 19 your witness statement to support your position that the
 20 people responsible for the theft are NRD employees, and
 21 not you for lapsed security; correct?
 22 A. Yes, it's in the record. In fact, the name of the
 23 police station is also included in the record.
 24 Q. If I could ask that we go back to paragraph 17. I'm
 25 bringing this up to remind you that in your witness

Page 65

14:53 1 statement you initially described the clients with debt
 2 against NRD as numbering 26, other than Mr Pascal.
 3 Do you recall, if you could go down to
 4 footnote 20 -- do you see footnote 20 there? Yes, thank
 5 you. Do you recall that what you cited in support of
 6 identifying 26 employees with debts against NRD is
 7 document Exhibit R-066? Do you recall identifying that
 8 document in support of your identification of your
 9 25 other clients?
 10 A. We were at the police station, we gave all the names, we
 11 said everything that I was doing. Mr Marshall summoned
 12 me to the police station. The names, the phone numbers
 13 of everybody who demanded to be paid by NRD, the list
 14 was drawn up. The names and the phone numbers ...
 15 Q. May I ask that R-066 be brought up, and if you can focus
 16 on paragraph 1.1.
 17 The document that you referred to as containing
 18 names of 26 creditors that you provided notice of to NRD
 19 actually only contains 7 names; isn't that correct?
 20 A. Yes, the names that I listed there are the names of
 21 those people who came to my office to sign a contract
 22 with me to recover the amounts due to them.
 23 Q. And those were the only names provided in this document;
 24 correct?
 25 A. There are other names that I've not mentioned. There's

Page 66

14:56 1 a whole list, a comprehensive list. When I was
 2 summonsed by the police, I had to produce the list of
 3 all the names, and indeed I produced the copies of the
 4 rulings listing all the people who demanded payment from
 5 NRD. This is just a small portion: the people who
 6 actually came to the office to sign the contract with me
 7 to execute the order.
 8 Q. Sir, it's true, is it not, if you provided a list of
 9 26 names, you kept a copy of it -- let me strike the
 10 question. Let me ask it this way.
 11 It's true, is it not, that you kept a copy of the
 12 comprehensive list of names that you provided the police
 13 that day; correct?
 14 A. Yes, and in the document that I produced, the list is
 15 included there as an annex. It is there.
 16 Q. Well, you'll certainly agree with me, sir, that you're
 17 capable of providing a copy of the document you provided
 18 to the police; correct?
 19 A. Yes.
 20 Q. The Shema Ernest that's identified as one of your
 21 clients, is that the same Shema on whose behalf you say
 22 you provided notice to NRD by giving Shema a copy that
 23 was signed for?
 24 A. Well, when I produced the letter, Shema was still
 25 working for NRD at the time. But one or two years

Page 67

14:58 1 later, I don't remember exactly, but she was kicked
 2 out -- or he was kicked out. He came to my office and
 3 asked me to execute the ruling on his behalf.
 4 Q. To be clear, it's the same Shema that you said accepted
 5 notice of the claims of all 26 --
 6 A. Yes, and he --
 7 Q. -- creditors? I'm sorry, I spoke over you. I want to
 8 just be clear. You're saying that the same Shema that
 9 accepted notice of the debt owed to 26 creditors on
 10 behalf of NRD is the Shema that's named in this
 11 document; correct?
 12 A. Well, when he signed the document -- at the time when he
 13 received the notice, he was a NRD employee. But when he
 14 was kicked out and he produced the copy of the ruling,
 15 he came to my office to ask me in turn to execute the
 16 ruling in his favour.
 17 Now, there was one or two years' gap in between.
 18 Q. It's true, is it not, sir, that you had never paid any
 19 of the creditors the value of the inventory that was
 20 stolen from the Nemba facility's offices while they were
 21 under your control, having seized that office; correct?
 22 A. Can you repeat the question, please?
 23 Q. Yes. Remember your testimony that after you seized the
 24 Nemba facility's offices, you came back a couple of days
 25 later to find that minerals were stolen; you blamed NRD

Page 68

15:01 1 employees. Do you remember that testimony?
 2 A. In Nemba, yes.
 3 Q. You agree that you have never provided payment of the
 4 value of the inventory stolen while it was under your
 5 seizure to any of the creditors; correct?
 6 A. Well, when the NRD employees stole the NRD minerals, the
 7 next day I took them to the police station; and when
 8 they were taken to the police station, I was able to
 9 complete my work.
 10 Q. Did you recover minerals, sir, and sell them for the
 11 debt?
 12 A. No, I didn't sell anything from Nemba.
 13 Q. And you didn't pay the value of those minerals to any of
 14 the creditors; correct?
 15 A. I didn't sell anything in Nemba, and it wasn't for me to
 16 pay anything. It should have been for the thieves to
 17 pay it.
 18 Q. If I could ask that paragraph 27 of the witness
 19 statement be focused on, and [R-]66 could be reduced.
 20 In paragraph 27 of your witness statement you
 21 testify about a meeting at NRD's offices on June 25th
 22 that was arranged for the day before, and at this
 23 meeting Mr Marshall, Ms Mruskovicova and Mr Benzinge
 24 were all present, among others. Do you recall providing
 25 testimony about that meeting in a witness statement?

Page 69

15:03 1 A. Yes, I do.
 2 Q. And your testimony says, among other things:
 3 "I told them that my only duty was to open the
 4 office as had been agreed and that if they did not want
 5 to work with Mr Benzinge that was a matter for them."
 6 Do you recall that testimony?
 7 A. Yes, I do, sir.
 8 Q. Who gave you the instruction that created that duty?
 9 A. Mr Marshall had lodged a complaint [with] the Ministry
 10 of Justice claiming that Bosco had closed the office and
 11 so they were not in a position to pay employees, and
 12 that Bosco was using forged documents, and the Ministry
 13 of Justice therefore asked me to produce all the
 14 documents and to re-open the door. They actually
 15 indicated the date at which I was supposed to report to
 16 NRD with officials from the Ministry of Justice, so that
 17 I should open the doors and so that Mr Marshall could go
 18 in and pay his employees.
 19 I followed these instructions from the Ministry of
 20 Justice. And so we went to the NRD offices, I did open
 21 the door, and that's -- I completed my duties.
 22 Q. To be clear, it's your testimony that you believe you
 23 were instructed by the Ministry of Justice to open the
 24 door and give the keys, control of those offices,
 25 equally to Mr Marshall, Ms Mruskovicova and Mr Benzinge;

Page 70

15:06 1 you believe that was your instruction?
 2 A. Yes, sir. These were my instructions.
 3 Q. Now, you seized the office originally believing you were
 4 enforcing an arbitration award; correct?
 5 A. Yes.
 6 Q. And you understood turning the office over [in] the way
 7 you just described is inconsistent with what you read
 8 the arbitration award to say, isn't it?
 9 A. No, that's not the case. Mr Marshall had lodged
 10 a complaint with the Ministry of Justice claiming that
 11 I had been using forged documents or false rulings. The
 12 Ministry of Justice then sent me a letter suspending my
 13 functions vis-à-vis the NRD case: I was asked to desist
 14 from that case and no longer attempt to execute that
 15 ruling.
 16 Having received this order, this summons from the
 17 Ministry of Justice the cease-and-desist on execution on
 18 NRD, that was the end of my duty. So I returned the key
 19 and that ended my functions.
 20 Q. Are you saying that the Ministry of Justice told you
 21 they considered the arbitration award forged, so you had
 22 to return the office to Mr Marshall and Ms Mruskovicova,
 23 among others?
 24 A. No. The Ministry of Justice, on the basis of the
 25 complaint lodged by Mr Marshall, who was claiming that

Page 71

15:08 1 I was using forged documents, on that basis the minister
 2 ordered me to stop my activities against NRD and to
 3 return the entire file to the Ministry of Justice. And
 4 the keys were to be returned to the NRD executives, and
 5 Bosco -- that is myself -- was left aside.
 6 Q. Based on the arbitration award that you say you were
 7 acting consistent with, who did you believe the NRD
 8 executives to be?
 9 A. I don't know who these executives were. You had to read
 10 the list of RDB, Rwanda Development Board. When the
 11 list of corporate officers of the company were listed,
 12 the Rwanda Development Board lists who the executives
 13 are, these corporate officers. There were names,
 14 including Ben Benzinge and others.
 15 Q. I asked you who you determined it to be. Is it your
 16 testimony that when you were instructed to turn the
 17 offices back over to executives, you looked at the list
 18 of officers: it included Mr Benzinge, Mr Marshall and
 19 Ms Mruskovicova? Is that your testimony?
 20 A. Well, we looked up the list of the shareholders of NRD
 21 at the Rwanda Development Board. We, together with
 22 Ms Mruskovicova, Ben Benzinge and Marshall, we went
 23 together to the offices of the Ministry of Justice, and
 24 they said that, "On that date you have to report to the
 25 offices, Mr Bosco will return the keys, and that will

Page 72

15:11 1 complete his duties".
 2 On said day, I reported with the keys, I opened the
 3 doors, and that completed my duties, in the presence of
 4 officials from the Ministry of Justice.
 5 Q. Based on your review of the arbitration award that you
 6 said you were enforcing and checking again yourself at
 7 the RDB, you confirmed that Mr Benzinge was only a 15%
 8 shareholder; correct?
 9 A. Well, that wasn't my concern.
 10 Q. You know that minority shareholders don't get keys to
 11 the offices and allowed to run the operations,
 12 don't you?
 13 A. Well, my instructions were simply to stop the execution
 14 in NRD. My instructions were to open the doors of NRD
 15 in the presence of officials from the Ministry of
 16 Justice. Those were my instructions.
 17 We had had a meeting before. Minutes were drafted
 18 at the Ministry of Justice. And on the indicated date
 19 at the indicated time, I duly reported to produce the
 20 keys in the presence of officials from the Ministry of
 21 Justice, and that completed my duty.
 22 Q. When deciding how to turn the keys over to the people in
 23 charge of NRD, did you take any action to reach out to
 24 the majority shareholders and ask them how they wish to
 25 secure their company?

Page 73

15:15 1 RDB, the Rwanda Development Board, and they say clearly
 2 who are the shareholders. And the shareholders, you had
 3 Marshall, you had Ben Benzinge, you had Zuzana, and
 4 there was somebody else, I don't recall who. And these
 5 were the shareholders of the company.
 6 Q. It's your testimony that you were told that by the RDB
 7 before June 25th 2014, and you're handing the keys back
 8 over to Mr Benzinge: you tried, you say, to Mr Marshall
 9 and Ms Mruskovicova, as well, but they, you say,
 10 wouldn't accept the keys and walked away. Is that your
 11 testimony?
 12 A. Yes, under the supervision of the Ministry of Justice.
 13 Marshall had suggested that Bosco should desist from the
 14 execution. The Ministry of Justice set me aside, and
 15 made an appointment so that I should open the doors and
 16 that the owners then take over. And from that time on,
 17 that completed my job.
 18 Q. Sir, I was just trying to get clear when you say: in
 19 order to determine the shareholders of a company, you
 20 have to confirm with RDB. I'm asking you just simply to
 21 focus on this question: is it your testimony you did in
 22 fact check with the RDB to get an answer to that
 23 question before turning keys back over to anyone on
 24 June 25th 2014?
 25 A. Yes, I did check.

Page 75

15:13 1 A. Again, that was not my concern. There had been
 2 a meeting at the Ministry of Justice, in the presence of
 3 Marshall, Benzinge and Ms Mruskovicova, saying that on
 4 that date the doors would be opened; that Bosco --
 5 i.e. myself -- would open the door, would turn the keys,
 6 and go away. And it was not my concern to know who was
 7 a minority or majority shareholder; that was not my
 8 concern. My job was to open the doors and leave.
 9 Q. You agreed with me at the beginning of your testimony
 10 that part of your responsibilities as a professional
 11 bailiff is to maintain the security of the assets you
 12 seize. Do you recall agreeing that that's your
 13 obligation?
 14 A. I quite agree. 100%.
 15 Q. What was the Zarnacks' position about whether they would
 16 come to Rwanda or send a representative to take control
 17 and secure NRD?
 18 A. Can you repeat the question, please?
 19 Q. What was the Zarnacks' position [about] whether they
 20 were willing to come to Rwanda themselves or send
 21 a representative to take control of NRD?
 22 A. Who are Zarnacks? I'm sorry. Who are Zarnacks?
 23 I don't know them.
 24 Q. Did you even read the arbitration award?
 25 A. Yes, I did. You have to look at who owned the company,

Page 74

15:17 1 Q. And you say your actions were consistent with the
 2 instructions of RDB?
 3 A. Well, RDB -- what instructions were RDB? RDB -- it is
 4 RDB's duty to say who is the shareholders of the
 5 company. They simply gave you the names: A, B, C and D.
 6 RDB produced the documents to the effect that the
 7 shareholders were Marshall, Ben and the others, and it
 8 was not for me to challenge that document to RDB.
 9 THE PRESIDENT: Mr Cowley, you have ten minutes, leaving
 10 Mr Hill three minutes for re-examination.
 11 MR COWLEY: Thank you.
 12 Can I ask that R-[77] be brought up. (Pause)
 13 At some point, Mr Nsengiyuma, you agree that the
 14 Ministry of Justice informed you [that] you were free to
 15 continue collecting on judgments against NRD; you
 16 testify to that, correct?
 17 A. Yes.
 18 Q. R-077 is a document -- looks like it's in English --
 19 that provides information about an auction in
 20 February 2015 in which a car seized from Mr Marshall was
 21 auctioned; correct?
 22 A. Yes, sold by Bosco.
 23 Q. So you were still trying to collect into 2015, and at
 24 this point you were going after the personal assets, the
 25 personal car of Mr Marshall; correct?

Page 76

15:19 1 A. No, not the assets of Mr Marshall; of NRD.
 2 What should be noted: having given all of NRD's
 3 documents -- that is the copies of the judgments -- to
 4 the Ministry of Justice, these were checked. After
 5 a period of two or three months, the minister came to
 6 the conclusion that all the copies of the judgments that
 7 I had used were appropriate, correct. And so he ordered
 8 NRD, represented by Mr Marshall, to pay all the workers
 9 who had these judgments in their favour; and if this
 10 were not done, then he authorised Bosco to continue with
 11 his work, my work.
 12 After, when I received the letter from the minister,
 13 I told NRD, "You must pay or the car will be sold".
 14 Mr Marshall refused to pay. And this is how NRD's car
 15 came to be seized and auctioned in order to pay the
 16 amounts owed under the judgments.
 17 Q. Mr Nsengiyuma, you agree you never took action to seize
 18 any assets of Mr Benzinge, as shareholder of NRD, to pay
 19 your other clients' debts; correct?
 20 A. No, that is forbidden. You do not take the -- you do
 21 not seize the belongings of the shareholders. The
 22 bailiff seizes the assets of the company, not individual
 23 assets. The car that Mr Marshall drove was registered
 24 as an NRD asset, so it was not a personal vehicle.
 25 Q. You'll agree that you never went back -- after the

Page 77

15:22 1 Ministry of Justice said you could continue to collect
 2 debt against NRD, you'll agree you never went back and
 3 seized any of the concessions or their offices again;
 4 correct?
 5 A. I sold the car that I had seized.
 6 Q. Yes. Sir, that's not my question. You agree that you
 7 never went back to the concessions or the offices and
 8 seized those again; correct?
 9 A. Well, there was what had already been seized, such as
 10 the car used by Mr Marshall, which I told when the
 11 authorisation came from the Ministry of Justice.
 12 Q. You'll agree, sir, that someone instructed you not to
 13 seize any of the concessions again, to let whatever
 14 mining was going on there continue; won't you agree with
 15 that?
 16 A. No. The bailiff receives no orders from anyone to
 17 conduct his work. The bailiff enforces the judgment.
 18 MR COWLEY: I have no further questions.
 19 (3.24 pm)
 20 Re-direct examination by MR HILL
 21 Q. Mr Nsengiyuma, you were asked about a document at R-051,
 22 if that can be put up on the screen. And could I also
 23 have it in the French as well, please, up on the screen,
 24 one beside each other.
 25 It's coming up in French in a moment, Mr Nsengiyuma.

Page 78

15:24 1 You recall you were asked some questions about
 2 whether or not there were judgments annexed to this
 3 document; do you remember those questions?
 4 A. Yes, that question was put to me.
 5 Q. Now, I'm going to ask you to look at the third paragraph
 6 of the document, which in French starts "Vu le jugement
 7 RSOC ..."
 8 Could you just explain what was said at the end of
 9 that paragraph, with the words "dont la copie est en
 10 annexe"?
 11 A. NRD, through Mr Marshall, went to the courts and sued to
 12 reverse the enforcement and the seizures that I had
 13 begun to undertake. The court asked him, "Have you paid
 14 up the amounts owed to employees?" He answered that he
 15 had not. The court said, "Then we shall carry on with
 16 enforcement".
 17 Q. Then if you just focus on my question, Mr Nsengiyuma.
 18 Where it says in this paragraph -- the closing words --
 19 "dont la copie est en annexe", what were you doing with
 20 this document and with the judgment?
 21 A. Enforcement was underway. Mr Marshall brought
 22 proceedings against me. The court decided that
 23 Marshall's claim and NRD's claim was groundless, so
 24 automatically the enforcement that I had stopped could
 25 resume. And for me to resume with the enforcement

Page 79

15:27 1 procedure of the judgment, I had to append, I had to
 2 annex the judgment that authorised me to continue with
 3 the -- or to resume the enforcement, that said that NRD
 4 had not paid, and therefore the enforcement could
 5 resume.
 6 MR HILL: Thank you, Mr Nsengiyuma.
 7 THE PRESIDENT: Thank you very much indeed for coming to
 8 assist us. You are now free to leave.
 9 (The witness withdrew)
 10 MR HILL: Mr President, the next witness is going to be
 11 Mr Imena.
 12 THE PRESIDENT: Yes. (Pause)
 13 MR COWLEY: Mr President, if I may ask while we have
 14 a moment, what's the preference in terms of the schedule
 15 for breaks from here?
 16 THE PRESIDENT: I think we'll have the next half-hour break
 17 at 4.15, and there will be one final break of 15 minutes
 18 before we conclude at 7.00.
 19 MR WATKINS: Okay, we are bringing the witness in now.
 20 THE PRESIDENT: Maybe we'll have the break at 4 o'clock:
 21 that would balance the rest of the day better. (Pause)
 22 (3.31 pm)
 23 MR EVOKE IMENA (called)
 24 THE PRESIDENT: Good afternoon, Mr Imena. On your screen
 25 you should see a witness declaration: would you please

Page 80

15:31 1 repeat that aloud?
 2 MR IMENA: I solemnly declare upon my honour and conscience
 3 that I shall speak the truth, the whole truth and
 4 nothing but the truth.
 5 THE PRESIDENT: Thank you.
 6 MR HILL: Thank you.
 7 (3.31 pm)
 8 Direct examination by MR HILL
 9 Q. Mr Imena, did you work with Mr Dominique Bidega when you
 10 were at OGMR?
 11 A. Yes.
 12 Q. Do you recall Mr Bidega retiring from the OGMR?
 13 A. Yes, I remember.
 14 Q. What can you remember about the circumstances of
 15 Mr Bidega's retirement?
 16 A. So I remember he retired at the end of 2011. At that
 17 time they were restructuring from OGMR, changing into
 18 a new institution. And as I was working there, so we
 19 were given some of those new positions: for instance,
 20 Bidega was given a new position as an officer in charge
 21 of inspection, and he was demoted from his previous role
 22 as a director in charge of inspection and regulation.
 23 So at that time he was not feeling happy about that.
 24 And then he started showing signs that he's not happy
 25 with the decision made in September 2011 to change his

Page 81

15:32 1 position, because his salary was reduced and he was
 2 given a position that would require a lot of fieldwork,
 3 and his health situation was not allowing him to perform
 4 fieldwork. So he showed signs that he was not happy,
 5 and he ended up being given a retirement or quitting the
 6 institution at the end of the year.
 7 MR HILL: Thank you, Mr Imena. Now, Mr Cowley represents
 8 the Claimants and he's going to ask you some questions
 9 now.
 10 MR IMENA: Okay.
 11 (3.33 pm)
 12 Cross-examination by MR COWLEY
 13 Q. Good afternoon, Mr Imena.
 14 A. Good afternoon, sir.
 15 Q. Please let me know if I saw correctly: to my eye, it
 16 appeared that you may have carried papers with you into
 17 the exam room, and that may be on the table in front of
 18 you. Is that accurate?
 19 A. I have these papers, as well as my witness statement.
 20 MR COWLEY: May I ask that any papers -- if there's someone
 21 else in the room from the Respondent, or someone could
 22 go into the room from the Respondent and take any papers
 23 or any previously prepared materials away and held
 24 safely for Mr Imena.
 25 MR IMENA: There's no one in this room. I have my printed

Page 82

15:34 1 witness statement. I thought I was allowed to have
 2 them. But they can be taken away, if that's the
 3 instruction.
 4 MR HILL: I think he is permitted to have his witness
 5 statement.
 6 THE PRESIDENT: Yes.
 7 MR COWLEY: There's no way I can take the time to try to
 8 check what's on each page through Mr Imena and whether
 9 there's other materials or information written there.
 10 So I would certainly just request the courtesy to not
 11 leave any question about whether there's something more
 12 on that version than on others. And as Respondent's
 13 counsel knows, we have been relying with all the
 14 witnesses on pulling up and giving them an opportunity
 15 to review as much of their witness statements as they
 16 need before answering questions about it.
 17 MR IMENA: So let me just bring them out of the room.
 18 THE PRESIDENT: That's a good idea.
 19 MR IMENA: Okay. (Pause)
 20 MR COWLEY: Thank you, Mr Imena.
 21 MR IMENA: You're welcome.
 22 MR COWLEY: I'm going to ask that the first witness
 23 statement indeed be brought up, and paragraph 9 focused
 24 on.
 25 So I'm skipping over some prior paragraphs. To

Page 83

15:36 1 orient you, in paragraphs prior to this you provide your
 2 background, professional background, including your time
 3 with the -- am I pronouncing this correctly, is this how
 4 you pronounce it -- the agency, the ministry that's used
 5 as an acronym here, I pronounce "MINIRENA". Is that how
 6 you pronounce it?
 7 A. Yes.
 8 Q. So you provide some background about your time with
 9 MINIRENA and the positions you hold. And I'm picking up
 10 at paragraph 9, and there's two time periods covered.
 11 First, you mention "shortly after [you] were
 12 appointed in February 2013". You've already explained
 13 in prior paragraphs that that's when you were appointed
 14 the minister.
 15 Then you go in the next sentence backwards in time,
 16 and that's what I want to focus on. You say that:
 17 "[You were] already familiar with the file as in
 18 May 2012 I had been asked to evaluate NRD's application
 19 for new five year licences made in November 2010 ..."
 20 You referenced "file" there. Do you recall what
 21 you're referring to is the NRD relationship with
 22 MINIRENA?
 23 A. Can you repeat, please, your question?
 24 Q. Yes. The reference to being "familiar with the file",
 25 you're talking about NRD's file in that paragraph,

Page 84

15:38 1 right?
 2 A. Yes.
 3 Q. Who asked you in 2012 to review the NRD November 2010
 4 application?
 5 A. I was asked that by my superiors, my supervisors at
 6 Rwanda Natural Resources Authority, Geology and Mines
 7 Department.
 8 Q. And by name, who asked you?
 9 A. I think at that time it was Mr Francis Kayumba.
 10 Q. And when you were asked to review it, what were you told
 11 to review it for, what purpose?
 12 A. It was to make an assessment of the application file and
 13 give recommendations as a geologist.
 14 Q. I'd like to be clear about the reference to "file".
 15 Literally, are you referring to a file that consolidated
 16 all of whatever, within MINIRENA, was considered to be
 17 the important materials to hold together in some form of
 18 filing system, so a physical file; or is that an offhand
 19 reference referring to any and all documents, wherever
 20 found in the computer system, but not all together in
 21 one place?
 22 A. There were documents on hard copies and there were
 23 documents on soft copies.
 24 Q. And that means on the computer system?
 25 A. Yes.

Page 85

15:41 1 A. I'm sorry, I don't remember if it was hard file or soft
 2 file.
 3 Q. Who was it circulated to?
 4 A. The report I made was circulated to Francis and
 5 copies --
 6 Q. I'm sorry, I asked a poor question. And it would be
 7 rude to interrupt, but I want to make sure my question
 8 aligns with your answer, and I think I asked a poor
 9 question. So let me start again.
 10 Who was -- is it fair for me to call him
 11 "Dr Michael": you'll understand who I'm referring to?
 12 A. Yes.
 13 Q. Your supervisor. So who was Dr Michael's assessment
 14 that predated yours, who was that circulated to?
 15 A. I don't remember. But I got a copy of that assessment.
 16 I don't remember all the people who had access to that
 17 assessment.
 18 Q. Was it provided to NRD?
 19 A. I don't remember. I don't think it's appropriate to
 20 speculate.
 21 Q. When was it created?
 22 A. The report of Dr Michael was created before my May 2012
 23 report. I don't -- right now, I don't remember the
 24 date.
 25 Q. Is it attached to your witness statement in any way? Do

Page 87

15:40 1 Q. Now, when you were told to make an assessment of the
 2 2010 application at this time, were you told assessment
 3 of that application had already started by some previous
 4 person or persons?
 5 A. Yes, it was a file that had been at the ministry since
 6 some years, but there were additional documents that
 7 were brought in. So I had to make an assessment of all
 8 the information that was available to me at that time.
 9 Q. Well, obviously the relationship with NRD, including in
 10 document form, predates, goes back in time before the
 11 November 2010 application itself. So I'm not referring
 12 to the fact that there were prior materials before that
 13 application.
 14 But to ask my question again, and perhaps be
 15 clearer, when you were asked to make an assessment of
 16 the November 2010 application, were you told whether one
 17 or more assessments of that application had already been
 18 started by others?
 19 A. Yes, my supervisor at that time had already made
 20 an assessment. He was called Dr Michael Biryabarema.
 21 He had already made an assessment.
 22 Q. Was that in writing?
 23 A. Yes, it was in writing.
 24 Q. Was it part of the hard file or only the soft file,
 25 internal computer files?

Page 86

15:43 1 you recall discussing it and referring to it in any of
 2 your witness statements?
 3 A. That report is referred to in my May 2012 report.
 4 Q. And is it attached to it?
 5 A. I would need to check if it is attached to it.
 6 Q. Did it come to a conclusion, Dr Michael's assessment?
 7 A. Dr Michael's report, yes, made some conclusions.
 8 Q. Did any information in the file state whether his
 9 conclusions were communicated to NRD?
 10 A. I'm sorry, I don't remember.
 11 Q. Did you rely on -- and by that, I mean did you copy --
 12 any of Dr Michael's work product in his assessment when
 13 you created your own?
 14 A. I relied on information provided in his report, as well
 15 as information from other reports.
 16 Q. Well, let's identify those for a moment. Did you look
 17 at the November 2010 application, did you read that in
 18 full?
 19 A. Yes.
 20 Q. What are the reports, if any, beyond the November 2010
 21 and Dr Michael's assessment --
 22 A. There was another report that was submitted by NRD: it
 23 was a summarised investment plan for the year 2012 to
 24 2017. That report I think was submitted by NRD in July.
 25 Q. Of what year?

Page 88

15:45 1 A. In July 2011.
 2 Q. When you picked up the file and started work on the
 3 assessment, what was your understanding of whether there
 4 was any communication with NRD about the 2010
 5 application prior to your being asked to create
 6 an assessment?
 7 A. Any communication from my side?
 8 Q. Yes.
 9 A. No. I don't remember any communication from my side to
 10 NRD before May 2012.
 11 Q. Did anyone from MINIRENA ever explain to NRD why there
 12 was no communication back to it about its November 2010
 13 application as of May 2012?
 14 A. NRD had been informed by the minister on several
 15 occasions after their application in 2010. That is what
 16 I remember.
 17 Q. Were there discussions with other concession holders
 18 about their applications during that same time period,
 19 November 2010 to May 2012?
 20 A. There might have been applications around that time by
 21 other concession holders.
 22 Q. Yes, and I'm only referring to the ones that had
 23 submitted applications. Did MINIRENA engage in
 24 discussions with those concession holders about their
 25 applications during the time period where there wasn't

Page 89

15:49 1 for short term.
 2 Q. So for the short-term licence holders with large
 3 concessions, how many were there whose initial licence
 4 term was coming up in or around 2010 that either would
 5 apply to continue in some fashion or give it up?
 6 A. I don't remember the number, unfortunately.
 7 Q. Has it ever been recorded within MINIRENA how each
 8 initial short-term licence or concession holder, how its
 9 continuation process was either continued or not? Have
 10 you ever seen a chart or a summary or something tracking
 11 all of them, focusing on the large mines, if there's
 12 differences, not on the very small ones?
 13 A. I think if we -- if we check, I think we can get some
 14 documents. Because there had been a change around
 15 2005/2006, when the government started to do
 16 a privatisation programme, and at that time private
 17 investors were invited to take over the former
 18 government concessions, including the ones that were
 19 held by NRD.
 20 So there were various former government concessions
 21 that were granted to various companies. So I don't --
 22 right now I don't remember the exact number of those
 23 concessions that were granted. But if we check, we can
 24 get that number.
 25 Q. And within the total number during this privatisation

Page 91

15:47 1 communication back to NRD about its application?
 2 A. So if I heard properly, your question is -- you're
 3 asking if there were communications between MINIRENA and
 4 applicants between 2010 and 2012?
 5 Q. Yes.
 6 A. Yes, MINIRENA had been communicating with concession
 7 applicants, concession holders during that period of
 8 time.
 9 Q. So you'll agree that as of November 2010, when NRD
 10 submitted its application, there were other initial
 11 concession holders, short-term concession holders, whose
 12 licences were coming to the end, and that applied for
 13 continued or long-term or short-term, but some new
 14 licence to continue with the concession; you'll agree
 15 with that, correct?
 16 A. I didn't get the answer -- the question properly. But
 17 for instance, I remember Bisesero concession was being
 18 treated around that time, 2010.
 19 Q. And I want to ask about all of them. So let me ask
 20 a broader question.
 21 There were a number of initial-term concession
 22 holders with limited-term -- four- or five-year --
 23 exploratory licences that were issued for various mining
 24 concessions; correct?
 25 A. Yes, there were many different licences that were issued

Page 90

15:51 1 period, will you agree with me that some subset were
 2 treated as, and perhaps sometimes called by, the term
 3 "large-scale mining concessions"?
 4 A. Can you repeat, please?
 5 Q. So you mentioned the fact that there was privatisation
 6 of mines, mining concessions, that began in 2005, and
 7 that there was some wide number of licences and
 8 discussions that went forward after that. So I want to
 9 figure a way to come to language that we're both
 10 understanding or agree that refers to a particular
 11 subset. That's the purpose of my question, and really
 12 nothing more.
 13 So within that time period where initial
 14 privatisation of mining concessions occurred, was there
 15 some subset of such concessions that were treated as
 16 "large-scale mining concessions", and looked at and
 17 referred to either with that term or another that meant
 18 the same thing?
 19 A. No. At that time companies were given short-term
 20 licences to conduct both mining and exploration. There
 21 were no large-scale concession licences given at that
 22 time.
 23 Q. Okay. And just to be clear, we're talking about
 24 2005/2006?
 25 A. Yes.

Page 92

15:53 1 Q. By statute of 2008, there was a defined term, defined
 2 subset, called "large-scale concessions"; correct?
 3 A. Yes, with the 2008 law, we had what we call the
 4 "concession licence".
 5 Q. Okay. Now, as of the 2008 law and the term that
 6 referred to "large-scale mining concessions", the subset
 7 that would come to fit with that term, a number of them
 8 had been issued in the 2004/2005/2006 time period, and
 9 their initial exploratory licence phase was coming to
 10 the end in and around 2010; correct?
 11 A. You are right.
 12 Q. How many?
 13 A. I don't remember the number. I'm sorry.
 14 Q. Is it more than 10?
 15 A. Something of -- I don't remember the number.
 16 Q. Okay. Let me ask it this way. After 2008, and the
 17 definition of the "large-scale mining concessions"
 18 that's defined differently than those that are smaller
 19 than it, from that time on, have there ever been
 20 additional new large-scale mining concessions added to
 21 that sub-group, or have they always remained constant?
 22 A. If I got properly your question, the licences that were
 23 issued in 2005 and 2006, they expired about 2009/2010,
 24 and some of them were applying for other mining
 25 licences. But in that period of time, no one was

Page 93

15:55 1 given -- just after the 2008 law, no one was given
 2 a concession licence.
 3 Q. My question is a little different, and I apologise then
 4 if I asked it poorly. But I'm simply trying to get
 5 a sense of the number, as best we can, of similarly
 6 situated mining concessions. I want to refer to the
 7 similarly situated ones and sort of exclude from my
 8 questions applicability of my questions to all the
 9 others.
 10 So I'm just going to stick with it from the point of
 11 view of just seeing if we can reach agreement as to the
 12 subset of mining concessions over the years that fall
 13 within a similar category.
 14 So in 2008 you agreed with me that there came to be
 15 a defined term "large-scale mining concessions". And my
 16 question is --
 17 A. Yes.
 18 Q. -- the number of concessions that met that defined term
 19 in 2008, has that number increased since 2008?
 20 THE PRESIDENT: Mr Cowley, I don't understand this witness
 21 to have said that anyone had such a concession.
 22 I understood him to say that there are a number of
 23 applicants who had obtained four-year licences with
 24 a view to applying at the end of the four years for
 25 a concession, and that not one of those was granted

Page 94

15:56 1 a concession at the end of the four years. I, like you,
 2 would like to have an idea of a ballpark figure of how
 3 many applicants we're talking about.
 4 MR COWLEY: Sir, I was asking a poor question if my
 5 reference to the concessions -- in other words, that
 6 a licence was actually issued -- was part of my
 7 question. I wasn't trying to make it part of my
 8 question. So a poor question asked twice. I'm sorry
 9 for that.
 10 THE PRESIDENT: That's alright.
 11 MR COWLEY: But let me try again.
 12 The number of potential large-scale mining
 13 concessions, because they met the different definition
 14 of the size, should they be issued, has that number
 15 remained constant since 2008?
 16 A. You are comparing since 2008 to today or 2008 to 2010?
 17 Q. Just: has it remained constant? If it hasn't remained
 18 constant, then I'll try to sharpen my question. But if
 19 it doesn't need sharpening, I'm just trying to get to
 20 the key part of this line, is just: what's the
 21 approximate number we're talking about?
 22 So, again, with apologies for repeating the question
 23 over and over again, has the number of potential
 24 large-scale mining concessions, because they would, if
 25 issued, meet the size definition of the 2008 statute,

Page 95

15:57 1 has that number been constant since 2008, or have there
 2 been new potential large-scale mining concessions that
 3 have come online or become available at some point in
 4 time, so the number changed?
 5 A. So I will try to answer what I remember properly, and
 6 that was the time when I was a minister. So when I was
 7 a minister, we issued a few -- like, three to four, if
 8 I'm correct -- large-scale mining licences, and that was
 9 around 2015 and beginning of 2016.
 10 So what I was saying is that between 2008 and 2014,
 11 there's no company that was given what we called the
 12 "concession licence" under the 2008 --
 13 Q. I understand that, and I'm not trying -- we're going to
 14 be getting into it. Different purpose, and I don't mean
 15 to cut off the questioning because we'll get back to it.
 16 But you said as of 2016, when you left, three or
 17 four large-scale mining concessions had been granted by
 18 MINIRENA?
 19 A. That is what I remember when I was still there. But
 20 since 2016, the number has increased, because the mining
 21 board has issued other licences.
 22 Q. That's fine. I just want to -- as of 2016, you said
 23 three or four had been issued. How many other
 24 independent mines had applicants made a request for
 25 a large-scale mining concession, but it hadn't been yet

Page 96

15:59 1 allowed as of the time you left in 2016?
 2 So there were three or four that were allowed, and
 3 I'm not asking about the number of applicants because
 4 they would need more than one for a mine. But how many
 5 other potential mining concessions were subject to
 6 applications that hadn't been decided as of 2016,
 7 large-scale?
 8 A. If I got properly your question, I would say that the
 9 cases I remember, companies that applied for mining
 10 licences that might be considered as large-scale, and
 11 didn't get them, we can include NRD, we can include
 12 Rwanda Minerals and Mining, we can include Roka Rwanda,
 13 we can include Trans Africa. So those are the ones
 14 I'm just remembering for the moment.
 15 Q. And those were all for different potential concessions,
 16 or were any overlapping?
 17 A. Can you repeat, please?
 18 Q. Yes. Those are all for -- if they all received
 19 concessions, would they all have different mining
 20 concessions, or were any of those applicants for the
 21 same concession, or potential concession?
 22 A. It was on different areas, different concessions.
 23 Q. Okay. I appreciate that.
 24 So of the potential eight that you can recall,
 25 you've now identified four that you recall not being

Page 97

16:01 1 awarded as of the time you left. What were the three or
 2 four large-scale mining concessions that had issued as
 3 of your departure from MINIRENA in 2016?
 4 A. So if -- for maybe the clarity of my question,
 5 a large-scale mine is determined on the basis of the
 6 reserves of the deposits that were identified: the
 7 reserves, the investment plan and the production plan.
 8 So it's not the ministry that was the one to determine
 9 that this will be a large-scale mine; it was the work
 10 and the outcome of the work by the applicant that will
 11 help the ministry determine if this mine falls in which
 12 category.
 13 So for the ministry, the basis was to issue
 14 an exploration licence, and then you conduct your
 15 studies and you came up and you say, "I'm applying for
 16 this type of licence".
 17 Q. Thank you. Mr Imena, the three or four that you said --
 18 as you recalled, at the time you left your position with
 19 MINIRENA, your position as minister, three or four
 20 large-scale mining concessions had been issued. I just
 21 ask you to name them.
 22 A. Yes. If I remember properly, there was Musha, Musha
 23 mine; Nunga(?) mine, that was a joint licence; there was
 24 Rutongo mine; there was Nyakabingo mine, and -- so those
 25 are the ones I remember for the moment. There might be

Page 98

16:03 1 others, but at least those are the ones I remember.
 2 MR COWLEY: Thank you.
 3 Mr President, I've gone, I think, a few minutes past
 4 the stated --
 5 THE PRESIDENT: Yes, I think we'll break for half an hour.
 6 MR COWLEY: Thank you.
 7 (4.04 pm)
 8 (Adjourned until 4.34 pm)
 9 (4.35 pm)
 10 THE PRESIDENT: Thank you. Let us continue.
 11 MR COWLEY: Thank you. Before I start, Mr President, please
 12 let me know what the preferred time is for the break.
 13 THE PRESIDENT: Well, around about 6 o'clock.
 14 MR COWLEY: Thank you.
 15 Mr Imena -- if we could focus again back at R-040,
 16 please, FTI -- this analysis, how long did it take you?
 17 How long did you work on this?
 18 A. It can take a few days.
 19 Q. And when you were done, what did you do with it? What
 20 happened with this document?
 21 A. I sent it to my supervisor and copied it to other
 22 colleagues. My supervisor was Francis Kayumba.
 23 Q. And the other colleagues? If there's many of them, just
 24 tell me that there's a number.
 25 A. They include Dr Mike Biryabarema. They include

Page 99

16:36 1 Alison George. She was the coordinator of a project
 2 that was working in the ministry. And other colleagues,
 3 such as Peter Martin Niyigena, Celse Gabinema, who were
 4 working with me.
 5 Q. Is there a reason why there's no documentation showing
 6 how this document was treated, how it was transmitted,
 7 what was done with it, attached to your witness
 8 statement?
 9 A. What I remember is that Francis received it and he gave
 10 a comment on it, and Alison George gave it to the
 11 minister, as well as the permanent secretary.
 12 Q. Was there some sort of process whereby an action was
 13 taken or decided not to be taken as a result of your
 14 submission of this evaluation marked R-040?
 15 A. Apart from the comment I received from Francis Kayumba
 16 and the note from Alison George, the rest was beyond my
 17 role.
 18 Q. Do you know if at any point before it was given to the
 19 minister there was some meeting of those within OGMR or
 20 otherwise to discuss and agree on any action as a result
 21 of this evaluation?
 22 A. So I can't give any information. I was not part of
 23 those meetings, if they have happened.
 24 Q. So you've heard others talk about the fact that it went
 25 upstream, but you did not actually participate in or see

Page 100

16:38 1 the transmittals of this document up to the minister at
 2 that time; correct?
 3 A. At that time my job was just to give it to my
 4 supervisors, and they will do whatever was in their
 5 capacity.
 6 Q. But eventually you became minister in 2013; correct?
 7 A. You are right.
 8 Q. And at that time the file was a little bit larger than
 9 it was in 2012, right?
 10 A. Can you repeat, please?
 11 Q. Yes. The NRD file in 2013 was a little bit larger than
 12 it was in May 2012, right?
 13 A. You are right, because there are documents that were
 14 submitted by NRD after my report.
 15 Q. And this report, this evaluation is part of the file as
 16 of 2013, when you take over as minister, right?
 17 A. This report is an internal document. You see that it is
 18 stamped "Confidential". So it was, yes, part of the
 19 information we had in the ministry.
 20 Q. I'm sorry, I just want to be clear. Are you suggesting
 21 that that means something different than what you
 22 referred to before as being part of the "file"?
 23 A. From my side?
 24 Q. They're your references. So I'm just asking: earlier in
 25 your testimony, we were using the phrase "in the file".

Page 101

16:42 1 agreed upon or voted on as a result of it?
 2 A. If I got your question properly, after I submitted this
 3 evaluation report, if there has been any meeting, I was
 4 not part of it. But if you're asking if my report maybe
 5 contributed to any decision taken by the ministry, yes,
 6 I can guess so, because I was asked by my supervisors to
 7 write this report: they might have read it and maybe
 8 have considered some of the conclusions that I was
 9 suggesting.
 10 Q. That's fine. I just wanted to be clear as to whether
 11 there was any other information you could give me.
 12 As I understand it, you weren't any part of any
 13 further meeting or discussion, other than to know that
 14 you transmitted it once you had the initial comments.
 15 And when you became minister, you didn't learn of some
 16 meeting and specific action as a result of this
 17 evaluation, but you guess somebody did something with
 18 it. Is that accurate?
 19 A. It's accurate.
 20 Q. Now, in R-040 on page 2, if I could ask FTI to scroll
 21 down a bit to the "Budget" section, 3.
 22 It says here, it summarises very quickly here, that
 23 the original budget for equipment and working capital
 24 for the 2007 to 2011 time period was \$39.5 million; do
 25 you see that?

Page 103

16:40 1 You just said something a little bit different about the
 2 ministry's records.
 3 I'm asking you whether this evaluation, how it was
 4 held, was that something other than being part of the
 5 "file" that you referred to earlier in your testimony?
 6 A. This evaluation, yes, was part of the NRD file that we
 7 had at the Department of Mines and at the ministry.
 8 Q. But because it was stamped "Confidential", that means
 9 that the intention was not to show it to NRD; correct?
 10 A. Yes.
 11 Q. When you took over as minister, did you observe at that
 12 time whether the file contained any explanation of what
 13 action, if anything, occurred as a result of your
 14 transmittal of this evaluation report?
 15 A. Yes, between May, when my report was submitted to my
 16 supervisors, and February the following year, 2013,
 17 there had been several communications between the
 18 ministry and NRD.
 19 Q. I'm sorry, with regard to R-040, the document that's up
 20 on the screen, your evaluation.
 21 A. Yes.
 22 Q. When you obtained access to the full file as minister,
 23 at that time did you make a determination of whether any
 24 action was taken within the ministry with regard to
 25 this? Was a meeting held to discuss it? Was an action

Page 102

16:44 1 A. I see it, sir.
 2 Q. Then at the next page, 3 of 4, you comment on that by
 3 saying that they "only invested 30% of [that] initial
 4 budget"; correct?
 5 A. I see that as well.
 6 Q. Now, did you review the whole November 2010 application
 7 before making that summary?
 8 A. Yes.
 9 Q. If I could ask that C-035 be brought up, and page 8
 10 focused on. The "Achievements in Research" section or
 11 part, if that could be highlighted and enlarged.
 12 What NRD said in its application is, in reviewing
 13 its own information about the original request to obtain
 14 the four-year licence for the five concessions, that
 15 \$39.5 million number posed expenditures over a five-year
 16 period, 2007 to 2011; correct?
 17 A. Yes.
 18 Q. So in order to get into a 2011 portion of such a budget,
 19 another concession and extension, something else had to
 20 go beyond the period of the four-year licence that was
 21 being discussed, right?
 22 A. Can you repeat your question, please?
 23 Q. Yes. To spend five years of a budget on the mining
 24 concessions, something beyond the initial four-year
 25 concession had to be extended to NRD; correct?

Page 104

16:46 1 A. No, that's not what I am reading. They are saying, if
2 I'm reading it properly, that the proposed volume of
3 investment for five years is that amount of \$39 million.
4 If I got your question properly.
5 Q. Right. They're saying that the initial proposed
6 investment in working capital and equipment covered
7 a five-year period to spend that money; correct?
8 A. You are right.
9 Q. And they had a four-year exploratory licence; correct?
10 A. You are right.
11 Q. So in order to spend any money in year 5, they were
12 counting on or budgeting in the expectation that they
13 would have some additional licence past the first
14 four years; correct?
15 A. If I recall it properly, they got a contract in 2006,
16 but they got their licence in 2007. And that's why they
17 budgeted for 2007 to 2011.
18 Q. In fact, aren't you aware that the November 2010
19 application was at the end of the four-year term that
20 began in 2006?
21 A. For the contracts, yes. And the licence ended in 2011.
22 Q. So in order to exercise that licence into the next year,
23 they had to extend the contract: they had to have some
24 further right to mine at that concession to get into
25 that fifth year. Correct?

Page 105

16:49 1 The information you had in NRD's November 2010
2 application talked about what they had done through that
3 date in 2010; correct?
4 A. No. The information I used in my report was up to
5 July 2011.
6 Q. Okay. We'll get there in a moment. I have a question
7 about that. But before we leave this line, so I don't
8 bounce around, I just want to point out that in NRD's
9 application about its own four-year initial contract:
10 "The original business plan [it said] included
11 investment in the applied-for mines of Nyakabingo and
12 Gifurwe ..."
13 Do you see that?
14 A. I see that.
15 Q. Did you review the file to determine if that's accurate,
16 that the \$39.5 million also included projected spendings
17 on those two mines?
18 A. That's what they say.
19 Q. Did you confirm it? You had the file: you were
20 reviewing it, right?
21 A. I reviewed what I had in hand, and what they are saying
22 is they were also projecting to invest in those mines.
23 Q. I'm just trying to clarify with you, sir: did you
24 confirm that yourself by reviewing the file from 2006?
25 A. Excuse me, can you repeat, please?

Page 107

16:47 1 A. They had to apply for a new licence or a new contract.
2 Q. But the budgeted number that you wanted to hold them to
3 included the expectation of spending money in the fifth
4 year; right?
5 A. That's the budget they proposed. It's not the ministry
6 that proposed this budget.
7 Q. I understand. But you're doing the calculation about
8 what percentage they spent and what they projected as of
9 2010's application. So I'm just focusing on what you
10 did and what you looked at.
11 So you took the \$39.5 million and counted it all,
12 and assessed how much they spent as a percentage against
13 it. The --
14 A. I assessed what? Can I respond, please?
15 Q. I said -- the question was -- I hadn't finished it. But
16 what I said in the question was: you assessed how much
17 they had spent as a percentage of that \$39.5 million
18 number, right?
19 A. They were supposed to spend this amount within
20 five years, but I made my assessment after six years.
21 So they were given one more year, more than what they
22 expected initially.
23 Q. The information you had in the November 2010 licence
24 talked about what they had spent -- excuse me, licence
25 application -- sorry.

Page 106

16:50 1 Q. Yes.
2 A. I'm not getting your question properly.
3 Q. Did you confirm this representation that the budget
4 providing for \$39.5 million of anticipated expenses,
5 when submitted back in 2006, included projected expenses
6 for the mines Nyakabingo and Gifurwe, in addition to the
7 other NRD concessions?
8 A. You are right.
9 Q. Okay. So what did you do -- when you determined, to
10 report up through the ministry, what percentage of the
11 projected spendings were actually spent through, you
12 say, to July 2011, what did you do to back out of the
13 \$39.5 million figure all the projected expenditures for
14 those two mines?
15 A. So if I'm getting it right, they had this budget
16 proposed for five years for in total. If we add these
17 two mines, that would be seven mines. And I was just
18 highlighting that for five mines, they only invested
19 about 30%, and that is a claimed investment. They
20 claimed to have invested about 30% in the five mines
21 they got.
22 Q. When calculating 30%, you took the number that you say
23 you thought they claimed in July 2011 and determined
24 what fraction that was of \$39.5 million; correct?
25 A. If the people who are helping us with the technology and

Page 108

16:52 1 display of documents can show us, I think this 30% is
 2 around the \$12 million, \$12 million-and-something, that
 3 they were saying that they had invested. So \$12 million
 4 was around 30% of the 35 -- \$39 million. That was,
 5 I think, where I got that figure from.
 6 Q. But in reporting up through the ministry to others that
 7 were going to take action on this, what percentage of
 8 the initial projected expenses were actually spent, it
 9 wasn't fair to hold against them not spending any
 10 portion of the budget for two mines that they never
 11 obtained, was it?
 12 A. Can you repeat, please? I didn't get your question,
 13 sorry.
 14 Q. I'll try to break it down and make it smaller and
 15 quicker, hopefully.
 16 You just explained how you took the number that they
 17 claimed having spent and that you applied it against the
 18 \$39.5 million working capital investment projected, and
 19 you came up with about 30% as a figure. You agree that
 20 you did not go into the budget, that total \$39.5 million
 21 from 2006, and break out all the budgeted expenses for
 22 the two mines that were not part of the NRD concessions
 23 ultimately issued; correct? Or, excuse me, the NRD
 24 contract that was ultimately issued. Correct?
 25 A. So, yes, I didn't have the break down. I just took the

Page 109

16:54 1 39 figure, \$39 million figure.
 2 Q. Well, the breakdown was in the original budget, when
 3 they gave you an estimate in 2006, with "you" being the
 4 ministry; correct?
 5 A. Sorry, in 2006, I -- the documents I used to make my
 6 evaluation, in them there's not a breakdown of
 7 investment submitted in 2006. So I didn't have access
 8 to that document while making my report.
 9 Q. Okay. So you couldn't break out the \$39.5 million
 10 specifically to account only for the projected expenses
 11 on the mines that were part of the contract. But
 12 wouldn't it have been fair to inform those in the
 13 ministry who were going to read this, when you said
 14 spending only 30% of the projected figure was not
 15 enough, wouldn't it have been fair to tell them that
 16 they never actually projected to spend 39.5 on only
 17 these five mines?
 18 A. Yes, that information would have been helpful.
 19 Q. Why did you choose not to pass it on?
 20 A. I maybe forgot to explain it.
 21 Q. On page 3, further down, within 3.2.1, in two sections,
 22 two small-sentence paragraphs above 3.2.2, if I could
 23 draw attention to the NRD -- I'm sorry, my mistake.
 24 I apologise. First I need to ask to call up R-040, and
 25 the "NRD did only" portion of 3.2.1.

Page 110

16:57 1 This portion of your evaluation of the November 2010
 2 application section on the exploration that had been
 3 done uses the language:
 4 "NRD did only some significant preliminary
 5 exploration work, but failed to realize the objective of
 6 delineating the resources and evaluating the reserves."
 7 What did that mean, "did only some significant
 8 preliminary exploration work"?
 9 A. It means that they did surficial and superficial work.
 10 They visited the concessions, they identified the type
 11 of minerals that can be mined from those concessions,
 12 but they didn't conduct estimation of the deposits and
 13 the reserves in all the deposits.
 14 Q. Do you acknowledge that, based on your review of the
 15 November 2010 application, there is reference to
 16 "preliminary exploration work" that you're willing to
 17 characterise as "significant", but that's only a limited
 18 amount?
 19 A. Can you repeat, please?
 20 Q. Are you willing to agree that on your first evaluation
 21 of the November 2010 application, you acknowledged that
 22 it did refer to some "significant preliminary
 23 exploration work", although you say it wasn't a lot, it
 24 wasn't enough, but some of what they were able to point
 25 to, you did consider "significant" at that time;

Page 111

16:58 1 correct?
 2 A. Yes, you're right: "significant ... exploratory work" --
 3 "preliminary exploratory work".
 4 Q. Then you go on to say, in the next sentence:
 5 "Details on this are provided in the assessment by
 6 the DDG RNRA/GMD."
 7 A. Yes.
 8 Q. So first of all, when you say "Details on this", now
 9 you're referring to the "preliminary exploration work"
 10 that's referred to above: you're saying the details of
 11 that work, what it consisted of, are in this other
 12 assessment; correct?
 13 A. Yes, details on the "significant preliminary exploration
 14 work", yes, they are provided in that report.
 15 Q. Now, was that report attached to this evaluation when
 16 you submitted it?
 17 A. I don't remember.
 18 Q. Is that other report that's referenced, the analysis
 19 that you say Dr Mike did before you?
 20 A. This one, when I mean "DDG", that is Deputy Director
 21 General, Rwanda Natural Resources Authority, Geology and
 22 Mines Department. That is Dr Michael. So here I'm
 23 referring to Dr Michael's report.
 24 Q. Now, I may have asked it this way before. And I just
 25 wanted, having now looked at where you referenced it and

Page 112

17:00 1 how you referenced it -- have you attached anywhere to
 2 your witness statements that Dr Michael report that
 3 preceded yours?
 4 A. There's a report that was done by Dr Michael in
 5 April 2011, if I am correct. I don't remember if it is
 6 attached to my witness statement, but it can be asked to
 7 our lawyers and they can share it with you. A report
 8 produced by Dr Michael in April 2011, and that's the one
 9 I'm referring to.
 10 So if it was not attached to my assessment report,
 11 it's because the people I was reporting to, they even
 12 include Dr Michael. So I didn't have to share to
 13 Dr Michael a report that he produced himself.
 14 Q. Now that you remember a specific date about Dr Michael's
 15 analysis and that it was in writing, can I ask how you
 16 have a sharper memory of that now? Is it just based on
 17 seeing this, or some other information obtained during
 18 the break?
 19 A. No, this is -- as you're asking me questions, my memory
 20 is getting refreshed.
 21 Q. Now that you recall it better, at least in terms of the
 22 date, are you able to recall the answer to another
 23 question I asked earlier: based on your review of
 24 Dr Michael's prior evaluation, were you able to
 25 determine whether it was shared with NRD at any time?

Page 113

17:04 1 statement anywhere that you recall?
 2 A. While preparing this hearing, I tried to search for that
 3 report. Unfortunately I didn't find it.
 4 Q. And you were looking in the materials attached to your
 5 witness statements; correct?
 6 A. I looked at the materials attached to my witness
 7 statement, and unfortunately I didn't find it.
 8 Q. And you looked at all the documents produced by
 9 Respondent for this hearing, even if they weren't
 10 attached to your witness statements, to look for it;
 11 correct?
 12 A. Unfortunately, yes. I tried to look for that report,
 13 but I was not successful in getting a copy of it.
 14 Q. And you looked at the Claimants' submitted exhibits for
 15 this hearing also to search for that report, to see if
 16 it was there; correct?
 17 A. No, I didn't have time to go through all the documents
 18 sent by the Claimants.
 19 Q. How about the exhibit numbers for the hearing: did you
 20 at least go through those, looking for this report?
 21 A. I went through the documents that were attached to my
 22 witness statement, and I couldn't, unfortunately.
 23 Q. Yes. No, we asked that. I'm just trying to get clarity
 24 on one last piece.
 25 You said you didn't have time to review all the

Page 115

17:02 1 A. I don't remember. And I was not in a capacity, as
 2 a geologist, to be the one to share documents in 2012 to
 3 NRD.
 4 Q. I understand that's a further comment on a prior
 5 question, right. But did you understand my current
 6 question is whether what you now recall of Dr Michael's
 7 report, did it indicate on its face -- or otherwise was
 8 it indicated to you -- whether it was shared with NRD?
 9 A. I don't remember. I would need to check again.
 10 Q. Was it stamped "Confidential" that you recall?
 11 A. I don't remember.
 12 Q. If I could ask that -- I'm sorry -- yes, page 4, there's
 13 a section 4, "Work Plan and budget for 2012 - 2017". It
 14 says:
 15 "NRD intends to invest \$ 9,960,000 for the 2012 to
 16 2017 period."
 17 And then it goes on to talk about some other aspects
 18 of that.
 19 Please say again: where did you get that number?
 20 A. If you can go to the main source of information I used,
 21 you will find that there was a report produced by NRD
 22 for their investment plan for the years 2012 to 2017.
 23 So I got the information from that report.
 24 Q. Okay. I can't go there, so I'm going to ask this
 25 question: is that report attached to your witness

Page 114

17:06 1 documents produced by Claimants in the case. I just
 2 want to be clear: did you have time and did you review
 3 the documents that Claimants put forward as exhibits in
 4 this case, this hearing, so the C-[some number]
 5 documents, did you review that looking for this report?
 6 A. At least -- yes, I reviewed all the documents that I had
 7 access to and I was not able to find that specific
 8 report I'm referring to.
 9 Q. You'll agree that that number and that time period is
 10 not referenced in the November 2010 NRD application,
 11 right?
 12 A. I would need to check. But this number I'm referring to
 13 is 2012 to 2017.
 14 Q. Right.
 15 A. And trying to look at it, I remember that I got it from
 16 that document I'm referring to on paragraph 0 of this
 17 report.
 18 Q. Okay. If I could ask that C-035 be brought up.
 19 MR IMENA: Excuse me, can I just be given one second to
 20 switch on the light of the room where I'm sitting?
 21 MR COWLEY: Of course.
 22 MR IMENA: Okay, thank you.
 23 MR COWLEY: Now, you said you would need to check the
 24 document. I'm going to try to assist, and then if
 25 I can't, I'll step out of the way, and you can tell me

Page 116

17:07 1 what you think would work for your checking.
 2 But the best way I know to find things in this
 3 document is to look at the index first. So if I could
 4 ask FTI to go to pages, I think, 2 and 3. So there's
 5 the index, and I guess it goes on to -- hold up one
 6 second. I'll get ahead of you and see where it ends.
 7 It goes through 2, 3 and 4. So we'll turn to 4 when we
 8 have a second.
 9 But in terms of the future projections, I would draw
 10 your attention to start at the "Proposed Activity
 11 Plan[s]" and "Proposed Business Plan" following it, so 6
 12 and 7. Do you see there that all of the time periods
 13 covered by the various projections and details, all of
 14 the time periods are different than the 2012 to 2017
 15 time period referenced in your evaluation? It's one
 16 year earlier, the five-year projection; correct?
 17 A. I'm sorry, I didn't get your question properly.
 18 Q. I'm sorry. Let me just ...
 19 If you look back up at the page 3, do you see
 20 there's "Proposed Activity Plan[s]" near the bottom of
 21 section 6? 6.3, 6.4, 6.5, 6.6. That seems to be
 22 a discussion in summary of the various aspects of the
 23 activity plans for 2011 to 2015. Do you see that?
 24 A. Yes, I see that.
 25 Q. Then if you go to section 7, the "Proposed Business

Page 117

17:09 1 Plan", how much money is going to be spent on those
 2 activities, you have a similar individual-year breakout
 3 and then the summaries are below it, [and] the
 4 individual year breakouts are 2011 to 2015. Do you see
 5 that?
 6 A. I see that.
 7 Q. Now, [if] you think you need to look at any of those
 8 individual pages, either in the individual years or in
 9 the subsequent pages to confirm, if you think you need
 10 to do that, tell me. But I would like to ask the
 11 question first, to see if you even need to.
 12 Do you agree that the November 2010 application
 13 could not provide a figure such as 9.96, as projected
 14 over 2012 to 2017, because it simply didn't project
 15 anything over that specific time period?
 16 A. Sorry, I didn't get properly your question that you want
 17 me to confirm. First, I don't remember the figures on
 18 each of those years. And if you can agree with me, this
 19 plan was submitted, I think, ten years/eleven years ago,
 20 so I can't remember all the figures in my mind. So can
 21 you just tell me what you would like me to confirm, and
 22 I can confirm it or not confirm it.
 23 Q. So all I'm asking you is: do you agree that whatever the
 24 figures are that are reported there, they're not
 25 a figure projecting over the time period 2012 to 2017?

Page 118

17:11 1 A. Yes.
 2 Q. That all of the figures here purport to project over
 3 an earlier time period?
 4 A. It's 2011 to 2015, you are right.
 5 Q. Okay. So do you agree, going back to R-040, your number
 6 in the projected time period which it covers, that
 7 number in that projected time period didn't come from
 8 the November 2010 application itself, right?
 9 A. The number I'm referring to comes from a report of
 10 July 2011; it's not coming from this report. But
 11 unfortunately, I tried to find that report: I couldn't.
 12 Q. Fair enough. I'm not asking you to repeat that. I'm
 13 just trying to address the fact that you said earlier
 14 you would need to check the November 2010 application to
 15 know if it was also in there. That's the reason I did
 16 this. I wasn't asking to repeat the other statements
 17 you made.
 18 If I could ask now that C-207 be brought up, and
 19 page 2. So do you see that this is -- I'll make
 20 a representation to you that there's a number of emails
 21 and attachments to emails all together collected as one
 22 electronic document. So what I'm looking at is just one
 23 example. But there's an exchange by email of what's
 24 behind it as a document.
 25 Do you see the "Article4: Capital investment" in

Page 119

17:13 1 this document?
 2 A. I see it.
 3 Q. It says:
 4 "The company plan to invest 9.960.000USD in period
 5 of 5 years."
 6 Do you see that?
 7 A. I see that.
 8 Q. And that number is the same number as in your R-040;
 9 correct?
 10 A. Can we go back to that? But yes, it is
 11 9 million-something. If it is 9.96, I'm not -- I don't
 12 remember, yes. But I talked about 9-point-something
 13 million in --
 14 Q. If you do it quickly, that's fine. Could I ask that
 15 [R]-40 be -- don't put this down, just make it one
 16 document on the left side of the page, bring up [R]-40
 17 on the right. The --
 18 A. Yes, I see that.
 19 Q. Right. So --
 20 A. 9.96.
 21 Q. Okay.
 22 Now, in C-207, if I could ask we go to page 93,
 23 I think there's another example there later.
 24 Now, in this later email -- and I'll show you, if
 25 you would like -- before you answer the question, I can

Page 120

17:14 1 scroll up and show you that it's a similar document, in
 2 terms of what it is that we're looking at, and that it's
 3 also similarly attached to an email as the opening
 4 document in this exhibit that I showed you.
 5 But if you look at specifically page 93 now of this
 6 draft contract, there's, under "Article 4", a little bit
 7 more updated language. And do you see there it uses the
 8 same phrase:
 9 "The company plan to invest 9,960,000 USD in
 10 a period of 5 years ..."
 11 And gives the specific "2012 - 2017". And that's
 12 essentially what aligns with, in a full reference, your
 13 evaluation; correct?
 14 A. \$9.96 million: it's the same, it's the same number.
 15 Q. And over the same reference time period, all in one
 16 sentence?
 17 A. Yes, "2012 - 2017", correct.
 18 Q. I'll suggest to you: of all the exhibits that the
 19 parties have put in for this hearing, this is the only
 20 document -- C-207 contained the only documents with that
 21 projected number over that projected time period
 22 preceding your evaluation of the application for the
 23 renewal of NRD's exploration in mining licences, if in
 24 fact the date that that was prepared was May 2012.
 25 Was it your --

Page 121

17:16 1 A. I didn't get the question properly.
 2 Q. Okay. Looking at R-040 again.
 3 A. Yes.
 4 Q. And I'm asking FTI to bring up the first page of R-040.
 5 Do you see the date is May 8th 2012?
 6 A. You are right.
 7 Q. If that is the accurate date of this document --
 8 A. Yes.
 9 Q. -- I will suggest to you that the only document in the
 10 record provided for this hearing that uses the number
 11 and the time period that's included in your evaluation
 12 that we've seen is what we just looked at: C-207, the
 13 draft contracts that are part of that email chain.
 14 My question to you is: isn't it true that you know
 15 that? That after reviewing all of the exhibits and
 16 materials, you found there isn't that phrase and that
 17 number for that time period in the actual record, and
 18 that's what caused you to reference some other document
 19 not in the record as your source?
 20 A. No.
 21 Q. Isn't it true that you also know that the next time in
 22 the record that amount over that time period is included
 23 as a phrase is part of the January 2013 amended
 24 application that NRD submitted to the ministry? Are you
 25 aware of that?

Page 122

17:18 1 A. I am aware.
 2 Q. And if that were the source of the number and phrase
 3 about the period it covered, that would mean your
 4 evaluation wasn't actually prepared in May 2012; it
 5 would have to be sometime after January 2013 that it was
 6 created. Isn't that true?
 7 A. You are not saying the truth. Can I explain?
 8 Q. I'm just asking -- my question to you, sir, is: if the
 9 January 2013 document was the source, that would mean
 10 your evaluation would have to be created after it; isn't
 11 that --
 12 A. No.
 13 MR HILL: Mr Cowley has been given the metadata for this
 14 document. It's one of the documents he asked for the
 15 metadata for, and he got it. He doesn't have a basis
 16 for the questions he's just put. It's inconsistent with
 17 the data he has now been provided with.
 18 MR COWLEY: Counsel for Rwanda is aware, presumably, having
 19 litigated in the current age, where metadata is
 20 a constant source of discussion, that documents could be
 21 amended, and metadata is no different. Metadata is
 22 computerised documents, computerised data. To produce
 23 metadata does not come with a guarantee that nothing
 24 within that metadata itself could have been changed. So
 25 counsel is making a factual representation that he's

Page 123

17:20 1 simply not capable of making.
 2 I do have the metadata, I know what it says, and I'm
 3 not pointing to it to suggest anything. But suggesting
 4 that it says something and means something I think is
 5 inappropriate to this witness.
 6 MR IMENA: Sorry, am I allowed to give an explanation?
 7 THE PRESIDENT: Yes, you are.
 8 MR COWLEY: If you answer my last question, yes.
 9 MR IMENA: I think the purpose of this hearing is to find
 10 the truth. So can you please someone from your -- send
 11 someone from your side, he gets to my email, I will give
 12 him full access to my email, and he will find out
 13 himself that that email was shared on May 8th 2012. So
 14 you can send whoever he wants: he will get or she will
 15 get access to my email for the purpose of finding out
 16 the truth. And I would be happy to do that.
 17 MR COWLEY: Mr Imena, if I could stick with the topic. And
 18 I'm not trying to do this in an antagonistic or
 19 argumentative way, but you've raised now a topic that
 20 I'd like to question you about specifically.
 21 Did you participate in the production of documents
 22 on behalf of the Respondent in this case?
 23 A. Yes, I participated: I made a witness statement.
 24 Q. A little bit different. Are you aware that beyond
 25 producing your own statement and attaching things to it,

Page 124

17:21 1 that there was another part of this process in which
 2 both sides ask each other to go and look for documents
 3 and voluntarily give them to each other?
 4 A. Yes, I tried also to share with our lawyers the maximum
 5 of information I had. And I'm telling you, sir, that
 6 I would be pleased to share with you the access to my
 7 computer and to my email, so that you can check for you.
 8 Q. Mr Imena, I just have some just brief specific questions
 9 about the process, just so it's clear what happened
 10 already.
 11 You were out, you were no longer minister, you were
 12 no longer working --
 13 A. Alright. I'm no longer minister since October 2016.
 14 Q. The question I'm trying to ask, sir, is: you were no
 15 longer within MINIRENA in any capacity at the time that
 16 the parties asked each other to produce documents; do
 17 you recall that?
 18 A. Yes, I recall.
 19 Q. Okay. Nevertheless, you participated by making your
 20 personal information available; is that correct?
 21 A. I tried my best, and I'm still willing to do so.
 22 Q. Sir, I'm just asking questions, because I don't -- it's
 23 not that I purport to know these questions. These are
 24 legitimately questions I don't know the answer to. I'm
 25 not suggesting anything by them, just asking you for

Page 125

17:23 1 information.
 2 The reference to email, I just want to be clear on
 3 and specific. You had, while you were with MINIRENA,
 4 a government, a ministry account; correct?
 5 A. So if I'm allowed just to explain it quickly, I have my
 6 personal email that I run for maybe the last 20 years.
 7 I was using it until I was appointed minister of state
 8 in February 2016. Now, before February 2016, I was
 9 primarily using my Yahoo account, and I still have
 10 access to that account.
 11 Now, the dates --
 12 Q. May I just ask you to focus on --
 13 A. Yes, please.
 14 Q. I think you may have made a mistake in the date. And
 15 rather than have you go all the way on and ask you
 16 again, I just want to point out to you: you said you
 17 became Minister of Mining in February 2016. Is that
 18 what you meant, or did you mean to say --
 19 A. Oh, no, no. That was a mistake in explaining. I became
 20 minister in February 2013.
 21 Q. Thank you.
 22 A. Yes.
 23 Q. So prior to February 2013, when doing work for the
 24 ministry, you used your personal Yahoo email account and
 25 nothing else; correct?

Page 126

17:24 1 A. I was using that, yes, for the ministry work. I was
 2 using that email.
 3 Q. And when you were appointed minister, you began using
 4 a ministry address email account; is that correct?
 5 A. Yes, I began using a specific Government of Rwanda
 6 address. I no longer have access to that one, but
 7 I have access to my Yahoo address.
 8 Q. Right. I'm getting there, sir. I'm just trying to make
 9 it clear.
 10 So is it also true that during the period while you
 11 were minister, some communications where you were
 12 conducting government business, you use the Yahoo email
 13 account address, either alone or also with the ministry
 14 email address, both on one document? Did that happen
 15 from time to time?
 16 A. Can you repeat your questions -- your question, please?
 17 Q. Yes. Even after 2013 and becoming appointed as
 18 minister, some of your communications in that capacity
 19 still included your Yahoo email account address, whether
 20 alone or with your government address; some of those
 21 emails wound up in your Yahoo account too. Correct?
 22 A. Yes, before creating my -- because I'm not the one who
 23 created it. Before the IT people created my government
 24 email, I used my Yahoo, and then I think I also created
 25 a Gmail account. So there had been a transition. And

Page 127

17:26 1 there were people who didn't know my new government
 2 account, so those continued to contact me through the
 3 Yahoo for a short period of time. And then I informed
 4 them gradually that now I have a new, official account,
 5 and that's the one I'm using.
 6 Q. Sir, was the Gmail account also used from time to time
 7 for your government work?
 8 A. I don't remember.
 9 Q. Okay.
 10 Now, when it came time for the government to produce
 11 documents, were the Yahoo email account and Gmail
 12 account fully searched for all documents that someone
 13 was looking for to be produced in this case?
 14 A. Yes, they were searched.
 15 Q. Who did that? Did you do that yourself, or did someone
 16 else do it?
 17 A. I did the search, and that's where I found this May 2012
 18 report. So I sent the report that our lawyer is
 19 referring to you to our team of lawyers from my Yahoo
 20 account. And now, because you are questioning its
 21 production date, I'm inviting you to get access to my
 22 Yahoo account, so that you check it yourself and your
 23 team.
 24 Q. Sir, I'm just asking some questions. If we could stick
 25 with the questions. I'm not trying to make this

Page 128

17:28 1 a belaboured exercise. I just want to be clear as to
 2 what happened.
 3 At the time those email accounts were searched by
 4 you looking for documents, did you come up with the
 5 search terms yourself or did someone provide them to
 6 you? Were you following instructions and going through
 7 a list of things that were supposed to be searching for,
 8 or did you just look on your own for what you thought
 9 was relevant?
 10 A. So I just put on "NRD" as a keyword for searching, and
 11 then the tools of the internet helped me search in my
 12 email account.
 13 Q. Okay. And last question on this: in addition to the
 14 email accounts that were searched as you just described,
 15 did you also have paper documents, files at home,
 16 perhaps electronic storage at home, that contained other
 17 documents that went beyond just the email accounts, that
 18 contained some of your work while you were with MINIRENA
 19 on them?
 20 A. I also searched my computer and found some of the
 21 documents that I had, and I shared everything that I had
 22 at that moment with our team of lawyers.
 23 Q. Alright. I very much appreciate the explanation.
 24 Now I would like to go back to R-040 and then ask
 25 the specific questions about this, given the context

Page 129

17:29 1 that you've now described.
 2 R-040, if I understood you correctly -- and that's
 3 my question -- do I have it correct that you said you
 4 found R-040 in your files in one of your email accounts
 5 only?
 6 A. So at least what I remember is that I found it from my
 7 emails that it shows that I sent it to Francis Kayumba.
 8 Q. So you found it in searching your personal email
 9 accounts that you just described, right?
 10 A. Okay, that's where -- one of the areas. It's only in my
 11 email account and in my computer.
 12 Q. So the document itself was also stored on your computer,
 13 and you found that too; is that what you're saying?
 14 A. I'm the one who created it, sir. I'm the one who wrote
 15 this. So (overspeaking) --
 16 Q. I'm just asking --
 17 A. -- my computer.
 18 Q. I'm just trying to ask questions so I understand what
 19 you're saying.
 20 You found it in two places: you found it on the
 21 Yahoo or Gmail system stored with emails --
 22 A. Yes.
 23 Q. -- and you found it as a document on your own computer;
 24 correct?
 25 A. You are correct.

Page 130

17:30 1 Q. Okay. Now, when you produced it in this case, was it
 2 your understanding that it wasn't found anywhere else by
 3 the Respondent, in anybody else's email or anybody
 4 else's computer, so it had to be produced from the
 5 version you found on your own?
 6 A. So I produced it and copied it to several of my
 7 colleagues, the ones that I mentioned. Now, the
 8 document you are showing me might come from either the
 9 one I sent to our lawyers or the one my colleagues might
 10 have shared to our team of lawyers.
 11 Q. I'm not asking about what you did with it when you found
 12 it. I just want to be clear about what you understood.
 13 Did you learn that when you found it on your
 14 computer and in your email account, that your copy of it
 15 was the only copy found and produced in this case, so
 16 you had to turn it over so we could get it: it wasn't
 17 found in Respondent's files otherwise?
 18 A. So if I can explain it again, if I'm allowed.
 19 This document was produced in 2012, shared to my
 20 colleagues. So now the one you are showing me might
 21 either come from the one I sent to our team of lawyers
 22 or from my colleagues, who might have shared it to our
 23 team of lawyers.
 24 But if you want to access the one I produced, you
 25 are please to do so.

Page 131

17:32 1 Q. No, I think I understand now. It's fair to say what
 2 your testimony is: you don't know whether R-040 is the
 3 version you found on your system or if it was found by
 4 someone else; you wouldn't have any way to know that.
 5 That's what you're saying; correct?
 6 A. This one you are highlighting to me was produced by me.
 7 This is correct. And the information I'm reading is
 8 correct to what I found in my email and in my computer
 9 system. So whatever is written here is correct with me.
 10 Q. Okay. And looking back at the time, May 2012, when you
 11 were asked to do this project and submitted, as you've
 12 already explained, what you did, based on the practices
 13 of you and your colleagues within MINIRENA, if it was
 14 circulated to others at that time, it would remain in
 15 the NRD file and accessible in Respondent's records at
 16 the time of this case; correct?
 17 A. So let me explain again.
 18 When you will check the email I shared to my
 19 colleagues, I think none of them was using a government
 20 email. Because here it's not like in the US. We are
 21 progressing gradually with IT. In 2012, most of the
 22 people in the ministry and in the Natural Resources
 23 Authority were using their Yahoo or Hotmail or any other
 24 public email system. So, yes, if you check those emails
 25 to which I shared it, you will find it.

Page 132

17:34 1 But I didn't properly get your question.
 2 Q. Okay. And I'm not hiding anything from you in my
 3 question: I don't have an email. I don't have it. So
 4 I would ask you and direct you to it if I did.
 5 So to be clear, you remember saying that this was
 6 also sent on -- after you sent it to your supervisor,
 7 and also Dr Mike, it was sent on eventually to the
 8 minister; do you recall that testimony?
 9 A. Yes, Alison George shared it to the Minister of
 10 Natural Resources, Mr Kamanzi.
 11 Q. Now, the minister at that time, just like you later, had
 12 a government email account to use as a formal email
 13 account address; correct?
 14 A. In 2012, had he a government email? I don't remember.
 15 But we can check for that.
 16 Q. Okay. Last attempt with this question.
 17 Whoever received it up the chain from you, it was
 18 your expectation, based on the practices and policies at
 19 the time, that it would be retained within the NRD file,
 20 as you've described it in your testimony, available to
 21 anybody else in MINIRENA to look at in the future, if
 22 others up the chain that you've described received it
 23 from you; correct?
 24 A. I don't know what you are calling the "NRD file". The
 25 NRD file that I know is the one we're having for this

Page 133

17:36 1 arbitration. But what I can tell you is that I shared
 2 it to several people, and they might have shared it to
 3 other people.
 4 Q. If I could ask FTI, on document C-207 -- I guess you
 5 have to bring that back up. Yes, I'm sorry, it's the
 6 document on the right. If you could go to page 89 of 98
 7 in the PDF pages, and if you can enlarge at the top.
 8 So just to orient you, I don't want to hide anything
 9 from you, but before we move up, I want you to see that
 10 this is an email exchange between Mr Marshall
 11 originally, and then there's a response on top of that
 12 email from Mr Bidega. This is now the highlighted top
 13 portion, the response.
 14 Do you understand that, or do you want to reduce it
 15 and see the chain again? You see that there's two
 16 emails on top of each other?
 17 A. I see.
 18 Q. Alright. So Mr Marshall send back an email and gets
 19 this response: they're attached together?
 20 A. Yes, I see.
 21 Q. Okay. Now, if I could highlight again at the top:
 22 Mr Bidega's response has a copy, has a "Cc".
 23 A. Yes.
 24 Q. Up in the address lines, please.
 25 A. Yes.

Page 134

17:37 1 Q. Okay. Can you please pronounce -- are you familiar with
 2 the name in the "Cc" line?
 3 A. Yes, I'm familiar with the name. It's pronounced --
 4 this is email of Mr Clement Habiymbere.
 5 Q. And I'm going to say "Mr Clement" to refer to him.
 6 A. Clement, yes.
 7 Q. I don't mean to be disrespectful, but I'm going to get
 8 it wrong either way, I think.
 9 So Mr Clement was an employee of MINIRENA as of
 10 December 13th 2011, correct?
 11 A. No. Mr Clement was an employee of Natural Resources
 12 Authority, not ministry MINIRENA.
 13 Q. And just very briefly, the Natural Resources Authority,
 14 was that department or authority involved in the mining
 15 industry in any way?
 16 A. Yes, I will just be quick. There was the ministry
 17 itself: it was called Ministry of Natural Resources,
 18 MINIRENA. And there was an agency called Rwanda Natural
 19 Resources Authority, and in that agency there were
 20 several departments, including a department in charge of
 21 mining.
 22 So Clement was an employee of the agency, Rwanda
 23 Natural Resources Authority. But before joining the
 24 agency, he used to work for the OGMR, which was the
 25 authority in charge of mining.

Page 135

17:39 1 Q. And when was that? When did he work there?
 2 A. OGMR was -- he joined OGMR, I think, shortly after its
 3 creation, or even he was involved in the task team that
 4 was there when it was created.
 5 Q. And I apologise, I don't know that date. So just,
 6 please: when was he an employee of OGMR?
 7 A. Let's say at least before I joined it. So it is
 8 anything before 2008. So he was there before me.
 9 Q. And when did he move over to the Natural Resources
 10 Authority?
 11 A. When OGMR was restructured and changed into the Geology
 12 and Mines Department of Rwanda Natural Resources
 13 Authority. That is in 2011.
 14 Q. As of December 13th 2011, was he with OGMR or was he
 15 with the Natural Resources Authority agency? Or are you
 16 saying you don't know: it could be one or the other?
 17 A. December 2011, we were shifting from OGMR into RNRA,
 18 Natural Resources Authority, GMD. So I think at that
 19 time he was already at Geology and Mines Department.
 20 Q. Okay. And was he a lawyer?
 21 A. Yes, he was. At least at OGMR he was serving as the
 22 legal affairs advisor, legal affairs officer; I don't
 23 remember properly the position.
 24 Q. And when he moved over to Natural Resources Authority,
 25 is it your understanding that he continued to work in

Page 136

17:41 1 a capacity that was involved in some way in mining
2 licences, mining contracts?
3 A. I would say that he was -- what I remember: he was part
4 of a pool of lawyers or people trained in legal affairs.
5 And because he was one of the few with mining
6 experience, he was most of the time involved in mining
7 legal issues.
8 Q. It's fair to say that Mr Bidega knew Mr Clement --
9 A. Yes. I think they even had been together in a training
10 in France; I think, if I recall it properly. So they
11 knew each other.
12 Q. So in seeing that Mr Bidega copied Mr Clement here,
13 isn't it fair to say that you recognise Mr Bidega was
14 not trying to hide this communication from anyone within
15 either Natural Resources Authority or OGMR?
16 A. I don't agree.
17 Q. Did Mr Clement report to you that he received this
18 email?
19 A. He was not under my supervision and he never talked to
20 me about this.
21 Q. Did he report to -- without talking to you, did you
22 learn that he reported to anyone else in Natural
23 Resources Authority about this email?
24 A. I don't have -- I never got that information.
25 Q. And you're aware, are you not, sir, that no one reached

Page 137

17:45 1 not an application for a long-term licence."
2 Do you see that?
3 A. I see. I see that.
4 Q. I'm sorry, one second. I lost the notation of the next
5 exhibit. I'll pick that up. (Pause)
6 May I ask that document R-118 be pulled up, please.
7 Mr Imena --
8 A. Yes.
9 Q. -- if you recall this document, it won't require us to
10 toggle back and forth with the other. I will be happy
11 to, if you don't recall this document and need
12 orientation for my questions. But for purposes of my
13 questions right now, I'd like to start by finding that
14 answer out.
15 Do you recognise this document? Do you know what
16 it is?
17 A. "August 12, 2014". I don't remember exactly this
18 document.
19 Q. I will bring it up on my own screen for a moment so
20 I can see it in a size that I can read.
21 So perhaps it's best if on one side of the screen,
22 this document -- perhaps the right side, because I think
23 it's later in time, and if you could bring back up R-040
24 and put it on the left side.
25 Now, R-040 is a document we just went over various

Page 139

17:43 1 out to Mr Bidega after he copied Mr Clement on this
2 email and told him that this email was somehow
3 inappropriate; correct?
4 A. I don't remember. I don't remember.
5 Q. You are aware, sir, that no one from the ministry
6 reached out to Mr Marshall or NRD and said this was
7 an inappropriate communication between him and
8 Mr Bidega; correct?
9 A. I don't remember.
10 Q. And that goes for the other groups as well: you never
11 heard of anyone from OGMR or anyone from Natural
12 Resources Authority reaching out to NRD or Mr Marshall
13 to complain that this was somehow an inappropriate
14 communication; correct?
15 A. I don't remember.
16 Q. If I could ask that the first witness statement be
17 brought back up and paragraph 12 be focused on. If we
18 look within paragraph 12, the third sentence, do you see
19 there it's saying that:
20 "In fact, its November 2010 Application ..."
21 You understand that you're referring here to NRD,
22 right?
23 A. Yes. Yes.
24 Q. "... was only an application for further five-year
25 licences with some variations from the original ones and

Page 138

17:47 1 sections of, and it's a four-page document. If I could
2 draw your attention to the last page of R-118, you'll
3 see that it's a seven-page document.
4 Sir, do you recall that in August 2014 someone was
5 asked to undertake an update assessment of NRD, starting
6 with or based upon your evaluation that's been marked as
7 R-040?
8 A. Can -- are you asking me if someone made an evaluation
9 in August 2014 about NRD's fine?
10 Q. I'm asking whether someone was asked to update or work
11 with your evaluation -- that's R-040 -- and add more
12 information.
13 A. Sorry, I'm not getting your question properly.
14 Q. Okay, never mind. I take it if you recalled such
15 an event or project, it wouldn't be such a hard
16 question. So I would ask then just to help me by going
17 through specific sections.
18 For the purposes of the last question, however, from
19 your witness statement, there's one portion I'd like to
20 draw your attention to first that's right in the middle.
21 Because I'm getting the sense that you have a fresh
22 memory of this, if you've seen it before -- I'm happy to
23 let you look through page by page. But I'm going to
24 suggest to you that to answer this question or
25 questions, I'm not going to require you to say something

Page 140

17:49 1 about what's in the other content.
 2 Would you prefer to see the other pages and what's
 3 on them before you answer any questions about it?
 4 A. Yes, there's this document, R-040, I think it's the one
 5 that I produced. Now there's another one exhibited.
 6 Q. Yes.
 7 A. So I would like to read it.
 8 THE PRESIDENT: Well, in that case I suggest we have
 9 a 15-minute break now and resume at 6.05 English time.
 10 MR COWLEY: Thank you.
 11 MR IMENA: Thank you.
 12 (5.50 pm)
 13 (A short break)
 14 (6.07 pm)
 15 MR COWLEY: Before we return to that document --
 16 Mr President, I'm sorry, may I continue?
 17 Before we return to that document, sir, I realised
 18 during the break that I left open a couple of questions
 19 that I thought I had answers to, but I don't.
 20 Earlier I asked you some questions about a number of
 21 large-scale mining concession holders that were issued
 22 before you left, and then you talked about the names
 23 that you gave us. And what I've left open
 24 unintentionally was: other than large-scale ...
 25 (Pause to resolve a technical problem)

Page 141

18:10 1 Q. And the other question I started to ask, but I didn't
 2 get a response and I have to return to -- and I didn't
 3 get a response because I diverted. So to return to what
 4 we were talking about with regard to the applications or
 5 applicants for concessions while you were with the
 6 ministry.
 7 Was there ever a document or a computer program,
 8 a computer system, spreadsheet, that listed all
 9 applicants for concessions and tracked where each was in
 10 the process, showed what was done, what the ultimate
 11 decisions were or what open questions there were in
 12 their application process?
 13 A. I don't remember.
 14 Q. So you don't remember having such a tool available to
 15 you at any time, to see them all and where they stood?
 16 A. You are asking for which period, please?
 17 Q. Prior to your leaving the ministry -- prior to you
 18 leaving MINIRENA, excuse me.
 19 A. Yes, me prior to leaving MINIRENA, we had a cadastre
 20 system. It was an online system. So that was the
 21 system we had at that time.
 22 Q. Say it again, please? Sorry.
 23 A. A mining cadastre system.
 24 Q. And did that system allow you to pull up on your
 25 computer screen all of the applicants, to see and

Page 143

18:08 1 Mr Imena, other than the large-scale mining
 2 concession holders that you identified having been
 3 issued prior to your leaving ... (Pause) how many other
 4 concessions were awarded to applicants prior to your
 5 leaving MINIRENA?
 6 A. I don't remember the number, the exact number.
 7 Q. Do you recall an approximate number of how many other
 8 concession holders had issued --
 9 A. Licences. Mining licences and exploration licences.
 10 Q. I'm asking specifically about concession holders. Other
 11 than large-scale mining concession holders already
 12 identified, not to be repeated, were there any other
 13 concessions awarded prior to your leaving the position
 14 as minister?
 15 A. If concession is the right to mine for 30 years, zero
 16 concession licence was granted prior to me leaving the
 17 ministry.
 18 Q. How many other long-term licences were granted -- let me
 19 stop the question and restart it.
 20 How many long-term licences were granted to
 21 applicants, excluding the large-scale mining concession
 22 holders already identified, prior to your leaving?
 23 A. I don't remember the number, as I said.
 24 Q. Is it more than ten?
 25 A. I don't remember.

Page 142

18:11 1 compare as to where they stood in the process of their
 2 applications?
 3 A. In the data fed into that system, you can have the list
 4 of licences that were issued, those that have expired.
 5 Q. But I'm asking specifically about the summary of all the
 6 names in one place, that you could see them together and
 7 where they stood. So, in other words, could you call up
 8 on a screen and see: this application was granted, this
 9 application was denied, this application is in a process
 10 where we're waiting for the following thing; all of the
 11 applications in one place?
 12 A. I was not the one running that computer system, but we
 13 had the mining cadastre system which was in charge of
 14 that.
 15 Q. Thank you. Now if we could go back and pull up R-118.
 16 MR McCARTHY: Sorry to intervene. This is Mr McCarthy on
 17 behalf of the Respondent. We've lost Mr Hill. So
 18 I wonder if we could have a little break until we get
 19 him back.
 20 THE PRESIDENT: That seems reasonable. We'll have a short
 21 break.
 22 MR WATKINS: Mr President, would you like us to put everyone
 23 back into their breakout rooms?
 24 THE PRESIDENT: Not particularly. We'll just sit peacefully
 25 and wait for Mr Hill to return.

Page 144

18:13 1 MR WATKINS: Understood.
 2 (6.13 pm)
 3 (Pause)
 4 (6.15 pm)
 5 MR HILL: Mr President, I apologise for that. We have
 6 a problem with our system in chambers. But we are back
 7 on through a mobile phone connection, which I think will
 8 be sufficient for us to listen to the cross-examination
 9 of Mr Imena.
 10 THE PRESIDENT: Very well. Thank you very much, Mr Hill.
 11 We'll carry on then, please.
 12 MR HILL: Thank you.
 13 MR COWLEY: To the FTI system operator, if we could close
 14 R-040 now. Because when we left, the witness said he
 15 needed to review this document. So I'd like to open it
 16 two pages at a time, so he can see it.
 17 Mr Imena, R-118 is a seven-page document, as
 18 I mentioned before. I'm going to give you the
 19 opportunity you asked for: you said you needed to read
 20 it to understand whether it's something you're familiar
 21 with, so please do. And when you need to go on to
 22 page 3, please say so.
 23 I have specific questions about specific entries.
 24 So I will give you an opportunity to read the material
 25 I'm questioning you about.

Page 145

18:16 1 A. Yes.
 2 Q. Please keep that in mind.
 3 A. You can go to page 3. (Pause)
 4 Yes, page 4, please. (Pause)
 5 Page 5, please. Yes, and 6. (Pause)
 6 Yes, please, 7. (Pause)
 7 Yes? Sorry, I can't hear you.
 8 Q. My apologies.
 9 Having read the document, are you now able to say
 10 you recall the creation of this document and its
 11 purposes?
 12 A. Can you repeat your question, please?
 13 Q. When was the document marked R-118 created?
 14 A. Looking at the first page, I think it is in 2014.
 15 Q. It says on the first page, if we bring it up,
 16 "August 12, 2014". Do you recall it being created at
 17 that time?
 18 A. I don't remember.
 19 Q. Why was it created?
 20 A. Why was this document created?
 21 Q. Yes.
 22 A. According to the title, it's assessment of the
 23 performance of NRD.
 24 Q. That is the title. But do you recall why this
 25 assessment of its performance was done in August 2014?

Page 146

18:21 1 A. So I am not seeing the author, the name of the one who
 2 wrote the document. I don't see the one he's addressing
 3 to. So I can't recall.
 4 Q. Have you seen this document before today?
 5 A. I don't remember.
 6 Q. You do recall the circumstances of NRD's operation of
 7 its mining concessions in August 2014, don't you?
 8 A. What I remember is -- so, after reading it, I agree with
 9 the recommendations and the findings given in the
 10 document. So the document might have been produced
 11 maybe by someone at the ministry or at Rwanda Natural
 12 Resources Authority.
 13 Q. Do you recall the circumstances of NRD's operations at
 14 the mining concessions in August 2014, where things
 15 stood?
 16 A. August 2014, I recall that around that time we have had
 17 the 2014 law; and after the 2014 law, NRD was asked to
 18 re-apply for its licences. So that was the context in
 19 2014. That is what I recall.
 20 Q. Was NRD being provided tags so that mining operations
 21 could be conducted and it could lawfully sell the
 22 resulting minerals as of August 2014?
 23 A. There was -- there's a point in time when we banned NRD
 24 to continue receiving tags. The date is explained in my
 25 witness statement. I don't remember the exact date.

Page 147

18:23 1 But that happened.
 2 Q. During the period when tags were not provided to NRD to
 3 operate mines and sell minerals, would there have been
 4 any reason to evaluate its performance as a mining
 5 operator?
 6 A. We had very good reason to ban NRD to continue [to]
 7 access tags.
 8 Q. That's not my question, sir. I just want to focus you
 9 on the question.
 10 During the period when the ban was in place, was
 11 there any reason that you can recall why an assessment
 12 of its performance would be begun at that point in time?
 13 A. During the period when we banned NRD to access tags,
 14 they didn't have a licence. So we had good reasons to
 15 continue making assessment of their performance.
 16 Q. I'll return to the chronology briefly, but I want to
 17 focus first on this document.
 18 Although you say that since you agree with certain
 19 things, it could be something from the MINIRENA -- is it
 20 accurate for me to say that you recognise that it was
 21 a document that might have been worked on by someone in
 22 MINIRENA, but you don't actually recall someone working
 23 on this document? Is that your testimony?
 24 A. This document is not signed. I don't see the name of
 25 it, the one who wrote it. So I can't give you more

Page 148

18:25 1 information than that.
 2 Q. Page 6, the various sections that are broken up here in
 3 the assessment of the performance, then lead to
 4 section 4, "Application for Long Term License". Do you
 5 see that?
 6 A. I see that.
 7 Q. And in this assessment it states:
 8 "On 29th November 2010 NRD Rwanda Ltd sent a letter
 9 of request for an extension of Mining and exploration
 10 license (Special licence) for ..."
 11 And then it names the five concessions:
 12 "... On 2nd August 2011, The Ministry of Natural
 13 Resources extended operations for a period of six ...
 14 months to allow for negotiations. On 2nd February 2012,
 15 and on 13th September 2012, the Licence was extended on
 16 the two occasions ..."
 17 And it then goes on to describe the same statement
 18 of the projected expense, the same period of time that's
 19 in your earlier assessment. Do you see all that?
 20 A. I see it.
 21 Q. And that's characterised in this report as the
 22 "Application for [a] Long Term License"; correct?
 23 A. NRD applied in 2010. Their application was deemed
 24 non-satisfactory. The ministry informed them that they
 25 didn't comply with their contractual obligations.

Page 149

18:28 1 Q. Then it is accurate in the rest of the first paragraph
 2 as to when extensions of licences were issued by the
 3 ministry; correct?
 4 A. The ministry issued an extension, you are correct.
 5 Q. And just like you, the author here recognises the amount
 6 that NRD was proposing to spend over the period of the
 7 licence that it was applying for; correct?
 8 A. NRD presented a plan for investment: that's the one
 9 I mentioned in my 2012 report.
 10 Q. Well, you can agree with me then that that information
 11 is accurate. What was submitted and what was extended,
 12 as it's described in this report, is accurate; correct?
 13 A. What I can agree is that there's a figure that was
 14 presented by NRD, and that is what I know.
 15 Q. Okay. The author -- someone who had worked on this, and
 16 whoever reviewed it or commented on it before it became
 17 in this form, they took those same facts that you
 18 describe, recognising when things happen, and the
 19 characterisation, the way it's described as events,
 20 that's the application process for a long-term licence
 21 by NRD: that's what -- this report characterises that.
 22 Can you agree with that?
 23 A. No.
 24 Q. You don't agree that it even uses that language; you
 25 won't agree with that?

Page 151

18:26 1 Minister Kamanzi informed NRD on several occasions;
 2 I also informed NRD of their non-compliance on several
 3 occasions. And I see that this report is again
 4 highlighting that NRD did not fulfil its obligations.
 5 Q. Can I have an answer to my question? Let me break it
 6 down a little bit, so that we can focus and move
 7 a little quicker, hopefully.
 8 The statements, the dates and what happened on those
 9 dates, those are accurate: that's your understanding of
 10 what was done on those dates; correct?
 11 A. I'm not the one who wrote this report, sir.
 12 Q. Can I ask you of your memory, please. You do recall --
 13 A. NRD applied in 2010 for extension of their exploration
 14 licence and grant of short-term mining licences. That
 15 application was not successful because NRD didn't fulfil
 16 its obligations. That is what I remember.
 17 Q. Right. Mr Imena, you do recall the date of the initial
 18 application was on or about November 29th 2010; correct?
 19 A. The initial application was 2009. I didn't get the
 20 question.
 21 Q. The application submitted by NRD for an extension of
 22 mining and exploration licence for Rutsiro, Sebeya,
 23 Giciye, Nemba and Mara concessions was submitted on
 24 November 29th 2010; correct?
 25 A. Yes, it was submitted in 2010.

Page 150

18:30 1 A. That is to be asked to the one who made that statement.
 2 Q. Well --
 3 A. But if I can be allowed to add on, NRD made
 4 an application in January 2013 for a so-called
 5 "long-term licence", but that application of
 6 January 2013 was not satisfactory because it was just
 7 a kind of copy-and-paste of the 2010 application.
 8 Q. And you'll agree it's not mentioned here; right?
 9 A. It's mentioned in my witness statement, and that's what
 10 I'm mentioning to you.
 11 Q. Sir, please focus on my question.
 12 A. Yes, sir.
 13 Q. You'll agree it's not mentioned in this assessment of
 14 performance; correct?
 15 A. It's not mentioned.
 16 Q. So without reference to that, the author, and anybody
 17 who reviewed it before it was put in this form,
 18 characterised these events as the application for
 19 a long-term licence for NRD; correct?
 20 A. No.
 21 Q. Okay. You do know that Mr Marshall repeatedly told you,
 22 any time he communicated with you, that he considered
 23 these events that are mentioned here as the application
 24 for a long-term licence, and he wanted to negotiate such
 25 terms; you'll agree with that, won't you?

Page 152

18:32 1 A. I don't agree. Can I explain?
 2 Mr Marshall applied for extension of exploration
 3 licence. That application came with application for
 4 mining licence, short-term. That application was deemed
 5 non-satisfactory. Mr Marshall was informed.
 6 He then applied in 2013 for long-term licence. The
 7 government, through the ministry and through the Rwanda
 8 Development Board, told him that his application is not
 9 satisfactory. But because we wanted to give him chances
 10 to see if he can perform, he was invited to negotiate
 11 for one concession, and possibly two concessions, and he
 12 refused to that offer.
 13 So this is what I can confirm.
 14 Q. Is it actually your testimony that Mr Marshall did not
 15 take the position with the ministry, in communications
 16 with you and others that worked for you, that when
 17 submitting the November 29th 2010 application, NRD's
 18 intention was to obtain a long-term licence? Are you
 19 saying Mr Marshall didn't say that?
 20 A. It was very clear in the 2010 application that they were
 21 applying for five years.
 22 Q. Isn't it true the reason that this document in 2014 uses
 23 the same reference to the application process that began
 24 on November 29th 2010 as an application for a long-term
 25 licence, isn't it true that it was because Mr Marshall,

Page 153

18:33 1 in his communications with people in the ministry, OGMR,
 2 in talking about that application, suggested he intended
 3 to get a long-term licence, and they, in responding to
 4 him, said they understood that was the purpose? That
 5 was the characterisation prior to this lawsuit,
 6 wasn't it?
 7 A. No.
 8 Q. You will agree with me that there was no one within the
 9 ministry that would have a reason for calling these
 10 events an application for a long-term licence by NRD,
 11 other than that's what they truthfully believed it was,
 12 in this report?
 13 A. NRD was clearly informed that if it wants to proceed
 14 with its application, it is invited to negotiate for
 15 short-term licences. There are letters from RDB and
 16 there are letters from MINIRENA to confirm that.
 17 Q. I'll try one more time, sir. I'm asking you recognising
 18 that you say you don't know who the author is. So
 19 I'm asking you what is therefore an open question as to
 20 anybody who could have been working on this within
 21 MINIRENA.
 22 You're not aware of anyone who was working on the
 23 NRD file in August 2014 having a purpose or reason for
 24 characterising the November 29th 2010 application as
 25 an application for a long-term licence, other than

Page 154

18:35 1 whoever was working on it believed that to be true,
 2 are you?
 3 A. RDB -- no, sorry. NRD submitted a long-term application
 4 in 2013, but that application was not approved. Then
 5 down the line, NRD continued to ask, to request for
 6 long-term licences. But the ministry continued to
 7 inform NRD that our position is: short-term licences, if
 8 any.
 9 Q. And that's your answer to my question, right?
 10 A. Yes. Yes, sir.
 11 Q. As of August 2014, where in the process for the
 12 application for a licence did the assessment of
 13 performance fall?
 14 A. Can you repeat, please?
 15 Q. Yes. This document is called an "Assessment of ...
 16 Performance".
 17 A. Yes.
 18 Q. It's dated "August 12, 2014". As of that date, where in
 19 the process for an applicant seeking a licence to
 20 operate a mine, where in that process did MINIRENA's
 21 assessment of its performance fall?
 22 A. NRD was still occupying -- if I may use that
 23 terminology -- the concessions, or the mining areas at
 24 that time. So it is obvious that an assessment of
 25 performance can be conducted at any moment, on any area.

Page 155

18:37 1 Q. Did MINIRENA conduct assessments of performances by the
 2 other short-term licence holders who applied for
 3 concessions after their initial term expired?
 4 A. Assessments of performance were conducted at any moment
 5 it was deemed necessary by MINIRENA.
 6 Q. Okay. So in terms of the process for deciding whether
 7 or not to grant a licence that was being applied for by
 8 a short-term licence-holder seeking to extend it, please
 9 tell me when the ministry performed its assessment of
 10 performance. What did it do before then, what did it do
 11 after then in the process?
 12 A. When an application is received at the ministry, there's
 13 an evaluation that is made on that application. That is
 14 normal. But at any moment, [if] either the Natural
 15 Resources Authority or the Minister of Natural Resources
 16 would deem it necessary, it can conduct an assessment.
 17 Q. Sir, if an application for a licence extending beyond
 18 the initial short-term licence by any applicant for
 19 mining operations was submitted, won't you agree that
 20 the application itself would first be analysed and
 21 determined whether the application failed to qualify,
 22 and therefore would not proceed, before doing the work
 23 involved in an assessment of performance?
 24 A. Everything can be done in order to collect the maximum
 25 information that will inform the ministry towards making

Page 156

18:39 1 a decision.
 2 Q. But what was done? What was the practice? What was the
 3 policy? How were all the mining operation licence
 4 applicants treated, in terms of a process? After
 5 submitting the application, what came next, and where in
 6 that process did an assessment of performance fall for
 7 everyone?
 8 A. What was normal is that an application is received,
 9 there's an evaluation conducted, and that evaluation
 10 comprises any activity that will lead the ministry to
 11 gather all the information so that a decision is taken
 12 on the application.
 13 So there would be maybe an evaluating committee,
 14 a committee visiting the sites, discussions with the
 15 applicants. So all are part of the process of
 16 evaluating the application.
 17 Q. Would you agree with me that means that as of
 18 August 14th 2012, MINIRENA considered NRD's application
 19 for a long-term licence pending and under consideration,
 20 but not already rejected?
 21 A. The -- I think we issued a final notice that the
 22 application was rejected, I think it was in 2015, if
 23 I remember properly. So between 2010 to 2015, we were
 24 still giving NRD all the chances possible to see if they
 25 can come to the table and negotiate an agreement for

Page 157

18:41 1 mining.
 2 Q. If I can ask you to look at the second page of R-118 and
 3 "Fulfillment of Obligations". There, under section 3.1,
 4 called "Exploration", is the sentence:
 5 "It should be understood that the major objective of
 6 these hybrid permits was to delineate the resources and
 7 evaluate the reserves in the license areas."
 8 Do you see that?
 9 A. Yes, I see that.
 10 Q. And the hybrid permit is the initial exploration licence
 11 period; correct?
 12 A. Can you repeat, please?
 13 Q. The hybrid permit is the initial exploration licence
 14 period where exploration and analysis, feasibility
 15 studies, those actions are being conducted, for
 16 an applicant who believes it may want to apply for
 17 a concession?
 18 A. You are right.
 19 Q. Okay. It's true, is it not, that --
 20 THE PRESIDENT: Sorry. Am I right that the word "hybrid"
 21 reflects the fact that they are at the same time allowed
 22 to mine, while they're exploring?
 23 A. You are right, sir. You are right.
 24 MR COWLEY: You agree with this statement that the major
 25 objective at that time period was delineating and

Page 158

18:43 1 evaluating the resources and reserves, that the major
 2 objective wasn't immediate industrialisation; correct?
 3 A. The major objective in the contract signed by NRD was to
 4 immediately start industrialisation and also conduct
 5 exploration, evaluate the reserves, submit a feasibility
 6 study. So it is clear in their contract. The fact that
 7 it is mentioned as such in this report doesn't take away
 8 the major objectives as stated in the signed contract.
 9 Q. Well, doesn't pure logic and business sense dictate that
 10 they can't all be given equal weight immediately after
 11 signing the initial exploration licence? Because if you
 12 immediately industrialise, without assessing reserves
 13 and resources, you're setting everyone up for failure by
 14 pouring money into something with no idea what you want
 15 to do and how you want to do it.
 16 A. These mines -- for instance, the Nemba mine had been
 17 discovered in the '40s or the 1930s. So it was
 18 an already-existing mine, with infrastructure on site.
 19 So to immediately move on with industrialisation, it was
 20 very logic[al], and that is what NRD signed in its
 21 contract.
 22 Q. You're not suggesting that the shareholders and entities
 23 behind NRD, when they originally obtained a contract in
 24 2006, were the same parties that from the 1940s, as you
 25 say, had started mining efforts, before the government

Page 159

18:45 1 took over?
 2 A. I didn't get the question well, sorry.
 3 Q. NRD in 2006 is not the same entity as whatever private
 4 enterprise or government agency was behind the
 5 initiation of mining in the 1940s, was it?
 6 A. No, it wasn't.
 7 Q. So they didn't have the information on which the
 8 infrastructure that you say was at the facility was
 9 built, what their expectations were, such that they
 10 could immediately industrialise it; correct?
 11 A. I was not there in 2006 when they signed it, but I think
 12 there's a good reason NRD in 2006 planned and signed and
 13 agreed to immediately start industrialisation. So they
 14 have a good reason.
 15 Q. Well, there are five concessions, and you've mentioned
 16 one that had anything predating NRD's obtaining
 17 a concession. The concessions in the western part of
 18 the state had nothing; correct?
 19 A. Not at all. It's not correct, what you are saying.
 20 It's not correct, what you are saying, not at all
 21 correct.
 22 Q. Don't you know when you're assessing NRD in 2012, you
 23 say you began, that it's completely unfair to suggest,
 24 just because the words in the initial contract said
 25 "immediately industrialise", to actually believe

Page 160

18:46 1 someone, upon taking the initial four-year licence,
 2 would pour money into industrialising with plants and
 3 automatic equipment, and whatever else might go into it
 4 eventually to extract all the minerals profitably, to do
 5 it immediately on day one, that that's very unfair;
 6 don't you know that?
 7 A. I don't agree. The government had a plan when it
 8 privatised the mines. The plan was to change and
 9 modernise the activities in the country, and that
 10 required a lot of investment, fresh money. So that's
 11 why the government invited people, investors, to come
 12 and develop this sector. And the government believed in
 13 NRD, and NRD pledged to invest about \$40 million in
 14 modernising the operations.
 15 So we were very disappointed in the fact that people
 16 who were thought to be very experienced in mining failed
 17 to implement the plan that they draw themselves.
 18 Q. FTL, if I could ask you to turn to the next page, 3.2.
 19 Under "Production", it does reference the language
 20 of the contract you're referring to. You'll agree with
 21 me that the author, and whoever reviewed this at the
 22 time before this document came in this form, did not use
 23 the same weighty concept of the "major objective" of the
 24 hybrid agreement being industrial exploitation
 25 immediately; that's not how that's characterised there,

Page 161

18:50 1 in the next phase they should have spent much more than
 2 40. So that's why we know that this investment is
 3 gradual. They should have started with the 40 and then
 4 proceeded with much more investment.
 5 Unfortunately, most of the investment was just from
 6 retains from minerals they sold from the concession, not
 7 fresh money from the outside.
 8 Q. Let's stick with those two points. In 2006, when NRD's
 9 founders were applying and they put out their budget,
 10 what were -- the policy, practices and guidelines of
 11 MINIRENA, what did they say about what the amount to be
 12 invested in each mine had to be for every applicant?
 13 A. We, for instance, had the policy in 2010 to invest
 14 an estimate of about USD \$3 million in exploration for
 15 an area the size of 7 kilometres squared.
 16 Q. I asked you about 2006, when the contract was signed and
 17 people used the language, not at the end.
 18 When people signed up and made the projections, what
 19 did MINIRENA say was the amount that each applicant
 20 would be held to equally of investment?
 21 A. MINIRENA, when they signed this contract in 2006, they
 22 were happy with the \$40 million pledged. So it means it
 23 was okay with the policy of 2006.
 24 Q. Isn't it true that MINIRENA had no such minimum equally
 25 applicable to all applicants for a short-term

Page 163

18:48 1 correct?
 2 A. No, what I'm reading is that, "NRD was expected to
 3 proceed immediately to industrial exploitation", and
 4 that is what we were expecting.
 5 Q. And you can agree with me that the authors of this used
 6 the same description that this term -- excuse me. They
 7 did not ascribe to this term of the contract the
 8 characterisation that it was a "major objective" of the
 9 contract, did they?
 10 A. This is the interpretation of the author. But at the
 11 ministry level, the interpretation was that proceeding
 12 to industrialisation of the mine is key to the plan of
 13 NRD.
 14 Q. And proceeding could be gradual, because
 15 industrialisation of Rwanda's mining industry was always
 16 intended to be a gradual process, was it not?
 17 A. It's gradual everywhere in the world.
 18 Q. And true of Rwanda; correct? So when Rwanda was looking
 19 at its short-term exploratory contracts with applicants
 20 such as NRD, when it was interpreting the "immediately
 21 to industrialise" provision, it reasonably understood
 22 that that means effectively it would be gradual, it
 23 would be over time; correct?
 24 A. You are right. It was -- you are very right. These
 25 \$40 millions had to be spent within four years, and then

Page 162

18:52 1 exploratory licence?
 2 A. I don't remember what was the situation on that fact in
 3 2006.
 4 Q. I'm sorry, I did speak over you at the beginning. Can
 5 I ask you to repeat at least the beginning of that prior
 6 answer, and I'll do that by repeating the question.
 7 A. Yes, please.
 8 Q. In 2006, what did MINIRENA say was its policy that
 9 applied equally to every applicant for a short-term
 10 exploratory licence on investment: that there was
 11 a minimum amount, a specific amount total, or that they
 12 just left everybody free to say the number that they
 13 wanted and they set no parameters?
 14 A. I don't remember the policy that was there in 2006,
 15 I was not working yet for MINIRENA.
 16 Q. Right. But you inherited this contract and you looked
 17 in this file and you made an assessment of what to do
 18 with it. So you had to look back at 2006 if you were
 19 actually going to interpret what NRD was supposed to do.
 20 Your only way to do that is to learn what it was told
 21 the contract meant when it signed it, right?
 22 A. I don't remember the policy in 2006 about minimum
 23 investment.
 24 Q. How about whether you looked into it? When you wrote
 25 your 2012 assessment, for example, two years before

Page 164

18:53 1 this, did you contact the people who were involved in
 2 issuing the licence within the agency to find out from
 3 their communications, oral or written or email, what was
 4 said, what was told, before you went to your superiors
 5 and said, "This was the contract expectations when they
 6 signed it"?

7 A. In 2012, first -- the first thing I read, I read the
 8 contracts. And the contract was the basis on which
 9 everything would be built. After reading that, I read
 10 the investment plan, the assessments done by my
 11 colleague or my supervisor at that time, and then I made
 12 my own assessment. I didn't have to go further than
 13 what was signed in the contract.

14 Q. You were looking at making assessments of other
 15 applicants at that time, not just NRD; correct?

16 A. It might have happened.

17 Q. Did you notice that they had different numbers for
 18 proposed investment, for example?

19 A. I don't think -- I don't remember. But what I remember
 20 is that NRD signed for \$40 million and invested much,
 21 much less than their pledge.

22 Q. To be clear, when reporting to your superiors in 2012
 23 what the contract required and what the expectations
 24 were, you actually didn't communicate with anyone within
 25 MINIRENA about what their expectations that were

Page 165

18:57 1 world, and including Rwanda, that progress towards
 2 industrialisation is actually gradual; it's not
 3 immediate anywhere?

4 A. I totally agree. But this 40 million for four years was
 5 just one phase in the process to full industrial, and
 6 they failed to succeed with phase 1.

7 Q. I would like to stick with this point though, sir,
 8 before you tell me that there's others to consider.
 9 Because this is assessing performance, you assessed
 10 performance two years earlier, and you're both referring
 11 to contracts.

12 I'm trying to determine: when you were doing it,
 13 when you were reaching conclusions and passing them on,
 14 didn't you actually recognise that it can't mean
 15 immediate industrialisation in 2006; it has to mean over
 16 time? So there's the language and there's the what it
 17 must mean and how it's going to be applied. Didn't you
 18 recognise that?

19 A. I recognised that NRD did some good preliminary
 20 exploratory work. So if you want me to tell you that
 21 I recognise what they did, yes, I did recognise that
 22 they did a good preliminary work. But they were
 23 supposed to do a reserve calculation and a feasibility
 24 study, and unfortunately they didn't.

25 Q. I'm not asking about those things. Please, I don't mean

Page 167

18:55 1 communicated to NRD were, did you?

2 A. All -- sorry, can you repeat, please?

3 Q. Yes. When you wrote your assessment in 2012 about what
 4 the contract required and how you assessed NRD met it,
 5 you did not first ask anyone who was involved in issuing
 6 that contract with NRD in 2006 what they actually
 7 communicated their expectations to be?

8 A. I discussed with Dr Michael, who was my supervisor,
 9 I got his report and I used it as a tool. I was not
 10 there in 2006, but the senior person in my department at
 11 that time was Dr Michael, and I got his report.

12 Q. Is it your testimony that his report says that he
 13 actually analysed and obtained the information about the
 14 representations made to NRD about contract expectations
 15 when they were signed?

16 A. The contract expectations are very clear in the
 17 contracts: proceeding to industrial mining, conduct
 18 exploration, conduct a feasibility study and provide
 19 reports, two years. So that was the baseline for my
 20 evaluation. And what I saw, by the way, is that NRD
 21 failed on all those points.

22 Q. With all due respect, sir, haven't we just discussed
 23 somewhat of an ambiguity or tension between the language
 24 in the contract, "to proceed immediately to industrial
 25 exploitation", and your acknowledgment that around the

Page 166

18:58 1 to cut you off, but I am trying to push for time to
 2 actually cover what my questions are.

3 So you gave me your answer, as much as you're going
 4 to give it, as to whether you recognise the distinction
 5 between the literal language with regards to industrial
 6 exploitation, and the reality of how long it takes.

7 My next question is: in that process of looking at
 8 that element -- that's the element we're on right now --
 9 did you go further and look into what the policy that
 10 was announced and communicated to investors in Rwanda's
 11 mining industry in 2006 was? Did you hold up your
 12 expectations against what was communicated to see if
 13 they were consistent before passing on an assessment?

14 A. I can repeat again; I think, unfortunately, it would be
 15 the same answer.

16 My assessment was first based on the contract that
 17 was signed. So I looked at what was the -- were the
 18 conditions in the contract and made an assessment, and
 19 it came with the findings that I have been highlighting
 20 again. If you allow, I can highlight them again.

21 THE PRESIDENT: Not this evening, because we've reached
 22 7 o'clock in this country, 8 o'clock, I think, where you
 23 are, and that's time to adjourn.

24 Could I make one statement of housekeeping. I asked
 25 at the beginning whether we could have some laptop

Page 168

19:00 1 assistance in getting the data in a user-friendly form
2 on our laptops. We haven't yet received that. If we
3 could have it before we sit the day after tomorrow,
4 which will be our last day -- and we'll allow
5 a reasonable time, so we could come in an hour before we
6 sat in order to make sure we get what we need -- that
7 would be most helpful.
8 MR KAPLAN: Mr President, perhaps I can speak with the
9 assistant to the Tribunal, if she's available, after we
10 end today.
11 THE PRESIDENT: Yes, thank you.
12 MR KAPLAN: Thank you.
13 THE PRESIDENT: Okay.
14 I must ask you, Mr Imena: over the adjournment until
15 tomorrow, please do not discuss this case with anybody.
16 MR IMENA: Yes, sir.
17 THE PRESIDENT: That's one of our rules.
18 Thank you very much. We'll adjourn until midday
19 tomorrow.
20 (7.01 pm)
21 (The hearing adjourned until 12.00 noon the following day)
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23
24
25

<p>A</p> <p>Aaronson 2:7,7,8,8</p> <p>able 14:6 36:13 48:13</p> <p>48:16,22 56:20</p> <p>59:22 69:8 111:24</p> <p>113:22,24 116:7</p> <p>146:9</p> <p>above 46:9 110:22</p> <p>112:10</p> <p>accept 11:25 63:20</p> <p>75:10</p> <p>accepted 5:7 58:20</p> <p>68:4,9</p> <p>accepting 10:16 11:3</p> <p>access 19:3,4,12 26:1</p> <p>87:16 102:22 110:7</p> <p>116:7 124:12,15</p> <p>125:6 126:10 127:6</p> <p>127:7 128:21</p> <p>131:24 148:7,13</p> <p>accessible 132:15</p> <p>according 16:11 44:25</p> <p>146:22</p> <p>accordingly 51:19</p> <p>account 13:1,11</p> <p>110:10 126:4,9,10</p> <p>126:24 127:4,13,19</p> <p>127:21,25 128:2,4,6</p> <p>128:11,12,20,22</p> <p>129:12 130:11</p> <p>131:14 133:12,13</p> <p>accounting 31:17</p> <p>accounts 129:3,14,17</p> <p>130:4,9</p> <p>accuracy 43:21</p> <p>accurate 55:1 82:18</p> <p>103:18,19 107:15</p> <p>122:7 148:20 150:9</p> <p>151:1,11,12</p> <p>accurately 42:17</p> <p>Achievements 104:10</p> <p>acknowledge 12:3</p> <p>40:8 111:14</p> <p>acknowledged 41:6</p> <p>111:21</p> <p>acknowledging 64:22</p> <p>acknowledgment</p> <p>166:25</p> <p>acronym 84:5</p> <p>acting 72:7</p> <p>action 13:2,4,6 73:23</p> <p>77:17 100:12,20</p> <p>102:13,24,25</p> <p>103:16 109:7</p> <p>actions 50:6 55:12</p> <p>60:24 76:1 158:15</p> <p>active 3:5</p> <p>activities 72:2 118:2</p> <p>161:9</p> <p>activity 117:10,20,23</p> <p>157:10</p> <p>acts 34:1</p> <p>actual 122:17</p> <p>actually 7:11 21:14</p> <p>51:5 54:13 66:19</p> <p>67:6 70:14 95:6</p> <p>100:25 108:11</p>	<p>109:8 110:16 123:4</p> <p>148:22 153:14</p> <p>160:25 164:19</p> <p>165:24 166:6,13</p> <p>167:2,14 168:2</p> <p>add 20:4 108:16</p> <p>140:11 152:3</p> <p>added 93:20</p> <p>addition 108:6 129:13</p> <p>additional 1:9 52:24</p> <p>86:6 93:20 105:13</p> <p>address 59:11 119:13</p> <p>127:4,6,7,13,14,19</p> <p>127:20 133:13</p> <p>134:24</p> <p>addressed 47:24</p> <p>addressing 147:2</p> <p>adjoin 57:22 168:23</p> <p>169:18</p> <p>adjoining 99:8</p> <p>169:21</p> <p>adjourment 169:14</p> <p>administrative 39:24</p> <p>55:25</p> <p>admissibility 8:18</p> <p>admissible 8:8</p> <p>admit 1:25 11:17</p> <p>12:21</p> <p>advance 31:14</p> <p>advisor 136:22</p> <p>affairs 136:22,22</p> <p>137:4</p> <p>afraid 35:7</p> <p>Africa 20:19 34:15</p> <p>46:3 97:13</p> <p>after 9:20 10:3,11</p> <p>15:22 17:3,5,5,11</p> <p>18:10 19:13 21:8,21</p> <p>24:8,20 31:17 38:8</p> <p>46:18 47:15 48:6</p> <p>49:3 50:15,22 52:20</p> <p>61:3 63:1 64:13</p> <p>68:23 76:24 77:4,12</p> <p>77:25 84:11 89:15</p> <p>92:8 93:16 94:1</p> <p>101:14 103:2</p> <p>106:20 122:15</p> <p>123:5,10 127:17</p> <p>133:6 136:2 138:1</p> <p>147:8,17 156:3,11</p> <p>157:4 159:10 165:9</p> <p>169:3,9</p> <p>afternoon 9:16,17</p> <p>80:24 82:13,14</p> <p>again 7:1,20 12:10,12</p> <p>16:13 17:1 18:13</p> <p>37:14,17,18 39:18</p> <p>44:10 45:4 53:2</p> <p>58:8 60:10 61:3</p> <p>63:3 73:6 74:1 78:3</p> <p>78:8,13 86:14 87:9</p> <p>95:11,22,23 99:15</p> <p>114:9,19 122:2</p> <p>126:16 131:18</p> <p>132:17 134:15,21</p> <p>143:22 150:3</p> <p>168:14,20,20</p>	<p>against 13:2,6 31:18</p> <p>31:23 32:2 35:16</p> <p>36:24 37:22 38:5,11</p> <p>44:24 45:10 46:15</p> <p>48:10 50:18 51:14</p> <p>51:16,18 52:12,25</p> <p>53:6 55:5 61:6</p> <p>64:24 66:2,6 72:2</p> <p>76:15 78:2 79:22</p> <p>106:12 109:9,17</p> <p>168:12</p> <p>age 123:19</p> <p>agency 84:4 135:18,19</p> <p>135:22,24 136:15</p> <p>160:4 165:2</p> <p>aggrieved 12:18</p> <p>ago 17:14 23:3,22</p> <p>62:23 118:19</p> <p>agree 11:2 13:5,9,20</p> <p>14:10 19:12 21:12</p> <p>21:18 26:2,6,23</p> <p>27:3,8 38:9 39:20</p> <p>40:16 41:12,20</p> <p>43:23 44:9 46:11</p> <p>47:14 48:5 49:12</p> <p>50:5,20 53:20 67:16</p> <p>69:3 74:14 76:13</p> <p>77:17,25 78:2,6,12</p> <p>78:14 90:9,14 92:1</p> <p>92:10 100:20</p> <p>109:19 111:20</p> <p>116:9 118:12,18,23</p> <p>119:5 137:16 147:8</p> <p>148:18 151:10,13</p> <p>151:22,24,25 152:8</p> <p>152:13,25 153:1</p> <p>154:8 156:19</p> <p>157:17 158:24</p> <p>161:7,20 162:5</p> <p>167:4</p> <p>agreed 8:14 26:20</p> <p>70:4 74:9 94:14</p> <p>103:1 160:13</p> <p>agreeing 74:12</p> <p>agreement 22:21 23:2</p> <p>23:4,17 24:16,17</p> <p>27:21 28:1 45:6</p> <p>94:11 157:25</p> <p>161:24</p> <p>ahead 42:9 117:6</p> <p>ALASTAIR 2:6</p> <p>ALEX 1:22</p> <p>aligns 87:8 121:12</p> <p>Alison 100:1,10,16</p> <p>133:9</p> <p>alleged 37:22</p> <p>allocation 11:9 13:22</p> <p>allow 143:24 149:14</p> <p>168:20 169:4</p> <p>allowed 8:1 73:11</p> <p>83:1 97:1,2 124:6</p> <p>126:5 131:18 152:3</p> <p>158:21</p> <p>allowing 82:3</p> <p>almost 13:21 28:6</p> <p>alone 127:13,20</p> <p>along 7:9 37:7 50:24</p>	<p>aloud 29:17 81:1</p> <p>already 56:10 60:12</p> <p>78:9 84:12,17 86:3</p> <p>86:17,19,21 125:10</p> <p>132:12 136:19</p> <p>142:11,22 157:20</p> <p>already-existing</p> <p>159:18</p> <p>alright 9:11 20:4 36:8</p> <p>95:10 125:13</p> <p>129:23 134:18</p> <p>although 111:23</p> <p>148:18</p> <p>always 8:17 30:14</p> <p>43:17 44:3 47:9</p> <p>52:21 93:21 162:15</p> <p>ambiguity 166:23</p> <p>amended 122:23</p> <p>123:21</p> <p>amendment 30:3</p> <p>among 36:9 69:24</p> <p>70:2 71:23</p> <p>amongst 56:5</p> <p>amount 39:13,21</p> <p>40:21 46:14 50:18</p> <p>52:6,8 55:7,23</p> <p>105:3 106:19</p> <p>111:18 122:22</p> <p>151:5 163:11,19</p> <p>164:11,11</p> <p>amounts 54:19 66:22</p> <p>77:16 79:14</p> <p>analyse 6:16</p> <p>analysed 5:13 156:20</p> <p>166:13</p> <p>analysis 99:16 112:18</p> <p>113:15 158:14</p> <p>ANNA 2:23</p> <p>annex 43:7,14,15 44:4</p> <p>44:17 45:23 62:1</p> <p>67:15 80:2</p> <p>annexe 79:10,19</p> <p>annexed 41:23 42:2</p> <p>43:17 44:5,14 54:8</p> <p>54:11,14,15 61:11</p> <p>61:11 62:12,16 79:2</p> <p>Anne-Marie 1:23</p> <p>announced 10:16</p> <p>168:10</p> <p>announcement 11:3,5</p> <p>announcements 33:25</p> <p>another 17:23 18:2,14</p> <p>25:10 36:19 56:17</p> <p>57:19 88:22 92:17</p> <p>104:19 113:22</p> <p>120:23 125:1 141:5</p> <p>answer 3:24 4:15,21</p> <p>7:6,8 12:9 23:21</p> <p>26:25 38:23 42:24</p> <p>44:11 46:8 47:13,22</p> <p>49:4 59:8 63:20</p> <p>64:9 75:22 87:8</p> <p>90:16 96:5 113:22</p> <p>120:25 124:8</p> <p>125:24 139:14</p> <p>140:24 141:3 150:5</p> <p>155:9 164:6 168:3</p>	<p>168:15</p> <p>answered 16:25 79:14</p> <p>answering 12:13</p> <p>42:22 83:16</p> <p>answers 141:19</p> <p>antagonistic 124:18</p> <p>ANTHONY 3:4 9:13</p> <p>anticipated 108:4</p> <p>anybody 65:9,13</p> <p>131:3,3 133:21</p> <p>152:16 154:20</p> <p>169:15</p> <p>anyone 65:3 75:23</p> <p>78:16 89:11 94:21</p> <p>137:14,22 138:11</p> <p>138:11 154:22</p> <p>165:24 166:5</p> <p>anything 4:3,4 7:7,10</p> <p>7:14,25 27:4 47:5</p> <p>69:12,15,16 102:13</p> <p>118:15 124:3</p> <p>125:25 133:2 134:8</p> <p>136:8 160:16</p> <p>anywhere 58:23 113:1</p> <p>115:1 131:2 167:3</p> <p>Apart 100:15</p> <p>apologies 54:1 95:22</p> <p>146:8</p> <p>apologise 19:5,9,24</p> <p>27:2 31:14 94:3</p> <p>110:24 136:5 145:5</p> <p>Apparently 37:13,16</p> <p>APPEARANCES 2:1</p> <p>appeared 82:16</p> <p>append 80:1</p> <p>appended 62:1</p> <p>applicability 94:8</p> <p>applicable 163:25</p> <p>applicant 98:10</p> <p>155:19 156:18</p> <p>158:16 163:12,19</p> <p>164:9</p> <p>applicants 90:4,7</p> <p>94:23 95:3 96:24</p> <p>97:3,20 142:4,21</p> <p>143:5,9,25 157:4,15</p> <p>162:19 163:25</p> <p>165:15</p> <p>applications 10:16</p> <p>11:4 89:18,20,23,25</p> <p>97:6 143:4 144:2,11</p> <p>applied 90:12 97:9</p> <p>109:17 149:23</p> <p>150:13 153:2,6</p> <p>156:2,7 164:9</p> <p>167:17</p> <p>applied-for 107:11</p> <p>apply 91:5 106:1</p> <p>158:16</p> <p>applying 93:24 94:24</p> <p>98:15 151:7 153:21</p> <p>163:9</p> <p>appointed 84:12,13</p> <p>126:7 127:3,17</p> <p>appointment 75:15</p> <p>appraisals 32:6</p> <p>appreciate 6:4 33:12</p>	<p>37:1 49:14 51:24</p> <p>97:23 129:23</p> <p>appropriate 12:6 77:7</p> <p>87:19</p> <p>approval 32:25</p> <p>approved 155:4</p> <p>approximate 95:21</p> <p>142:7</p> <p>April 113:5,8</p> <p>arbitration 1:1,1</p> <p>53:12 71:4,8,21</p> <p>72:6 73:5 74:24</p> <p>134:1</p> <p>ARB/18/21 1:4</p> <p>area 155:25 163:15</p> <p>areas 97:22 130:10</p> <p>155:23 158:7</p> <p>argument 7:5</p> <p>argumentative 124:19</p> <p>around 89:20 90:18</p> <p>91:4,14 93:10 96:9</p> <p>99:13 107:8 109:2,4</p> <p>147:16 166:25</p> <p>arranged 69:22</p> <p>Article 121:6</p> <p>Article4 119:25</p> <p>ascribe 162:7</p> <p>aside 72:5 75:14</p> <p>asked 6:10 16:9 25:3</p> <p>33:14 35:16 37:19</p> <p>46:24 47:12,13</p> <p>50:17 68:3 70:13</p> <p>71:13 72:15 78:21</p> <p>79:1,13 84:18 85:3</p> <p>85:5,8,10 86:15</p> <p>87:6,8 89:5 94:4</p> <p>95:8 103:6 112:24</p> <p>113:6,23 115:23</p> <p>123:14 125:16</p> <p>132:11 140:5,10</p> <p>141:20 145:19</p> <p>147:17 152:1</p> <p>163:16 168:24</p> <p>asking 7:24 24:18</p> <p>33:13 36:6 40:10</p> <p>44:8 48:2 49:11</p> <p>51:14,15,24 52:1</p> <p>54:4 55:8 61:14</p> <p>62:6,7 63:14 64:4</p> <p>75:20 90:3 95:4</p> <p>97:3 101:24 102:3</p> <p>103:4 113:19</p> <p>118:23 119:12,16</p> <p>122:4 123:8 125:22</p> <p>125:25 128:24</p> <p>130:16 131:11</p> <p>140:8,10 142:10</p> <p>143:16 144:5</p> <p>154:17,19 167:25</p> <p>asks 33:17</p> <p>aspect 33:11</p> <p>aspects 114:17 117:22</p> <p>assess 61:6</p> <p>assessed 106:12,14,16</p> <p>166:4 167:9</p> <p>assessing 159:12</p> <p>160:22 167:9</p>
--	--	--	---	---	---

<p>assessment 16:6 18:25 85:12 86:1,2,7,15 86:20,21 87:13,15 87:17 88:6,12,21 89:3,6 106:20 112:5 112:12 113:10 140:5 146:22,25 148:11,15 149:3,7 149:19 152:13 155:12,15,21,24 156:9,16,23 157:6 164:17,25 165:12 166:3 168:13,16,18 assessments 86:17 156:1,4 165:10,14 asset 36:19 77:24 assets 32:11 34:6,23 35:9 36:5,9,17 38:16 39:23 40:22 59:22 74:11 76:24 77:1,18,22,23 assist 8:11 28:19 80:8 116:24 assistance 2:10,12 56:9 169:1 assistant 2:23 39:24 56:1 169:9 assisted 2:14 attach 41:15 43:18,19 49:20,25 56:7 attached 11:6 43:5 44:7 54:6 58:23 59:2 60:10 61:9,24 62:10 65:18 87:25 88:4,5 100:7 112:15 113:1,6,10 114:25 115:4,6,10,21 121:3 134:19 attaching 124:25 attachment 24:11,14 25:3 42:1 attachments 119:21 attempt 71:14 133:16 attention 11:24 13:20 26:11 58:9 110:23 117:10 140:2,20 auction 32:11,12,21 33:1,3,19,22 34:13 46:15,16,19,21 47:7 47:15 48:1,6,9 52:6 52:11 76:19 auctioned 35:6 39:2 76:21 77:15 auctions 34:25 35:2,5 audio 16:25 August 139:17 140:4 140:9 146:16,25 147:7,14,16,22 149:12 154:23 155:11,18 157:18 Australian 10:2 author 147:1 151:5,15 152:16 154:18 161:21 162:10 authorisation 33:23 78:11 authorised 77:10 80:2</p>	<p>authority 85:6 112:21 132:23 135:12,13 135:14,19,23,25 136:10,13,15,18,24 137:15,23 138:12 147:12 156:15 authors 162:5 automatic 161:3 automatically 12:25 44:14 54:8 79:24 availability 56:18 available 9:4,8 52:14 52:14 56:14 86:8 96:3 125:20 133:20 143:14 169:9 avoid 38:16 39:22 40:22 award 10:17 71:4,8,21 72:6 73:5 74:24 awarded 14:15 15:20 19:20 98:1 142:4,13 aware 22:25 23:1 24:8 24:15 26:19 105:18 122:25 123:1,18 124:24 137:25 138:5 154:22 away 10:4 20:14,14 74:6 75:10 82:23 83:2 159:7</p> <hr/> <p style="text-align: center;">B</p> <p>B 1:22 76:5 back 3:3 6:15 14:11 19:9 24:19 26:14 32:10 33:2,21 40:1 44:1 54:9,16 58:8 65:24 68:24 72:17 75:7,23 77:25 78:2 78:7 86:10 89:12 90:1 96:15 99:15 108:5,12 117:19 119:5 120:10 129:24 132:10 134:5,18 138:17 139:10,23 144:15 144:19,23 145:6 164:18 background 84:2,2,8 backwards 84:15 bailliff 31:1,16,21,25 32:5,9,14,24 33:2,9 33:12,17,20,23 34:3 35:1,18 44:17 45:14 45:20,20 52:15,16 52:18,19,20 64:22 74:11 77:22 78:16 78:17 bailliffs 35:4 45:13 52:9,10 balance 80:21 ballpark 95:2 ban 148:6,10 bank 13:1,11 banned 147:23 148:13 Barbara 1:12 30:25 40:17 41:1,2,3 55:15 58:19</p>	<p>based 18:6 20:15 21:12,18 59:6 72:6 73:5 111:14 113:16 113:23 132:12 133:18 140:6 168:16 baseline 166:19 basic 60:6 basically 51:3 basis 3:14 8:20 52:21 52:21 71:24 72:1 98:5,13 123:15 165:8 Bay 1:15 2:4 became 5:2 101:6 103:15 126:17,19 151:16 become 96:3 becoming 4:20 127:17 before 1:10 3:3 5:1 6:24 13:4 19:13 22:16 23:18 32:1,7 39:8,10,16,19 49:3 63:1 69:22 73:17 75:7,23 80:18 83:16 86:10,12 87:22 89:10 99:11 100:18 101:22 104:7 107:7 112:19,24 120:25 126:8 127:22,23 134:9 135:23 136:7 136:8,8 140:22 141:3,15,17,22 145:18 147:4 151:16 152:17 156:10,22 159:25 161:22 164:25 165:4 167:8 168:13 169:3,5 beg 10:21 began 5:9 9:21 92:6 105:20 127:3,5 153:23 160:23 begin 1:4 beginning 64:21 74:9 96:9 164:4,5 168:25 begun 79:13 148:12 behalf 1:24 15:15 18:5 18:14,20 19:20 26:16 36:6,20 37:10 37:21 50:7 55:3 67:21 68:3,10 124:22 144:17 behind 119:24 159:23 160:4 being 1:24 4:19 7:8 8:9 9:1,20 13:15 19:13 23:25 31:18 45:16 47:6,14 53:24 82:5 84:24 89:5 90:17 97:25 101:22 102:4 104:21 110:3 146:16 147:20 156:7 158:15 161:24 belaboured 129:1 believe 2:15 4:9 5:10</p>	<p>16:24 23:23 39:17 42:22 56:12,16 64:2 64:3,4 70:22 71:1 72:7 160:25 believed 55:1 154:11 155:1 161:12 believes 158:16 believing 71:3 belongings 77:21 below 46:9 118:3 Ben 55:20 72:14,22 75:3 76:7 benefit 36:13 Benzinge 53:1,4,11 54:19,21 55:2,6,10 55:14,15,18,22,24 56:3 58:12,13,16 59:4 69:23 70:5,25 72:14,18,22 73:7 74:3 75:3,8 77:18 Benzinge's 53:22 54:5 56:5 beside 78:24 best 94:5 117:2 125:21 139:21 better 4:5 26:7,19 48:15 80:21 113:21 between 17:11 18:18 22:21 30:15 33:8 37:25 42:18 68:17 90:3,4 96:10 102:15 102:17 134:10 138:7 157:23 166:23 168:5 beyond 34:23 88:20 100:16 104:20,24 124:24 129:17 156:17 Bidega 2:11,22 3:21 81:9,12,20 134:12 137:8,12,13 138:1,8 Bidega's 3:17 81:15 134:22 BIDWELL 1:11 big 22:4 Biryabarema 86:20 99:25 Bisesero 27:23,25 28:3,7,15,16 90:17 bit 15:10 19:7 37:1 47:21 101:8,11 102:1 103:21 121:6 124:24 150:6 black 63:24 blamed 68:25 board 2:9 55:14 56:4 72:10,12,21 75:1 96:21 153:8 Bonjour 29:10 Bosco 3:7 29:6 70:10 70:12 72:5,25 74:4 75:13 76:22 77:10 boss 40:6 41:2 both 1:13,23 59:25 63:10,11 92:9,20 125:2 127:14 167:10</p>	<p>bother 28:9 bottom 47:17,24,25 62:25 63:17 64:6 117:20 bought 28:5 bounce 107:8 break 39:4,8 57:15 58:3 80:16,17,20 99:5,12 109:14,21 109:25 110:9 113:18 141:9,13,18 144:18,21 150:5 breakdown 110:2,6 breaking 10:23 19:7 breakout 56:24 57:2,3 118:2 144:23 breakouts 118:4 breaks 80:15 brief 57:6 125:8 briefly 135:13 148:16 bring 3:21 5:15 9:10 10:6 11:21 13:17 29:3 37:25 40:18 44:10 83:17 120:16 122:4 134:5 139:19 139:23 146:15 bringing 65:25 80:19 British 1:2 broader 90:20 broadly 6:16 BRODSKY 2:22 broke 15:10 broken 64:16 149:2 brought 9:8 22:18 23:11 24:7,14 34:10 36:17,18 50:13 53:5 58:8 60:21 66:15 76:12 79:21 83:23 86:7 104:9 116:18 119:18 138:17 BRYAN 2:3 budget 103:21,23 104:4,18,23 106:5,6 108:3,15 109:10,20 110:2 114:13 163:9 budgeted 105:17 106:2 109:21 budgeting 105:12 Buildings 2:6,6 built 160:9 165:9 BURNHAM 2:18 business 107:10 117:11,25 127:12 159:9 BVG 22:21 26:8 27:10</p> <hr/> <p style="text-align: center;">C</p> <p>C 76:5 116:4 cadastre 143:19,23 144:13 calculating 108:22 calculation 106:7 167:23 call 24:2,4 25:10 63:15 64:5 87:10 93:3 110:24 144:7 called 3:7,11 8:15 9:2</p>	<p>27:11 29:6 34:14 48:7 54:5 65:11 80:23 86:20 92:2 93:2 96:11 135:17 135:18 155:15 158:4 calling 133:24 154:9 came 5:19 6:22 38:8 50:25 66:21 67:6 68:2,15,24 77:5,15 78:11 94:14 98:15 109:19 128:10 153:3 157:5 161:22 168:19 capable 42:21 67:17 124:1 capacity 5:16 6:10 7:5 101:5 114:1 125:15 127:18 137:1 capital 103:23 105:6 109:18 119:25 car 17:15 35:3,6 36:10 36:15,17,19,24 76:20,25 77:13,14 77:23 78:5,10 carried 52:20 82:16 carry 2:6 16:21 17:22 20:4 79:15 145:11 case 1:4 5:15 6:23 19:6 21:2 30:19 51:21,25,25 52:2,4 71:9,13,14 116:1,4 124:22 128:13 131:1,15 132:16 141:8 169:15 cases 51:12,17 97:9 categorise 8:23 CATEGORY 94:13 98:12 CATHERINE 2:14 caused 122:18 Cc 22:6,8 134:22 135:2 ceased 2:11 cease-and-desist 71:17 Celse 100:3 Centre 1:2 certain 30:18 35:11 40:5 148:18 certainly 25:13 57:1 61:20 62:20 67:16 83:10 CHABINSKA 2:24 chain 122:13 133:17 133:22 134:15 chairs 60:8 challenge 5:4 6:20 8:17 25:11,24 43:21 54:11 76:8 challenged 5:25 25:2 43:22 challenges 8:20 47:4,5 chambers 145:6</p>
--	---	---	--	--	---

<p>chance 26:25 chances 153:9 157:24 change 30:5 81:25 91:14 161:8 changed 5:2 96:4 123:24 136:11 changes 3:3 changing 81:17 channel 29:1 CHAPIN 2:16 character 20:16 characterisation 42:14,15 151:19 154:5 162:8 characterise 111:17 characterised 38:2 149:21 152:18 161:25 characterises 151:21 characterising 154:24 charge 73:23 81:20,22 135:20,25 144:13 chart 91:10 chase 28:9 chat 56:22 check 49:15 75:22,25 83:8 88:5 91:13,23 114:9 116:12,23 119:14 125:7 128:22 132:18,24 133:15 checked 77:4 checking 73:6 117:1 choose 28:25 110:19 chronology 148:16 circulated 87:3,4,14 132:14 circumstance 33:15 circumstances 28:8 81:14 147:6,13 cite 39:14 40:19 41:9 cited 66:5 cites 39:12 53:17,18 claim 12:22 40:15 53:5,22 79:23,23 claimant 41:14 Claimants 1:17 2:2 1:8,11 5:14 22:20 24:9,16 25:18,20 31:6 82:8 115:14,18 116:1,3 claimed 108:19,20,23 109:17 claiming 35:12 70:10 71:10,25 claims 2:11,12,14 68:5 clarification 8:4 clarify 107:23 clarity 98:4 115:23 CLAUDE 2:19 clear 4:22 12:12 37:24 62:9 64:2 68:4,8 70:22 75:18 85:14 92:23 101:20 103:10 116:2 125:9 126:2 127:9 129:1 131:12 133:5</p>	<p>153:20 159:6 165:22 166:16 clearer 86:15 clearly 75:1 154:13 Clement 135:4,5,6,9 135:11,22 137:8,12 137:17 138:1 client 33:6 34:16,20 36:4 38:10 clients 38:2 55:3,19 58:14 66:1,9 67:21 77:19 client's 51:6,10 52:2,3 close 13:16 51:22 145:13 closed 70:10 closing 79:18 coaching 42:20 COFFEE 2:15 colleague 165:11 colleagues 35:18 50:24 99:22,23 100:2 131:7,9,20,22 132:13,19 collect 33:16 34:15 36:5,20 37:10,22 38:11,15 44:24 45:10 46:3 50:21 76:23 78:1 156:24 collected 36:10 51:7 52:4,13 119:21 collecting 33:13 34:19 34:22 38:4 55:3 76:15 collection 31:23 35:20 36:3 41:14 50:7 COLLEEN 2:23 combine 51:23 combined 51:17 come 8:19 24:5 30:19 33:15 38:25 74:16 74:20 88:6 92:9 93:7 96:3 119:7 123:23 129:4 131:8 131:21 157:25 161:11 169:5 comes 7:15 33:6 119:9 coming 3:3 28:18 29:8 78:25 80:7 90:12 91:4 93:9 119:10 command 33:7 43:6 commandment 43:10 comment 100:10,15 104:2 114:4 commented 151:16 comments 103:14 committee 157:13,14 communicate 15:14 165:24 communicated 88:9 152:22 166:1,7 168:10,12 communicating 90:6 communication 4:9 17:16 89:4,7,9,12 90:1 137:14 138:7 138:14</p>	<p>communications 17:10 30:7 90:3 102:17 127:11,18 153:15 154:1 165:3 companies 91:21 92:19 97:9 company 1:16 10:2 16:10,17 18:15 20:9 28:4,4 31:2,4 32:18 32:18 38:24 40:3 41:13 43:2,8,12 45:21 51:18 56:5 72:11 73:25 74:25 75:5,19 76:5 77:22 96:11 120:4 121:9 compare 144:1 comparing 95:16 comparison 13:12 complain 138:13 complaint 35:12 65:12 70:9 71:10,25 complete 51:21 52:1 69:9 73:1 completed 16:6 57:24 57:24 70:21 73:3,21 75:17 completely 51:21 160:23 completing 52:3 complied 44:23 45:9 comply 149:25 comprehensive 67:1 67:12 comprises 157:10 computer 9:15 25:4 85:20,24 86:25 125:7 129:20 130:11,12,17,23 131:4,14 132:8 143:7,8,25 144:12 computerised 123:22 123:22 concede 15:8,15 concept 161:23 concern 7:2 73:9 74:1 74:6,8 concerned 8:14 concerning 50:6 concession 5:18,23 6:2 10:3,4,11,13,17,25 11:4 12:2 13:13 14:2,7,14 18:14,23 18:25 19:13,19 20:8 27:23 28:1 60:25 89:17,21,24 90:6,7 90:11,11,14,17,21 91:8 92:21 93:4 94:2,21,25 95:1 96:12,25 97:21,21 104:19,25 105:24 141:21 142:2,8,10 142:11,15,16,21 153:11 158:17 160:17 163:6 concessions 9:22 12:17 15:9,21 20:14 78:3,7,13 90:24</p>	<p>91:3,18,20,23 92:3 92:6,14,15,16 93:2 93:6,17,20 94:6,12 94:15,18 95:5,13,24 96:2,17 97:5,15,19 97:20,22 98:2,20 104:14,24 108:7 109:22 111:10,11 142:4,13 143:5,9 147:7,14 149:11 150:23 153:11 155:23 156:3 160:15,17 conclude 80:18 conclusion 77:6 88:6 conclusions 88:7,9 103:8 167:13 conditions 168:18 conduct 78:17 92:20 98:14 111:12 156:1 156:16 159:4 166:17,18 conducted 34:25 35:2 35:5 147:21 155:25 156:4 157:9 158:15 conducting 127:12 conference 1:5 conferred 57:13 Confidential 101:18 102:8 114:10 confirm 36:18 49:14 75:20 107:19,24 108:3 118:9,17,21 118:22,22 153:13 154:16 confirmed 8:6 73:7 confirming 21:20 confusing 4:21 connection 27:14 145:7 conscience 29:19 81:2 consider 111:25 167:8 consideration 157:19 considered 55:22 71:21 85:16 97:10 103:8 152:22 157:18 consisted 60:18 112:11 consistent 72:7 76:1 168:13 consolidated 85:15 constant 93:21 95:15 95:17,18 96:1 123:20 constitutes 62:17 63:5 Consulting 2:22,22 contact 5:19 30:9,14 31:3 40:3 128:2 165:1 contacted 3:21 contained 102:12 121:20 129:16,18 containing 66:17 contains 66:19 content 1:17,17 141:1 contents 65:2</p>	<p>context 129:25 147:18 continuation 91:9 continue 9:6 39:7 52:7 76:15 77:10 78:1,14 80:2 90:14 91:5 99:10 141:16 147:24 148:6,15 continued 3:4,5 9:13 9:19 14:2 35:19 90:13 91:9 128:2 136:25 155:5,6 contract 33:7 66:21 67:6 105:15,23 106:1 107:9 109:24 110:11 121:6 159:3 159:6,8,21,23 160:24 161:20 162:7,9 163:16,21 164:16,21 165:5,8 165:13,23 166:4,6 166:14,16,24 168:16,18 contracts 105:21 122:13 137:2 162:19 165:8 166:17 167:11 contractual 149:25 contributed 103:5 control 65:4 68:21 70:24 74:16,21 controlled 20:9 controller 62:21 64:10 conversation 3:18,24 16:14 21:6,15 cooperation 22:20 23:2,17 24:16 28:1 coordinator 100:1 copie 79:9,19 copied 99:21 131:6 137:12 138:1 copies 4:7 30:20 38:23 45:23 55:4 59:6 67:3 77:3,6 85:22 85:23 87:5 copy 17:18 22:9 24:10 32:16 33:6,8 41:20 41:25 42:3,11 43:4 43:15,19,23 45:15 50:25 52:22 53:5 58:22 59:1 67:9,11 67:17,22 68:14 87:15 88:11 115:13 131:14,15 134:22 copy-and-paste 152:7 corporate 72:11,13 correction 30:3 correctly 16:7 48:24 82:15 84:3 130:2 corresponding 63:9 corrupt 20:19 corruption 20:18 counsel 1:13 3:12 6:6 8:17 25:21 49:1 62:8,11 83:13 123:18,25 counted 106:11 countersign 24:19</p>	<p>counting 105:12 countries 20:19 country 20:13,18 161:9 168:22 couple 68:24 141:18 course 31:12 34:12 37:19 116:21 court 12:22 32:10,12 32:14,19,25,25 33:2 33:7,18,21,24 35:13 45:1 79:13,15,22 courtesy 83:10 courts 79:11 court-ordered 32:10 cover 11:6 41:24 168:2 covered 52:7 84:10 105:6 117:13 123:3 covers 119:6 Cowley 2:3 3:5,9,13 1:6,19 2:9,14 3:15 4:15,22,24 5:1 8:6 9:4,7,14,17,19 26:24 27:2,17 31:5 31:10 37:19 38:21 39:3,12 42:17,20 47:22 49:1,6,7,14 49:18 54:3 56:8,12 58:1,5,7 61:13,20 76:9,11 78:18 80:13 82:7,12,20 83:7,20 83:22 94:20 95:4,11 99:2,6,11,14 116:21 116:23 123:13,18 124:8,17 141:10,15 145:13 158:24 create 14:1,5,8 89:5 created 61:21 63:6 70:8 87:21,22 88:13 123:6,10 127:23,23 127:24 130:14 136:4 146:13,16,19 146:20 creating 10:20,22,24 127:22 creation 136:3 146:10 credit 36:23 credited 32:2 46:15 52:11 64:24 creditor 34:8 49:21 creditors 52:24 66:18 68:7,9,19 69:5,14 credits 34:5 cross-examination 3:5 3:9,13 7:16 9:19 31:10 49:11 57:16 82:12 145:8 cross-examined 7:16 current 114:5 123:19 cut 20:1 27:3 96:15 168:1 cutting 27:1 C-035 104:9 116:18 C-122 22:18 C-181 10:6 13:17,22 18:6 C-207 119:18 120:22</p>
--	---	--	---	--	--

<p>121:20 122:12 134:4 C-210 24:7</p> <hr/> <p>D</p> <p>D 76:5 DALEY 2:12 DANIEL 2:7 DANIELLE 2:8 data 11:13 12:15 18:11,13 19:15,18 123:17,22 144:3 169:1 date 70:15 72:24 73:18 74:4 87:24 107:3 113:14,22 121:24 122:5,7 126:14 128:21 136:5 147:24,25 150:17 155:18 dated 155:18 dates 28:4 34:1 126:11 150:8,9,10 DAVID 2:22 day 1:4 39:6 48:10 54:18 58:10 59:13 60:23 64:13 65:11 67:13 69:7,22 73:2 80:21 161:5 169:3,4 169:21 days 68:24 99:18 DDG 112:6,20 de 29:11 dealings 20:15 debating 1:8 debt 31:18,23 32:3 33:13,16 34:19,22 36:23 37:22 38:4,11 38:14,25 39:21 46:15 47:8 49:22 51:7 52:12 58:12,13 58:22 61:6 64:24 66:1 68:9 69:11 78:2 debtor 34:4,6,8 49:21 debts 50:22 54:23 55:2,10,11,18,23 58:18 59:16 66:6 77:19 December 28:5 135:10 136:14,17 decided 79:22 97:6 100:13 deciding 73:22 156:6 decision 1:25 81:25 103:5 157:1,11 decisions 143:11 declaration 3:10 80:25 declare 81:2 declares 3:11 decline 43:20 deem 156:16 deemed 149:23 153:4 156:5 defending 5:12 defer 2:7</p>	<p>defined 93:1,1,18 94:15,18 definition 93:17 95:13 95:25 delineate 158:6 delineating 111:6 158:25 deliver 22:8 demand 44:16 45:15 45:20 53:11 54:19 54:21 55:9 58:16 demanding 27:11 55:24 66:13 67:4 demoted 81:21 denied 144:9 department 2:15,16 22:10 85:7 102:7 112:22 135:14,20 136:12,19 166:10 departments 135:20 departure 98:3 deposits 98:6 111:12 111:13 Deputy 112:20 describe 60:24 149:17 151:18 described 52:25 66:1 71:7 129:14 130:1,9 133:20,22 151:12 151:19 describes 46:2 description 162:6 designated 43:15 designation 7:8 desist 71:13 75:13 details 3:19 63:13 112:5,8,10,13 117:13 determination 102:23 determine 75:19 98:8 98:11 107:15 113:25 167:12 determined 72:15 98:5 108:9,23 156:21 develop 161:12 Development 56:4 72:10,12,21 75:1 153:8 dictate 159:9 difference 2:1 differences 1:22 91:12 different 59:5,6 62:11 90:25 94:3 95:13 96:14 97:15,19,22 97:22 101:21 102:1 117:14 123:21 124:24 165:17 differently 93:18 direct 3:8,12 29:24 30:14 31:3 81:8 133:4 directly 30:10 director 14:21 15:12 15:18 16:15 27:8 81:22 112:20 disagree 6:7,12 32:18</p>	<p>43:9 disagreed 5:9 disappointed 161:15 discovered 159:17 discuss 6:14 34:13 37:10 60:22 100:20 102:25 169:15 discussed 5:3 6:17,25 23:8,9 46:22 104:21 166:8,22 discussing 88:1 discussion 3:3 1:21 2:8,15 3:5,20,22 5:9 6:11,18 7:18,21 17:12 19:22 20:5,10 20:20 21:10,21 37:21 57:4,5 103:13 117:22 123:20 discussions 2:17 5:1 23:20,21 26:7 89:17 89:24 92:8 157:14 dispatches 33:24 display 109:1 disposed 32:2 Dispute 2:13,14 Disputes 1:2 2:12 disrespectful 135:7 distinction 37:4 168:4 distinguishing 37:25 diverted 143:3 documentation 21:11 27:14 100:5 documents 11:14 30:23 35:8,13 38:3 41:23 44:3,5 47:9 47:11,19 50:5 52:14 52:21 60:6 62:13 63:12 70:12,14 71:11 72:1 76:6 77:3 85:19,22,23 86:6 91:14 101:13 109:1 110:5 114:2 115:8,17,21 116:1,3 116:5,6 121:20 123:14,20,22 124:21 125:2,16 128:11,12 129:4,15 129:17,21 DOHMANN 1:12 doing 4:7 10:23 21:1 25:13 45:12 66:11 79:19 106:7 126:23 156:22 167:12 Dominique 81:9 done 6:12 15:25 16:10 17:8 18:18 21:24 26:16,21 28:6 32:18 48:12 51:8,17 52:5 52:8,9 77:10 99:19 100:7 107:2 111:3 113:4 143:10 146:25 150:10 156:24 157:2 165:10 DONNA 2:16 dont 79:9,19 door 70:14,21,24 74:5</p>	<p>doors 70:17 73:3,14 74:4,8 75:15 dossier 56:1 down 3:6 8:5,12,13 24:12,13 41:7 46:6 47:23 53:8 65:15,17 66:3 103:21 109:14 109:25 110:21 120:15 150:6 155:5 Dr 15:24 16:9,11 17:5 17:6,13,20 20:5,11 20:11,12,15,16,21 21:5,15,21 22:14,15 22:17 86:20 87:11 87:13,22 88:6,7,12 88:21 99:25 112:19 112:22,23 113:2,4,8 113:12,13,14,24 114:6 133:7 166:8 166:11 draft 121:6 122:13 drafted 47:19 60:14 73:17 drafting 2:17 drafts 45:15 dragged 46:24 draw 11:23 58:9 110:23 117:9 140:2 140:20 161:17 drawn 46:18 47:6,15 66:14 drilling 18:23 drove 77:23 Duane 2:3,3 due 54:19 66:22 166:22 DUFFIELD 2:8 duly 73:19 DUNCAN 2:7 during 31:12 89:18,25 90:7 91:25 113:17 127:10 141:18 148:2,10,13 DUSHIMIMANA 2:9 duties 70:21 73:1,3 duty 70:3,8 71:18 73:21 76:4 déclaration 29:11,15</p> <hr/> <p>E</p> <p>each 47:23,24 62:25 78:24 83:8 91:7 118:18 125:2,3,16 134:16 137:11 143:9 163:12,19 earlier 14:1 101:24 102:5 113:23 117:16 119:3,13 141:20 149:19 167:10 early 50:15 easier 37:5 edits 3:2 effect 76:6 effectively 162:22 efforts 10:7,10 37:10 37:21 41:14 159:25</p>	<p>Ehlers 3:4 9:4,5,13,16 9:17 12:7 27:3,20 28:17,18,20 Ehlers's 23:10 EIA 16:9 eight 97:24 either 18:25 46:13 63:4 91:4,9 92:17 118:8 127:13 131:8 131:21 135:8 137:15 156:14 electronic 119:22 129:16 element 168:8,8 ELIZA 2:18 else's 131:3,4 email 24:10,13,18,24 25:3 119:23 120:24 121:3 122:13 124:11,12,13,15 125:7 126:2,6,24 127:2,4,12,14,19,24 128:11 129:3,12,14 129:17 130:4,8,11 131:3,14 132:8,18 132:20,24 133:3,12 133:12,14 134:10 134:12,18 135:4 137:18,23 138:2,2 165:3 emails 119:20,21 127:21 130:7,21 132:24 134:16 employee 68:13 135:9 135:11,22 136:6 employees 35:22 36:2 38:8 50:17,21 51:15 51:25 54:20 55:10 58:23 59:5 64:16 65:6,20 66:6 69:1,6 70:11,18 79:14 en 79:9,19 end 7:2 20:17 28:5 35:15 71:18 79:8 81:16 82:6 90:12 93:10 94:24 95:1 105:19 163:17 169:10 ended 71:19 82:5 105:21 ends 117:6 enforce 50:17 51:12 enforced 31:18 52:17 53:6,25 enforcement 51:14,16 51:17 79:12,16,21 79:24,25 80:3,4 enforces 78:17 enforcing 55:4 71:4 73:6 engage 6:8 89:23 engaged 15:1 engaging 6:15 English 3:1 29:1,2,13 48:14,15,19,22,25 49:3 76:18 141:9 enlarge 64:11 134:7</p>	<p>enlarged 104:11 enough 15:25 19:19 22:4 110:15 111:24 119:12 enquire 56:19 enterprise 160:4 entire 35:24 72:3 entities 159:22 entitled 15:8,16 entity 9:25 34:14 160:3 entries 145:23 environment 30:16 environmental 16:6 18:24 19:2 envisaged 28:11,16 equal 159:10 equally 70:25 163:20 163:24 164:9 equipment 27:22 28:10,12 35:10,10 59:15,25 60:18,19 61:8,22 62:18 63:5 65:10 103:23 105:6 161:3 Ernest 67:20 essentially 4:19 121:12 est 79:9,19 establish 28:15 44:22 45:12 48:21 establishment 28:12 28:16 estimate 39:9 56:11 110:3 163:14 estimation 111:12 evaluate 84:18 148:4 158:7 159:5 evaluating 111:6 157:13,16 159:1 evaluation 100:14,21 101:15 102:3,6,14 102:20 103:3,17 110:6 111:1,20 112:15 113:24 117:15 121:13,22 122:11 123:4,10 140:6,8,11 156:13 157:9,9 166:20 even 4:21 15:1 74:24 113:11 115:9 118:11 127:17 136:3 137:9 151:24 evening 168:21 event 140:15 events 34:13 60:23 61:1 151:19 152:18 152:23 154:10 eventually 101:6 133:7 161:4 ever 6:18 7:18 12:25 23:24 30:9 89:11 91:7,10 93:19 143:7 every 30:10 42:13 46:25 163:12 164:9 everybody 66:13 164:12</p>
--	--	--	--	--	---

<p>everyone 28:25 57:1,3 144:22 157:7 159:13</p> <p>everything 42:2 44:23 50:2,9 60:7,8 61:11 61:11 63:24 66:11 129:21 156:24 165:9</p> <p>everywhere 162:17</p> <p>evidence 2:11 8:8,10 8:15,16,18,19,21,22 8:25 13:5,8 28:24 29:7,9 30:22 46:12 61:17</p> <p>EVODE 3:11 80:23</p> <p>exact 35:25 91:22 142:6 147:25</p> <p>exactly 13:2 19:1 60:17 68:1 139:17</p> <p>exam 82:17</p> <p>examination 3:6,8,10 3:12 7:24 27:19 29:24 78:20 81:8</p> <p>example 119:23 120:23 164:25 165:18</p> <p>exceed 57:20</p> <p>exceeded 56:11</p> <p>exchange 119:23 134:10</p> <p>exclude 94:7</p> <p>excluding 142:21</p> <p>excuse 6:23 10:8 65:16 106:24 107:25 109:23 116:19 143:18 162:6</p> <p>execute 43:18,20 67:7 68:3,15 71:14</p> <p>executed 38:7 43:8 44:19,25</p> <p>executing 30:18 51:1</p> <p>execution 35:16 71:17 73:13 75:14</p> <p>executives 31:3 72:4,8 72:9,12,17</p> <p>exercise 105:22 129:1</p> <p>exhibit 10:6 21:23 66:7 115:19 121:4 139:5</p> <p>exhibited 141:5</p> <p>exhibits 9:9,15 20:22 20:24 115:14 116:3 121:18 122:15</p> <p>existed 23:2 65:2,18</p> <p>exists 60:11,16 64:2</p> <p>expect 6:3 21:14</p> <p>expectation 105:12 106:3 133:18</p> <p>expectations 160:9 165:5,23,25 166:7 166:14,16 168:12</p> <p>expected 16:21 21:20 31:1 106:22 162:2</p> <p>expecting 18:14 162:4</p> <p>expenditures 104:15 108:13</p> <p>expense 149:18</p>	<p>expenses 108:4,5 109:8,21 110:10</p> <p>experience 5:17,22,24 137:6</p> <p>experienced 161:16</p> <p>expert 4:19,23 5:7,11 6:6,9,14,16 7:8 8:9 8:24</p> <p>experts 8:1</p> <p>expired 93:23 144:4 156:3</p> <p>explain 2:21,22 6:5 11:23 19:6 30:17 32:22 45:9 49:19,25 55:21 58:11 79:8 89:11 110:20 123:7 126:5 131:18 132:17 153:1</p> <p>explained 5:10 17:7 84:12 109:16 132:12 147:24</p> <p>explaining 126:19</p> <p>explanation 48:11 102:12 124:6 129:23</p> <p>explanations 47:1</p> <p>exploitation 161:24 162:3 166:25 168:6</p> <p>exploration 11:10 13:23 15:25 16:10 17:7 18:12,16,18 92:20 98:14 111:2,5 111:8,16,23 112:9 112:13 121:23 142:9 149:9 150:13 150:22 153:2 158:4 158:10,13,14 159:5 159:11 163:14 166:18</p> <p>exploratory 90:23 93:9 105:9 112:2,3 162:19 164:1,10 167:20</p> <p>explore 18:23</p> <p>exploring 158:22</p> <p>extend 105:23 156:8</p> <p>extended 104:25 149:13,15 151:11</p> <p>extending 156:17</p> <p>extension 104:19 149:9 150:13,21 151:4 153:2</p> <p>extensions 151:2</p> <p>externally 21:5</p> <p>extract 161:4</p> <p>eye 82:15</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabricating 44:6</p> <p>face 114:7</p> <p>facilitator 3:23 4:11</p> <p>facility 63:7 65:10 160:8</p> <p>facility's 61:23 62:18 65:2 68:20,24</p> <p>fact 5:25 6:12 7:15,23 9:2 10:20 22:15</p>	<p>23:5,13 35:14 47:14 61:21 65:22 75:22 86:12 92:5 100:24 105:18 119:13 121:24 138:20 158:21 159:6 161:15 164:2</p> <p>facts 151:17</p> <p>factual 8:7,8 123:25</p> <p>failed 111:5 156:21 161:16 166:21 167:6</p> <p>failure 159:13</p> <p>fair 21:13 42:14,15,22 61:18 87:10 109:9 110:12,15 119:12 132:1 137:8,13</p> <p>faked 24:24</p> <p>fall 94:12 155:13,21 157:6</p> <p>falls 98:11</p> <p>false 71:11</p> <p>falsified 35:13</p> <p>familiar 84:17,24 135:1,3 145:20</p> <p>far 8:14 28:2,2</p> <p>fashion 91:5</p> <p>favour 34:16 41:15 50:25 68:16 77:9</p> <p>feasibility 158:14 159:5 166:18 167:23</p> <p>February 76:20 84:12 102:16 126:8,8,17 126:20,23 149:14</p> <p>fed 144:3</p> <p>feeling 81:23</p> <p>felt 12:18</p> <p>FERGUSON 2:23</p> <p>few 14:24 46:1 96:7 99:3,18 137:5</p> <p>fieldwork 82:2,4</p> <p>fifth 105:25 106:3</p> <p>figure 92:9 95:2 108:13 109:5,19 110:1,1,14 118:13 118:25 151:13</p> <p>figures 118:17,20,24 119:2</p> <p>file 5:16,21 7:23 35:18 72:3 84:17,20,24,25 85:12,14,15,18 86:5 86:24,24 87:1,2 88:8 89:2 101:8,11 101:15,22,25 102:5 102:6,12,22 107:15 107:19,24 132:15 133:19,24,25 154:23 164:17</p> <p>filed 12:22</p> <p>files 43:16 86:25 129:15 130:4 131:17</p> <p>filing 85:18</p> <p>fill 48:8</p> <p>final 1:25 49:24 80:17 157:21</p>	<p>find 47:11 63:12,17,19 63:19 68:25 114:21 115:3,7 116:7 117:2 119:11 124:9,12 132:25 165:2</p> <p>finding 124:15 139:13</p> <p>findings 147:9 168:19</p> <p>fine 96:22 103:10 120:14 140:9</p> <p>finish 16:9 27:5</p> <p>finished 39:8 50:15,22 56:15 106:15</p> <p>finishes 52:15</p> <p>finishing 51:6,10</p> <p>fired 14:23 18:19</p> <p>firm 4:16 59:20</p> <p>first 23:13 30:9 36:11 36:12 37:10,21 38:7 39:6 41:24 52:19 58:7 59:3 83:22 84:11 105:13 110:24 111:20 112:8 117:3 118:11 118:17 122:4 138:16 140:20 146:14,15 148:17 151:1 156:20 165:7 165:7 166:5 168:16</p> <p>fit 93:7</p> <p>five 15:20 84:19 104:14,23 105:3 106:20 108:16,18 108:20 110:17 149:11 153:21 160:15</p> <p>five-year 90:22 104:15 105:7 117:16 138:24</p> <p>focus 11:21 13:15 26:14 33:10,14 36:3 37:8 45:5 55:8 64:10 66:15 75:21 79:17 84:16 99:15 126:12 148:8,17 150:6 152:11</p> <p>focused 23:11 69:19 83:23 104:10 138:17</p> <p>focusing 26:15 91:11 106:9</p> <p>follow 37:6 45:17</p> <p>followed 70:19</p> <p>following 14:3 47:7 102:16 117:11 129:6 144:10 169:21</p> <p>follows 33:5</p> <p>footnote 53:18 62:3 63:4 66:4,4</p> <p>footnotes 62:15,24</p> <p>forbidden 77:20</p> <p>forged 35:13 70:12 71:11,21 72:1</p> <p>forgot 110:20</p> <p>form 85:17 86:10 151:17 152:17 161:22 169:1</p>	<p>formal 53:10 54:19 133:12</p> <p>former 50:17 54:20 91:17,20</p> <p>forth 139:10</p> <p>forward 5:14,20 6:10 6:20 7:12 8:6 9:15 14:14 15:9,16,20 18:3 20:23,24 38:8 43:1 53:21 92:8 116:3</p> <p>found 60:7 85:20 122:16 128:17 129:20 130:4,6,8,13 130:20,20,23 131:2 131:5,11,13,15,17 132:3,3,8</p> <p>founders 163:9</p> <p>four 14:14 90:22 94:24 95:1 96:7,17 96:23 97:2,25 98:2 98:17,19 105:14 162:25 167:4</p> <p>four-page 140:1</p> <p>four-year 94:23 104:14,20,24 105:9 105:19 107:9 161:1</p> <p>fraction 108:24</p> <p>France 137:10</p> <p>Francis 85:9 87:4 99:22 100:9,15 130:7</p> <p>free 6:4 28:19 76:14 80:8 164:12</p> <p>French 28:24 37:15 48:15,17,18,20,24 49:2 78:23,25 79:6</p> <p>French-English 2:18 2:18,19</p> <p>fresh 140:21 161:10 163:7</p> <p>front 29:14 46:20 47:1 82:17</p> <p>FTI 2:22,22 10:6 11:21 13:16 37:8 40:1,18,24 41:7 44:10 47:18 54:16 56:24 59:10 64:10 99:16 103:20 117:4 122:4 134:4 145:13 161:18</p> <p>fulfil 150:4,15</p> <p>Fulfilment 158:3</p> <p>full 41:8,9 51:7 52:8 88:18 102:22 121:12 124:12 167:5</p> <p>fully 6:15 28:13 128:12</p> <p>functions 71:13,19</p> <p>further 1:11 6:23 24:22 27:17 46:8,9 78:18 103:13 105:24 110:21 114:4 138:24 165:12 168:9</p> <p>future 117:9 133:21</p>	<p style="text-align: center;">G</p> <p>Gabinema 100:3</p> <p>gap 68:17</p> <p>gather 157:11</p> <p>gave 6:9,13 32:15 33:21 40:16,20 41:21 43:2 50:2,5,9 54:4 55:25 59:3 60:12 62:7,10 66:10 70:8 76:5 100:9,10 110:3 141:23 168:3</p> <p>General 112:21</p> <p>geologist 85:13 114:2</p> <p>geology 20:13 22:11 85:6 112:21 136:11 136:19</p> <p>George 100:1,10,16 133:9</p> <p>Georgina 1:24</p> <p>gets 124:11 134:18</p> <p>getting 18:18 26:15 56:11 59:21 96:14 108:2,15 113:20 115:13 127:8 140:13,21 169:1</p> <p>GIBSON 2:14</p> <p>Giciye 150:23</p> <p>Gifurwe 107:12 108:6</p> <p>give 8:9 13:24 19:3,4 26:24,25 29:9 30:21 40:25 41:20 43:6 47:1 54:6,12 56:8 57:15,23 70:24 85:13 91:5 100:22 101:3 103:11 124:6 124:11 125:3 145:18,24 148:25 153:9 168:4</p> <p>given 8:18 20:8 27:8 49:20 77:2 81:19,20 82:2,5 92:19,21 94:1,1 96:11 100:18 106:21 116:19 123:13 129:25 147:9 159:10</p> <p>gives 8:16 121:11</p> <p>giving 2:11 20:14,14 28:23 59:17 64:18 67:22 83:14 157:24</p> <p>Gmail 127:25 128:6 128:11 130:21</p> <p>GMD 136:18</p> <p>go 5:14,20 6:10,20 7:12 9:15 10:11 13:11 18:2,22,24 28:19 30:11,12 32:22 39:19 40:1 42:9 44:1 47:10,17 54:9,16 57:1,3 62:25 65:24 66:3 70:17 74:6 82:22 84:15 104:20 109:20 112:4 114:20,24 115:17 115:20 117:4,25 120:10,22 125:2 126:15 129:24</p>
--	---	---	---	--	--

<p>134:6 144:15 145:21 146:3 161:3 165:12 168:9 goes 46:1 52:23 54:17 62:24 86:10 114:17 117:5,7 138:10 149:17 going 3:7,19 6:15,20 14:6,14,23 15:9,16 15:20 17:1 18:2 37:3 38:15 42:16 45:4,4 46:7 56:9,12 59:11 64:1 76:24 78:14 79:5 80:10 82:8 83:22 94:10 96:13 109:7 110:13 114:24 116:24 118:1 119:5 129:6 135:5,7 140:16,23 140:25 145:18 164:19 167:17 168:3 gone 38:21 99:3 good 1:6 9:16,17 19:19 29:8 39:3 47:20 80:24 82:13 82:14 83:18 148:6 148:14 160:12,14 167:19,22 government 1:18 2:9 91:15,18,20 126:4 127:5,12,20,23 128:1,7,10 132:19 133:12,14 153:7 159:25 160:4 161:7 161:11,12 gradual 162:14,16,17 162:22 163:3 167:2 gradually 128:4 132:21 grant 150:14 156:7 granted 1:12 91:21,23 94:25 96:17 142:16 142:18,20 144:8 grateful 8:4 GROSH 2:11 ground 9:1 groundless 79:23 grounds 1:22 group 1:15 2:4 35:24 50:16,19 51:4 52:24 groups 138:10 guarantee 123:23 guard 65:11 guards 64:15 guess 7:4 103:6,17 117:5 134:4 guidelines 163:10</p> <hr/> <p>H</p> <p>Habiyambere 135:4 Hage 2:7,7,8,8 half 99:5 half-hour 57:15,19,20 80:16 halt 35:15 hand 107:21</p>	<p>handing 75:7 handle 51:2 handled 51:5 handwritten 63:11 hand-delivered 58:18 happen 3:20,24 40:4 46:10 127:14 151:18 happened 5:1 16:2,12 24:15 43:13,22 46:20 99:20 100:23 125:9 129:2 148:1 150:8 165:16 happens 45:13 happy 7:22 44:15 81:23,24 82:4 124:16 139:10 140:22 163:22 hard 57:14,16 85:22 86:24 87:1 140:15 HARRISON 2:3 having 6:14 8:21 26:8 39:8 68:21 71:16 77:2 109:17 112:25 123:18 133:25 142:2 143:14 146:9 154:23 head 20:13 22:7 30:7 health 82:3 hear 12:8,9 54:1 146:7 heard 7:1,6 10:18 12:11 90:2 100:24 138:11 hearing 1:8 1:12,21 3:19 38:19 115:2,9 115:15,19 116:4 121:19 122:10 124:9 169:21 hearings 6:22,24 8:1 heavy 35:10 held 48:6 55:5 60:2 82:23 91:19 102:4 102:25 163:20 Hello 38:18 help 2:21 50:17 98:11 140:16 helped 129:11 helpful 110:18 169:7 helping 108:25 helps 19:6 her 30:8,13 40:6 41:2 hesitate 40:5 hide 134:8 137:14 hiding 133:2 highlight 134:21 168:20 highlighted 58:8 104:11 134:12 highlighting 108:18 132:6 150:4 168:19 Hill 2:6 3:6,8,10,12 1:6,16,17 4:14,18 5:1 7:6 8:4 26:24 27:19 28:17,22 29:24 31:5 42:14 49:4 76:10 78:20 80:6,10 81:6,8 82:7</p>	<p>83:4 123:13 144:17 144:25 145:5,10,12 him 2:15,23,25,25 3:1 3:10,15,21 4:6 5:11 5:19,20 6:8,15 7:2,3 7:8,14,25 8:2 9:6 22:5 24:4,18 26:24 27:1 29:3 42:16 44:2 53:12,19 61:19 62:3 79:13 82:3 87:10 94:22 124:12 135:5 138:2,7 144:19 153:8,9 154:4 himself 113:13 124:13 hinges 7:7,13 hint 14:23 hire 28:13 hired 5:15 HoD 22:10,10 hold 14:6 33:1,18 84:9 85:17 106:2 109:9 117:5 168:11 holder 91:8 holders 5:18 6:2 89:17 89:21,24 90:7,11,11 90:22 91:2 141:21 142:2,8,10,11,22 156:2 holding 11:14 14:2 16:17 home 129:15,16 HON 1:11 honour 1:19 4:24 29:19 49:18 58:5 81:2 honourable 20:12 hopefully 109:15 150:7 Hotmail 132:23 hour 56:13,17 57:15 57:23,25 99:5 169:5 hours 39:6 house 9:11 housekeeping 168:24 hungry 56:11 hybrid 158:6,10,13,20 161:24 hypothetically 40:10</p> <hr/> <p>I</p> <p>ICSID 2:23,24 idea 6:3 17:10 83:18 95:2 159:14 identification 66:8 identified 40:15 67:20 97:25 98:6 111:10 142:2,12,22 identify 62:2,15 63:3 63:14 65:14 88:16 identifying 31:22 60:3 66:6,7 imagine 39:9 Imena 3:11 80:11,23 80:24 81:2,9 82:7 82:10,13,24,25 83:8 83:17,19,20,21</p>	<p>98:17 99:15 116:19 116:22 124:6,9,17 125:8 139:7 141:11 142:1 145:9,17 150:17 169:14,16 immediate 159:2 167:3,15 immediately 9:21 13:15,21 17:6 39:22 46:18 159:4,10,12 159:19 160:10,13 160:25 161:5,25 162:3,20 166:24 impact 16:6 18:24 implement 161:17 important 85:17 improve 19:14 improved 20:6 21:7 inappropriate 124:5 138:3,7,13 incident 33:11 include 44:18 53:22 97:11,11,12,13 99:25,25 113:12 included 19:15 36:9 52:25 55:21 60:6,15 65:23 67:15 72:18 106:3 107:10,16 108:5 122:11,22 127:19 includes 42:1 43:3,4 60:17 including 35:9 53:2 60:7 62:14 72:14 84:2 86:9 91:18 135:20 167:1 inconsistency 42:18 inconsistent 71:7 123:16 increased 94:19 96:20 indeed 30:5 36:12,25 38:7 41:4 67:3 80:7 83:23 independent 3:11 22:21 32:6 45:13 96:24 index 3:1 117:3,5 indicate 43:7 114:7 indicated 34:1 70:15 73:18,19 114:8 individual 77:22 118:4,8,8 individual-year 118:2 industrial 161:24 162:3 166:17,24 167:5 168:5 industrialisation 159:2,4,19 160:13 162:12,15 167:2,15 industrialise 159:12 160:10,25 162:21 industrialising 161:2 industry 135:15 162:15 168:11 infer 61:16 inform 32:11 110:12 155:7 156:25</p>	<p>informal 4:5 information 3:16 11:13,17 12:1,1,15 17:15,21 18:7 19:15 19:18 20:22,24 25:4 25:24 52:22 76:19 83:9 86:8 88:8,14 88:15 100:22 101:19 103:11 104:13 106:23 107:1,4 110:18 113:17 114:20,23 125:5,20 126:1 132:7 137:24 140:12 149:1 151:10 156:25 157:11 160:7 166:13 informed 9:8 22:19 23:13 52:23 76:14 89:14 128:3 149:24 150:1,2 153:5 154:13 infrastructure 159:18 160:8 inherited 164:16 initial 2:16 5:12 6:22 34:9 37:9 90:10 91:3,8 92:13 93:9 103:14 104:3,24 105:5 107:9 109:8 150:17,19 156:3,18 158:10,13 159:11 160:24 161:1 initially 5:4,19 66:1 106:22 initial-term 90:21 initiated 48:10 initiation 160:5 inside 59:22 61:5 64:14 inspection 81:21,22 instance 4:4 33:15,20 81:19 90:17 159:16 163:13 instead 49:11 institution 81:18 82:6 instructed 70:23 72:16 78:12 instruction 70:8 71:1 83:3 instructions 49:4 70:19 71:2 73:13,14 73:16 76:2,3 129:6 intend 7:14,17 intended 7:18 22:7 154:2 162:16 intends 114:15 intention 61:15 102:9 153:18 intentional 31:13 interests 16:22 17:3 27:9 intern 2:24 internal 86:25 101:17 internally 21:5 International 1:2 2:11</p>	<p>2:12,13 internet 129:11 interpret 164:19 interpretation 3:25 29:1 38:20 57:21 162:10,11 interpreted 29:7,18 37:12 interpreter 2:18,18,19 2:19,20 4:5 37:13 37:16 39:6 47:21 48:18 54:1 56:21 57:19 interpreters 2:17 56:14,17,23,25 57:13,17 interpreter's 54:1 interpreting 162:20 interpret 42:15 87:7 intervene 56:8 61:13 144:16 introduce 1:9,11 inventoried 60:8 inventory 60:2,10,17 61:8,22 62:17 63:5 65:1 68:19 69:4 invest 107:22 114:15 120:4 121:9 161:13 163:13 invested 104:3 108:18 108:20 109:3 163:12 165:20 investment 1:2 2:12 2:13,14 16:22 88:23 98:7 105:3,6 107:11 108:19 109:18 110:7 114:22 119:25 151:8 161:10 163:2,4,5,20 164:10,23 165:10 165:18 investors 91:17 161:11 168:10 invite 61:16 invited 7:20 91:17 153:10 154:14 161:11 inviting 128:21 invoice 12:25 involved 3:18 5:2 26:17 32:22 35:4 135:14 136:3 137:1 137:6 156:23 165:1 166:5 iPad 22:3 IPC 36:12 irrelevant 8:20 issue 1:25 5:3 6:19 8:15 98:13 issued 90:23,25 93:8 93:23 95:6,14,25 96:7,21,23 98:2,20 109:23,24 141:21 142:3,8 144:4 151:2 151:4 157:21 issues 5:3 6:17,25 137:7</p>
---	--	---	---	--	--

issuing 165:2 166:5 IZABELA 2:24 i.e 74:5	keyword 129:10 KG 1:11 kicked 68:1,2,14 Kigali 59:15,19,24 60:3 62:23 63:10 kilometres 163:15 kind 152:7 Kinyarwanda 50:11 Kinyarwanda-Eng... 2:19,20 knew 11:17 17:4 137:8,11 know 3:13,20,21 4:3 4:10 16:4 19:10 20:11 21:25 25:20 40:17 52:12 63:1,20 72:9 73:10 74:6,23 82:15 99:12 100:18 103:13 117:2 119:15 122:14,21 124:2 125:23,24 128:1 132:2,4 133:24,25 136:5,16 139:15 151:14 152:21 154:18 160:22 161:6 163:2 knows 83:13	lawyers 113:7 125:4 128:19 129:22 131:9,10,21,23 137:4 le 79:6 lead 149:3 157:10 learn 103:15 131:13 137:22 164:20 learning 25:1 least 3:6 8:24 20:23 45:1 99:1 113:21 115:20 116:6 130:6 136:7,21 164:5 leave 4:12 7:22 31:2 35:17 39:19 74:8 80:8 83:11 107:7 leaving 7:3 11:15 57:17 76:9 142:3,5 143:13 117:2 143:17,18,19 left 6:18 22:3 35:17 39:21 40:25 42:11 52:12,16 64:15 72:5 96:16 97:1 98:1,18 120:16 139:24 141:18,22,23 145:14 164:12 legal 43:8 48:10 136:22,22 137:4,7 legitimate 25:3 legitimately 125:24 less 20:19 34:21 165:21 let 9:3,9 10:8 19:10 37:1,4 63:1,20 67:9 67:10 78:13 82:15 83:17 87:9 90:19 93:16 95:11 99:10 99:12 117:18 132:17 140:23 142:18 150:5 letter 1:9,11 11:7 22:6 43:12 44:16,18 54:21 58:16,19 67:24 71:12 77:12 149:8 letters 1:13 154:15,16 let's 6:11 14:11 88:16 136:7 163:8 level 162:11 liable 54:23 55:2,22 58:18 64:23 65:3 liar 24:3,4 25:11 licence 11:10 13:12,23 90:14 91:2,3,8 93:4 93:9 94:2 95:6 96:12 98:14,16,23 104:14,20 105:9,13 105:16,21,22 106:1 106:23,24 139:1 142:16 148:14 149:10,15 150:14 150:22 151:7,20 152:5,19,24 153:3,4 153:6,18,25 154:3 154:10,25 155:12 155:19 156:2,7,17	156:18 157:3,19 158:10,13 159:11 161:1 164:1,10 165:2 licences 14:13 15:8,16 15:20 84:19 90:12 90:23,25 92:7,20,21 93:22,25 94:23 96:8 96:21 97:10 121:23 137:2 138:25 142:9 142:9,9,18,20 144:4 147:18 150:14 151:2 154:15 155:6 155:7 licence-holder 156:8 license 149:4,10,22 158:7 light 8:5 116:20 like 2:9 3:12 7:15,23 9:6 21:25 22:1 25:17 28:12,15 29:3 30:4,5 33:10 34:20 36:3 45:6 57:1,2 76:18 85:14 95:1,2 96:7 118:10,21 120:25 124:20 129:24 132:20 133:11 139:13 140:19 141:7 144:22 145:15 151:5 167:7 likely 34:21 39:10 limit 19:6 limited 111:17 limited-term 90:22 line 13:25 30:6 95:20 107:7 135:2 155:5 lines 134:24 LISA 2:11 list 10:19 66:13 67:1,1 67:2,8,12,14 72:10 72:11,17,20 129:7 144:3 listed 66:20 72:11 143:8 listen 8:1 145:8 listening 18:4 19:7,25 26:5 listing 67:4 lists 72:12 literal 168:5 Literally 85:15 litigated 123:19 little 2:10 27:1 37:1 94:3 101:8,11 102:1 121:6 124:24 144:18 150:6,7 LLC 1:15,16 2:4 LLP 2:3,3,7,8,8 loan 27:21 located 36:11 locked 31:22 32:1 59:20 60:20 locking 61:3,23 lodged 35:11 65:12 70:9 71:9,25 log 31:22	logic 159:9 logic[al] 159:20 London 57:14,23 long 5:1 13:4 17:14 23:3 49:16 50:4 56:9 60:13 99:16,17 149:4,22 168:6 longer 56:20 71:14 125:11,12,13,15 127:6 long-term 90:13 139:1 142:18,20 151:20 152:5,19,24 153:6 153:18,24 154:3,10 154:25 155:3,6 157:19 look 13:18 28:3 38:6 46:8 63:8 74:25 79:5 88:16 115:10 115:12 116:15 117:3,19 118:7 121:5 125:2 129:8 133:21 138:18 140:23 158:2 164:18 168:9 looked 8:21 23:14 72:17,20 92:16 106:10 112:25 115:6,8,14 122:12 164:16,24 168:17 looking 17:2 25:10 27:9 38:6 115:4,20 116:5 119:22 121:2 122:2 128:13 129:4 132:10 146:14 162:18 165:14 168:7 looks 76:18 LORD 1:11 loss 65:3 lost 16:24,25 43:20 139:4 144:17 lot 15:25 16:5 31:14 59:12 82:2 111:23 161:10 LOUTFI 2:23 low-beds 28:14 Ltd 149:8 LUCY 2:8 lunch 56:20	maintain 31:16,21,25 74:11 major 158:5,24 159:1 159:3,8 161:23 162:8 majority 73:24 74:7 make 3:23,25 8:2 22:4 30:4,5 45:6 59:12 61:18 62:20 85:12 86:1,7,15 87:7 95:7 102:23 109:14 110:5 119:19 120:15 127:8 128:25 168:24 169:6 making 4:5,7 104:7 110:8 123:25 124:1 125:19 148:15 156:25 165:14 man 20:12 managing 14:10,20 15:12,18 16:15 27:8 mannng 40:8 many 35:22 90:25 91:3 93:12 95:3 96:23 97:4 99:23 142:3,7,18,20 Mara 150:23 marked 18:6 53:23 100:14 140:6 146:13 marker 8:5,12,13 Marshall 2:4 12:19 15:1 18:19 23:7 24:3,18 25:10 26:8 26:16 28:5 30:21 32:20 35:11 45:1 46:19,19,24 48:10 66:11 69:23 70:9,17 70:25 71:9,22,25 72:18,22 74:3 75:3 75:8,13 76:7,20,25 77:1,8,14,23 78:10 79:11,21 134:10,18 138:6,12 152:21 153:2,5,14,19,25 Marshall's 35:3,6 36:10,17,19 79:23 Martin 100:3 material 145:24 materials 6:13 61:5 65:4,14 82:23 83:9 85:17 86:12 115:4,6 122:16 matter 1:1 2:9 49:9 70:5 matters 3:3 61:14,16 maximum 125:4 156:24 may 1:19,23 8:19 9:4 9:7 11:25 16:24 38:23 40:4 50:12 53:24 58:5,7 64:10 66:15 80:13 82:16 82:17,20 84:18 87:22 88:3 89:10,13 89:19 101:12
J J 1:11 jail 20:17 JAMES 2:22 January 122:23 123:5 123:9 152:4,6 JEAN 2:19 job 74:8 75:17 101:3 JOHN 2:12 3:7 29:6 join 51:23 joined 51:4,17 136:2,7 joining 135:23 joint 98:23 Joseph 2:7,7,8,8 JR 1:11 judgment 32:17 33:8 34:4,15 38:24 41:15 41:17,21 43:5 46:4 51:1,12,14,16 52:4 52:17,22 53:5,22,24 54:5,6,10,13,13,14 78:17 79:20 80:1,2 judgments 30:18,20 41:18 43:23 44:24 45:10 50:18,25 51:3 52:24 55:4 59:6 76:15 77:3,6,9,16 79:2 judgement 79:6 July 88:24 89:1 107:5 108:12,23 119:10 June 1:7 1:1 10:12 12:21 14:12 18:13 18:19 19:19 53:10 55:13,14,17,24 58:11 59:14 60:23 69:21 75:7,24 Jurisdiction 1:8 Justice 2:15,16 35:12 35:14 70:10,13,16 70:20,23 71:10,12 71:17,20,24 72:3,23 73:4,16,18,21 74:2 75:12,14 76:14 77:4 78:1,11 justify 12:5,15 62:13	L la 79:9,19 lack 4:4 lacking 6:13 lag 27:6 language 50:10 92:9 111:3 121:7 151:24 161:19 163:17 166:23 167:16 168:5 lapsed 65:21 laptop 9:9 11:14 12:16 17:9,14 18:7 168:25 laptops 169:2 large 50:3 91:2,11 161:19 163:17 larger 101:8,11 large-scale 92:3,16,21 93:2,6,17,20 94:15 95:12,24 96:2,8,17 96:25 97:7,10 98:2 98:5,9,20 141:21,24 142:1,11,21 last 11:24 27:20 64:1 115:24 124:8 126:6 129:13 133:16 140:2,18 169:4 later 2:8 3:18 28:6 61:5 68:1,25 120:23 120:24 133:11 139:23 law 5:12 6:4,4,5,16 8:22,25 9:2 31:1 32:14 33:4 44:23,25 45:10 93:3,5 94:1 147:17,17 lawfully 147:21 lawsuit 45:18 154:5 lawsuits 45:3 lawyer 128:18 136:20	level 162:11 liable 54:23 55:2,22 58:18 64:23 65:3 liar 24:3,4 25:11 licence 11:10 13:12,23 90:14 91:2,3,8 93:4 93:9 94:2 95:6 96:12 98:14,16,23 104:14,20 105:9,13 105:16,21,22 106:1 106:23,24 139:1 142:16 148:14 149:10,15 150:14 150:22 151:7,20 152:5,19,24 153:3,4 153:6,18,25 154:3 154:10,25 155:12 155:19 156:2,7,17	M machine 35:10 made 1:23 3:4 10:7,10 24:8 47:10,23 53:10 54:19 59:16 75:15 81:25 84:19 86:19 86:21 87:4 88:7 96:24 106:20 119:17 124:23 126:14 140:8 152:1 152:3 156:13 163:18 164:17 165:11 166:14 168:18 mail 30:25 main 114:20		

<p>102:15 112:24 121:24 122:5 123:4 124:13 126:12,14 128:17 132:10 139:6 141:16 155:22 158:16 maybe 47:17 80:20 98:4 103:4,7 110:20 126:6 147:11 157:13 McCARTHY 2:7 144:16,16 McGowan 1:24 MD 17:2 mean 8:10 14:3 23:20 26:4 41:1 42:8 51:7 51:11 52:4 88:11 96:14 111:7 112:20 123:3,9 126:18 135:7 167:14,15,17 167:25 meaning 13:24 means 61:3 85:24 101:21 102:8 111:9 124:4 157:17 162:22 163:22 meant 23:22 59:19 92:17 126:18 164:21 mechanism 33:5 media 33:25 meet 95:25 meeting 4:10 15:23 17:5,5,20 69:21,23 69:25 73:17 74:2 100:19 102:25 103:3,13,16 meetings 100:23 members 57:12 memorialising 21:6,15 memory 26:7,12 38:22 113:16,19 140:22 150:12 mention 53:2 84:11 mentioned 66:25 92:5 131:7 145:18 151:9 152:8,9,13,15,23 159:7 160:15 mentioning 152:10 Merits 1:8 message 30:12,13 met 20:11 94:18 95:13 166:4 metadata 24:23 25:4 25:18,19,20,23,24 123:13,15,19,21,21 123:23,24 124:2 Michael 2:15 15:24 16:9,11 17:5,6 20:11,11,12,15,21 22:14,15,17 86:20 87:11,22 112:22 113:2,4,8,12,13 166:8,11 Michael's 20:16 87:13 88:6,7,12,21 112:23 113:14,24 114:6</p>	<p>MICHELLE 2:7 midday 169:18 middle 140:20 might 33:15 37:5 49:10 89:20 97:10 98:25 103:7 131:8,9 131:20,22 134:2 147:10 148:21 161:3 165:16 Mike 17:13,20 20:5 21:5,21 99:25 112:19 133:7 Mike's 21:15 million 53:11 55:7 103:24 104:15 105:3 106:11,17 107:16 108:4,13,24 109:2,3,4,18,20 110:1,9 120:13 121:14 161:13 163:14,22 165:20 167:4 millions 162:25 million-and-somethi... 109:2 million-something 120:11 mind 118:20 140:14 146:2 minded 2:3 mine 97:4 98:5,9,11 98:23,23,24,24 105:24 142:15 155:20 158:22 159:16,18 162:12 163:12 mined 111:11 mineral 34:15 46:2 47:15 60:19 minerals 34:14,23 35:3 36:11,16,16 37:2 46:2 47:7 48:7 49:22 59:15,25 60:2 60:4 61:8,22 62:17 63:5 64:14,17 65:6 65:9 68:25 69:6,10 69:13 97:12 111:11 147:22 148:3 161:4 163:6 mines 10:15 14:13 15:8,15 22:11 85:6 91:11 92:6 96:24 102:7 107:11,17,22 108:6,14,17,17,18 108:20 109:10,22 110:11,17 112:22 136:12,19 148:3 159:16 161:8 MINIJUST 2:9 minimum 163:24 164:11,22 mining 2:9 10:1,8,11 11:10 13:23 18:6,20 19:14,20 78:14 90:23 92:3,6,14,16 92:20 93:6,17,20,24 94:6,12,15 95:12,24</p>	<p>96:2,8,17,20,25 97:5,9,12,19 98:2 98:20 104:23 121:23 126:17 135:14,21,25 137:1 137:2,5,6 141:21 142:1,9,11,21 143:23 144:13 147:7,14,20 148:4 149:9 150:14,22 153:4 155:23 156:19 157:3 158:1 159:25 160:5 161:16 162:15 166:17 168:11 MINIRENA 84:5,9 84:22 85:16 89:11 89:23 90:3,6 91:7 96:18 98:3,19 125:15 126:3 129:18 132:13 133:21 135:9,12,18 142:5 143:18,19 148:19,22 154:16 154:21 156:1,5 157:18 163:11,19 163:21,24 164:8,15 165:25 MINIRENA's 155:20 minister 35:14 72:1 77:5,12 84:14 89:14 96:6,7 98:19 100:11 100:19 101:1,6,16 102:11,22 103:15 125:11,13 126:7,17 126:20 127:3,11,18 133:8,9,11 142:14 150:1 156:15 ministry 10:15 11:3 14:13 15:7,14 35:12 70:9,12,16,19,23 71:10,12,17,20,24 72:3,23 73:4,15,18 73:20 74:2 75:12,14 76:14 77:4 78:1,11 84:4 86:5 98:8,11 98:13 100:2 101:19 102:7,18,24 103:5 106:5 108:10 109:6 110:4,13 122:24 126:4,24 127:1,4,13 132:22 135:12,16 135:17 138:5 142:17 143:6,17 147:11 149:12,24 151:3,4 153:7,15 154:1,9 155:6 156:9 156:12,25 157:10 162:11 ministry's 102:2 minority 73:10 74:7 minutes 9:7 73:17 76:9,10 80:17 99:3 misled 44:2 mispronounce 31:11 34:21 mispronounced 34:17</p>	<p>mistake 110:23 126:14 126:19 misunderstood 6:3 mobile 145:7 modernise 161:9 modernising 161:14 modification 1:19 moment 4:13 23:22 57:7 62:22 78:25 80:14 88:16 97:14 98:25 107:6 129:22 139:19 155:25 156:4,14 Monday 1:7 1:1 money 12:6,18 13:11 105:7,11 106:3 118:1 159:14 161:2 161:10 163:7 month 13:10 28:5 months 14:24 77:5 149:14 more 3:16 4:3,4,21 6:14,16 7:10,14,25 16:5 21:11 28:11,15 33:12 37:1 46:1 52:5 83:11 86:17 92:12 93:14 97:4 106:21,21 121:7 140:11 142:24 148:25 154:17 163:1,4 morning 1:6 29:8 Morris 2:3,3 most 132:21 137:6 163:5 169:7 mostly 50:16 Mountain 10:1,7,10 18:5,20 19:14,20 move 63:21 134:9 136:9 150:6 159:19 moved 136:24 moving 26:13 Mruskovicova 30:8,9 30:12,21 69:23 70:25 71:22 72:19 72:22 74:3 75:9 MSA 35:3 47:8 48:7,9 much 24:2 28:18,20 46:15 49:22 52:11 52:12 80:7 83:15 106:12,16 118:1 129:23 145:10 163:1,4 165:20,21 168:3 169:18 MUGENZI 2:19 MUKARUTABANA 2:20 Musha 98:22,22 must 13:2,3 35:7 42:17 44:14 57:24 77:13 167:17 169:14 MVM 11:10 myself 32:23 34:25 35:2 60:15 72:5 74:5</p>	<p>N name 10:1 13:25 30:24 31:11 34:14 34:17 41:3 46:3 47:7 53:2,3 56:5 65:13,14,22 85:8 98:21 135:2,3 147:1 148:24 named 68:10 names 56:5 65:15,17 66:10,12,14,18,19 66:20,20,23,25 67:3 67:9,12 72:13 76:5 141:22 144:6 149:11 NARCISSE 2:9 narrow 6:17 native 29:2 Natural 85:6 112:21 132:22 133:10 135:11,13,17,18,23 136:9,12,15,18,24 137:15,22 138:11 147:11 149:12 156:14,15 nature 20:10,20 near 117:20 necessary 28:9,9 156:5,16 need 5:6 6:6 14:8 39:9 46:8 49:4 52:10 62:25 63:18 83:16 88:5 95:19 97:4 110:24 114:9 116:12,23 118:7,9 118:11 119:14 139:11 145:21 169:6 needed 14:1,5 20:6 21:7 145:15,19 NEEDLE 2:8 needs 13:18 negotiate 152:24 153:10 154:14 157:25 negotiations 149:14 Nemba 10:4,8,11,17 10:25 11:4,9 13:13 13:23 14:2,6,14 18:25 19:12,19 60:25 61:4,9,23 62:18 63:6,11 64:13 64:16 65:1,7,10 68:20,24 69:2,12,15 150:23 159:16 never 5:3 6:17,17,25 7:18,20 12:24,24 17:18 20:10,20 21:4 22:17 23:17 28:3,6 43:13,22,22 45:2,2 68:18 69:3 77:17,25 78:2,7 109:10 110:16 137:19,24 138:10 140:14 Nevertheless 125:19 new 9:20 81:18,19,20 84:19 90:13 93:20</p>	<p>96:2 106:1,1 128:1 128:4 next 24:15 46:1 48:9,9 59:10,13 60:23 65:11 69:7 80:10,16 84:15 104:2 105:22 112:4 122:21 139:4 157:5 161:18 163:1 168:7 NICOLE 2:13 Niyigena 100:3 nodding 1:16 none 132:19 non-compliance 150:2 non-satisfactory 149:24 153:5 noon 169:21 normal 156:14 157:8 notation 139:4 note 38:21 100:16 noted 40:4 77:2 nothing 7:9,13 29:20 81:4 92:12 123:23 126:25 160:18 notice 38:14 39:13,21 40:12,21 41:13,25 43:2,3 53:21 54:5 55:23 58:12,13,22 59:1 66:18 67:22 68:5,9,13 157:21 165:17 November 14:17,20 15:4,13 17:11 18:8 19:16 21:8,22 23:8 26:6,14 84:19 85:3 86:11,16 88:17,20 89:12,19 90:9 104:6 105:18 106:23 107:1 111:1,15,21 116:10 118:12 119:8,14 138:20 149:8 150:18,24 153:17,24 154:24 NRD's 5:22 9:20 10:11 11:17 12:1 14:1 34:14 47:7 55:15,18,23 56:3 59:15 60:20 64:16 69:21 77:2,14 79:23 84:18,25 107:1,8 121:23 140:9 147:6 147:13 153:17 157:18 160:16 163:8 Nsengiyuma 3:7 28:22 29:6,10,13,16,18,22 29:25 31:5,8,11 33:10 37:12,15,16 38:18 39:11 49:19 53:20 55:8 58:9 61:21 62:21 76:13 77:17 78:21,25 79:17 80:6 nuances 48:25 number 35:9,25 36:5 38:1 39:15 53:23 54:2,12 63:4,16,23</p>
--	--	---	---	--	--

<p>64:6,7,8 90:21 91:6 91:22,24,25 92:7 93:7,13,15 94:5,18 94:19,22 95:12,14 95:21,23 96:1,4,20 97:3 99:24 104:15 106:2,18 108:22 109:16 114:19 116:4,9,12 119:5,7 119:9,20 120:8,8 121:14,21 122:10 122:17 123:2 141:20 142:6,6,7,23 164:12 numbering 66:2 numbers 63:22 66:12 66:14 115:19 165:17 Nunga 98:23 Nyakabingo 98:24 107:11 108:6</p> <hr/> <p>O</p> <p>object 42:20 objection 1:13 objective 111:5 158:5 158:25 159:2,3 161:23 162:8 objectives 159:8 objects 51:18 obligation 74:13 obligations 149:25 150:4,16 158:3 observe 102:11 OBSERVERS 2:10 obtain 9:22 32:5 104:13 153:18 obtained 32:12 34:5 94:23 102:22 109:11 113:17 159:23 166:13 obtaining 160:16 obtains 33:18 obvious 155:24 obviously 29:1 86:9 occasions 63:11 89:15 149:16 150:1,3 occupying 155:22 occurred 2:20 92:14 102:13 October 125:13 off 20:1 27:1,3 39:2 40:6 49:2 52:16 96:15 168:1 offer 153:12 offhand 85:18 office 2:11,12,13,14 2:18,19 3:22 4:9 30:24 40:7,8 45:14 55:15 58:19,20 59:15,19,21,24 60:3 60:7,20 63:11 64:17 66:21 67:6 68:2,15 68:21 70:4,10 71:3 71:6,22 officer 47:1 81:20 136:22</p>	<p>officers 72:11,13,18 offices 60:24 61:4,9,23 62:18 63:6 64:14 65:2 68:20,24 69:21 70:20,24 72:17,23 72:25 73:11 78:3,7 official 128:4 officials 56:4 70:16 73:4,15,20 offline 56:18,21 57:4,5 OGMR 15:24 81:10 81:12,17 100:19 135:24 136:2,2,6,11 136:14,17,21 137:15 138:11 154:1 Oh 37:19 126:19 okay 26:6,19 29:16 37:3 47:20 57:13 64:1 80:19 82:10 83:19 92:23 93:5,16 97:23 107:6 108:9 110:9 114:24 116:18,22 119:5 120:21 122:2 125:19 128:9 129:13 130:10 131:1 132:10 133:2 133:16 134:21 135:1 136:20 140:14 151:15 152:21 156:6 158:19 163:23 169:13 once 103:14 one 1:23 2:9 4:14 6:25 8:23 9:22 12:16 20:18 22:4 30:18 33:10,11,14,15 36:1 36:1 38:11 39:17,19 44:21 45:8 51:21 56:22 57:7,15,17,18 57:23 59:4 64:1 67:20,25 68:17 78:24 80:17 82:25 85:21 86:16 93:25 94:1,25 97:4 98:8 106:21 112:20 113:8 114:2 115:24 116:19 117:5,15 119:21,22 120:15 121:15 123:14 127:6,14,22 128:5 130:4,10,14,14 131:9,9,20,21,24 132:6 133:25 136:16 137:5,25 138:5 139:4,21 140:19 141:4,5 144:6,11,12 147:1,2 148:25 150:11 151:8 152:1 153:11 154:8,17 160:16 161:5 167:5 168:24 169:17 ones 9:10 89:22 91:12 91:18 94:7 97:13</p>	<p>98:25 99:1 131:7 138:25 online 96:3 143:20 only 33:11,14 34:25 35:2,5 38:4,10 39:5 41:23 43:3 66:19,23 70:3 73:7 86:24 89:22 104:3 108:18 110:10,14,16,25 111:4,7,17 121:19 121:20 122:9 130:5 130:10 131:15 138:24 164:20 open 5:3 6:19,25 70:3 70:3 73:7 73:14 74:5,8 75:15 141:18 141:23 143:11 145:15 154:19 opened 73:2 74:4 opening 121:3 operate 148:3 155:20 operation 147:6 157:3 operations 73:11 147:13,20 149:13 156:19 161:14 operator 145:13 148:5 opining 5:11 opinion 7:4 opportunity 8:17 9:14 83:14 145:19,24 oral 165:3 order 9:11 12:16 13:24,24 32:16 34:2 34:15 36:5,19 37:4 38:7,15 39:22 40:21 46:7 58:24 59:4 67:7 71:16 75:19 77:15 104:18 105:11,22 156:24 169:6 ordered 35:14 53:12 72:2 77:7 orders 59:3,5,7 78:16 orient 84:1 134:8 orientation 139:12 oriented 59:13 original 43:7,16 44:20 103:23 104:13 107:10 110:2 138:25 originally 14:15 57:18 71:3 134:11 159:23 originals 42:5 other 1:24 5:17 7:23 9:9 32:12 34:23 35:1,1,3,4,9 36:16 36:17,21 38:1,8 50:21 51:15,25 52:9 52:10 55:3,9,18 58:14,22 59:5 62:25 66:2,9,25 70:2 77:19 78:24 83:9 88:15 89:17,21 90:10 93:24 95:5 96:21,23 97:5 99:21 99:23 100:2 102:4 103:11,13 108:7</p>	<p>112:11,18 113:17 114:17 119:16 122:18 125:2,3,16 129:16 132:23 134:3,16 136:16 137:11 138:10 139:10 141:1,2,24 142:1,3,7,10,12,18 143:1 144:7 154:11 154:25 156:2 165:14 others 10:17 14:15 36:6 59:21 69:24 71:23 72:14 76:7 83:12 86:18 94:9 99:1 100:24 109:6 132:14 133:22 153:16 167:8 otherwise 100:20 114:7 131:17 ourselves 28:15 out 9:1,22 12:17 16:21 17:15 24:5 25:9 26:12 27:9,11 48:8 51:19 58:14 65:10 68:2,2,14 73:23 83:17 107:8 108:12 109:21 110:9 116:25 124:12,15 125:11 126:16 138:1,6,12 139:14 163:9 165:2 outcome 98:10 outside 59:20 61:4 163:7 over 3:1,7,19 19:5,8 26:4 35:18 42:8,23 52:16,16,20 62:24 68:7 71:6 72:17 73:22 75:8,16,23 83:25 91:17 94:12 95:23,23 101:16 102:11 104:15 118:14,15,25 119:2 121:15,21 122:22 131:16 136:9,24 139:25 151:6 160:1 162:23 164:4 167:15 169:14 overcome 47:4 overlapped 47:21 overlapping 97:16 oversaw 15:4 overseeing 15:13 overspeaking 130:15 owed 12:5,18 39:21 49:23 50:18 55:2 58:22 68:9 77:16 79:14 own 5:22 8:2 37:6 42:3 50:10 88:13 104:13 107:9 124:25 129:8 130:23 131:5 139:19 165:12 owned 12:2 74:25 owner 15:1 16:17</p>	<p>owners 9:21 75:16 owning 13:12 o'clock 39:10 80:20 99:13 168:22,22</p> <hr/> <p>P</p> <p>page 3:2 22:4 41:24,24 46:1,6 47:17,24,25 62:3,25 63:1,2,17 64:6 83:8 103:20 104:2,9 110:21 114:12 117:19 119:19 120:16,22 121:5 122:4 134:6 140:2,23,23 145:22 146:3,4,5,14,15 149:2 158:2 161:18 pages 41:10,16,21 43:3,5 44:15 45:22 45:22,24 50:2,4 60:13 62:20,21,24 117:4 118:8,9 134:7 141:2 145:16 paid 12:25 13:10 35:23 39:14,22 51:19 56:2 66:13 68:18 79:13 80:4 pales 13:11 paper 129:15 papers 33:25 82:16,19 82:20,22 paragraph 11:22,23 11:24 23:11,14 29:25 30:4 37:8,9 37:20,24 38:10,16 39:24 40:1,11,20 42:10 43:25 45:25 50:12,14 53:8,9 54:16 58:8,10,11 59:10,11 60:21,22 62:22,23 64:11,12 65:24 66:16 69:18 69:20 79:5,9,18 83:23 84:10,25 116:16 138:17,18 151:1 paragraphs 46:1,9 83:25 84:1,13 110:22 paralegal 2:23 parameters 164:13 pardon 10:21 part 4:14 8:24 10:10 21:16 22:19 36:25 53:14 55:6,14 64:18 74:10 86:24 95:6,7 95:20 100:22 101:15,18,22 102:4 102:6 103:4,12 104:11 109:22 110:11 122:13,23 125:1 137:3 157:15 160:17 participate 100:25 124:21 participated 124:23 125:19</p>	<p>particular 45:19 60:13 92:10 particularly 3:8 144:24 parties 3:11 121:19 125:16 159:24 party 2:10 26:8 30:11 30:13,15 Pascal 34:16,21 35:20 36:1,6,10,13,20,21 36:21,25 37:2,11,22 38:5,11,13 40:13 41:14,15 46:7,14 49:21,23 50:7,23 51:4,13 59:3 66:2 Pascal's 34:22 46:3 47:8 51:25 pass 30:8,11,13 38:23 110:19 passed 30:7,23 41:4 45:21 passing 167:13 168:13 past 36:21 38:21 99:3 105:13 Pause 1:5,7 9:11 12:6 16:23 24:7,13 29:4 47:19 50:11 57:10 57:12 76:12 80:12 80:21 83:19 139:5 141:25 142:3 145:3 146:3,4,5,6 pay 38:15,25 40:22 43:6,10 45:21 47:8 53:11,12 55:6,18,20 56:1 58:24 59:3,4,5 59:7 69:13,16,17 70:11,18 77:8,13,14 77:15,18 paying 16:20 26:11 payment 67:4 69:3 payments 59:16 PC 1:11 PDF 134:7 peacefully 144:24 pending 14:12 157:19 people 16:20 50:16 51:3 65:20 66:21 67:4,5 73:22 87:16 108:25 113:11 127:23 128:1 132:22 134:2,3 137:4 154:1 161:11 161:15 163:17,18 165:1 perceive 1:22 percentage 106:8,12 106:17 108:10 109:7 perfectly 6:4 27:7 42:21 perform 27:12 82:3 153:10 performance 146:23 146:25 148:4,12,15 149:3 152:14 155:13,16,21,25 156:4,10,23 157:6</p>
--	--	---	--	--	--

<p>167:9,10 performances 156:1 performed 156:9 perhaps 20:18 86:14 92:2 129:16 139:21 139:22 169:8 period 22:22 77:5 89:18,25 90:7 92:1 92:13 93:8,25 103:24 104:16,20 105:7 114:16 116:9 117:15 118:15,25 119:3,6,7 120:4 121:10,15,21 122:11,17,22 123:3 127:10 128:3 143:16 148:2,10,13 149:13,18 151:6 158:11,14,25 periods 84:10 117:12 117:14 permanent 100:11 permission 32:25 33:18,21 permit 34:19 158:10 158:13 permits 158:6 permitted 32:11 83:4 perplexed 4:18 person 32:15,17,19 33:8 43:20,20 45:19 51:18 86:4 166:10 personal 76:24,25 77:24 125:20 126:6 126:24 130:8 persons 86:4 Peter 100:3 phase 93:9 163:1 167:5,6 PHILLIPS 1:11 phone 66:12,14 145:7 photocopies 42:5 43:17 44:18 photocopy 54:15 phrase 51:6,10 101:25 121:8 122:16,23 123:2 physical 85:18 pick 4:14 19:9 139:5 picked 6:18 7:20 89:2 picking 84:9 piece 115:24 place 23:4 48:9 56:24 85:21 144:6,11 148:10 placed 1:14 2:4 41:2 places 130:20 plain 61:19 plan 88:23 98:7,7 107:10 114:13,22 117:11 118:1,19 120:4 121:9 151:8 161:7,8,17 162:12 165:10 planned 57:18 160:12 plans 117:23 plants 161:2</p>	<p>Plan[s] 117:11,20 played 4:10 playing 3:13,23 please 4:25 15:10 21:17 24:25 26:4 27:4,5 29:4,12,15 37:18 46:6,10 47:12 47:18,22 51:2,24 55:21 56:24 62:2 63:1,19 64:10 68:22 74:18 78:23 80:25 82:15 84:23 92:4 97:17 99:11,16 101:10 104:22 106:14 107:25 109:12 111:19 114:19 124:10 126:13 127:16 131:25 134:24 135:1 136:6 139:6 143:16,22 145:11 145:21,22 146:2,4,5 146:6,12 150:12 152:11 155:14 156:8 158:12 164:7 166:2 167:25 169:15 pleased 125:6 pledge 165:21 pledged 161:13 163:22 plus 57:15 pm 1:3 9:12,18 27:18 29:5,23 31:9 57:9 57:11 58:2,4 78:19 80:22 81:7 82:11 99:7,8,9 141:12,14 145:2,4 169:20 point 27:20 48:21 58:14 76:13,24 94:10 96:3 100:18 107:8 111:24 126:16 147:23 148:12 167:7 pointing 124:3 points 25:9 34:11 163:8 166:21 police 32:19,21,22 46:20,21,25 47:1,6 47:15 48:7 65:7,12 65:23 66:10,12 67:2 67:12,18 69:7,8 policies 133:18 policy 157:3 163:10 163:13,23 164:8,14 164:22 168:9 pool 137:4 poor 87:6,8 95:4,8 poorly 94:4 portion 67:5 104:18 109:10 110:25 111:1 134:13 140:19 posed 104:15 position 3:9 5:6,10 7:3 15:18 60:16 65:19 70:11 74:15,19</p>	<p>81:20 82:1,2 98:18 98:19 136:23 142:13 153:15 155:7 positions 81:19 84:9 possession 50:6 possible 54:11 157:24 possibly 7:3 25:22 37:3 153:11 posted 59:20 61:4 potential 95:12,23 96:2 97:5,15,21,24 pour 161:2 pouring 159:14 practical 5:17,24 practice 157:2 practices 132:12 133:18 163:10 preceded 113:3 preceding 121:22 precisely 3:13 predated 87:14 predates 86:10 predating 160:16 prefer 48:24 141:2 preference 80:14 preferred 99:12 prejudice 1:14 2:4 preliminary 111:4,8 111:16,22 112:3,9 112:13 167:19,22 preparation 3:19 15:4 prepare 21:13,19 prepared 2:12 6:8,10 11:7,9,11 18:16 22:24 23:24 24:1 44:20 45:7 49:3 82:23 121:24 123:4 preparing 13:21 22:15 50:8 115:2 presence 73:3,15,20 74:2 present 2:21 13:5 69:24 presentation 8:2 presented 4:19 25:2 151:8,14 President 1:4,6,18 2:3 3:8 4:12,14,17,25 8:13 9:11 28:18,23 29:3,4,8,11,14,17 29:21 38:21 39:3,5 49:6,8,16 56:8,14 56:16,19 57:22 58:6 61:13 76:9 80:7,10 80:12,13,16,20,24 81:5 83:6,18 94:20 95:10 99:3,5,10,11 99:13 124:7 141:8 141:16 144:20,22 144:24 145:5,10 158:20 168:21 169:8,11,13,17 presumably 123:18 prevent 27:4 59:21 previous 81:21 86:3 previously 82:23</p>	<p>price 36:23 primarily 126:9 printed 82:25 prior 83:25 84:1,13 86:12 89:5 113:24 114:4 126:23 142:3 142:4,13,16,22 143:17,17,19 154:5 164:5 private 91:16 160:3 privatisation 91:16,25 92:5,14 privatised 161:8 problem 19:8 31:15 39:11 141:25 145:6 procedural 3:3 procedure 45:17 80:1 proceed 9:3 58:5 154:13 156:22 162:3 166:24 proceeded 163:4 proceeding 6:24 12:23 162:11,14 166:17 proceedings 3:14 4:20 4:23 48:10 53:13 79:22 proceeds 36:13 process 5:23 52:23 91:9 100:12 125:1,9 143:10,12 144:1,9 151:20 153:23 155:11,19,20 156:6 156:11 157:4,6,15 162:16 167:5 168:7 produce 43:12 44:16 63:9,12,23 67:2 70:13 73:19 123:22 125:16 128:10 produced 1:23 17:9 17:18 42:5 43:24 63:10 67:3,14,24 68:14 76:6 113:8,13 114:21 115:8 116:1 128:13 131:1,4,6,15 131:19,24 132:6 141:5 147:10 producing 44:15 124:25 product 88:12 production 98:7 124:21 128:21 161:19 professional 31:16,21 31:25 32:5,9,24 34:3 64:22 74:10 84:2 profitably 161:4 program 143:7 programme 91:16 progress 167:1 progressing 132:21 progressively 51:20 51:20 project 100:1 118:14 119:2 132:11 140:15 projected 106:8</p>	<p>107:16 108:5,11,13 109:8,18 110:10,14 110:16 118:13 119:6,7 121:21,21 149:18 projecting 107:22 118:25 projection 117:16 projections 117:9,13 163:18 pronounce 84:4,5,6 135:1 pronounced 135:3 pronouncing 84:3 proper 29:1 properly 90:2,16 93:22 96:5 97:8 98:22 103:2 105:2,4 105:15 108:2 117:17 118:16 122:1 133:1 136:23 137:10 140:13 157:23 property 31:18,22 32:1,6 33:1,5,5 35:1 39:1 64:23 propose 1:12 39:7 proposed 105:2,5 106:5,6 108:16 117:10,11,20,25 165:18 proposing 7:10,12 8:2 151:6 protect 16:21 protect 43:12 prove 44:5 provide 27:10,22 32:16 34:3 40:21 41:25 43:4 46:12 48:11 84:1,8 118:13 129:5 166:18 provided 5:20 18:12 22:20 24:10 25:20 27:14 30:20 33:8 34:9 39:13,23 41:13 60:4 66:18,23 67:8 67:12,17,22 69:3 87:18 88:14 112:5 112:14 122:10 123:17 147:20 148:2 provides 76:19 providing 46:13 60:25 67:17 69:24 108:4 provision 162:21 public 11:2,5 132:24 publicly 10:15 publishes 33:24 pull 143:24 144:15 pulled 139:6 pulling 83:14 purchasing 27:22 159:9 purport 119:2 125:23 purporting 4:23 purpose 12:1 45:5,8 85:11 92:11 96:14</p>	<p>124:9,15 154:4,23 purposes 3:17 44:22 45:8 139:12 140:18 146:11 pursue 10:8 12:16 push 168:1 put 1:20 3:10 8:5,6,11 8:13 9:11 10:18 13:25 20:22,24 21:22 35:15,15 43:1 49:13 53:21 62:21 78:22 79:4 116:3 120:15 121:19 123:16 129:10 139:24 144:22 152:17 163:9 putting 7:2</p> <hr/> <p style="text-align: center;">Q</p> <p>QC 1:12 2:6 qualify 156:21 questioned 24:23 questioning 31:12 96:15 128:20 145:25 questions 3:14 3:25 14:5 27:17 30:18 31:7 37:6 59:12 78:18 79:1,3 82:8 83:16 94:8,8 113:19 123:16 125:8,22,23 125:24 127:16 128:24,25 129:25 130:18 139:12,13 140:25 141:3,18,20 143:11 145:23 168:2 quick 20:17 135:16 quicker 109:15 150:7 quickly 103:22 120:14 126:5 quite 13:1 74:14 quitting 82:5</p> <hr/> <p style="text-align: center;">R</p> <p>R 69:19 76:12 120:15 120:16 radio 34:1 raised 5:4 124:19 rather 4:18 16:3 40:10 56:11 126:15 RDB 72:10 73:7 75:1 75:6,20,22 76:2,3,3 76:3,6,8 154:15 155:3 RDB's 76:4 re 3:3 reach 52:7 73:23 94:11 reached 137:25 138:6 168:21 reaching 138:12 167:13 read 2:25 22:7 29:12 29:13,15 48:13,17 48:23 58:24 71:7 72:9 74:24 88:17</p>
--	--	---	---	--	---

<p>103:7 110:13 139:20 141:7 145:19,24 146:9 165:7,7,9 reading 105:1,2 132:7 147:8 162:2 165:9 reads 50:14 ready 1:4 9:6,15 realised 141:17 reality 168:6 realize 111:5 really 8:7,11 48:25 60:11 92:11 reason 24:4 33:17 43:14 100:5 119:15 148:4,6,11 153:22 154:9,23 160:12,14 reasonable 25:16 144:20 169:5 reasonably 162:21 reasons 148:14 recall 25:13,14,16 27:20 47:3 53:14 54:4 59:17,24 60:25 64:20,21 66:3,5,7 69:24 70:6 74:12 75:4 79:1 81:12 84:20 88:1 97:24,25 105:15 113:21,22 114:6,10 115:1 125:17,18 133:8 137:10 139:9,11 140:4 142:7 146:10 146:16,24 147:3,6 147:13,16,19 148:11,22 150:12 150:17 recalled 98:18 140:14 receipt 40:9 41:6 receipts 34:5 receive 18:14 37:13,16 40:8 received 31:17 43:3 46:14 50:24 68:13 71:16 77:12 97:18 100:9,15 133:17,22 137:17 156:12 157:8 169:2 receives 40:4 45:14 78:16 receiving 147:24 reception 30:23 40:7 41:1 recite 47:14 recognise 137:13 139:15 148:20 167:14,18,21,21 168:4 recognised 167:19 recognises 151:5 recognising 151:18 154:17 recollect 34:18 35:7 recollection 25:6,9 recommendations 85:13 147:9 record 1:14,20 2:4,7</p>	<p>3:10 49:9 65:7,15 65:17,18,22,23 122:10,17,19,22 recorded 20:3 91:7 records 102:2 132:15 recover 66:22 69:10 recovered 52:11 recoveries 31:17 redoing 6:15 reduce 134:14 reduced 69:19 82:1 refer 13:19 22:8,12,14 34:10,20 39:24 62:9 94:6 111:22 135:5 reference 41:17 47:9 53:25 54:2,10 63:8 63:14 64:5,7 84:24 85:14,19 95:5 111:15 121:12,15 122:18 126:2 152:16 153:23 161:19 referenced 38:9 64:3 84:20 112:18,25 113:1 116:10 117:15 references 47:11 101:24 referred 21:1 34:23 41:19 45:23 54:3 58:24 66:17 88:3 92:17 93:6 101:22 102:5 112:10 referring 46:16 60:14 84:21 85:15,19 86:11 87:11 88:1 89:22 112:9,23 113:9 116:8,12,16 119:9 128:19 138:21 161:20 167:10 refers 92:10 reflects 158:21 refreshed 113:20 refused 30:10 58:21 77:14 153:12 regard 2:17 5:22 39:8 62:23 102:19,24 143:4 regards 168:5 registered 77:23 regulation 81:22 rejected 157:20,22 relate 20:25 related 50:6 52:24 relating 24:16 34:13 55:9 relationship 84:21 86:9 relevance 8:18 relevant 1:15 2:5,5 8:8 129:9 relied 11:13 88:14 rely 88:11 relying 83:13 remain 57:19 132:14 remained 49:23 93:21</p>	<p>95:15,17,17 remaining 57:15 remember 16:7 19:1,2 22:1 23:4,9,25 24:20 28:2,2,7 64:18 68:1,23 69:1 79:3 81:13,14,16 87:1,15,16,19,23 88:10 89:9,16 90:17 91:6,22 93:13,15 96:5,19 97:9 98:22 98:25 99:1 100:9 112:17 113:5,14 114:1,9,11 116:15 118:17,20 120:12 128:8 130:6 133:5 133:14 136:23 137:3 138:4,4,9,15 139:17 142:6,23,25 143:13,14 146:18 147:5,8,25 150:16 157:23 164:2,14,22 165:19,19 remembering 97:14 remind 65:25 reminder 28:25 renewal 121:23 repeat 15:10 21:17 24:25 68:22 74:18 81:1 84:23 92:4 97:17 101:10 104:22 107:25 109:12 111:19 119:12,16 127:16 146:12 155:14 158:12 164:5 166:2 168:14 repeated 142:12 repeatedly 61:14 152:21 repeating 95:22 164:6 report 32:9,14,15 33:2 33:20 34:4 46:18 47:23 48:1,1,8,11 49:20,24,25 50:3 60:9,14 70:15 72:24 87:4,22,23 88:3,3,7 88:14,22,24 101:14 101:15,17 102:14 102:15 103:3,4,7 107:4 108:10 110:8 112:14,15,18,23 113:2,4,7,10,13 114:7,21,23,25 115:3,12,15,20 116:5,8,17 119:9,10 119:11 128:18,18 137:17,21 149:21 150:3,11 151:9,12 151:21 154:12 159:7 166:9,11,12 reported 16:17 17:12 73:2,19 118:24 137:22 reporting 109:6 113:11 165:22 reports 62:13,14,14</p>	<p>63:10 88:15,20 166:19 represent 61:17 representation 108:3 119:20 123:25 representations 166:14 representative 2:15 43:9 74:16,21 represented 25:12 77:8 representing 5:17 54:21 represents 31:6 82:7 request 1:9,11 33:23 83:10 96:24 104:13 149:9 155:5 requested 38:25 requests 1:23 require 82:2 139:9 140:25 required 16:1,5 18:17 31:16,21,25 32:5,9 33:2,20 34:3 38:24 161:10 165:23 166:4 Research 104:10 reserve 167:23 reserves 98:6,7 111:6 111:13 158:7 159:1 159:5,12 reserving 7:4 resolve 141:25 resources 85:6 111:6 112:21 132:22 133:10 135:11,13 135:17,19,23 136:9 136:12,15,18,24 137:15,23 138:12 147:12 149:13 156:15,15 158:6 159:1,13 respect 166:22 respond 4:24 11:2,5 106:14 responded 24:17 Respondent 1:19 2:5 7:1 20:23,25 21:4 21:13,18,22 22:24 50:7 62:7 82:21,22 115:9 124:22 131:3 144:17 Respondent's 1:10 6:6 25:21 49:1 62:11 83:12 131:17 132:15 responding 154:3 response 1:10 7:21 24:10 134:11,13,19 134:22 143:2,3 responsibilities 74:10 responsible 55:11 65:20 rest 80:21 100:16 151:1 restart 142:19 restate 10:9</p>	<p>restructured 136:11 restructuring 81:17 result 4:21 10:7 24:22 25:1 49:17 100:13 100:20 102:13 103:1,16 resulting 147:22 results 32:10,12 33:3 33:22 49:22 resume 79:25,25 80:3 80:5 141:9 retained 3:14,15 4:16 5:11,14 133:19 retains 163:6 retired 81:16 retirement 81:15 82:5 retiring 81:12 return 37:3 71:22 72:3,25 141:15,17 143:2,3 144:25 148:16 returned 71:18 72:4 reverse 79:12 review 5:16 25:4 73:5 83:15 85:3,10,11 104:6 107:15 111:14 113:23 115:25 116:2,5 145:15 reviewed 25:23 107:21 116:6 151:16 152:17 161:21 reviewing 104:12 107:20,24 122:15 revisit 1:25 re-apply 147:18 Re-direct 3:6,10 27:19 78:20 re-examination 76:10 re-open 70:14 RGL 64:15 RICHARD 2:6 right 2:1,13 9:10,14 12:3 14:2 23:22 24:24 38:17 52:1 65:10 85:1 87:23 91:22 93:11 101:7,9 101:12,13,16 104:21 105:5,8,10 105:24 106:4,18 107:20 108:8,15 112:2 114:5 116:11 116:14 119:4,8 120:17,19 122:6 127:8 130:9 134:6 138:22 139:13,22 140:20 142:15 150:17 152:8 155:9 158:18,20,23,23 162:24,24 164:16 164:21 168:8 rights 13:12 RNRA 136:17 RNRA/GMD 112:6 ROBERT 2:19 RODERICK 2:4</p>	<p>Roka 97:12 role 3:13 4:10 27:8 81:21 100:17 room 9:5 56:25 57:2,3 82:17,21,22,25 83:17 116:20 rooms 144:23 ROSE-MARIE 2:20 ROSSI 2:18 round 13:3 RSOC 79:7 RT 1:11 rude 87:7 rules 1:1 169:17 ruling 32:17 33:6 43:18,21 45:15 68:3 68:14,16 71:15 rulings 41:18 43:7,19 44:4,14,18,19 45:23 67:4 71:11 rumours 10:18,20,22 10:24 14:5,9 run 73:11 126:6 running 144:12 Rutongo 98:24 Rutsiro 150:22 Rwakirenga 34:16 50:23,24 51:2,4,13 52:17 Rwakirenga's 50:16 50:22 Rwamasirabo 2:13,14 2:20,24 3:9,16 4:1 4:16 5:5 Rwamasirabo's 4:8 Rwanda 1:18 2:9,9 5:15 12:23 16:22 20:13,16 21:14 31:16,21,25 32:5,9 32:24 33:17 34:3 45:13 56:4 64:22 72:10,12,21 74:16 74:20 75:1 85:6 97:12,12 112:21 123:18 127:5 135:18,22 136:12 147:11 149:8 153:7 162:18,18 167:1 Rwandan 8:25 31:1 33:4 44:23 45:10 Rwanda's 162:15 168:10 RwF 50:19 53:11 R-040 99:15 100:14 102:19 103:20 110:24 119:5 120:8 122:2,4 129:24 130:2,4 132:2 139:23,25 140:7,11 141:4 145:14 R-051 39:14,15,19 40:15,18 43:15 78:21 R-063 53:17 R-066 66:7,15 R-077 76:18 R-118 139:6 140:2</p>
---	--	--	--	--	--

<p>144:15 145:17 146:13 158:2</p> <hr/> <p>S</p> <p>safely 32:2 82:24 salary 12:24 82:1 sale 15:2 34:6 36:23 49:22 61:5 same 18:13 19:18 51:5 51:15,18,20 54:18 67:21 68:4,8 89:18 92:18 97:21 120:8 121:8,14,14,15 149:17,18 151:17 153:23 158:21 159:24 160:3 161:23 162:6 168:15 SARAH 2:18 sat 169:6 satisfactory 152:6 153:9 saw 23:17 25:19 39:16 82:15 166:20 saying 2:21,22 4:1 8:7 12:5 27:4 42:19 45:5 48:19 53:14 68:8 71:20 74:3 96:10 104:3 105:1,5 107:21 109:3 112:10 123:7 130:13,19 132:5 133:5 136:16 138:19 153:19 160:19,20 says 32:15 41:17 53:9 64:12 70:2 79:18 103:22 114:14 120:3 124:2,4 146:15 166:12 schedule 80:14 scheduling 6:24 screen 29:11,14 78:22 78:23 80:24 102:20 139:19,21 143:25 144:8 scroll 22:2 24:12 41:7 46:6 59:10 103:20 121:1 scrolled 24:13 53:7 sealed 64:13 search 115:2,15 128:17 129:5,11 searched 128:12,14 129:3,14,20 searching 129:7,10 130:8 Sebeya 150:22 second 5:5 30:1,5 39:19 51:22 52:18 58:19 59:4 116:19 117:6,8 139:4 158:2 secretariat 31:2 55:25 secretary 1:22 30:24 40:3,5,14 58:20 100:11 section 103:21 104:10</p>	<p>111:2 114:13 117:21,25 149:4 158:3 sections 110:21 140:1 140:17 149:2 sector 161:12 secure 61:5 64:23 73:25 74:17 security 32:1 59:20 61:4 64:15 65:11,21 74:11 see 1:16 6:19 21:10 22:5 24:12,23 25:19 25:22 29:11,14 39:15,18,25 40:2 41:8,9 46:6 49:10 51:1 52:10 53:23,25 54:3,24 62:19 63:24 65:3 66:4 80:25 100:25 101:17 103:25 104:1,5 107:13,14 115:15 117:6,12,19,23,24 118:4,6,11 119:19 119:25 120:2,6,7,18 121:7 122:5 134:9 138:18 139:2,3,3,20 140:3 141:2 143:15 143:25 144:6,8 145:16 147:2 148:24 149:5,6,19 149:20 150:3 153:10 157:24 158:8,9 168:12 seeing 24:22 44:12 94:11 113:17 137:12 147:1 seeking 1:10 155:19 156:8 seeks 32:25 seem 8:21 31:13 seems 4:20 8:23 117:21 144:20 seen 20:22,23 21:4 24:20 91:10 122:12 140:22 147:4 seize 33:4 74:12 77:17 77:21 78:13 seized 31:22 32:1,6,11 34:22 35:1,6,9,11 36:5,9,17,19 39:2 51:19 59:14,24 60:3 60:19,20 61:9,23 62:18 64:23 68:21 68:23 71:3 76:20 77:15 78:3,5,8,9 seizes 77:22 seizing 38:16 59:19 61:3 63:6 65:5 seizure 31:18 34:6,13 36:12 39:23 40:22 46:2 60:14 69:5 seizures 52:7 62:14 79:12 selfsame 35:18 sell 59:22 69:10,12,15</p>	<p>147:21 148:3 selling 32:7 35:4 send 24:19 74:16,20 124:10,14 134:18 senior 166:10 sense 94:5 140:21 159:9 sent 22:13,16 24:18 25:25 54:21 58:16 71:12 99:21 115:18 128:18 130:7 131:9 131:21 133:6,6,7 149:8 sentence 11:24 84:15 112:4 121:16 138:18 158:4 September 81:25 149:15 serve 44:16 served 38:14 45:20 55:9,23 serves 38:22 serving 58:11,13 136:21 set 2:19 3:20 25:9 75:14 164:13 setting 2:14 159:13 settle 38:25 Settlement 1:2 seven 108:17 seven-page 140:3 145:17 several 89:14 102:17 131:6 134:2 135:20 150:1,2 share 113:7,12 114:2 125:4,6 shared 113:25 114:8 124:13 129:21 131:10,19,22 132:18,25 133:9 134:1,2 shareholder 54:22 55:11 56:3,6 58:17 73:8 74:7 77:18 shareholders 72:20 74:10,24 75:2,2,5 75:19 76:4,7 77:21 159:22 sharpen 95:18 sharpening 95:19 sharper 113:16 sheet 56:3 Shema 39:25 40:14,16 40:20 41:3,4 42:3 42:12 43:3 67:20,21 67:22,24 68:4,8,10 shifting 136:17 short 58:3 91:1 128:3 141:13 144:20 shorten 49:10 shortly 9:20 50:15 84:11 136:2 short-term 90:11,13 91:2,8 92:19 150:14 153:4 154:15 155:7 156:2,8,18 162:19</p>	<p>163:25 164:9 show 18:12 25:17,18 54:14 62:2 102:9 109:1 120:24 121:1 showed 82:4 121:4 143:10 showing 54:13 81:24 100:5 131:8,20 shown 29:25 42:20 53:19 shows 130:7 shut 9:1 side 21:15 39:11 89:7 89:9 101:23 120:16 124:11 139:21,22 139:24 sides 125:2 side-by-side 62:20 sign 40:6,6 58:21 66:21 67:6 signature 23:1 44:17 signed 3:6 24:18 41:5 41:5,23 42:3 49:2 65:8 67:23 68:12 148:24 159:3,8,20 160:11,12 163:16 163:18,21 164:21 165:6,13,20 166:15 168:17 significant 111:4,7,17 111:22,25 112:2,13 signing 23:9 25:6,14 159:11 signs 81:24 82:4 similar 51:13,23 60:24 94:13 118:2 121:1 similarly 94:5,7 121:3 simply 7:13,20 33:24 54:4,12 59:1 73:13 75:20 76:5 94:4 118:14 124:1 simultaneous 57:20 since 11:15 30:9 64:4 86:5 94:19 95:15,16 96:1,20 125:13 148:18 sir 14:10 16:24 19:5 20:2 22:6 24:8 26:2 26:23 27:8 37:20 41:12 42:3,23 43:14 44:8,20 45:25 46:11 46:17,22 47:12 48:2 50:14 51:6,24 53:9 55:17 56:12 63:14 63:19 64:1 65:1 67:8,16 68:18 69:10 70:7 71:2 75:18 78:6,12 82:14 95:4 104:1 107:23 123:8 125:5,14,22 127:8 128:6,24 130:14 137:25 138:5 140:4 141:17 148:8 150:11 152:11,12 154:17 155:10 156:17 158:23 166:22 167:7</p>	<p>169:16 sit 7:25 144:24 169:3 site 28:12,16 64:15 159:18 sites 157:14 sitting 3:6 116:20 situated 94:6,7 situation 33:16 82:3 164:2 situations 32:24 six 106:20 149:13 size 95:14,25 139:20 163:15 skipping 83:25 slight 1:19 small 67:5 91:12 smaller 93:18 109:14 small-sentence 110:22 soft 85:23 86:24 87:1 sold 47:8 52:19 64:24 76:22 77:13 78:5 163:6 solely 18:6 solemnly 29:18 81:2 solo 57:19,20 some 8:22 20:15,23,25 21:1 26:12,12 31:6 33:17 56:9,20 76:13 79:1 81:19 82:8 83:25 84:8 85:17 86:3,6 88:7 90:13 91:5,13 92:1,7,15 93:24 96:3 100:12 100:19 103:8,15 105:13,23 111:4,7 111:22,24 113:17 114:17 116:4 122:18 125:8 127:11,18,20 128:24 129:18,20 137:1 138:25 141:20 167:19 168:25 somebody 75:4 103:17 somehow 138:2,13 someone 5:16 21:6 78:12 82:20,21 124:10,11 128:12 128:15 129:5 132:4 140:4,8,10 147:11 148:21,22 151:15 161:1 something 20:2 26:15 48:21 49:8,9 52:19 62:11 83:11 91:10 93:15 101:21 102:1 102:4 103:17 104:19,24 124:4,4 140:25 145:20 148:19 159:14 sometime 123:5 sometimes 38:2,2 92:2 somewhat 166:23 son 3:1,2,6 soon 15:22 43:6 48:9 54:10 sorry 10:23 14:3</p>	<p>15:11 16:4,4,24 17:25 20:1 22:2 26:4,5 31:11 37:19 42:8,23,25 47:21 53:2 59:14 68:7 74:22 87:1,6 88:10 93:13 95:8 101:20 102:19 106:25 109:13 110:5,23 114:12 117:17,18 118:16 124:6 134:5 139:4 140:13 141:16 143:22 144:16 146:7 155:3 158:20 160:2 164:4 166:2 sort 94:7 100:12 sounds 9:6 source 17:19 114:20 122:19 123:2,9,20 so-and-so 43:18 so-called 17:12 152:4 SPALENA 1:16 speak 26:4 29:19 30:10 42:8 48:15,15 48:25 51:24 56:17 81:3 164:4 169:8 speaker 29:2 speaking 19:5 56:23 58:10 speaks 3:1 Special 149:10 specific 13:19 33:1,1 33:18 40:12 59:12 103:16 113:14 116:7 118:15 121:11 125:8 126:3 127:5 129:25 140:17 145:23,23 164:11 specifically 11:21 169:3 33:13 40:10 110:10 121:5 124:20 142:10 144:5 SPECIOZA 2:9 speculate 87:20 Spedag 30:7 speed 27:2 spend 104:23 105:7,11 106:19 110:16 151:6 spending 106:3 109:9 110:14 spendings 107:16 108:11 spent 106:8,12,17,24 108:11 109:8,17 118:1 162:25 163:1 spoke 17:6 42:23 68:7 spoken 61:17 spreadsheet 143:8 squared 163:15 STAFF 2:21 Stallard 1:23 stamped 101:18 102:8 114:10 stands 45:14</p>
---	---	---	--	--	--

<p>Starck 16:18,20 17:6 17:11,19 26:16 Starck's 17:3 start 16:13 19:8 37:14 50:21 51:22 87:9 99:11 117:10 139:13 159:4 160:13 started 10:9 13:2,3 19:1 38:3 50:23 81:24 86:3,18 89:2 91:15 143:1 159:25 163:3 starting 140:5 starts 79:6 state 88:8 126:7 160:18 stated 99:4 159:8 statements 6:1,21 7:11,23 13:6 21:2 21:13,19 27:15 50:1 83:15 88:2 113:2 115:5,10 119:16 150:8 states 2:11,12,13,14 2:15,16 149:7 stating 56:1 station 46:20,21,25 47:7,15 48:7 65:7 65:23 66:10,12 69:7 69:8 status 14:12 34:4 statute 93:1 95:25 stay 56:20 57:3 step 14:11 52:18 116:25 STEVEN 2:3 stick 26:12 94:10 124:17 128:24 163:8 167:7 still 4:18 7:4 15:25 16:4,14 17:2 21:25 54:22 58:17 67:24 76:23 96:19 125:21 126:9 127:19 155:22 157:24 stole 65:6,13 69:6 stolen 17:14,15 64:17 68:20,25 69:4 Stone 2:6,6 stood 143:15 144:1,7 147:15 stop 19:9 57:14,16 72:2 73:13 142:19 stopped 79:24 storage 129:16 stored 130:12,21 stricken 1:24 strike 7:12 16:12 67:9 strong 10:18 strongly 42:20 studies 98:15 158:15 study 159:6 166:18 167:24 subject 1:12,20,24 97:5 submission 15:13 21:8</p>	<p>22:19 100:14 submit 2:23 5:5,7 159:5 submitted 7:11 10:12 11:8 12:25 14:17 15:23 18:5,13 24:8 62:4,8 88:22,24 89:23 90:10 101:14 102:15 103:2 108:5 110:7 112:16 115:14 118:19 122:24 132:11 150:21,23,25 151:11 155:3 156:19 submitting 12:2 15:19 18:10,19 19:13 153:17 157:5 subsequent 118:9 subsequently 54:12 subset 92:1,11,15 93:2 93:6 94:12 subsidiary 16:18 substantially 56:10 sub-group 93:21 succeed 167:6 successful 115:13 150:15 sued 45:16 79:11 sufficient 15:19 16:10 17:7 18:12 145:8 suggest 121:18 122:9 124:3 140:24 141:8 160:23 suggested 13:25 75:13 154:2 suggesting 26:13 101:20 103:9 124:3 125:25 159:22 summaries 118:3 summarised 88:23 summarises 103:22 summary 91:10 104:7 117:22 144:5 Summer 1:2 summoned 46:19 66:11 summons 71:16 summonsed 67:2 superficial 111:9 superiors 85:5 165:4 165:22 supervision 75:12 137:19 supervisor 86:19 87:13 99:21,22 133:6 165:11 166:8 supervisors 85:5 101:4 102:16 103:6 supplemental 11:20 23:10 24:9 30:1 Supply 34:15 46:2 support 2:21 39:12 43:1,24 65:19 66:5 66:8 supporting 17:10 supported 26:20 35:15</p>	<p>35:19 70:15 106:19 129:7 164:19 167:23 sure 3:23,25 4:5,7 12:14,14,14 13:1,3 15:11 18:1,4 19:11 34:17 45:6 59:13 87:7 169:6 surficial 111:9 suspected 7:9 suspending 71:12 swear 29:19 switch 116:20 system 85:18,20,24 130:21 132:3,9,24 143:8,20,21,23 143:24 144:3,12,13 145:6,13</p> <p style="text-align: center;">T</p> <p>table 39:17 82:17 157:25 tables 60:8 tagged 34:14 tags 147:20,24 148:2,7 148:13 take 2:1 14:11 30:25 37:4 39:4 49:4 64:8 73:23 74:16,21 75:16 77:20 82:22 83:7 91:17 99:16,18 101:16 109:7 140:14 153:15 159:7 taken 5:6 20:8 34:6 37:21 69:8 83:2 100:13,13 102:24 103:5 157:11 takes 52:16,16 168:6 taking 49:16 161:1 talk 47:2 58:12 100:24 114:17 talked 36:15 106:24 107:2 120:12 137:19 141:22 talking 5:23 16:4 19:8 19:10 35:20 62:22 84:25 92:23 95:3,21 137:21 143:4 154:2 task 136:3 team 128:19,23 129:22 131:10,21 131:23 136:3 technical 9:1 141:25 technology 108:25 telephonic 17:17 tell 22:7 42:16 44:13 48:18 64:4 99:24 110:15 116:25 118:10,21 134:1 156:9 167:8,20 telling 4:6 24:5 125:5 ten 45:1,1 46:25 76:9 118:19 142:24 tendered 8:9 tenders 20:14 tension 166:23</p>	<p>term 4:5 52:1,3 62:9 91:1,4 92:2,17 93:1 93:5,7 94:15,18 105:19 149:4,22 156:3 162:6,7 terminated 9:20 13:16 19:13 36:2 termination 13:21 35:23 terminology 155:23 terms 6:1 16:25 80:14 113:21 117:9 121:2 129:5 152:25 156:6 157:4 testified 39:20 41:12 testify 7:3,15,23 69:21 76:16 testifying 7:13 testimony 18:10 40:12 41:22 42:6,10 50:20 60:25 64:18,21 68:23 69:1,25 70:2 70:6,22 72:16,19 74:9 75:6,11,21 101:25 102:5 132:2 133:8,20 148:23 153:14 166:12 thank 4:12 9:14 28:17 28:18,20 29:8,21,22 31:5,8 44:12 49:18 56:21 57:8,12 58:1 66:4 76:11 80:6,7 81:5,6 82:7 83:20 98:17 99:2,6,10,11 99:14 116:22 126:21 141:10,11 144:15 145:10,12 169:11,12,18 theft 65:20 their 1:10 3:11 9:22 16:21,22 22:19 35:23 50:25 51:7 52:4 56:18 60:4 62:7 73:25 77:9 78:3 83:15 89:15,18 89:24 93:9 101:4 105:16 139:12 132:23 143:12 144:1,23 148:15 149:23,25 150:2,13 156:3 159:6 160:9 163:9 165:3,21,25 166:7 themselves 44:19 74:20 161:17 thieves 69:16 thing 23:13 24:15 63:8 92:18 144:10 165:7 things 8:3 20:6 21:7 26:12 28:4 35:4 70:2 117:2 124:25 129:7 147:14 148:19 151:18 167:25 think 6:11 17:24 19:21 20:1,2 25:16 28:8 35:24 39:5 55:17</p>	<p>57:5 80:16 83:4 85:9 87:8,19 88:24 91:13,13 99:3,5 109:1,5 117:1,4 118:7,9,19 120:23 124:4,9 126:14 127:24 132:1,19 135:8 136:2,18 137:9,10 139:22 141:4 145:7 146:14 157:21,22 160:11 165:19 168:14,22 third 2:10 26:8 30:11 30:12,15 52:20 59:4 79:5 138:18 THORNTON 2:13 though 167:7 thought 3:22 12:5 19:18 39:16 83:1 108:23 129:8 141:19 161:16 three 39:6 59:3,6 76:10 77:5 96:7,16 96:23 97:2 98:1,17 98:19 through 3:2 4:8 7:25 9:25 16:22 30:11,12 30:23 34:12 37:1 40:17 47:10 79:11 83:8 107:2 108:10 108:11 109:6 115:17,20,21 117:7 128:2 129:6 140:17 140:23 145:7 153:7 153:7 times 1:2 45:2 46:25 47:2 timing 4:6 title 62:15 63:4 146:22 146:24 today 26:9,20 29:9 95:16 147:4 169:10 together 20:7 55:16 72:21,23 85:17,20 119:21 134:19 137:9 144:6 toggle 139:10 told 2:10,24,25 15:24 17:19 18:11 60:12 64:14 70:3 71:20 75:6 77:13 78:10 85:10 86:1,2,16 138:2 152:21 153:8 164:20 165:4 tomorrow 169:3,15,19 TOMSON 2:6 tool 143:14 166:9 tools 129:11 top 134:7,11,12,16,21 topic 37:25 124:17,19 total 50:18 91:25 108:16 109:20 164:11 totally 167:4 towards 156:25 167:1 track 37:7 tracked 143:9</p>	<p>tracking 91:10 Trade 2:14 trailers 28:14 trained 137:4 training 137:9 Trans 97:13 transaction 15:2 transcript 1:23 1:2 17:1 transition 127:25 translation 37:14,15 37:17 38:18,19 48:20 transmittal 22:6 102:14 transmittals 101:1 transmitted 100:6 103:14 transport 28:14 treated 12:19 90:18 92:2,15 100:6 157:4 Trevor 1:24 Tribunal 1:22 2:23 3:14 1:8 3:12,12 8:11,14,22,24,25 39:4 44:22 45:9 57:12 61:16 169:9 tried 75:8 115:2,12 119:11 125:4,21 trouble 10:24 trucks 35:10 true 7:9 19:22 20:5 31:24 65:1 67:8,11 68:18 122:14,21 123:6 127:10 153:22,25 155:1 158:19 162:18 163:24 TRUMAN 1:11 truth 24:5,23 29:19,20 29:20 81:3,3,4 123:7 124:10,16 truthfully 154:11 try 2:23 10:3 19:6,9 37:17 83:7 95:11,18 96:5 109:14 116:24 154:17 trying 7:12 8:23 25:11 27:2,3 36:18 48:21 75:18 76:23 94:4 95:7,19 96:13 107:23 115:23 116:15 119:13 124:18 125:14 127:8 128:25 130:18 137:14 167:12 168:1 turn 1:10 32:19 41:2 63:2 68:15 72:16 73:22 74:5 117:7 131:16 161:18 turned 3:1 13:20 turning 71:6 75:23 twice 95:8 two 1:23 9:7 34:25 35:2,5 38:1 41:10 41:16,21 43:3,5</p>
---	--	--	---	---	---

<p>44:15 45:22,22,24 51:5,16 62:21,24 64:15 65:6 67:25 68:17 77:5 84:10 107:17 108:14,17 109:10,22 110:21 110:22 130:20 134:15 145:16 149:16 153:11 163:8 164:25 166:19 167:10 type 17:16 98:16 111:10 témoïn 29:12</p> <hr/> <p style="text-align: center;">U</p> <p>ultimate 143:10 ultimately 109:23,24 unclear 7:19 under 1:1 9:22,25 12:17 27:20 28:1 31:1 65:4 68:21 69:4 75:12 77:16 96:12 121:6 137:19 157:19 158:3 161:19 underhand 20:15 understand 2:10,16 2:24 22:12 26:13 27:6,6 28:23 30:3 48:3,4,17,24 53:3 87:11 94:20 96:13 103:12 106:7 114:4 114:5 130:18 132:1 134:14 138:21 145:20 understanding 6:5 55:12 89:3 92:10 131:2 136:25 150:9 understood 4:1,6,16 22:14 44:21 45:7 54:22 58:17 71:6 94:22 130:2 131:12 145:1 154:4 158:5 162:21 undertake 79:13 140:5 underway 79:21 unfair 160:23 161:5 unfortunately 91:6 115:3,7,12,22 119:11 163:5 167:24 168:14 unintentionally 31:13 141:24 United 2:11,12,13,14 2:15,16 unlawful 35:23 unless 45:16 unpaid 12:22 until 39:7 50:22 56:14 57:22 59:21 99:8 126:7 144:18 169:14,18,21 untrue 61:18 update 140:5,10 updated 121:7</p>	<p>upstream 100:25 USD 121:9 163:14 use 11:25 12:1 18:7 51:10 52:1,3 127:12 133:12 155:22 161:22 used 12:24 20:25 27:22 77:7 78:10 84:4 107:4 110:5 114:20 126:24 127:24 128:6 135:24 162:5 163:17 166:9 useful 56:22 user-friendly 169:1 uses 111:3 121:7 122:10 151:24 153:22 using 11:18 12:15 28:13 35:13 51:6 62:9 70:12 71:11 72:1 101:25 126:7,9 127:1,2,3,5 128:5 132:19,23 Usually 40:2</p> <hr/> <p style="text-align: center;">V</p> <p>v 1:17 Valley 10:1,8,10 18:6 18:20 19:14,20 value 13:9,12 31:17 32:6 68:19 69:4,13 variations 138:25 various 47:2 90:23 91:20,21 117:13,22 139:25 149:2 vast 11:10 13:23 Vaughn 1:24 vehicle 77:24 veracity 25:11 verbal 21:10 version 24:17 49:1,3 83:12 131:5 132:3 very 10:18 15:22 20:12,12,17,17 24:2 28:18,20 47:20 49:16,16 50:3 56:22 57:22 62:8 64:2 80:7 91:12 103:22 129:23 135:13 145:10,10 148:6 153:20 159:20 161:5,15,16 162:24 166:16 169:18 via 1:5 Video 1:5 view 1:15 2:4 94:11,24 visited 111:10 visiting 157:14 vis-à-vis 71:13 volume 105:2 voluntarily 39:1 125:3 voted 103:1 Vu 79:6 vulnerability 14:1,4</p> <hr/> <p style="text-align: center;">W</p>	<p>wages 12:22,24 13:10 35:23 wait 144:25 waiting 6:19 9:5 144:10 walk 37:1 walked 75:10 want 19:5 24:2 26:13 44:2 58:9 59:12 62:8 64:2 65:2 68:7 70:4 84:16 87:7 90:19 92:8 94:6 96:22 101:20 107:8 116:2 118:16 126:2 126:16 129:1 131:12,24 134:8,9 134:14 148:8,16 158:16 159:14,15 167:20 wanted 3:8 10:18 14:7 14:8 49:14 103:10 106:2 112:25 152:24 153:9 164:13 wants 124:14 154:13 wasn't 2:16 4:3,4 5:7 5:14,15 9:8 15:1 25:13 46:24 69:15 73:9 89:25 95:7 109:9 111:23,24 119:16 123:4 131:2 131:16 154:6 159:2 160:6 WATKINS 2:22 28:25 57:1,7 80:19 144:22 145:1 way 18:22 25:10 34:2 50:24 67:10 71:6 83:7 87:25 92:9 93:16 112:24 116:25 117:2 124:19 126:15 132:4 135:8,15 137:1 151:19 164:20 166:20 weight 2:6 60:4 159:10 weighty 161:23 welcome 83:21 well 3:8 4:12 6:8 8:4 11:21 14:10 16:8,12 17:23 21:24 22:7 25:17 32:14,18 33:23 34:8,25 35:22 36:11,21,23,25 37:24 38:6 39:1 40:3,25 41:17 42:2 43:6,17 44:3,25 45:12,16,17 46:18 46:24 47:9 48:25 49:16 57:22 63:8 65:11,15 67:16,24 68:12 69:6 72:20 73:9,13 75:9 76:3 78:9,23 82:19 86:9 88:14,16 99:13 100:11 104:5 110:2</p>	<p>138:10 141:8 145:10 151:10 152:2 159:9 160:2 160:15 went 3:2 4:8 10:3 24:22 37:2 45:20 46:21 48:11 70:20 72:22 77:25 78:2,7 79:11 92:8 100:24 115:21 129:17 139:25 165:4 weren't 7:10,11 13:10 65:9 103:12 115:9 western 160:17 we'll 4:12 57:5 80:16 80:20 96:15 99:5 107:6 117:7 144:20 144:24 145:11 169:4,18 we're 1:17,17 6:8 7:22 7:24 8:1 9:6 15:8,15 38:6 44:5 45:6 92:9 92:23 95:3,21 96:13 121:2 133:25 144:10 168:8 we've 5:2 7:19 27:6 122:12 144:17 168:21 whatsoever 2:6 46:13 while 14:10 33:16 51:1 57:3 65:4 68:20 69:4 80:13 110:8 115:2 126:3 127:10 129:18 143:5 158:22 white 63:25 whole 29:20 50:9 52:6 56:1 62:3,19 67:1 81:3 104:6 wide 92:7 willing 74:20 111:16 111:20 125:21 wish 8:25 73:24 withdrew 28:21 80:9 witnesses 7:24 83:14 WOLFENSTEIN 2:19 won 45:2,2,19 wonder 4:22 144:18 word 158:20 words 1:24 79:9,18 95:5 144:7 160:24 work 5:13 16:1,5 19:2 20:7 21:12 27:23,25 27:25 28:3,6,10 30:15 33:12 35:19 50:3 51:8 52:5,15 69:9 70:5 77:11,11 78:17 81:9 88:12 89:2 98:9,10 99:17 111:5,8,9,16,23 112:2,3,9,11,14 114:13 117:1 126:23 127:1 128:7 129:18 135:24 136:1,25 140:10 156:22 167:20,22</p>	<p>worked 9:25 22:15,17 22:24 148:21 151:15 153:16 workers 35:24 36:22 55:5 56:2 77:8 working 9:21 21:18 33:16 38:10 50:21 67:25 81:18 100:2,4 103:23 105:6 109:18 125:12 148:22 154:20,22 155:1 164:15 works 5:23 6:2 34:2 world 162:17 167:1 wouldn't 8:25 21:16 27:12 75:10 110:12 110:15 132:4 140:15 wound 127:21 write 2:23 103:7 writing 17:17,18 47:3 86:22,23 113:15 written 23:17 34:4 43:9 47:25 48:14,19 48:22 63:22 83:9 132:9 165:3 wrong 11:25 135:8 wrote 47:23 53:10 54:18 65:15,17 130:14 147:2 148:25 150:11 164:24 166:3</p> <hr/> <p style="text-align: center;">Y</p> <p>Yahoo 126:9,24 127:7 127:12,19,21,24 128:3,11,19,22 130:21 132:23 year 35:6,7 38:6 82:6 84:19 88:23,25 102:16 105:11,22 105:25 106:4,21 117:16 118:4 years 67:25 68:17 86:6 94:12,24 95:1 104:23 105:3,14 106:20,20 108:16 114:22 118:8,18,19 120:5 121:10 126:6 142:15 153:21 162:25 164:25 166:19 167:4,10 years/eleven 118:19</p> <hr/> <p style="text-align: center;">Z</p> <p>Zarnacks 74:15,19,22 74:22 zero 20:18 142:15 Zoom 1:5 4:9 Zuzana 30:8,9 32:20 75:3</p> <hr/> <p style="text-align: center;">\$</p> <p>\$100,000 27:10,21 28:10,11 \$12 109:2,2,3</p>	<p>\$3 163:14 \$39 105:3 109:4 110:1 \$39.5 103:24 104:15 106:11,17 107:16 108:4,13,24 109:18 109:20 110:9 \$40 161:13 162:25 163:22 165:20 \$9.96 121:14</p> <hr/> <p style="text-align: center;">0</p> <p>0 116:16</p> <hr/> <p style="text-align: center;">1</p> <p>1 3:3 167:6 1.00 29:23 1.04 31:9 1.1 66:16 10 37:8,20 38:10,16 39:24 40:1,11,20 42:10 43:25 93:14 10th 17:11 21:22 100 50:2,4 60:13 100% 74:14 100-page 60:15 11 45:25 11th 59:14 12 138:17,18 139:17 146:16 155:18 12th 60:23 12.00 169:21 12.06 1:3 12.20 9:12,18 12.54 27:18 12.59 29:5 13th 10:12 135:10 146:16 149:15 14th 157:18 15 80:17 15% 73:7 15-minute 141:9 158 3:14 16.3 53:11 55:7 17 50:12,14 65:24 1930s 159:17 1940s 159:24 160:5</p> <hr/> <p style="text-align: center;">2</p> <p>2 39:10 103:20 117:4,7 119:19 2nd 53:24 149:12,14 2.00 57:9 2.04 57:11 2.06 58:2 2.30 57:22 2.35 58:4 20 53:8,9 54:16 58:8 58:10 66:4,4 126:6 2004/2005/2006 93:8 2005 92:6 93:23 2005/2006 91:15 92:24 2006 93:23 105:15,20 107:24 108:5 109:21 110:3,5,7 159:24 160:3,11,12 163:8,16,21,23</p>
--	---	--	---	---	--

<p>164:3,8,14,18,22 166:6,10 167:15 168:11 2007 103:24 104:16 105:16,17 2008 93:1,3,5,16 94:1 94:14,19,19 95:15 95:16,16,25 96:1,10 96:12 136:8 2009 150:19 2009/2010 93:23 2010 14:17,20 15:4,13 17:11 18:8 19:16 21:8 22:22 26:6,14 84:19 85:3 86:2,11 86:16 88:17,20 89:4 89:12,15,19 90:4,9 90:18 91:4 93:10 95:16 104:6 105:18 106:23 107:1,3 111:1,15,21 116:10 118:12 119:8,14 138:20 149:8,23 150:13,18,24,25 152:7 153:17,20,24 154:24 157:23 163:13 2010's 106:9 2011 9:20 10:12 12:21 14:12 18:13,19 19:19 81:16,25 89:1 103:24 104:16,18 105:17,21 107:5 108:12,23 113:5,8 117:23 118:4 119:4 119:10 135:10 136:13,14,17 149:12 2012 84:18 85:3 87:22 88:3,23 89:10,13,19 90:4 101:9,12 114:2 114:13,15,22 116:13 117:14 118:14,25 121:11 121:17,24 122:5 123:4 124:13 128:17 131:19 132:10,21 133:14 149:14,15 151:9 157:18 160:22 164:25 165:7,22 166:3 2013 38:7,7,8 84:12 101:6,11,16 102:16 122:23 123:5,9 126:20,23 127:17 152:4,6 153:6 155:4 2014 50:15 53:10,24 55:13,17,24 58:11 59:14 60:23 75:7,24 96:10 139:17 140:4 140:9 146:14,16,25 147:7,14,16,17,17 147:19,22 153:22 154:23 155:11,18 2015 76:20,23 96:9 117:23 118:4 119:4</p>	<p>157:22,23 2016 96:9,16,20,22 97:1,6 98:3 125:13 126:8,8,17 2017 88:24 114:13,16 114:22 116:13 117:14 118:14,25 121:11,17 2021 1:7 1:1 21 59:11,11 62:22 22 60:21,22 62:23 23 64:11,12 23.1 23:11,14 25 53:18 54:20 55:3,9 55:19 58:14,22 66:9 25th 69:21 75:7,24 26 38:2 50:16 51:3 52:25 66:2,6,18 67:9 68:5,9 27 3:6 69:18,20 28 35:22,25 38:3 28th 1:7 1:1 29 3:7,8 29th 149:8 150:18,24 153:17,24 154:24</p> <hr/> <p>3 3 103:21 104:2 110:21 117:4,7,19 145:22 146:3 3.00 57:17 3.1 158:3 3.2 161:18 3.2.1 110:21,25 3.2.2 110:22 3.24 78:19 3.30 57:14 3.31 80:22 81:7 3.33 82:11 30 142:15 30% 104:3 108:19,20 108:22 109:1,4,19 110:14 31 3:9 33 11:22 35 109:4 39 110:1 39.5 110:16</p> <hr/> <p>4 4 2:6,6 80:20 104:2 114:12,13 117:7,7 121:6 146:4 149:4 4.04 99:7 4.15 80:17 4.34 99:8 4.35 99:9 40 120:15,16 163:2,3 167:4 40s 159:17</p> <hr/> <p>5 5 105:11 120:5 121:10 146:5 5.50 141:12</p>	<p>6 6 1:4 99:13 117:11,21 146:5 149:2 6.05 141:9 6.07 141:14 6.13 145:2 6.15 145:4 6.3 117:21 6.4 117:21 6.5 117:21 6.6 117:21 66 69:19</p> <hr/> <p>7 7 66:19 117:12,25 146:6 163:15 168:22 7.00 80:18 7.01 169:20 77 76:12 78 3:10</p> <hr/> <p>8 8 29:25 104:9 168:22 8th 122:5 124:13 8.15 38:21 80 3:11 81 3:12 82 3:13 85,761,624 50:19 89 134:6</p> <hr/> <p>9 9 3:4,5 53:10 83:23 84:10 120:11 9th 55:24 58:11 9,960,000 114:15 121:9 9-point-something 120:12 9.96 118:13 120:11,20 9.960.000USD 120:4 93 120:22 121:5 98 134:6</p>		
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