

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

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 8
Hearing on the Merits

Wednesday, 31st May 2017

Before:

PROFESSOR GABRIELLE KAUFMANN-KOHLER
PROFESSOR ALBERT JAN VAN DEN BERG
PROFESSOR PIERRE MAYER

(1) BSG RESOURCES LIMITED
(2) BSG RESOURCES (GUINEA) LIMITED
(3) BSG RESOURCES (GUINEA) SÀRL

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

M KAREL DAELE, JAMES LIBSON, DEEPA SOMASUNDERAM and KATY COLTON,
of Mishcon de Reya and DAVID BARNETT and GABRIELLE PELED, of
Barnea & Co, appeared on behalf of the Claimants.

MICHAEL OSTROVE, SCOTT HORTON, THÉOBALD NAUD and SÂRRA-TILILA
BOUNFOUR, of DLA Piper, LAURENT JAEGER and AGNÈS BIZARD, of
Orrick Herrington & Sutcliffe, and MOHAMED SIDIKI SYLLA, of Sylla
& Partners, appeared on behalf of the Respondent.

Secretary to the Tribunal: BENJAMIN GAREL
Assistant to the Tribunal: MAGNUS JESKO LANGER

Transcript produced by Trevor McGowan
Georgina Vaughn and Lisa Gulland
www.thecourtreporter.eu

ALSO APPEARING

FOR CLAIMANTS

JACK BURSTYN, Mishcon de Reya
GUSTAF BODIN, BSGR
FRANÇOIS FERREIRA, CFA

FOR RESPONDENT

ANDREA LAPUNZINA-VERONELLI, DLA Piper
CLÉMENTINE EMERY, DLA Piper
EUGÉNIE WROBEL, DLA Piper
YANN SCHNELLER, Orrick Herrington & Sutcliffe
QUIREC DE KERSAUSON, Orrick Herrington & Sutcliffe
VALÉRIE KUBWIMANA, Orrick Herrington & Sutcliffe
MARIUS ATTINDOGBE, Orrick Herrington & Sutcliffe

COURT REPORTERS

SIMONE BARDOT, French court reporter
CATHY LE MADIC, French court reporter
CHRISTINE ROUXEL-MERCHET, French court reporter

INTERPRETERS

SARAH ROSSI, French-English interpreter
ELIZA BURNHAM, French-English interpreter
JESUS GETAN BORNN, French-English interpreter

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09:30

1

Wednesday, 31st May 2017

2

(9.34 am)

3

THE PRESIDENT: (In English) Good morning to everyone. We

4

are starting the eighth day of this hearing. I hope

5

everybody is still doing fine.

6

We will start with the mini-openings as usual, and

7

I will turn to the Claimants first, of course. The

8

Tribunal has one point on its list, which are the

9

comments to the FBI declaration that was filed last

10

night as R-587, but you may have other points that you

11

wish to address as well on both sides.

12

Mr Daele, do I give the floor to you?

13

MR DAELE: Thank you, Madam President, dear members of the

14

Tribunal. I will pass the microphone to my colleague

15

James Libson, who will set out our points in relation to

16

your question.

17

MR LIBSON: Thank you. Thank you, Madam President, members

18

of the Tribunal. I want to deal with three points, if

19

I may, very briefly this morning.

20

First I will deal with the schedule of contracts and

21

the attestation that we looked at on the first day, and

22

on which our position on authenticity is indicated.

23

It's this schedule (indicating). It's a demonstrative.

24

(Pause) Okay, I'm not sure we need it on the screen.

25

But that's the first topic I want to talk about; the

09:37

1 second is the Martinez declaration you've asked us to
2 make comments on; and the third is the general issue of
3 the contracts and the correspondence between us and DLA.
4 So I will just deal with the schedule first, if I may.

5 You will recall that on Day 4 of the hearing we took
6 the position in relation to six of the documents to
7 which Pentler was a party that they weren't documents to
8 which our client was a party, and therefore we were
9 adopting a neutral stance in relation to them. They are
10 not, in the main, our client's contracts and they have
11 nothing to do with our client. They were not signed on
12 our client's behalf. But we were just not in a position
13 to help the Tribunal on them because they had not been
14 in our client's possession or even knowledge, so we just
15 took a neutral position. For this reason their
16 authenticity was deemed non-contested, but not accepted.

17 For reasons we can develop today, or preferably in
18 our post-hearing briefs, that position has changed in
19 light of Mr Tinkiano's evidence yesterday and the
20 authenticity of those documents is now challenged
21 forcefully. So where there's a "oui" in the final
22 column, that should now be a "non".

23 PROFESSOR MAYER: All of them?

24 MR LIBSON: All of them.

25 THE PRESIDENT: So these are the three first lines? It's

09:38

1 the last column and it's the three first lines; is that
2 right?

3 MR LIBSON: And the three last lines as well.

4 THE PRESIDENT: And the three last ones, absolutely. Thank
5 you. (Pause) The result is that you are challenging the
6 authenticity of all the contracts?

7 MR LIBSON: All the contracts. So the three that
8 Mr Tinkiano gave evidence on yesterday, and we say that
9 his evidence as to those contracts infects the
10 authenticity of the other contracts.

11 I don't intend to develop that further today because
12 I think that is for analysis of the evidence later.

13 THE PRESIDENT: Absolutely. Thank you.

14 MR LIBSON: The second point I want to address you on is the
15 Martinez declaration, Special Agent Martinez's
16 declaration. I have five brief points to make about the
17 declaration.

18 The first point is: we did not and do not challenge
19 its inclusion on the record. It is a very instructive
20 document and it is exceedingly helpful to my clients.
21 Our only objection over the weekend to its immediate
22 inclusion was that without an answer to our 28th May
23 letter on the documents, the letter to DLA, which I will
24 come on to, the record was partial and incomplete; that
25 the Martinez declaration doesn't stand alone.

09:40

1 The second point is that as you will see from the
2 declaration, if you could turn it up, if you look at the
3 first paragraph, you will see that the declaration is in
4 response to a request for information from DLA. Again,
5 if you look at the first paragraph and the penultimate
6 line, you will see that Special Agent Martinez says:

7 "I write this declaration in response to your
8 request for information ..."

9 My simple point is this: we would like to see the
10 request, in whatever form it exists, whether it's
11 a letter, email or an attendance note of the
12 conversation. As the Tribunal is aware, the issue in
13 relation to the documents is one of the most hotly
14 contested of this case and we make very serious
15 allegations against DLA about it. It is inconceivable
16 that they have not fully recorded their dealings with
17 the FBI on this matter, and we would like to see that
18 request.

19 The third point is that you will see in the second
20 paragraph, the big paragraph in the middle, that Special
21 Agent Martinez refers to, on the second line, "documents
22 at issue", and on the sixth line "the original
23 documents". These are non-neutral phrases. We don't
24 know precisely what documents are being referred to as
25 "documents at issue" or as "original[s]". We don't know

09:43

1 how Special Agent Martinez can know what the issues are
2 or what are originals, given what we now know about the
3 chain of custody of those documents. We think we are
4 entitled to more precision in the declaration for these
5 phrases to have any meaning at all.

6 My fourth point on this document is that it is
7 partial and should not be taken at face value. You will
8 see in the third and fourth lines of the second
9 paragraph the sentence that says:

10 "However, Frederic Cilins, whom BSGR hired to obtain
11 mining rights in Guinea and who pleaded guilty ..."

12 You see that sentence. And you see Special Agent
13 Martinez concluding that BSGR hired Pentler or Cilins to
14 obtain mining rights. This is not agreed and not proven
15 in any proceedings anywhere. He appears to have drunken
16 the DLA Kool-Aid, and the declaration should not be
17 viewed as an impartial statement of a unbiased officer.

18 Similarly he elides Cilins with BSGR at the end of
19 that paragraph by suggesting -- wrongly -- that Cilins
20 may have shared the results of his expert's testimony
21 with BSGR, which he didn't.

22 Remember, this is the same agent who attempted to
23 elicit allegations against BSGR from Mr Thiam during his
24 testimony, and I referred to that in my opening. He
25 failed to do so. But the reference for that is C-360.

09:45

1 My fifth and final point on the declaration is that
2 if you read the final paragraph:

3 "Second, in response to your questions related to
4 Ms Touré: (1) Ms Touré was not offered U.S. citizenship
5 in connection with the Department of Justice's
6 investigation; rather, the U.S. government deferred
7 action on Ms Touré's immigration proceedings to ensure
8 that she remained in the United States to provide
9 testimony as a witness; and (2) Ms Touré is not
10 currently under house arrest in the United States, and
11 is not facing any felony charges of which I am aware."

12 So it is silent on the issue of whether Madame Touré
13 can provide evidence in the proceedings.

14 What it does say as to her status appears to be
15 inconsistent with what Mr Ostrove said on Day 4 of this
16 hearing. On Day 4 (page 25, lines 2 to 4), Mr Ostrove
17 submitted that the Department of Justice:

18 "... are not allowing her [Madame Touré] to speak in
19 another case, a case other than the one that's under
20 criminal investigation in the United States."

21 Special Agent Martinez's declaration makes no
22 mention of this, instead stating that Mamadie Touré is
23 not currently under house arrest in the United States
24 and is not facing any felony charge of which he is
25 aware. So this of course begs the question of when she

09:46

1 was last under house arrest, why she cannot give
2 evidence in these proceedings, and what criminal
3 investigation Mr Ostrove was referring to on Day 4.

4 As this Tribunal knows, the non-appearance of
5 Madame Touré is a matter of some significance in this
6 case. The Tribunal, and we, are entitled to a proper
7 explanation. This is what Mr Wolfson requested almost
8 a week ago -- the reference to that is Day 4, page 25,
9 lines 11 to 25 -- and yet no explanation has been
10 forthcoming, despite the Respondent's clear line of
11 communication with the FBI.

12 So we are content for the declaration to be adduced
13 on the record. Our submission is that it should be
14 treated with extraordinary caution, and its real value
15 is in how it further undermines the positions that DLA
16 has adopted in relation to both the documents and
17 Madame Touré's presence -- or lack of presence -- here.

18 For DLA to repair the damage of its inclusion, it
19 needs, at the very least, to answer the questions about
20 the documents' provenance set out in our letter, which
21 I'm going to turn to; disclose their communications with
22 the FBI; and come clean on the current true position
23 with Madame Touré.

24 So the final topic I want to turn to, if I may, is
25 the documents. As I will say later, I regret having to

09:48

1 bring this up in front of the Tribunal. We had hoped
2 that this would be resolved in correspondence with DLA,
3 but it hasn't been, and it's a matter of some concern
4 for our clients.

5 I hope you will have had a chance to read our
6 [28]th May letter and the following correspondence.
7 Regrettably, we make some very strong allegations that
8 have only been compounded by events since, including, as
9 I have mentioned, the Martinez declaration and
10 Mr Tinkiano's evidence yesterday.

11 I will be accused, no doubt, of not understanding
12 international arbitration, but I am bound to say that in
13 the forums with which I am more familiar, the response
14 by the recipient of the letter such as the one we wrote
15 over the weekend to such serious allegations would have
16 been instant. Judges in the English High Court would be
17 issuing warnings about the lawyer's duty to the court
18 and the regulator's authority would be invoked.

19 But I am told that arbitration is self-regulating
20 and it relies upon a code of honesty and probity amongst
21 its practitioners that obviates the need for regulation
22 of conduct in the cut and thrust of adversarial
23 litigation. However, we are now seven days into the
24 hearing of this matter and issues of fundamental
25 importance to this case that can only be clarified with

09:49

1 a full explanation by Mr Ostrove remain, to put it at
2 its lightest, unclear.

3 We are left in the unsatisfactory and unfair
4 position where my client does not know the case that is
5 being made against it and that one of its witnesses,
6 Mr Struik, had documents put to him that are the basis
7 of accusations of his corruption when the provenance of
8 those documents had not been properly explained. The
9 same is about to happen tomorrow. This has compounded,
10 and will continue to compound, the grave prejudice faced
11 by our clients following the partial disclosure by the
12 Respondent in its Redfern schedule, as referred to in
13 our letter.

14 There's no getting round the fact that the current
15 record in this arbitration contains statements and
16 submissions from Mr Ostrove that are demonstrably
17 untrue, and that he must have known were untrue when he
18 made them. We have set it out in our letter, but on
19 four separate occasions Mr Ostrove, knowing that he had
20 received the originals, whatever they are, from Guinea,
21 and that he had scanned them in and sent them to the
22 FBI, says that Madame Touré gave them to the FBI direct.

23 To highlight how stark the prejudice is I want to
24 refer to just one example from our letter. It's on
25 page 2 and it's subparagraph (b).

09:51

1 THE PRESIDENT: Just to make sure, this is your letter of
2 28th May?

3 MR LIBSON: Yes, it is. Sorry, I said the 25th, I think.

4 THE PRESIDENT: Yes.

5 MR LIBSON: I'm sorry.

6 THE PRESIDENT: This is one that was communicated to us,
7 yes.

8 MR LIBSON: Yes, it is.

9 THE PRESIDENT: Thank you.

10 MR LIBSON: On Day 4 Mr Ostrove was in discussion with
11 Professor van den Berg about the documents being
12 referred to in the Cilins transcripts. Professor van
13 den Berg enquires about Madame Touré's statements that
14 she had control of the documents but they are not with
15 her, and Mr Ostrove says (page 20, lines 10 to 11):

16 "Yes, of course, because it was the FBI who held the
17 originals."

18 This isn't true. It wasn't true at the time, and
19 Mr Ostrove must have known this. We have no idea when
20 he did send the originals to the FBI, but we know that
21 it must have been after July 2013 at the earliest,
22 because the Department of Justice at this date said that
23 it did not have and never had had in its possession the
24 original contracts. We know this because Mr Cilins
25 issued a motion to compel the disclosure of the original

09:52

1 documents in his criminal proceedings, and the defence
2 to that motion from the Department of Justice was that
3 it did not have and has never had those documents in its
4 possession; and that defence to that motion was put in
5 on 30th June 2013.

6 You will recall that the discussions between
7 Mr Cilins and Madame Touré which Professor van den Berg
8 was asking about were taking place in March and
9 April 2013. So the FBI did not have the originals when
10 Mr Cilins was speaking to Madame Touré in March and
11 April 2013. We don't know who did, but Mr Ostrove does.

12 As I have said, in the jurisdictions I am more
13 familiar with, Mr Ostrove's current position would have
14 been met with the strongest sanctions available. We
15 deliberately have not invoked your authority until now,
16 hoping that the issue between us and DLA would be
17 resolved without the Tribunal's intervention. But I am
18 now asking for your assistance in getting us a full and
19 frank explanation, on the record, of the inconsistencies
20 we have identified, and for that explanation to be made
21 before the second witness who is accused of corruption
22 on the basis of documents Mr Ostrove has had control
23 over, and about which we say this Tribunal has been
24 misled, is cross-examined, and that's Mr Avidan
25 tomorrow.

09:54

1 Thank you. Those are my submissions for this
2 morning.

3 THE PRESIDENT: Thank you.

4 Can I turn to the Respondent. Maître Jaeger.

5 MR JAEGER: (Interpreted) Thank you, Madam President. Yes, I
would like

6 to make comments on Christopher Martinez's statement,
7 Christopher Martinez, special agent of the FBI, dated
8 May 26th 2017, Exhibit R-587.

9 This document is interesting in several respects for
10 the Tribunal. It deals with documents that were entered
11 into between Mrs Mamadie Touré on the one hand, Pentler
12 and BSGR on the other hand, and the Tribunal has copies
13 of these documents.

14 BSGR has changed position several times with respect
15 to the documents signed by Pentler. First they
16 challenged the authenticity of these documents, as you
17 will recall. They subsequently recalled or recognised,
18 based on Mr Noy's statement, who confirmed that these
19 documents were authentic. I don't have the exact number
20 of the exhibit, but it's in the Reply of BSGR. And now
21 we are having a third turnabout: BSGR is now again
22 challenging the authenticity of the documents signed by
23 Pentler, but we don't know why. Consequently, we cannot
24 respond to this new challenge.

25 Regarding the documents to which BSGR is a party,

09:56

1 there is no change. BSGR has always challenged the
2 authenticity of these documents. The main documents --
3 THE PRESIDENT: I apologise for interrupting. You say you
4 don't know why the documents are again challenged today.
5 It was my understanding that it was following the
6 testimony of Mr Tinkiano.

7 MR JAEGER: Indeed, but we don't know why. I was present
8 yesterday and never heard anything said by Mr Tinkiano
9 that would constitute grounds to challenge the
10 authenticity of the documents signed by Pentler. So
11 today I do not know why they are changing their position
12 on this point.

13 Regarding the BSGR documents, we have two main
14 documents, those dated 27th and 28th [February] 2008,
15 these are documents in which BSGR is granting a 5%
16 interest in BSGR Guinea to Mrs Touré and is granting her
17 a commission of \$4 million, two for herself and two to
18 be apportioned according to the wording used in the
19 letter to persons of goodwill.

20 These documents have always been challenged, and
21 here it is worthwhile looking at Agent Martinez's
22 statement. He provides various elements of information.

23 PROFESSOR VAN DEN BERG: We have two different dates in the
24 French transcript and the English transcript, and yet
25 again a different date that you gave. If I understood

09:58

1 correctly, you talked about 27th and 28th February 2008.

2 The transcripts don't have that date.

3 MR JAEGER: Yes indeed, and we need to correct this. In the

4 transcript we have 27th and 28th May.

5 PROFESSOR MAYER: It was R-28 and R-29, to avoid any kind of

6 mistake.

7 MR JAEGER: To be precise, BSGR's recognition of the

8 authenticity of the documents entered into by Pentler is

9 to be found in paragraph 32 of [Annex 1 to] their Reply,

10 in which they say, at the end of paragraph 32:

11 (In English) "However, Mr Noy has subsequently

12 confirmed that they are genuine."

13 (Interpreted) I would like to return to the BSGR

14 documents. What is interesting -- and the Tribunal

15 knows this today. The Tribunal has copies of these

16 documents, copies that are being challenged by BSGR.

17 The circumstances surrounding these documents appear to

18 us, and the Republic of Guinea, sufficient to establish

19 their authenticity.

20 You will recall that in March 2008 Pentler sold its

21 interest to BSGR on the basis of an agreement according

22 to which BSGR was to take over the full responsibility

23 for local consultants, and that is precisely what these

24 documents say, the documents dated 27th and

25 28th February [2008].

10:01

1 Just as a reminder, the payments as set out in these
2 documents were carried out through the businessman
3 Mr Boutros, and that subsequently -- let me put it this
4 way, to be more precise -- the interest granted to
5 Mrs Touré on the basis of these documents was then
6 bought back by BSGR for \$4 million, and we have found
7 evidence of these payments of \$4 million through the
8 intermediary, Mr Boutros.

9 So there's a whole series of circumstances clearly
10 showing that those contracts entered into by BSGR and
11 Madame Touré were indeed signed and implemented, and it
12 would be in vain to challenge the authenticity thereof.
13 So for the time being, BSGR seems to be content
14 challenging the authenticity, but with no evidence.

15 May I remind you that in these arbitral proceedings,
16 at no time has BSGR put in a request to have those
17 documents forensically examined. It never asked the
18 Republic of Guinea -- or this Tribunal, for that
19 matter -- to organise a forensic examination of those
20 documents.

21 So when a challenge is put forward as regards the
22 authenticity of some documents, some evidence must be
23 given. BSGR hasn't made the slightest effort to prove
24 that authenticity, which would make one think that they
25 don't actually want a forensic examination to be carried

10:02

1 out, and I shall be telling you why.

2 In Mr Martinez's statement it's mentioned that
3 Mr Frédéric Cilins did appoint an expert in the United
4 States to carry out a forensic examination of those
5 documents, and these documents were indeed examined by
6 the expert chosen by Mr Cilins. And it was in
7 Mr Cilins's interest to show that those documents were
8 forged because if he had been able to do that, to the
9 American authorities then he would have been able to
10 say, "Well, I didn't try and destroy any evidence,
11 I tried to destroy fakes". Destroying fakes is much
12 less serious than destroying authentic documents.

13 So Mr Cilins appointed an expert in the hope of
14 showing that they are fakes. And then what happens? He
15 doesn't produce the report of his expert to American
16 justice and he pleads guilty, which is a very strong
17 indication that Mr Cilins, having examined the
18 conclusions of his expert, decided that those
19 conclusions would not make it possible for him to say
20 that the documents were fakes. That we know today.

21 So this is a very interesting piece of information
22 because it does explain why BSGR, in these arbitral
23 proceedings, has refrained from asking for the
24 appointment of an expert to review the authenticity of
25 these documents.

10:04

1 It is also indicated that the Department of Justice
2 appointed that expert in order to forensically examine
3 the contracts, and it's been indicated that it hasn't
4 been felt necessary to produce that report within this
5 procedure because Mr Cilins pleaded guilty and therefore
6 that report had become useless. One could always think
7 that if the conclusions of the expert appointed by the
8 Department of Justice had been that the documents were
9 forgeries, such information would have been revealed.

10 Therefore the elements available to us thanks to
11 this statement corroborate the authenticity of the
12 documents of which you have the copies today.

13 Now the second subject dealt with by Mr Martinez:
14 the status of Madame Touré. You may remember that
15 Mr Steinmetz, in the course of his examination, had
16 asserted on the one hand that she was offered American
17 nationality in exchange for her testimony. Well, that
18 is not true. That is false. Mr Martinez clearly
19 indicates that she was never offered American
20 nationality; and that, on the contrary, today she has
21 not been allowed to leave the territory of the United
22 States of America, so that she may be heard by American
23 justice as a witness. (Pause)

24 My colleague Michael Ostrove has corrected me,
25 because apparently I did not exactly convey what was

10:06

1 said.

2 According to Agent Martinez, in any case, the
3 American authorities are trying to make sure that
4 Madame Touré will remain in the United States, with
5 a view to a possible testimony by her in a procedure on
6 come, a procedure which today we do not know what shape
7 it will take.

8 Moreover, Mr Steinmetz also indicated that Mamadie
9 Touré was under house arrest, and that is also false.
10 She is not under house arrest. And she has not been
11 charged with a felony either. But there again, the
12 assertion according to which she had been charged with
13 felony -- this is what Mr Steinmetz said -- is false.
14 So this is the information given by Mr Martinez.

15 Now a couple of words -- really just a couple of
16 words, because I don't want to take up too much time --
17 on the question put by BSGR as to the forwarding of
18 these documents, to which BSGR seems to be attaching
19 disproportionate attention, at least within the
20 framework of this procedure.

21 We are not in an American criminal investigation.
22 This is arbitral proceedings. The Tribunal has
23 discretion, obviously, to pass judgment on the validity
24 of the evidence submitted to it, and how that evidence
25 is forwarded is only of relative importance.

10:08

1 However be that as it may, you will see in the
2 documents that BSGR transmitted to us last night and
3 that it wishes to produce, you will see simply that the
4 information according to which the FBI and the
5 Department of Justice of the United States did not have
6 the originals of these documents in the month of
7 July 2013 was known; this was in the public domain.
8 BSGR must have known this. Therefore BSGR didn't
9 discover in the case of these arbitral proceedings that
10 those documents had not been in the possession of the
11 American authorities, but they were at the time in the
12 possession of the Guinean authorities.

13 It's only afterwards, in the month of August 2013,
14 that the Guinean authorities transmitted the originals
15 of these documents over to the American authorities,
16 through the FBI. This took place in August 2013, when
17 those documents were transmitted to the United States.
18 Nothing mysterious to that. This was done under the
19 aegis and under the control of the judicial authorities
20 of the United States of America. Consequently, the
21 attempt by BSGR to dramatise that particular element of
22 information and to turn it into an element of suspicion
23 casting doubt on the authenticity of the documents is
24 perfectly vain.

25 That is the end of my observations. I'm sure that

10:10

1 we will be getting back to this in a more detailed
2 manner once we have had a clear vision of BSGR's
3 position on these subjects.

4 THE PRESIDENT: Thank you. (Pause)

5 The Tribunal should like to thank you, sir, for your
6 explanations. We shall consider them during one of the
7 breaks, and if there is reason to come back with some
8 specific questions, we shall be putting them to you when
9 we meet at that point.

10 MR JAEGER: Madam President, if I may, both parties today
11 have spoken about documents that BSGR offered to produce
12 last night, but which have not yet been produced before
13 the Tribunal.

14 THE PRESIDENT: I have heard about that indeed. I think
15 that there was an exchange [last] night. I don't know
16 whether there is a request to produce documents or not.

17 MR JAEGER: Yes, there is a BSGR request, with which we
18 agree, madam. We agree to produce these documents.

19 THE PRESIDENT: (In English) So, Mr Libson, we understand
20 there has been an exchange of documents overnight and
21 the parties are in agreement to file certain documents;
22 is that correct?

23 MR LIBSON: Yes, it is.

24 THE PRESIDENT: So they are related to this issue of the
25 original contracts?

10:12

1 MR LIBSON: They are the motion to compel that I was
2 referring to.

3 THE PRESIDENT: That is the motion to compel that Mr Cilins
4 filed in the US?

5 MR LIBSON: And the government's defence to that, and the
6 decision emerging from that.

7 THE PRESIDENT: Saying that it did not have the documents.
8 And that you said was on 30th June 2013?

9 MR LIBSON: Yes.

10 THE PRESIDENT: Yes, fine. So --

11 MR LIBSON: Madam President, can I just respond to one point
12 in Mr Jaeger's submissions?

13 THE PRESIDENT: Yes. Just to finish about this motion to
14 compel, if it is agreed between the parties, you may of
15 course file it, and the sooner we have it, the better,
16 because when we discuss these issues we can consider it.
17 If there is a short reply to one of the points.

18 MR LIBSON: I am just going to refer you to our letter,
19 because Mr Jaeger made the point that we had not sought
20 to have the documents forensically examined, but we made
21 requests for the documents in our Redfern schedule. If
22 I can ask you to read page 4 of our letter, which sets
23 out the Redfern requests in relation to this.

24 THE PRESIDENT: Yes, we've seen that.

25 (Interpreted) No additional comments on this point

10:13

1 by Guinea?

2 MR JAEGER: My only comment is that you will see that the
3 request for the document in the Redfern schedule is put
4 in rather vague and general terms, and therefore does
5 not respond to the point that I was making earlier,
6 i.e. that at no time in the course of these arbitral
7 proceedings has BSGR asked for a forensic examination of
8 the documents to be carried out.

9 THE PRESIDENT: Yes, indeed that was a request for
10 communication, not a request for forensic examination;
11 we have understood that.

12 (In English) It's not in issue that you requested
13 communication of the documents, but you have never asked
14 for a forensic expert review of the authenticity of the
15 documents; is that right?

16 MR LIBSON: Well, we cite two requests. 36(a):

17 "Documents between January 2011 -- June 2016
18 relating to:

19 "(a) Seeking, obtaining and considering evidence
20 from Mamadie Touré and/or her husband A Cissé ..."

21 Then at 33 we ask for all the documents on which the
22 Technical Committee relied, which includes the
23 originals. All of the documents at issue were in front
24 of the Technical Committee.

25 THE PRESIDENT: Thank you.

10:15

1 Fine. Can we close the mini-openings with this, and
2 proceed to hear the next witness? (Pause)

3 (Interpreted) I would only like to make sure we have
4 concluded the mini-openings, in which case we will need
5 a short break in any case in order to proceed to the
6 witness. Anything else from the Respondent?

7 MR OSTROVE: Madam President, we had foreseen in
8 mini-opening the spirit of what Professor van den Berg
9 had proposed, i.e. to situate the witness's testimony
10 for today, but we have wasted a great deal of time on
11 these issues. I don't know now how you wish to proceed,
12 Madam President. I am entirely in your hands.

13 THE PRESIDENT: It is true that there has been a change in
14 the nature of mini-openings in connection with the
15 original definition we had tried to give these
16 mini-openings; but arbitral proceedings are a living
17 thing, aren't they, so there's no problem with this.
18 But I do see, according to time, what is it that we
19 could do.

20 MR OSTROVE: Well, since this is not going to have any
21 impact on Mr Bouna Sylla, we can see how long that would
22 take, and it could be done between Mr Sylla and
23 Mr Nabé's testimonies.

24 THE PRESIDENT: Yes, that seems reasonable to me.

25 (In English) It's a good suggestion. Mr Ostrove had

10:17

1 prepared a mini-opening in the spirit of what we had
2 initially said, which was a presentation of the evidence
3 to come. Now we spend time on procedural matters, that
4 are of course important matters, so we should spend
5 time. But we suggest that we now proceed with the first
6 witness, with Mr Bouna Sylla, without listening to this
7 mini-opening, and then we see where we stand, as it
8 appears to have no impact on this witness, but possibly
9 on others. Is that agreed?

10 MR DAELE: Yes, that's fine.

11 THE PRESIDENT: Fine. So we will now hear Mr Bouna Sylla,
12 and while we are getting ready for the witness, the
13 French court reporters can relaunch the system.

14 (Pause to resolve a technical problem
15 with the French realtime)

16 (10.24 am)

17 MR BOUNA SYLLA (called)

18 (Evidence interpreted)

19 THE PRESIDENT: (Interpreted) Good morning, sir.

20 MR SYLLA: Good morning, madam.

21 THE PRESIDENT: For our record, sir, would you confirm to us
22 that you are Bouna Sylla?

23 A. Yes, I am Bouna Sylla.

24 THE PRESIDENT: At present you are economic and tax advisor
25 to the Ministry of Mines?

10:26

1 A. Yes, madam, I am.

2 THE PRESIDENT: You have submitted a written testimony dated
3 31st March 2017?

4 A. Yes, madam.

5 THE PRESIDENT: You have your witness statement before you?

6 A. Yes, I do.

7 THE PRESIDENT: You are going to be heard as a witness. As
8 a witness, it is your duty to tell the truth. Could you
9 please confirm that that is your intention by reading
10 the witness declaration that you have before you.

11 MR SYLLA: I solemnly declare upon my honour and conscience
12 to tell the truth, the whole truth, and nothing but the
13 truth.

14 THE PRESIDENT: Is there a minor technical problem still?

15 (Pause to resolve a technical problem
16 with the French realtime)

17 THE PRESIDENT: The question I put to you, Mr Daele, because
18 you are the one who is in charge of the
19 cross-examination: are you content to continue without
20 the French transcript in real time?

21 MR DAELE: (Interpreted) Madam, I don't know how long this
22 will take, to solve the problem. Since it is a rather
23 busy day, I think that we should continue; on condition
24 of course, as you have said, that there is a sound
25 recording.

10:29

1 THE PRESIDENT: Well, yes. Mr Secretary, there is
2 absolutely no doubt that we both have sound and a video
3 recording?

4 MR GAREL: Yes, everything is recorded twice.

5 THE PRESIDENT: Everything is recorded twice.

6 So, Mr Daele, this is my suggestion to you: please
7 commence, and if you find that the absence of a French
8 transcript creates a problem, you tell us.

9 MR DAELE: Well, it's not particularly for today, but later.

10 THE PRESIDENT: No, obviously this is going to have to be
11 settled by the next break.

12 MR DAELE: No, I meant, madam, after the hearing. I just
13 want to make sure that there is a recording, that there
14 shouldn't be any challenge later as to the exact content
15 of the testimony given by Mr Sylla. That is the only
16 guarantee I'm seeking.

17 MR GAREL: Well, the court reporters will be correcting the
18 transcript with their recordings.

19 THE PRESIDENT: Then we will see. Because if there's no
20 transcript in French --

21 MR GAREL: The court reporters shall do that on the basis of
22 the sound recording. It won't be a live note, but it
23 will be done on the basis of the sound recording.

24 THE PRESIDENT: Very well then. On that basis, let's
25 continue, if you have no objections.

10:30

1 MR DAELE: None whatsoever.

2 THE PRESIDENT: Very well. Let me call first of all on the
3 representatives of Guinea for introductory purposes, and
4 then we shall move over to the BSGR counsel.

5 Mr Ostrove.

6 MR OSTROVE: Thank you very much indeed, Madam President.

7 (10.31 am)

8 Direct examination by MR OSTROVE

9 Q. Good morning, Mr Sylla. Would you kindly turn your
10 microphone on, please. I would just have a few general
11 questions on your witness statement to begin with.

12 You say in your witness statement in paragraph 14,
13 or beginning with paragraph 14, that you did not take
14 part in the work of the committee that had been
15 entrusted with reviewing the feasibility study within
16 the framework of the negotiations for a mining agreement
17 over Zogota in 2009, if I understood you correctly.

18 So one question: in the course of your career within
19 the Guinea administration, did you ever take part in
20 these review committees, feasibility studies and mining
21 agreements?

22 A. Yes, several times.

23 Q. How many times, more or less?

24 A. Oh, some ten times at least.

25 Q. Would you describe to us what is the process that

10:32

1 regularly these committees go through?

2 A. Yes. Generally what happens is that the holder of
3 a prospection permit, when he finds a deposit that is
4 economically available, he has a feasibility study made,
5 including geological, technical, mining, environmental,
6 economic and financial aspects, and that particular
7 study is submitted to the mining administration for it
8 to be examined by the administration. Once that
9 feasibility study has been submitted and reviewed, and
10 a favourable opinion has been given on it, negotiations
11 commence with the holder of the title with a view to
12 granting a mining convention or an exploitation title or
13 a production title.

14 Q. You say that once a favourable opinion has been given;
15 who gives the favourable opinion?

16 A. It is all of the technical departments of the Mining and
17 Geology Ministry, all of the technical departments plus
18 the counsellors or advisors who analyse. Each of them
19 receives this feasibility study individually, so they
20 have several weeks to consider it. Then there is
21 a meeting of everybody: it could last two/three days,
22 even longer, depending on the nature of project. And
23 then there's a recommendation from that committee that
24 is submitted to the Ministry of Mines and which is then
25 transmitted to the investor.

10:34

1 Q. What is the role of the CPDM in this whole process?

2 A. The CPDM is the one-stop window for the mining
3 administration. They are the ones in charge of
4 receiving all of the applications for research permits.

5 Q. What is therefore the role of the CPDM in the course of
6 the study of the feasibility study, the review of the
7 feasibility study?

8 A. In that process the CPDM, like all the technical
9 departments, the National Director of Mines, National
10 Director of Geology, all of the technical and mining
11 services, technical people, all of them together, they
12 all get the feasibility studies and then they meet in
13 a preliminary to analyse it and to put forward
14 observations or recommendations for the benefit of the
15 minister.

16 Q. Then does it play a role or not in the committee that is
17 set up?

18 A. Yes, the members of the committee, like all of the other
19 services that I have described to you, and it's
20 a technical department like all the other technical
21 services.

22 Q. In your experience, sir, what is the duration of such
23 a process, such a review committee that studies the
24 feasibility studies and negotiates mining agreements?

25 A. Well, as I was saying earlier, generally analysing the

10:35

1 feasibility studies means that you receive the study
2 a few days or a few weeks in advance, so that the
3 administration can become aware of the contents fully,
4 and then everybody gets a copy of the feasibility study
5 and they carry out their own individual analysis. Then
6 everybody gets together for a collective analysis and
7 there may be some specific questions that can be put,
8 for instance, to the investor, asking him to go back
9 over a few areas that perhaps may not have been clear.

10 In the end, when the feasibility study is approved
11 by the ministry -- and this could take one week, two
12 weeks or a month. In general, it's three weeks to four
13 weeks to review the whole of the feasibility study. And
14 at times, because of the complexities of these projects,
15 you need to get some advice, for instance, on the
16 analysis of a financial model; you could ask for some
17 external consultants to come in to let us know whether
18 the project is indeed viable, whether the sharing of
19 income between the Guinean State and investors is well
20 balanced. So it has to then begin the negotiations with
21 a view to the mining agreement.

22 To give you an example, right now we are negotiating
23 with an investor on a bauxite and aluminium mining
24 project. Negotiations started in 2016, in September
25 2016, and to date we are still in negotiations with this

10:37

1 investor over the mining agreement.

2 Q. So just for the negotiation of the mining agreement,
3 generally speaking, how long would that take?

4 A. Ever since I've been in the mining administration, the
5 mining agreements that I have been involved with have
6 taken several months of negotiations.

7 MR OSTROVE: Thank you very much. I have no further
8 questions.

9 THE PRESIDENT: Thank you.

10 Mr Daele.

11 MR DAELE: First of all, I am rather surprised at the way in
12 which this direct examination has been developed,
13 because this is not really to be found in the witness
14 statement. In my opinion, this is new testimony on
15 usual practices in negotiating mining agreements, and
16 Mr Sylla never made a statement on that in his own
17 witness testimony. So I would have preferred having
18 that statement included in the witness statement, so
19 that we could have prepared ourselves for that and
20 checked whether Mr Sylla really did clearly explain
21 present practice.

22 Having said that, I should now like to commence with
23 the cross-examination that I had prepared. But I wanted
24 to note that point first.

25 THE PRESIDENT: I do take note of that point.

10:39

1 Does the Respondent wish to answer? Obviously in
2 Procedural Order No. 1 we have a definition of what the
3 direct examination entails.

4 MR OSTROVE: Yes, of course, Madam President, and if my
5 colleague had an objection, I would have preferred for
6 that objection to be voiced during my direct examination
7 and not putting in a plea afterwards.

8 But we do have the possibility of asking questions
9 in light of things that have happened in the hearing so
10 far, and there was Mr Struik's testimony as to the way
11 in which all of this was done. We didn't want to put
12 Mr Struik's testimony to Mr Sylla; that would not have
13 been fair. So I just asked the question to provide
14 a context, in light of what we have already heard in the
15 course of the arbitral proceedings so far. If
16 I overstepped the limits, my apologies, madam.

17 THE PRESIDENT: It is true that among the goals of direct
18 examination, there is the goal of responding to some
19 assertions that were made after the presentation of the
20 written testimony. May we proceed on that basis,
21 Mr Daele? I had understood it was a point that you were
22 making, but not really an objection.

23 MR DAELE: Well, it is nonetheless an objection, madam.

24 THE PRESIDENT: Ah, it is an objection. So what do you
25 want?

10:40

1 MR DAELE: Well, in his testimony, madam, there is
2 absolutely nothing about the way in which mining
3 agreements are negotiated. The whole process of
4 analysis of a feasibility study, this is not in the
5 witness testimony.

6 THE PRESIDENT: Let's then see Procedural Order No. 1 and
7 look at the terms of the Procedural Order specifically.
8 This is paragraph 18.15.2. I have it in English in
9 front of me:

10 (In English) "... may briefly examine the witness
11 for purposes of asking introductory questions, including
12 to confirm and/or correct that witness's written
13 statement, and to address facts which have arisen after
14 such statement was drafted ..."

15 (Interpreted) Therefore your opponent is saying that
16 the questions he put fall within the second possibility.
17 Do you wish to address that matter, sir?

18 MR DAELE: Could I go back to this perhaps tomorrow? If
19 I maintain my objection for the time being. I am just
20 lodging a provisional objection. But I have heard that
21 the [Respondent] would say that this is in reference to
22 something Mr Struik said; well, then I should be given
23 the possibility of reading what Mr Struik said about
24 that in order to be able to give you a final answer.

25 THE PRESIDENT: I think that's a very reasonable way of

10:42

1 proceeding indeed.

2 MR DAELE: Now I'm thinking about it, because tomorrow we
3 have Mr Asher Avidan. So could I reserve my position
4 until Friday, instead of tomorrow? Because I do not
5 think this is going to have an influence on what will be
6 happening today.

7 THE PRESIDENT: The only thing is that if the objection is
8 kept and accepted, then that part of his testimony would
9 not be on the record. Would that have an influence on
10 what comes later?

11 MR DAELE: Could I ask nonetheless a few questions about
12 what I have just heard? Because if I no longer keep my
13 objection, then I would have forfeited the opportunity
14 of asking some questions.

15 THE PRESIDENT: Yes, of course it's a dilemma. Go ahead and
16 ask the questions that you think you should put.

17 MR OSTROVE: I'm sorry, Madam President, your microphone
18 wasn't on when you were speaking to my dear friend. But
19 I am rather confused, because if Mr Daele now wishes to
20 ask a few questions, listen to the answers, and then
21 decide later, if he doesn't like the answers, that he
22 will keep his objection so as to avoid that being part
23 of the record, this is a way of proceeding that I have
24 not seen in any arbitral proceeding in which I have been
25 involved.

10:44

1 The thing is that when you start your direct
2 examination, if there's an objection to be made, it
3 should be made at that point, and not later simply
4 because you didn't like the answer. So I would have my
5 own objection to the objection that may be lodged by my
6 opponent. Thank you, madam.

7 (The members of the Tribunal confer)

8 THE PRESIDENT: Mr Daele, I think that you may ask your
9 questions provisionally, and if there is an objection at
10 a later stage, we'll see how we deal with this.

11 MR DAELE: Thank you very much.

12 (10.45 am)

13 Cross-examination by MR DAELE

14 Q. Good morning, Mr Sylla.

15 A. Good morning.

16 Q. Sorry for not introducing myself because of this little
17 incident. My name is Karel Daele, I'm one of the
18 lawyers for BSGR.

19 I am going to try and examine you in French,
20 although it is not my mother-tongue. I am going to try
21 and say "vous" to you as much I conceivably can, but if
22 I lapse into "tu", please forgive me.

23 A. No problem.

24 Q. It's not because of lack of courtesy or respect for you.
25 It is not always easy to examine somebody in a language

10:46

1 which is not one's own and one's mother-tongue; mine, in
2 other words. Forgive me.

3 I am going to try and following the chronology of
4 your witness statement. When I refer to numbers, they
5 should correspond to the numbered paragraphs as you have
6 them in front of you.

7 You say in paragraph 8 that you were appointed in
8 January 2009. Who appointed you?

9 A. The President, that is Camara, who was President of
10 Guinea at the time.

11 Q. If I understand you rightly, it was your first
12 professional job, to put it this way; before that, you
13 were a student?

14 A. No, it's not my first professional job. In the
15 administration, yes, it's my first job, but it's not my
16 first professional job.

17 Q. I see. In paragraph 5 you explain that you were also
18 the legal counsel in the company: was that your first
19 job, under paragraph 5?

20 A. Yes.

21 Q. Then under paragraph 10 you immediately start speaking
22 of the assassination attempt on 3rd December 2009.
23 Between the beginning of your responsibility as economic
24 advisor to the President, the time when you were
25 appointed in January 2009, and December 2009, had you

10:49

1 been involved in commissions for the review of
2 a feasibility study?

3 A. First of all, I wasn't an economic advisor; I was
4 economic and tax advisor. And I took part in the
5 negotiation of one investment agreement, no feasibility
6 study.

7 Q. So at that time you didn't have any experience of this
8 type of review or this type of negotiation for a base
9 convention?

10 A. No, not for a base convention, but an investment
11 agreement covering mining aspects.

12 Q. And this related to what company?

13 A. China International Fund; CIF, as it's called currently.

14 Q. Following the incidents on 3rd December 2009, did the
15 minister stay in place?

16 A. Yes. Following the incidents of 3rd December 2009, the
17 assassination attempt, the minister stayed in place.

18 Q. Did the government still operate at this stage?

19 A. "Operate"? I don't know. But at least it's not the
20 impression that I had, as a citizen, of that period.
21 And I say "as a citizen", I insist.

22 Q. So you are saying that as a citizen. You were still
23 a civil servant, were you not?

24 A. Yes, I was -- well, I was a civil servant -- no. I was
25 in the administration, I was appointed, but I was not

10:51

1 a civil servant.

2 Q. Yes, but you still had a function in the administration,
3 the Guinean administration?

4 A. Yes, I did have a function in the Guinean
5 administration, but I wasn't paid as a civil servant.
6 I got premiums or bonuses as a member of the Cabinet of
7 the President of the Republic.

8 Q. Under paragraph 13 you say that you were travelling
9 outside of the country when the incident, or the
10 assassination attempt against Mr Camara, took place. Do
11 you remember exactly when you left the country?

12 A. I can't give you the exact date. But I was in Dakar,
13 that's what I can tell you, but I can't tell you that it
14 was this particular day or that particular date.
15 I can't remember.

16 Q. It was a few days, several weeks, or one month you had
17 been gone?

18 A. It was less than ten days.

19 Q. Less than ten days?

20 A. Less than ten days.

21 Q. You say in the same paragraph that there were flights
22 when they resumed. Do you remember when you flew back?

23 A. Well, when the President was shot at, some airline
24 companies interrupted their flights to Guinea until the
25 situation got back to normal, or to a safer state. And

10:53

1 when the flights resumed from Dakar to Conakry, the
2 airline that I was travelling on resumed its flights, it
3 must have been around the 7th or 8th or 9th, about three
4 or four days after the assassination attempt of
5 President Dadis.

6 Q. So at that time at least, the airlines felt that the
7 safety situation in the country was back to stability?

8 A. For air transport, yes. For air transport, yes. Not
9 the entire situation. I don't know. But as far as
10 flights were concerned, the airline considered that it
11 could resume its flights to Guinea.

12 Q. For air transport, but also tourism and business life,
13 et cetera? Because you need people on your planes,
14 surely.

15 A. I don't know. Even in countries such as yours, where
16 the institutions are very solid and have been there for
17 centuries, I don't know if after the President of the
18 Republic has been the subject of an assassination
19 attempt, you can resume business in the following week.
20 That's my point of view. I don't think you can talk
21 about tourism and business when there is
22 an assassination attempt on the President of the
23 Republic, whatever the country.

24 Q. But you yourself at least considered that the safety
25 situation was sufficiently stable to go back?

10:55

1 A. It's my country, I have my family, my parents; I don't
2 have a choice. I have to go back home to my own
3 country.

4 Q. You say that when you got back, under paragraph 14, you
5 learnt in an informal way that you had been appointed
6 a member of the commission. Who told you this?

7 A. I don't remember exactly. Probably from a colleague.
8 Why do I say "informally"? How do things take place?
9 When you are nominated, you have to see the president of
10 the commission, the ministers who are concerned, and, to
11 initiate the setting-up of the commission, send a letter
12 through the Presidency, through the Chief of Staff of
13 the Cabinet of the President of the Republic, who was
14 a lady at the time, who calls upon the advisors who are
15 going to represent the Cabinet of the Presidency within
16 the commission. In normal conditions, it's up to the
17 person in charge to inform people that they are going to
18 represent the President within this or that commission,
19 and the procedure is administrative, purely so.

20 Q. Is it possible that they might have tried to get in
21 touch with you to inform you of your appointment to this
22 commission, but they failed to join you because you were
23 in Dakar?

24 A. Yes. But when I came home, the work of the commission
25 had started. And if you note that a member --

10:57

1 especially the representative of the President -- is not
2 there, phone lines were not cut; they could get in touch
3 with me. There were a whole set of means of
4 communication that would have enabled them to inform me.

5 Q. So you consider that the fact that one should not have
6 tried to get in touch with you puts the credibility of
7 the said commission at stake?

8 A. No, not the fact that I wasn't got in touch with. Even
9 had they got in touch with me, I couldn't have taken
10 part in the commission on the day after the
11 assassination attempt. When you are told that you are
12 appointed to a commission that's going to commit the
13 country for at least 25 years, which is a long period,
14 I don't think this was the priority of the authorities.
15 There was no President of the Republic at the time, or
16 at least during the week that followed the assassination
17 attempt of President Dadis, and up until the Ouagadougou
18 agreements that took place in 2015 in Burkina Faso.

19 Q. When you returned, did you speak to colleagues or people
20 who were part or who were members of the commission and
21 who took part in the work of this commission?

22 A. Outside Momo Sakho, who was with me at the President's
23 Cabinet, I didn't know the other members of the
24 commission.

25 Q. You spoke to Mr Sakho about the activities of the

10:59

1 commission?

2 A. I didn't speak about the activities of the commission
3 with him. But I knew that he continued to attend the
4 commission, but I didn't speak about the activities or
5 the discussions within the commission, no. I wasn't
6 interested in this. This wasn't my subject matter.

7 Q. At the beginning you described what you depict as the
8 practice for the work of such a commission. In what
9 timeframe did this practice apply? Is it a practice
10 that applies today or that applied in those days?

11 A. Since the independence of the country, the practice is
12 that feasibility studies are submitted and analysed,
13 approved, before negotiations are started for a mining
14 convention. This is the practice, the practice that's
15 always existed. Anybody who works in the mining sector,
16 and has done so for the past 30 years, at least --

17 Q. So this has been the practice for the past 30 years?

18 A. No, for a long time. I'm not saying 30 years. But
19 since Guinea has negotiated mining conventions, this has
20 been the case. I don't think there is a single
21 convention that was negotiated in one week and approved,
22 or at least less than two weeks. I have no experience
23 of such a convention, at least.

24 Q. You said that you had been involved in about ten such
25 commissions. Was there one that had to negotiate these

11:01

1 conventions in the same circumstances as those that
2 prevailed at the time?

3 A. What do you mean by "circumstance"?

4 Q. The situation of crisis.

5 A. In a situation of crisis, as far as I know, I didn't
6 take part in the negotiation of mining convention with
7 the circumstances, political and institutional
8 circumstances of their country, with a void at the head
9 of the state, no.

10 Q. So negotiating conventions under circumstances that
11 were, at the end of the day, rather different from those
12 that prevailed around this particular commission.

13 A. Quite so. I didn't take part in negotiations in this
14 type of context.

15 Q. According to you, can the context influence the way
16 a commission works?

17 A. I just told you. Even in democratic countries, the most
18 advanced democratic countries in the world, an attempt
19 at assassinating their President, I can hardly see how
20 the administration would start negotiating a convention
21 committing the country for a long period of time. So up
22 to you to choose for yourself.

23 Q. But I am asking you about Guinea. My question was
24 whether you thought the way a commission works and
25 negotiates may vary depending on the surrounding

11:03

1 circumstances within which it's working: emergency,
2 urgency, whatever.

3 A. No. Urgency, whatever the urgency, if a country has no
4 head of state, I don't think anything can be that
5 urgent, and I don't think you can qualify the
6 negotiation of a convention as being urgent. This is
7 why, on a personal basis, I said that I couldn't attend
8 such a negotiation: the context within which it was
9 taking place, when there was an assassination attempt
10 against the head of state, there was a risk of chaos,
11 nobody knew what direction the country would take, and
12 to just sit down and negotiate a convention on the day
13 after the assassination attempt, all the more. People
14 say that people met on 4th December to discuss a mining
15 convention; as far as I am concerned, it's simply not
16 credible.

17 Q. You say in paragraph 16 that you still haven't had
18 a copy of the feasibility study by BSGR?

19 A. Absolutely. As I explained, when a commission is
20 appointed to negotiate, you look at the negotiating
21 documents several days before the negotiation itself
22 starts.

23 Q. What are you saying? You are saying this in your
24 witness statement. Did you not receive the feasibility
25 study by BSGR when you were preparing your witness

11:05

1 statement?

2 A. For the preparation of this witness testimony? Which
3 testimony?

4 Q. The testimony here.

5 A. Well, I wrote that I didn't receive the BSGR feasibility
6 study. I never received the feasibility study from
7 BSGR; never.

8 Q. Not even from your counsel during the preparation?

9 A. No, not at all.

10 Q. But this was one of the first exhibits that we submitted
11 in evidence in these proceedings. So you didn't ask
12 your lawyers to see that feasibility study? It wasn't
13 offered?

14 A. No, I never asked for it.

15 Q. Can we look at the document under tab 1. This is C-14.
16 This is the famous feasibility study. If you go to the
17 very last page, you will see that it's a 454-page-long
18 document.

19 When you go back to the first page, you see that
20 there is a date of October 2009. Copies: Government of
21 Guinea, 10; electronic copy, 1. Apparently there are
22 ten copies, ten feasibility studies that were forwarded
23 to your government. Were you aware of this?

24 A. No.

25 Q. If you turn the page, you see the index. I would like

11:07

1 you to cast an eye on this index, "Table of contents".
2 You see "Introduction". 3.1, for instance, "Independent
3 consultants" that were appealed to: Snowden, SGS. Can
4 you see all this, under 3.1?

5 A. Yes.

6 Q. Snowden, SGS, the group [WSP], et cetera, Environ. Some
7 of these names ring a bell. Are you familiar with these
8 companies? Did you see them in other cases?

9 A. Yes, I saw SRK in other files, and SGS.

10 Q. According to you, these are serious and credible
11 consultants?

12 A. SGS and SRK are quite renowned in the sector.

13 Q. Do you know if they've already worked in Guinea?

14 A. Yes, I think they have already worked in Guinea.

15 Q. Let's continue down the table of contents. Under 4 we
16 see "Geology and resources". Then on page iii, "Design
17 of Mines". 6, "Processing". 6.4, "Description of the
18 process". It's too technical for me, but I'm under the
19 impression that it is particular technical.

20 Then 7, at the bottom of page v, "Design of the
21 Harbour and the Railway". 8 is "Infrastructure"; 9,
22 "Electricity and Water"; 11, "Human Resources"; 12,
23 "Management of the Environment"; 13, "Financial
24 Projections"; 14, "Marketing".

25 So can we see here all of the elements that you

11:10

1 expected from this type of feasibility study? When you
2 look at the document, do you feel that it complies with
3 good practice?

4 A. Well, when I look at the table of contents, I would say
5 yes, basically. But the main projects that I was
6 involved in of the same magnitude are several volumes
7 that are concerned. Each component makes up a volume,
8 a full volume.

9 Q. And the following page, on page xii, there's a "List of
10 Tables". You see? More than four pages of tables.

11 Then on page xvi, a "List of Figures", each time
12 with a reference to the page. Again, we have four or
13 five pages where there is a reference to figures. If
14 you just browse through a few of the pages, peruse them,
15 you can see the study itself, where you can see all of
16 the tables, the figures. There are many graphs.

17 So I repeat my question. On the basis of what
18 you've been able to look at right now, at first sight,
19 does this look like an acceptable study which complies
20 with good practices in Guinea?

21 A. At the level of the table of contents, most of the
22 elements are there. But I repeat: the studies that
23 I was confronted with are several volumes. When you
24 take the social and environmental impact, it's several
25 volumes, because this study itself is there, plus the

11:13

1 plan for rehabilitation, et cetera. So there are
2 several volumes that are produced. When you take the
3 economic and financial part, it's also usually a full
4 volume. Geology, hydrology -- I'm not a geologist
5 myself, but since I've been involved in this for the
6 past six/seven years within the administration.

7 These are the feasibility studies at least that
8 I was involved in: there are several volumes that are
9 presented; not a study on a single subject matter,
10 454 pages. It's several volumes. This is very
11 burdensome.

12 They are submitted to the various mining
13 administration depending on their competence and
14 attributions: mining aspects, geology department,
15 geotechnical, the office for such matters that looks at
16 technical things, environmental aspects for the
17 environmental department, transport, tax. There are
18 several aspects that are involved in the drafting of the
19 feasibility study and usually it's several volumes, if
20 I may put it this way, that are produced by the
21 investors.

22 THE PRESIDENT: May I ask for a precision. Are there any
23 annexes to this study? I seem to remember that there
24 were annexes, but I can't see the list of annexes.
25 Well, you can answer later if you wish.

11:14

1 MR DAELE: I will check on this and let you know.

2 Because of course we're talking about 2009. Do you
3 know whether before BSGR presented this study, the
4 government had already received --

5 THE INTERPRETER: The interpreter apologises. The sound was
6 cut, so we couldn't get the question.

7 THE PRESIDENT: I think it's difficult for the witness to
8 judge the quality of this document, insofar as he is not
9 familiar with it. So what he can say is the length, the
10 contents, on the basis of the table of contents that
11 seem to correspond or not. And his view --

12 MR DAELE: Yes, and it's also the presentation.

13 So let me reword my question. As far as the form,
14 the presentation, the contents of this study, at the
15 time -- we're not talking about the present day, but
16 what happened in those days -- do you know whether the
17 government had already received feasibility studies that
18 would be similar?

19 A. As I said previously, I never was involved in the
20 analysis of a mining convention, so I could not tell you
21 anything in this respect. I don't know.

22 Q. Is there not a database containing all the feasibility
23 studies by the ministry?

24 A. At the time I was not at the ministry or with the
25 presidency.

11:16

1 Q. Within the presidency, was there a collection, a place
2 where all the studies were kept?

3 A. No, the mining administration is the depository of such
4 studies, not the presidency.

5 Q. Do you know if the Ministry of Mines has this type of
6 collection?

7 A. You mean if they keep the feasibility studies?

8 Q. Yes, copies of the feasibility studies that they
9 received.

10 A. Yes, there are former feasibility studies that are kept
11 at the Ministry of Mines.

12 Q. In paragraph 16 you refer to the decision whereby you
13 were appointed to the commission. This decision is to
14 be found under tab 2 of the bundle, document C-15.

15 You'll see the 20 members of the commission?

16 A. Yes.

17 Q. Aside from you, do you know if there are other members
18 who did not participate, who refused to be a part of the
19 commission?

20 A. Aside from myself, I don't know anybody else. Aside
21 from Mr Sakho, who was my colleague, I did not know the
22 other members.

23 Q. So according to you, the 19 other members actually took
24 part in the commission?

25 A. I don't know, because I have not seen the minutes of the

11:18

1 negotiations.

2 Q. Mr Kourouma chaired the commission. He was the

3 Secretary General of the ministry; is that correct?

4 He's a high-ranking official in the ministry; is that

5 correct?

6 A. Yes, he was Secretary General at the time.

7 PROFESSOR MAYER: (In English) Maybe an explanation. There

8 was a sticker in my copy, and I thought that was

9 something that was put in by mistake here, certainly by
mistake, and probably

10 came from that party, I don't know, but ...

11 MR OSTROVE: (Interpreted) Thank you. I know you're not trying
to send

12 any secret signals to my friend!

13 MR DAELE: Mr Kourouma was number one or number one in the

14 Ministry of Mines? What was his rank?

15 A. The Secretary General is number two, right after the

16 minister.

17 Q. Mr Sakho was the main advisor to the presidency. He was

18 your direct superior?

19 A. No, he was my colleague. They were both advisors in

20 charge of natural resources.

21 Q. So he was a senior official?

22 A. Yes. Yes, all the staff of the President.

23 Q. Mr Noramou, advisor to the ministry, and then Mr El Hadj

24 Mohamed Aly Thiam. These are the two rapporteurs,

25 Mr Noramou and Mr Thiam.

11:21

1 Then there's a list of the members. You were the
2 first, legal advisor and tax advisor. Then Yansané,
3 advisor in charge of infrastructure. When you see this
4 list and you see the departments they're with --

5 A. As I said, aside from Mr Sakho, I didn't know any of
6 these individuals.

7 Q. But when you look at the second page of the ruling we
8 find Ibrahima Sory Sangaré: he is advisor to the
9 presidency in charge of the economy. Do you know him?

10 A. He was advisor, but he was not in the same department as
11 I was.

12 Q. He was also with the presidency?

13 A. But he was seconded to the Ministry of Economy and
14 Finance.

15 Q. He was an economics specialist, right? He is in charge
16 of economy and finance?

17 A. That's what his title indicates.

18 Q. We then have Mrs Louise Juliette Darchicourt, who was
19 also with the presidency and she was also responsible
20 for economy and finance?

21 A. Yes, with the Ministry of Economy and Finance.

22 Q. Then there was Mr Mamadou Saliou Diallo, with the
23 Ministry of the Environment. Do you see that?

24 A. Yes, I do.

25 MR OSTROVE: I don't understand if there are any questions

11:23

1 to the witness. We can all read the list of names.

2 MR DAELE: I am attempting to check with the witness that
3 all the subject matters that are addressed in the
4 commission are represented by the members. We've seen
5 that the feasibility study talks about the environment,
6 it addresses finance, it addresses planning, marketing.

7 THE PRESIDENT: I think you can proceed.

8 MR DAELE: I want to ask the witness if he sees the same
9 capabilities, the same subject areas in the attributions
10 of the persons who were a part of the commission. We
11 have somebody who is in charge of economics and a woman
12 also in charge of the environment; Mr Condé, who was
13 from the Ministry of Planning. Then we have Mr Younassa
14 Koita, National Director of the Ministry of Transport;
15 Mr Salim, also from the Ministry of Transportation; then
16 Mr Cécé Loua from the Ministry of Territorial Affairs
17 and Political Affairs; Mr Millimono from the Central
18 Bank.

19 So when I say that this was a pluri-disciplinary
20 commission, do you agree with me?

21 A. Yes, most of the administrations that are involved in
22 this type of exercise were represented.

23 Q. You also said, in response to a question put to you by
24 Mr Ostrove, that the CPDM would also normally be
25 involved?

11:25

1 A. The analysis of the feasibility study, that's internal
2 to the mining administration.

3 Q. At the end of the page there is a Mr Ibrahima Kalil
4 Soumah; this is the fourth name on page 2. Do you see
5 this name?

6 A. Yes, he is director general of the CPDM.

7 Q. So he was the director of the CPDM and he was a member
8 of the commission. So the CPDM was involved in the work
9 of the commission, because the director of the CPDM was
10 involved.

11 A. Maybe you didn't understand. I said the CPDM is the
12 single-stop entity of the Mining Ministry. So when
13 people want to make an application for a mining permit,
14 this is what they do. The feasibility study is handled
15 by all of the departments of the Ministry of Mines and
16 Geology, including the CPDM.

17 Q. Thank you.

18 PROFESSOR VAN DEN BERG: May I put a short question?

19 MR DAELE: Of course.

20 PROFESSOR VAN DEN BERG: Mr Sylla, do you know the
21 individuals who were just named, who are identified on
22 this decision?

23 A. As I said, aside from my colleague Momo Sakho, I didn't
24 know any of these individuals.

25 PROFESSOR VAN DEN BERG: None of them?

11:27

1 A. None of them, aside from Mr Sakho. I know some of them
2 now, but then I didn't know them.

3 Q. Mr Thiam, the rapporteur?

4 A. No, at the time I did not know him.

5 PROFESSOR VAN DEN BERG: We have Mahmoud Thiam who is the
6 minister. Are they related?

7 A. There are many Thiams in Guinea.

8 PROFESSOR VAN DEN BERG: I see.

9 I do have another question. The name Touré, is that
10 kind of like DuPont in France: is it a very common name?

11 A. Yes, in absolutely every community you'll find some
12 Tourés.

13 PROFESSOR VAN DEN BERG: Thank you.

14 MR DAELE: I think that Touré is kind of a name by default?

15 A. No, it is a surname.

16 Q. In paragraph 17 of your statement you say that you
17 refused to participate in the work of this commission.
18 Did you consider that under these circumstances it was
19 impossible to do serious work; is that a proper summary?

20 A. That's what I said before. I think in your country, can
21 you negotiate a convention when you don't have a head of
22 state?

23 Q. You say in paragraph 18 that:

24 "Because of the political context in the country,
25 I preferred not to participate ..."

11:29

1 But you also say that you did not want to be too
2 public about your decision. Did you inform anybody of
3 your decision?

4 A. I did not inform my direct superior that I was not
5 involved in the commission, nor did my superior inform
6 me that I was a member of the commission. So when
7 I became aware of the fact that there was negotiation,
8 I felt that I could not be involved in this negotiation,
9 given the context. And this may be the reason in fact
10 why she did not inform me.

11 Q. You consider that you were not informed, but at the time
12 you were actually abroad?

13 A. Yes, but I came back to Guinea afterwards. The
14 negotiations lasted over ten days.

15 Q. When did you decide not to participate? Was it right
16 away? Or did you think about it, did you talk with
17 anybody else?

18 A. No, when I was told, it was a spontaneous decision.

19 Q. Did you discuss it with Mr Sakho?

20 A. I told him that I was not going to be involved in the
21 negotiations. I don't know if I actually spoke about
22 this with Mr Sakho, but to my colleagues I said I was
23 not going to be involved in negotiations, and I don't
24 remember if it was Mr Sakho or whether it might have
25 been somebody else. But in any event, I did say that

11:31

1 I was not going to be participating.

2 Q. Do you know if the members of the commission were
3 vetted?

4 THE INTERPRETER: I'm not quite sure what the word is in
5 English.

6 THE PRESIDENT: "Vetted" in English, "verifié" in French.

7 Maybe we need to explain, to make it clear. Was the
8 profile or the background of the members of the
9 commission reviewed by the person that appointed them,
10 prior to actually appointing them?

11 A. I don't know.

12 MR DAELE: I also imagine you don't have the answer to this
13 question, but I will ask it nevertheless.

14 It was alleged that the then minister, Mr Thiam, had
15 first checked the position of the members of the
16 commission vis-à-vis the BSGR applications, and he
17 wanted to include only members that took a positive
18 position on BSGR. Have you heard these words, or is
19 this news to you?

20 A. No, I know nothing about this.

21 Q. You say in your paragraph 19 that while you were
22 preparing this statement, you first saw Exhibit C-251.
23 This document is under tab 3.

24 So here you say you were shown documents concerning
25 the work of the commission in order to prepare your

11:34

1 testimony. So you did not see the feasibility study,
2 but you did see this document?

3 A. That is correct.

4 Q. Did you see any other exhibits, or is this the only
5 document?

6 A. I saw the decision whereby the members of the commission
7 were appointed, Mr Thiam's testimony, and the review of
8 the feasibility study.

9 Q. Then in paragraph 20 you say that it was not credible
10 that the commission would have worked, given the crisis
11 condition that prevailed at the time?

12 A. Yes. I say on December 3rd in the afternoon Captain
13 Camara was shot, and he was evacuated to Morocco, and on
14 the very next day -- the number two person was not in
15 Guinea -- there was a Council of Ministers' meeting, and
16 all the press was talking about this, and in fact
17 everybody could see what was going on from abroad.

18 So it was not credible that a commission could have
19 met the next day -- that is, on 4th December -- to work
20 on a project such as this. I'm not saying it's not
21 possible, but it's not credible. They had to have very
22 good reasons to meet that day, given the general chaos
23 that prevailed at the time. So that's why I say it
24 wasn't credible, according to me.

25 Q. This was the very next day following the attack on the

11:36

1 President?

2 A. Yes.

3 Q. You think the commission could have worked properly two
4 days, three days later? Because I understand you are
5 saying that the very next day it was not credible.

6 A. I said previously it's only after the Ouagadougou
7 agreements in 2015 -- in fact in January, to be
8 precise -- that an interim President was appointed to
9 the state.

10 THE PRESIDENT: You said "January 2015" previously. You
11 mean January 2010; is that correct?

12 A. Yes, let me correct myself. I of course meant
13 January 2010.

14 MR DAELE: You said at the very beginning of your testimony
15 the mining company usually sends the feasibility study
16 a few weeks prior to these activities. Do you know when
17 BSGR sent the feasibility study?

18 A. I told you I saw the date, and I saw October.

19 Q. But do you know when it was actually given to the
20 government?

21 A. I don't know.

22 Q. Would you please look at tab 10. This is R-266. As you
23 can see, this is a letter from BSGR accompanying the
24 feasibility study, and at the end of the page there's
25 a note that it was received on 16th November 2009. Do

11:38

1 you see that?

2 A. Yes.

3 Q. So it seems that BSGR sent the feasibility study to the
4 Minister of Mines on November 16th 2009, and this would
5 have been two weeks prior to the beginning of
6 activities. Do you think this is reasonable?

7 A. Yes, that seems reasonable. But when I see that it was
8 received November 16th 2009, there's simply a signature,
9 there's no stamp. So if it was received by the central
10 secretariat, that's all this indicates. Well, normally
11 there would be a stamp.

12 Q. As we have seen, the commission was put together, and
13 BSGR claims to have sent the feasibility study on
14 November 16th and it was received that day by the
15 ministry, and we have on December 1st the constitution
16 of the commission.

17 If you would now turn to tab 5, Exhibit R-268. We
18 have here the report of the commission. You will see
19 that on the last page it is signed by the vice chair,
20 Mr Sakho, and one of the two rapporteurs, Mr Noramou.

21 Going back to the first page, we see in the first
22 paragraph, last line, the commission reviewed from
23 December 2nd to December 12th the study and drafted
24 a draft Base Convention.

25 So it appears that once the commission was set up,

11:41

1 it immediately got to work, the very next day, on
2 December 2nd. The Commission worked on the 2nd, on the
3 3rd, obviously, because when it says "from 02 to 12",
4 this includes the 3rd. December 2nd was a Wednesday.
5 So apparently, according to this document, the
6 Commission worked on the 3rd, which was a Thursday,
7 4th December, a Friday.

8 I would like you to go to tab 3. This is document
9 C-251, and here I am particularly interested in page 2.
10 We read (In English) "Answers to Questions by Technical
11 Commission 4 December 2009". (Interpreted) So "Answers
12 to Questions by Technical Commission 4 December 2009".
13 Do you see this?

14 A. Yes.

15 Q. You see there are twelve questions. I submit to you,
16 and to the Tribunal, that on December 4th the Technical
17 Commission has formulated some detailed questions for
18 BSGR. So this was on Friday.

19 Then if you go back to page 1, you see that this is
20 an email from Mr Avidan addressed to Mr Thiam,
21 Minister Thiam: he was Minister of Mines at the time.
22 And you can see on the fourth line he says this is
23 a document, it's "Technical Committee Answers" and
24 there's a date: December 5th 2009?

25 A. Yes.

11:44 1 Q. "[Version]2.docx". I submit that this indication shows
2 that BSGR worked on the questions put by the Technical
3 Commission on the 4th, they worked on it on Saturday
4 the 5th. Then when we look at line 2 of the document,
5 when the email was sent to Mr Thiam, this second line
6 indicates: (in English) Sunday, December 6th (interpreted) at
10.38 in the morning.

7 Do you see this?

8 A. Yes.

9 Q. This is an email, and in the first line of the email it
10 says:

11 (in English) "Dear Minister. Please see attached for the
12 committee."

13 (Interpreted) So once again this document suggests that,
having
14 worked on the answers on Saturday the 5th, BSGR then
15 sends its answers to the committee on December 6th.

16 MR OSTROVE: [Excuse me, Madam President.] I get the
17 feeling that we are in the middle of pleadings, and I'm
18 not particularly perturbed by the content. We've been
19 reading documents for more than 15 minutes on the work
20 that has been done of the commission, but we haven't
21 heard a single question.

22 THE PRESIDENT: I understand the question as being the
23 following one.

24 We have seen now how the process is taking place,
25 starting on November 16th, when the feasibility study

11:46

1 was sent. Then December 1st, as we saw, the decision
2 was handed down creating the commission. Then we see
3 that the commission worked from December 2nd to 12th.
4 We see that on December 4th the commission asked certain
5 questions. This was on a Friday. Then over the weekend
6 BSGR worked in order to provide answers to the
7 questions. Then following on this email, on
8 December 6th, which was a Sunday, it sent to Minister
9 Thiam these responses.

10 There's an implicit question there, which to me
11 would seem to be: does that look to you as normal
12 procedure?

13 Obviously I understand that at the time, in 2009,
14 you only got there in January.

15 A. That's correct.

16 THE PRESIDENT: So you still didn't have the experience of
17 that type of process. But today, with hindsight, with
18 the experience you've had so far, does that seem to you
19 to be a regular process? I heard you say earlier that
20 two weeks' review of the feasibility study, until the
21 setting-up of the committee, was a reasonable period of
22 time. I think this is a question that was put to you
23 and you answered in the affirmative. But this
24 description I have given you of the whole of the
25 process, would that seem to you to be a regular process?

11:48

1 A. I said earlier that we would all receive the feasibility
2 study before we started actually negotiating the mining
3 agreement. So first of all you had to adopt the
4 feasibility study, before going on.

5 THE PRESIDENT: Yes, and I noticed at the time that you said
6 that that particular process took -- first you said
7 several weeks, and then you said between one week and
8 a month.

9 A. Yes. The consideration of the feasibility study, yes.

10 THE PRESIDENT: Right. In order to come to a decision,
11 i.e. supposedly a favourable opinion given by the
12 various technical departments of the feasibility study;
13 have I understood correctly?

14 A. Well, this is, yes, the process of the review of the
15 feasibility study within the department: if there are
16 some other issues, transport, more specific issues,
17 where the various departments have to look into this;
18 you have to also take into consideration the laws
19 covering this, and you want to make sure that the laws
20 are fully complied with; perhaps there are questions
21 that would have to go to the investor.

22 Well, here the committee was set up on 1st December,
23 entrusted with the study of the feasibility committee.
24 That probably means obviously the feasibility study had
25 already been sent to the members of the committee. And

11:50

1 as soon as the committee met, they were in a position to
2 ask questions. I haven't seen all of the questions, but
3 in any case they must have analysed the feasibility
4 study. And then coming up with a mining convention in
5 just two days ...

6 THE PRESIDENT: I had understood that the internal review of
7 the feasibility study was in fact done before the
8 setting-up of the committee. Or did I misunderstand
9 you, sir?

10 A. The feasibility study is examined internally by the
11 ministry, that is correct.

12 THE PRESIDENT: Fine. So if I go back to the process as
13 described a few moments ago, that should have taken
14 about two weeks, between 16th November and 1st December.
15 Is that a duration that seems to you to be regular,
16 normal and ordinary?

17 A. For the internal consideration of the various services,
18 yes.

19 THE PRESIDENT: Fine. That is exactly what I had understood
20 before. Then afterwards the process continues. Let us
21 not take into account the institutional context, just
22 look at how the process develops. Does that seem to you
23 to be regular? Not calling for any specific comments.

24 A. Well, two weeks' consideration of feasibility study and
25 getting to a signed mining convention, no. I have never

11:51

1 had that experience in negotiations, in any of the cases
2 I have been involved with.

3 THE PRESIDENT: What doesn't correspond to your experience
4 here?

5 A. Well, between the consideration of the feasibility study
6 and the signing of the mining agreement after two
7 months, I have never seen that.

8 THE PRESIDENT: Is that too short then? What is too short
9 here, the process within the committee? Because you
10 said that people within the ministry, the technical
11 departments do get the feasibility study to study it,
12 and you said that two weeks would be more or less
13 normal.

14 A. Yes, that would be normal. And then they have to meet
15 in plenary, put forward their comments in the presence
16 of all the other technical departments, and these are
17 the observations that are sent on.

18 THE PRESIDENT: So it is the process within the commission
19 that seems to you to be too short in order to be able to
20 get to a mining agreement; is that it?

21 A. Yes. Yes. Yes, that is my opinion.

22 THE PRESIDENT: Thank you.

23 PROFESSOR MAYER: It's still not totally clear for me. Who
24 is supposed to give an opinion on the feasibility study?
25 It is not the members of the committee at all, the

11:53

1 members of the committee are just shown the opinions of
2 the other services, or is it the members of the
3 committee who have to give their opinion?

4 A. The feasibility study is studied by the internal
5 departments of the Ministry of Mines and Geology,
6 various technical departments. Once the various
7 technical departments have given their observations,
8 have finished examining the feasibility study, either
9 they consider it to be insufficient and they go back to
10 the investor and they ask for additional work to be
11 done, drilling or whatever, or perhaps considering that
12 the service life of the mine is not long enough and they
13 have technical questions to ask; or the feasibility
14 study is considered to be okay, and then the investor
15 would be invited to join the negotiation with a view to
16 the mining agreement. It is then that the other
17 departments also pitch in, in order to negotiate the
18 base convention.

19 THE PRESIDENT: Does the committee pre-examine the
20 feasibility study, or is it simply content with the
21 favourable opinion given by the various departments
22 within the Mining Ministry?

23 A. Perhaps the other departments may ask for a particular
24 limb of the study, which has to be further clarified
25 with a view to the mining convention, and they would

11:54

1 like to know exactly what the feasibility study is
2 saying on that particular aspect, in that particular
3 area. The feasibility study is a basis for the
4 negotiation.

5 THE PRESIDENT: We got carried away by our own enthusiasm:
6 it's almost midday and we haven't had the mid-morning
7 break yet. Would it be alright, sir, if we took the
8 break now? That wouldn't interrupt your line of
9 questioning?

10 MR DAELE: It would be fine, madam, but it really depends on
11 the position of your Tribunal on the comment that
12 Mr Ostrove made about what we have just heard the
13 witness saying. Because I was interrupted, because
14 Mr Ostrove felt that I was taking the witness to
15 documents.

16 What I would like to say: since the witness seems to
17 be challenging the whole committee process, I would like
18 to continue verifying the activities of that committee.

19 THE PRESIDENT: We interrupted you when you had not yet
20 asked your question. The Tribunal asked its questions
21 in connection with the process in question. It would be
22 useful, obviously, for you to put your own question now.

23 MR DAELE: My question to the witness, madam, or my question
24 to you?

25 THE PRESIDENT: No, to the witness. To the witness, because

12:20

1 Mr Daele, you have the floor.

2 MR DAELE: Thank you, madam.

3 Before the coffee break, we were considering the
4 process of work of the committee, and I wanted to take
5 you to tab 3 (C-251), Mr Asher Avidan's email of
6 6th December 2009, addressed to the Mining Minister.

[PROTECTED]

[REDACTED]

12:23

[PROTECTED]

[REDACTED]

12:26

[PROTECTED] [REDACTED]

[REDACTED]

13 In other words, the committee continues working on
14 8th December, 9th December, the 10th, a Thursday,
15 the 11th, that's a Friday, and then 12th December is
16 apparently the final day of work of the committee, and
17 that is Saturday, 12th December. And then obviously
18 it's Sunday the 13th, and then Monday, 14th December.
19 So that is the day -- you will see that on the last
20 page -- that is the day on which the committee finalises
21 its review and puts forward its recommendation. So one
22 is to imagine that work ended on the 12th, the 13th is
23 a Sunday, and then the people wrote the report --
24 THE PRESIDENT: Mr Daele, didn't we see that before the
25 break?

12:28

1 MR DAELE: No. No, because I was trying to respect the
2 chronology. That is why I said ...

3 PROFESSOR VAN DEN BERG: Is all of this going to be leading
4 to a question? Reviewing all these dates will lead to
5 a question?

6 MR DAELE: Yes, my question was going to be: after seeing
7 all these documents, would you agree that that process
8 was reasonable?

9 So then you have the report and the recommendation.
10 From this committee, after two weeks' work, the
11 committee sends its recommendation to the ministry. You
12 see it on the last page:

13 "In view of what came before, the committee
14 recommends to the Minister ...:

15 "- To send this report ... to the Council of
16 Ministers and to authorise the signature of the
17 Base Convention ..."

18 So that's on the 14th, a Monday.

19 And then behind tab 6 --

20 MR OSTROVE: I'm sorry, if I've understood correctly,
21 Mr Daele announced his question to the Tribunal but that
22 question was never put to the witness.

23 THE PRESIDENT: We had already seen R-268 before. You had
24 already drawn attention to the date of the report of the
25 committee, which is 14th December. But if I understood,

12:30

1 your chronological sequence isn't over yet, because we
2 still have another document from 15th December. So
3 I would imagine that the question will come later.

4 MR DAELE: Yes, indeed, madam. Yes. I will be asking it
5 forthwith. But I didn't want the witness to tell me
6 that he wasn't aware of these activities, so I wanted to
7 take him through this process and then conclude with the
8 question.

9 THE PRESIDENT: Very well. You wanted to say something
10 about tab 6.

11 MR DAELE: Yes.

12 After having received that recommendation of the
13 committee, behind tab 6 we see the note, the reasons,
14 the explanation of the reasons given; document C-210.
15 This is the note proposed by the Mining Minister,
16 Mr Thiam, for the Council of Ministers.

17 On the last page you see the date is 15th December
18 2009. So Mr Thiam received the recommendation from the
19 committee on the 14th; he prepares this note for the
20 benefit of the council on the 15th.

21 MR OSTROVE: Madam President, I'm really very sorry. I have
22 never seen a cross-examination like this one. I do
23 understand that Mr Daele wants to make a presentation of
24 the documents and then ask a question after about
25 a half-hour of getting us through those documents. When

12:32

1 he says, "This is the minister who did this", and, "This
2 is the minister who did that", et cetera, that is like
3 a plea, like a statement. He is putting forward
4 a statement on this document.

5 I think it is not normal to use cross-examination to
6 put forward a statement as to what these documents are
7 supposed to show, during 15, 20, 30 minutes, and then
8 ask a witness who never took part in that. Do you find
9 that to be normal?

10 THE PRESIDENT: (In English) Your point is taken, sir.

11 (Interpreted) Have you reached the end of your
12 chronological sequence, the one that you wanted to take
13 your documents through, or are there still other stages
14 left?

15 MR DAELE: There are still other stages, other documents
16 that I want to show.

17 The convention was signed on 21st December and we
18 have now reached 15th December. So at that time the
19 report or the dossier goes from the committee to the
20 minister and then from the minister to the Council of
21 Ministers. And so there were activities within the
22 Council of Ministers, and that is still ...

23 THE PRESIDENT: Well, perhaps you could ask your question by
24 stages.

25 MR DAELE: Okay.

12:33

1 THE PRESIDENT: Then you would be able at the end to ask
2 a question for the whole of the process.

3 MR DAELE: I shall try to ask questions of the witness.

4 THE PRESIDENT: I think that's a very good idea.

5 MR DAELE: I'm sure Mr Ostrove would agree with me.

6 Mr Sylla, were you aware of the fact that Mr Thiam
7 had prepared a note on 15th December to move forward the
8 committee's recommendation to the Council of Ministers?

9 A. No.

10 Q. So you were not aware of the content of that note?

11 A. I understand that he sent that note to the council.

12 Q. And Mr Sakho never told you that the minister's
13 recommendation to the Council of Ministers was to
14 approve the mining agreement and to authorise signature
15 thereof?

16 A. No.

17 Q. But for the Tribunal I have already referred to the
18 document behind tab 6, that is C-210.

19 On the following day, 16th December, Mr Thiam, the
20 Minister for Mines, submits the dossier. Were you
21 aware, sir, that on 16th December the Mining Minister
22 submitted that dossier to the Council of Ministers?

23 A. No.

24 Q. So you were not aware.

25 Have you not already seen -- I am sorry, turn to

12:35

1 tab 9, please, C-138. This is a letter from the vice
2 president of the committee, Mr Momo Sakho, who was the
3 vice president of the committee. You can find that on
4 page 5. This is a memo by Mr Sakho to the Prime
5 Minister, and in the second paragraph, first line, it is
6 stated:

7 "Without mentioning here the reasons which were
8 conveyed to you on Wednesday 16th December 2009 by the
9 Minister of Mines ..."

10 This is what I'm asking you, sir, but you already
11 answered that you were not aware of the fact that
12 Mr Thiam had sent this on 16th December to the Council
13 of Ministers. Were you aware that the Council of
14 Ministers then appointed --

15 THE PRESIDENT: May I ask for a clarification. Here mention
16 is made of the Council of Ministers of 18th December.

17 MR DAELE: Yes, I'll be getting to that shortly. It was
18 just to show that the presentation was made on the 16th
19 by the minister to the Council of Ministers.

20 Were you aware that the Council of Ministers then
21 set up a subcommittee?

22 A. No.

23 Q. So the document behind tab 8, C-211, this is an email to
24 the Minister of Mines Thiam, and the third paragraph
25 says:

12:38

1 (In English) "The conseil des ministre has set up
2 a sub [committee] to analyse the convention and
3 feas[i]bility study and give feedback tomorrow at the
4 extraordinary conseil..."

5 (Interpreted) Do you understand English, sir?

6 A. No, I would prefer to hear it in French.

7 Q. So in French, and your counsel will correct me if I make
8 a translation mistake. It says that:

9 "The council of ministers has set up a sub committee
10 in order to analyse the convention and the feasibility
11 study and to give comments tomorrow at the extraordinary
12 council to be held at 3 pm. The members of the
13 subcommittee are the Finance minister, the Environment
14 Minister and as rapporteur Mr Camara, who is the
15 director of the cabinet of the presidency."

16 Were you aware of that?

17 MR OSTROVE: No, no, no, he was not the Director of the
18 Cabinet of the Presidency, but the Director of the
19 Cabinet of the Prime Minister.

20 MR DAELE: Oh, I'm sorry. So Director of the Cabinet of the
21 Prime Minister.

22 That subcommittee was set up to further analyse the
23 convention on the feasibility study.

24 On the following day, an Extraordinary Council was
25 held on 18th December. And indeed behind tab 9 now

12:40

1 (C-138) we see the document that we were considering
2 earlier -- and this is where your question fits in,
3 Madam President. Here we see the Extraordinary Council
4 of Ministers, in the first line.

5 Were you aware, sir, of the fact that there had been
6 a meeting of the Extraordinary Council of Ministers on
7 18th December 2009?

8 A. No.

9 Q. So from this document, if you turn the page and proceed
10 to page 3, it is clear that there were several points
11 that were discussed by the Council of Ministers, and
12 here we have the explanation given by the vice president
13 of the committee. The questions were put on
14 18th December, and on the 19th the vice president of the
15 committee is answering to the Prime Minister, providing
16 his answers to the Prime Minister.

17 THE PRESIDENT: But you forgot to ask your question.

18 MR DAELE: Were you aware of this document?

19 A. No.

20 Q. On page 3, do you see a list of points that were
21 discussed? For instance, the first point was connected
22 with tax, taxation matters, and the stabilisation
23 period; then the fourth paragraph, income tax. You may
24 take some time to read through this document.

25 THE PRESIDENT: Mr Daele, the witness says he didn't know

12:43

1 these documents. It would be difficult to ask him
2 specific questions on the contents thereof.

3 MR DAELE: But I will ask a rather general question.

4 At first blush, would these be the kind of items
5 that are discussed, that you would be expecting to see
6 discussed when the government decides to sign a base
7 convention; yes or no?

8 A. Well, I've already said that I hadn't seen the
9 feasibility study, I didn't see the mining convention,
10 so it's only on the basis of these two that one can
11 know. There's no such thing as a typical question or
12 typical items to be discussed; it all depends on the
13 particular feasibility study and the particular mining
14 convention.

15 Q. Yes. Again, at first sight, however, do you have the
16 impression that the members of the Council of Ministers
17 did in any case read the convention and were given
18 a critical analysis thereof, and this is why they had
19 some questions on technical and financial matters?

20 A. I do not know. I cannot pronounce on that.

21 Q. Very well then.

22 That is a document of 29th December. Do you know
23 when the Base Convention was signed?

24 THE PRESIDENT: 19th December. You said "29th".

25 MR DAELE: Fine.

12:44

1 So now we turn to tab 7, C-69. This is
2 a convention, what is called in the dossier the "Base
3 Convention". Are you aware of the existence of that
4 document? Had you already seen it before?

5 A. No.

6 Q. So this is the first time that you see the
7 Base Convention?

8 A. This document, I saw it much later, when the convention
9 was published on the website of the ministry.

10 Q. If you would turn to page 57. For the government, the
11 convention was signed -- it's at the bottom of the
12 page -- by Minister Thiam and the Minister at the
13 Presidency in charge of Economy and Finance, Captain
14 Mamadou Sandé, on 21st December 2009. Do you see this
15 date, next to the signature of Mr Sandé?

16 A. Yes.

17 Q. So to end with my questions, we've looked at the entire
18 process applied by the commission between the beginning
19 of the activities of the commission and the signature of
20 the Base Convention on 21st December. On the basis of
21 the documents that you've seen during that three-week
22 period of time, does it seem to be a reasonable process
23 to you, or a normal process, in your view?

24 A. If we ignore the context, I think the process, according
25 to me, is not normal. It's a fast-track process. It's

12:47

1 my personal opinion, and on the basis of my experience
2 within the ministry, since I've been working for the
3 Ministry of Mines since 2011.

4 Q. On what specific point do you believe it was abnormal?

5 A. The period between the feasibility analysis, the mining
6 convention and its submittal to the ministers and the
7 publication of the convention, that is very ambitious.

8 Q. So it's only in terms of the duration of the work of the
9 commission and the Council of Ministers?

10 A. You asked me what I thought of the entire process and
11 I answered on this.

12 Q. So the duration is abnormal to you?

13 A. Yes, it's extremely short, as I see it.

14 Q. And the communications between the government and BSGR,
15 and BSGR and Minister Thiam, were these communications
16 abnormal, as you see it?

17 A. I said that the process is very short. The commission
18 was set up on the 1st, they started working on the 2nd,
19 on the 4th they were able to ask questions and propose
20 a draft mining convention, and then the convention is
21 signed on 21st December. I think this is extremely
22 short, compared to our usual practice.

23 PROFESSOR MAYER: Just a precision, if I may.

24 In the normal process -- between brackets: outside
25 of this case, because you think it's abnormal -- the

12:49

1 draft base convention is drafted how? Is it authored by
2 the services of the ministry and then you can discuss
3 this or that point, or is there a true negotiation from
4 the start?

5 A. Usually the base convention is a negotiation that leads
6 to a convention with the main elements. At the end you
7 do the drafting of the base convention. You have a road
8 map, if you like, on the major items. You negotiate
9 these items, usually the commission and the investor
10 initial them, sign them, and then you start drafting the
11 mining convention after that.

12 PROFESSOR MAYER: During the period during which the
13 commission is working; is that right?

14 A. Yes, during the work of the commission.

15 PROFESSOR MAYER: So it's a negotiation?

16 A. It's a negotiation of a mining convention over a period
17 of 25 years. These are commitments or undertakings that
18 will be stabilised over a long period. And this is why
19 I think that the time dedicated by this convention is
20 not reasonable. That's my personal opinion, according
21 to my own experience, of course.

22 PROFESSOR MAYER: Thank you.

23 MR DAELE: On the basis of your experience, the members who
24 represent the government who negotiate this take notes
25 during the negotiations or not? Do you take notes when

12:50

1 you take part in such negotiations?

2 A. Each representative of the administration is under the
3 obligation of referring to their line manager who
4 decides to interpret. There are often to-and-fros
5 between the administrations.

6 Q. Are there notes, internal notes that are taken, or
7 memos?

8 A. Do you mean minutes of --

9 Q. Yes?

10 A. Minutes of meetings, yes.

11 Q. And [between] members, is it usual to send emails to
12 discuss what's happened, for instance what happened on
13 the previous day, to see where the members stand?

14 A. I don't understand your question.

15 Q. On the basis of your knowledge, does it happen that
16 members of the commission, i.e. members representing the
17 government, might send emails to each other to ask, for
18 instance, "What is the position of this particular
19 number?", "What do you think of this clause in the
20 convention?", for instance, "I disagree, what is your
21 point of view?", between --

22 A. Yes, it is possible that the members of the commission
23 might exchange amongst each other; as an example, the
24 representative of the Ministry of Finance on a tax
25 point, or if he feels that given the level of

12:52

1 investments, et cetera. The members of the commission
2 do sometimes communicate and exchange in this way. It's
3 perfectly normal.

4 Q. As you said, there are also notes?

5 A. Minutes of the meetings.

6 Q. I imagine you never saw these notes for this particular
7 commission?

8 A. No.

9 Q. Let me close with a few general questions.

10 Do you know some civil servants who, within the
11 framework of this BSGR file, would have been paid bribes
12 from BSGR?

13 A. I have no knowledge of this.

14 Q. Do you know whether the members of the commission and
15 the Council of Ministers were put under pressure by
16 President Conté?

17 A. I don't know. At the time he wasn't the President, or
18 at least he was impeached.

19 MR OSTROVE: There are certain allegations, but we are not
20 going to go all the way to the death of the President.

21 MR DAELE: So this was President Camara at the time, or the
22 Prime Minister at the time?

23 A. I don't know.

24 Q. Do you know if there are members of the commission or
25 Council of Ministers who were submitted to pressures

12:54

1 from a lady called Mamadie Touré?

2 A. I don't know.

3 Q. Do you know Mamadie Touré?

4 A. I've never met her, but I heard her name.

5 Q. Did you see her in the ministerial file yourself?

6 A. No.

7 Q. Do you consider that the Base Convention was signed by
8 your government in compliance with the law, with
9 Mining Law?

10 A. I told you I haven't read it. And the period of
11 negotiations, I gave you my point of view on that. So
12 I can't pass judgment on this, whether it's regular or
13 not.

14 Q. But from what you saw, there is nothing to suggest that
15 the way the convention was signed was an infringement?

16 THE PRESIDENT: I think it's very difficult to ask for legal
17 advice from Mr Sylla. It is true that he is a lawyer by
18 training, but he has not looked at the documents. He
19 said that practically all of the documents he wasn't
20 familiar with, or that he had only got to know them at
21 a later stage. He told us that he felt that the period
22 covered was too short. I don't think we can go much
23 further.

24 MR DAELE: I have one very last question.

25 Do you think it's possible that the government

12:55

1 wanted to speed up things because it wanted to show that
2 it was still operating and that the mining sector was
3 still active? Because after all, the President was
4 assassinated, according to you. Could that --

5 THE PRESIDENT: He wasn't assassinated. He wasn't
6 assassinated. He was the subject of an assassination
7 attempt.

8 MR OSTROVE: I'm sorry, Madam President, we're asking the
9 witness to speculate. This is going too far.

10 MR DAELE: The circumstances prevailing in the country
11 during the period when the convention was negotiated,
12 may that have had influence on the duration of the
13 negotiation?

14 A. I don't know.

15 MR DAELE: Thank you. I have no further questions for the
16 moment.

17 THE PRESIDENT: Would the Respondent have any questions?

18 MR OSTROVE: Yes, Madam President, thank you.

19 (12.57 pm)

20 Re-direct examination by MR OSTROVE

21 Q. You were asked a few questions -- or rather, let me
22 reword this.

23 One looked at the table of contents of the
24 feasibility study with you, and if I understand your
25 comments, you indicated that usually there are several

12:57 1 volumes, including questions dealing with environmental
2 and social questions. Did I understand rightly your
3 answer?
4 A. Yes.

[PROTECTED] [REDACTED]

[REDACTED]

12:59

[PROTECTED]

[REDACTED]

13:01

1 Q. We go back to what was presented to you as the draft
2 working plan of the commission, where you were told --
3 I don't want to go back to all the documents, but I'm
4 sure Mr Daele will correct me if I'm mistaken -- the
5 commission would have started working on Wednesday
6 the 2nd. If I go back to the chronology that was
7 presented to you, the commission started working on
8 Wednesday, 2nd December 2009, and worked on Thursday
9 the 3rd, in order to, according to the document under
10 tab 3, put questions to the Technical Committee on
11 4th December.

12 So my first question for you: usually, in a normal
13 procedure, what are the working days in Guinea?

14 A. Monday to Friday.

15 Q. What are the working hours in Guinea on a Friday?

16 A. On Friday we finish earlier.

17 Q. Why?

18 A. Well, Friday we have prayer. We are of course a *laïque*
19 country according to the Constitution, but we are Muslim
20 and then we finish work early on Fridays. This doesn't
21 prevent people from working later.

22 Q. Within the context -- I'm sorry if you've already
23 answered this question, but you said that you had to
24 ignore the political and social events that had taken
25 place at the time. I wish you to put things back into

13:04

1 the right context on 3rd December.

2 Is it normal, do you think, that these commissions
3 would have prepared such questions on 4th December 2009?

4 A. Well, just by looking at the feasibility study, which is
5 more than 400 pages long, and the mining convention,
6 either people are very smart, extremely smart, or they
7 were sufficiently familiar with the project and knew it
8 by heart to be able to ask questions 48 hours
9 afterwards. Since the commission was constituted on
10 the 1st, they must have received the documents on the
11 1st. So I presume that they received the documents
12 after they were appointed. I'm talking outside the
13 political context at the time.

14 Q. But if I'm asking you to put this back into the
15 political context, can you remind us what happened on
16 3rd December 2009?

17 A. In the afternoon there was this assassination attempt on
18 President Dadis, as I already said. And on the 4th,
19 that the commission may be able to meet to send
20 questions or observations to BSGR, as I said in my
21 statement, it's not credible.

22 Q. If we remain at tab 3, C-[251], we see that Mr Avidan
23 writes to the minister. If we go back to tab 2, C-15,
24 this is the ruling of the minister to set up the
25 commission.

13:06

1 Can you explain: is the minister part of the
2 commission?

3 A. No, he's not part of the commission. He puts in place
4 the commission.

5 Q. So usually, when a commission is working on
6 a feasibility study and a mining convention, who
7 communicates between the commission and the company in
8 question?

9 A. It's the minister. The observations of the commission
10 are forwarded to the minister, who then forwards them to
11 the holder or to the applicant.

12 Q. And normally these communications are formal or
13 informal?

14 A. They are formal, with the letterhead of the ministry.
15 And any letter that reaches the ministry is put with the
16 central secretariat, and then it follows the circuit,
17 administrative circuit: chief of staff, minister,
18 et cetera. There is a whole path for the circulation of
19 this, until it reaches the ministry.

20 Q. Official communications with the government are done in
21 what language usually?

22 A. In French.

23 Q. If you look at tab 3 here, C-251, this is an email which
24 says:

25 (In English) "Dear Minister. Please see attached

13:07

1 for the committee. Thanks".

2 (Interpreted) In your experience, is that the usual
3 tone for a communication within the framework of such
4 commissions?

5 A. Since we don't speak very good English, well, this is
6 administration between an investor, the State of Guinea,
7 represented by the Geology Minister, and the
8 communication framework is very formal.

9 Q. You were also asked a few questions concerning the
10 document which can be found at tab 6, C-210 in our file.
11 This is a document dated 15th December 2009.

12 The document is not signed. But for the Tribunal,
13 I would note that the source is -- you've got a Bates
14 number at the bottom, on the right-hand side. These are
15 documents that have been furnished by Mr Thiam in the
16 framework of the discovery procedure.

17 This document was presented to you as being
18 something that was meant for the Council of Ministers.
19 According to your experience, what form do -- forgive
20 me, French is not my mother-tongue either, so let me
21 reword this.

22 What is the form and shape of memos that are
23 presented between a minister and the Council of
24 Ministers?

25 A. For the communication of a minister to the council, the

13:09

1 document is prepared on the letterhead of the ministry
2 concerned and it's transmitted to the Secretary General
3 of the government that puts it on the agenda of the
4 council, and then it's presented to the Council of
5 Ministers.

6 Q. If we look at the Base Convention, which can be found
7 under tab 7 and which is C-69, you were told that this
8 document was signed on 21st December 2009. This date
9 can be found on the last page, page 57 of the document.
10 I'm sorry, the copy is not of very good quality. But
11 the date of 21st December 2009 is written down next to
12 the signature of Captain Mamadou Sandé. You were told
13 that this document had been signed by the Minister of
14 Mines, Mr Thiam, and the Minister of Finance, Sandé.

15 If you look at the titles, "The Minister at the
16 Presidency" and the "[Visa of the Minister at the
17 Presidency]", can you explain the difference between the
18 signature of a minister and the visa?

19 A. Usually these conventions are signed both by the
20 Minister of Geology and Mines and the Financial
21 Minister, because there are waivers on the rule of law,
22 and it's the Finance Minister that commits the state.
23 That's why they both sign the conventions.

24 Q. So the visa or the stamp of the Minister of Finance is
25 put on the document at the same date?

13:12

1 A. Yes, they are both done at the same time.

2 Q. If you look at the last line:

3 "By virtue of where, the Parties have signed this
4 Convention in five ... examples, in Conakry on
5 16 December 2009."

6 How do you explain that it is indicated that it is
7 signed on 16th December, and only has the stamp of the
8 Minister of Finance five days later?

9 A. I can't explain this. If there is a convention, both
10 ministers and the investor, everybody signs together and
11 in public.

12 THE PRESIDENT: While you're talking about this document and
13 the date of the signature, how do you explain the first
14 Council of Ministers that rules on this subject on
15 16th December, i.e. the date which is indicated as the
16 first date for the signature here, and that there is
17 an Extraordinary Council of Ministers on 18th December,
18 while the convention is supposed to have signed two days
19 before this Extraordinary Council of Ministers?

20 A. I don't know. I can't explain this.

21 MR OSTROVE: I'm trying to see whether there was a Council
22 of Ministers on 16th December.

23 Usually, what is the day of the Council of
24 Ministers, what day of the week in Conakry?

25 MR DAELE: Excuse me.

13:13

1 A. Usually Tuesday, and then the Council of Ministers on
2 the Thursday.

3 MR DAELE: I wonder in what capacity the witness is
4 a specialist of Council of Ministers. He's not a member
5 of the Council of Ministers.

6 THE PRESIDENT: This is a question that I noted before this
7 was raised, because I was struck by the difference
8 between 16th and 18th December, and, Mr Daele, these are
9 documents upon which you put questions to the witness,
10 is my answer.

11 MR DAELE: Yes, quite so, but all sorts of questions are
12 being asked that don't belong to the competence of the
13 witness. I think it is somewhat strange that there
14 should be 19 members of the commission that did take
15 part and who were not asked to appear here as witnesses,
16 and the only member who didn't take part is coming here
17 to explain what happened in the commission.

18 MR OSTROVE: I saw nowhere in the files an indication that
19 all of the other members of the commission took part.
20 I'd rather you didn't state this for a fact in our case
21 in point.

22 Let me go back to my question. I am not asking you
23 to say what happened within the Council of Ministers.
24 But given your responsibilities, did you know what day
25 of the week the Council of Ministers were held?

13:15

1 A. I couldn't tell you when it was then, but I can say
2 since 2011 those council meetings are held on Tuesdays
3 and Thursdays.

4 Q. When you were advisor to the presidency, you do not
5 recall on what day those meetings took place?

6 A. No.

7 Q. Mr Sylla, if you would please go to tab 9. This is
8 Exhibit C-138. This was presented as a letter from the
9 vice chair of the commission, Mr Momo Sakho. You said
10 that he was the only person on the commission that you
11 actually knew?

12 A. That is correct.

13 Q. Have you remained in touch with him?

14 A. Yes, I'm still in touch with him.

15 Q. Do you know if he's still working for the government?

16 A. No, he's no longer working for the Guinean Government.

17 Q. Do you know what his profession is now?

18 A. He's a lawyer.

19 Q. Do you know that he worked as a lawyer for BSGR?

20 A. He told me that he was a lawyer working for BSGR.

21 MR OSTROVE: Thank you. I have no further questions.

22 THE PRESIDENT: Thank you. Do my co-arbitrators have any
23 questions for Mr Sylla?

24 (1.18 pm)

25 Questions from THE TRIBUNAL

13:18

1 PROFESSOR MAYER: Good afternoon, Mr Sylla. If we could
2 return to tab 7 (C-69). This is the Base Convention.
3 At the last page of the French version, which is
4 somewhere towards the middle of this document, we find
5 a list of the annexes.

6 In the document that we have before us, only
7 Annexes 1 and 9 are appended to the document. I assume
8 it is because these are letters and therefore they are
9 short. But the other annexes from 2 to 8 -- and this is
10 the question I am putting to you -- I imagine that these
11 documents are large documents?

12 A. Yes, indeed. The tax and accounting annexes are a very
13 large document.

14 PROFESSOR MAYER: The feasibility study normally would not
15 be part of the annexes?

16 A. No. Generally speaking, no, it's not appended as
17 an annex.

18 PROFESSOR MAYER: We see the environmental management plan.
19 We don't know what the contents of this plan is, but it
20 is one of the annexes: this would be Annex 7.

21 A. Yes, I see this.

22 PROFESSOR MAYER: Should there also be the socioeconomic
23 plan and is it included in the annexes here?

24 A. It's usually called the PGES, the environmental and
25 social management plan.

13:19

1 PROFESSOR MAYER: It doesn't appear here. Is this omission
2 normal or does it call for no comment?

3 A. Here we have the "Environmental Management Plan",
4 whereas normally it's called the environmental and
5 social management plan.

6 PROFESSOR MAYER: So this could be an abbreviated form of
7 designating the same thing that we have here under
8 Annex 7? In other words, the full name of the plan
9 would not have been included?

10 A. I have no way of knowing.

11 PROFESSOR MAYER: I have no further questions.

12 PROFESSOR VAN DEN BERG: Mr Sylla, I have re-read
13 paragraphs 16 through 18 of your statement. Is it true
14 that at the time, in December 2009, you were aware of
15 the existence of the commission and the commission was
16 holding meetings?

17 A. I explained that I was in Dakar when President Dadis was
18 attacked. I came back three or four days after that.
19 As I said, I was told that I was part of a commission to
20 negotiate a convention, and I said that under the
21 circumstances I cannot be involved with the commission.

22 I also explained that the designation or the
23 appointment of the members of the commission follows
24 a procedure, and it was up to the chief of staff to
25 formally announce this, and the documents had to be

13:21

1 transmitted to the members of the commission before
2 their meeting so that they would know what it was about
3 before the actual meeting.

4 PROFESSOR VAN DEN BERG: So that means you're answering
5 "yes" to my question?

6 A. I don't understand.

7 PROFESSOR VAN DEN BERG: My question was: did you know about
8 the commission?

9 A. Yes, I knew that the commission was meeting. When
10 I came back from my trip, yes.

11 PROFESSOR VAN DEN BERG: You said that you would not be
12 involved in it?

13 A. Yes.

14 PROFESSOR VAN DEN BERG: For the reasons that you have
15 indicated in your statement?

16 A. Yes.

17 THE PRESIDENT: Mr Sylla, let me pick up on these points.

18 You said that you decided not to participate in the
19 commission, and if I read your statement, it is a bit
20 mysterious, the reason for your wanting not to
21 participate. You say, "I thought to myself there was
22 a serious problem", and then you didn't really want to
23 tell anybody or to let anybody know that you were not
24 going to participate. You did not put anything in
25 writing; you wanted to be discrete about it, for obvious

13:23

1 security reasons. This is paragraph 18.

2 Could you be clearer as to why there were serious
3 problems? Could you tell us more specifically what your
4 reasons were for not participating?

5 A. For the obvious reason that the President was attacked,
6 shot at, on December 3rd, and immediately thereafter
7 there is to be negotiations on a mining convention. The
8 President has been medevaced to Morocco, and the
9 de facto number two was the Vice President, who didn't
10 really have the power of the President, he was the
11 Second Vice President, and the person who should really
12 have been present was not in Guinea. There were two
13 camps, Dadis had his men and the other one had his men
14 as well, so there was a real risk that the two camps
15 would rise up in arms against each other. And there
16 were military everywhere, they were swarming through the
17 town with weapons in hand, just as if we were at war.
18 So there was a general state of insecurity.

19 THE PRESIDENT: I understand. But by taking part in the
20 commission, were you taking sides for one of the camps?
21 Was that your concern? Is that what you felt was risky?

22 A. The real concern was who was going to step in to take
23 President Dadis's position as President. It was not
24 what was going to happen with the mining conventions to
25 be negotiated.

13:24

1 THE PRESIDENT: How then do you explain that all the other
2 members of the commission apparently met, produced
3 a report, asked questions? Did they not share your
4 concerns?

5 A. I said I doubted, I had doubts as to whether the
6 commission actually met on the day that follow the
7 attempt on the life of the President. I really doubt
8 that this could have happened.

9 THE PRESIDENT: Do you have doubts as to whether the
10 commission actually issued a report?

11 A. The next day?

12 THE PRESIDENT: No, when it handed in its report.

13 A. On December 4th.

14 THE PRESIDENT: No, on 4th December they asked questions.

15 A. The interim President was only appointed in mid-January.

16 THE PRESIDENT: Was the whole administration at a standstill
17 during this period?

18 A. On the one hand the political parties, civil societies
19 and trade unions were active, and the international
20 community. There was an international contact group
21 with the UN, the African Union and ECOWAS, and there
22 were mediators. So everybody was focused on getting
23 Guinea out of this extreme situation.

24 THE PRESIDENT: Could we return to the document under tab 2
25 (C-15). This is the ruling establishing the commission.

13:26

1 Article 1 says that the commission is tasked with
2 reviewing the feasibility study presented by BSGR, and
3 its second task is to draft the mining convention.

4 I thought I heard you say that a commission of this
5 type was to be set up based on a prior opinion of the
6 technical departments in the ministry, including that of
7 the CPDM, but this does not seem to have been the case
8 here. So what is the standard practice?

9 A. The feasibility study is sent to the minister, and the
10 different technical departments that we refer to as the
11 "mining administration" reviews the feasibility study,
12 and if it approves the study, well, it makes
13 recommendations to the minister. The minister then
14 informs the applicant of the outcome. Then
15 an inter-ministerial committee is set up to negotiate
16 a mining convention.

17 THE PRESIDENT: You described for us the formal channels of
18 communication. Does it happen that ministers
19 communicate informally, for instance via email?

20 A. For feasibility studies it's always formal letters that
21 are signed and recorded.

22 THE PRESIDENT: I think that with a potential investor,
23 there are probably various reports that help to clarify
24 various points that are not necessarily formal?

25 A. You can have an official letter with attachments, and

13:28

1 that be sent via email and then have a formal letter.

2 Because any company that's incorporated in Guinea --

3 THE PRESIDENT: I'm just trying to know whether ministers

4 use email.

5 A. Yes, they do.

6 THE PRESIDENT: Do they use Gmail accounts?

7 A. Yes, they will use personal accounts.

8 THE PRESIDENT: They will use their personal addresses when

9 they are communicating as ministers?

10 A. As ministers?

11 THE PRESIDENT: As ministers, they are using a private email

12 address?

13 A. Yes, those that don't have an official account. And

14 it's often the case: everybody is using their private

15 email accounts.

16 THE PRESIDENT: Very well. I am finished with my questions.

17 Do the parties have any further questions?

18 MR DAELE: I have three questions.

19 THE PRESIDENT: You have three questions?

20 MR DAELE: On the basis of questions that have been asked.

21 THE PRESIDENT: So this is a re-cross; these are not

22 questions that follow on the questions posed by the

23 Tribunal? You can ask your questions, but you know

24 again that the re-cross is not standard.

25 MR DAELE: These are short questions.

13:30

1 THE PRESIDENT: Fine.

2 (1.30 pm)

3 Further cross-examination by MR DAELE

4 Q. You said that Mr Sakho was counsel for BSGR. Do you
5 know when?

6 A. After he left the Guinean Government he went to work for
7 BSGR, around 2012 or 2013.

8 Q. At the time that he signed, around December 19th 2009,
9 he was not BSGR's counsel then?

10 A. No, he was still a civil servant.

11 Q. This is my second question. Is it possible for the
12 chair of the commission to ask the members to work over
13 the weekend, or to work longer hours?

14 A. Yes, they can be asked to work longer hours if they
15 wish.

16 Q. Very well. One last question. You talked a great deal
17 about your experience. Can you tell me what are the
18 base conventions that you negotiated?

19 A. I was involved in negotiating the base convention with
20 the company Alufer that was signed last year, and that
21 company has obtained its financing and is currently
22 investing.

23 I was involved in negotiating the convention with
24 SEMAFO. This is the mining company of Mandiana, it's
25 a gold company. And the mining convention was signed

13:32

1 and ratified.

2 I was involved in the negotiations of the rider to
3 the convention of [RusAl] Dian-Dian.

4 I was involved in negotiating the rider to the base
5 convention for Fria. This is an alumina company. This
6 was a tax and customs convention.

7 I am now involved in negotiating the base convention
8 for the CBG.

9 I was involved in negotiating -- let me see, let me
10 think of the other companies -- the negotiations with
11 Rio Tinto, the first negotiation with Rio Tinto for the
12 base convention.

13 These are the base conventions for which I was
14 involved in the negotiations.

15 Q. These negotiations also involved reviewing the
16 feasibility study?

17 A. It's when the feasibility studies are complete that we
18 start the negotiating for the base convention.

19 Q. For each case, was there -- as there was here --
20 a decision of the Minister of Mines appointing
21 a commission and appointing you?

22 A. For the feasibility study, all the technical team are
23 members of the committee that reviews the feasibility
24 study. Then to negotiate the mining convention, the
25 minister appoints representatives also that work with

13:33

1 the representatives of other ministries.

2 Q. But for each commission, there will be a similar
3 decision? The decision that we have under tab 2 (C-15),
4 that is an arrêté in Guinean law, or a decision. For
5 each commission, you will have this type of decision?

6 A. In some cases there is such a decision and in other
7 cases there isn't.

8 Q. Do you know in how many cases there has been this type
9 of decision?

10 A. I can't tell you in how many of these cases there were
11 such decisions.

12 Q. But you say that you are still a formal member of
13 a commission although there isn't such a decision,
14 an official decision?

15 A. I said: to review the feasibility studies, all the
16 advisors are involved.

17 Q. And in that case there is a decision to be a member of
18 the commission, not the one that reviews the feasibility
19 study but the commission that negotiates the base
20 convention? In those cases there is always a decision?

21 A. Not necessarily a decision. The minister sends a letter
22 to his counterparts on the ministry to appoint one or
23 two representatives who will be involved in the
24 negotiation, and they respond and appoint the people who
25 will represent the relevant departments.

13:35

1 Q. In what years were these cases and negotiations handled?

2 A. Which cases are you referring to?

3 THE PRESIDENT: I think Mr Daele is talking about the
4 conventions that you said you were involved with.

5 A. Since 2011.

6 THE PRESIDENT: Mr Daele, have we finished with the three
7 additional questions?

8 MR DAELE: Do you know if the base conventions that you
9 negotiate are public?

10 A. The base conventions that are negotiated are first
11 submitted to the inter-ministerial committee and the
12 Council of Ministers. Then there are submitted to the
13 National Assembly, the National Assembly where all the
14 political parties are represented, and they are
15 discussed in plenary session. Then the National
16 Assembly votes openly, and then it's ratified, and then
17 it's submitted to the President to be promulgated in
18 accordance with the Constitution.

19 Q. Is there a difference between negotiating a base
20 convention and negotiating a rider to a base convention?
21 Because I think that in two of those cases you were
22 involved in negotiating the riders.

23 A. A rider to a base convention changes some of the terms
24 and conditions of the base convention. But because the
25 convention is actually a law, it has to be submitted to

13:36

1 the National Assembly for ratification.

2 Q. But negotiating a rider can be much shorter? Maybe the
3 rider only concerns one or two of the articles in the
4 convention?

5 A. It depends what is being discussed in the rider. It
6 really depends what is involved.

7 MR DAELE: I have no further questions. Thank you,
8 Mr Sylla.

9 MR SYLLA: Thank you.

10 THE PRESIDENT: Thank you. This brings to a close your
11 testimony. Thank you very much for testifying today.
12 You are free to go.

13 MR SYLLA: Thank you very much.

14 THE PRESIDENT: We will now break for lunch. We shall
15 resume at 2.30. Is that sufficient for all parties?
16 Very well.

17 MR OSTROVE: Madam President, if you allow me, I would like
18 to mention that Mr Nabé took the plane last night and he
19 is also fasting, in compliance with Ramadan, so I would
20 just ask for your indulgence.

21 THE PRESIDENT: Will he be ready to start at 2.30? Does he
22 want to start a bit later?

23 MR OSTROVE: I think the earlier the better, since he won't
24 have eaten anything since 5 o'clock this morning, and
25 after having spent the night onboard the plane.

13:39

1 THE PRESIDENT: You just have to let us know if we need to
2 make breaks. It may be difficult for us to judge. We
3 will tell him of course, so that he can speak up if
4 there is a problem, and of course you will be attentive.

5 MR OSTROVE: Thank you.

6 (1.39 pm)

7 (Adjourned until 2.30 pm)

8 (2.32 pm)

9 (Proceedings began in French with no interpretation)

10 (2.34 pm)

11 MR LOUNCÉNY NABÉ (called)

12 (Evidence interpreted)

13 THE PRESIDENT: Good afternoon. You told us you are present
14 governor of the Central Bank, and during the time in
15 which we are interested here, from August 2008 to
16 December 2008, you were Minister for Mines. Is that
17 accurate?

18 A. Yes, madam.

19 THE PRESIDENT: You also submitted to us a written statement
20 dated 8th December 2015; is that accurate?

21 A. Yes, it is.

22 THE PRESIDENT: Do you have your witness statement with you?

23 A. Yes.

24 THE PRESIDENT: Very well then.

25 You are being heard as a witness, and as a witness

14:34

1 it is your duty to tell us the truth. May I ask you to
2 confirm that by reading the witness declaration that you
3 should have before you.

4 MR NABÉ: Yes, your Honour. I solemnly declare upon my
5 honour and conscience that I shall tell the truth, the
6 whole truth, and nothing but the truth.

7 THE PRESIDENT: Thank you.

8 We understand, sir, that you travelled last night
9 and you are also fasting because of Ramadan, and we
10 should say we are particularly thankful for you being
11 with us this afternoon. Needless to say, if at any
12 point you need a break or if you wish to postpone the
13 examination, if it is a long one, to tomorrow, you will
14 feel free, please, to tell us.

15 MR NABÉ: Yes, madam. I had a very trying week and
16 I travelled last night, but I am not fasting today
17 because it's not compulsory for a traveller.

18 THE PRESIDENT: Oh, thank you. Very well then. That
19 lightens part of your burden then.

20 Do I call on the counsel for Guinea first of all?

21 MR OSTROVE: Yes, thank you very much.

22 You already have the one administrative detail that
23 I wanted to give you, because I checked on that before
24 meeting with Mr Nabé. Now I give the floor to Mr Naud
25 for the direct examination.

14:36

1 (2.36 am)

2 Direct examination by MR NAUD

3 Q. Good afternoon, Mr Nabé. Have you any changes to
4 introduce to your witness statement?

5 A. Yes, I do. Paragraph 21, I believe. It says:

6 "Granting the permits to BSGR was therefore decided
7 by the Council of Ministers of 9 December 2008."

8 That is in fact a mistake. It is 4th December, and
9 not the 9th. The same year, 2008.

10 Q. Is that your only correction, sir?

11 A. Yes.

12 MR NAUD: Thank you. I have no further questions.

13 THE PRESIDENT: Thank you.

14 Mr Daele, over to you.

15 MR DAELE: Thank you very much, madam.

16 (2.37 pm)

17 Cross-examination by MR DAELE

18 Q. Good afternoon, Governor.

19 A. Good afternoon, sir.

20 Q. My name is Karel Daele, I am counsel for BSGR.

21 I will endeavour to proceed to your examination in
22 French, sir, which is not my native language. So in
23 advance let me tell you that if I commit any mistakes,
24 like for instance if I use the informal mode of address,
25 I apologise in advance. I shall try and use the formal

14:38

1 mode of address every single time, but I cannot
2 guarantee that it will be systematic. So again, my
3 apologies in advance. It's not due to any lack of
4 respect for you or the position you occupy, sir.

5 With all the other witnesses, I have more or less
6 followed the order of the written witness testimony.
7 Where the others were concerned, their statements were
8 drafted more or less in chronological order, whereas in
9 your case, sir, it is not totally chronological. So
10 perhaps I will be moving from one paragraph to another
11 and then back somewhere in between, simply to try and
12 respect the chronology of the facts. We shall see how
13 it plays out.

14 My first set of questions are connected with your
15 payment. Paragraph 5, you say that you were appointed
16 Minister of Mines by President Lansana Conté on
17 27th August 2008. So my first question to you, sir: at
18 the time of your appointment, did President Conté give
19 you any directives, any instructions, as regards the
20 management of this ministry where you were going to be
21 the newly appointed minister?

22 A. Thank you, dear sir, for your question.

23 Things wouldn't really happen that way. After
24 appointment, the President would see you to say that he
25 was counting on you to handle all of the dossiers

14:40

1 following within the remit of your ministry.

2 Q. Did you have a conversation like that with the
3 President?

4 A. Before my appointment, no. But after the appointment,
5 we had many conversations.

6 Q. And what did the President tell you during that
7 conversation?

8 A. The President said that he was counting on me to
9 undertake the necessary reforms in the mining sector.

10 Q. What reforms were deemed necessary?

11 A. Well, those questions were discussed after
12 a governmental council.

13 Q. Could you please specify what reforms you had in mind
14 there?

15 A. Yes. The Mining Code was already on the table, that is
16 to say the reform of the Mining Code, the reform of the
17 Oil Code, the design of a model mining convention.

18 Q. So in fact he asked you to modify the legislation?

19 A. Well, it was already underway.

20 Q. Did he speak about any specific mining dossiers?

21 A. No.

22 Q. He didn't broach the Rio Tinto matter?

23 A. No.

24 Q. Did he speak about the BSGR case?

25 A. No, not at that point.

14:42

1 Q. Do you know what the expectations were of the Guinean
2 people at large as regards the mining sector at the
3 time?

4 A. Yes. The people of Guinea knew that the country was
5 very rich in mineral ore, but that mineral ore wealth of
6 the population had not really been used for the benefit
7 of the population. So creating the necessary conditions
8 to tap into that potential so as to improve living
9 conditions, were it only a little bit. That indeed was
10 the expectation of the Guinean people.

11 Q. I'm sorry, this might sound like a very odd question to
12 you, but what kind of a minister were you?

13 A. Well, I have an answer which is just as odd as your
14 question. The answer is: what do you mean?

15 Q. Well, were you the kind of minister who would accept
16 directives from your Prime Minister or your President
17 without questioning them, or were you a minister who had
18 his own ideas, his own viewpoint on the direction the
19 country should take, for instance, and normally would
20 you try to give vent to your views and to your positions
21 and engage in a discussion with the Prime Minister or
22 with the President or with your co-ministers? Do you
23 see the difference?

24 A. Yes, I'm trying to see the difference. But it was just
25 to answer your question, which I definitely understood

14:44

1 the first time round.

2 I was a minister like all the Guinean ministers,
3 I believe. There is a governmental policy of which
4 a part, because you're a minister, you don't apply as
5 a minister your own policy. If you were able to apply
6 your own policy, on the basis of your own instructions,
7 then the only solution would be to be the chief. But
8 when you're a minister, you belong to a team that has
9 a programme and a given policy line to follow.

10 Q. Are you referring here to the governmental policy? Who
11 then determined that governmental policy? Was it the
12 Prime Minister, was it the Council of Ministers, was it
13 the President? Who, at the time, would determine and
14 set governmental policy?

15 A. Well, you know that the regime in Guinea has always been
16 a presidential regime, a very strong presidential
17 regime. So the policy of the state is defined by the
18 President of the Republic and implemented by the
19 government.

20 Q. Was that also the case at that time?

21 A. Well, that time was a rather particular time because the
22 President was ill, and his illness did not allow him to
23 cope with all of his duties without delegating them.

24 Q. So if it wasn't the President, then who was it? Who
25 determined what governmental policy would be?

14:46

1 A. Are you trying to say: to whom did he delegate his
2 powers for that?

3 Q. Yes.

4 A. Well, to the Prime Minister.

5 Q. Then would it be accurate to say that in that particular
6 period the real strong man was the Prime Minister?

7 A. I don't know whether that is your impression, but not
8 mine. The strong man is the one who has the suffrage of
9 the people, the vote of the people. That was the
10 President of the Republic. The Prime Minister was
11 appointed by him; he could also be dismissed by him.

12 Q. What was the situation as far as his health was
13 concerned at the end of 2008?

14 A. The President was ill.

15 Q. Very ill?

16 A. Yes, he was ill. It's true that it was difficult --
17 when you were sitting across from him, it was very
18 difficult to feel his illness because he was in full
19 possession of his intellectual means. However,
20 physically, he wasn't really completely in possession of
21 all his physical faculties.

22 Q. So would you say that his health was declining already
23 compared to 2005/2006? Because it seems to me that he
24 passed away in December 2008, that is to say three
25 months after you were appointed, three or four months.

14:47

1 A. Three and a half months.

2 Q. Fine, yes. So had his health already reached a visible
3 state of deterioration?

4 A. It had deteriorated, indeed. It was in the public
5 domain that he was very ill. And when I separated from
6 him towards 10th December, I was far from feeling that
7 only a few days after I got back, he was called back to
8 God.

9 Q. Was he ever hospitalised during the period in which you
10 were Mining Minister, between August and his death? Was
11 he in hospital?

12 A. No. Not as far as I remember, no.

13 Q. Was he hospitalised before your appointment, for
14 instance in the course of 2008?

15 A. Well, I no longer know the date. But he had travelled
16 abroad for some medical checkups.

17 Q. Over those last months, was he still working, was he
18 still in the Presidential Palace, was he still present
19 in official ceremonies, or was he in his village and no
20 longer involved in governmental matters?

21 A. Up until his very last breath, President Conté would
22 travel a lot. His village was not very far away from
23 Conakry, and he would go from his village to his office
24 very often.

25 Q. Was there not a political agreement, the tripartite

14:49

1 agreement, under which the powers of the President had
2 been limited and actually transferred to the Prime
3 Minister?

4 A. Well, I have no specific memory of the contents of
5 an agreement, which was the result of very strong social
6 movements towards the end of 2006/2007. The President,
7 however, kept his power of appointing the Prime Minister
8 and appointing the members of the government.

9 Q. Yes, appointing the ministers and appointing the Prime
10 Minister, yes. But once the Prime Minister was
11 appointed and once the ministers were appointed, did he
12 not have less power than before? Because if there had
13 been no change at all, then what would have been the
14 purpose of that tripartite agreement?

15 A. Well, listen, I cannot tell you what the situation was
16 like before. But when I was in government, I never had
17 the impression that I was different from those who were
18 there before me. As to the purpose of that agreement,
19 that agreement was signed in order to appease the
20 situation, as everybody knows. The motivation is one
21 thing, and how things worked out in practice and in
22 reality is another thing.

23 Q. Yes, well, we have heard that the situation was indeed
24 rather difficult because the President one day could
25 sign a decree, and very often on that same day he would

14:51

1 repeal that decree, at the end of the day. So he was
2 doing things rather haphazardly.

3 So in order to try and make sure that things were
4 kept on track, wasn't there an effort to try and
5 discharge the presidential duties in a different manner,
6 so as to make sure that the situation in the country
7 would not derail?

8 A. Well, what I was able to see for myself -- I cannot tell
9 you what happened when I wasn't there. But what I was
10 able to see for myself is that the power of the
11 President was absolutely intact, notwithstanding his
12 illness. Notwithstanding his illness. In spite of the
13 physical ailment, the physical problems he had, he was
14 still very much present in the arena, so to speak.

15 Q. Was he still lucid?

16 A. Yes, he was still lucid.

17 Q. So you replaced Mr Kanté as Minister for Mines?

18 A. Yes.

19 Q. Do you know why Mr Kanté was replaced?

20 A. No.

21 Q. The President never spoke to you about that?

22 A. No.

23 Q. Did the Prime Minister speak to you about that?

24 A. No, not him either, probably because it was none of my
25 business.

14:52

1 Q. Well, did you ever ask?

2 A. No, I never even asked myself why I was appointed in
3 lieu of my predecessor at the Central Bank.

4 Q. Did you hear the rumours that the fact that he was
5 replaced was in some way linked to the BSGR case?

6 A. I never had that information, no. I didn't ask for it
7 and I never got it.

8 Q. When you replaced Mr Kanté, there was a sort of
9 transition from one minister to the next. Did you speak
10 with Mr Kanté about the state of your ministry?

11 A. Yes. You should know that the transfer of power is done
12 according to protocol in my country, it's a very formal
13 thing. Some of the dossiers, particularly connected
14 with reform, are mentioned. And as to the details in
15 these dossiers, it's the technical teams later that let
16 you know what is happening, the other ones who ensure
17 that the services of the ministry are kept on track.

18 Q. Did you speak with Mr Kanté on the BSGR case?

19 A. No.

20 Q. On the Rio Tinto case?

21 A. No.

22 Q. So these were questions to you, sir, in connection with
23 your appointment, but I now have a set of questions
24 related to what happened right before you were
25 appointed.

14:54

1 You know that on 28th August the President issued
2 a presidential decree in order to suspend the Rio Tinto
3 concession. Were you aware of that?

4 A. Yes, I was aware through the press.

5 Q. According to you, after that decision or that decree,
6 what would the legal status of Blocks 1 to 4 of
7 Rio Tinto have been?

8 A. According to my interpretation after that decree, such
9 as I was able to interpret things at the time, the
10 dossier concerning Mount Simandou was in question.

11 Q. What do you mean by that? What does that entail for the
12 mining rights on those blocks, when the whole dossier is
13 in question? Does it mean that those rights become
14 available?

15 A. Well, according to my interpretation of things, they do
16 not become immediately available.

17 Q. Well, you don't say directly available, but then how
18 would you qualify that status? Because the concession
19 is suspended but the rights are not yet available. So
20 what then is the status of those blocks at the time?

21 A. Well, you know, I'm not a legal expert. The only thing
22 I know is that there was a decree issued by the
23 President concerning the concession to Rio Tinto.
24 Before the decree, there had been an inter-ministerial
25 committee to negotiate mining contracts and agreements

14:56

1 that had been set up. So I imagine that all of that
2 must be put together so as to create a coherent whole,
3 so that the government could experience the least
4 possible disadvantage from this.

5 Q. Can I ask you, please, to turn to tab 3 of your bundle
6 (C-98). Do you recognise this document? This is in
7 fact the application by BSGR for Blocks 1 to 3.

8 A. Yes, I have seen this before, but much later, much
9 later; not when I took office, not immediately after
10 taking office, but later I became aware of this
11 document.

12 Q. Was this application legal, according to you?

13 A. Well, I wouldn't justify the application. The
14 application may be considered to be exorbitant by the
15 party receiving it, but it's normal for the applicant to
16 put it forward.

17 Q. Yes, but in light of the presidential decree, was BSGR
18 entitled to submit an application for these permits,
19 permits over Blocks 1 to 3?

20 A. Well, it's not up to me to pass judgment on that.
21 Someone can always ask for the moon.

22 Q. So you had no views on the legality -- or lack
23 thereof -- of this document?

24 A. No, you can't look at this document in terms of it being
25 legal or illegal, but simply whether or not the

14:59

1 application is reasonable or not. Because in fact no
2 company can grant itself the permits; they can only
3 apply for them.

4 Q. That's exactly what they were doing here, wasn't it?
5 They were just applying for the permits.

6 A. Well, you need a legal framework for an application
7 to -- do you need the legal framework in order to put
8 this forward?

9 Q. Well, the legal framework was the Mining Code of 1995.

10 A. Well, I'm not a legal expert. I am saying simply that
11 the applicant must have had his own intentions, his own
12 wishes, and it is the entity receiving the application
13 who should determine whether it is legal or not.

14 Q. I understand you are not a legal expert, but there were
15 legal experts within the Ministry of Mines. The legal
16 experts in your department never told you that this
17 particular application was legal or illegal?

18 THE PRESIDENT: Mr Daele, I believe that Mr Nabé has
19 answered that the application as such doesn't have to be
20 considered legal or illegal as such, but whether it is
21 reasonable or not, and then it is up to the granting
22 authority to decide whether the permit shall be granted
23 or not. Obviously you will correct me if I am mistaken.

24 A. No, you are entirely right, Madam President.

25 MR DAELE: I was asking the question because obviously the

15:00

1 governor is quite right, he is not a legal expert, and
2 I wanted to check whether there were any legal experts
3 in his department who gave their opinion on that.

4 A. I am going to answer. They didn't have to decide on
5 this, because I only became aware of this letter much
6 later.

7 Q. So this is the application by BSGR dated 5th August.
8 Could you look at the document under tab 5. This is
9 C-174. On the last page there is a name and
10 a signature: Mr Alsény Bangoura. The document is dated
11 20th August 2008, i.e. one week before you were
12 appointed.

13 Were you familiar with this document?

14 A. No.

15 Q. Do you know Mr Alsény Bangoura?

16 A. As I am sitting here today, I don't represent that
17 person.

18 Q. But you see his stamp: it says "President of the Control
19 and Assessment Commission for Mining Titles". You can
20 see that?

21 A. Yes, I can.

22 Q. So this document suggests that it was signed by the
23 president of that commission. As we can see on the
24 first page also there's the letterhead, "Commission for
25 the Control and Assessment of Mining Titles".

15:03

1 I'd like to show you the last paragraph of this
2 letter, i.e. the suggestions made by the commission in
3 question. It says, in terms of negotiations with
4 Simfer -- Simfer was, I believe, the sister company or
5 the joint venture of Rio Tinto. Is that right?

6 A. Yes.

7 Q. So in terms of negotiations, Rio Tinto -- because
8 throughout the week we have constantly spoken of
9 Rio Tinto, not Simfer. So I am going to continue using
10 this name Rio Tinto.

11 Anyway, the suggestion of the Control Commission for
12 Mining Titles:

13 "... [Rio Tinto] is under the obligation of
14 retroceding 50% of the 738 [square kilometres] that it
15 still holds without reason; further to the payment of
16 a lump-sum fine (at your discretion) for infringing the
17 mining rules and regulations in force in the Republic of
18 Guinea."

19 Do you agree with me that this was the opinion of
20 this commission, that the concession held by Rio Tinto
21 infringed mining laws?

22 A. That it was the opinion of the commission? Well, as
23 expressed here, it is unequivocal.

24 Q. Once you were minister, did you have any contacts with
25 that commission?

15:05

1 A. I had contacts with an inter-ministerial commission
2 which was quite different from this one.

3 Q. So this is one week before you were appointed. Then you
4 were appointed on [27]th August?

5 A. Yes.

6 Q. And on that very same day -- and this is tab 7, and this
7 is the commission you are referring to. This is C-176.
8 There is a commission. Do you see this is the service
9 memo dated 27th August 2008?

10 A. Yes, I see it.

11 Q. So it's the day you were appointed. And it's signed by
12 your predecessor, Mr Kanté; I presume that this was the
13 very last act that he launched into before he left the
14 ministry. Were you aware of this commission?

15 A. Well, I didn't know this memo, I wasn't aware of this
16 memo.

17 Q. So the fact that the Minister of Mines had set up on
18 28th August a Technical Commission to analyse -- you can
19 read the first sentence:

20 "This bears constitution of a technical commission
21 for the examination of mining titles granted to Company
22 RIO TINTO."

23 Does that not ring a bell to you?

24 A. No, this memo does not recall any memory.

25 Q. This document is dated 27th August.

15:07

1

Can you take the document under tab 11. [PROTECTED]

[REDACTED]

20 Under tab 8 --

21 A. Document number 8?

22 Q. Yes. This is document C-177. This is a summary record
23 of a meeting. At the [top] of the page it says

24 "Introduction":

25 "On Monday 1st September ... was held at the office

15:10

1 of the Minister of Justice a meeting of the
2 inter-ministerial Committee set up in order to discuss
3 issues linked to the situation of crisis relating to
4 [the 28 July 2008 decree] ..."

5 Do you remember this meeting?

6 A. If you're asking me if I remember the meeting of
7 1st September 2008, I can't remember the date. But
8 I did take part in meetings at the office of the
9 Minister of Justice, which was the inter-ministerial
10 committee that I found in place.

11 Q. You see in the second paragraph that you have the names
12 of the six people who made up this committee, amongst
13 which you are the second one: "Dr Louncény NABÉ,
14 Minister of Mines and Geology". So you took part in
15 this meeting, at least according to this document.

16 The last paragraph of the introduction on the first
17 page, the paragraph says:

18 "One should note that the ministerial committee was
19 put in place by the Government with as its mandate to
20 find as quickly as possible a solution to this problem,
21 taking into account the interest of the State but also
22 the strong social demand that the Government is facing
23 presently."

24 Do you remember that this was the mandate that had
25 been entrusted to that committee?

15:12

1 A. The mandate of the committee consisted in discussing the
2 discussion for the application of the provisions of the
3 decree that had been adopted by the President on the
4 iron blocks of Simandou.

5 Q. Then I continue at the bottom of the page. He then
6 asked the Minister of Mines -- that's yourself -- the
7 rapporteur of this committee, to present the technical
8 and legal aspects of the case, or the matter. The last
9 paragraph says that:

10 "The Minister of Mines and Geology introduced the
11 officials attending and asked them to present the
12 various aspects of the matter."

13 Do you remember such events?

14 A. In detail, no. But meetings did take place, and indeed
15 that we should have asked the officials who were in
16 charge to present the state of advancement, this is
17 quite possible.

18 Q. Under [tab] 9 now we have this legal opinion. Do you
19 recognise this document, C-178?

20 A. I do not have any recollection of this document.

21 Q. Could you please look at the last page, where the
22 document is dated 1st September 2008. Is it possible
23 that this might have been a legal opinion that was
24 presented to the committee, to your committee?

25 A. You mean the last paragraph?

15:15

1 Q. Yes.

2 A. Can you read it out, so I understand what you're talking
3 about?

4 Q. First we looked at the document under tab 8. That was
5 the summary record of the meeting of your committee.

6 A. Yes.

7 Q. At the bottom it is said that the committee asked you to
8 present the technical and legal aspects of the matter.

9 A. Are you talking about document 8 or 9?

10 Q. 8.

11 A. Yes, I would have liked you to have read. So it says:

12 "The Minister ... introduced the various officials
13 present and asked them to present technical aspects of
14 the case."

15 Q. Yes.

16 A. I've already given you my answer, which was that
17 meetings did take place.

18 THE PRESIDENT: I don't think you need to repeat your
19 answer, we heard it properly.

20 The next question was: the document that you find
21 under tab 9, which is entitled "Legal Opinion on the
22 Simfer File", would that be the presentation of the
23 legal aspects that were tackled by the officials of your
24 ministry at the 1st September meeting, the summary
25 record of which is under tab 8?

15:16

1 A. This is a possibility, Madam President. But these
2 events took place in 2008 and I do not recall the detail
3 of this.

4 THE PRESIDENT: Well, if you don't remember, just try and
5 answer to the best of your ability.

6 A. That's what I am trying to do.

7 MR DAELE: In the end, what was the final position of your
8 committee? You heard the legal opinions and technical
9 opinions that were presented. Do you remember what the
10 ultimate position of your committee was?

11 A. The committee reached a situation where it took stock of
12 a disagreement with Rio Tinto.

13 Q. The last paragraph of the document under tab 8.

14 A. We're back to 8.

15 Q. The last paragraph said:

16 "Finally, the members of the inter-ministerial
17 Committee were unanimous in stating that there was no
18 way that they could give a favourable answer to the
19 appeal and instructed the members of the technical team
20 to continue the negotiations while complying strictly
21 with the regulatory and legal framework."

22 This was the position of the committee. Therefore
23 they were unanimous, so it means that you too were
24 unanimous?

25 A. Independently from the document, that I no longer

15:19

1 remember with sufficient precision, indeed the
2 inter-ministerial committee concluded that there was no
3 agreement with Rio Tinto.

4 Q. But when would an agreement have been reached with
5 Rio Tinto?

6 A. In the negotiations with the ministerial committee.

7 Q. Because in my view the negotiations with Rio Tinto took
8 place after this meeting had taken place. Or were there
9 other meetings/negotiations with Rio Tinto before that?

10 A. My first meeting as a minister was one with Rio Tinto in
11 the offices of the Minister of Justice, who was the
12 president of the inter-ministerial committee. This was
13 the day I took an oath. It was on a Friday, if
14 I remember rightly, so it must have been around
15 29th August 2008. I was asked to attend the meeting,
16 I was given the agenda by phone, and as I stated before,
17 the files are not looked at in detail on that
18 opportunity.

19 So the answer is: yes, there were meetings with
20 Rio Tinto, between Rio Tinto and the committee.

21 Q. In this paragraph there is a reference to an appeal by
22 Rio Tinto. What was this appeal?

23 A. I couldn't tell you today. All the more so that this
24 document which you are presenting me is not the subject
25 of my recollection.

15:21

1 Q. Is it possible that after the presidential decree had
2 suspended Rio Tinto's rights, is it not that Rio Tinto
3 would have appealed to the President to overturn this
4 presidential decree? Does this remind you of anything?

5 A. You are free to come to that conclusion yourself.

6 THE PRESIDENT: Before we leave this document, I understand
7 from your answer that on Friday, 29th August, your very
8 first meeting as Minister of Mines, this took place at
9 the Ministry of Justice together with representatives of
10 Rio Tinto?

11 A. Yes.

12 THE PRESIDENT: So that would have been before the meeting
13 the summary record of which is to be found under tab 8,
14 because that's dated Monday, 1st September; that would
15 have drawn the consequences from the Friday meeting. Is
16 that possible?

17 A. That's what the dates suggest.

18 THE PRESIDENT: Thank you.

19 MR DAELE: We were at the beginning of September. You say
20 under paragraph 6 of your witness statement that:

21 "Approximately ten days after my arrival ... i.e. in
22 September 2008, the President ... asked me to attend
23 a meeting in his office with the subject matter of
24 Simandou."

25 So I did my reckoning and this means

15:23

1 4th/5th September 2008? You say "About ten days". You
2 were appointed on 27th August. So it would be right?

3 A. Yes, that would be correct, for the meeting. If I could
4 give you the precise date, I would have done it already
5 in my witness statement.

6 Q. So it's more or less 4th/5th/6th September, right?

7 A. Yes, that would be right.

8 Q. In the following paragraphs you talk about this meeting
9 you say that there was also the Prime Minister,
10 Mr Souaré, the Secretary General, Alpha Ibrahima Kera,
11 and a lady, Mamadie Touré. Were there other people too?

12 A. I indicated those that came to mind, as I recollect.

13 Q. So you don't exclude the fact that there might be other
14 people too?

15 A. I can't be categorical on this point because I didn't
16 have my notes; it's just my recollection. Because
17 indeed this is how things took place: I was called,
18 I went, I had other people with whom we spoke with the
19 President. So it's not impossible that there might have
20 been other people there. Besides, I just mentioned
21 this; it came back to my recollection.

22 Q. Do you remember whether BSGR was present?

23 A. No.

24 Q. You don't remember, or were they not there?

25 A. I don't remember.

15:25

1 Q. Do you think, had BSGR been present, that you might have
2 remembered? It was important all the same, wasn't it?
3 Because you say later that the aim of this meeting was
4 to discuss BSGR. So whether they were present or not is
5 important, no?

6 A. I don't think I discussed things with BSGR, but
7 I discussed the subject of BSGR. We usually talk about
8 people who are not there, surely.

9 Q. But you no longer remember whether they were present or
10 not?

11 A. It depends what you call BSGR. Mamadie Touré was there,
12 Madame Mamadie Touré was there.

13 Q. I can guarantee that this was not BSGR. So anyway,
14 Mamadie Touré was there and there were representatives.
15 Mr Asher Avidan, was he there?

16 A. I don't remember having seen Mr Asher Avidan in the room
17 on that day.

18 Q. Ibrahima Sory Touré?

19 A. On that day, as far as I remember, he wasn't there.

20 PROFESSOR VAN DEN BERG: May I ask a question, Mr Daele?

21 Mr Governor, you wrote in paragraph 8:

22 "When I saw [Mrs] Touré next to the President at the
23 meeting, I understood that she was putting pressure on
24 her husband in favour of BSGR concerning Simandou, like
25 your brother."

15:27

1 Can you be more specific? How did you come to
2 understand -- well, what pressure, to start with, did
3 she exert?

4 A. Well, you know, if I remember correctly, Mr Touré had
5 been in touch with me on several occasions, more than
6 once. He is the brother of Mamadie Touré. And it was
7 also well known that Mamadie Touré interfered in favour
8 of BSGR. So I had a visit of her brother, the President
9 calls me without telling me what it is all about, I go
10 there and I find Mamadie Touré on the spot. What do you
11 expect me to interpret? At least I established the
12 link.

13 PROFESSOR VAN DEN BERG: How close was Mamadie Touré from
14 the President, how many centimetres?

15 A. She was sitting next to him.

16 PROFESSOR VAN DEN BERG: She was talking to him?

17 A. No, she didn't interfere in the debate. She was seated,
18 sitting upright, very self-confident.

19 PROFESSOR VAN DEN BERG: Were there other wives of the
20 President?

21 A. No.

22 PROFESSOR VAN DEN BERG: She was the only one?

23 A. I remember very clearly that she was there.

24 MR DAELE: You say that it was a well-known fact that

25 Mamadie Touré would interfere in favour of BSGR. [PROTECTED]

15:31

1 you know that he was employed by BSGR?

2 A. At the time I did not know that he was employed by BSGR.

3 I found out later on that he had a fairly high position

4 in the local representation of the company.

5 Q. You said that he came to see you several times?

6 A. More than once, yes.

7 Q. So when he came, he did not present himself or introduce

8 himself as an employee of BSGR, but rather as

9 the spokesperson of Mamadie Touré?

10 A. Yes, as Mamadie Touré's brother.

11 Q. But not as an employee of BSGR?

12 A. As I said earlier, I found that out later.

13 Q. When he came to see you, what was he asking for?

14 A. He asked me to use my power, to help BSGR get those

15 blocks by saying that BSGR is able to develop the

16 deposit in the best possible timeframe.

17 Q. How did you react?

18 A. I did as I often do: patiently. Because as you must

19 understand, the decision was not mine to take. So

20 I could not simply say, "Yes, I will do that".

21 And what's more, he knew the President was headed in

22 this direction. He knew it, because he told me very

23 clearly one day, "The President said to Madame that he

24 gave you instructions through the Prime Minister, and

25 the Prime Minister also says that he gave you

15:32

1 instructions". So Mr Touré knew that his sister was
2 doing this. And I wonder whether his presence in the
3 company -- and this is an interpretation -- was not done
4 to basically guarantee their interests.

5 Q. You say that the Prime Minister, Mr Souaré, if
6 I understand you correctly, had received instructions
7 from Mamadie Touré or from -- on behalf of the President
8 or from Mamadie Touré?

9 A. Let me explain how it happened. Mr Touré said, seeing
10 that I wasn't very enthusiastic, "The President told
11 Madame that he had passed on the instructions to you".

12 Q. But this is not what happened at the meeting that's
13 described here. When you were there, as was the
14 President and Mamadie Touré, that was not when you
15 received this direction or this instruction.

16 A. For me it was beyond being implicit.

17 Q. But why wouldn't they say so explicitly? There were
18 just the four of you present there.

19 A. I don't know.

20 Q. If it's implicit --

21 A. I said it was more than implicit.

22 Q. So what was said?

23 A. I'm going to repeat what I'm saying, because I think
24 it's better to repeat rather than lie.

25 Mr Touré came to see me. He wants me to give BSGR

15:35

1 the permits and he gives me reasons to do so. He says
2 it will serve the country because BSGR is capable of
3 developing this mine. Then I receive a call, I am
4 called to the President, and here I found his sister,
5 who is raising the same matter. Frankly, that's the
6 conclusion I drew. So I was within my rights to draw
7 this conclusion.

8 PROFESSOR VAN DEN BERG: There are two meetings: first with
9 Mr Touré, and then the meeting with the President where
10 Mrs Touré was there alongside the President.

11 Was there, according to you, something illegal in
12 what was going on? The brother who asked you to do
13 something for a company; then you are called in to [see]
14 the President, there is a problem with Rio Tinto and the
15 retrocession. So where's the problem in fact?

16 A. In answer to Mr Daele's question, I wasn't talking about
17 whether it was legal or illegal; I was talking about
18 what was possible between what he had done and then the
19 fact that his sister was there at the meeting with the
20 President. I was talking about the possible link
21 between these two events.

22 MR DAELE: You have said that the same subject matter was
23 discussed during these two meetings. Could you be
24 specific? In your statement at paragraph 8 you say that
25 the President said, regarding Rio Tinto -- and this is

15:37

1 in paragraph 8 -- that:

2 "... 'If they don't agree, they have to be thrown
3 out'. He is referring to the retrocession of part of
4 the zones within the perimeter ..."

5 That we also saw in the legal opinions. As we saw,
6 there was a problem with the retrocession, that
7 Rio Tinto did not agree to. And here you say this is
8 what was said about Rio Tinto: that if they don't
9 accept, they have to be thrown out. And this involves
10 retrocession.

11 Is that what the President said, were those the very
12 words, or did he say it in a different way?

13 A. This is a literal interpretation, you are right to do
14 that. And I am telling you that in this context the
15 President had one objective: it was not to throw
16 Rio Tinto out, it was to get rid of Rio Tinto in order
17 to bring in BSGR.

18 Q. But during the meeting he also talked about the second
19 stage: the first stage being getting rid of Rio Tinto,
20 and the second stage, to then grant the rights to BSGR.
21 Did he also issue instructions for the second stage?

22 A. I thought you would ask me why was I establishing the
23 link. That's what I said.

24 Q. You're the one who makes the link, not the President.

25 A. You have my answer. I established that link after the

15:39

1 visit by her brother coming to see me, and then seeing
2 her in the company of the President. The President is
3 normally not with any one of his wives during these
4 types of discussions. So it was quite clear.

5 My real feeling at the time, you can ask me
6 questions. I didn't think anything else at the time.

7 Q. You left the meeting thinking that the President had
8 instructed you to take back the permits from Rio Tinto
9 and to give them back to BSGR as quickly as possible?

10 A. In any event, subsequent events simply turned out to
11 corroborate this interpretation.

12 Q. Do you know that Mr Souaré, when he was examined on this
13 subject, no longer recalls this meeting?

14 A. No, I did not know that.

15 Q. Isn't that somewhat strange: that the Prime Minister who
16 took part in the same meeting no longer remembers, but
17 you do?

18 A. I must say that what he remembers is of no concern to
19 me. What is of concern to me is what I recall.

20 Q. Would you please turn to tab 35. It's document C-86.
21 This is a statement made by Mamadie Touré. On page 5 --

22 A. Page or paragraph?

23 Q. Page 5. Here we find Mamadie Touré's version of what
24 took place at this meeting. In the third line she said:

25 "The next day, [Mr] Avidan, myself and others went

15:42

1 to the small palace for a meeting with the President.
2 In the presence of [Mr] Avidan, the President said that
3 I would one day be thrown out by BSGR. Avidan promised
4 the President promised that this would not happen. The
5 President then brought Nabé into the room. The
6 President told Nabé to grant blocks 1 and 2 to BSGR.
7 Nabé said that he understood."

8 Do you agree with this description of these events?

9 A. I don't recall the details that are as described here,
10 nor do I remember Mr Avidan was there at the meeting to
11 which I was called.

12 Q. If the President tells you that you must grant Blocks 1
13 and 2 to BSGR, this is not a detail. So even having
14 read this passage, you are still not able to say what
15 took place?

16 A. I stand by what I said. I do not recall that Mr Avidan
17 was there during a meeting where I was with the
18 President, nor do I recall that the President himself
19 talked about BSGR.

20 Q. Thank you. We'll leave this aside for the time being
21 and go on with the chronology of events.

22 Coming back to reality, [tab] 12. This is document
23 R-232. On the second page I see your name and
24 a signature. Do you recognise your signature?

25 A. Yes.

15:45

1 Q. On the first page there is the date of September 16th
2 2008, which would be one week after this alleged
3 meeting. You set up a Technical Commission to follow up
4 on the Simfer case, and there is a variety of officials:
5 the members are Diaby, and the chair is Mr Nimaga, and
6 then there are several members.

7 Did you set up this commission?

8 A. Yes.

9 Q. This means that there was already a commission that had
10 been set up by Mr Kanté on August 27th; then there was
11 an inter-ministerial committee set up by the Council of
12 Ministers on August 28th; and now this is a third
13 commission that you set up on September 16th.

14 What was the purpose of this committee and in what
15 way was it different from the other committees?

16 A. I said that the committee that was set up by Mr Kanté,
17 according to the document that you have shown that was
18 dated August 27th, I did not work with that committee.

19 Q. Do you know if that commission did any work?

20 A. I said before, I didn't know of its existence.

21 Q. But you know that this committee existed. What was the
22 purpose of this committee?

23 A. The committee was intended to discuss with Rio Tinto in
24 order to come to an arrangement.

25 Q. What type of arrangement?

15:47

1 A. To get Rio Tinto to accept a retrocession in accordance
2 with the provisions of the Mining Code.

3 Q. Did you select the members yourself?

4 A. As far as I can recall, yes. It was from the Ministry
5 of Mines and there has to be an internal commission,
6 this tool for the Minister of Mines to prepare the
7 various aspects of the dossier.

8 Q. When I look at their titles -- for instance, Mrs Camara
9 Fatou Diallo, who was the head of legal affairs and
10 disputes?

11 A. For the same case, yes.

12 Q. Then Mr Sidiki Condé, who was the National Director of
13 Mines. There was also Mr Soriba Bangoura, Deputy
14 Director of Mines, and the rapporteur, Mamadou Diaby,
15 who was the Permanent Secretary General.

16 So these were quite substantial and senior
17 individuals. These were not mid- to low-level managers;
18 these were experienced and senior officials. You will
19 agree with that?

20 Forgive me, I will reformulate the question, or
21 rather I will formulate my question now. Did you select
22 or did your staff select these members on the basis of
23 their seniority and competence?

24 A. On the basis of their knowledge of the situation at
25 hand. It's not necessarily seniority in terms of how

15:50

1 much time you've been in the position, because, for
2 instance, the chairman of the commission was not the
3 oldest; he was one of the youngest members in fact. But
4 those whose names appear here were certainly capable and
5 able to do the job at hand.

6 PROFESSOR VAN DEN BERG: Mr Governor, if I may ask you
7 another question.

8 There are several individuals that are members of
9 the commission that was set up on September 16th 2008 --
10 this is as per the document under tab 8, and that you
11 were just examined about -- who are actually the same
12 individuals that we find in the commission that was set
13 up by your predecessor on August 27th 2008, and that is
14 as per the document under tab 7.

15 Is this a coincidence? Were you trying to recreate
16 a commission with a few different persons?

17 A. As I said before, up until I came into this room, I was
18 not aware of the existence of the committee that was set
19 up on August 27th.

20 I set up the commission. And you will understand
21 that I had just arrived at the ministry, I found
22 a situation that was quite thorny, and it was the first
23 topic of a meeting. So of course I was going to rely on
24 those managers who knew about the case. It may be that
25 some of the same individuals were part of this

15:52

1 commission, but I can say quite categorically that I had
2 no knowledge of the existence of the first committee.

3 PROFESSOR VAN DEN BERG: Let me ask the question a different
4 way. Mrs Camara --

5 A. On both lists.

6 PROFESSOR VAN DEN BERG: Couldn't Mrs Camara say, "I am
7 already on a committee. Why would I be appointed
8 a second time?"

9 A. This is a relevant question, because the administration
10 is continuous. Had I known of Mr Kanté's committee, of
11 course I would have taken that into consideration.

12 PROFESSOR VAN DEN BERG: Mr Daele, you may continue.

[PROTECTED]

[REDACTED]

15:54

[PROTECTED]

[REDACTED]

15:58

1 Q. You see at the bottom of the second page the letter is
2 Cc'ed to the Minister of Justice, Mr Bachir Touré.

3 A. Yes, I can see that.

4 Q. If I'm not mistaken, he was also the chair of the
5 inter-ministerial committee.

6 A. Yes, that is quite correct.

7 Q. So this is Rio Tinto's letter sent to you, and in the
8 middle of the first page, in paragraph 4 that starts
9 with:

10 "Through correspondence and discussions that we have
11 had over the last few months, we, at our end, have noted
12 that the State's major concerns are: ..."

13 And then follows a list of four concerns. Do you
14 see this on the page?

15 A. Yes, I do.

16 Q. The first major concern for the state was:

17 "The rebalancing of the convention in such a way
18 that the Republic of Guinea and its population could
19 fully benefit from the exploitation of its resources in
20 the short-term and long-term."

21 This suggests that this was the government's
22 position, namely the convention it had signed in 2002
23 was not balanced, since it has to be rebalanced. Do you
24 agree with this?

25 A. This would simply mean that the convention was flawed,

16:00

1 otherwise there would be no reason to question it.
2 Before the present decisions there were people saying
3 that there should have been a retrocession, so to have
4 it said in this letter is hardly of concern.

5 Q. Yes. That's point number one: making sure that the
6 mining convention or the mining agreement is rebalanced.
7 The second major concern of the state, at least
8 according to Rio Tinto, was that Rio Tinto apparently
9 wanted to freeze the Simandou resources. The third
10 concern was that Rio Tinto was said not to have
11 fulfilled all of its obligations under the convention
12 and the concession; and the fourth concern, that
13 Rio Tinto was said to be controlling far too many
14 resources in Simandou and that it had to retrocede part
15 of its present perimeter or to accept working in a joint
16 venture with a third party.

17 Does this summary by Rio Tinto of the major concerns
18 of the state correspond to reality? That was really the
19 position of the government at the time?

20 A. Well, these were indeed concerns for the government.

21 Q. Then you have no particular problem with this list?

22 A. Well, I don't have an exact recollection. But it does
23 seem to me that this summary probably comes from
24 a letter that's been sent to them, because they are
25 saying they are taking note of that, and they are afraid

16:02

1 that this may come from some misinformation that they
2 wanted to set right.

3 Q. Very well then. On the second page, second paragraph,
4 Rio Tinto then says there:

5 "If our concession perimeter in the concession had
6 to be reduced ..."

7 We are speaking here of the retrocession:

8 "... the economy of the project, such as it is
9 designed at the present time, would be jeopardised
10 dangerously because of the reduced amount of iron that
11 would be available for the remaining life of the
12 project. Such a reduction in resources would inevitably
13 affect the choices on infrastructures."

14 Then in the following paragraph, in the third
15 sentence, Rio Tinto continues that:

16 "That same climate generates difficulties with
17 engineering firms that are sought after for other
18 projects, elsewhere in the world, that would seem safer
19 to them. Finally, we, unfortunately, are confronted with
20 a prospect of losing heart, the consequence of which
21 would be delays in the timetable of the project."

22 This is Rio Tinto's position. Rio Tinto is telling
23 the government, "Be careful, because if you want us to
24 retrocede these areas there will be consequences,
25 substantial consequences". They even speak of

16:05

1 "dangerously jeopardising", "very substantial delays",
2 et cetera.

3 How did you interpret this letter? As a threat?

4 A. Well, that was Rio Tinto's presentation of things.

5 Q. But that presentation of things was a refusal to
6 retrocede the areas.

7 A. Well, yes, you can read that in the background. This is
8 what you [have to try and] understand, my dear sir.
9 This is what I was trying to explain.

10 Q. Tab 15, please. It is document R-151. Yet another
11 Rio Tinto letter to you. On page 1, under the date, we
12 see that the letter is indeed addressed "To
13 His Excellency Dr Louncény Nabé". The letter is dated
14 6th October 2008.

15 "Your Excellency" -- well, I'm not going to go
16 through every single paragraph with you, but
17 I'll immediately take you to the last page.

18 First of all, do you recognise this letter?

19 A. We had many letters exchanged between us, to discuss the
20 situation. There were many letters involved.

21 Q. Very well then.

22 This particular letter, last page, again there is
23 an indication here of the fact that the letter is being
24 copied to the Minister of Justice, Mr Bachir Touré. But
25 I want to show you in particular the first paragraph on

16:07

1 this page, where mention is made of the estimation of
2 the reserves.

3 Apart from the points that are mentioned in another
4 letter, there is yet here another point where Rio Tinto
5 says:

6 "In spite of a lower threshold applying to the
7 Resource, the fact of the matter is if our title were
8 not to be confirmed by the Government, our estimation of
9 the Resource could also be lowered. This would have
10 a disastrous effect on the 'bankability' of the
11 project."

12 So here again, at least for me, this paragraph
13 clearly implies Rio Tinto's opposition, and again a kind
14 of warning that they are giving: if the concession is
15 not confirmed, or if there is retrocession, the project
16 would be much less bankable.

17 This is how you interpreted this letter at the time?

18 A. Well, I'm waiting for the rest now, because to answer
19 your question, the interpretation I made of all these
20 letters was that Rio Tinto did not want a retrocession
21 to take place.

22 Q. This is why you're saying in your witness statement, in
23 paragraph 13, that in fact the negotiations were not
24 getting anywhere?

25 A. Yes. Yes. Yes, in the light of what I have said,

16:09

1 indeed.

2 Q. Turning to tab 17, please (R-235). Here we find
3 a letter from you. Do you recognise your signature at
4 the end of the page?

5 A. Yes, I do.

6 Q. Do you remember this letter?

7 A. Yes, I do remember it. I remember indeed that a letter
8 such as this one was sent to them, just by reading the
9 very first words. But if you'll allow me, I would like
10 to read through it.

11 Q. Yes, by all means. (Pause) I'm particularly interested
12 in the last three paragraphs.

13 A. Whereas I'm interested in the whole of the letter.

14 (Pause) Fine, I've read it.

15 Q. Okay, if you have read it, then please.

16 The fourth paragraph, you are telling Rio Tinto
17 there that your technical services have carried out
18 a review of the information that Rio Tinto sent them and
19 that the conclusion of your technical department or
20 services was that Rio Tinto is proposing a retrocession
21 of only 17%. That's what you find in that paragraph.
22 And in the following paragraph, your request is that the
23 retrocession should be not just 17% but 50%.

24 Do you see that?

25 A. Yes, I do see it.

16:12

1 Q. So on 28th October 2008 you're asking Rio Tinto, "You
2 have to send us your proposal for a 50% retrocession".
3 Is this what you refer to in paragraph 13 of your
4 witness statement, where you say:

5 "The inter-ministerial committee then asked me to
6 write to Rio Tinto to ask them to propose to us
7 a retrocession plan, which is what I did."

8 So is paragraph 13 of your witness statement
9 referring to this letter?

10 A. That could very well be the case.

11 Q. So in fact you wrote this letter at the behest of the
12 inter-ministerial committee?

13 A. Yes.

14 Q. What was Rio Tinto's reaction? Did they agree?

15 A. Rio Tinto didn't agree. They didn't agree with the
16 principle of retrocession of 50%.

17 Q. So they did not agree? Fine. So then what did you do?
18 Because they kept refusing. So what initiative did you
19 then take?

20 A. When it was understood that there was no progress, the
21 inter-ministerial committee felt it was necessary to let
22 the Council of Ministers know. And the Council of
23 Ministers decided -- or instructed the Minister for
24 Mines to do what I call an "ex officio retrocession", of
25 which Rio Tinto would be informed.

16:14

1 Q. You are speaking here about December 2008?

2 A. Yes.

3 Q. You're going too fast for me, or perhaps I'm going too
4 slow for you. I'm sorry if that were to be the case.

5 But let me show you first tab 19 (C-94). Because
6 you see, you sent that letter to Rio Tinto on
7 28th October, and five days after that -- by the way, do
8 you recognise your signature at the end of the page
9 here?

10 A. Yes.

11 Q. And do you remember this letter as well?

12 A. Yes.

13 Q. So five days later you sent a letter to BSGR, and in the
14 second paragraph of that letter you say:

15 "In that connection, we should like to inform you
16 that the Government is now implementing the conditions
17 contained in decree D/041 ... of 28 July 2008 ..."

18 That was the presidential decree, by the way, which
19 suspends the Rio Tinto concession:

20 "... and which includes the decree ... of
21 30 March 2006 ..."

22 In other words, the decree that had initially
23 granted the concession to Rio Tinto. So in fact you are
24 hereby implementing the provisions contained in the
25 presidential decree. And you say that:

16:16

1 "Discussion are now underway with a partner that may
2 be concerned by the provisions of this act."

3 I would imagine that this is a reference to
4 Rio Tinto?

5 A. Yes.

6 Q. You say:

7 "In that connection, the Government must now examine
8 the possible consequences of the conditions that will be
9 taken concerning Mount Simandou after the various
10 requests by companies such as yours ..."

11 So here in fact you are referring to "requests",
12 "requests" in the plural, made by "companies". So it
13 wasn't just BSGR? Do you remember what the other
14 applicants were?

15 A. From memory, yes, I know that AfriCanada, for instance,
16 was interested.

17 Q. So you get in touch with BSGR and you say, "We are in
18 a difficult situation. In the meantime, however, we
19 want to make sure that we know what the alternatives
20 are". Therefore in your third paragraph you say:

21 "In that framework, we would ask you please to send
22 us the following in writing: ..."

23 Then five bullet points. The first bullet, you are
24 asking BSGR to send you the detailed results of the work
25 on the permits that had already been granted to them in

16:17

1 the Simandou zone.

2 The second bullet --

3 THE PRESIDENT: Is it really necessary to read through all
4 of these? Because we have read them already, and the
5 governor perhaps already remembers it quite clearly. So
6 why don't you ask your question immediately?

7 MR DAELE: Fine.

8 Were these conditions set by the inter-ministerial
9 committee?

10 A. Those conditions were set by the Council of Ministers.

11 Q. Oh, by the Council of Ministers. So there was a meeting
12 of the Council of Ministers?

13 A. Well, the question was mentioned in the Council of
14 Ministers, even though it may not have been the sole
15 question for that Council of Ministers.

16 Q. But those very conditions were put to AfriCanada as
17 well, do you remember?

18 A. No, I can't remember. I remember I did have discussions
19 with AfriCanada on the proposals that had been made.

20 Q. Do you remember or do you know whether the Council of
21 Ministers was under pressure from President Conté or
22 from Mamadie Touré in order to establish to set these
23 conditions out?

24 A. Not to set these conditions at all. The point was to
25 try and find a way of implementing the instructions of

16:19

1 the President, but indeed with precautions that had to
2 be taken. The President was not letting up his
3 pressure.

4 Q. He was not letting up his pressure?

5 A. That's right.

6 Q. But if there was pressure from the President, then why
7 you are putting conditions to BSGR like paying
8 a \$20 million bonus?

9 A. Well, if you were to tell the President, "Mr President,
10 we are asking this of BSGR", do you think the President
11 would have said, "No, don't ask for that"?

12 Q. But do you know when the President gave these
13 instructions? When did he give these instructions to
14 the Council of Ministers?

15 A. The President doesn't take part in the Council of
16 Ministers. The Council of Ministers at that time was
17 compared by the Prime Minister.

18 Q. Yes, but it is the President who gave these instructions
19 to the Prime Minister.

20 A. Yes.

21 Q. And all these five conditions were conditions from the
22 President himself, or were there some other people -- or
23 some of them came from the President and others came
24 from --

25 A. No, no, let me tell you. All of these conditions and

16:20

1 the instructions on the case came from the President of
2 the Republic. The details, in a way, are elements that
3 the Council of Ministers found in order to try and make
4 sure that (1) we would not totally divorce ourselves
5 from Rio Tinto, because we wanted Rio Tinto's
6 capacities, particularly before the crisis; and (2), if
7 we were to do that, why not have a safeguard?

8 Q. Oh, so these conditions then were discussed, proposed
9 both to BSGR and to AfriCanada?

10 A. As far as my memory helps me here, I don't think there
11 was any insistence or pressure, so to speak, in favour
12 of AfriCanada.

13 Q. So in fact you are saying that this particular letter,
14 you sent it under pressure?

15 A. I am saying that it was within the framework of the
16 implementation of the decree and of the will of the
17 President that the letter was written. It is true that
18 we could easily, we could have simply said -- we could
19 have simply said, "BSGR, here you go, these are the
20 permits", but the government felt that we had to ask for
21 some compensation.

22 Q. Did BSGR fulfil these conditions?

23 A. No. As far as I remember, BSGR made promises as to
24 these conditions: they said, "Yes, in case there is
25 a procedure, yes, we are ready to cope, we are ready to

16:22

1 face it, and if we have the good results, then we will
2 give you the entrance ticket".

3 Q. [Tab] 21 then is BSGR's answer. This is a letter dated
4 6th November 2008. For the record, this is C-95. Do
5 you remember this letter?

6 A. Yes. By reading it, I realise that what I've just told
7 you is in fact in one way or another contained in this
8 paper. (Pause) Yes. Yes, it's pretty much that.

9 Q. Fine then.

10 On the last page, you see the first paragraph:
11 mention is made of that bonus indeed. And the last
12 paragraph, mention is made of paying for the expenses of
13 judicial proceedings, and at the bottom of the page
14 there's a suggestion that BSGR has sent some of these
15 reports. Look, you see: "Result of the work of
16 Geological Research", "The proof of financial capacity",
17 you see it at the bottom of the page.

18 Do you remember having received these documents?

19 A. To tell you the truth, even in the answers I told you
20 about the two elements that I remember very clearly: the
21 commitment to cope with the consequences from possible
22 proceedings and the commitment of resources, to justify
23 that, paying the bonus. But you obviously may
24 understand easily that I cannot remember exactly the
25 results of the provision of financial capacity.

16:47

1 MR NABÉ: Yes, Madam President.

2 THE PRESIDENT: Thank you. Mr Daele, you have the floor.

3 MR DAELE: Thank you very much, Madam President.

4 Mr Governor, I think we had ended on the BSGR letter
5 dated 6th November 2008, within which BSGR says or
6 informs you that it's ready to fulfil the terms and
7 conditions as per your letter dated 3rd November.

8 [PROTECTED]

[REDACTED]

Let's go back to BSGR.

5 [Tab] 23. This is C-179. On the first page, do you
6 recognise your signature?

7 A. Yes.

8 Q. So here we have a memo that you prepared for the Prime
9 Minister relating to the state of your negotiations with
10 Rio Tinto?

11 A. Yes, yes.

12 Q. As well as your negotiations or communications with
13 BSGR. And on the last page, above the title
14 "Recommendation" in the middle of the page, there is
15 a paragraph that says:

16 "Certain of those terms ..."

17 A. Yes.

18 Q. So you informed the Prime Minister that BSGR has
19 complied with some of the terms that have been imposed
20 and included, and has committed to achieving
21 infrastructure, not only railway but harbour
22 infrastructure also, and you refer to the report by
23 Ernst & Young, whose financial capacity and technical
24 capacity are guaranteed, and the conditions for the
25 bonus and costs of arbitration. So here you inform the

16:52

1 Prime Minister that BSGR has complied, maybe not with
2 all of the terms, but at least some of them.

3 Then comes your recommendation. You say in the
4 first paragraph:

5 "At this stage we cannot contemplate granting
6 permits to any other company whatever they are ..."

7 So here you still leave the door open, not
8 necessarily to give BSGR, but to give any company.

9 "At this stage it cannot be contemplated yet ...
10 because the zone that is retroceded upon which the
11 permit bears has to be identified."

12 You say it's still too early days because the zone
13 has to be identified. Secondly:

14 "It is only once this stage has been completed that
15 the possibility to grant permits to other partners ..."

16 Here in the plural:

17 "... in the same zone can be contemplated."

18 And in the last paragraph you say that the
19 discussions with Rio Tinto will aim at obtaining the
20 retrocession in the shortest possible time.

21 This is your recommendation to your Prime Minister.

22 Do you remember this recommendation?

23 A. Yes, in substance.

24 Q. Do you know how the Prime Minister reacted?

25 A. As far as I can remember, the Prime Minister only

16:53

1 reacted within the Council of Ministers, when it was no
2 longer a question of sending a letter but to react in
3 front of the Council of Ministers.

4 Q. Here you are referring to your presentation during the
5 Council of Ministers of 4th December 2008, right?

6 A. Yes.

7 Q. So you continue to try and obtain an agreement from
8 Rio Tinto. Again, you are keeping those two parallel
9 routes.

10 If you look at [tab] 24. This is a letter from
11 Rio Tinto to you dated 10th November 2008. This is
12 C-[186]. So following your two letters, "Rio Tinto,
13 please send us your proposal", and Rio Tinto reacts on
14 10th November on the first page -- well, first of all,
15 do you remember that letter?

16 A. Well, I was perusing it.

17 Q. Okay, take your time. It's a letter that was sent to
18 you. (Pause) It's the last paragraph I am particularly
19 interested in.

20 A. Yes, I remember indeed this attitude that had been
21 adopted by Rio Tinto. This is what the elements of this
22 letter seem to suggest.

23 Q. Yes, but the last paragraph:

24 "We repeat our will to give you the information that
25 you have asked for, but given the volume and the

16:56

1 complexity of the data concerned, we need to work
2 together to have a better understanding of your
3 needs...", et cetera.

4 So here it's Rio Tinto who has tried to gain time
5 and is still not handing the plan that you ask for.

6 A. This is indeed the answer that was given to us.

7 Q. I'm sorry, can you repeat your answer?

8 A. Yes: this is the answer that was given to us.

9 Q. So the story continues. Let's turn to [tab] 25. We are
10 making headway.

11 This is the Rio Tinto letter of 10th November that
12 we just looked at, and under tab 25 you've got C-187.
13 This is the technical note on the Simfer file. It's
14 dated 14th November, as you can see on the last page, by
15 Mr Bangoura, the president of the commission -- for the
16 president of the commission?

17 A. "PO", it's for the president, so it means that it's
18 somebody who signed in the name of the president.

19 Q. So it's the president of the commission that you had set
20 up?

21 A. Yes, in the name of the president of the commission.

22 Q. Therefore it's your own commission on 14th November who
23 at the end of the day identifies the zones that have to
24 be retroceded.

25 On page 3, item 18, you see the last item:

16:58

1 "14 November 2008: The Technical Commission suggests
2 a retrocession plan applying to 50% of the surface ..."

3 Here, the fact that Rio Tinto should continue to
4 refuse offering its own plan, your own services take
5 over and propose the government's plan.

6 On page 5 we see the coordinates for the site after
7 retrocession of 50%. Are these the zones that Rio Tinto
8 may keep?

9 A. I believe so. At least, there was a retrocession plan.
10 The title suggests that indeed coordinates of the zone
11 that stays with Rio Tinto have been determined as
12 follows. Geographical coordinates, of course.

13 Q. These are [Blocks] 3 and 4, as you interpreted?

14 A. I presume that this is the case. But what is true is
15 that the commission gave the coordinates of the zone.

16 Q. But you remember that the commission proposed to
17 withdraw or that [Blocks] 1 and 2 be retroceded and that
18 Rio Tinto may keep [Blocks] 3 and 4?

19 A. Yes.

20 Q. That was upon the proposal of your Technical Commission?

21 A. Yes.

22 Q. Tell me if I am wrong, but I believe that the work that
23 Rio Tinto had done, the little work that had been done
24 was in [Blocks] 3 and 4, and that's why they could keep
25 those zones, but they hadn't done any work in Blocks 1

17:01

1 and 2, and this is why the zones were chosen to be
2 retroceded. Is that right?

3 A. This is what their technicians indicated.

4 Q. So this is a proposal of your own commission.

5 You yourself, on a personal basis, seem to remain
6 pretty positive and to fight for Rio Tinto. The
7 document under tab 26, if you could look at it, is
8 R-237. On the second page you can see your signature.

9 A. Yes.

10 Q. Do you recognise this letter?

11 A. Let me look at it.

12 Q. Dated 28th November, from you to Rio Tinto.

13 It is mainly the second page that I'm interested in.
14 In the first paragraph on the second page you tell
15 Rio Tinto that:

16 "[Your] proposals ..."

17 Because apparently Rio Tinto had offered to
18 introduce a new partner. But you say here that:

19 "The proposals in this regard as well as those
20 concerning the intervention of another partner must be
21 clarified better. In the same way, the precisions must
22 be given as to the contracts with the subcontractors, in
23 order to enable all of the parties concerned to find the
24 best possible solutions."

25 What does this concern? Do you remember?

17:03

- 1 A. The question relates to what specific aspect?
- 2 Q. You are talking here of "another partner", and the
3 contracts with subcontractors.
- 4 A. I remember that I received Mr Walsh, amongst other
5 people, or at least I discussed things with him.
6 I discussed their wish to set up a partnership, and
7 I said, "Which partner do you have in mind?" And I was
8 told, "We'll tell you in due course". So from memory,
9 indeed, clarifications on this partner are aimed at here
10 in this letter.
- 11 Q. But even at the time, at 28th November, there's still no
12 retrocession. And the new partner, you don't have any
13 identity, you don't know the quality of that new
14 potential partner; you just say, "Well, maybe there will
15 be another partner", and nothing more?
- 16 A. Yes.
- 17 Q. And therefore your reaction is, "We need to have
18 clarifications, or better clarifications, on that
19 score"?
- 20 A. Yes.
- 21 Q. Then in the following paragraph you say:
22 "As far as I am concerned ..."
23 So you are speaking personally:
24 "... the continuation of activities in the field is
25 the best way and the main guarantee to overcome the

17:05

1 present challenges i.e. the financial crisis."

2 When I read this I interpret this to mean that's
3 it's sort of a piece of advice to Rio Tinto: "Continue
4 to work in the field"?

5 A. Yes.

6 Q. Unfortunately I don't think that Rio Tinto abided by
7 your advice, since if we look at [tab] 27 -- this is
8 C-189. It's a letter from Rio Tinto dated 3rd December
9 2008, sent to yourself. Do you remember that letter?

10 A. Well, the information in that letter, yes. You asked me
11 before -- well, had you asked me before if I had seen
12 a letter like this, I would have thought twice. But now
13 that I see it, I do think that I received such a letter.

14 Q. If I may, I'd like to refer you to the second paragraph,
15 where Rio Tinto announces that it has examined the
16 project:

17 "... and in the light of the uncertainty concerning
18 our Concession, the need for major resource in ore and
19 the general economic situation, the expenses for the
20 Simandou Project will have to be reduced in 2009 for all
21 of the non-essential work."

22 So here Rio Tinto is informing you that it's going
23 to cut its investments and its work as of 2009. Do you
24 remember that?

25 A. Yes.

17:08

1 Q. Then further down it talks of the retrocession:

2 "Rio Tinto retroceded 50% of its research or
3 prospection services in 2000."

4 I.e. eight years ago.

5 "We are now being asked to retrocede an extra part
6 of our Concession. A Concession which would be thus
7 reduced signifies an increased risk that the project
8 should not reach its critical size."

9 Do I interpret this paragraph correctly when I say
10 that even here, Rio Tinto is saying, "We're not ready to
11 retrocede our zones because it would imperil our
12 project"? Is that the right interpretation?

13 A. Does it require interpreting?

14 Q. And what is your interpretation of this paragraph?

15 A. Well let me read it. It's not interpreting, it's
16 reading. But I've already listened to you, Mr Lawyer.
17 I've already listened to you.

18 Q. Do you want to read it through again?

19 THE PRESIDENT: No, I think what the governor is telling you
20 is that the paragraph is to be read as such, and it
21 doesn't need to be interpreted, and I understand that
22 this is a paragraph that is to be read as a refusal to
23 retrocede.

24 Mr Governor, if I have mistaken your answer, please
25 correct me.

17:09

1 A. This is correct, Madam President.

2 MR DAELE: On the following page, third paragraph, Rio Tinto
3 informs you also of the fact that it will:

4 "... reduce significantly the number of
5 subcontractors and will postpone any new construction
6 project requiring new recruitment of labour for the
7 Simandou project ..."

8 So this is the contrary to what you asked them to
9 do. You had asked them to show in the field that they
10 were ready to work, and here they announce the reverse.

11 What did you do after you received that letter?

12 A. Well look, after receiving this letter, which is dated
13 3rd December, you might have seen that the decision of
14 the council is dated 4th December.

15 Q. Yes, this is precisely what I was heading at.

16 Immediately after this letter, there was a meeting of
17 the Council of Ministers, on the next day.

18 A. The Council of Ministers doesn't meet a function of the
19 subject matters. The dates are set in advance for the
20 Council of Ministers, the same day every week. So it
21 was done on the following day: it's a coincidence.

22 Q. What can you tell us of the way this meeting took place?
23 What happened on that day? What did you say to the
24 council?

25 A. To the Council of Ministers? Well, the previous council

17:12

1 had planned to talk about the Rio Tinto file, the
2 previous one. So the presentation was to be made by the
3 president of the inter-ministerial committee, the
4 Minister of Justice, who was absent, and therefore on
5 that day it couldn't take place.

6 The following council, the Minister of Justice was
7 still absent. The case was presented by the Minister of
8 Mines, who is rapporteur of the commission. But he
9 insisted, so that the decision may be taken. He really
10 insisted that the decision be taken within the Council
11 of Ministers. So it was presented on that day in that
12 way.

13 Q. You say that the case was presented directly by the
14 Minister of Mines, i.e. yourself, insisting greatly so
15 that the decision -- so in fact you were the one to
16 plead for a decision to be taken?

17 A. On that day, yes.

18 Q. Why did you insist?

19 A. Because I was under pressure to do something, because
20 I only wanted to act once there had been an official
21 decision of the Council of Ministers, not my own.

22 Q. Pressure from whom?

23 A. Pressure on the file. Do you want me to repeat what
24 I said earlier? With lawyers, it's difficult to keep
25 repeating.

17:13

1 Q. But it's a bit vague for me.

2 A. But if you read my hearing, what I said during the
3 hearing, I said that the Prime Minister was telling me
4 that we should act quickly because the President was
5 becoming impatient. I also said that a friend of mine
6 who was no longer involved called me to say that he knew
7 that the President had given instructions; what was
8 I waiting for? And I didn't want to take the decision
9 on my own. I wanted the government to take the
10 decision, and nothing but.

11 Q. You told the council that you were under pressure of the
12 President or Mamadie Touré?

13 A. I didn't need to say that, to tell the council. All
14 I needed was for the council to give me the green light.

15 Q. So here you are saying that on 4th December you were
16 still under the same type of pressure as for the meeting
17 at the beginning of December, and that all of the
18 documents that I have shown you had no influence
19 whatsoever?

20 A. Influence on what?

21 Q. On the fact that Blocks 1 and 2 had been withdrawn from
22 Rio Tinto.

23 A. Do you remember just a moment ago how swift I was, as
24 opposed to you being so slow? Because everything you
25 are trying to justify with Rio Tinto, well, it is true

17:15

1 that the government was ready to withdraw Blocks 3 and 4
2 from Rio Tinto, and that all of this adventure shows
3 that the government was right to wish to do so. Does
4 this justify that it should be granted to BSGR? This is
5 the question.

6 Q. So the first part of the decision, that is to say to
7 withdraw the blocks from Rio Tinto, you are saying that
8 that was a valid decision; where you see a problem is
9 with the subsequent decision to grant Blocks 1 and 2 to
10 BSGR?

11 A. Globally, yes. But it's not an attempt to separate the
12 two topics. The two issues are directly connected. Why
13 the pressure to such an extent? It's because right
14 behind there was the matter of BSGR. And as far as I'm
15 concerned personally, I thought that justice there was
16 grounds to apply the provisions of the Mining Code by
17 imposing the retrocession. Likewise, it was not
18 justified to give the blocks to any partner. No, the
19 withdrawal and the granting decided the same day, there
20 is the link.

21 Q. But both decisions were taken by the Council of
22 Ministers?

23 A. Yes, of course.

24 Q. As well as the decision to grant Blocks 1 and 2 to BSGR.
25 This was not your personal decision; this was a decision

17:17

1 taken by the Council of Ministers?

2 A. This is what I'm endeavouring to tell you.

3 Q. Have you made a presentation on this second aspect? Did
4 the council ask you for your opinion on what should take
5 place with Blocks 1 and 2?

6 A. The council knew what my position was. The council had
7 the memo.

8 Q. Which memo? I'm sorry.

9 A. The memo that was sent and that was the basis of the
10 council's meeting.

11 Q. But in the memo you say, "The case is not ready yet.
12 First we have to identify the zones to be retroceded,
13 before they can be granted to somebody else".

14 A. Yes, and the decision was taken to grant it to BSGR.

15 Q. So in this memo you say, "Perhaps they can be granted to
16 another company, but not at this stage, because the
17 zones first of all have to be identified".

18 Then after this memo, on November 14th, your own
19 department identified the zones that were to be
20 retroceded. So your condition or your reservation has
21 been resolved because your own department has identified
22 the zones that are to be retroceded, so that obstacle no
23 longer obtains.

24 A. Retroceded; retroceded to the state, of course.

25 Q. Yes, that is it. But if you did not agree, did you

17:19

1 speak out at the meeting of the Council of Ministers?

2 A. At the Council of Ministers' meeting I clearly said
3 what's in the memo. I said, "Now we're going to do the
4 retrocession. As for granting and granting to whom,
5 that is something that will be seen later". Because
6 that was the conclusions of my department, and I fully
7 shared in these conclusions.

8 Q. You were discussing this with two [candidates]: BSGR and
9 AfriCanada. During the Council of Ministers, were you
10 asked, "Okay, now we have the blocks. These are
11 significant deposits; who are we going to give these
12 zones to? Because it's very important"? And the
13 government's policy was to encourage investment. Was it
14 really an alternative to not grant the blocks to
15 anybody?

16 A. It was not a matter of an alternative. In my opinion,
17 it was a decision to take.

18 Q. What do you mean?

19 A. To retrocede, and then it was an obvious decision. You
20 talk about [reserves] at the time; it was not a matter
21 of having [reserves] on Blocks 1 and 2. It's really
22 perspective.

23 Q. Who on the council took the initiative and said, "No, we
24 really should give it to BSGR"?

25 A. The council adopted a resolution that was published.

17:21

1 The resolutions of the council are drafted by the
2 Secretary General of the government, who basically
3 mandated for the application of the Mining Code's
4 provisions.

5 Q. But you have not answered my question. When you were
6 expressing your reservations during this meeting --

7 A. These are not reservations. Let's be clear about what
8 we're talking about. It was not that I had
9 reservations; it was an opinion. I, as rapporteur,
10 presented my opinion when the case was presented.

11 Q. How many members were present?

12 A. I couldn't tell you. There were persons absent, for
13 instance the Minister of Justice, but I can't tell you
14 exactly who was absent.

15 Q. But generally speaking, how many people attended
16 a Council of Ministers' meeting?

17 A. You're asking me too much. I know that there were some
18 absences, and I know that there are more people present
19 than there are people absent.

20 Q. But can you give me an indication: 5, 10, 20? If
21 everybody is there, how many members on the council?

22 A. If everybody is there, everybody is there.

23 Q. But how many people?

24 THE PRESIDENT: If I tell you what I heard from a witness
25 during the week, it was 37: [36] ministers plus the

17:22

1 Prime Minister. Does that seem right?

2 A. Yes, 30 plus the Prime Minister, and then the council
3 can be held. All I can tell you is that the Minister of
4 Justice was absent that day, because he also chaired the
5 inter-ministerial committee.

6 MR DAELE: Even if you do not know the exact number of
7 members of the Council of Ministers who were present,
8 there was a quorum, a quorum that is necessary to take
9 legally valid decisions? Because I assume that there is
10 a quorum to adopt a resolution. So do you recall
11 whether there was a quorum at that meeting?

12 A. Yes, of course there was a quorum. Otherwise the
13 meeting would not have been held.

14 Q. So you're saying that the council mandated you to
15 implement the provisions of the Mining Code?

16 A. Yes, to apply the provisions of the Mining Code.

17 Q. You must have followed the instructions of the council,
18 so applying the law, you granted the two permits to
19 BSGR?

20 A. We did the retrocession, the forced retrocession, and
21 this forced retrocession was only impeded by the
22 convention binding it to Rio Tinto. But the granting to
23 BSGR is something entirely different. The granting is
24 what was done under pressure.

25 Q. Five minutes ago you talked about a mandate, a mandate

17:25

1 that was given to you by the Council of Ministers. What
2 were you mandated to do?

3 A. You have not fully taken on board what I said. I said
4 that there was a memo presented to the Prime Minister.
5 The Prime Minister did not respond directly to the memo.
6 A presentation was to have been done by the Minister of
7 Justice, who was the chair of the inter-ministerial
8 committee, who was absent.

9 The next phase, the Minister of Justice was once
10 again absent, and given the pressure, I had to present
11 it; and I even insisted upon this before the council, so
12 that a decision be taken. To corroborate this, in the
13 meantime the Prime Minister told me that the President
14 was growing impatient. And I told the Prime Minister,
15 "I have written you, we will look at this during the
16 council". And I also told you that Mr Touré had told me
17 that Madame had communicated this information as if the
18 Prime Minister had given me instructions.

19 So given the situation -- I know this is a permit to
20 engage in prospecting, but I know it's a different type
21 of permit.

22 Q. You say that the President was impatient, but was he the
23 only person to be impatient? Were you not impatient,
24 when I see all the efforts exerted by yourself to find
25 a solution, starting in September: the letters, the

17:27

1 meetings, the technical, legal memos, everything you
2 have today? Was it only the President who was growing
3 impatient, or was this a shared sentiment?

4 A. If words have meaning, "impatience" and "pressure", it's
5 not the same thing. I was the subject of pressure.
6 I had to take a decision, a decision that couldn't be
7 taken at my level.

8 Q. Do you remember, during the council meeting on
9 December 4th, in your recollection, was there talk of
10 the memorandum of understanding that had been signed by
11 the state and BSGR in 2006?

12 A. I do not recall that we discussed this. I can even say
13 that the memorandum of understanding is something that
14 I discovered after I was involved in the process. It's
15 not the -- the way it happened is the meeting with the
16 President and the meetings with the Prime Minister and
17 the inter-ministerial committee. Then in implementing
18 these instructions, I then discovered that there was
19 a memorandum of understanding that had already been
20 signed, and I was not motivated because I saw the
21 memorandum.

22 Q. But even had there not been a memorandum of
23 understanding, you would have reached the same
24 decisions?

25 A. No. It would have been useful for me to know if you

17:29

1 said "vous" or "tu". Are you saying "vous" or "tu" to
2 me? If you were speaking in Flemish, would you have
3 used the "tu" form?

4 Q. I must admit that you've lost me.

5 THE PRESIDENT: The question is whether you are asking the
6 minister if he himself decides, or whether you're asking
7 him whether there is a collective pronoun involved here.

8 A. I would just like to understand what he means when he
9 uses "vous". "Vous" is the "you" in the plural form in
10 French. If he talks to me, he can say "vous". He said,
11 "You made a decision"; who does he mean by this "vous"?

12 THE PRESIDENT: I understood that that was the source of the
13 confusion. Let's ask Mr Daele to be clear.

14 MR DAELE: The decision to withdraw Blocks 1 and 2 from
15 Rio Tinto, was this decision taken by the Council of
16 Ministers; yes or no?

17 A. Yes. I said yes.

18 Q. The decision to grant Blocks 1 and 2 to BSGR, was this
19 decision taken by the Council of Ministers; yes or no?

20 A. Yes.

21 Q. In this last decision, did the Council of Ministers take
22 into consideration the memorandum of understanding of
23 February 20th 2006?

24 A. It was not discussed, and I myself only became aware of
25 the existence of memorandum of understanding towards the

17:31

1 middle of the process. I didn't know there was such
2 a memorandum. It was during the discussions that
3 I heard that there was a memorandum whereby the
4 government had undertaken to grant to BSGR the parts
5 that would be freed up in the Simandou area. I became
6 aware of the existence of the memorandum much later. So
7 whether it had been there or not, the basic movement had
8 been unleashed.

9 Q. To finish, did you receive any bribes from BSGR, from
10 any other persons on behalf of BSGR?

11 A. No, I did not receive any bribes.

12 Q. Do you know other persons involved in this case who have
13 received bribes from BSGR or on behalf of BSGR?

14 A. Aside from what I read in the press many years later,
15 yes, of course, like everybody else.

16 Q. How would you qualify this information? Do you qualify
17 this type of information as "rumours"?

18 A. What rumours?

19 Q. That people had received bribes in the BSGR case.

20 A. I consider this information.

21 Q. But you don't have any more concrete details or
22 information: who, when, how?

23 A. Sometimes we hear unverified information. And
24 a journalist, very professional, said in Conakry, "When
25 I write, I have the evidence". But I'm not

17:33

1 a journalist, I'm just a reader.

2 Q. The two decisions taken by the Council of Ministers: the
3 first decision, which was to withdraw Blocks 1 and 2
4 from Rio Tinto, was that decision in compliance with the
5 Mining Law?

6 A. There are many decisions that are taken that can be
7 interpreted. The challenged convention of Rio Tinto was
8 voted by the assembly and then adopted by decree. You
9 can't really talk about legality; there's legality and
10 there's legitimacy, and I believe that a decision can be
11 legal but not legitimate. That's what I think.

12 Q. The decision to withdraw the two blocks from Rio Tinto,
13 was it legitimate?

14 A. Yes, I consider it to have been legitimate.

15 Q. Was it legal?

16 A. Yes, all the more so that it was legitimate. So it was
17 sort of consequently legal because it was legitimate.
18 That's inherent in the process.

19 Q. The decision to grant Blocks 1 and 2 to BSGR, was that
20 decision compliant with Mining Law?

21 A. In compliance with the Mining Law in the absolute,
22 I don't see any violation. But the real question, to my
23 mind, is whether it was reached without any pressure,
24 without interference and without corruption. I think
25 that's really the crux of the discussion. It's not the

17:34

1 act per se.

2 As I said earlier, when a person says or writes, for
3 instance, "Give me a concession", a person can do that,
4 and the answer can be, "This is not how you get
5 a concession; this is how you do it". This is the
6 proper process.

7 Q. One last question. I have understood that you were the
8 subject of pressure. Do you know any other members of
9 the Council of [Ministers] who were subject to the same
10 pressure?

11 A. Yes, I can't tell you how, but what I can say is that
12 when I took part in my first meeting, members said that
13 behind this case there were strong pressures being
14 exerted.

15 Q. But you can't give us any names?

16 A. I do know that the Minister of Justice at the time was
17 the chair, and the Minister of Decentralisation, and it
18 was unanimous that there was pressure being exerted.

19 Q. When you say "unanimous", do you mean by that that all
20 the members of the Council of Ministers agreed and they
21 were all subject to pressure?

22 A. All the members of the inter-ministerial committee knew
23 about the pressure. Some of the members of the Council
24 of Ministers only discovered the whole affair through
25 the memorandum that they were receiving.

17:36

1 Q. There may be confusion. I'm not talking about the
2 members of the inter-ministerial committee. It may be
3 I misspoke. Let me reformulate my question. It is as
4 follows: are you aware of members of the Council of
5 Ministers who were subject to the same pressures as you
6 were?

7 A. Yes. I say some of the members were members of both.
8 [The Minister of Justice was absent but the Minister of
9 Decentralisation was there].

10 Q. Aside from the two, can you mention any others?

11 A. Aside from those two -- you're asking me to remember
12 things that are difficult to remember. My feeling is,
13 once again, that it was well known that the wife of the
14 President was simply supporting and advocating for BSGR.
15 There was nothing hidden about this.

16 MR DAELE: I have no further questions. I'd like to thank
17 you.

18 MR NABÉ: Thank you.

19 THE PRESIDENT: Thank you.

20 Mr Ostrove, do you have anything on re-direct.

21 MR OSTROVE: If you would give us a moment, let us check.

22 (Pause)

23 (5.58 pm)

24 Re-direct examination by MR NAUD

25 Q. Mr Governor, we have just one question for you.

17:38

1 If you would please go to tab 3. This is C-98, one
2 of the first documents that was shown to you. If you
3 look at the bottom of the page, you will see this is
4 BSGR's request that was sent to the Minister of Mines,
5 at the time Minister Kanté.

6 Looking at the bottom of the page you see a mention
7 that says "PM": that probably stands for Prime Minister?

8 A. Yes.

9 Q. Then we see "MSGPR". Can you identify "MSGPR"?

10 A. Minister Secretary General of the Presidency of
11 the Republic.

12 Q. In your experience, would it be usual for a mining
13 company to send its application for a research permit to
14 the Prime Minister and to the Minister Secretary General
15 of the Presidency?

16 A. No. It's not at all common practice.

17 Q. If this is not common practice, what is your opinion of
18 these indications on the letter?

19 A. It is characteristic of the presidential determination
20 expressed in this case.

21 MR NAUD: Thank you. I have no further questions.

22 (5.39 pm)

23 Questions from THE TRIBUNAL

24 THE PRESIDENT: While we're on this document, would you
25 please tell us: what does "MMG" stand for?

17:39

1 A. Ministry of Mines and Geology.

2 THE PRESIDENT: I am turning to my co-arbitrators to see if
3 there are any questions for the governor.

4 Professor Mayer will go first.

5 PROFESSOR MAYER: Mr Governor, good afternoon to you.

6 A. Good afternoon.

7 PROFESSOR MAYER: Regarding the part of the decision
8 concerning the retrocession, this was legitimate and it
9 was normal; and regarding the part that granted it to
10 BSGR, this was not normal. Could you tell us what would
11 have been a normal process to grant to any company the
12 zones that had been retroceded?

13 A. What is normal and what is not normal, in my
14 understanding, depend on the conditions that prevailed
15 when the granting took place. If the granting had taken
16 place in the way that it imposed in the technical
17 memorandum, where it was proposed to withdraw and then
18 to wait before granting, whether it was granted to BSGR
19 or somebody else, then that would have been alright. If
20 there had not been BSGR waiting in the wings,
21 intervening, I would have understood. It's not so much
22 a matter of process or procedure; it's a matter of
23 context.

24 PROFESSOR MAYER: So what you're saying is that, in
25 procedural terms, it was not abnormal to order the

17:42

1 granting and the retrocession?

2 A. No. If you take the Mining Code, it only talks about
3 granting research permits on areas that have not yet
4 been granted.

5 The retrocession is done on areas that have already
6 been explored. So this is an untypical case, the fact
7 that Rio Tinto had these areas that they had not fully
8 explored, that they got a convention covering all of
9 that area, and that the government did not ask for
10 a retrocession on the part that had been explored but
11 the part that had been the object of the concession.

12 If all of this had not taken place in that context,
13 if an investor had showed up and identified a given area
14 or perimeter and asked for a research permit for that
15 area, it would have been customary to grant it. But it
16 would necessarily have to go through the Secretary
17 General and the presidency.

18 PROFESSOR VAN DEN BERG: Mr Governor, would you please read
19 for us what you have in paragraph 19 of your statement.
20 I would like to quote you. You say:

21 "For me, it was a very serious decision to take away
22 Rio Tinto's rights to give them to another company."

23 Do you deem that the retrocession decided by the
24 Council of Ministers was done in order to give the
25 rights to BSGR?

17:44

1 A. That was exactly what took place in the situation, and
2 that's what made it serious, just as I explained a few
3 minutes ago. This is not an ordinary situation. It's
4 not a research permit that is being applied for and
5 granted on an area that is unencumbered. That is what
6 makes this different.

7 PROFESSOR VAN DEN BERG: In other words, had BSGR not
8 applied for a permit for Blocks 1 and 2, and they had
9 already started in August 2008, and even in the
10 memorandum of understanding of 2006 -- so if that had
11 not happened, according to you: at that meeting of the
12 Council of Ministers of December 4th 2008, the ministers
13 had not decided to withdraw Blocks 1 and 2 from
14 Rio Tinto.

15 A. I'm sorry, I did not understand your question.

16 PROFESSOR VAN DEN BERG: My question is: the reason to
17 withdraw Blocks 1 and 2, is it because of a desire to
18 grant Blocks 1 and 2 to BSGR?

19 A. The determination to grant it to BSGR was simply
20 an accelerator.

21 PROFESSOR VAN DEN BERG: Had it not been for BSGR's
22 application for permits for Blocks 1 and 2, was the
23 decision anyway taken to withdraw Blocks 1 and 2?

24 A. Yes. There was already a decree in July 2008, as early
25 as July 2008.

17:46

1 PROFESSOR VAN DEN BERG: You mean to retrocede? The
2 retrocession decision was in December.

3 A. Yes, the retrocession in December. What I was saying is
4 there was a presidential decree that had been taken, and
5 the inter-ministerial committee that I referred to was
6 mandated to ensure the implementation of that decree.

7 PROFESSOR VAN DEN BERG: Was the mandate to make
8 recommendations or to reach decisions?

9 A. Recommendations.

10 PROFESSOR VAN DEN BERG: And the government could follow or
11 not follow the recommendation?

12 A. Yes, the government could do as it saw fit.

13 PROFESSOR VAN DEN BERG: Thank you.

14 THE PRESIDENT: I have a question for you, Mr Governor, that
15 is along the same lines, on paragraph 21 of your
16 statement. As I read this paragraph and as I listen to
17 you, I wonder if there was a discussion at the Council
18 of Ministers on withdrawal and granting; if there was
19 a discussion and, if so, what was the content.

20 A. Madam President, once again I return to the context.
21 The members of the inter-ministerial committee that were
22 present were of the opinion -- and this is to the best
23 of my recollection -- that the conclusion of the
24 memorandum was right. Of course there was a discussion,
25 and then these conclusions are reflected in the minutes.

17:47

1 THE PRESIDENT: This reflects the consensus of the council?

2 A. This is without doubt: take it away from Rio Tinto and
3 given to BSGR.

4 THE PRESIDENT: And the members of the inter-ministerial
5 committee were opposed to the granting to BSGR in
6 accordance with the memorandum or not?

7 A. Well, opposed? I wouldn't know. There were discussions
8 even afterwards. I remember the Minister of
9 Decentralisation phoning me and telling me that that's
10 not exactly what he had understood.

11 THE PRESIDENT: He had understood what?

12 A. He had not understood that the granting would be
13 automatic, the attribution would be automatic.

14 THE PRESIDENT: But you're saying at the same time that
15 everybody knew that the permit had been retroceded, had
16 to be given over to BSGR, because the president was
17 behind that?

18 A. Yes, well, everybody knew that.

19 THE PRESIDENT: So the discussion was just a mere formality?

20 A. Well, it's true that whatever the situation may be,
21 opinions are expressed, observations are made on the
22 ways of proceeding, et cetera. All of this goes well
23 back, and I can't remember in detail exactly how things
24 went.

25 THE PRESIDENT: I fully appreciate that. I understand you

17:49

1 may not remember.

2 But at the same time, you're saying yourself that it
3 was a serious decision and that you therefore didn't
4 want to take it on your own. So it seems to me that it
5 was, in the discharge of your ministerial duties, a very
6 important moment for you, wasn't it? Or am I mistaken?

7 A. Under normal circumstances, granting a prospecting
8 permit is within the remit of the Minister of Mines.
9 Under a normal situation, that would be the case. But
10 when we're talking about a surface area that is already
11 the subject of a concession, and that is so coveted, you
12 may understand, madam, that -- well, you may understand
13 that the Minister of Mines that I was had to be
14 cautious.

15 THE PRESIDENT: Well, I understand your caution. Definitely
16 I understand that. I was just wondering whether you
17 didn't have a more specific recollection of that
18 discussion within the Council of Ministers, to the
19 extent precisely that this was an important decision
20 from your vantage point, and unusual as well.

21 A. Well, I know that the problem was asked by myself,
22 I raised the problem myself, and there were comments,
23 and the conclusion was drawn by the Prime Minister along
24 lines of what I said.

25 THE PRESIDENT: Thank you.

17:50

1 Along the same lines, the letter of 3rd November
2 that you sent to BSGR, behind tab 19 -- for the record,
3 this is Exhibit C-185 -- asking for a certain number of
4 undertakings and information from BSGR: was this
5 a letter that was meant simply to save face? So
6 whatever undertakings or whatever information you may
7 have received afterwards, you already knew really that
8 the permits would, in the final analysis, be granted to
9 BSGR?

10 A. Well, Madam President, I was telling you earlier that it
11 was very difficult to withstand what I felt was this
12 tremendous thrust moving forward. But I had to have
13 guarantees, and possibly also a compensation. And the
14 compensation was the \$20 million for the state budget in
15 a very specific context.

16 THE PRESIDENT: Thank you.

17 PROFESSOR MAYER: A question of general information on the
18 granting of prospection permits.

19 I think I've understood that it's not a very big
20 deal, nothing to do really with an exploitation permit
21 or an operational permit; that it would suffice, when
22 the application is submitted, to know that the applicant
23 is a company that already has a permit perhaps, or
24 a company that is already known, a company that is
25 reputed to be trustworthy. That's my general question.

17:52

1 But more specifically, if there are two applicants, then
2 how do you choose?

3 A. Well, for a prospection permit, it's relatively rare
4 that you find yourself in a situation where you have two
5 applicants for the same surface area, under ordinary
6 circumstances, because these are surface areas that have
7 generally never yet been the subject of the granting of
8 any permits of any nature, they have never been granted
9 to anybody, or that grants had been made but then
10 withdrawn because those who received the grants had done
11 nothing whatsoever in the period considered in the
12 Mining Code.

13 So indeed, to answer your questions, under normal
14 circumstances that's never a problem. But if, par
15 extraordinaire, there would have been two applicants for
16 the same surface area, the Mining Code doesn't deal with
17 the subject, but then you have to look into the
18 background of the applicants, their experience, their
19 expertise -- at least their expertise -- so that you
20 know who you're dealing with. And that's not difficult
21 to get.

22 PROFESSOR MAYER: Thank you.

23 THE PRESIDENT: Thank you very much.

24 There are no further questions from counsel on
25 either side?

17:54

1 MR DAELE: Yes, I would still have two short questions.

2 THE PRESIDENT: Two?

3 MR DAELE: Yes, but the two are connected.

4 THE PRESIDENT: Two short ones.

5 (5.54 pm)

6 Further cross-examination by MR DAELE

7 Q. My first question is: the Council of Ministers, does it
8 have a secretary?

9 A. The Secretariat of the Council of Ministers is done by
10 the Secretary General of the government.

11 Q. Does that secretary take note of what happens during
12 those meetings? Do they keep a record of what happens
13 in the meetings?

14 A. Yes.

15 MR DAELE: Well, then I have no further questions.

16 THE PRESIDENT: Any questions from the Respondent?

17 MR NAUD: Just one final question, if I may, following up on
18 the questions just put by our friend opposite.

19 (5.55 pm)

20 Further re-examination by MR NAUD

21 Q. Mr Governor, it seems to me, quickly here, after that
22 Council of Ministers you left the country, you went
23 abroad?

24 A. Yes, I did.

25 Q. And you returned at the time at which President

17:55

1 Lansana Conté died?

2 A. Yes, I think that happened -- I came in on the 21st and
3 he died on the following day.

4 Q. When you returned to your country, were you able to
5 recover all your minutes, all your notes of meetings of
6 the time?

7 A. Well, as a matter of fact I always keep those records
8 with me, but you told me earlier that I wasn't
9 authorised to use it. I always have my records with me.

10 But you must know that right after the death of
11 President Conté, the militaries took over, the
12 militaries took power. And I, who knew nothing about
13 the coup d'état, I left one morning to go to work, and
14 on the bridge my car was recognised and somebody said
15 "That's a minister". So people came to my [car], and
16 the car was taken away from me, I never saw the vehicle
17 again, and they took me in their car. And it was
18 afterwards that I knew that these were the people
19 responsible for that famous committee. However, my bag
20 was still in my original car, with my keys, some money
21 and my notes. So since I lost the bag, the notes went
22 with the bag.

23 Otherwise, I do always take down everything that is
24 said in the meeting, my conversations and everything.
25 But during that particular period, a little bit before

17:57

1 that as well, because I had a notebook for the Central
2 Bank that was not yet finished that I was taking with me
3 to the ministry -- it wasn't for the ministry, it was
4 personal, it was a personal thing -- but unfortunately
5 I lost them all. They were all taken.

6 MR NAUD: Thank you. That was our final question. Thank
7 you.

8 THE PRESIDENT: Thank you, Mr Governor. This brings us to
9 the end of your testimony. We should like to thank you
10 very much indeed for your patience, in spite of the
11 trying circumstances. You are free to leave the room,
12 sir.

13 MR NABÉ: Thank you very much, Madam President. I am at
14 your disposal. It is indeed true that I have not had
15 a great deal of rest, but I don't feel tired yet.

16 THE PRESIDENT: Oh, you may well soon feel tired!

17 MR DAELE: Thank you very much also for our part.

18 THE PRESIDENT: The Tribunal has one procedural subject that
19 it would like to discuss with the parties, but we are
20 obviously not keeping you here in the room, Mr Governor.
21 You are free to leave.

22 MR NABÉ: Thank you very much, Madam President. Thank you
23 very much, members of the Tribunal. And thank you to
24 all counsel, and to you, my dear sir; I forgot your
25 name.

17:59

1 MR DAELE: My name is Daele. Thank you, sir. (Pause)

2 (5.59 pm)

3 THE PRESIDENT: (In English) Over the lunch break the
4 Tribunal has conferred about the exchange this morning
5 in respect of the FBI declaration and related issues.
6 At this stage we thought we should flag with you two
7 points that we have on our minds. These are not
8 decisions; this is part of a thinking process of the
9 Tribunal on which we would appreciate hearing you
10 tomorrow morning.

11 The first thing is: we are asking ourselves whether
12 we should seek a forensic expert report on the
13 authenticity of the original documents that are with the
14 FBI. We're not clear yet on the principle itself, on
15 the advisability of doing so. We're not clear either on
16 the practicalities: would it be a request to the US
17 courts or other channels; would it be under
18 paragraph 1782 of the Federal Rules of Civil Procedure
19 or some other channel? But this is a question that we
20 have been considering.

21 The second question is whether we should not hear
22 Mamadie Touré. There's no showing, it seems to us, that
23 she cannot give evidence. What we have read is that she
24 cannot leave the United States, and so she might be able
25 to give evidence by way of a video link or in a hearing

18:01

1 that this Tribunal could conduct in the United States.

2 So as I was saying, these are not decisions; it's
3 just part of the Tribunal's thought process. Before
4 carrying it further, we would very much appreciate
5 hearing what the parties have to say to it. And if we
6 can do it tomorrow morning, of course that would be
7 preferable, because it allows us then to continue our
8 deliberations in the course of the day tomorrow.

9 Tomorrow morning we will hear Mr Avidan; is that
10 right? Is he scheduled for 9.30?

11 MS PELED: He is scheduled for 10.00.

12 THE PRESIDENT: For 10.00? That's fine. Which would be
13 11.00 for him, right?

14 Have you been able to sort out the problem with the
15 documents for the cross-examination?

16 MS PELED: Yes, the other side asked us to print all the
17 witness bundle, so we're going to do the same way we did
18 for Mr Steinmetz.

19 THE PRESIDENT: And you will of course hold on to the
20 documents and not show them to Mr Avidan before he is
21 examined on them.

22 MS PELED: Of course.

23 THE PRESIDENT: Is this agreed with the Respondent?

24 MR OSTROVE: (Interpreted) Yes, indeed, madam.

25 THE PRESIDENT: Thank you very much.

18:03

1 Is there anything else that we should address before
2 adjourning for the day?

3 MR DAELE: (In English) Not from the Claimants.

4 THE PRESIDENT: (In English) Not from your side.

5 (Interpreted) Respondent?

6 MR OSTROVE: If you grant us just a few moments,

7 Madam President, please. (Pause)

8 Precisely one question on the procedural order.

9 Will there be questions tomorrow evening from the
10 Tribunal, or Friday morning?

11 THE PRESIDENT: No, the Tribunal's idea, really since we've
12 made headway here, thanks to your contributions, will be
13 to have tomorrow morning at 9.30 the mini-openings; then
14 to hear Mr Avidan, as long as it takes, starting at
15 10.00 am; and then thereafter the Tribunal will deal
16 with all the necessary organisational and procedural
17 matters, including questions to the parties. It seems
18 to us that it would be more efficient for those
19 questions to be dealt with in your post-hearing
20 submissions, rather than improvise an answer tomorrow.

21 (In English) Is this an acceptable way forward for
22 the Claimants?

23 MR DAELE: Yes, it is, Madam President.

24 THE PRESIDENT: (Interpreted) And how about the Respondent:
25 acceptable to you?

18:05

1 MR OSTROVE: Yes, perfectly.

2 THE PRESIDENT: I have a minor, very slight hesitation in
3 saying that we will be necessarily through tomorrow
4 evening, because it is not totally under our control,
5 but it would seem that this is what we all have in mind.

6 MR OSTROVE: Madam President, I assure you that in the light
7 of everything we have heard for a week and a half,
8 I will try and shorten the extent of my questions to
9 Mr Avidan. The Claimants have been so kind to say that
10 they would accept, in view of the cancellation and then
11 the reconstitution, they would show some flexibility
12 time-wise. However, we shouldn't be taking the whole
13 day. I don't think so.

14 THE PRESIDENT: Yes, I must confess I can't remember exactly
15 where you stand time-wise. Perhaps the Secretary could
16 shed some light on this.

17 PROFESSOR VAN DEN BERG: Your estimate was two hours for the
18 cross. Is that okay? That was your estimate.

19 MR OSTROVE: Yes, indeed it was two hours.

20 While we wait for the Secretary, if you allow me,
21 madam, just a clarification on the questions that you
22 asked, in case anybody was looking for the legal origin
23 that you mentioned. You mentioned Article 1782 of the
24 Federal Court of Civil Procedure, but simply to clarify,
25 it is titled 28 US Code 1782.

18:07

1 THE PRESIDENT: Didn't I say Federal Rules of Civil
2 Procedure? Is that wrong?

3 MR OSTROVE: It's not the Federal Rules of Civil Procedure,
4 madam.

5 THE PRESIDENT: Well, it's nice to know what we're talking
6 about.

7 In the meantime, Mr Secretary, you've got the times?

8 THE INTERPRETER: He cannot be heard.

9 THE PRESIDENT: Thank you. I don't think you will need all
10 that time, otherwise we will find ourselves in a rather
11 difficult situation.

12 Is everything clear now, for the time being?

13 (In English) Is everything clear for the Claimants?

14 MR DAELE: Yes, thank you, Madam President.

15 THE PRESIDENT: (Interpreted) And the same for the
16 Respondent?

17 MR OSTROVE: Yes, thank you very much, madam.

18 THE PRESIDENT: Well, then it only remains to wish you
19 a very pleasant evening.

20 (6.08 pm)

21 (The hearing adjourned until 9.30 am the following day)

22

23

24

25

