

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

Case No. ARB/18/21

Video conference  
via Zoom

Tuesday, 22nd June 2021

Hearing on Jurisdiction and the Merits

Before:

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

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BAY VIEW GROUP LLC  
and  
THE SPALENA COMPANY LLC

Claimants

-v-

GOVERNMENT OF RWANDA

Respondent

---

Secretary to the Tribunal: ALEX B KAPLAN

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

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12:01 1 Tuesday, 22nd June 2021  
 2 (Transcript times are British Summer Time)  
 3 (12.01 pm)  
 4 THE PRESIDENT: There's one item of housekeeping: Mr Cowley,  
 5 you were going to produce names of witnesses that you  
 6 would wish to cross-examine on the new Tinco material.  
 7 MR COWLEY: Yes, your Honour. The new exhibits that this  
 8 relates to are C-208 and C-209, and I will identify now  
 9 both Mr Evode Imena and Mr Gatara. I think it's  
 10 unlikely that I would question both about it, but I at  
 11 this point am not -- you know, we're at a stage where  
 12 the cross-examination is still going to change.  
 13 THE PRESIDENT: Yes, very well. I quite understand. Thank  
 14 you.  
 15 Are there any other matters of housekeeping before  
 16 we continue? (Pause)  
 17 No, very well. Then -- yes?  
 18 MR COWLEY: Your Honour, I thought the Respondent was  
 19 raising with us this morning -- I received an email from  
 20 the Respondent demanding production of metadata  
 21 regarding one of the additional documents you had asked  
 22 us to send over, and that we were supposed to produce it  
 23 before this hearing.  
 24 Now, obviously that's physically impossible for  
 25 a couple of reasons. You know, I received that email at

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12:03 1 4 o'clock this morning when I woke. But we would like  
 2 to address the issue of a demand for metadata being  
 3 produced for these new documents.  
 4 We will undertake to work with an IT professional at  
 5 our firm who, only after we work with him could we make  
 6 a representation about how much metadata is preserved  
 7 when we take it out of somebody else's -- I believe it's  
 8 a Yahoo email account. We can work with that and we'll  
 9 confer with Respondent's counsel.  
 10 But as a reminder to the Respondent and to the  
 11 Tribunal, we had requested metadata regarding three  
 12 documents the Respondent produced which we questioned  
 13 when they were created and challenged the authenticity  
 14 of, and the Respondent took the position it's completely  
 15 irrelevant to have metadata and not reasonable to ask to  
 16 produce it, and the Tribunal upheld that. We would like  
 17 it to be mutual, and we would like to revisit and have  
 18 the Respondent undertake the same obligation to produce  
 19 the metadata regarding those three documents that we  
 20 asked for many months ago.  
 21 THE PRESIDENT: Yes, Mr Hill.  
 22 MR HILL: We haven't yet made an application to the  
 23 Tribunal. We have requested metadata from Mr Cowley's  
 24 side. If he has a difficulty in producing it, he can  
 25 identify that to us, we will consider, and then if

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12:04 1 there's an application to be made to the Tribunal, we  
 2 will make it. I hadn't anticipated spending time now,  
 3 when I want to get on with cross-examining Mr Marshall  
 4 on this.  
 5 THE PRESIDENT: Yes, well, there's a second point.  
 6 Mr Cowley said he has made a similar request to you in  
 7 relation to three documents whose authenticity is  
 8 challenged. I don't expect you to deal with that off  
 9 the cuff, but it seems reasonable.  
 10 MR HILL: No, I can't: I have no idea about it. I don't  
 11 know if it's reasonable, I just don't know. I will make  
 12 enquiries.  
 13 THE PRESIDENT: Yes, very well. Thank you.  
 14 Can we have the witness back, please.  
 15 MR WATKINS: Okay, we're bringing him in now.  
 16 (12.05 pm)  
 17 MR RODERICK MARSHALL (continued)  
 18 Cross-examination by MR HILL (continued)  
 19 MR HILL: Mr Marshall, we were dealing yesterday with the  
 20 cooperation agreement. Can we look at the Claimants'  
 21 Application to Introduce Additional Facts, which was  
 22 submitted late last week, if FTI could bring that up.  
 23 This is an application to adduce what your side  
 24 explained was an email from Mr Ehlers attaching the  
 25 cooperation agreement, and can we look at paragraph 17.

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12:06 1 So this document says:  
 2 "Claimants request leave to submit as evidence email  
 3 correspondence from Anthony Ehlers attaching a copy of  
 4 the ... cooperation agreement. A version of the  
 5 cooperation agreement was exhibited as C-122 and the  
 6 signature line for Mr Ehlers was entered by Tom Grey on  
 7 or about March 30, 2011, months after the cooperation  
 8 agreement was signed because of the need for a wet-ink  
 9 and stamped version, which did not yet exist."  
 10 Then a little lower down, in paragraph 18, in the  
 11 second sentence it says:  
 12 "The email communication Claimants were able to  
 13 obtain calls into serious question the veracity of  
 14 Mr Ehlers' statement. Claimants acknowledge that  
 15 Mr Ehlers' personal signature is not on the version  
 16 exhibited at C-122 (instead, that copy bears a signature  
 17 entered by Tom Grey for the purpose of creating  
 18 a properly stamped company record), but the email and  
 19 attachment which Claimants have now obtained establish  
 20 that Mr Ehlers did in fact receive and sign the  
 21 cooperation agreement, the content of which is identical  
 22 to version submitted at C-122."  
 23 Now, presumably what's said in these paragraphs came  
 24 on instruction from you; is that correct?  
 25 A. Sorry, say that again?

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12:07 1 Q. Well, you must have given your attorneys the information  
 2 for what's said in these paragraphs; yes?  
 3 A. I think generally, but I -- are you referring to  
 4 something specific?  
 5 Q. Well, the two sections I've just read out: "the need for  
 6 a wet-ink and stamped version"; Mr Grey entering  
 7 a signature "for the purposes of creating a properly  
 8 stamped company record", these agreements being the  
 9 same. That's all come from you, hasn't it?  
 10 A. Well, no, the document came from him. As I recall, it  
 11 was signed in counterparts. You were -- or he, in his  
 12 affidavit, as I recall, had claimed that he had never  
 13 seen the agreement before and we were never in  
 14 a cooperation agreement.  
 15 Q. I'm just trying to establish with you how what's said in  
 16 these paragraphs came to be said. Presumably you gave  
 17 instructions to your attorneys, on the basis of which  
 18 this was said. They can't have got it from anywhere  
 19 else, can they?  
 20 A. Yes, I --  
 21 MR COWLEY: I would like to ask the Tribunal for  
 22 instructions that the witness does not need to disclose  
 23 and should not be disclosing attorney-client  
 24 communications. If the question is simply did he  
 25 provide the document or did he provide the actual

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12:08 1 information, but not what was said with attorneys.  
 2 MR HILL: No, I'm not asking for details of legal advice.  
 3 Just, exactly as Mr Cowley says: did he provide the  
 4 information?  
 5 A. I provided my attorney with that email, yes.  
 6 Q. And the information that creates this representation;  
 7 yes?  
 8 MR COWLEY: Again, I can make --  
 9 A. Sorry, you know you need to be more specific when you  
 10 say "this representation".  
 11 MR HILL: Well, what this statement says is that there is  
 12 an identical version of this agreement --  
 13 A. Yes.  
 14 Q. -- and that Mr Grey put on this signature to create  
 15 a wet-ink and stamped version of this agreement.  
 16 A. Yes.  
 17 Q. And that came from you, presumably?  
 18 A. That's all true.  
 19 Q. Well, those representations were untrue, weren't they?  
 20 A. No, those representations were true.  
 21 Q. And you must have been aware that it was false to state  
 22 that the content of the document attached to Mr Ehlers'  
 23 [email] is the same as the cooperation agreement that  
 24 had previously been exhibited, and that what was --  
 25 MR COWLEY: Again, I'd like --

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12:10 1 MR HILL: -- said about Mr Grey must also be false?  
 2 A. You know --  
 3 MR COWLEY: Hold on, Rod. I'd like to object and ask the  
 4 Tribunal, please: despite the statement that he is not  
 5 asking for communications with counsel, he is, and he  
 6 continues to ask, and he's saying that these are  
 7 representations of Rod. I can make a representation to  
 8 the Tribunal, given the timing and -- Rod never saw this  
 9 before it was submitted.  
 10 So to suggest that he's not asking about  
 11 communications, when the simple question that he's  
 12 refusing to ask is whether he even saw the document  
 13 before it went out -- he refuses to ask, and instead  
 14 he's trying to suggest this is what Rod said. This is  
 15 what we wrote. And I think it's grossly unfair.  
 16 THE PRESIDENT: Mr Cowley, the cross-examination on this  
 17 point has first of all sought to establish whether the  
 18 facts pleaded were facts supplied by the witness, and he  
 19 has said yes. It's now being put to the witness that  
 20 those facts were not true. That is not trying to  
 21 establish client-attorney communications, it's  
 22 a question of fact, and it's a perfectly proper  
 23 question.  
 24 A. But he's tying me -- maybe I'm misunderstanding, but  
 25 isn't he trying to tie me to language that I've not seen

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12:11 1 before?  
 2 MR HILL: Don't worry about what your counsel has just said.  
 3 Just listen to my questions, please, Mr Marshall.  
 4 Now --  
 5 THE PRESIDENT: Before you ask the question --  
 6 MR HILL: I'm sorry.  
 7 THE PRESIDENT: -- are copies of the email in question, of  
 8 the document in question, available?  
 9 MR HILL: Yes, Mr President. I'm about to look at the  
 10 document, the contract in question, and put it side by  
 11 side with the other one.  
 12 THE PRESIDENT: Very well.  
 13 MR HILL: Can we look at C-122, which is the version that  
 14 was already in the trial bundle, and if FTI can put that  
 15 up and put up C-210 beside it.  
 16 Then scroll down in C-210 so we have the agreement.  
 17 I want the two versions of the agreement. So don't  
 18 worry about the covering email, FTI; I just want C-122  
 19 and -- exactly. Thank you very much.  
 20 Now, C-210 is the version that, on its face, bears  
 21 Mr Ehlers's signature, and which your side provided us  
 22 with yesterday.  
 23 A. Yes.  
 24 Q. This draft agreement is not the same, is it, not  
 25 identical -- as was represented to the Tribunal -- not

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12:13 1 identical to the version in C-122, which is in the trial  
 2 bundle? That's correct, isn't it?  
 3 A. I think there are two things going on here. If my  
 4 memory serves me right, that this was to be able to show  
 5 confirming -- and I don't know what that thing means,  
 6 but this agreement continues --  
 7 THE PRESIDENT: Mr Marshall, I wonder if you could help us,  
 8 because we want to save as much time as possible.  
 9 A very simple question was put to you. Would you  
 10 listen to the questions and try to answer them. The  
 11 question was whether the two documents were the same.  
 12 It was put to you they were not. That's susceptible to  
 13 a single-word answer.  
 14 A. That's right, I see that there are differences. One  
 15 looks longer. Without reading the text of the document,  
 16 I can agree.  
 17 THE PRESIDENT: Thank you very much.  
 18 MR HILL: And you knew there were differences, didn't you,  
 19 before the application was made to adduce this document?  
 20 A. Before the application was made to --  
 21 Q. Before the application was made at the end of last week  
 22 to adduce this document, you knew there were differences  
 23 between the two versions of the document, didn't you?  
 24 A. No.  
 25 Q. Well, let's look at some of these differences.

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12:15 1 manage the concessions at "the direction and instruction  
 2 of BVG"; yes?  
 3 A. I see that.  
 4 Q. So it's a different obligation: it moves from being  
 5 a discretionary operation to one where they are obeying  
 6 the instructions of BVG. Yes?  
 7 A. I see the difference in language.  
 8 Q. Paragraph 3 provides for an obligation on NRD to loan  
 9 equipment. And just in parentheses, the costs of that  
 10 operation are going to be split, so this is the cost to  
 11 NRD.  
 12 Under Mr Ehlers's version, NRD has to loan "enough  
 13 machinery and equipment for minerals to be processed ...  
 14 [at] Bigugu". Do you see that?  
 15 A. Yes.  
 16 Q. Under the version Mr Ehlers did not sign, NRD's  
 17 obligation is wider than that: it has to loan enough to  
 18 enable minerals to be processed "at other sites" too.  
 19 Yes?  
 20 A. I see the language is different.  
 21 Q. Paragraph 4. This provides, under Mr Ehlers's version,  
 22 another obligation on NRD to create a "program of  
 23 cooperative artisanal miners, supervisors and security"  
 24 at Bisesero; do you see that?  
 25 A. Yes.

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12:14 1 Just while I'm doing this, I'm just going to make  
 2 clear: for the purposes of the questions I'm about to  
 3 [ask], I'm going to assume in favour of the Claimants  
 4 that what we have on the left-hand side is in fact  
 5 an authentic document from Mr Ehlers. But I just want  
 6 to make clear that even that is currently not accepted  
 7 on our side.  
 8 Let's look at paragraph 1 --  
 9 A. How can it be authentic and not accepted?  
 10 Q. I'm just assuming for the purposes of these questions,  
 11 with your side's submission, that there is something  
 12 that's authentic from Mr Ehlers, but I'm not accepting  
 13 that. Don't worry about that; I'm just making it clear  
 14 for the record.  
 15 Let's look at paragraph 1 of the cooperation  
 16 agreement that Mr Ehlers signed. So that's the one on  
 17 the left-hand side. You can see that in his version,  
 18 NRD are to "manage the operation of the Concession for  
 19 BVG"; do you see that?  
 20 "During the period of this agreement NRD shall  
 21 manage the operations of the Concession for BVG ..."  
 22 A. Yes, I see it.  
 23 Q. In the version that does not bear Mr Ehlers's signature,  
 24 but which someone has added his name to, we have  
 25 a different obligation on NRD, in that they are to

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12:17 1 Q. Under your version, not signed by Mr Ehlers, NRD is  
 2 under a new obligation to operate at the direction of  
 3 BVG?  
 4 A. Yes, I see a difference.  
 5 Q. And just to be clear, I'm not taking all the differences  
 6 to you, I'm just taking some of them.  
 7 Down to the bottom, paragraph 8, under Mr Ehlers's  
 8 version, if it is his:  
 9 "This Agreement shall be governed by English law and  
 10 any dispute shall be resolved in the UK."  
 11 Under the version not signed by him:  
 12 "This Agreement shall be governed by United States  
 13 law and any disagreement shall be resolved in the USA."  
 14 A. Yes.  
 15 Q. So different law, different jurisdiction; yes?  
 16 A. I see there's difference in the language.  
 17 Q. And that last point, quite material, given that on your  
 18 case -- which we don't accept -- there was a significant  
 19 liability and claim that BVG had against NRD on the  
 20 [REDACTED],  
 21 according to your case. So rather important to --  
 22 A. I think your mistake is that this document, as far as  
 23 I know, was never presented to Starck. This was  
 24 a record-keeping exercise within NRD.  
 25 Q. Just to make sure I understand that, this is a document

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12:18 1 which you say was -- a cooperation agreement, you say,  
 2 arrived at in November 2010, when Starck were still the  
 3 owners of NRD?  
 4 A. I'm sorry, say the question again?  
 5 Q. This is an agreement you say was arrived at in  
 6 November 2010, when Starck were still the owners of NRD?  
 7 A. Yes. It was written at the instruction of -- I would  
 8 guess Tony Ehlers had written it to memorialise what had  
 9 been happening between the companies from August/early  
 10 September until he wanted it documented as of  
 11 November 1st.  
 12 Q. Okay. You haven't produced any document, have you,  
 13 showing any actual agreement between the parties as to,  
 14 for example, the law or jurisdiction applying to this  
 15 arrangement; correct?  
 16 A. I'm sorry?  
 17 Q. You haven't produced any document showing any actual  
 18 agreement between the parties, for example as to the law  
 19 or jurisdiction applying to this arrangement?  
 20 A. I don't -- I have no recollection of when or why this  
 21 second confirmed agreement was signed. My recollection  
 22 is it's this agreement with Tony Ehlers and then it was  
 23 signed in counterparts. Do you have any document to  
 24 suggest that there was a different scenario? Because  
 25 I don't recall that.

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12:20 1 Q. Do you have any document to suggest there was any  
 2 meeting of minds between NRD and BVG on the specific  
 3 terms of any cooperation arrangement?  
 4 A. My recollection is that it was signed in counterparts  
 5 and it's this document on the left.  
 6 Q. Well, there is in fact no completed agreement in which  
 7 the parties mutually agreed the terms of any  
 8 cooperation, was there?  
 9 A. It was signed in counterparts. Yes, there was.  
 10 Q. Well, let's go back again to the Claimants' Request to  
 11 Introduce Additional Facts and look again at what was  
 12 being said, on instruction from you. Paragraph 17. You  
 13 say:  
 14 "A version of the cooperation agreement was  
 15 exhibited as C-122 and the signature line ... was  
 16 entered by Tom Grey on or about March 30 ... months  
 17 after the cooperation agreement was signed because of  
 18 the need for a wet-ink and stamped version ..."  
 19 Then, as we saw before, in paragraph 18:  
 20 "Claimants acknowledge that Mr Ehlers' personal  
 21 signature is not on the version ... (instead, that copy  
 22 bears a signature entered by Tom Grey for the purposes  
 23 of creating a properly stamped company record) ..."  
 24 Then as we saw, we saw the stamps on that version of  
 25 C-122: we saw the stamp from both NRD and from BVG.

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12:21 1 So this is saying that the version at C-122 had this  
 2 signature added by Mr Grey so there could be a properly  
 3 stamped company record; in other words, it was included  
 4 in the company's records as being a genuine binding  
 5 agreement, wasn't it?  
 6 A. It was a company record. Did the terms -- you know, we  
 7 purchased the company on December 23rd 2010, and were  
 8 there additional terms that were reflected and that made  
 9 the difference? I don't know.  
 10 Q. Well, this was included in the company's records as  
 11 being a genuine binding agreement, wasn't it?  
 12 A. I'm sorry?  
 13 Q. This was included in the company's records as being  
 14 a genuine binding agreement? That's why the stamps are  
 15 put on it, as is explained in these --  
 16 A. Yes, but did it reflect additional changes? I don't  
 17 recollect that.  
 18 Remember, Bay View as a company was already gone at  
 19 this point. What the purpose of this document was, to  
 20 restamp it in March, when the company was already out of  
 21 business and was not even allowed to be operating in  
 22 Rwanda, I don't know what the -- I don't have any  
 23 recollection of what that was.  
 24 Q. Although the stamps have been put on this document, it  
 25 didn't reflect the agreement and meeting of minds that

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12:23 1 the parties had in fact reached, did it?  
 2 A. At that point it was a relationship between NRD and  
 3 Bay View Group, both owned by us.  
 4 Q. But it's still got a November date and Mr Ehlers's name  
 5 written into it?  
 6 A. I don't dispute that. I don't recollect what this  
 7 scenario was. The point I'm trying to make is: as far  
 8 as I know, I can't even imagine the scenario where  
 9 a company which is defunct and has no business, what  
 10 they were thinking when this was drafted.  
 11 Q. It's a false document in your company's records,  
 12 isn't it?  
 13 A. I'm sorry?  
 14 Q. It's a false document in your company's record,  
 15 isn't it?  
 16 A. False document? No, it is not a false document.  
 17 Q. And you put it forward in this arbitration as being  
 18 a cooperation agreement actually arrived as in the terms  
 19 of this document?  
 20 A. I fully recognise that there are two versions of it.  
 21 Which one is binding, why it got to a point where there  
 22 were some additional negotiations, I don't know. This  
 23 says, "Confirmed as of" -- I don't have it in front of  
 24 me now, but confirmed as of a date in March when  
 25 Bay View Group did not exist anymore.

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12:24 1 Q. I suggest you are also aware that submissions being made  
 2 to the Tribunal as recently as the end of last week were  
 3 also false.  
 4 A. No, nothing is false.  
 5 Q. Now, Mr Ehlers explained in his evidence that he did  
 6 recall discussing a joint venture between BVG and NRD in  
 7 broad terms, and that you did want, as BVG, to be using  
 8 NRD's equipment to start mining operations.  
 9 THE PRESIDENT: Sorry, are you leaving these two documents,  
 10 Mr Hill?  
 11 MR HILL: Sorry, am I ...? I'm so sorry.  
 12 THE PRESIDENT: Yes, I would like to know whose the  
 13 signature is under "Confirmed as of 30 March" --  
 14 MR HILL: Let's go back to them. If FTI can pull them back  
 15 up again.  
 16 Yes, so, Mr President, it's the signatures under  
 17 the --  
 18 THE PRESIDENT: "Confirmed". Perhaps Mr Marshall can tell  
 19 us whose signature that is.  
 20 A. I'm sorry, I missed the question.  
 21 THE PRESIDENT: You drew attention to the fact that the  
 22 stamped version has added to it "Confirmed" --  
 23 A. Yes.  
 24 THE PRESIDENT: -- "as of 30 March 2011". There is  
 25 a signature underneath that, and I would like to know

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12:27 1 committed unspeakable crimes. And he has a lot to be  
 2 trying to get back whatever shred of credibility he has.  
 3 Q. Well, that's just an example of something we're about to  
 4 see a lot of in this arbitration in correspondence from  
 5 you, of wild exaggeration and slurring the name of any  
 6 person who disagrees with you. That's fair, isn't it,  
 7 Mr Marshall?  
 8 A. No, it is definitely not fair.  
 9 Q. And there wasn't even any actual agreement as to  
 10 terms --  
 11 A. Yes, there was.  
 12 Q. -- as between NRD and BVG, and we can see that even from  
 13 the material that you have now put forward to rely on;  
 14 correct?  
 15 A. No.  
 16 Q. [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 A. I'm sorry?  
 21 Q. It's simply untrue, your --  
 22 A. No. We went through this yesterday and my statements  
 23 have been true.  
 24 Q. I'm going to go back to where we were yesterday evening  
 25 when we broke. We were looking at the contract, which

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12:25 1 whose signature that is.  
 2 A. That's Thomas Grey. He is the same initials next to  
 3 "A Ehlers", above that.  
 4 THE PRESIDENT: Thank you.  
 5 A. So he has signed -- Thomas Grey was our then operations  
 6 manager.  
 7 THE PRESIDENT: Thank you.  
 8 A. The other signature, William Quam, is also an American.  
 9 He was there in a variety of consulting roles.  
 10 THE PRESIDENT: Thank you.  
 11 MR HILL: So I was just going back to what Mr Ehlers says  
 12 about this. He explained in his evidence that he did  
 13 recall discussing a joint venture between BVG and NRD,  
 14 and that you did indeed want BVG to be using NRD's  
 15 equipment to start mining operations. What he says is  
 16 that NRD did not in fact do anything at Biseseo prior  
 17 to your acquisition of NRD, and NRD certainly did not  
 18 receive the \$100,000. And he's right about that,  
 19 isn't he?  
 20 A. No, he's a liar.  
 21 Q. And the reality is that there was discussion of a joint  
 22 venture, but nothing was actually ever done; correct?  
 23 A. That's untrue, completely untrue.  
 24 Q. And there wasn't even any actual agreement --  
 25 A. I had a very bad falling out with Anthony Ehlers. He

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12:28 1 is at C-017 -- if that could be pulled back up -- and  
 2 you'll recall that I was suggesting to you that the  
 3 guarantee or assurance that you say existed as to  
 4 long-term licences is not reflected in the contract.  
 5 I just want to look at an answer you gave yesterday.  
 6 It's in yesterday's transcript, if that could be pulled  
 7 up, at page 234, lines 1-2.  
 8 MR BRODSKY: My apologies, I will need one minute for that  
 9 transcript.  
 10 MR HILL: That's no problem. (Pause) It's page 234.  
 11 MR MARSHALL: Can you put it on the other screen, please?  
 12 MR HILL: Sorry, perhaps we need to look at the bottom of  
 13 233 as well, so Mr Marshall remembers how this arose.  
 14 So I say:  
 15 "Just to be clear, is it your evidence that you knew  
 16 at the time that this guarantee of a long-term licence  
 17 was not in the contract?"  
 18 And you say:  
 19 "It's not in this contract document, but we  
 20 understood it to be in other documents."  
 21 A. Sorry, I don't have anything I can look at yet.  
 22 Q. I'm sorry. Tell me when you have. (Pause)  
 23 So, Mr Marshall, you don't have a screen that's  
 24 showing this in a way that you can read it; is that the  
 25 problem?

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12:31 1 A. They're working with both screens at once, and not yet.  
 2 MR WATKINS: Mr Marshall, you should see it now on the  
 3 screen on the left. That is the full-size version that  
 4 I just enabled on your screen on the left that you  
 5 should be able to see in bigger text, and you can scroll  
 6 up and down.  
 7 MR MARSHALL: Can I change the size of the text?  
 8 MR WATKINS: Yes, you can just click the plus sign to make  
 9 it bigger.  
 10 MR HILL: So there's a question at the bottom of page 233.  
 11 I say:  
 12 "Just to be clear, is it your evidence that you knew  
 13 at the time that this guarantee of a long-term licence  
 14 was not in the contract?"  
 15 And you say:  
 16 "It's not in this contract document, but we  
 17 understood it to be in other documents."  
 18 A. Perhaps I misspoke. The word -- as I understand the  
 19 conversation -- I don't see it here -- but the  
 20 conversation was about whether the word "guarantee" was  
 21 here. And as I -- which I agreed with you: the word  
 22 "guarantee" is not here. But that is not --  
 23 Q. Come on, Mr Marshall. Are you suggesting that the  
 24 substance of the guarantee obligation is in the  
 25 contract?

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12:34 1 disappeared off my screen; I wonder if it can reappear.  
 2 A. I have the ...  
 3 Q. So it's clear from my question I wasn't talking about  
 4 the word "guarantee":  
 5 "Just to be clear, is it your evidence that you knew  
 6 at the time that this guarantee of a long-term licence  
 7 was not in the contract?"  
 8 You say:  
 9 "It's not in this contract document, but we  
 10 understood it to be in other documents."  
 11 Now, I just want to ask you --  
 12 A. But I clarified my answer there, didn't I, in the next  
 13 sentence, saying:  
 14 "... I understand that they don't use the word  
 15 "guarantee" here. But we understood the meaning of  
 16 this, the way it was going to be interpreted."  
 17 Q. Just try to focus on my question. Just try to focus on  
 18 my question. Which "other documents" are you referring  
 19 to where this guarantee is to be found?  
 20 A. I think it's here and I think it's in the whole pattern  
 21 of behaviour, and certainly it would have been  
 22 discussed.  
 23 Q. So you are unable to identify other documents that you  
 24 thought this guarantee was to be found in?  
 25 A. If you give us back our documents, I'm sure I can.

Page 23

12:33 1 A. Am I suggesting what?  
 2 Q. That the substance of this guarantee obligation is to be  
 3 found in this contract?  
 4 A. Yes.  
 5 Q. We'll go back and look at the contract then.  
 6 A. Yes.  
 7 Q. That wasn't your evidence last night, was it?  
 8 A. Come on, Mr Hill, let's be polite.  
 9 Q. It wasn't your evidence last night, was it, Mr Marshall?  
 10 A. No, it was not, Mr Hill. It was my -- it is what I said  
 11 last night.  
 12 Q. And these other --  
 13 A. Can I have the document? This is really frustrating for  
 14 me.  
 15 Q. Just going back to the transcript. The "other  
 16 documents" --  
 17 A. You asked me about whether the word -- I'm not trying to  
 18 be argumentative, but my recollection of the discussion  
 19 last night was: you asked me if the word "guarantee" is  
 20 there. You were not asking whether the substance of  
 21 a guarantee is there. And no, I'm not contradicting  
 22 myself.  
 23 Q. Well, we can all look at the transcript and we'll go  
 24 back to that.  
 25 Let's just go back to the answer you gave. It's

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12:35 1 Q. You said in your evidence:  
 2 "... we understood it to be in other documents."  
 3 Are you suggesting that when you did due diligence  
 4 on this company, you found other documents that  
 5 contained this guarantee obligation?  
 6 A. No, those are two different things. You know, when they  
 7 seized all the documents from our -- and I'm sure it  
 8 would have come up in various communications. When they  
 9 seized all the documents from our offices, I'm sure that  
 10 that's where we would have found it.  
 11 I think if you look at the application from the  
 12 other concession holders, they also say we have  
 13 an automatic right to this long-term agreement.  
 14 Q. Now, just focusing again on the evidence you gave, you  
 15 said you "understood it to be in other documents". I'm  
 16 dealing now with your acquisition of this company, when  
 17 you conducted due diligence. Are you suggesting you saw  
 18 other documents that contained a guarantee obligation?  
 19 A. No, I -- I saw many documents where the issue was  
 20 discussed, because it was a constant issue of  
 21 discussion.  
 22 We're walking -- please understand the context.  
 23 We're walking into an investment environment where we're  
 24 asked to put up money first, and that doesn't happen in  
 25 the mining industry. So that's the reason that

Page 24

12:36 1 everybody -- the Rwanda Government came around to this  
 2 concept: well, we'll guarantee it. So, fine, and we  
 3 accepted that. It's an unusual circumstance, but that's  
 4 what we were willing to accept.  
 5 For them to say that this -- I never -- the reverse,  
 6 I never had somebody say it's not guaranteed.  
 7 Q. What we're looking at, and you may recall, is we're  
 8 looking at what you must have understood about NRD's  
 9 rights when you bought into NRD. And you must have  
 10 understood -- and you did understand -- that NRD had no  
 11 guarantee or assurance about a long-term licence,  
 12 did it?  
 13 A. From the very beginning, I was assured that NRD had  
 14 a right to a long-term licence, a commercially  
 15 reasonable long-term licence. I don't know what the  
 16 terms of it would be; that was a matter of negotiation.  
 17 But it would have been a commercially reasonable  
 18 long-term licence.  
 19 Q. And it was obvious to you from your review of the  
 20 contract that you did undertake that NRD did not have  
 21 a guaranteed right to a long-term licence, did it?  
 22 A. I'm sorry, please rephrase the question.  
 23 Q. It would have been obvious to you from the review of the  
 24 contract you did undertake that NRD did not have  
 25 a guaranteed right to a long-term licence?

Page 25

12:37 1 A. That's not true.  
 2 Q. Let's go back to C-017.  
 3 A. The Rwanda Government was always pointing to its  
 4 Article 4 -- okay, in French, it's Article 3 -- that  
 5 that was our guarantee for having a commercially  
 6 reasonable long-term agreement.  
 7 Q. Let's take this in stages. You agreed with us  
 8 yesterday -- I'm happy to go back if you like --  
 9 Article 2 had obligations --  
 10 A. I disagree that I'm saying something different now.  
 11 Q. Article 2 had obligations that you agreed yesterday NRD  
 12 had to abide by; yes?  
 13 A. Yes.  
 14 Q. And if NRD did not abide by it, amongst other things,  
 15 Rwanda had the right to terminate the agreement and not  
 16 to provide you with any long-term licence; correct?  
 17 A. NRD did abide by all those obligations.  
 18 Q. Just answering my question: if NRD did not abide by it,  
 19 Rwanda had the right to terminate the agreement and not  
 20 grant you a long-term licence; correct?  
 21 A. If we did not, you say?  
 22 Q. Yes. That was your understanding; yes?  
 23 A. Well, as a matter of negotiation, but -- you know, as  
 24 a principle, yes. But that was, you know ...  
 25 What we were told had to be done, these are

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12:39 1 ambiguously worded language: each one of them is four or  
 2 five words. There was an ongoing discussion between the  
 3 parties about what was expected when and how it was to  
 4 be done.  
 5 Q. I'm going to come back to Article 4 in a moment, which  
 6 is the article you referred to. But just staying with  
 7 Article 2, there was within Article 2 an obligation  
 8 under item 3 for NRD to "Proceed immediately", after  
 9 December 2012, with the "industrial exploitation" of the  
 10 site; yes?  
 11 A. Yes.  
 12 Q. And you appreciated that that meant moving beyond  
 13 artisanal mining and achieving industrial exploitation  
 14 of the concessions; yes?  
 15 A. No, you're misusing the words, or the implication of  
 16 those words.  
 17 There is no industrial exploitation in Rwanda.  
 18 That -- in ordinary parlance, that means entirely  
 19 mechanised. There is only and has ever only been  
 20 artisan support mining. And it's -- the nature of the  
 21 artisan support mining is a matter of discussion, for  
 22 how to make different mine sites most efficient.  
 23 There are no rich deposits. There are no open-cast  
 24 mines, like there are in Congo or Australia or other  
 25 countries with impossibly large machinery. You know,

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12:40 1 the mining has to be done to match the deposit. If it's  
 2 a very small deposit, that's what you have to work with.  
 3 You can't bring in an open -- a large, you know,  
 4 half-mile-wide open pit if the minerals aren't there.  
 5 Q. You knew, didn't you, that what was required was moving  
 6 beyond artisanal mining and achieving industrial  
 7 exploitation and concessions?  
 8 A. No. They used the term "industrial exploitation"  
 9 I think partly for political reasons, but partly to  
 10 suggest they want something more than simple artisanal  
 11 work. They define "industrialisation" -- although it  
 12 seems very odd -- to include jackhammers and compressors  
 13 and generators. That's everybody's performance in  
 14 Rwanda. There are no big mines in Rwanda.  
 15 Q. Can we look at your own witness statement. This is your  
 16 second supplemental witness statement, so your third  
 17 witness statement, at paragraph 23. We're going back to  
 18 the contract, FTI, but we'll just look at the witness  
 19 statement first.  
 20 You say there, in paragraph 23:  
 21 "I always understood the importance of 'industrial  
 22 exploitation' both as part of the requirement of the  
 23 Contract and in order to make the Concessions more  
 24 profitable. My goal was also to move beyond artisanal  
 25 mining and achieve 'industrial exploitation' of the

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12:42 1 Concessions."  
 2 So that was exactly the formulation I put to you,  
 3 which you accepted was your -- you say was your goal  
 4 also.  
 5 Then we go over the page, and you say:  
 6 "Mining is a costly endeavour and I believed that  
 7 I would be able to attract investors by trading NRD on  
 8 the Alternative Investment Market of the London Stock  
 9 Exchange. However, in order to attract investors, NRD  
 10 needed the long term license. Without it, potential  
 11 investors saw NRD as too risky of an investment and were  
 12 not interested in investing. As a result of Rwanda  
 13 delays and ultimate refusal to grant a long term  
 14 license, I was never able to trade NRD on the London  
 15 Stock Exchange. Had I been able to, I expected to raise  
 16 substantial sums of money that I could have invested  
 17 into the Concession to improve the roads, bridges and  
 18 other infrastructure, bring in additional heavy  
 19 machinery, and build processing plants."  
 20 So you make it quite clear in your witness statement  
 21 that you do understand what "industrial exploitation"  
 22 is; yes?  
 23 A. You're misusing the term.  
 24 Q. Well, I'm using it in exactly the same way as you used  
 25 it in your own witness statement, aren't I?

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12:43 1 A. No.  
 2 Q. You explain in your witness statement that you wanted to  
 3 achieve industrial exploitation, and then you go on to  
 4 explain what that means, including bringing in  
 5 additional heavy machinery and building processing  
 6 plants; yes?  
 7 A. You're confusing -- you're conflating the issues. No  
 8 deposit can be treated differently than the richness of  
 9 that deposit. You can't open up a massive, mile-wide  
 10 open pit if there's no minerals there. The Rwandan  
 11 mines are very thin and variable veins; not placer  
 12 deposit, like open cast pits or anything like that.  
 13 The common parlance in Rwanda for what they mean by  
 14 industrial exploitation is giving assistance to artisan  
 15 miners. It will only be that, and it will never be  
 16 more. I suggest you address that to the other  
 17 witnesses.  
 18 Q. That is why you explain in your witness statement what  
 19 industrialisation is: you explain it involves bringing  
 20 in machinery and processing plants.  
 21 A. I think you're mistaken about the pieces of equipment we  
 22 use. A processing plant is really a more efficient way  
 23 of an artisan miner using a chisel and hammer to hammer  
 24 out part of the vein, crushing it and then panning it.  
 25 That's, in essence, all of the mining.

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12:44 1 When you have --  
 2 Q. You understand --  
 3 A. -- a processing plant, you have to simply put larger  
 4 quantities of extracted material, and instead of it  
 5 being crushed by hand and instead of being hand-panned,  
 6 it does that in a consecutive order of machinery, so  
 7 through a gravity-fed machine. That's a processing  
 8 plant. It's not more complicated than that.  
 9 Q. You understood that industrial exploitation of the kind  
 10 you have described in your witness statement was  
 11 required under Article 2 of the contract, didn't you?  
 12 You knew that; yes?  
 13 A. Yes, but you're conflating what is meant by "industrial  
 14 exploitation" in Rwanda with a sense that you have from  
 15 some other source.  
 16 Q. When you purchased NRD, you knew also that there  
 17 generally hadn't been industrial exploitation as was  
 18 required under the contract; correct?  
 19 A. For example, Rutongo Mines has been said that: yes you  
 20 satisfied the requirements of industrial mining. We did  
 21 exactly the same as Rutongo Mining. They had no  
 22 difference in their operation, and that was deemed to be  
 23 industrial mining.  
 24 Q. Just answering my question: when you purchased NRD you  
 25 understood that there hadn't generally been industrial

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12:46 1 exploitation; correct?  
 2 A. That there had not been? Yes, there had.  
 3 Q. We can come on to the detail of this. But there was, at  
 4 best, artisanal mining going on. Certainly in three of  
 5 the concessions there was nothing except artisanal  
 6 mining going on; correct?  
 7 A. By that standard, there is nothing but industrial mining  
 8 anywhere in the country.  
 9 Q. Just, again, answer my question.  
 10 A. Well, you're using a term --  
 11 Q. In relation to Giciye, Sebeya, Mara, there was, on any  
 12 view, nothing except artisanal mining going on?  
 13 A. Artisanal-support mining.  
 14 Q. In relation to those three concessions, there was no  
 15 plant, no infrastructure, nothing approaching  
 16 industrialisation in respect of those three concessions,  
 17 was there?  
 18 A. You're misusing the term "industrialisation" in the  
 19 context of how they use it. Any artisanal-support is  
 20 considered industrialisation by them.  
 21 Q. That's not accurate, is it, (inaudible)?  
 22 A. Yes, it is.  
 23 Q. And in relation to two of the concessions --  
 24 A. You can't name any mine that has industrial exploitation  
 25 by that definition.

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12:47 1 Q. In relation to two of the concessions, there was only  
 2 some limited industrialisation, and that relates to the  
 3 processing plant installed at Rutsiro and some  
 4 enhancement of infrastructure at Nemba; correct?  
 5 A. No.  
 6 Q. In paragraph 24 of your witness statement, you're  
 7 explaining exactly what you mean by industrialisation,  
 8 because you're talking about bringing in additional  
 9 heavy machinery and building processing plants. That's  
 10 industrialisation, isn't it?  
 11 A. No. No.  
 12 Q. Then why does it appear in the same paragraph as you --  
 13 A. You're misreading it. You're misreading it. Any  
 14 artisan-support -- and yes, it includes bringing in  
 15 additional roads, equipment, additional assistance to  
 16 the miners. But you're looking for some kind of  
 17 automated machinery process. That's not what happened  
 18 in Rwanda.  
 19 Q. I'm reading your witness statement. You say you  
 20 understand the importance of industrialisation: that's  
 21 the beginning of paragraph 23.  
 22 A. And I --  
 23 Q. You say you wanted to achieve it. You then explain that  
 24 you wanted to go on and improve roads and infrastructure  
 25 and bring in heavy machinery and build processing

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12:48 1 plants. It's quite clear that you are seeing that as  
 2 industrialisation; correct?  
 3 A. You're conflating the issues. All support for our  
 4 artisans, any additional support that is beyond a hammer  
 5 and a chisel, is considered industrialisation. So  
 6 every --  
 7 Q. That's not true, is it?  
 8 A. Yes, it is true. Can I finish, please?  
 9 Every time you bring in additional heavy equipment,  
 10 in the context of jackhammers and generators and  
 11 compressors to run the jackhammers, that's -- in Rwandan  
 12 parlance that's industrialisation.  
 13 You have a misunderstanding about the significance  
 14 of a processing plant. A processing plant doesn't do  
 15 more than make it more efficient -- it's exactly the  
 16 same thing that miners do by hand, and it's somewhat  
 17 more efficient if there are enough feedstocks to be able  
 18 to keep it going. You're defined by the deposit itself.  
 19 If the mineralisation isn't there, you can't have a more  
 20 efficient processing plant.  
 21 Q. Now, your --  
 22 A. You -- you're -- I'm sorry, go ahead.  
 23 Q. We can see from paragraph 24 of your witness statement  
 24 what your business strategy was, which was to proceed  
 25 with industrialisation after getting long-term licences

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12:49 1 and achieving flotation?  
 2 A. Every time you bring in additional equipment for miners,  
 3 that's industrialisation. But it's not building  
 4 a massive processing plant. There's no deposit there  
 5 which can run -- there's not enough feedstocks to be  
 6 able to run through a processing plant of any size.  
 7 Q. Just to look at it --  
 8 A. It's a very modest country, very modest mining.  
 9 Q. Just, again, focus on my questions, please.  
 10 A. Sorry.  
 11 Q. Paragraph 24 explains your business strategy --  
 12 A. Yes.  
 13 Q. -- which was to seek a flotation on the London Stock  
 14 Exchange --  
 15 A. Yes.  
 16 Q. -- and achieve industrialisation on the back of the  
 17 flotation, the flotation itself being on the back of  
 18 long-term licences; yes?  
 19 A. Yes.  
 20 Q. But that is the wrong way around, because --  
 21 A. No, you're misunderstanding, again. Again.  
 22 Q. -- you were required -- just listen -- you were required  
 23 to commence industrialisation immediately after the 2006  
 24 contract was entered into. So your business strategy  
 25 could never be viable and consistent with the contract,

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12:51 1 could it?  
 2 A. No, your premise is wrong. It's unique in Rwanda, and  
 3 there's nowhere else in the world where mining companies  
 4 were asked to come in and invest before getting  
 5 a long-term licence; none. Not one country in the  
 6 world. That was done as an accommodation, part of the  
 7 enthusiasm of wanting good things to happen in Rwanda.  
 8 We were one of them.  
 9 We said: okay, you're going to give us the long-term  
 10 concession. We're willing to do this a little bit  
 11 backwards. So we're going to make an accommodation for  
 12 you to be able to put in money before we have  
 13 a long-term licence.  
 14 Q. So if we go back to C --  
 15 A. If I could finish answering your question, please.  
 16 When we're talking here about industrialisation,  
 17 we're talking about raising substantial sums of money to  
 18 yet build out the mines even more. There are thousands  
 19 of part-time artisan miners, who are farmers in the  
 20 daytime -- mornings and miners in the afternoon, and if  
 21 every one of them had a jackhammer, they can produce  
 22 more. Of course, a jackhammer requires having  
 23 a compressor and a generator.  
 24 Q. If we could go back to C-017 now. Thank you.  
 25 I'm going to suggest you knew when you acquired NRD

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12:52 1 that the Article 2 obligations were unfulfilled, and on  
 2 that basis alone, NRD had no entitlement to a long-term  
 3 contract.  
 4 A. No, those were fulfilled, and we were told that they  
 5 were fulfilled by Dominique, who was the head of the  
 6 licensing department. We were told we had the best  
 7 application of all. And by the way, we did read the  
 8 other applications: we knew it was superior to the  
 9 others, because we worked with the geologist who  
 10 prepared the others.  
 11 So then --  
 12 Q. Are you suggesting, just to be clear on that last  
 13 point -- I'll come back to that -- who provided you with  
 14 everyone else's applications?  
 15 A. The ministry.  
 16 Q. Mr Bidega?  
 17 A. And his staff.  
 18 Q. So just to be clear, Mr Bidega provided you with  
 19 everyone else's applications. When was that?  
 20 A. No, I just said: and his staff. I don't know which one  
 21 was which. But they were -- people saw ours. There was  
 22 no confidentiality. That's not the way this mining  
 23 industry works. Everybody was sharing all the  
 24 information.  
 25 Q. No, you referred to Mr Bidega saying you had the best

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12:53 1 application. You're referring at the moment to  
 2 something that happened, on your evidence, in late 2011;  
 3 correct? And I'm asking you --  
 4 A. I'm sorry, I don't understand.  
 5 Q. All my questions at the moment -- I just want you to be  
 6 focused -- all my questions at the moment are about what  
 7 you understood when you acquired NRD in late 2010.  
 8 That's got nothing to do with what you say Mr Bidega  
 9 told you in late 2011.  
 10 You understood, when you acquired NRD in late 2010,  
 11 that the Article 2 industrial exploitation obligation  
 12 had not been fulfilled, and on that basis alone, there  
 13 would be no right to a long-term licence; correct?  
 14 A. You mean number 3?  
 15 Q. Article 2 -- yes, Article 2, subpara 3. You knew that  
 16 was unfulfilled, and on that basis alone there would be  
 17 no right to a long-term licence?  
 18 A. No, you're completely misunderstanding this whole  
 19 process, I'm sorry.  
 20 Q. Were you also aware that the Zarnacks had indicated to  
 21 the government in their investment plan that they would  
 22 be investing \$39 million in the deal? Yes? Are you  
 23 aware of that?  
 24 A. No. I only saw it in the application. I was not aware  
 25 of it from the Zarnacks.

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12:54 1 Q. And you were aware that nothing like this level of  
 2 investment had gone in; correct?  
 3 A. But you're putting -- you're reversing the process  
 4 again. Nobody invests in anything in mining until they  
 5 have an agreement. As an accommodation, they were  
 6 making some investments.  
 7 Q. No --  
 8 A. But then to say, "Look, you didn't put in \$40 million,  
 9 therefore you have to go home and you leave your  
 10 \$40 million", doesn't make any business sense.  
 11 Q. Just trying to understand what you knew. Did you know  
 12 and understand that the Zarnacks had promised  
 13 a \$39 million investment plan over the period of the  
 14 contract, and that that money had not gone in, except  
 15 a small fraction of it?  
 16 A. I don't know that, no. What I know is what -- the  
 17 language that I saw in the application.  
 18 Q. It's not a question of the \$39 million being invested in  
 19 the future; that was money that was to be invested over  
 20 the period of the contract, wasn't it?  
 21 A. Not that I know of.  
 22 Q. Now --  
 23 A. Why would you invest \$40 million -- I'm sorry, I --  
 24 Q. We'll come back to that. I'm afraid the process,  
 25 Mr Marshall, is that I ask the questions and you answer

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12:56 1 them.  
 2 A. (Overspeaking).  
 3 Q. Now let's go to item 5 of Article 2. This is  
 4 an obligation, again within the four-year term, to  
 5 provide evaluation reports of reserves and a feasibility  
 6 study after four years; yes? And you were aware that  
 7 that was something that needed to be provided?  
 8 A. Yes.  
 9 Q. The feasibility study would itself be based in part on  
 10 the reserves that had been reported based on the  
 11 geological exploration carried out, including whether  
 12 the exploitation proposals for a long-term concession  
 13 were realistic and feasible; yes?  
 14 A. I'm sorry, say that again?  
 15 Q. Yes. The idea of a feasibility study is in part it's  
 16 based on the evaluation of reserves that's already been  
 17 carried out following exploration; yes?  
 18 A. Sorry, again you've got it backwards. This is not to  
 19 create a study for the government that the government  
 20 can use as an asset; the purpose of it is for a company  
 21 to be able to evaluate whether it wants to invest.  
 22 Q. Well, again, you're not focusing at all on my questions,  
 23 I'm afraid. Please answer my question.  
 24 The feasibility study would be based in part on  
 25 an evaluation of reserves based on exploration that had

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12:57 1 been carried out; yes?  
 2 A. You're going to have to ask me one more time, I'm sorry.  
 3 Q. So you're going to have a process: you would explore,  
 4 you would evaluate reserves, and on the back of that you  
 5 would have a feasibility study; yes?  
 6 A. Yes.  
 7 Q. And the feasibility study is evaluating whether  
 8 exploitation proposals for a long-term concession are  
 9 realistic and feasible based on the reserves and the  
 10 investment and the exploitation plan; yes?  
 11 A. For the company, yes. That's the way all mining  
 12 companies work.  
 13 Q. And if you look at Article 4, you were aware that it  
 14 says:  
 15 "After positive evaluation of the submitted  
 16 feasibility study Natural Resources Development Rwanda  
 17 Limited will be granted the mining concessions."  
 18 You were aware that whatever rights were granted,  
 19 long-term investment rights were granted, or whether  
 20 they were, would depend on a positive evaluation by  
 21 Rwanda of the feasibility study?  
 22 A. No.  
 23 Q. That's exactly what Article 4 requires, and that's what  
 24 you well understood was in the contract when you  
 25 acquired NRD?

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12:59 1 providing the evaluation reports and the feasibility  
 2 study to the government? You don't even need to  
 3 bother --  
 4 A. Because they want --  
 5 Q. -- you could just keep it internal --  
 6 A. They want (overspeaking) --  
 7 Q. Listen to my question. On your logic, you wouldn't even  
 8 need to bother: you could keep the feasibility study to  
 9 yourself and just say to the government, "We're happy".  
 10 A. You'll need to go back to your client. This is their  
 11 document. We were not given ...  
 12 Q. I'm suggesting it's quite obvious how the document  
 13 worked, and you knew it at the time. There was  
 14 an obligation to provide to the government evaluation  
 15 reports and the feasibility study, and the government  
 16 needed to be satisfied about your feasibility study  
 17 before they would grant you a long-term licence;  
 18 correct?  
 19 A. No. That's not the way that -- that's not what they say  
 20 it meant.  
 21 Q. And that's exactly what you understood when you acquired  
 22 NRD, and indeed it's what you were told by the NRD  
 23 staff, because they were concerned, and they told you,  
 24 that not enough work had been done to justify long-term  
 25 licences; correct?

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12:58 1 A. No, it's not true. In fact, that is the -- exactly the  
 2 provision that the Rwanda Government's staff always  
 3 pointed to say: once you approve it, once you decide you  
 4 want to go ahead, you have the right to do so. They  
 5 wanted to make sure that the company did the internal  
 6 research to be able to make sure they wanted to put more  
 7 money into the project. This was not intended to give  
 8 the Government of Rwanda a way out after receiving so  
 9 many tens of millions of dollars.  
 10 Q. You're not suggesting, are you, the company could  
 11 simply, without more, say, "We're happy with the  
 12 feasibility study; please grant us a long-term licence"?  
 13 A. Yes.  
 14 Q. There would have been entirely different terms, and much  
 15 fuller terms, if it had been thought that someone else,  
 16 other than the Government of Rwanda, could certify  
 17 themselves as satisfied with the feasibility study,  
 18 wouldn't there?  
 19 A. This is the way the mining works. It's not the  
 20 government. The government says, "Look, we have these  
 21 sites: are you willing to invest here?" Mining  
 22 companies go in, they spend some of their money doing  
 23 exploration, and then they determine whether they want  
 24 to ask for it.  
 25 Q. Then why is it necessary, under Article 2(5), to be

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13:00 1 A. That's entirely nonsense.  
 2 Q. Now, could we go to C -- sorry, just before I do, just  
 3 standing back from all the questions I've asked, I'm  
 4 going to give you one more opportunity to answer the  
 5 question.  
 6 My suggestion was that when you and Spalena entered  
 7 the frame in late 2010, you did not think for a moment  
 8 that NRD had any guaranteed entitlement to long-term  
 9 mining licences, did you?  
 10 A. Of course I did.  
 11 Q. Can we go to --  
 12 A. All concession holders had a guaranteed long-term  
 13 licence if they invested.  
 14 Q. Well, even on the answers you've given this morning,  
 15 also if they satisfy their obligations under Article 2.  
 16 Or are you resiling from that evidence too?  
 17 A. You'll have to be more clear.  
 18 Q. You accepted this morning already that any long-term  
 19 licence would be dependent on satisfying the obligations  
 20 under Article 2.  
 21 A. I agree. But you're giving a more narrow interpretation  
 22 than the Rwandans do to the meaning of the language in  
 23 Article 2.  
 24 Q. Can we go to C-068.  
 25 A. This agreement was signed and put into a drawer from the

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13:02 1 Rwanda side. Everybody was guaranteed the long-term  
 2 concession licence if they invested. What the other  
 3 documents were -- they never came to the field. They  
 4 never came to understand what we were doing. They  
 5 weren't interested in what we were doing.  
 6 Q. Well, again, Mr Marshall, you know that's untrue,  
 7 because you know the government was keenly interested in  
 8 what you were doing and closely scrutinised all the  
 9 applications and feasibility studies that you provided.  
 10 You know that, don't you?  
 11 A. No, it's not true.  
 12 Q. Well, let's go to the document I mentioned: C-068. This  
 13 is the agreement again that we looked at earlier.  
 14 I'm going to ask to start at page 14, subpara 4.  
 15 Just to make sure you understand, this is the clause  
 16 that [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 If we go on to page 15 --  
 20 A. Yes, this is actually a more complicated agreement.  
 21 I'll need to read the agreement. If you don't mind --  
 22 Q. I'll ask you the question and then you tell me if you  
 23 need to read the agreement before you answer it.  
 24 Within this clause, I want to look at one of the  
 25 pieces of information that there's an acknowledgment

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13:04 1 yes.  
 2 Q. Well, that doesn't make sense, Mr Marshall, because the  
 3 time has only just arrived for the government to issue  
 4 long-term licences or not, because we've only just  
 5 reached the end of the four-year period. So they were  
 6 telling you --  
 7 A. That was the story we were told to believe: at the end  
 8 of the four-year period, we would be given the long-term  
 9 licences.  
 10 Q. Exactly. And they are -- that's exactly my point.  
 11 The end of the four-year period has arrived. The  
 12 application has only just gone in, because this is just  
 13 after November 2010. It hasn't been ruled on yet, the  
 14 application. [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 A. No.  
 18 Q. Well, that's what --  
 19 A. The applications were submitted. That was a -- as we  
 20 had always been explained, that was part of the  
 21 pro forma exercise to make sure we were going to build  
 22 out the concessions as they were politically expecting  
 23 them to be built out.  
 24 Q. Mr Marshall, you're simply making up your answer as you  
 25 go along.

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13:03 1 that the buyer knows about. If you look in the middle  
 2 of page 15, it says:  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 A. I have to go back and read the whole agreement. [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 So in that sense, you're correct. But I need to go  
 19 back and read the whole agreement.  
 20 Q. So you knew already when you bought into this company  
 21 that [REDACTED]  
 22 [REDACTED]  
 23 A. No different issues than all other concession holders.  
 24 We all faced exactly the same issue: why hadn't the  
 25 government issued the long-term licence? So in a sense,

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13:06 1 A. I'm not. This is -- I'm sorry. No, I'm not.  
 2 Q. You acknowledged that there were issues with the renewal  
 3 of the licence at the time when the licence application  
 4 had only just been made, [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 A. You're creating a fantastic administrative hierarchy  
 8 around this issue. That's not what happened.  
 9 Q. [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 A. Not true.  
 13 Q. -- it was quite a serious risk that there wouldn't be  
 14 any renewal at all; correct?  
 15 A. There were parallel lines of negotiation going on.  
 16 You'll recall we began negotiating, and I want to say  
 17 maybe March 2011, the language of the long-term  
 18 contract. We had fulfilled all the terms and  
 19 conditions, they were very happy --  
 20 Q. I'm going to stop you there because we're not in 2011  
 21 now. We're still dealing with what you understood when  
 22 you acquired NRD at the end of 2010.  
 23 A. The reason I'm telling you is it was evidence of why  
 24 I believed that we had fulfilled all the requirements.  
 25 Q. But you acknowledged, and were required to acknowledge

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13:07 1 in your contract, that you understood that there were  
 2 issues associated with that renewal; okay?  
 3 A. As I said, I need to go back and read the whole  
 4 agreement. But the issues that all of us had were: they  
 5 had not yet issued the long-term licences. That's  
 6 an issue. Was there -- had we failed in any respect?  
 7 No.  
 8 Q. You had only just applied for the long-term licences and  
 9 hadn't even had a ruling yet on them, as you know.  
 10 A. It was a formality.  
 11 THE PRESIDENT: Mr Hill, you've just put to this witness  
 12 that NRD had applied for the long-term licences --  
 13 MR HILL: I'm sorry.  
 14 THE PRESIDENT: -- and I don't understand that to be your  
 15 case.  
 16 MR HILL: No, and that was certainly a slip.  
 17 Just to be clear, I'm not suggesting there was  
 18 an application for a long-term licence. It's very  
 19 strongly our case that there isn't an application for  
 20 a long-term licence; it's an application for a five-year  
 21 licence. I apologise for that slip.  
 22 A. That's the case: it was an application for a long-term  
 23 licence.  
 24 Q. I'm going to suggest to you that your evidence that you  
 25 thought that there was a guarantee of a long-term

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13:10 1 licences, and its application in November 2010 was for  
 2 short-term licences because they knew that that was all  
 3 realistically they could hope for; correct?  
 4 A. I don't even understand the premise of your argument.  
 5 Because it's a five-year plan? All mining is five-year  
 6 increments. Nobody plans more than five years.  
 7 Q. Just answer my question. I'm going to bring you to the  
 8 evidence that demonstrates this, but I'm asking about  
 9 your understanding. And your understanding -- because  
 10 it was made clear to you by NRD itself -- was that this  
 11 was only an application for five-year licences; correct?  
 12 A. No. I'm sorry, you're misstating the facts.  
 13 Q. Well, before Spalena acquired NRD, you would have  
 14 reviewed the licence renewal application; yes?  
 15 A. I had read this agreement, sure -- this application.  
 16 Q. You had read it, and you read it on due diligence,  
 17 presumably; yes?  
 18 A. Yes. Well, no, I read it way before then. It was being  
 19 prepared in pieces, but we saw different pieces at  
 20 different times.  
 21 Q. And --  
 22 A. From the geologist.  
 23 Q. Can we go to the licence application, which is at C-035.  
 24 So this is an "Application for the Renewal of  
 25 Exploration Licences" and an "Application for the

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13:08 1 licence is inconsistent with your acknowledgment in the  
 2 contract that there were issues with renewing the  
 3 licences at all.  
 4 A. No.  
 5 Q. That --  
 6 A. I'm sorry, you're mischaracterising what happened.  
 7 There are parallel lines of relationship. There was  
 8 the Licensing and Supervision Office, who were telling  
 9 us without any reservations, "Yes, your long-term  
 10 application is the best among all of them that we've  
 11 seen". And we did see the others, either through the  
 12 geologists or through the mining department, because  
 13 they showed them to us, and they showed ours to them.  
 14 There was no secret in this -- in many respects, there  
 15 was no secrets in the industry. In this respect, there  
 16 was certainly no secret.  
 17 So we could begin directly. And that's why I say  
 18 March 2011 to begin negotiating the language of that  
 19 long-term concession. It's not some additional review  
 20 or advantages. They knew what we knew, they knew what  
 21 we had invested, they knew what the process was, and  
 22 that's why we started that discussion.  
 23 Q. Now, the next point -- and this picks up on the point  
 24 raised to me by the President -- is you also knew at  
 25 this stage that NRD hadn't even applied for long-term

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13:11 1 Allocation of Mining Licences to NRD"; do you see that?  
 2 A. Yes.  
 3 Q. What that is asking for is a renewal of its ability to  
 4 explore and also for small mine five-year licences;  
 5 correct?  
 6 A. No, absolutely not.  
 7 Q. You're not suggesting that this is an application for  
 8 a vast mining concession --  
 9 A. Yes.  
 10 Q. -- under Article 57 of the 2008 law?  
 11 A. I don't know the cite to the law, but this was for  
 12 a long-term licence. As a proper concession holder, as  
 13 an accommodation we were being treated as a large-scale  
 14 concession holder, and this is consistent with that.  
 15 Q. Were you aware that if you had been applying for a vast  
 16 mining concession, you would of course, as the  
 17 legislation shows, be entitled to explore and research  
 18 within your vast mining concession? All you need is  
 19 a vast mining concession. You wouldn't be applying for  
 20 renewal of exploration licences and the mining licence.  
 21 A. I would say that would be an insignificant  
 22 inconsistency.  
 23 Q. And the reason that you have two forms of application is  
 24 that you have a separate exploration licence being  
 25 applied for and a separate small mining licence; yes?

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13:13 1 A. I'm sorry, but you're really reaching. That's  
 2 completely untrue.  
 3 Q. If we look at paragraph 9 (sic) of the document, at the  
 4 bottom.  
 5 MR BRODSKY: Do you have a page number? This is a large  
 6 document.  
 7 MR HILL: I said page 9.  
 8 MR BRODSKY: Oh, page. I thought you said paragraph.  
 9 MR HILL: Page 9, yes.  
 10 We can see at the bottom we have a "Proposed  
 11 Activity Plan". That's dealing with a period from  
 12 January 2011 to January 2015, so a five-year period;  
 13 correct?  
 14 A. Yes.  
 15 Q. If you look over the page, page 10, we can see more of  
 16 the activity plan, also for a five-year period; correct?  
 17 A. Yes.  
 18 Q. And if you look at the paragraph under the box, you can  
 19 see various exploration exercises, including making new  
 20 reserve calculations, in the period from 2011 to 2015;  
 21 yes?  
 22 A. Yes.  
 23 Q. And --  
 24 A. This -- I don't know if you understand. This is the way  
 25 planning and mining is done. Nobody does it

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13:15 1 "Detailed calculation of reserves of Rutsiro primary  
 2 wolframite deposits."  
 3 So the main job had not been done, and that's why --  
 4 A. No, that's not true.  
 5 Q. -- there was a request for renewal of another  
 6 exploration contract; correct?  
 7 A. You're misreading that statement.  
 8 Q. And a consequence of the lack of work --  
 9 A. That's wolframite. What research was done on tungsten  
 10 or tantalum, it doesn't say. When they say "Detailed  
 11 calculation", what was the broader calculations that had  
 12 been done?  
 13 Q. Mr Marshall, wolframite is tungsten.  
 14 A. I'm sorry, cassiterite and tantalum. There are all  
 15 three minerals in Rutsiro.  
 16 Q. But Rutsiro isn't a cassiterite reserve.  
 17 A. Yes, it is. It has all three. You are sorely mistaken.  
 18 Q. The reality is that Rutsiro was being focused on always  
 19 for tungsten, wolframite --  
 20 A. You're mistaken.  
 21 Q. -- and even with its primary ore, there had not been  
 22 detailed calculation of its reserves?  
 23 A. You're mistaken. There are tin deposits and there are  
 24 tantalum deposits.  
 25 Q. And the plant that had been installed at Rutsiro was

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13:14 1 ten years --  
 2 Q. Just focus on my questions.  
 3 Just pausing here, you can see the sort of reserve  
 4 calculations that are now earmarked. What that is  
 5 itself showing is there hadn't previously been any  
 6 adequate calculation of reserves, even though that was  
 7 one of the obligations under Article 2 of the previous  
 8 contract; correct?  
 9 A. No.  
 10 Q. And most of the expected exploration work hadn't been  
 11 done, and you were told that when you acquired the  
 12 company; yes?  
 13 A. I don't think you understand the mining process. You  
 14 know, when -- it's not like you do all the exploration  
 15 and then you begin mining. You do sufficient  
 16 exploration to know that it's attractive enough to  
 17 invest the money, to be able to expect to get a return.  
 18 Q. What this shows is a sort of --  
 19 A. Where there are areas that aren't researched, that comes  
 20 over time. It's not like everything is done at once.  
 21 Q. Well --  
 22 A. So you're misrepresenting what these things mean.  
 23 Q. We'll accept that you talk about areas that haven't been  
 24 researched.  
 25 In "Rutsiro", the top item:

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13:17 1 a wolframite, tungsten, processing plant, wasn't it?  
 2 A. I understand that that has been characterised that way.  
 3 The process is the same. You can make adjustments to  
 4 a plant, and they have to be able to process all three  
 5 minerals. There is no difference in the machinery.  
 6 There are some parameters that have to be adjusted if  
 7 you want to get more fines or less fines, depending on  
 8 whatever the host material is.  
 9 Q. The commercial reason --  
 10 A. And it depends on the proposal --  
 11 Q. The commercial reason -- just to be clear, the  
 12 commercial reason why that plant was built was to  
 13 process wolframite, wasn't it?  
 14 A. No.  
 15 Q. And the idea -- and we have got witnesses from the  
 16 people who were there when it was built, and you  
 17 weren't -- the idea that Starck had, and why they built  
 18 it, was to process wolframite from the scree and  
 19 thereafter move into the primary ore; correct?  
 20 A. No. It was centrally located. Starck was very clever:  
 21 they -- there are cassiterite reserves right across the  
 22 other side of the valley. There has been historically  
 23 a lot of tungsten work done there. There are tailings  
 24 there that were expected to be processed. Immediately  
 25 across the road is where the tin deposits are. Half

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13:18 1 a mile up the road is when you start to get the tantalum  
2 deposits. This was a central location on a road.  
3 Q. Mr Marshall, you're making things up. Because we have  
4 a number of witnesses -- it's not just one witness; we  
5 have a number of witnesses who deal with this processing  
6 plant. It's also clear from the evidence that this  
7 plant did not operate, did it? You're not suggesting  
8 this plant operated?  
9 A. Yes, it did operate.  
10 Q. You're suggesting this plant processed ore, are you?  
11 A. Yes.  
12 Q. What sort of ore are you suggesting it processed?  
13 A. Whatever we wanted to put through it. For example, it  
14 wasn't operating regularly in the sense of bringing  
15 large quantities of material and putting it in the top;  
16 it was operating regularly with regard to the artisan  
17 miners, to give them support.  
18 A plant is nothing more than crushing minerals,  
19 washing them by either trommels, jigs or spirals, and  
20 ending up with a finished product at the end. It's the  
21 least labour-intensive process. That's all.  
22 Q. Just so we have your evidence on this, just so we've got  
23 it absolutely clear, your evidence to the Tribunal is  
24 that this plant, the Rutsiro plant, kept operating; yes?  
25 A. Yes.

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13:21 1 business plan only covered the period 2011 to 2015;  
2 correct?  
3 A. Yes.  
4 Q. That's because this was an application dealing with  
5 a five-year period; correct?  
6 A. No. This is the way all of these plants are put  
7 together. If you compare it to Rutongo, you'll see the  
8 same; Nyakabingo. All the -- this is the way mining  
9 companies do these proposals. They don't forecast out  
10 beyond five or six years, for the reason that too many  
11 things can change.  
12 Just compare it to the other applications: you'll  
13 see.  
14 Q. Sorry, just give me one moment. (Pause)  
15 You just gave an answer that this is what always  
16 happens. But the reality is that you, later in this  
17 story -- and we'll come to it -- do put in an actual  
18 application for a long-term licence and you do give  
19 projections out to 30 years. So the evidence you've  
20 just given --  
21 A. That's --  
22 Q. -- is not true.  
23 A. No. At the request of the ministry, with technical  
24 information submitted to us by the ministry.  
25 Q. So instead of being something that always happens,

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13:19 1 Q. Throughout the period of NRD's concession?  
2 A. Yes. It was always available for the artisans. They  
3 didn't use -- when you say "operating", you know, again,  
4 you're drawing in a big issue. It was available for the  
5 artisans who were there to use individual pieces. The  
6 plant is nothing more than, as I say, a crusher,  
7 trommels, washing tables. The artisan miners who are  
8 there on site can use pieces of it to make their work  
9 easier.  
10 Q. Now, let's go back to this document. The consequence of  
11 the lack of exploration work that had been done to date  
12 meant that there was no meaningful feasibility study  
13 that was provided or could be provided in late 2010;  
14 correct?  
15 A. No.  
16 Q. And certainly no feasibility study --  
17 A. We did more research than anybody.  
18 Q. Certainly no feasibility study that would be sufficient  
19 to meet with approval from the government so as to move  
20 forward with a long-term licence; correct?  
21 A. You've got it backwards again. This is not for the  
22 government to approve; this is for the company to  
23 approve, to decide whether they put in more money.  
24 Q. Let's go to the bottom of page 11 of this document  
25 (C-035). This is a "Proposed Business Plan", and the

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13:23 1 that's not the case, despite --  
2 A. No. Again, you're mixing apples and oranges, you know.  
3 When mining companies do this, it's a five-year plan.  
4 You can't forecast more than five years; there are too  
5 many variables. So say a business plan, you know, is  
6 very valuable as a planning exercise, but it has no  
7 meaning once you get started.  
8 Q. But again, you chose to provide long-term, 30-year  
9 projections when you were in fact applying for  
10 a long-term licence; correct?  
11 A. That's not correct. We were instructed to provide those  
12 numbers and they were provided -- those numbers were  
13 provided to us by the ministry.  
14 Q. Could FTI go to page 143 of this document (C-035).  
15 This is a document dealing with a plant, and it is  
16 indeed a wolframite ore dressing plant, isn't it? You  
17 can see that from the first page of the document.  
18 A. It was set up to deal first with the tailings at this  
19 site. That's why they call it wolframite. There is no  
20 such thing as a wolframite or a tantalum or a tin plant;  
21 they're all the same. When you go to Rutongo's plant,  
22 it's a crushing plant, it's a processing plant. It's  
23 not a wolframite plant or a tin plant or a tantalum  
24 plant.  
25 Q. Now, let's go back to page 13 of this document, the one

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13:24 1 we were on earlier. This is dealing with what the  
2 application is for licences. So here what's clear is:  
3 "It is ... applied to retain the concessions of  
4 Rutsiro, Giciye and Sebeya as Exploration Licences,  
5 albeit with a reduced ... extent ..."  
6 So under this application, the concessions were  
7 being shrunk as exploration licences; correct?  
8 A. Yes. What the ministry wanted was for us to say, "Okay,  
9 you've done this evaluation, now tell us concretely what  
10 it is you want to keep as part of your licences".  
11 Q. So they were shrinking as exploration licences; correct?  
12 A. No. This was to go to the 30-year licence, and we were  
13 saying: these are the areas that we would like to  
14 retain.  
15 Q. No, that's not right. This is an application for  
16 renewal of exploration licences. So the exploration  
17 licences are just on this reduced area, aren't they?  
18 A. That may be badly written. But are you saying that  
19 we're not applying for the 30 years, or what are you  
20 saying? I'm missing the point of your question.  
21 Q. That NRD was reducing its areas, concession areas, for  
22 the purposes of its exploration licences; correct?  
23 A. All I know is that there is one 30-year licence.  
24 That's -- under the statute, the 2008 statute, that's  
25 the only possibility, as far as I know.

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13:28 1 to have made an application six months before the expiry  
2 date?  
3 A. No.  
4 Q. You did know, didn't you, not at least because you  
5 looked at this application but also from what you were  
6 told by NRD, that all NRD was applying for was  
7 a five-year renewal of a small mines licence?  
8 A. Not true.  
9 Q. Can you be provided with C-041.  
10 A. All of us were applying for the same thing. All  
11 applications were similar. Ours were more detailed;  
12 ours had done far more work and made much more  
13 investment. But all the applications were virtually the  
14 same.  
15 Q. Can you look at C-041.  
16 A. We were the only ones who didn't get it.  
17 Q. This is a letter we'll come back to later. It's  
18 a letter from you to Mr Kamanzi dated 31st October 2011.  
19 A. Yes.  
20 Q. There's quite a lot of points here. I just want to go  
21 to point 10, which you'll find at the bottom of the  
22 [fourth] page of your letter.  
23 You say there:  
24 "In the last sentence of the second paragraph of the  
25 letter, it is implied that NRD must engage additional

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13:26 1 Q. And if, on your case, there was a guarantee of  
2 a long-term licence and what was being applied for was  
3 a long-term licence, it's inconsistent with that,  
4 isn't it, to be reducing what's being sought; yes?  
5 A. No, I think you need to understand what they were asking  
6 us to do. They were saying, "Look, you've evaluated it;  
7 now what is it you really need for your long-term  
8 concession?" We were already being treated as long-term  
9 licence holders. We had rights and responsibilities  
10 under a statute which made us holders of these  
11 concessions even though it wasn't formally designated as  
12 a 30-year period. There was nothing else we could be  
13 under the 2008 statute.  
14 Q. Could we now go to page 25. This gives a description of  
15 the licences and it says:  
16 "Applications for renewal have to be submitted  
17 three months prior to the expiry date."  
18 Do you see that?  
19 A. Yes.  
20 Q. That was because applications under Article 45 of the  
21 2008 law for small five-year mining licences needed to  
22 be made three months before the expiry date; correct?  
23 A. No, I don't know that.  
24 Q. Were you aware that if you had been applying for a vast  
25 mining concession under Article 57, you would have had

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13:29 1 'professionals... in order to fulfill the contractual  
2 obligation'. As you may be aware, like all concession  
3 holders, NRD awaits the decision of your Ministry  
4 regarding the conditions on which NRD will extend its  
5 existing concession rights. Like all  
6 concession-holders, we have submitted a five year  
7 extension agreement for review. When we have  
8 an extension agreement of five years, our investors will  
9 follow the NRD action plan and begin semi-industrial  
10 mining. As it is [well] known, NRD has invested more in  
11 Rwanda than any other concession holder. We expect to  
12 be able to continue and bring our operations to  
13 fruition."  
14 So your own position to Mr Kamanzi was that you had  
15 submitted a five-year extension agreement for review;  
16 correct?  
17 A. No. There are two different things. The 2010  
18 application is for a long-term application. The  
19 government came back, and I don't know if it was  
20 Dominique or who it was -- and I think this is 2012.  
21 Can we go back to the top of the letter?  
22 Q. This is 2011, October 2011.  
23 A. Okay. Then no, they may have come back and asked for  
24 an application for five years because they said the  
25 Mining Law was going to take longer, and that's the

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13:31 1 closest I can remember to any reference to it. But the  
 2 November 2010 application is for a long-term licence,  
 3 and we were negotiating in October 2011 the language of  
 4 the long-term licence.  
 5 Q. Well, you just gave a contradictory answer there,  
 6 because you say you were negotiating the language of  
 7 a long-term licence, but you've just said, as  
 8 I understood your answer, that you had submitted  
 9 a five-year licence [application].  
 10 A. No. No. You're not listening, I'm sorry. The 2010  
 11 application is for a long-term licence.  
 12 Q. What did you mean when you said, "we have submitted  
 13 a five year extension agreement for review"?  
 14 A. This was a later announcement from the ministry, as  
 15 I recall, saying: we need a five-year application  
 16 because there's going to be delays in the granting of  
 17 the long-term licences. Notwithstanding that -- and  
 18 that's why I say there are parallel lines of  
 19 communication; this is with the minister, who had his  
 20 own unique limitations -- we were still continuing with  
 21 the Licensing and Supervision Office negotiating the  
 22 long-term language of the licence, which by October  
 23 I think had been submitted to the cabinet.  
 24 Q. Now, as I understood the --  
 25 A. They're not (overspeaking) --

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13:33 1 have to be decided based on the work executed in the  
 2 light of the contract signed ..."  
 3 A. We did not actually submit anything, although we had  
 4 been requested to submit an application for five-year  
 5 licences.  
 6 Q. Just to be clear -- I don't want to confuse you -- this  
 7 is August 2011: this is the ministry's response to the  
 8 November 2010 application. Their understanding,  
 9 correctly, is that your application was for five-year  
 10 licences for small mines within each of the five  
 11 concessions.  
 12 A. No, that was never understood. And I think this letter  
 13 is simply a mistake or a misrepresentation.  
 14 Q. I'm going to suggest --  
 15 A. If what you're saying is that they were trying to  
 16 shoehorn our long-term application as if it was  
 17 a five-year licence application, I can't guess what  
 18 their motivation may have been. But this is -- we never  
 19 had a discussion of the 2010 agreement or application  
 20 being anything but an application for a long-term  
 21 licence.  
 22 Q. [REDACTED]; yes?  
 23 A. [REDACTED]  
 24 [REDACTED].  
 25 Q. [REDACTED].

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13:32 1 Q. -- answer you just gave, you just said that you were  
 2 asked by the -- I'll make sure I get a -- sorry, one  
 3 moment.  
 4 The evidence you just gave is you were -- I'm afraid  
 5 my transcript has stopped working. But I think the gist  
 6 of it was that the ministry told you that while you were  
 7 working on a long-term licence, you should apply for  
 8 a five-year licence?  
 9 A. Also.  
 10 Q. Is that what you're saying? That is simply not what  
 11 happened, is it? We are going to go through the history  
 12 of this. That is simply not what happened; correct?  
 13 A. That is simply what happened, yes.  
 14 Q. Let's go through it chronologically. C-062.  
 15 A. By October I think our long-term application had already  
 16 been submitted to the cabinet and we were waiting for  
 17 a determination on that.  
 18 Q. C-062. This is the ministry's response in August 2011  
 19 to your November 2010 application.  
 20 A. Yes.  
 21 Q. We will actually come back to this document. But one of  
 22 the points made is, in the third paragraph:  
 23 "We notice that you applied for five year (5)  
 24 licenses for small mines within each of the five  
 25 concessions. The new status of the concessions will

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13:35 1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] Yes?  
 5 A. No.  
 6 Q. Professor Rupiya has given evidence of the state of play  
 7 at the time this licence application was put in, and I'm  
 8 going to ask you to look at paragraph 7 of his  
 9 supplemental witness statement.  
 10 Professor Rupiya, you recall, was the chief  
 11 geologist of NRD at the time this application was put  
 12 in; yes?  
 13 A. He was a geologist.  
 14 Q. He was the chief geologist of NRD; do you dispute that?  
 15 A. I don't know that he was the chief geologist.  
 16 Q. As a geologist at NRD, he would know, wouldn't he, what  
 17 the status was of the application and of the --  
 18 A. He did not participate in the negotiations. His job  
 19 primarily, as we understood it, was working for the  
 20 Directorate of Military Intelligence, with an eye on the  
 21 industry as a whole. He did not have a lot of time to  
 22 be performing in his role as an exploration geologist.  
 23 Q. Well, let's look at what he says:  
 24 "As I explained at paragraphs 18-21 of my first  
 25 statement, NRD had only completed superficial

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13:36 1 exploratory work by late 2010, and the four-year  
2 licences were due to expire the following month. It was  
3 in these circumstances that we put together the  
4 November 2010 Application. The idea was that, if we  
5 successfully developed the five concessions during this  
6 period, we might be granted a long-term (30-year)  
7 licence to exploit the concessions. It was not the  
8 expectation or belief of anyone at that time that NRD  
9 would be granted a 30-year licence at this stage -- that  
10 was not realistic based on the limited exploration that  
11 had been undertaken."

12 That is accurate, and it is also what you understood  
13 when you came in to buy NRD, isn't it?

14 A. No. No. In fact, this is the first time I've seen  
15 Professor Nkanika write that kind of thing. He was  
16 fired for plagiarism. But I don't have any -- certainly  
17 he never communicated this to anybody in my firm, NRD,  
18 and certainly not to me.

19 Q. This suggestion that he was fired for plagiarism, it's  
20 the first time you've suggested that, isn't it, in these  
21 proceedings?

22 A. And what?

23 Q. It's another example, isn't it, Mr Marshall, of you  
24 reaching for accusations against anyone who says  
25 something --

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13:39 1 "17. We realised internally that the Government  
2 would be disappointed at the lack of development of the  
3 Five Concession Areas since 2007. As I have explained,  
4 we were still using artisanal mining in all of the Five  
5 Concession Areas and although some investment had gone  
6 into remedial works of the pre-existing infrastructure  
7 at Nemba, and although we had installed the plant at  
8 Rutsiro which was not productive, nothing had been done  
9 at the other three concessions.

10 "18. NRD had also only done superficial exploratory  
11 work which had been carried out by another German,  
12 Dr Peter Schoenherr, but had not carried out any proper  
13 assessments of the mineral reserves. They had relied on  
14 satellite imagery, some limited use of ground  
15 penetrating radar for a few days, and some limited  
16 sampling. What I would have expected, and what  
17 I proposed but what HC Starck refused to do, was much  
18 more detailed sampling, and then drilling in areas that  
19 had been identified as having potential to identify  
20 underground reserves.

21 "19. ... in these circumstances that we put  
22 together an application to the Government for the grant  
23 of some new exploration and small scale mining licences  
24 within the Five Concession Areas ... We hoped that if we  
25 put together an overview of what had been done to date,

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13:37 1 A. No. You can ask him. Please ask him. I say "fired for  
2 plagiarism": it was agreed that he would retire, after  
3 him being caught in plagiarising a document.

4 Q. Can we look at Professor Rupiya's --

5 A. His function, just to be clear, was primarily for the  
6 Directorate of Military Intelligence. We understood  
7 that. We were happy to enable him to collect  
8 information, and whatever reporting he was doing, that  
9 was alright with us. We understood that that's the  
10 functions of the state.

11 Q. Can we look at Professor Rupiya's first witness  
12 statement at paragraphs 16-21.

13 So he deals here with the November 2010 application,  
14 and he was involved in putting it together, and you  
15 weren't. And what he explained is:

16 "We were conscious that in 2010, NRD was required to  
17 provide a feasibility study to the Government in order  
18 to justify the granting of new licences to continue  
19 mining ..."

20 A. Which section, I'm sorry?

21 Q. I'm looking at paragraph 16:

22 "... because the licences that had given NRD the  
23 right to mine in the Five Concession Areas were going to  
24 expire in January 2007."

25 He then goes on to say:

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13:40 1 and proposed to carry out some exploratory work over the  
2 following 5 years, the Government would look favourably  
3 on granting us 5 year licences. After that, we hoped  
4 that if we had successfully developed the Five  
5 Concession Areas in that period, we might be granted  
6 a long term 30 year licence that was possible under the  
7 2008 Mining Law.

8 "20. The November 2010 application was prepared by  
9 Dr Peter Schoenherr. It summarised the work that had  
10 been done to date, gave a plan for research and  
11 exploration work that would be done between 2011 and  
12 2015 if we were granted further 5 year licences, gave  
13 some very approximate estimates for reserves (which were  
14 more guesswork than anything else because of the  
15 superficial [surveying] that had been carried out), and  
16 set out a business plan (which assumed that the new  
17 Rutsiro plant would be successful because at the time  
18 the report was being drafted in October 2010 it was  
19 still being commissioned). We also addressed the fact  
20 that when the Government had awarded the Five Concession  
21 Areas to NRD in 2006, the business plan had projected  
22 investment by the Zarnacks of around US\$40 million,  
23 whereas nowhere near this amount had been invested.

24 "21. I understand Mr Marshall is claiming in these  
25 proceedings that the November 2010 Application was

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13:41 1 an application for a 30 year concession, and that the  
 2 report contained within it was a feasibility report  
 3 which should be sufficient to persuade the Government to  
 4 grant such a licence. All I can say is that as far as  
 5 I am aware, this was not the expectation or belief of  
 6 anyone at NRD at the time: we were really just hoping to  
 7 be granted new 5 year licences under the 2008 Mining  
 8 Law."  
 9 Now, that is all accurate, isn't it, and it also  
 10 reflects what you were told by Mr Ehlers and others when  
 11 you arrived at NRD?  
 12 A. It is not accurate and I've never seen anything vaguely  
 13 similar to this in all my time at NRD. This, to me, was  
 14 made up specifically for this arbitration and no other  
 15 reason.  
 16 Q. Now, Professor Rupiya was there when this application  
 17 was being put together, and you were not; correct?  
 18 A. We were a joint venture partner with them under  
 19 a cooperation agreement. I was not participating in  
 20 pulling together the documents for this. But in the --  
 21 he was still there until 2012, so another two years, but  
 22 he never communicated any of this to me; none of it.  
 23 Q. And he is in a good position to understand what was  
 24 expected and intended by this application, and you are  
 25 not; correct?

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13:42 1 A. He was in a position where, if he was following his  
 2 responsibility as a geologist for our company, he would  
 3 have communicated this to me if it had been true.  
 4 Q. And --  
 5 A. I was his boss, starting in December 2010.  
 6 Q. And the substance of this was communicated to you,  
 7 wasn't it --  
 8 A. No, it wasn't.  
 9 Q. -- Mr Marshall, because Mr Ehlers told you exactly this;  
 10 correct?  
 11 A. No, Mr Ehlers's affidavit is also incorrect.  
 12 Q. He accompanied you for three weeks while you were going  
 13 about your due diligence; correct? Yes?  
 14 A. I don't recollect three weeks of due diligence. We were  
 15 working closely together beginning in -- in the  
 16 beginning of September.  
 17 Q. Can we look at Mr Ehlers's statement at paragraph 19,  
 18 his first witness statement.  
 19 THE PRESIDENT: Perhaps we might look at that after the  
 20 adjournment. We've reached, I think, a convenient  
 21 moment to break for 30 minutes.  
 22 MR HILL: Yes, I'm grateful.  
 23 MR MARSHALL: Okay.  
 24 (1.43 pm)  
 25 (A short break)

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14:18 1 (2.20 pm)  
 2 MR WATKINS: Would you like me to bring the witness in?  
 3 THE PRESIDENT: Yes, please.  
 4 MR COWLEY: May I ask a very brief housekeeping question:  
 5 basically just the schedule for this afternoon. I know  
 6 it was an open question at the end of the day yesterday  
 7 to make 30-minute breaks, but just for expectation  
 8 purposes, I don't have any further detail about what's  
 9 expected for the schedule for the rest of the day, when  
 10 those breaks -- you know ...  
 11 THE PRESIDENT: We're going to go through until about 3.45  
 12 our time -- that's another hour and a half -- then we  
 13 have a half-an-hour break. Then we go through until  
 14 6 o'clock our time, where we have a quarter of an hour  
 15 break. And we finish at 7.30 our time. There's a bit  
 16 of flexibility in when we break, to make sure it's  
 17 a convenient time.  
 18 MR COWLEY: Thank you. I just wanted --  
 19 THE PRESIDENT: The next break, in an hour and a half or so,  
 20 will also be a half-an-hour break.  
 21 MR COWLEY: Thank you.  
 22 MR WATKINS: We're going to bring the witness back in right  
 23 now.  
 24 THE PRESIDENT: Yes, please.  
 25 MR HILL: Mr Marshall, I was going to ask FTI to pull up

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14:21 1 paragraph 19 of Mr Ehlers's witness statement.  
 2 Mr Ehlers is dealing here with what he told you  
 3 prior to your acquisition of NRD. He explained in  
 4 paragraph 19 about the November 2010 application, and  
 5 him telling you that any licence would be on  
 6 a short-term rather than a long-term basis. And what he  
 7 says at paragraph 19, do you see:  
 8 "That was because, as we fully ..."  
 9 It's at the bottom:  
 10 "That was because, as we fully accepted, NRD had not  
 11 sufficiently carried out the exploration it had agreed  
 12 to do in the Contract, and had therefore not been able  
 13 to provide a feasibility study which contained the  
 14 detail which would be necessary to satisfy the  
 15 Government it should grant the concessions to NRD on  
 16 a long term basis."  
 17 And that's what you were told, wasn't it?  
 18 A. No, that's not.  
 19 Q. Then he goes on to say:  
 20 "In relation to this, under the Contract, the  
 21 granting of long-term licences was conditional on NRD  
 22 providing evaluation reports of reserves and a study of  
 23 the feasibility of long-term mining at the end of the  
 24 4-year period, and these being approved by Rwanda.  
 25 However, as I learned when I came in, funding and

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14:22 1 investment in NRD had not been made to the extent  
 2 originally envisaged, and as a result NRD had carried  
 3 out only relatively superficial exploratory activities,  
 4 such as reviewing satellite imagery and carrying out  
 5 some pretty basic, not very comprehensive, sampling.  
 6 Accordingly, we thought the most that would result from  
 7 submitting the November 2010 Application would be that  
 8 NRD might convince Rwanda that at least we had the  
 9 intention to carry out the kind of detailed exploration  
 10 they would have expected, and now had a plan to do so,  
 11 even though we had not done it by that point."  
 12 Again, that reflects what he told you, doesn't it?  
 13 A. No, it's entirely apocryphal. It's detailed, but  
 14 apocryphal.  
 15 Q. Then he says:  
 16 "I also explained to Mr Marshall that -- as was also  
 17 obvious from the visits we took to the concessions --  
 18 NRD had not taken any real steps towards  
 19 industrialisation, which was also a requirement of the  
 20 contract. In relation to this, as is apparent from the  
 21 November 2010 Application, the original business plan  
 22 submitted by NRD in 2006 on the basis of which the  
 23 Contract was signed, had pledged an investment of almost  
 24 US \$40 million between 2007 and 2011, whereas in fact  
 25 only a small fraction of this investment had ... been

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14:23 1 made. My understanding -- as also reflected in the ...  
 2 Application -- was that the original owners had not been  
 3 able to commit the promised finance. Further, when  
 4 Starck had taken over control of the business in 2008  
 5 they had decided to change the business plan from one  
 6 focussed on high levels of capital expenditure on  
 7 infrastructure and investment in equipment that would  
 8 have led to true industrialisation, instead to focussing  
 9 on trying to make a profit by working with small-scale  
 10 artisanal miners. I will explain something ... about  
 11 this ... below."  
 12 Again, that's what he told you, isn't it?  
 13 A. No, it is not. It's entirely apocryphal.  
 14 Q. Which bits do you disagree with?  
 15 A. We never had any of these conversations.  
 16 Q. You certainly understood, didn't you, for instance,  
 17 about the \$40 million of investments from Starck, that  
 18 had been promised in the original business plan, not  
 19 going in?  
 20 A. No, the \$39 million is referenced in the --  
 21 Q. Sorry, I should -- yes, 39. You knew that that hadn't  
 22 gone in; yes?  
 23 A. But it was not a requirement.  
 24 Q. Was it the investment plan?  
 25 A. I understand that he's saying that it is, but it was

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14:24 1 not.  
 2 Q. Well, it was in the investment plan to be spent over  
 3 five years. And then indeed, if we go --  
 4 A. It was predicted to be invested over five years. Nobody  
 5 ever said, "You have to come up with the remainder of  
 6 the \$39 million". In fact, we were never asked for  
 7 investment.  
 8 Q. Sorry, my fault, I spoke over you. But you're saying it  
 9 was predicted, do you say?  
 10 A. No, it was -- Zarnack had predicted that they were going  
 11 to build some kind of -- if you look at their original  
 12 investment plan -- some kind of tantalum processing  
 13 plant for \$20 million, and that they would also be  
 14 building out Gatumba and another concession. And so it  
 15 was very unclear what was -- it was, I would say, a good  
 16 faith statement of their commitment rather than  
 17 an accurate portrayal of what concretely they would do  
 18 with their money.  
 19 Q. But it was their investment plan on the basis of which  
 20 they got the contract; wasn't it?  
 21 A. But investment plan indicating the types of things that  
 22 they are interested in doing.  
 23 Q. And --  
 24 A. Nobody was held to a checklist of investments that if  
 25 they were made, then that was sufficient. Nobody ever

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14:25 1 said we failed to invest enough.  
 2 Q. And as you recall, the November --  
 3 A. Until now, until this arbitration process.  
 4 Q. And as you recall, the November 2010 application in fact  
 5 has a section explaining that the \$39 million hasn't  
 6 been spent, and trying to explain why, and saying that  
 7 there has been a change of management and a change of  
 8 approach; yes?  
 9 A. Yes. As I explained, this was not a commitment,  
 10 a contractual commitment to invest \$39 million as  
 11 a condition of getting a long-term licence.  
 12 I'm sorry, I have to repeat it again. This was  
 13 a very unusual circumstance, unheard of in the mining  
 14 industry, where mining companies were investing money  
 15 before they got a long-term concession. That being the  
 16 case, people were trying to work in good faith and work  
 17 around as an accommodation to the Rwanda Government, who  
 18 were struggling. They wanted to be able to show  
 19 process. They wanted to be able to show US investment.  
 20 They wanted to be able to show things were changing.  
 21 Q. Let's go on to see what Mr Ehlers says about what he  
 22 told you. This is paragraph 22. He says:  
 23 "For these reasons, I do not think that Mr Marshall  
 24 could have had any expectation when he acquired NRD that  
 25 it would necessarily be granted long term licences or

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14:27 1 concessions -- it should have been (and I believe was)  
 2 clear to him that (at the least) the steps proposed on  
 3 the November 2010 Application in terms of further  
 4 exploration would have to be carried out before there  
 5 was any chance of the Government being persuaded that  
 6 long-term licences should be granted to NRD for any of  
 7 the 5 areas for which it had been granted the initial  
 8 4-year licences, and there was no guarantee that those  
 9 initial 4-year licences would be extended at all."  
 10 Again, that's what he told you, and you clearly  
 11 understood that anyway?  
 12 A. No, untrue. Most of this is completely untrue. It's  
 13 very detailed. I respect that he has put together  
 14 a very elaborate story, but it's simply not true.  
 15 Q. Can we now go to paragraph 18 of his second witness  
 16 statement. This is dealing with your position on what  
 17 the mining community understand. Paragraph 18:  
 18 "Based on my experience of Rwanda it is not true  
 19 that long-term licences are automatically granted by  
 20 Rwanda after four years. That is just not how it works  
 21 and everyone in the mining community in Rwanda is aware  
 22 of this. Rather, it is the common understanding that  
 23 many conditions have to be met in order for long-term  
 24 licences to be granted -- indeed, this is true of every  
 25 country I have worked in. Shortly after I joined NRD in

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14:29 1 That's what you knew --  
 2 A. A false -- entirely false statement. He arrived in  
 3 June. He left several times because of health reasons.  
 4 He went home at Christmas, in December, and he never  
 5 came back. So his total stay in Rwanda was probably  
 6 four months.  
 7 He didn't have the experience. He never  
 8 communicated any of these things to me. We never got  
 9 any -- I mean, we were grateful to be able to negotiate  
 10 with him to figure out how we were going to work into  
 11 a joint venture between NRD and Bay View Group. But  
 12 none of -- these things are entirely made up for the  
 13 purposes of this arbitration.  
 14 Q. You say he did not have the experience. Mr Ehlers is  
 15 a professional who has been involved in a career in  
 16 mining all his life, and you are not; correct?  
 17 A. Mr Ehlers?  
 18 Q. Yes. He is a mining engineer, and you are not?  
 19 A. He has a very, very bad reputation.  
 20 Q. Sorry, I'm just picking you up on your suggestion that  
 21 he didn't have the expertise. He has expertise in  
 22 mining that you do not have; that's correct, isn't it?  
 23 A. He has -- he had responsibility in working at very  
 24 large, complex gold mining operations. As far as  
 25 I know, he was fired from most of them. But he was

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14:28 1 mid-2010 I met with Dr Michael ... of the OGMR to  
 2 discuss the process of obtaining long-term licences ...  
 3 and he advised me that more work still had to be done,  
 4 in particular in carrying out exploration and proving  
 5 ore resources, before they would be granted.  
 6 I informed ... Starck of this. Subsequently,  
 7 Dr Biryabarema ..."  
 8 That's Dr Michael:  
 9 "... reiterated the same point to me several times  
 10 about the work that would need to be done before  
 11 long-term licences could be granted."  
 12 Then he says:  
 13 "As I explained at paragraph 19 of my first witness  
 14 statement, I clearly explained the requirements for the  
 15 granting of long-term licences to Mr Marshall before  
 16 Spalena acquired the company in December 2010."  
 17 That's exactly right, isn't it?  
 18 A. No, that's exactly wrong.  
 19 Q. And he says:  
 20 "In particular, I explained to him that NRD could  
 21 not expect to be granted any long-term licences upon  
 22 expiry of the initial four-year licenses as it had not  
 23 sufficiently carried out the exploration and was unable  
 24 to provide an acceptable feasibility study as required  
 25 under the Contract."

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14:30 1 doing unspeakable things in Rwanda, preying on people  
 2 and --  
 3 Q. Do you want to have one more go at answering my question  
 4 and we'll see if you can do it. He has expertise in  
 5 mining, which you do not have; correct?  
 6 A. It's possible, but I don't know that.  
 7 Q. Let's go back to what he says at paragraph 26 of his  
 8 first witness statement. Let's see if you agree with  
 9 what he says here:  
 10 "My understanding is that when granting licences and  
 11 mining rights under agreements such as the Contract  
 12 entered into between NRD and Rwanda in 2006, what Rwanda  
 13 wanted to ensure was that [the] mining operations in the  
 14 country would move away from an artisanal mining model  
 15 towards the more productive and professional industrial  
 16 model. This necessarily involves significant investment  
 17 in exploration and resource evaluation, and then in more  
 18 sophisticated mining equipment and infrastructure, as  
 19 well as the organisational requirements for employing  
 20 miners and ensuring greater health and safety standards,  
 21 and ceasing reliance on child labour."  
 22 That's a fair summary, isn't it, of some of the  
 23 things that industrialisation involves; yes?  
 24 A. No, not in Rwanda. That's not the meaning of the term  
 25 there, no. Any artisan support they deem

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14:31 1 industrialisation. Anything that can move away from  
 2 simple buckets and shovels and hammers is, in their  
 3 mind, industrialisation.  
 4 Q. Let's look at paragraph 27 now, the next paragraph:  
 5 "In short, by the time I started to work for NRD it  
 6 had not taken any significant steps to transition from  
 7 a basic form of artisanal mining to an industrial model  
 8 because the necessary investment was not made, and  
 9 indeed (as ... admitted in the November 2010  
 10 Application) once Starck took over [it] had instead  
 11 taken a conscious policy decision to base the business  
 12 on 'supporting small scale artisanal mining in multiple  
 13 places'. Accordingly, none of NRD's sites were  
 14 producing anything remotely close to the quantities of  
 15 minerals that would have been expected after investment  
 16 and proper industrialisation."  
 17 That is a fair summary, and it's also something you  
 18 understood when you came in, isn't it?  
 19 A. I'm sorry, let me read it for a second.  
 20 Q. Yes, please do. (Pause)  
 21 A. No, that's not true.  
 22 Q. He then goes on to deal with the concessions  
 23 individually, starting with Rutsiro. He explains that:  
 24 "At Rutsiro, Starck had attempted to industrialise  
 25 by building a plant using equipment purchased from

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14:33 1 Malaysia. This plant was built to wash the minerals and  
 2 to extract tungsten from the wolfram ore body."  
 3 You agree with that so far; yes? Nothing you're  
 4 aware of that's wrong there?  
 5 A. Yes, again, he's misusing -- he's not using -- I'm sorry  
 6 to have to repeat it, but his concept of industrialising  
 7 mining is different to the way you seem to be  
 8 interpreting it. And he is trying to muddy the water  
 9 here in this sentence: "industrialise by building  
 10 a plant".  
 11 You know, all increased possibilities for the  
 12 artisans to have jackhammers, to have a handful of  
 13 machinery, this is quite separate from  
 14 the road-building, from the bridge-building, from  
 15 gaining access to sites. Those are first. Second to  
 16 that is enabling the miners to be able to be more  
 17 productive.  
 18 Q. Is that the only thing you want to disagree with in  
 19 paragraph 28?  
 20 A. This sentence --  
 21 Q. I've covered this point with you before; I'm not going  
 22 to ask more questions about that now. But is that the  
 23 only point you disagree with him in this sentence?  
 24 MR COWLEY: Your Honour, may I ask that he allow the witness  
 25 to finish before he cuts him off and says he's done with

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14:34 1 a point. He clearly wasn't done, and the purpose was to  
 2 stop him from answering.  
 3 MR HILL: Well, I obviously don't want to cut across  
 4 answers. But I will cut Mr Marshall short at times if  
 5 he appears to be digressing, because we've just simply  
 6 got to get through this and we're going quite slowly.  
 7 MR COWLEY: I object to that description of that answer. He  
 8 was directly answering.  
 9 MR HILL: Is there anything else you want to disagree with  
 10 in this sentence, Mr Marshall?  
 11 A. You asked whether "Starck had attempted to industrialise  
 12 by building a plant using equipment purchased from  
 13 Malaysia".  
 14 First of all, that's not the meaning of  
 15 "industrialise". According to the Rwandans, the Rwanda  
 16 Government and the Rwanda mining community,  
 17 industrialising is providing any additional support  
 18 equipment to the miners.  
 19 Q. You've given that evidence and I disagree with it, but  
 20 I'm not going to ask you about that again. Do you have  
 21 a different point?  
 22 A. Do I have a different point about this?  
 23 Q. Do you have any other point, other than that point about  
 24 industrialisation? Anything else you disagree with in  
 25 these first two sentences of paragraph 28?

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14:35 1 A. Yes, because that's not -- that's only one element of  
 2 industrialising. I object to both your term of  
 3 "industrialising" meaning some kind of abstract, full  
 4 mechanisation mining. There's no place in Rwanda and  
 5 other places where you can do that if it's simple vein  
 6 mining. These are very limited deposits. And to say,  
 7 "Well, you had an obligation to industrialise", that's  
 8 not the meaning of it in Rwanda.  
 9 Q. Let's go on:  
 10 "When I started as Managing Director in early 2010,  
 11 the equipment had already been purchased" --  
 12 A. "... building a plant using equipment purchased from  
 13 Malaysia". No, the equipment wasn't purchased from  
 14 Malaysia; the equipment was purchased from all over.  
 15 They had a very good German engineering firm which  
 16 sought different pieces from different companies because  
 17 they needed to have it as hardy and as resistant to  
 18 breakdowns as possible.  
 19 For example, the -- in comparison, Rutongo did buy  
 20 a whole plant from China, and the whole plant never  
 21 functioned. They had to replace motors, they had to  
 22 replace cables, belts. And you can ask Zuzana about it  
 23 directly: she was there.  
 24 This was very different. This was a highly  
 25 specialised engineering project from the German company.

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14:37 1 They spent nearly a year just doing the site work. When  
 2 they did the engineering work, they went to find experts  
 3 in each one of these types of processing equipment,  
 4 because the plant is nothing more than an assembly of  
 5 processing equipment: a crusher, a roller crusher,  
 6 a trommel, a jig. You know, all these pieces can't come  
 7 from one place and survive. The engines had to be  
 8 sturdy.  
 9 We never had to repair any significant piece of the  
 10 plant, ever. The engineering --  
 11 Q. That's because the plant wasn't operating.  
 12 A. I'm sorry?  
 13 Q. When you say you never had to repair a piece of the  
 14 plant, the plant wasn't in fact processing, was it?  
 15 A. The plant was processing. We didn't have feedstocks to  
 16 start it from the beginning. Pieces of it were. You  
 17 could operate the shaking tables, you could operate the  
 18 jigs. The plant doesn't have to operate as one piece.  
 19 That's what I'm --  
 20 Q. Let's go on with what Mr Ehlers says:  
 21 "When I started as Managing Director in early 2010,  
 22 the equipment had already been purchased and  
 23 construction of the plant was well underway although was  
 24 not operational. Artisanal mining was still continuing,  
 25 and NRD was making some money from this, taking the

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14:38 1 minerals to be processed in Kigali.  
 2 "29. However, the problem was that Starck and NRD  
 3 had never undertaken a proper analysis of the ore body  
 4 at Rutsiro prior to building the plant, and had simply  
 5 assumed without conducting proper exploration that the  
 6 minerals were in higher concentration than was in fact  
 7 the case. In other words, they had gone ahead and built  
 8 a plant without doing the necessary exploratory ground  
 9 work. The result was that, because of the low  
 10 concentration of minerals in the rocks (which were in  
 11 scree in the hillside in the area the plant had been  
 12 built), the plant machine could not produce sufficient  
 13 volumes to make its operation economic or commercially  
 14 viable. I showed this plant to Mr Marshall when we  
 15 visited Rutsiro, and clearly explained to him my  
 16 concerns that it was not appropriate for the site on  
 17 which it was being built. From what I subsequently  
 18 heard from contacts in Rwanda, once Mr Marshall took  
 19 over NRD this plant was never operated, and mining at  
 20 Rutsiro remained based on artisanal mining."  
 21 All that is accurate, isn't it?  
 22 A. No, none of that is accurate.  
 23 Q. Can we go to what he then says about Nemba.  
 24 A. Can I answer and give you specifics of why it's not  
 25 true, or do you just want to go on?

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14:39 1 Q. Yes, please do. But please be, if you can, concise,  
 2 just because of the timing.  
 3 A. I can't fit to your argument, you know. I need to be  
 4 able to explain the process so you understand where  
 5 you're mistaken.  
 6 Q. Perhaps in that case Mr Cowley will do it with his  
 7 re-direct. I'm going to move onto Nemba.  
 8 A. Well --  
 9 Q. I just want to move to Nemba now, Mr Marshall.  
 10 "30. Nemba had not been industrialised either. In  
 11 the context of this mining site, which unlike Rutsiro  
 12 was located in the flat countryside, industrialisation  
 13 would have meant carrying out proper exploration by way  
 14 of drilling, and then building underground tunnels to  
 15 exploit seams of tin underground identified from this  
 16 exploratory drilling. However, this was not done.  
 17 Instead, NRD had continued to use tunnels and  
 18 infrastructure that had been set up in Belgian colonial  
 19 times (although in fact a number of the tunnels had been  
 20 closed on health and safety grounds under Starck's  
 21 ownership, and some re-timbering work had been carried  
 22 out), and to allow artisanal mining on the surface. As  
 23 with Rutsiro, I explained this to Mr Marshall and showed  
 24 him the site."  
 25 That's accurate in relation to Nemba, isn't it?

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14:40 1 A. No, it's not. It did not happen. He never made any of  
 2 those statements to me.  
 3 When you're building out an existing mine like Nemba  
 4 was, it is different from a greenfield site, which is  
 5 what Rutsiro was. They built the plant in Rutsiro in  
 6 order to be a central location for deposits up to  
 7 10 miles away, and they brought the dump trucks suitable  
 8 for that activity.  
 9 Nemba was different because it was a smaller defined  
 10 deposit of cassiterite, with some coltan, and in that  
 11 you build out from existing veins. You know, you don't  
 12 start as if it's a greenfield site. You determine what  
 13 you have, and you make assessments about what the  
 14 likeliest and most rich veins are, and pursue them  
 15 individually.  
 16 Q. But using exploratory drilling which had not been done;  
 17 correct?  
 18 A. I'm sorry, you're sorely mistaken about the purpose of  
 19 exploratory drilling in vein mining. There has never  
 20 been any successful exploratory drilling in vein mining  
 21 in Rwanda ever, even though the government has often  
 22 asked for it.  
 23 Exploratory drilling can be for placer deposits.  
 24 You know, I think, if you can imagine, if you're trying  
 25 to drill into a vein, it's like drilling in and hitting

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14:41 1 a piece of string. If you hit the vein, it's 100%; if  
2 you hit right next to it, it's zero. It doesn't tell  
3 you anything. And that's why, although Dr Michael is  
4 misled and thinks that that's a good idea, none of the  
5 companies do.

6 Q. NRD's other sites are dealt with in the next paragraph,  
7 the Mara, Sebeya and Giciye concessions. Those:  
8 "... also remained basic artisanal mining  
9 concessions and no industrialisation had occurred ..."

10 That's correct and that's what you were told; yes?

11 A. No, that's not what I was told.

12 Q. We've also seen -- just in relation to your last point,  
13 we've also seen from the 2010 application that it was  
14 envisaged that there would be further exploratory work  
15 in the November 2010 application. That just shows,  
16 doesn't it, the kind of work that had not been done  
17 prior to 2010 and should have been; correct?

18 A. No, that's not correct. That's not the way the industry  
19 works. There's always exploration and development  
20 ongoing at every step.

21 Q. Now, after --

22 A. With regard to Mara, Sebeya and Giciye, it's  
23 an allocation question of where you decide to use  
24 jackhammers, drills, compressors and generators. It's  
25 a set, and you have to decide, based on the kind of

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14:44 1 access the plant.

2 "Unfortunately the plant never operated. The plant  
3 had been built to process tungsten, however it turned  
4 out that there was not enough tungsten in the rocks at  
5 the site to make the operation of the plant viable."

6 So he's also confirming that the plant never  
7 operated because there was not enough tungsten, for  
8 which it was built; correct?

9 A. No, he has an axe to grind. He stole from the company,  
10 we fired him, and now he's -- as I can see -- making  
11 stuff up. This is not true.

12 Q. He confirms, if you go to his second witness statement  
13 paragraph 5, he also says, in relation to the same  
14 point:  
15 "Although we ran a few trial runs of the plant, it  
16 was never in use throughout my [time] at NRD."  
17 That's correct, isn't it?

18 A. No.

19 Q. Now, you were also shown the company's documentation in  
20 relation to the due diligence that you conducted; yes?  
21 When you did due diligence, you saw other documentation  
22 from the company; not just the licence application and  
23 the contract, you looked at other company documents too,  
24 didn't you?

25 A. Yes.

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14:43 1 production you're getting, where you allocate that set.  
2 You know, this is -- these are always management  
3 questions, and there is no magic to any of this. And  
4 you allude to plants somehow as being magical. That's  
5 not it. This is simply determining what the best  
6 locations to pursue mineral drilling are, and guessing  
7 that you're going to be -- by using the machinery here,  
8 and not someplace else, you're going to get a better  
9 result.

10 Q. Can we go to Mr Sindayigaya's witness statement now,  
11 paragraph 16. He was there for rather longer than  
12 Mr Ehlers, so he can take the story forward.

13 A. He was suspended for six months or so, so I'm not sure  
14 that he was.

15 Q. He was there until November 2012. Let's just look at  
16 what he says about the Rutsiro plant --

17 A. Before that, he was suspended for six months in the  
18 beginning of 2012.

19 Q. Let's just look at what he says about the Rutsiro plant,  
20 paragraphs 15 and 16:  
21 "As I have explained above, when I joined NRD, the  
22 plant at Rutsiro was under construction. Starck was  
23 spending a lot of money -- around RwF 20 million  
24 a week -- on the construction of the plant and the  
25 related infrastructure, including building a road to

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14:45 1 Q. Correspondence; yes?

2 A. Yes, I -- you know, it's twelve years ago. I don't  
3 really remember. But quite likely.

4 Q. Can you be shown R-105. This is a letter from NRD in  
5 July 2009, so again before your time, and in the first  
6 four paragraphs it explains what's the position at  
7 July 2009:  
8 "the Nemba, Rutsiro, Giciye, Sebeya and Mara  
9 concessions were granted ... on the 24th November 2006  
10 for a four year[] period to evaluate the potential by  
11 exploration and to start industrial mining operations as  
12 soon as possible. In those days ... Christoph Zarnack  
13 and his son Jens Zarnack from Germany were the major  
14 shareholders of NRD. Despite firm promises made by  
15 these gentlemen they had limited funds and were lacking  
16 expertise in exploration and in mining. Therefore very  
17 little progress was made during the first two years  
18 until H.C. Starck ... one of the worlds leading  
19 processors of special metals" --

20 A. I'm sorry, I don't see that here. Where are you reading  
21 from?

22 Q. I'm sorry, I'm towards the end of the first main  
23 paragraph. Do you have that? Last sentence:  
24 "Therefore very little progress was made during the  
25 first two years until H.C. Starck ... one of the worlds

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14:46 1 leading processors of special metals, took full control  
 2 over the company in late 2008 by acquiring the shares  
 3 from the Zarnacks.  
 4 "Another reason for the delay in our exploration and  
 5 investment program was the lacking infrastructure from  
 6 such areas like in Rutsiro, Sebeya and Giciye  
 7 concessions where we had to reconstruct roads and  
 8 bridges ..."  
 9 Then he goes on to:  
 10 "[The] third concern we had to cope with last year  
 11 was the complete lack of sufficiently detailed  
 12 topographic maps ..."  
 13 Then he says:  
 14 "All in all we lost about two years to investigate  
 15 the concessions potential and to evaluate ore grades and  
 16 reserves. We therefore kindly apply for an extension of  
 17 the Concession Agreement for another two years until  
 18 November 23rd, 2012."  
 19 Were you aware that Starck had applied for  
 20 a two-year extension of the original agreement?  
 21 A. No, I wasn't. But I can understand, because -- not that  
 22 they need to prepare additional materials for the  
 23 government, but they wanted to be able to hold on to the  
 24 right to have the long-term concession. But they  
 25 weren't prepared to invest more money without doing,

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14:47 1 obviously, more research.  
 2 Q. But on your argument --  
 3 A. This is not about the government. This is about their  
 4 needing to do that work for themselves.  
 5 Q. But on your argument, this sort of guarantee of  
 6 a long-term contract, they wouldn't need to ask for two  
 7 further years, would they, because it wouldn't matter  
 8 what they were doing?  
 9 A. I don't know. I wasn't party to those discussions. As  
 10 far as I knew, we had complied with all the conditions,  
 11 they'd all been accepted. We were the best, in fact,  
 12 application. And we immediately went into negotiating  
 13 the language of the long-term concession.  
 14 Q. Just to be clear, this request for a long-term  
 15 concession was refused by the government; were you aware  
 16 of that?  
 17 A. No.  
 18 Q. Can you go to C-026.  
 19 A. October 2010?  
 20 Q. Yes.  
 21 A. The documents being presented to the cabinet were not  
 22 until the end of 2011.  
 23 Q. I'm just showing you this document, which is a 2010  
 24 document. This says:  
 25 "Following different visits of OGMR officials to

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14:49 1 your Mining sites and different reports submitted, we do  
 2 inform you that we are satisfied with exploitation  
 3 progress made in Rutsiro Mining site, specifically the  
 4 construction of a washing plant which is still at the  
 5 testing phase. We also acknowledge upgraded facilities  
 6 at Nemba mine like the supply of water and the new  
 7 equipment.  
 8 "The four year[] contract you have with the  
 9 Government of Rwanda will expire in two months time.  
 10 However, there are no final report and feasibility  
 11 studies for any of the five concessions granted."  
 12 Then the writer refers to the dramatic decrease in  
 13 production of minerals. And then he says:  
 14 "Regarding to your request for a two permits  
 15 extension, you were requested to show clearly what [had]  
 16 been done in the past four years in exploration and  
 17 exploitation and submit reasons for the need for  
 18 extension.  
 19 "Due to the relatively low investment done in the  
 20 large number of concessions you own, I request you to  
 21 give some back to the Government. I believe that in the  
 22 last four ... years you have identified those which you  
 23 would prefer to keep.  
 24 "In your two year[] progress report, you gave a good  
 25 estimation of wolframite resources but no data for

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14:50 1 tantalite and cassiterite was submitted. I hope you are  
 2 now able to give us also the estimation for the two  
 3 minerals before the end of [the] year."  
 4 So NRD was being asked to give back some of the  
 5 concessions, wasn't it?  
 6 A. That's what the text of this letter says. I don't know  
 7 about it.  
 8 Q. You were aware of that, weren't you, when you came into  
 9 the company?  
 10 A. No. But they often asked for things and then reversed  
 11 themselves.  
 12 Q. The government had already identified a "relatively low"  
 13 level of investment and had already notified NRD of  
 14 that; yes?  
 15 A. It may have been a low level of investment for whoever  
 16 this author was, but it was certainly far more than any  
 17 other investment -- mining investment in the country.  
 18 Q. And you were also aware from your --  
 19 A. (Overspeaking) -- there. Nobody had done the work we  
 20 had done.  
 21 Q. You were also aware from your due diligence, weren't  
 22 you, that by mid-2010, Starck had ceased providing  
 23 funding to NRD, and equipment was in fact being sold to  
 24 pay miners' wages?  
 25 A. That's not true.

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14:51 1 Q. If you look at Mr Sindayigaya's witness statement at  
 2 paragraph 17, you'll see his account of it.  
 3 Mr Sindayigaya said at paragraph 17:  
 4 "There was a period of about 6 months in 2010 when  
 5 it mandated the then Managing Director, Mr ... Ehlers,  
 6 to restructure the company's business and operations  
 7 around cassiterite, including investigating the  
 8 possibility much using the plant for cassiterite and it  
 9 provided around USD\$100,000 in around June/July 2010 to  
 10 support the proposed restructuring. We did not receive  
 11 any further money from Starck after this and so far as  
 12 I can recall they started looking for buyers ..."  
 13 Then a little lower down, in paragraph 18, he  
 14 explains about an Australian company withdrawing, and  
 15 then meeting you. Then he says:  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]  
 ■ [REDACTED]

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14:54 1 A. No.  
 2 Q. If you look at paragraph 9 of his first witness  
 3 statement.  
 4 A. All of the concessions had equipment, and it was  
 5 a management decision where to allocate what equipment  
 6 when. It's not a permanent thing. The veins are  
 7 sometimes very successful, and sometimes they peter out  
 8 for a while. So it's an allocation question.  
 9 Q. So he explains, paragraph 9: Rutsiro, the only plant  
 10 invested in in his time.  
 11 Then he --  
 12 A. By the way, this is the only plant in the country.  
 13 Q. Then he explains in paragraph 11:  
 14 "The Nemba mine had not been industrialised and the  
 15 mining was done by artisanal mining. There was some  
 16 infrastructure and a few tunnels that were left over  
 17 from the Belgian colonial times. NRD did not make any  
 18 investment in the Nemba mine during the period that  
 19 I worked for the company, although I understood some  
 20 very limited investment had been made before I arrived."  
 21 So that would be before 2010. And that's right,  
 22 isn't it?  
 23 A. No, it's not.  
 24 Q. Well, he's the accountant in this company. So he's  
 25 going to have the best idea, isn't he, of where the

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14:52 1 It's right to say that NRD was in some financial  
 2 trouble by the time that you arrived; correct?  
 3 A. No.  
 4 Q. Well, we'll come back to that.  
 5 A. Not that I know of. As far as I understood -- to me  
 6 this is entirely new information. I've never seen this  
 7 before. It was never represented to me in -- when we  
 8 came to the offices -- we've been there many times --  
 9 but we came as the new owners, beginning of January.  
 10 This information was never communicated to me.  
 11 HC Starck is a blue-chip company: they do everything  
 12 right. Really. They pay their taxes, they have good  
 13 engineers; they're meticulous about this process.  
 14 Q. I'm going to turn now to the question of --  
 15 A. Anthony Ehlers was embezzling money. We couldn't find  
 16 out how much. Is that what happened to the money?  
 17 I don't know.  
 18 Q. I'm going to turn now to the question of investments  
 19 made into NRD, starting with investments made before you  
 20 and Spalena acquired NRD.  
 21 Mr Sindayigaya had been there since January 2010,  
 22 and he explains in his witness statement that in the  
 23 period he was there, the only mine into which there was  
 24 material investment was Rutsiro, in respect of the  
 25 processing plant. Would you agree with that?

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14:55 1 investment -- where the money is going?  
 2 A. He's a bookkeeper, he's not an accountant. We had  
 3 an accounting -- an external accounting firm.  
 4 His job was to supervise these things. This is the  
 5 first I've ever heard him say these things, so I would  
 6 have to guess at what his motivation might be.  
 7 Q. Then he says, at paragraph 12:  
 8 "The sites at Mara, Sebeya and Giciye were also  
 9 artisanal mining operations and during my time at NRD  
 10 the company did not invest any substantive money in any  
 11 of them."  
 12 That's correct, isn't it?  
 13 A. No, it's not.  
 14 Q. Then we have Professor Rupiya explaining it from his  
 15 perspective, and you'll see that at paragraph 8 of his  
 16 witness statement.  
 17 A. This is still Aime's.  
 18 Q. Paragraph 8 of Professor Rupiya, please. So that's  
 19 Prosper Nkanika Wa Rupiya. If FTI could -- you've got  
 20 it. Yes, that's right. Paragraph 8 of that.  
 21 He explains there that he joined as chief geologist  
 22 in March 2008, when the Zarnacks had sold their shares  
 23 to Starck. So he's able to speak to matters from  
 24 two years before Mr Sindayigaya; yes? From 2008, so  
 25 two years before Sindayigaya arrives in 2010. And he's

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14:57 1 able to cover the period from 2008, which is the whole  
 2 of the Starck period, to early 2012. So that's the  
 3 period covering the first couple of years of your own  
 4 ownership; yes?  
 5 A. I understand the date.  
 6 Q. Yes. So he says at paragraph 9:  
 7 "At the time [he] arrived ..."  
 8 This was 2008:  
 9 "... it was clear that in the year or so that the  
 10 Zarnacks had been in charge of the ... concessions ...  
 11 very little had been done to develop them, and [very]  
 12 little money appeared to have been invested."  
 13 So that's the starting point in 2008; you don't  
 14 disagree with that?  
 15 A. I do disagree with it.  
 16 Q. You know about investment in the Zarnack period, when  
 17 Mr Rupiya doesn't?  
 18 A. I know the equipment that was purchased in the Zarnack  
 19 period and I know generally where it was distributed  
 20 during that time.  
 21 Q. Professor Rupiya has got a clear picture, because he was  
 22 there and you were not; yes?  
 23 A. He has a different picture. I don't know what his  
 24 motivations are. These are statements that, until now,  
 25 he certainly never made to me, and I don't believe them

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14:58 1 to be true.  
 2 Q. He then goes on to explain what happened in the Starck  
 3 era. He explains that:  
 4 "... Starck were particularly interested in  
 5 exploiting tungsten. I learned that prior to my  
 6 appointment, when the Zarnacks were still in control, an  
 7 Australian geologist had calculated that the scree rocks  
 8 in the Rutsiro concession had significant wolframite  
 9 reserves. I believe that is why HC Starck had been  
 10 interested in acquiring NRD. On the basis of this  
 11 information, HC Starck decided that they would invest in  
 12 a mechanised plant at Rutsiro to process the wolframite  
 13 scree. The machine was imported from Malaysia, and took  
 14 a long time to be delivered ..."  
 15 Just pausing there, this machine was imported from  
 16 Malaysia, wasn't it? That's the second time we've seen  
 17 this, different witnesses.  
 18 A. Second time, and it's incorrect for the second time.  
 19 Q. Different witnesses?  
 20 A. Many pieces were purchased from Malaysia, but it was  
 21 a specialty-built plant sourced from different companies  
 22 in different parts of the world.  
 23 Q. Then he says:  
 24 "... [it] took a long time to be delivered and then  
 25 to be commissioned. It cost somewhere in the region of

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14:59 1 US\$ 1 million, and HC Starck believed that they would be  
 2 able to generate significant profits from it. However,  
 3 by the time Dr Roethe left in 2010, it had still not  
 4 been fully commissioned. The commissioning was  
 5 completed by Mr Ehlers when he joined, but the plant was  
 6 a total failure -- when it was started in late 2010 it  
 7 turned out that the scree rocks contained [very] little  
 8 wolframite, and so the plant was essentially useless.  
 9 It was not commercially viable and it never operated  
 10 throughout my time with NRD."  
 11 And that's accurate, isn't it?  
 12 A. When I knew Professor Nkanika, he never said anything  
 13 like that to me or anybody I knew. It was always the  
 14 premier plant, and it could be used for any of the 3T  
 15 minerals that were available: cassiterite, tungsten or  
 16 tantalum.  
 17 Q. Then still on the question of investment, he goes on at  
 18 paragraph 11:  
 19 "In addition to the failed plant at Rutsiro,  
 20 HC Starck made some relatively small investments at  
 21 Nemba, which was already the most developed of the  
 22 concessions because it had mine shafts and tunnels left  
 23 by the Belgians. HC Starck invested some money to  
 24 repair some of the tunnels which had become dangerous,  
 25 but this meant that they were closed for a while. They

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15:00 1 also brought a couple of crushers which were fed by  
 2 artisanal miners who mined the rock manually, either  
 3 with picks and shovels or with some jackhammers which  
 4 HC Starck had bought. They also acquired 3 compressors  
 5 and a grinder, and some safety equipment for the miners.  
 6 Overall, however, this was a pretty low level of  
 7 investment for a concession which had the possibility to  
 8 be a large scale industrial tin mine."  
 9 That's all accurate, isn't it?  
 10 A. None of that's accurate.  
 11 Q. Then paragraph 12:  
 12 "No investments, so to speak, were made in either of  
 13 the other three concessions, apart from perhaps some  
 14 safety equipment for miners and a few hand tools.  
 15 HC Starck were just not interested in them."  
 16 That's correct, isn't it?  
 17 A. I'm sorry, where are you reading from?  
 18 Q. Paragraph 12. Please read it to yourself. I just read  
 19 it out.  
 20 A. That's simply not true.  
 21 Q. Then Professor Rupiya goes on to explain in paragraph 13  
 22 that he "proposed to ... Starck that we should carry out  
 23 ... exploratory work"; they weren't interested in it and  
 24 only wanted to focus on the wolframite. And that's also  
 25 something that you understood?

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15:01 1 A. Professor Nkanika was working for DMI. That was his  
 2 primary obligation. That's what he had to do because  
 3 it's a requirement from the state. We understood that.  
 4 We could rarely get Professor Nkanika to go into the  
 5 field. So we had to bring in foreign expats to do the  
 6 exploratory work, because Professor Nkanika would not do  
 7 it.  
 8 Q. That's simply not true, because he did go into the  
 9 field, and you can see this from the next paragraph. So  
 10 paragraph 14:  
 11 "So, by late 2010, NRD was still running artisanal  
 12 mining operations, with little of what I would consider  
 13 proper serious exploratory work having been done, and  
 14 with no industrialisation of any of the concessions.  
 15 Each of the sites had a site manager, but they were not  
 16 skilled mining engineers -- they were really just  
 17 managing the artisanal miners and trying to ensure that  
 18 they provided what they produced to NRD rather than  
 19 selling to other people. We also had security people on  
 20 the sites to try to stop unauthorised artisanal miners  
 21 from taking the minerals and selling them elsewhere. As  
 22 I was not being asked to do exploratory work by NRD,  
 23 I used to go into the field, check site by site and  
 24 produce monthly reports of the production and each  
 25 site."

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15:03 1 So he did go into the field, didn't he, and he  
 2 produced his reports; yes?  
 3 A. Again, at the time he never did any significant  
 4 exploratory work when I was there, and he refused to do  
 5 it. He was busy with government matters.  
 6 Q. He didn't do significant exploratory work because, as he  
 7 explained, the investment was not provided for that work  
 8 to be done; correct?  
 9 A. That's not true. No.  
 10 Q. Now, let's go to the document we were looking at --  
 11 A. By the way, I would like to make one comment about the  
 12 process here.  
 13 All mining is artisanal; it's only a question of who  
 14 gets support from the equipment. The deposits where  
 15 there's the greatest likelihood, these are very highly  
 16 scattered, very small deposits. The only process of  
 17 industrialisation is in allocating those groups of  
 18 equipment to people who could make use of them.  
 19 So for him to say there was no industrialisation,  
 20 that's false, because all industrialisation is artisan  
 21 support industrialisation.  
 22 Q. Can we go to C-035. I'm just going to start by looking  
 23 at page 57.  
 24 That's Professor Rupiya there, isn't it?  
 25 A. Yes.

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15:04 1 Q. In the field. In the field; yes?  
 2 A. Yes.  
 3 Q. Now, can we go to page 97 of this document. If we look  
 4 at the bottom of this page, we have a section headed  
 5 "Achievements in Research, Production and Processing  
 6 versus Targets Outlined in Original Business Plan". And  
 7 underneath that paragraph, it reads:  
 8 "The original Business Plan was submitted by NRD in  
 9 2006. The proposed volume of investment in equipment  
 10 and working capital amounted to US \$ 39 [million] for  
 11 the [first] five years 2007 to 2011."  
 12 Yes?  
 13 A. Yes.  
 14 Q. And ...  
 15 A. That's what it says.  
 16 Q. Then if we go onto the next page and we can look at the  
 17 last two paragraphs. It says:  
 18 "Therefore, when H.C. Starck acquired the majority  
 19 of NRD in 2008, the focus of activities and investments  
 20 changed from large and unrealistic projects to  
 21 supporting small scale artisanal mining in multiple  
 22 places, with an emphasis on increasing the standards of  
 23 safety in the workplace and protecting the environment."  
 24 Then it has a paragraph which says:  
 25 "The following tabulation gives an overview of the

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15:06 1 investment in equipment, services and salaries over the  
 2 last four years. An expenditure of Rwf 7.6 [million] is  
 3 evidence of the commitment of NRD to the development of  
 4 a thriving mining industry of Rwanda and its people."  
 5 Just give me one moment. (Pause)  
 6 So that's dealing with the relative underinvestment,  
 7 the amounts of the underinvestment, by comparison with  
 8 what was predicted by Starck. And if you look at the  
 9 table that follows -- I'm going to ask FTI to now --  
 10 A. Sorry, just to go back --  
 11 Q. Yes.  
 12 A. I think if you could bring up the previous screen --  
 13 sorry, both screens at once. Thank you.  
 14 At the bottom of the screen, it says, "The original  
 15 business plan included investment in ... Nyakabingo and  
 16 Gifurwe", which are also very large mining concessions.  
 17 So if this plan was to include those, then you're  
 18 talking about, again, maybe a third more and actually  
 19 richer deposits than what you're dealing with in the  
 20 west. So I can imagine that it would have been more if  
 21 you were including Nyakabingo and Gifurwe.  
 22 Q. Can we go to page 101, FTI, please, just to jump ahead  
 23 to the actual number invested compared to the  
 24 \$39 million projected. The euro figure is on the  
 25 right-hand side. So it's €9.3 million; yes?

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15:07 1 A. Yes, I don't have the top of the table, but okay.  
 2 Q. You knew coming in, didn't you, that significantly less  
 3 investment had gone in than planned?  
 4 A. Than \$40 million?  
 5 Q. Yes.  
 6 A. Yes.  
 7 Q. That's what you knew about?  
 8 A. Yes.  
 9 Q. Yes. Can we then go to page 99.  
 10 A. \$40 million was not the contracted amount.  
 11 Q. No, don't worry, I'm not going to go back to that.  
 12 I want to move on.  
 13 Page 99 gives the expenditure from 2007 to 2010, and  
 14 I'm going to want to look, FTI, at three pages, which is  
 15 99, 100, to 101. I don't know whether all three could  
 16 be put on the screen or whether that's not viable.  
 17 MR BRODSKY: You lose screen space very quickly. If you can  
 18 do them sequentially, that would be much better.  
 19 MR HILL: Well, okay.  
 20 So just to try and give you an overview of this  
 21 document, Mr Marshall, you see you have "Expenditure  
 22 2007-2010". You have a number of items here:  
 23 "Vehicles", "Processing + Laboratory", "Plant",  
 24 "Mining + Tools", you see on this page; yes?  
 25 A. Okay.

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15:09 1 Q. Then the next page, you have "Office Kigali",  
 2 "Salaries", "Costs", "Infrastructure", "Environmental  
 3 Activities", and so on; yes?  
 4 A. Okay.  
 5 Q. Then the last page, you have a few small items, and then  
 6 the final number of €9.3 million; yes?  
 7 A. Yes.  
 8 Q. We can probably keep the €9.3 million figure in our  
 9 heads and just look at 99 and 100?  
 10 A. At the exchange rate at that date, it was \$13 million.  
 11 That's the handwritten number underneath it.  
 12 Q. Now, there's no suggestion in this report that all this  
 13 investment is all new investment from Starck. In fact,  
 14 much of this would have been reinvestment of income from  
 15 mining; yes?  
 16 A. I don't know.  
 17 Q. Likely? I mean, you look at some of these items,  
 18 they --  
 19 A. Certainly I would imagine that some of it is, because,  
 20 you know, there is turnover, and so there would be  
 21 income. But I don't know if that's reflected here or  
 22 not.  
 23 Q. Yes. Well, it's the kind of thing you would expect?  
 24 Because you see, for instance, this covers rent and  
 25 salaries, and the kind of items that you would expect to

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15:10 1 be coming out of operational income.  
 2 A. I see. I would have to have somebody walk through that  
 3 for me. But I know as a general practice other  
 4 concessions do include turnover as part of their  
 5 contribution.  
 6 Q. Now, I want you to keep [page] 101 on the screen, if  
 7 possible, FTI, then if we can now go to C-054.  
 8 This is the letter from you to Mr Kamanzi in  
 9 January 2013. We'll be coming to the substance of this  
 10 later. But this is the application which you submitted  
 11 in January 2013 for long-term licences; do you recall  
 12 that?  
 13 A. Not specifically, but I see the letter.  
 14 Q. Yes. Well, I'm going to do all this cross-examination  
 15 chronologically, so we will get to January 2013 soon,  
 16 I hope.  
 17 I'm going to ask FTI to go to page 5 of this letter.  
 18 That's 4; one more page.  
 19 This gives an estimation by you in January 2013 of  
 20 total investment in the period 2007 to 2012.  
 21 A. Okay.  
 22 Q. And you will see you end up with a figure of  
 23 €15.8 million; yes?  
 24 A. I see that.  
 25 Q. If we could keep that on screen and go back to page 99

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15:12 1 of the other document (C-035). Thank you.  
 2 You can see that this section starts with a list of  
 3 vehicles acquired before 2010. Now, if you add up those  
 4 vehicles acquired before 2010, you will find those  
 5 numbers add up to fractionally over €865,000, which is  
 6 the same number as the number in your 2013 application  
 7 document.  
 8 I'm not asking you to do the arithmetic. You can  
 9 take it from me, and no doubt your counsel will  
 10 intervene if he disagrees. But you can take it from me  
 11 that that adds up to the same number.  
 12 Then if you look at "Plant Rutsiro" on page 99, you  
 13 will see you have a number for the plant at Rutsiro of  
 14 €912,000, and you see that is the same number as you  
 15 have as at 2013 in your application; yes?  
 16 A. Yes.  
 17 Q. You get the same in other items. So, for instance, we  
 18 have "Processing + Laboratory". Those numbers, as at  
 19 November 2010 on page 99, add up to €269,514, and that's  
 20 the same number as we see in your January 2013  
 21 application.  
 22 We have the same thing for "Mining + Processing",  
 23 where there are items that add up to €757,604 on the  
 24 right-hand side; and again, in January 2013 it's the  
 25 same investment expenditure between 2013 and 2010, the

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15:14 1 same numbers.  
 2 Do you see that?  
 3 A. I'm getting the idea. But go ahead.  
 4 Q. Yes. So in all these areas -- and we can do it across  
 5 this document -- in all these areas, the actual  
 6 expenditure that you relied on in support of your  
 7 application in January 2013 was the same expenditure --  
 8 there's going to be one exception, which I'll come to;  
 9 it's a big exception -- but it's the same expenditure as  
 10 was included in the 2010 application; yes?  
 11 A. I don't know. I would have to have somebody look at it.  
 12 Q. What this shows is that there was no material investment  
 13 conducted once NRD was taken over by Spalena; all the  
 14 investment and expenditure that's material took place  
 15 before November 2010. Correct?  
 16 A. No.  
 17 Q. Well, it's what your own figures show. Because these  
 18 are your own figures that you produced --  
 19 A. I understand that -- I appreciate that if you're running  
 20 a company for -- what was this? -- two years, with  
 21 300 employees and 10,000 -- 20,000 subcontractors, there  
 22 are necessarily expenses.  
 23 Are these tables correct? I don't know. I would  
 24 have to talk to the people who created it.  
 25 Q. We're going to come to the left-hand side soon, because

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15:17 1 Slovak and Czech geologists who came over.  
 2 Q. That is not a real or accurate figure for actual  
 3 expenditure on foreign consulting or engineering, is it?  
 4 A. Yes, it is.  
 5 Q. Can we look at Mr Sindayigaya's second witness statement  
 6 at paragraph 6.2.4. He deals here -- he's referring to  
 7 a different document, but the same figures:  
 8 "... states that the estimated foreign consulting  
 9 and engineering costs are '[4,848,000,000]' Rwf. This  
 10 figure is grossly exaggerated. The only foreign  
 11 consultant who worked for NRD for any decent period of  
 12 time and who attracted a significant salary was Mr Fink,  
 13 a German engineer who built the plant at Rutsiro. He  
 14 spent approximately two years at Rutsiro, leaving at the  
 15 end of 2010."  
 16 So, just interposing, that's before you purchased.  
 17 "I recall that paying his living allowances was  
 18 always a priority even though NRD was struggling  
 19 financially. There were no other permanent foreign  
 20 consultants employed at NRD during my years at the  
 21 company, and I do not recall any other consultants being  
 22 hired after 2010. Although Mr Marshall did bring in  
 23 some Slovakian staff in 2011, they worked for Bay View  
 24 and their task was primarily to construct the clinic at  
 25 Bisesero -- they did almost no work for NRD."

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15:15 1 we're going to look at the application. But this was  
 2 your application in January 2013, and you were unable to  
 3 identify any investment beyond the investment identified  
 4 in November 2010; that's correct, isn't it?  
 5 A. I'm sorry, you'll have to rephrase it.  
 6 Q. Yes. You, when you made an application for a long-term  
 7 licence in January 2013, were unable to identify any  
 8 investment beyond the investment already identified in  
 9 November 2010?  
 10 A. No, that's not true.  
 11 Q. The only difference --  
 12 A. I'm not saying that it's here on the chart or not;  
 13 I would have to have somebody walk through it with me.  
 14 But there were significant investments, including all  
 15 the BVG material.  
 16 Q. That's just one example of why this story about the BVG  
 17 material is an invented one, isn't it?  
 18 A. It's not.  
 19 Q. I said there was one exception, and it is a significant  
 20 one. That's at the bottom of the table on page 5  
 21 (C-054), on the left-hand side of the page, you will see  
 22 that there is an item of €6 million for "Foreign  
 23 Consulting and Engineering". And it says in square  
 24 brackets "[est.]", so that's estimated; yes?  
 25 A. Yes, we had significant expenditures from delegations of

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15:18 1 That's accurate, isn't it?  
 2 A. No.  
 3 Q. So what we see, if we go back --  
 4 A. Aime is highly biased, he's terribly embarrassed for the  
 5 terrible things that he did, and he got caught and we  
 6 fired him. So he's trying to get back his own, as far  
 7 as I can tell. I've never seen any of this; none of  
 8 this was ever mentioned to me.  
 9 Q. What we can see in this document is that there was no  
 10 material investment in the two-plus years before  
 11 January 2013 that you had been in control of NRD;  
 12 correct?  
 13 A. No.  
 14 Q. The Claimants' written opening at paragraph 9 suggests  
 15 that insofar as there was investment, that was derived  
 16 from retained cash from operations. Would that be what  
 17 you understand?  
 18 A. No. I mean, I think there was some retained cash from  
 19 operations, but that was certainly -- you know, we were  
 20 feeding the company. We had all kinds of operational  
 21 responsibilities, investments. We were trying to do as  
 22 many things as we could as quickly as we could, because  
 23 we saw the possibility of doing it better than anybody  
 24 else.  
 25 So it's a matter of allocation, it's a matter of

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15:20 1 putting in procedures so that not only does the  
 2 compressor and mining drill stay in one place  
 3 an appropriate amount of time, but that they do get  
 4 supervised for both maintenance, but to simultaneously  
 5 identify what other area may need them more. And it's  
 6 a constant exercise in covering whatever expenses come  
 7 up. It's not a simple business.  
 8 Q. Mr Marshall, if you had put new money into this company,  
 9 you would have identified it in your application form,  
 10 wouldn't you?  
 11 A. I'm sorry?  
 12 Q. If you had really put new money into this company, you  
 13 would have identified it as one of the investments in  
 14 your application form in January 2013?  
 15 A. We did identify it. We knew what we had to spend money  
 16 on, and we spent the money on it.  
 17 Q. And --  
 18 A. This application, no. It was irrelevant. We had spent  
 19 more than any other company. This application is only  
 20 to say: look, remember who we are here. In the whole  
 21 country, there are six mining concession holders. We  
 22 were expending far more money than anybody else.  
 23 Q. I would suggest that far from putting money into this  
 24 company, which you weren't doing, you were in fact  
 25 siphoning off money out of the company, which was being

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15:21 1 siphoned off and going off to Slovakia. Correct?  
 2 A. No.  
 3 Q. Can we go --  
 4 A. That's actually so far afield from what we were doing.  
 5 Q. Can we --  
 6 A. Every day we were having to reallocate resources to be  
 7 able to keep it going properly. And in the middle of  
 8 that we had the mafia, we had the military, we had  
 9 bribed people who are causing problems.  
 10 Q. Can we now go to C-147. This is an internal NRD  
 11 document that you have relied on in your Reply. If we  
 12 look at the column headings, we can see that it purports  
 13 to be a schedule of actual expenditure.  
 14 You tell me: is this supposed to be budgeted or  
 15 actual expenditure? This is one of your documents,  
 16 Mr Marshall. Are you familiar with this document? It  
 17 was produced by your side.  
 18 A. Yes, I -- I'm sorry, what's your question?  
 19 Q. Yes. Are we looking at budgeted or actual expenditure,  
 20 as far as you understand?  
 21 A. Well, it says "Budge[te]d", although it's misspelled,  
 22 but ...  
 23 Q. Can we go to Mr Sindayigaya's second witness statement  
 24 at paragraph 6.2. He comments on this document, and his  
 25 evidence is that:

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15:23 1 "... the investment figures the Claimants rely on  
 2 are pure fantasy [and] the sums are grossly inflated."  
 3 I'm just going to pick up one example. If you look  
 4 at 6.2.3, he says:  
 5 "The summary of activities, investment, and plans on  
 6 all NRD's concessions lists an item 'Donations:  
 7 Construction of Clinic' as having been incurred in 2010.  
 8 There was no clinic at any of NRD's concessions,  
 9 although a clinic was built at Bisesero as part of BVG's  
 10 promised corporate social responsibility initiative."  
 11 That's right, isn't it?  
 12 A. I don't know where you're reading, I'm sorry.  
 13 Q. I'm sorry. You read it to yourself. I'm reading 6.2.3.  
 14 Read that to yourself. (Pause)  
 15 A. Yes.  
 16 Q. It's right, isn't it, that there simply was no clinic  
 17 built --  
 18 A. We had built clinics for the other concessions too. The  
 19 two companies were being operated jointly at that time.  
 20 Were expenses from NRD being contributed to a joint  
 21 charitable function? Quite likely.  
 22 Q. Now --  
 23 A. I don't think the clinic was -- the construction of the  
 24 clinic was finished until 2013. But it was a charitable  
 25 project; it was nothing to do with producing income.

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15:25 1 Q. If we look at 6.3 of Mr Sindayigaya's witness statement,  
 2 he explains:  
 3 "The investment figures relied on by the Claimants  
 4 are not only inconsistent with NRD's audited accounts;  
 5 they are also inconsistent with the reality of NRD's  
 6 financial situation during the years I worked for it.  
 7 Throughout this period, the company was in survival  
 8 mode -- the only outgoings were payments to miners,  
 9 salaries, and basic operational expenses. There simply  
 10 was no money available to be invested."  
 11 That's accurate, isn't it?  
 12 A. No, that's definitely not accurate.  
 13 Q. Now, Mr Ehlers also comments on your €6 million foreign  
 14 consultant and engineering figures, and you'll see that  
 15 at paragraph 14 of his supplemental witness statement.  
 16 So he also is looking at the same figures, and he says:  
 17 "The Investment Plan Report Summary specifies that  
 18 4,848,000,000 RWF (€6,000,000) was spent on foreign  
 19 consulting and engineering. However, during my time at  
 20 NRD I do not recall that we ever employed any foreign  
 21 consultants or engineers aside from the engineer who  
 22 constructed the plant infrastructure at Rutsiro.  
 23 Further, I was not aware of any foreign consultants or  
 24 engineers being hired before my time apart from  
 25 a geologist at Nemba and another who provided

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15:27 1 a provisional assessment of the ore body at Rutsiro."  
 2 So, like Mr Sindayigaya, Mr Ehlers does not recall  
 3 any foreign consultant or engineering.  
 4 A. Mr Ehlers was there, as I keep saying, between June and  
 5 late November. I don't know what he saw and he didn't  
 6 see.  
 7 Q. But you're not seriously suggesting, are you, that  
 8 €6 million was spent on foreign consultants and  
 9 engineers?  
 10 A. As an estimated number of all the engineering  
 11 obligations, I -- it wouldn't be there if it wasn't  
 12 true.  
 13 Q. I'm suggesting you know that it's not true, and that  
 14 this expenditure and investment didn't occur.  
 15 A. I understand that you're insisting that I am lying, but  
 16 again, I'm not lying. This is the best estimate that  
 17 our staff gave.  
 18 If you are telling me that there's some other  
 19 evidence, not by Mr Ehlers or Aime, please, let's talk  
 20 about it. Their answers are nonsensical to me. They  
 21 never commented, they never -- if there was -- the  
 22 numbers that they were -- Aime may have been a part of  
 23 making that estimate; I don't know who else was  
 24 involved. I could find out.  
 25 But for Ehlers, who was there before that period,

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15:28 1 it's -- he has no basis on which to say that.  
 2 Q. Now let's go back --  
 3 A. He's been there long enough to understand the company.  
 4 Q. Let's go back to C-147, third page. We have some  
 5 figures there for 2011 expenditure, which is presumably  
 6 budgeted. And we know from the other document that we  
 7 looked at that there's nothing like this level of actual  
 8 as opposed to budgeted expenditure because outside the  
 9 square bracketed figure for foreign consultants, there's  
 10 virtually no difference between the expenditure figure  
 11 for January 2010 and the figure for January 2013; yes?  
 12 A. We would have to get our audit team back together, and  
 13 the planners. Because I can't comment on it, I don't  
 14 know.  
 15 From my perspective, I have not looked at any of  
 16 these because I thought this was going to be part of the  
 17 bifurcated process. This is supposed to be damages, not  
 18 to ... and we're separating that out, aren't we?  
 19 Q. Can we keep that page on the screen and go to R-240.  
 20 This is an email that's been produced by your side. It  
 21 attaches another version of the document we've been  
 22 looking at. Can we go to page 3 of the version  
 23 attached.  
 24 So this was a document that was produced in  
 25 September 2014, this second version. And it updates

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15:30 1 what we see in the other document, because instead of  
 2 2011, if you look at the left-hand column, it now says  
 3 "2011-3"; yes?  
 4 A. Okay.  
 5 Q. And we can see that the numbers involved are the same.  
 6 A. Okay.  
 7 Q. Do you see that?  
 8 A. I don't, but I --  
 9 Q. Well, you can see. I don't want to put words into your  
 10 mouth. If you look, for instance, at the 833 figure for  
 11 environmental projects --  
 12 A. I wasn't involved in the preparation of these. So, you  
 13 know, if you ask our CFO, I think you can get concrete  
 14 answers.  
 15 Q. Well, what we can see is that the same investment -- is  
 16 you could call this "investment" -- is put in for 2011  
 17 to 2013 as is put in for 2011 on its own, the second  
 18 document being produced in 2014. Do you see that?  
 19 A. Yes.  
 20 Q. It again shows, doesn't it, that there's no material  
 21 investment in the whole of the period through to 2013?  
 22 A. I think you're going to need to refer this question to  
 23 my CFO.  
 24 Remember, we had fulfilled the requirement. If we  
 25 had put in \$1 million, we had fulfilled their

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15:32 1 requirement as it was expressed to us. I understand the  
 2 business plan talked about \$39 million. But for what  
 3 they wanted as this initial phase, to be able to show  
 4 that you were capable of doing this, it was not to  
 5 contribute \$39 million and then let Rwanda decide  
 6 whether they get to keep it or we get to keep it. That  
 7 was not, and never was, the equation.  
 8 Q. Mr Marshall, you, as Spalena, didn't put in any material  
 9 investment, did you? All the material investment took  
 10 place before November 2010 and was done by Starck;  
 11 correct?  
 12 A. That's not true. That's not true.  
 13 Q. I'm now going to move on to look at the period from the  
 14 beginning of 2011, after Spalena had acquired NRD.  
 15 We've looked at the level of investments in this period.  
 16 Can I just ask you to pick up Mr Sindayigaya's  
 17 witness statement, if FTI could put paragraph 21 on the  
 18 screen.  
 19 A. Maybe I misunderstood, and maybe we should have been  
 20 more up-to-date on going through this. I understood  
 21 that this had been bifurcated at your request, and these  
 22 go to damages. I'm not -- you know, for us to be able  
 23 to talk about what expenditures were incurred when, we  
 24 had not prepared -- gone through all those background  
 25 materials.

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15:33 1 Q. I'm going to ask you to be shown paragraph 21 --  
 2 A. It would be helpful if you could answer my question, so  
 3 that I could understand what part is bifurcated and what  
 4 part is not.  
 5 Q. Well, I'm asking you about your documents. There has  
 6 certainly been a bifurcation of the damages part of the  
 7 case. I'm asking you questions on the basis relevant to  
 8 the part of the case that is before the Tribunal, which  
 9 is merits and jurisdiction. So I'm going to pursue this  
 10 line of enquiry; although, as it happens, I've come to  
 11 the end of that particular group of questions.  
 12 I'm now asking you about paragraph 21 of  
 13 Mr Sindayigaya's witness statement. He says:  
 14 "From the day he started at NRD, Mr Marshall showed  
 15 no interest whatsoever in the mines or the operation of  
 16 the mines. He did not invest any money in the mines and  
 17 did not visit them. The new management team that he  
 18 brought in had no mining experience or expertise.  
 19 Mr Marshall's focus was on getting the mining licences  
 20 renewed as he believed that this would enable him to  
 21 raise money in the US and elsewhere. He therefore spent  
 22 a lot of time visiting the US Embassy and the Mining  
 23 Board, trying to use political pressure to get new  
 24 licences issued, rather than actually managing NRD."  
 25 That's a fair summary, isn't it?

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15:35 1 who was a mining engineer, and replaced him with a new  
 2 management team that had no mining experience or  
 3 expertise; yes?  
 4 A. No. No.  
 5 Q. Who do you say in your management team had mining  
 6 experience or expertise?  
 7 A. Zuzana, our CFO, and I were at the top of the  
 8 organisation, and we retained almost all of the Starck  
 9 organisation. Many of them were very capable.  
 10 Q. Who do you say -- well, we'll take that in stages.  
 11 You're not suggesting that you and Ms Mruskovicova  
 12 had mining expertise, are you?  
 13 A. No, but we didn't need it. We had -- and the same is  
 14 true with Starck, the same -- I mean, Rutongo, Tinco,  
 15 they don't have -- the top people do not have mining  
 16 expertise. They bring in consultants who run the mines  
 17 for them -- "Tell us what to do, explain it to me so  
 18 I can understand" -- and then we make judicial  
 19 decisions.  
 20 Q. So the answer to my original question that you brought  
 21 in a management team who didn't have mining expertise  
 22 is: that's correct?  
 23 A. No, it's not correct. We kept the management team that  
 24 has mining experience.  
 25 Q. And --

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15:34 1 A. No, I would say it's vicious. I would say that it shows  
 2 his bias. He's pretending not to know what we were  
 3 doing.  
 4 The reasons we were going to the embassy were  
 5 because that was our protection: they offered to help  
 6 us. They were very kind in their help. We were getting  
 7 preyed upon by at least one mafia group and we were  
 8 getting preyed upon by the military, who -- well, on one  
 9 side, they wanted legitimate help; they also wanted us  
 10 to smuggle. So I had to go to the embassy; I had no  
 11 choice. And the embassy staff, to their credit -- they  
 12 didn't have to -- they came to dozens and dozens of  
 13 meetings with us, to represent us in talking with  
 14 representatives of the Rwanda Government.  
 15 It was a very unpleasant time. And we still, to  
 16 this day, don't know exactly who had what motivations.  
 17 Was it all to cover up the smuggling? That's  
 18 speculation.  
 19 Q. That aside -- I'm not going to pick you up on those  
 20 points, Mr Marshall; you have made them repeatedly.  
 21 I am going to ask you to focus on my questions. But  
 22 I will say that none of those points are accepted. But  
 23 I'm going to ask you to focus on my questions.  
 24 Mr Sindayigaya is right, isn't he, in what he says  
 25 about the management team? You got rid of Mr Ehlers,

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15:37 1 A. I was merely the CEO listening to everybody to try to  
 2 steer the company in the correct direction.  
 3 Q. Well, we know who replaced Mr Ehlers. We know we have  
 4 Mr Quam, for instance. Are you saying Mr Quam has got  
 5 mining expertise?  
 6 A. No, Mr Quam came in to look at some security issues,  
 7 including in particular the crimes of Mr Ehlers.  
 8 Q. Is there a MD you're suggesting that has mining  
 9 expertise?  
 10 A. No.  
 11 Q. Was there any senior executive that you're suggesting  
 12 had mining --  
 13 A. We kept all of the Starck staff, and I was the new  
 14 managing director, in order to be able to bring a logic  
 15 to what I could see were logical decisions.  
 16 Q. Which senior executives of this company do you say you  
 17 retained that had mining expertise?  
 18 A. Who was running -- with mining --  
 19 Q. Who was running the company?  
 20 A. We had a logistics manager. Aime was okay for what he  
 21 was doing. We had an operations manager who would spend  
 22 most of his time travelling from site to site.  
 23 In fact, there was nobody who we did replace, except  
 24 for cause. When we found somebody was stealing or  
 25 self-dealing, then we fired them. That's the only

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15:38 1 times. Otherwise, the Starck management team -- and it  
 2 was about 20 people -- all stayed in place.  
 3 Q. Again, your evidence is not accurate, is it,  
 4 Mr Marshall?  
 5 A. Are you saying that I just lied or --  
 6 Q. Yes.  
 7 A. I'm not sure what you're saying.  
 8 Q. I'm trying to ask you about the management team. We  
 9 know what happened to the management team: you got rid  
 10 of the MD and replaced him with someone who wasn't  
 11 a miner. And there were not other managers who were  
 12 mining experts; that's correct, isn't it?  
 13 A. No.  
 14 Q. It's also right, isn't it, that -- sorry, just give me  
 15 one moment. (Pause)  
 16 A. Ehlers did not have this kind of mining expertise.  
 17 Q. We're going to look at the documents over the next day  
 18 or so. But it's right to say, isn't it, that a fair  
 19 summary is that your focus was on putting political  
 20 pressure to secure licences?  
 21 A. No. My objective was to give the best service that  
 22 I could to the Rwanda Government as an advisor on  
 23 numerous issues.  
 24 Q. And you had no intention of committing any investment,  
 25 any material investment, before fundraising, which could

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15:39 1 only happen after long-term licences were secured?  
 2 A. No, but your question is a false one. If we had the  
 3 licence we would have expended huge additional amounts.  
 4 But there are very complicated simultaneous negotiations  
 5 going on with three discrete parties, as we identified  
 6 them.  
 7 With regard to the Licensing and Supervision  
 8 Department, we already had a long-term agreement; all we  
 9 needed was the okay from the cabinet.  
 10 With regard to Dr Michael and his machinations with  
 11 Anthony Ehlers, who was bribing who and how that was  
 12 working, I don't know, but it created a nightmare.  
 13 With regard to the military, who we were  
 14 representing and giving advice to, they told us, "Please  
 15 do not pay attention to Dr Michael or to Minister Evode.  
 16 It's a problem of corruption". We gave hours-long  
 17 testimony on the corruption we saw. And we followed  
 18 their advice, because they were the legitimate  
 19 decision-makers as far as we were --  
 20 Q. Mr Marshall, everything you've just said in that last  
 21 long answer -- and we'll all make a note of it -- is  
 22 entirely new and not in any of your witness statements.  
 23 And that's because you've just made it all up; yes?  
 24 A. Not true.  
 25 Q. Why isn't any of that in your witness statements?

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15:41 1 A. Which part?  
 2 Q. Any of it: the three strands, Dr Michael and Mr Ehlers  
 3 bribing each other.  
 4 A. Mr Ehlers told us he was bribing Dr Michael and that's  
 5 part of the reason we fired him, the reason we refused  
 6 to allow him to come back to Rwanda.  
 7 Q. That's not in your witness statement. And if you had  
 8 genuinely thought that was true, or that was a point,  
 9 you would certainly have said so in your witness  
 10 statement, wouldn't you?  
 11 A. Look, I'm getting death threats. I don't know what  
 12 point to be able to -- let me just say one thing about  
 13 the death threats, if I may.  
 14 Q. No, I'm not going to ask you about those. I'm going to  
 15 ask you to answer my questions.  
 16 MR COWLEY: I would ask the Tribunal to allow the witness to  
 17 answer, because he's trying to answer why he didn't put  
 18 it in a witness statement previously, which was the  
 19 question. Mr Hill is not letting him to answer the  
 20 question and suggesting he's not, but that's only  
 21 because he doesn't like the answer.  
 22 MR HILL: Mr Marshall does say in his witness statement  
 23 about having death threats, so that certainly is not the  
 24 reason. I'm not going to give him a platform to make  
 25 further false points which are not answers to my

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15:42 1 questions.  
 2 MR COWLEY: You asked him about why he didn't specify  
 3 bribery by Mr Ehlers of Dr Michael. That was the  
 4 question, and he was answering it, and you cut him off.  
 5 Now you've just changed and said you asked him something  
 6 different. Please just allow him to answer, just be  
 7 respectful enough to do that.  
 8 MR HILL: Well, I'm obviously in the President's hands.  
 9 THE PRESIDENT: Let's have an answer to that question. Put  
 10 the question again and then let the witness answer it.  
 11 MR HILL: Yes.  
 12 Why is it not in your witness statement, this  
 13 suggestion that there was bribery as between Mr Ehlers  
 14 and Dr Michael?  
 15 A. My understanding about death threats is what I've  
 16 learned from the State Department while I was in Rwanda,  
 17 and that is that people do not get murdered for revenge;  
 18 they only get murdered to stop statements being made.  
 19 So I've been very reluctant to suggest what I was  
 20 going to say in advance of this hearing, because that  
 21 puts a target on my back. If they know that I'm going  
 22 to talk about what happened in the military, what our  
 23 representations at the military were, how the military  
 24 is handling the smuggling from Congo and what that means  
 25 for the determinations of the ministry, all those things

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15:43 1 are tied, and it's a constant re-evaluation of where  
 2 I see the most risk. Thank God I have gotten to this  
 3 hearing, and I'm -- I can't say that I'm at bigger risk  
 4 or not.  
 5 But with regard to Anthony Ehlers and his bribing of  
 6 Dr Michael, if you look at the -- I think it's in our  
 7 document, and I hesitate because I'm not sure.  
 8 Anthony Ehlers confided in me after we bought the  
 9 company. I said, "Well, what am I going to do about  
 10 Dr Michael, because he's causing such problems and  
 11 I can't pay him a bribe". And Ehlers said, "Well, I've  
 12 been bribing him and it won't be any problem". And with  
 13 that, I had to fire him, or at least begin the criminal  
 14 investigation -- which was handled by Bill Quam -- into  
 15 all of his activities.  
 16 MR HILL: Mr Marshall --  
 17 A. That's the reason it may not be in the original  
 18 pleading.  
 19 Q. -- you do make allegations against Mr Ehlers, which are  
 20 in your witness statements, and they don't include that  
 21 one; that's correct, isn't it?  
 22 A. I don't know.  
 23 Q. You also make serious allegations against Rwanda in your  
 24 witness statements, including serious allegations of  
 25 smuggling and mentions of stories about unnamed

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15:45 1 oligarchs.  
 2 You're not seriously suggesting that this further  
 3 allegation about a bribe of Dr Michael is a thing you  
 4 had to keep quiet on because you were worried about some  
 5 threat to your person; that's simply an invention,  
 6 isn't it?  
 7 A. No, it's absolutely not an invention.  
 8 What we are doing -- you know, right now, the world  
 9 believes that Rwanda's minerals are \$800 million a year.  
 10 And what I found out, and was regularly reporting into  
 11 the ministry, the United States Embassy -- they were my  
 12 friends, and I was telling them, not just once a week  
 13 but virtually every day, how we knew what we knew about  
 14 the smuggling of minerals from Congo, from conflict  
 15 areas, bringing them to Rwanda and selling them to  
 16 international investors under the pretence that they're  
 17 conflict-free. They are not.  
 18 Q. Mr Marshall, the difficulty with all this is those  
 19 points are in your witness statements and are in your  
 20 Claimants' Memorial. So you weren't keeping those back,  
 21 were you?  
 22 A. I'm sorry, which statement?  
 23 Q. I suggest to you all of your points there are invented  
 24 by you too, but you were not holding those back,  
 25 were you?

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15:46 1 A. No. I expected a lot more interest in it than came, and  
 2 that's fine. But do I know who was doing it? Do I know  
 3 how the minerals come into the country and who sells  
 4 them? Yes.  
 5 Q. Let's move on --  
 6 A. (Inaudible) additional information.  
 7 THE PRESIDENT: Let's move on in half an hour.  
 8 MR HILL: Thank you.  
 9 (3.46 pm)  
 10 (Adjourned until 4.15 pm)  
 11 (4.15 pm)  
 12 THE PRESIDENT: Could we have Mr Marshall back, please.  
 13 MR WATKINS: No problem, Mr President. Bringing the witness  
 14 in right now.  
 15 MR HARRISON: This is Mr Harrison. Could we just wait one  
 16 second? Mr Cowley is still out of the room; he's coming  
 17 right back.  
 18 THE PRESIDENT: Right.  
 19 MR HARRISON: I can see him coming in now. Thank you.  
 20 MR BRODSKY: In the meantime, Mr Hill, I should just mention  
 21 the Tribunal had said they were having a hard time  
 22 seeing the documents, so I'm going to be zooming in  
 23 a little bit more. Give me any direction on that front  
 24 that you see necessary.  
 25 MR WATKINS: One moment, Mr President. We're having just

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16:16 1 a slight difficulty starting his camera. One moment.  
 2 THE PRESIDENT: Alright. (Pause)  
 3 MR WATKINS: Okay, Mr President, we're good to go.  
 4 THE PRESIDENT: Thank you very much.  
 5 Just before we resume, the team who are producing  
 6 the transcripts have said they've been having a little  
 7 trouble with people speaking too fast and sometimes more  
 8 than one person speaking at the same time.  
 9 So far as the former is concerned, I'm not sure that  
 10 Mr Marshall is the culprit. I think there may be  
 11 a tendency to try to read rapidly through statements,  
 12 putting the transcribers under pressure. So if --  
 13 MR MARSHALL: That was not intentional, with apologies.  
 14 THE PRESIDENT: Yes. Anyway, if you could do your best to  
 15 speak one at a time and, Mr Hill, not to go too fast  
 16 when you're going through statements.  
 17 MR HILL: Thank you, Mr President.  
 18 Mr Marshall, could you be shown C-179. This one is  
 19 certainly going to need to be zoomed [in]. This is  
 20 an email --  
 21 MR MARSHALL: FTI, can you bring it to the other screen,  
 22 like you were before?  
 23 MR WATKINS: Certainly. Doing that right now.  
 24 MR MARSHALL: That's micro-print on that screen.  
 25 MR HILL: It's not a great copy of the document either.

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16:19 1 This is an email exchange between you and Mr Ehlers  
 2 in February 2011. I'm just going to pick up a couple of  
 3 points from it where you are dealing with allegations  
 4 that you're making against a former CFO, who is  
 5 obviously not Mr Ehlers.  
 6 Your email is the second one on the page. Do you  
 7 see you say:  
 8 "Hi Tony-  
 9 "As we have agreed from these last emails, Julius  
 10 (and perhaps others) have nearly bankrupted the  
 11 company."  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. Is it true that you regarded the company as nearly  
 15 bankrupt in February 2011?  
 16 A. Well, certainly melodramatic language. We did have some  
 17 extraordinary liabilities that I didn't know about, and  
 18 I don't know whether the staff did. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 22 Q. Then --  
 23 A. But no, that was being melodramatic.  
 24 Q. Then just a little lower down, we're going to go three  
 25 paragraphs down, you say -- sorry, pause there, thank

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16:21 1 NRD was in financial trouble when you arrived, as we  
 2 can see from these documents?  
 3 A. Yes, I think I've been consistent throughout. I think  
 4 we had an interchange yesterday when I was identifying  
 5 some of the unexpected liabilities, [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 9 Q. But in answer to my question earlier, I suggested to you  
 10 that NRD was in financial trouble by the time you  
 11 arrived, you said "no", and you're now accepting that it  
 12 was; correct?  
 13 A. As I say, this language about nearing bankruptcy is  
 14 being melodramatic. We had sufficient resources to keep  
 15 the company going until it was able to keep itself  
 16 going. But what was surprising, as I said yesterday,  
 17 were these handful of undisclosed liabilities.  
 18 Q. Now, in this email, we can see from the first  
 19 paragraph -- I'm not going to trouble you with the  
 20 detail -- that you are making a series of allegations  
 21 about Julius, and perhaps others, bankrupting the  
 22 company, and allegations against the former CFO; yes?  
 23 Julius --  
 24 A. Yes.  
 25 Q. -- you were talking about.

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16:20 1 you. Second paragraph, "I am having Tom and Bill  
 2 identify ...", and so on.  
 3 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 11 Again, that fairly reflected your view, didn't it?  
 12 A. I'm sorry?  
 13 Q. That reflected your view at the time: what you knew  
 14 about the finances was bad?  
 15 A. Yes, that's right.  
 16 Q. Now, I asked you a question earlier this afternoon, and  
 17 it's at page [102] of the transcript at line [1],  
 18 I think. I said:  
 19 "It's right to say that NRD was in some financial  
 20 trouble by the time that you arrived; correct?"  
 21 And you said:  
 22 "No."  
 23 Then you said:  
 24 "Not that I know of ... this is [all] entirely new  
 25 information."

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16:23 1 A. Julius was the CFO at that time, and we discovered that  
 2 he wasn't really keeping books in a satisfactory manner.  
 3 So we fired him and we fired his deputy because they  
 4 were not accurately reflecting the status of the  
 5 company.  
 6 Q. If we scroll up on the page, FTI, please. If we go back  
 7 to the top, you can see Mr Ehlers's response. He says:  
 8 "I am shaken to the core and I feel awful about  
 9 this. I will hang in there as long as you feel you need  
 10 me. I will not run. I must carry full responsibility  
 11 for this. I was misled by the CFO and there is no  
 12 excuse for that.  
 13 "I will return on the 28th as you suggest."  
 14 So Mr Ehlers, as CEO or MD, was standing by and  
 15 ready to bear ultimate responsibility for being misled  
 16 by the CFO in light of the information you were giving  
 17 him; yes?  
 18 A. No, he was not managing director at that time; he had  
 19 been replaced by me. We didn't know what his job would  
 20 be.  
 21 Q. But he is ready to stand by, because as far as he is  
 22 concerned, he was in charge and this has happened on his  
 23 watch; yes?  
 24 A. Yes, that's right.  
 25 Q. Can we just look at the Reply document at paragraph 266.

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16:24 1 This is your Reply Memorial.  
 2 You say in your Reply Memorial, paragraph 266 --  
 3 this is in relation to your allegations against  
 4 Mr Ehlers:  
 5 "He accepted responsibility for nearly bankrupting  
 6 the company in the time period surrounding the sale to  
 7 Claimants arising out of bad business deals and crooked  
 8 employees."  
 9 That is a very unfair characterisation, isn't it, of  
 10 Mr Ehlers's honourable email saying to you that given  
 11 the misleading by the CFO happened on his watch, he  
 12 would bear ultimate responsibility and stand by it and  
 13 help out? Correct?  
 14 A. No -- well, it depends on the timing. We had started  
 15 a criminal investigation of Ehlers, we had the police  
 16 in.  
 17 The reason that I delayed his coming back --  
 18 ordinarily, with the start of the new year, he would  
 19 have come back 1st January, 2nd January, but we delayed  
 20 him because there was this ongoing investigation.  
 21 I didn't want to prejudice it by being unfair to Ehlers.  
 22 I waited for the criminal report to come out, the  
 23 internal report and then the criminal report that was  
 24 filed with the police.  
 25 He -- I had instructed him -- he was, as you say --

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16:26 1 he said, "I will [come] on the 28th as you suggest", and  
 2 then I called him up and I said, "Please don't come back  
 3 at all".  
 4 Q. That's quite a long answer, and it wasn't an answer to  
 5 my question. We really must try and make progress.  
 6 My question was about this paragraph in the Reply.  
 7 I'm suggesting to you that this was an unfair  
 8 characterisation of Mr Ehlers's email, where he accepts  
 9 responsibility in the sense of saying, "I was in charge  
 10 at the time and I was misled, and I'm happy to come  
 11 back, stand by and help out". It's very unfair to  
 12 characterise it in the way you have in this Reply,  
 13 isn't it?  
 14 A. Very unfair for me to say he "accepted responsibility  
 15 ... surrounding the sale"?  
 16 Q. Yes.  
 17 A. I'm not understanding the question. Because he accepted  
 18 responsibility. Why is it unfair for me to say he  
 19 accepted responsibility?  
 20 Q. Well, we can see it for ourselves.  
 21 Let's stay in the Reply. Paragraph 264 of this  
 22 Reply document contains other allegations against  
 23 Mr Ehlers. In particular, at the top of the page, 106,  
 24 you say:  
 25 "Relatedly, he mistreated female employees by

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16:27 1 harassing, assaulting and punching them."  
 2 Do you see that?  
 3 A. Yes.  
 4 Q. You give a footnoted reference for that, and that  
 5 footnoted reference is to an incident where there was  
 6 indeed an altercation between Mr Ehlers and a male  
 7 member of staff; correct?  
 8 A. I don't know what the reference document is.  
 9 Q. Well, let's do a reference to a statement of Mr Mpongo.  
 10 He was a male member of staff?  
 11 A. That's -- I do recall that one, yes. That was -- he is  
 12 male.  
 13 Q. So the supporting material you have for your allegation  
 14 that Mr Ehlers mistreated female employees is one  
 15 altercation with one male member of staff; correct?  
 16 A. I think all are true. I think that he did do that. If  
 17 we didn't provide the criminal report, we should have  
 18 provided the criminal report.  
 19 Q. This is a serious allegation of mistreating female  
 20 employees --  
 21 A. Yes.  
 22 Q. -- for which you had no basis whatsoever, and you should  
 23 have withdrawn, shouldn't you?  
 24 A. Oh, it is in the criminal report. He was running  
 25 a bordel at a Deutsche Welle house, and he was abusing

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16:29 1 women and preying on people. It was a terrible,  
 2 terrible situation.  
 3 Q. Mr Marshall, I'm not accepting any of that. That is  
 4 also not the allegation you're making in this Reply,  
 5 which is dealing with mistreating female employees by  
 6 harassing, assaulting and punching them, which is simply  
 7 untrue and something for which you have no basis at all.  
 8 A. It is true. We have a basis for saying it: it's in the  
 9 criminal report. I don't know why the criminal report  
 10 is not attached to this exhibit.  
 11 Q. It's because it doesn't exist, Mr Marshall.  
 12 A. That's not true.  
 13 Q. At paragraph 260 of the Reply, you make the allegation  
 14 that:  
 15 "NRD fired Mr Ehlers for a number of serious  
 16 criminal acts."  
 17 But Mr Ehlers has never in fact been spoken to by  
 18 police and no criminal charges of any kind have ever  
 19 been pressed; correct?  
 20 A. I wouldn't know that. I know that we filed a criminal  
 21 complaint. We had had a number of meetings with the  
 22 criminal police where we gave and a staff member also  
 23 gave testimony. The allegations, as far as we could  
 24 determine, were all true.  
 25 Q. You also refer at paragraph 261 to Mr Ehlers stealing

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16:30 1 company equipment. But the true position, as he  
 2 explains, is that this was equipment which was retained  
 3 by him after he left the company: he was owed money by  
 4 the company, and he indicated to you he would hold on to  
 5 the equipment until he was paid his outstanding money.  
 6 Correct?  
 7 A. No, that's an entire fabrication.  
 8 Q. What we actually see in this part of your Reply document  
 9 is another example of you blackening the names of people  
 10 who you've fallen out with, with exaggerated  
 11 allegations; correct?  
 12 A. No.  
 13 Q. I'm going to go back now to the question of the  
 14 investments in the concessions. Can you go to C-015.  
 15 This is the government's Mining Policy in January 2010.  
 16 You would have been familiar with that, wouldn't  
 17 you, given both your investment in NRD and Bay View's  
 18 investment in Biseseero?  
 19 A. I don't recognise it.  
 20 Q. Well, in that case I might try and take it quite  
 21 quickly.  
 22 Page 31, can you go to. You will see this is under  
 23 a section at the top of the page:  
 24 "Ensure that the existing 4 year prospection and  
 25 extraction permits produce detailed resource

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16:32 1 statements."  
 2 So one of the points being made by the government is  
 3 that the existing four-year prospection and extraction  
 4 permits need to end up with detailed resource  
 5 statements. And you know what's meant by "detailed  
 6 resource statements"; yes?  
 7 A. This is not a document that anybody in the ministry had  
 8 the competence to prepare at that time. I believe this  
 9 to be a fabricated document.  
 10 Q. So just to make sure I understand, you're suggesting the  
 11 Government of Rwanda's Mining Policy in January 2010 is  
 12 a fabricated document; is that right?  
 13 A. It certainly was not available in 2010. When it was  
 14 prepared, I don't know. This is not a document,  
 15 certainly, that they gave any distribution to. And  
 16 I doubt that they had the competency to write it at that  
 17 time, even through contractors.  
 18 Q. Let's just look a bit lower down in this paragraph. It  
 19 says:  
 20 "Given ..."  
 21 This is the bottom four lines:  
 22 "Given that many of these 4 year licences are coming  
 23 up for renewal in 2010 there is a need to ensure that  
 24 the owners of the licences are making every effort to  
 25 undertake effective exploration with a view to

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16:33 1 developing industrial mining opportunities (resource and  
 2 ultimately reserve statements). To do this three  
 3 actions are required: ..."  
 4 Then can we go down. The first of them is:  
 5 "Establish clear criteria for the evaluation of the  
 6 exploration efforts of holders of mine concessions."  
 7 And underneath that, it says:  
 8 "Without ..."  
 9 Second sentence. Well, first it says:  
 10 "... provision of a validated resource statement  
 11 with effective quality assurance and quality control  
 12 signed by a member of an internationally recognised  
 13 professional body. Without such proof of effective  
 14 exploration, 30year licences will not be granted and  
 15 without proof of the ongoing development of such  
 16 resource statements companies will not be given  
 17 extensions to their 4 year licences."  
 18 The government's policy, as you knew at the time,  
 19 was that within the four-year period, companies needed  
 20 to have proved that they had done serious exploration  
 21 and proper resource evaluation; correct?  
 22 A. This document is -- has been prepared for this  
 23 proceeding. I've never seen it before. I can't imagine  
 24 that anybody had the capacity at that time to be able to  
 25 write this document, and there was no consultant that

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16:34 1 I was aware of that had been brought in to put such  
 2 a document together.  
 3 With regard to whether we had done enough research  
 4 or not, we were repeatedly informed that we had.  
 5 Q. Well, you --  
 6 MR COWLEY: Mr President, may I ask: the representation has  
 7 now been made in repeated questions that this is the  
 8 policy, and it's been described as, you know, issued by  
 9 the ministry. The document we produced, on the,  
 10 I think, first numbered page after the index, page 3 of  
 11 the document, the one we produced, is titled a "green  
 12 paper", so something in the works, something being  
 13 worked on, as we produced it.  
 14 If counsel actually has an issued public policy of  
 15 the Government of Rwanda, I would suggest he use such  
 16 document if he's going to be referring to those  
 17 policies, and stop informing this witness in his  
 18 questions that this document is something other than  
 19 what we produced.  
 20 MR HILL: Well, as far as I'm concerned, looking back at the  
 21 transcript, my questions have been put on an entirely  
 22 fair basis. I would submit that's not an appropriate  
 23 intervention at all, and I would just like to proceed  
 24 with my cross-examination.  
 25 THE PRESIDENT: Yes, please proceed, Mr Hill.

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16:36 1 MR HILL: Mr Marshall, you knew at the time, didn't you,  
 2 that without proof of effective exploration, long-term  
 3 licences would not be granted; yes?  
 4 A. No, as I say, this document, I don't believe it was  
 5 prepared at that time, I don't believe it existed for  
 6 many years afterwards, because they didn't have the  
 7 staff to be able to articulate these things, if indeed  
 8 that had been their policy.  
 9 I was told -- and we were always told -- that the  
 10 work we had done was superior to the other applications.  
 11 We saw the other applications. And we were the only  
 12 company who did not get a long-term concession.  
 13 Q. Just taking that up, we already know, don't we, from the  
 14 document we saw, that NRD was in fact told in  
 15 October 2010 that the work that it had done constituted  
 16 little investment, and it had been asked to give some  
 17 concessions back? Do you recall that? That's what NRD  
 18 was then actually told; yes?  
 19 A. No, NRD had not been told that, and that was reflected  
 20 in my response.  
 21 NRD prepared the application. In March we were  
 22 called up by the Licensing and Supervision Board; we  
 23 began negotiating the language of the long-term  
 24 concession. Dr Michael and Evode's decision-making was  
 25 only peripheral to the real decision-making going on in

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16:37 1 Rwanda, in my opinion.  
 2 Q. Well, we saw the October 2010 letter with NRD being  
 3 invited to give concessions back, didn't we? Yes? Do  
 4 you remember we looked at that earlier? This is before  
 5 anything that happened in 2011 that you just referred  
 6 to. Yes?  
 7 A. Yes.  
 8 Q. But we also know, when we get to August 2011, that your  
 9 licence application in November 2010 is refused, in part  
 10 because there's no proper feasibility study; correct?  
 11 A. No.  
 12 Q. So this suggestion that you were continually told --  
 13 A. I disagree with the characterisation -- sorry.  
 14 Q. Sorry, I was just going to -- you speak, please.  
 15 A. I disagree with the characterisation.  
 16 And with regard to the ministry's decision-making,  
 17 it could turn on a dime. So on the one hand, we've  
 18 already been told that the long-term concession  
 19 agreement has been cleared and approved by Dr Michael,  
 20 and it was then Minister Kamanzi, and then forwarded to  
 21 the ministry -- Cabinet for approval.  
 22 I don't know what the political dynamics are, but  
 23 you often get odd sort of requests or observations or  
 24 something less than a policy statement, which is not  
 25 intended for its purpose.

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16:39 1 Q. Mr Marshall, we're going to be looking at the  
 2 government's letters to you and their own internal  
 3 deliberations, and we can see that, far from turning on  
 4 a pin, they are entirely consistent. The only thing  
 5 that's inconsistent is your version of events, where you  
 6 suggest there was some other stream of dialogue. That's  
 7 correct, isn't it?  
 8 A. No, I would say it's creative writing and an attempt to  
 9 link together disassociated decision-making.  
 10 Q. You knew, when you came in, that the licence application  
 11 submitted in November 2010 fell a long way short of  
 12 amounting to the kind of proof of effective exploration  
 13 that the government would require, didn't you? You  
 14 knew?  
 15 A. No. No, and they wouldn't have submitted our long-term  
 16 application and draft contract to the cabinet if that  
 17 had been the case. I understand that that was  
 18 Dr Michael's animus, but that is not what was happening.  
 19 Q. No. Let's go now to your Reply Memorial again at  
 20 paragraph 62. This says:  
 21 "On November 29, 2010, NRD Submitted an application  
 22 for a long term License ..."  
 23 Pausing there, that's not correct, is it?  
 24 A. Yes, it is correct. We submitted an application for  
 25 long-term concessions on all five.

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16:40 1 Q. Let's now look at paragraph 63:  
 2 "The Application also contained an Environmental  
 3 Impact Assessment Report prepared by Dr Fabien  
 4 Twagirumungu, which included an environmental management  
 5 plan ..."  
 6 And there's a reference to the document at C-036;  
 7 that's at footnote 119.  
 8 I'm going to ask FTI: we're going to go back to the  
 9 Reply in a moment. Could we just look at that document,  
 10 so C-036.  
 11 So that is what's called a "Rapid Environmental  
 12 Impact Assessment of Nyatubindi Mining Site". And  
 13 Nyatubindi mine is one part of the Sebeya concession  
 14 area, isn't it?  
 15 A. Yes.  
 16 Q. So this is one environmental impact assessment for one  
 17 part of Sebeya --  
 18 A. I say that; I think it's Giciye, not Sebeya.  
 19 Q. Well, it doesn't matter. I'm not sure you're right, but  
 20 it doesn't matter for the purposes of any of this.  
 21 A. Okay.  
 22 Q. Then there was also, we accept, an environmental impact  
 23 assessment for the Rutsiro plant. Do you recall that?  
 24 A. Yes.  
 25 Q. There were no other environmental impact assessments for

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16:41 1 any other of the other sites, were there?  
 2 A. No, and there wouldn't have been.  
 3 Q. Why do you say "there wouldn't have been"?  
 4 A. The way the Department of Environmental Management works  
 5 is that you would -- after you've gotten the long-term  
 6 concession. We did this as a matter of a combination  
 7 because we wanted to show two particular problem areas.  
 8 Otherwise you would be doing an impact assessment for  
 9 the whole concession, and if you only received half of  
 10 the concession, then it would be a wasted effort from  
 11 the department's perspective. That was their policy,  
 12 and is their policy.  
 13 But you should ask directly to Zuzana Mruskovicova,  
 14 because she was the interface with the Department of  
 15 Environmental Management.  
 16 Q. Can we just go back to the Reply then. So just to be  
 17 clear, when you say at paragraph 63, "The Application  
 18 also contained an Environmental Impact Assessment  
 19 Report", you accept that the only environmental impact  
 20 assessment reports done were for Rutsiro and for --  
 21 A. Sebeya River catchment, yes.  
 22 Q. -- and for Nyatubindi?  
 23 A. Yes, Sebeya River catchment. Those were the two places  
 24 we were being specifically asked to do.  
 25 Q. Coming back to your Reply, paragraph 65. Can we look at

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16:43 1 the first sentence. The Reply says:  
 2 "The sufficiency of the Application pursuant to the  
 3 Contract is confirmed by numerous letters and  
 4 communications between Claimants and Respondent."  
 5 There's only one set of correspondence referred to  
 6 in support of this allegation, and that is at C-156,  
 7 which is referred to in the footnote to this paragraph.  
 8 So can I go to C-156.  
 9 This is an email string from January 2011, so  
 10 shortly after you took over NRD and when the  
 11 November 2010 licence application was pending. If we  
 12 look at the email at the bottom of the page from  
 13 Professor Rupiya, he says:  
 14 "Dear all,  
 15 "Be informed that this morning I met Mr Bidega  
 16 Dominique, acting Director in OGMR, in order to get  
 17 information about NRD renewal application. He said that  
 18 it is still in examination because OGMR is very busy  
 19 with starting the CTC implementation. OGMR has to meet  
 20 RDB next week and he hopes the response will be given at  
 21 the end of January."  
 22 So all he's doing at this point is telling you that  
 23 the licence application was under consideration; yes?  
 24 A. Sounds like it. I don't remember this.  
 25 Q. So if we go back to the Reply --

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16:45 1 A. I don't know -- obviously I don't know what  
 2 Professor Nkanika and Dominique's relationship was, so  
 3 I can't comment on it.  
 4 Q. You haven't identified any documents that support the  
 5 proposition in the first sentence of paragraph 65 that:  
 6 "The sufficiency of the Application pursuant to the  
 7 Contract is confirmed by numerous letters and  
 8 communications between Claimants and Respondent."  
 9 The reality is that there are no letters or  
 10 communications that confirm the sufficiency of your  
 11 application, are there?  
 12 A. I don't know what documents this may be referring to.  
 13 But obviously, if they began the negotiation for the  
 14 language of the long-term concession, that's sufficiency  
 15 in itself.  
 16 Q. Well, you're referring, aren't you, to some exchanges  
 17 between you and Mr Bidega in late 2011; correct?  
 18 A. No, it began in 20 -- I want to say March 2011, but it  
 19 may have been late March/early April 2011.  
 20 Q. I'm going to come -- sorry, I'm talking across. You  
 21 finish.  
 22 A. That's when the negotiations began, and they went on for  
 23 several months.  
 24 Q. Well, I'm going to come to your discussions with  
 25 Mr Bidega, so don't worry about that.

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16:46 1 Now, as you are aware, NRD's November 2010 licence  
 2 application was refused in August 2011; yes?  
 3 A. No, it was not, because the negotiations continued for  
 4 the language of the long-term licence.  
 5 Q. Well, I'll come back to that point. You've now seen the  
 6 documents in this case, and do you accept now that there  
 7 was an internal review of NRD's application by  
 8 Dr Biryabarema before Mr Kamanzi notified you in August  
 9 that your licence application hadn't been accepted?  
 10 Yes?  
 11 A. I don't accept it. I think that's the new document  
 12 Dr Biryabarema created. And we'd never seen it; it was  
 13 never articulated, never communicated to us. The other  
 14 documentation, if you would give us back our documents  
 15 from our offices, I'm sure there's additional details  
 16 about it.  
 17 But I'm 100% sure that if Dr Biryabarema --  
 18 "Dr Mike", he goes by -- if he had actually done any  
 19 research -- according to Professor Nkanika, he didn't  
 20 even read the document until 2012. So I'm sure that  
 21 Professor Nkanika, at least on that point, is correct.  
 22 Q. Let's look at Dr Biryabarema's first witness statement.  
 23 He was a geologist, yes, and a director of the Rwanda  
 24 Geology and Mines Authority; yes?  
 25 A. Yes.

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16:48 1 Q. Do you recall that?  
 2 Let's go to his witness statement at paragraph 10.  
 3 MR BRODSKY: Can you say the name one more time?  
 4 MR HILL: Biryabarema.  
 5 MR MARSHALL: Dr Mike.  
 6 MR BRODSKY: Yes, thank you.  
 7 MR HILL: If we start with paragraph 10. He is dealing  
 8 there with his assessment of the NRD licence  
 9 application, and he says:  
 10 "These obligations included investing  
 11 appropriately ..."  
 12 And he's referring to the Article 2 obligations:  
 13 "... carrying out sufficiently detailed exploratory  
 14 activity, and submitting a satisfactory study assessing  
 15 the feasibility of mining in the area over a 30-year  
 16 period. We would not be prepared to grant long-term  
 17 concession areas to operators who had not demonstrated  
 18 their professionalism and ability to develop the  
 19 concessions into high-performing, industrial mining  
 20 operations. This was the reason we had only awarded  
 21 relatively short, four-year contracts, back in around  
 22 2006 to operators like NRD: we needed them to prove  
 23 their credentials including by way of a proper  
 24 evaluation of the mineral resources before we could  
 25 proceed to granting them long-term concessions. The

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16:49 1 grant of long-term concessions was therefore in no way  
 2 automatic, but rather was wholly dependent on their  
 3 performance during the four-year term, and ability to  
 4 satisfy us of their potential to run professional and  
 5 productive industrialised sites over the long-term."  
 6 Now, that in fact reflected what you understood when  
 7 you arrived at NRD, because that's effectively what they  
 8 must have told you?  
 9 A. Absolutely not. I think he made this up in preparation  
 10 for this arbitration. Dr Michael would not have written  
 11 this at this time.  
 12 Q. Let's go on. Paragraph 11:  
 13 "In the end, although NRD built the proposed plant  
 14 in Rutsiro, it was a failure. They had not carried out  
 15 sufficient exploratory work prior to investing in the  
 16 plant, and the mineral resources in the surrounding area  
 17 which they were intending to process had not been  
 18 sufficiently evaluated.  
 19 "12. In short, my experience of NRD was that they  
 20 had failed to meet our expectations. Although Starck  
 21 had made some investment, it was mainly focused on the  
 22 failed Rutsiro plant, and by the end of 2010, they had  
 23 invested only a small amount of what had been proposed  
 24 in 2006. NRD had also failed to industrialise the  
 25 concessions, as required by the Contract, which instead

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16:50 1 remained based on artisanal mining. Further, they had  
 2 not carried out what I would consider to be sufficient  
 3 exploratory activities, which was also a requirement of  
 4 the Contract. It was therefore clear at the time that  
 5 they applied for new five-year licences at the end of  
 6 2010, that they had not met the requirements of ..."  
 7 Sorry, if FTI could scroll up.  
 8 "... not met the requirements of the Contract.  
 9 Further, the document claimed by NRD to be a feasibility  
 10 study fell far short of what was required of  
 11 a feasibility study. On the basis of this application  
 12 we could not possibly have granted even the short term  
 13 (five-year) mining licences requested, let alone any  
 14 long-term concessions."  
 15 That view from the government reflected exactly what  
 16 Mr Ehlers and Professor Rupiya thought at the time when  
 17 they prepared the application and what they had told  
 18 you; yes?  
 19 A. To use your word, this is an entirely fanciful document.  
 20 Q. This is his witness statement, and he actually has  
 21 a report --  
 22 A. I understand --  
 23 Q. -- at R-111.  
 24 A. This was not their procedure, this was not the  
 25 conditions they required of us and it was not the

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16:52 1 economic deal we made with them.  
 2 Q. This is a report done by Dr Biryabarema in respect of  
 3 NRD's application.  
 4 A. Where (inaudible), please?  
 5 Q. I'll come back to you on that.  
 6 So he's dealing with NRD's November 2010  
 7 application. If we look at the second paragraph, he  
 8 says:  
 9 "The nature of the agreement was ..."  
 10 And he explains those obligations under the  
 11 contract. And we've looked at those already in the  
 12 contract; yes? Progress report, evaluation reports and  
 13 feasibility studies; yes?  
 14 A. I'm sorry, as I understand, what you're saying is that  
 15 this is Dr Michael's report from 2010?  
 16 Q. Absolutely, yes. This is his review of the 2010  
 17 application.  
 18 A. No, it's not.  
 19 Q. Well, he confirmed in his witness statement that that's  
 20 what this is.  
 21 A. I think this is fraudulent.  
 22 Q. In the third paragraph, what he says is:  
 23 "The current report describes the initial figure of  
 24 39 359 000US\$ by the first management as seriously  
 25 flawed and inappropriate. A total of ... (about

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16:53 1 14,000,000US\$) is reported to have been invested up to  
 2 December 2010."  
 3 A. Dr Michael didn't even read our application until 2012.  
 4 Q. Then if you go over the page, the second page --  
 5 A. This is a creative writing exercise in my mind,  
 6 I'm sorry.  
 7 Q. -- Dr Michael has his comment on the extent of the works  
 8 done. So he says:  
 9 "Below are comments which provide an evaluation of  
 10 the extent of the work done as measured against the  
 11 expected work of mineral resource evaluation which was  
 12 to be the basis of long term contract negotiations".  
 13 And there he says:  
 14 "The satellite and the ground penetrating Radar were  
 15 intended, and indeed are capable of indicating surface  
 16 and near surface features which should be targets for  
 17 detailed exploration; as presented in the report these  
 18 methods were intended to enhance certain exploration  
 19 targets to help plan an exploration program".  
 20 Then he says:  
 21 "Evaluation of five scree deposits by processing  
 22 130 samples of 100 kg each; although the sampling seems  
 23 not to have been detailed enough the results helped take  
 24 a decision to construct a 20 ton/hr gravity  
 25 concentration plant".

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16:54 1 Then he says:  
 2 "'Detailed calculation' of primary wolfram deposit  
 3 in Rutsiro is very highly theoretical and is not  
 4 practical at all to provide any basis of objective  
 5 planning. The same applies to estimation of ... (Nemba  
 6 tin deposits".  
 7 Then down to 4, please, FTI.  
 8 "'Sampling' in Rutsiro, Giciye and Sebeya to  
 9 identify specific exploration targets for tantalum and  
 10 tin in these areas was carried out in 2008 and 2009.  
 11 A total of 115 samples were collected and analyzed. The  
 12 study showed important areas of significant tantalum  
 13 anomalies; these were supposed to be followed by more  
 14 detailed exploration, which has not been done yet; the  
 15 current results can only be taken to be qualitative;  
 16 "Most of the geologic work to date involved;  
 17 acquisition of historical data and understanding the  
 18 regional geology and metallogeny, remote sensing to  
 19 identify exploration target areas, regional sampling to  
 20 map target areas for more detailed exploration and very  
 21 preliminary theoretical calculations of resources in  
 22 some locations".  
 23 So the conclusion in all these respects by  
 24 Dr Michael is that there has been some exploration work,  
 25 but it is superficial and not sufficient; yes?

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16:56 1 A. No, I think he wrote this as part of the preparation for  
 2 this hearing. This is a fraudulent document.  
 3 Q. If you go now to page 3, he says in the top paragraph,  
 4 we can see the conclusion:  
 5 "Although some ... preliminary exploration work was  
 6 done, it fell far short of the target in the agreement.  
 7 This is very crucial in the light of the large area  
 8 given to the company because of its expressed financial  
 9 and technical capability."  
 10 And then "What the company is applying for":  
 11 "A continuation of mining and exploration works in  
 12 the five concessions;  
 13 "Mara to be converted into a mining license ...",  
 14 and so on.  
 15 And then he goes into the "Significant features of  
 16 the new business plan".  
 17 That conclusion at the top of the page, falling "far  
 18 short of the target in the agreement", is exactly as NRD  
 19 had predicted when they made the application and as you  
 20 were told; correct?  
 21 A. No. You're mischaracterising.  
 22 Q. And it meant that NRD hadn't met the requirements under  
 23 the contract in respect of reporting reserves and  
 24 a feasibility study, had it?  
 25 A. No, and this document is a fraud. Dr Michael didn't

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16:57 1 even read our application until 2012, according to his  
 2 own staff. I don't believe any of this, and I've never  
 3 seen it before.  
 4 Q. But you accept, don't you -- I'll come back to what you  
 5 say about this document -- you accept, don't you, that  
 6 the criticisms are accurate ones --  
 7 A. No.  
 8 Q. -- and NRD hadn't met the requirements under the  
 9 contract in respect of reporting reserves and  
 10 explorations and feasibility studies?  
 11 A. No, it was never even communicated to us, except in  
 12 Dr Michael's anger, to make these very general  
 13 statements, not supported by his staff.  
 14 Q. NRD certainly had not produced a feasibility study that  
 15 was capable of being positively evaluated so as to  
 16 justify a long-term contract; correct?  
 17 A. No. We had provided all the documentation that they  
 18 required, and we were told it repeatedly.  
 19 Q. Can we go further down this page. Just pausing there,  
 20 Dr Biryabarema gives "Significant features of the new  
 21 business plan". It includes:  
 22 "A fifty ton/hour processing plant at Nemba;  
 23 "Exploration techniques of geophysical surveys,  
 24 large scale trenching, diamond drilling, geological and  
 25 geochemical mapping etc are planned in most of the

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16:58 1 areas; with a planned exploration budget of  
2 382,000 Euros; the value is meagre ..."  
3 It's fair to say that the exploration budget planned  
4 in the November 2010 exploration was a meagre  
5 exploration budget, wasn't it?  
6 A. That was a number given to us by the ministry. That was  
7 not our number.  
8 Q. No, that's not true, is it?  
9 A. Yes, it is.  
10 Q. That is the number that was put in -- I fully accept it  
11 wasn't your application, because it was before you came.  
12 But it was a number that was put in by NRD and what they  
13 were allocating for exploration; correct?  
14 A. You're misunderstanding the process. When NRD -- when  
15 every concession holder is preparing the documents,  
16 there is a lot of consultation back and forth between  
17 the company and the ministry, and between them they come  
18 up with information, technical information, that is  
19 acceptable to both sides.  
20 Q. That is just not true, and you weren't even there when  
21 the application was put in.  
22 A. All the application process is the same. It's a very  
23 negotiated process. And it was the same process when  
24 I was negotiating with Dominique Bidega and his staff  
25 for the language of the long-term concession: they

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17:01 1 Q. He is the minister and he is communicating to you the  
2 outcome. And he is explaining to you that the contract  
3 has been regarded as -- although he says "not ... fully  
4 executed", plainly what he means is not fulfilled,  
5 particularly as regards Article 2: that's the obligation  
6 to provide "the final report on reserves and mining  
7 feasibility studies". Yes?  
8 A. I can see the language you're reading. But the way that  
9 would have been interpreted, and is interpreted, is the  
10 feasibility study is being performed for the company to  
11 determine whether it should continue its investment, not  
12 to provide a valuable tool for the government to give to  
13 somebody else at a later date. This is an exercise that  
14 companies go through to determine whether they're going  
15 to go ahead.  
16 To say that Article 2 is somehow not fully executed,  
17 we didn't know what that meant at that time. Certainly  
18 at that time we would have gone to talk to the staff,  
19 and they would have said, "Yes, you performed better  
20 than anybody else in this regard".  
21 Q. Mr Marshall, you were being told that one of the  
22 conditions of the contract, and the obligations under  
23 the contract in Article 2, had not been fulfilled, and  
24 you were fully aware of that; yes?  
25 A. No. I dispute the meaning of this language, that's all

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17:00 1 supplied the information, the technical information, to  
2 be included in that contract.  
3 Q. We have witnesses who were involved in this application,  
4 and they don't suggest that this happened, unlike you.  
5 A. I dispute your witnesses.  
6 Q. Can we go to C-062.  
7 Sorry, before FTI leave that document, there's one  
8 more question on that last document. (Pause) Don't  
9 worry, I'm not going to take time on it now. Let's go  
10 on to C-062.  
11 This was the letter from Minister Kamanzi of  
12 2nd August 2011, and in this letter he informed you that  
13 the government didn't regard you, NRD, as having  
14 fulfilled your obligations under the contract, and in  
15 particular Article 2; correct?  
16 A. No.  
17 Q. Well, look at the second paragraph:  
18 "... contract signed between the Government of  
19 Rwanda and your company on 24/11/2006 ..."  
20 A. I understand that Dr Kamanzi or Mr Kamanzi had animus as  
21 well. But we were being told by the Licensing and  
22 Supervision Department that, yes, we had in fact  
23 fulfilled those requirements. We got this letter,  
24 I understand it, but that was not the position of his  
25 staff.

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17:03 1 I'm saying.  
2 Q. And as I understood one of your earlier answers, you  
3 thought something different because of something that  
4 someone on the staff was saying; is that what you're  
5 saying?  
6 A. No, I'm saying that it's an iterative process. You  
7 know, it's not a -- Rwanda has its own internal  
8 weaknesses; they're desperately trying to do  
9 professional things.  
10 That being said, none of these things could happen  
11 in the abstract. You're trying to say -- you may  
12 contradict me, but you're trying to tie together  
13 sentences in documents that you have in your possession.  
14 We don't have all our documents. You're not providing  
15 us with all the ministry documents.  
16 That being said, things are not like what happens in  
17 that letter. The way Rwanda and many African countries  
18 work is you sit down with people and you say, "What do  
19 you want to do? How is this going to work? Where do  
20 you want this? What's the emphasis, what are you trying  
21 to achieve?" And you work out that process.  
22 Q. Let's look at what he does say in the letter. So after  
23 dealing with you not complying with Article 2, he goes  
24 on and he says:  
25 "We notice that you applied for five year ...

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17:04 1 licenses for small mines within each of the five  
 2 concessions. The new status of the concessions will  
 3 have to be decided based on the work executed in the  
 4 light of the contract signed (exploration work and other  
 5 commitments) and on the provisions of the new mining  
 6 law. We extend the operation of your license for  
 7 six ... months from the day of receipt of this [letter],  
 8 to allow us time to determine the future of these  
 9 concessions."  
 10 You understood by this letter two things, didn't  
 11 you? First, that the government considered that NRD had  
 12 not met its obligations under the four-year contract;  
 13 correct?  
 14 A. No, I disagree that that's the meaning of this letter.  
 15 Q. Secondly --  
 16 A. I've already said that that's not what we were being  
 17 told by the ministry.  
 18 Q. Secondly, you understood that the government was  
 19 granting a temporary six-month licence while it  
 20 considered what would happen to the concessions; yes?  
 21 A. I see the language.  
 22 Q. Let's now look at what you say at paragraph 20 of your  
 23 second supplemental witness statement.  
 24 A. Yes.  
 25 Q. It's your second supplemental witness statement.

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17:05 1 A. Notice on this letter it's August '11, by the way. This  
 2 was during the time we're negotiating the actual  
 3 language of the long-term concession, not to be seen in  
 4 the abstract.  
 5 Q. Just to be clear, I don't accept what you just said.  
 6 And we will look at your discussions of what you  
 7 describe as these negotiations, and we'll come to that.  
 8 Paragraph 20 of the second supplemental statement  
 9 from you. You say there:  
 10 "Minister Kamanzi sent a letter to NRD on  
 11 August 2, 2011 purporting to terminate NRD's licenses.  
 12 Claimants did not accept Minister Kamanzi's letter at  
 13 face value for three main reasons: ..."  
 14 And then you give three reasons. You say here the  
 15 letter, as you understood it, was "purporting to  
 16 terminate NRD's licenses".  
 17 That's slightly loose language, isn't it,  
 18 Mr Marshall? Because the actual licences, by that  
 19 point, had expired earlier in the year. And what he's  
 20 in fact doing is giving an extension to the licences,  
 21 but he's recognising that the obligations in the  
 22 contract are unfulfilled and there's no further  
 23 obligations under the contract; correct?  
 24 A. No, I would say that the agreement was executory, we had  
 25 fully performed, and now we were waiting for their

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17:07 1 performance.  
 2 Q. I'm just trying to understand what you meant in your  
 3 witness statement when you said "purporting to terminate  
 4 NRD's licenses". What I'm suggesting is what you mean  
 5 by that is not the licences, but what you mean is he was  
 6 recognising that you hadn't fulfilled your obligations  
 7 under the contract.  
 8 A. I disagree with that characterisation.  
 9 Q. What did you mean? It's your witness statement.  
 10 A. Can you go back up a little, because I can't read the  
 11 language anymore.  
 12 Q. "[Mr] Kamanzi sent a letter to NRD ... purporting to  
 13 terminate NRD's licenses."  
 14 A. Yes. I don't know if that's referring to the letter  
 15 that you and I were just looking at.  
 16 Q. Yes, it is. It's the only letter from 2nd August and  
 17 it's from Mr Kamanzi.  
 18 A. Do you know that?  
 19 Q. Yes. That's the only letter.  
 20 A. (Overspeaking) -- look in the logbooks.  
 21 Q. You're suggesting this is a reference to a different  
 22 letter?  
 23 A. It could be. I'm asking you whether you've looked at  
 24 the logbooks to determine whether there was only one  
 25 letter --

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17:08 1 Q. No, Mr Marshall, this is your witness statement, which  
 2 derives from the --  
 3 A. And I don't know which letter it's referring to. That's  
 4 why I'm asking you if you know whether there's another  
 5 letter of August --  
 6 Q. Well, it's your witness statement. Are you suggesting  
 7 you were not referring to the letter we've just been  
 8 looking at?  
 9 A. That's why I'm --  
 10 Q. And if so, you haven't produced it in evidence in these  
 11 proceedings.  
 12 A. I understand. But I'm asking you whether we're talking  
 13 about the letter that we just saw, and then I will  
 14 answer it in that context.  
 15 Q. That's the only letter that's been made available by  
 16 either side, it's the only letter that anyone has ever  
 17 been talking about from Minister Kamanzi. Okay? So we  
 18 are talking about the same letter.  
 19 What did you mean when you said "purporting to  
 20 terminate NRD's licenses"?  
 21 A. I would say that's inartfully worded and I'm not sure  
 22 what it means.  
 23 Q. What you meant was your understanding that the  
 24 government recognised that the obligations in the  
 25 contract were at an end because you hadn't fulfilled

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17:09 1 your obligations under Article 2?  
 2 A. No, I would say that he may have been alluding to  
 3 an argument that he was going to make in the future  
 4 about that being the case, but that was not in fact the  
 5 truth.  
 6 Q. You then say:  
 7 "Claimants did not accept Minister Kamanzi's letter  
 8 at face value for three main reasons: ..."  
 9 And what you say is:  
 10 "... 1) at the time of the letter, a long term  
 11 license had already been submitted to the Cabinet for  
 12 approval, 2) Dominique Bidega ... told Claimants to  
 13 ignore Minister Kamanzi's letter and 3) after the  
 14 letter, Minister Kamanzi approved the negotiated form of  
 15 the long term agreement, as signed by NRD" --  
 16 A. Yes.  
 17 Q. -- "and together with the Prime Minister, forwarded the  
 18 final, signed version of NRD's licence to the Cabinet  
 19 for final approval."  
 20 A. Yes.  
 21 Q. Now --  
 22 A. That would be a typical sort of circumstance where  
 23 something is written in the letter and then it's  
 24 reversed in -- in this case, in a very short time.  
 25 Q. Well, we'll come back to those three reasons. But just

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17:10 1 the starting point is: you're suggesting these were the  
 2 reasons why the Claimants did not accept Minister  
 3 Kamanzi's letter at face value, but you do accept, don't  
 4 you, that from the government's perspective, they were  
 5 treating the obligations under the contract as being at  
 6 an end, and you're explaining reasons why you didn't  
 7 take that at face value?  
 8 A. I'm sorry, maybe I'm misunderstanding your question.  
 9 Despite the letter, we were having negotiations and  
 10 had completed -- from -- I see the timing of this -- we  
 11 had completed negotiations on the language of the  
 12 long-term contract and that had been submitted, and  
 13 I was told it had been submitted to the cabinet.  
 14 So was this a negotiating position? That's the way  
 15 I understood it.  
 16 Q. Mr Marshall, none of that is true. But what is true is  
 17 you recognised at the time that the government was  
 18 regarding the obligations under the contract as at  
 19 an end, following your inability to fulfil them; yes?  
 20 A. Definitely not.  
 21 Q. And you also knew --  
 22 A. Absolutely. Not just definitely, but absolutely not.  
 23 Q. You also knew that the six-month licence extension that  
 24 the government did give was something that was voluntary  
 25 and something they didn't need to give; yes?

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17:11 1 A. No, actually those extensions had a political purpose  
 2 that we don't know about. My guess is that Kamanzi was  
 3 being told he was not performing well, and so -- and his  
 4 way of being able to solve this was to send around  
 5 letters, not just to us but to others, saying, "You have  
 6 a six-month extension". Not everybody had gone through  
 7 the process of negotiating the terms of the long-term  
 8 agreement and had submitted to cabinet. So for us, it  
 9 was a negotiating position.  
 10 Q. Mr Marshall, there's no need to reach for a conspiracy  
 11 theory because it's obvious on the face of the letter  
 12 what's happening, which is that Minister Kamanzi  
 13 recognises that the obligations in the contract are at  
 14 an end as far as the government is concerned, but he's  
 15 prepared to give you six months to see what can be  
 16 negotiated for the future; yes?  
 17 A. No.  
 18 Q. That's what he's saying.  
 19 A. I disagree.  
 20 Q. And you understood that NRD had no continuing rights  
 21 from that point of any kind with regard to a long-term  
 22 licence?  
 23 A. It was an executory contract that had already been fully  
 24 performed from our side, and the only performance we  
 25 needed from their side was to approve the long-term

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17:13 1 agreement which had already been negotiated.  
 2 Q. You understood at this point that NRD had no continuing  
 3 rights of any kind, because you had reached the end of  
 4 the four-year term and not complied under Article 2;  
 5 yes?  
 6 A. You're ignoring the fact that our long-term contract is  
 7 in front of the cabinet about --  
 8 Q. I'm going --  
 9 A. (Overspeaking).  
 10 Q. I'm going to come to your three reasons why you say you  
 11 didn't take this letter at face value. First, can we  
 12 just go to paragraph 53 of the Claimants' Memorial that  
 13 deals with this letter.  
 14 Just for FTI, I'm going to come back to that part of  
 15 Mr Marshall's witness statement in a moment, but first  
 16 we're going to look at paragraph 53 of the Memorial.  
 17 That's the wrong reference. I'm so sorry. Just  
 18 give me one moment. I'm so sorry. (Pause)  
 19 THE PRESIDENT: I think FTI may have brought up the wrong  
 20 document.  
 21 MR BRODSKY: Yes, I'm sorry, I think that was the  
 22 Reply Memorial.  
 23 MR HILL: Thank you. The Claimants' sort of opening  
 24 Memorial.  
 25 MR BRODSKY: Thank you.

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17:14 1 MR HILL: Yes.  
 2 So paragraph 53, you say:  
 3 "The six-month extensions ..."  
 4 This is the same letter from Mr Kamanzi:  
 5 "... was the first of many extensions of the  
 6 Contract throughout which representatives of Rwanda  
 7 continually represented to Mr Marshall that long term  
 8 contracts were forth coming and guaranteed."  
 9 We've just looked at the six-month extension, and  
 10 it's not doing that at all, is it? It's saying the  
 11 opposite. It's saying, "You haven't complied with the  
 12 agreement, but we're giving you six months to see what  
 13 can be discussed". Correct?  
 14 A. Well, you're very elegantly focusing on the words in  
 15 this document, which is only one of the sources of  
 16 communication. And it's not true that we -- we were  
 17 repeatedly assured, "Please be patient, don't do  
 18 anything precipitous", through all our advisors.  
 19 US Government, the staff were there; every ministry we  
 20 went to, it was always the same line. And you're  
 21 stringing together threads of sentences to say that it  
 22 was something else, and it's not true.  
 23 Q. Quite clear that this six-month extension was not  
 24 an extension throughout which representatives of Rwanda  
 25 were representing that long-term licences were

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17:17 1 A. I'm sorry?  
 2 Q. Your witness statement:  
 3 "Nevertheless, the express purpose of the extension  
 4 was to negotiate the long term" --  
 5 A. Isn't that the language of the last sentence of that  
 6 letter?  
 7 Q. It's your witness statement.  
 8 A. I understand. But isn't it a reference to the last  
 9 sentence of that letter: that a six-month extension  
 10 would be suitable in order to reach an agreeable result,  
 11 or -- I forget what word they used.  
 12 Q. I'm happy to pull it up if you like. It's C-062.  
 13 A. We had several of these letters where we were told that  
 14 this should be enough time to reach a favourable  
 15 response or ...  
 16 "... allow[ing] us time to determine" --  
 17 Q. "We notice that you applied for five year ... licenses  
 18 for small mines within each of the five concessions.  
 19 The new status of the concessions will have to be  
 20 decided based on the work executed in the light of the  
 21 contract signed ... and on the provisions of the new  
 22 mining law. We extend the operation of your license for  
 23 six months from the day of receipt of this [letter], to  
 24 allow us ... to determine the future of these  
 25 concessions."

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17:15 1 forthcoming and guaranteed; it was the very opposite.  
 2 Correct?  
 3 A. Not correct.  
 4 Q. Let's go now to your -- let's just look at, sorry,  
 5 paragraph 32 of your witness statement.  
 6 MR BRODSKY: First witness statement?  
 7 MR HILL: Yes, please.  
 8 You say there -- this is your witness statement:  
 9 "Instead of immediately granting Claimants the  
 10 long term contracts, Rwanda granted them a series of  
 11 extensions with the repeated representations that the  
 12 long term contracts would follow. The first one was  
 13 granted in August 2011 for six months."  
 14 Again, no representations were made at all that  
 15 long-term contracts would follow, were they?  
 16 A. I was nearly daily being given the representation that  
 17 long-term contracts would follow.  
 18 Q. Let's look at the penultimate sentence in this  
 19 paragraph:  
 20 "Nevertheless, the express purpose of the extension  
 21 was to negotiate the long term contracts."  
 22 That's simply untrue, isn't it? That wasn't the  
 23 express purpose of the extension, because you had been  
 24 told that the obligations under the contract hadn't been  
 25 fulfilled.

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17:18 1 You didn't see that for a moment, did you, as  
 2 conveying an assurance of a long-term licence?  
 3 A. In the context of the work that we were doing and the  
 4 people we were communicating with, I absolutely did.  
 5 Q. Well, of course you didn't, Mr Marshall.  
 6 A. There's nothing that detracted from it.  
 7 Q. He's making clear a number of things in this letter.  
 8 He's making clear: (1) you haven't complied with the  
 9 contract, you haven't met the obligations under  
 10 Article 2; (2) that you've only applied for five-year  
 11 licences; and then he's saying he's giving you  
 12 six months to decide what's going to happen.  
 13 A. Yes.  
 14 Q. You couldn't possibly have read that as an assurance in  
 15 respect of a long-term licence, could you?  
 16 A. I understand. But you'll appreciate that right now our  
 17 long-term licence for 30 years was in front of the  
 18 cabinet.  
 19 Q. Well, it wasn't, and you've -- that's simply not true.  
 20 A. It simply is true. I don't know why you keep refuting  
 21 it. We were told it. We went through the application  
 22 process, we reached agreement on the language. It was  
 23 approved by Dr Michael and Dr -- and Mr Kamanzi, and it  
 24 was referred to the cabinet for approval.  
 25 Q. And you're saying that had happened by August 2011,

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17:19 1 are you?  
 2 A. That's -- I think that's what it says.  
 3 Q. Well, that is all simply untrue. We'll come to these  
 4 three of your reasons from paragraph --  
 5 A. I don't know if it was August 2011, but it was certainly  
 6 under negotiation. I thought there was a reference in  
 7 the witness statement which gave a date, but I don't  
 8 recall what date.  
 9 Q. Well, let's go back to that witness statement. It was  
 10 paragraph 21 of your supplemental witness statement.  
 11 A. I do remember quite clearly, certainly by the end of the  
 12 year, November, for example, that it had been submitted  
 13 to the cabinet.  
 14 Q. Well, we're looking at a letter in August and you're  
 15 trying to explain -- sorry, it's paragraph 21 of  
 16 your ...  
 17 MR BRODSKY: The second supplemental?  
 18 MR HILL: It must be. Yes, paragraph 21 of the second  
 19 supplemental.  
 20 A. I think you appreciate, the quote you've brought up,  
 21 nobody would invest in it if it wasn't guaranteed. It  
 22 would be like buying a lottery ticket from people you  
 23 don't know.  
 24 Q. Sorry, if FTI could look at -- don't blow it up for the  
 25 moment, FTI.

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17:22 1 about to go to the detail, that you are accepting that  
 2 there's no -- you're not now saying that there is some  
 3 letter submitted to cabinet by August 2011.  
 4 A. No, I don't think it was August 2011. That's not my  
 5 point. My memory is that it was the end of the year --  
 6 October, it may have been November, or something like  
 7 that -- by the time we had finished negotiating all the  
 8 provisions.  
 9 Q. So we can strike out item 1 on your list, can we, the  
 10 list of why you didn't accept this letter at face value?  
 11 A. No, I think it should reflect that we were negotiating  
 12 the letter, not that it had already been submitted.  
 13 Q. And even that's not true, is it?  
 14 A. I don't know why you just -- I'm sorry. Yes, it is  
 15 true.  
 16 Q. Now, the allegations that you make in this paragraph  
 17 about negotiating a draft with Dominique Bidega which  
 18 gets approved by the minister and submitted to cabinet  
 19 is also something you've said in your Reply Memorial at  
 20 paragraph 65, where you say that -- let's just look at  
 21 it to make sure I've understood the allegation  
 22 correctly. Let's look at paragraph 65 of the Reply.  
 23 Your allegation, as I understand it, is that  
 24 Mr Bidega approved licences and they were submitted to  
 25 cabinet, and that involved a meeting of Minister Kamanzi

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17:21 1 So this was your second supplemental. You were  
 2 giving, do you see, at -- sorry, can we put 20 and 21 up  
 3 at the same time.  
 4 Do you remember this was where you said how you  
 5 didn't accept Minister Kamanzi's letter at face value  
 6 for three reasons?  
 7 A. No, that's a mistake. It would not have been submitted  
 8 as of August 2nd.  
 9 Q. Well, you say it's a mistake, but you've actually given  
 10 a number of answers today where you have said and  
 11 repeated your suggestion that a letter had been  
 12 submitted to cabinet by this time. So you're not now  
 13 maintaining that?  
 14 A. Yes, no, my memory is -- and I, you know, don't have any  
 15 of my files here so I can't go back and check -- we  
 16 began negotiating with the Licensing and Supervision  
 17 Department, I wanted to say in March or April, and by  
 18 November we had reached agreement on all the languages  
 19 of both the BVG long-term licence and the NRD long-term  
 20 licence.  
 21 Q. But this mistake, which you now say is a mistake --  
 22 A. Well, this --  
 23 Q. -- it was in your witness statement and it's something  
 24 that you've repeated today. And it's only now, when  
 25 I've been pressing you with it, because I'm obviously

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17:24 1 with the Prime Minister to recommend the draft, so that  
 2 it's final.  
 3 Then if we go on to paragraph 70, again, Bidega  
 4 supplying NRD with a long-term licence. Then you say,  
 5 lower down in that paragraph:  
 6 "... Bidega submitted the ... agreement to his boss,  
 7 Dr Biryabarema, who approved it and sent it to the  
 8 Minister ..."  
 9 And then going off to cabinet.  
 10 A. Yes.  
 11 Q. So there are three parts to your allegation here: first,  
 12 Bidega provided NRD with a draft long-term licence;  
 13 secondly, it was subsequently negotiated and approved by  
 14 Dr Biryabarema, who in turn submitted it to the  
 15 minister; thirdly, this agreement was submitted to  
 16 cabinet. And none of those things are true, are they?  
 17 A. As far as I know, they're all true.  
 18 Q. Can we go to paragraph 10 of Dr Biryabarema's  
 19 supplemental witness statement.  
 20 A. Dominique is the head of a committee which reviews and  
 21 approves these applications. Once he has approved it --  
 22 reviewed it and approved it, it goes to Dr Mike, and  
 23 then it's brought with presumably a positive opinion and  
 24 Kamanzi then adds his opinion, which, because it was  
 25 sent to cabinet, would also have been positive.

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17:25 1 Q. The role that you've just suggested Mr Bidega has,  
2 that's also not true; correct?  
3 A. As far as I know.  
4 Q. He did not have that role in the ministry, did he?  
5 A. You're telling me something that I don't know.  
6 Q. Let's look at --  
7 A. What I've explained to you was the role that  
8 I understand him to have.  
9 Q. Let's look at paragraph 10 of Dr Biryabarema's  
10 supplemental statement:  
11 "At paragraph 4 of his statement, Mr Bidega claims  
12 that the OGMR Regulation and Supervision Unit was  
13 responsible for negotiating a long-term licence with  
14 NRD, that he provided NRD with a draft contract in  
15 September 2011, that this draft contract was the form of  
16 agreement that was used for such agreements between  
17 investors and the Government and that he, together with  
18 his team at the Regulation and Supervision Unit, worked  
19 with NRD for several months to negotiate the terms of  
20 that agreement. Mr Bidega also claims at paragraph 5 of  
21 his statement that I approved the draft agreement  
22 following which it was sent to the Minister of Natural  
23 Resources who in turn submitted it to the Cabinet. As  
24 I explain in detail below, all of these statements are  
25 untrue:

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17:27 1 "10.1. We were not negotiating a long-term licence  
2 with NRD in 2011. As I explain at paragraph 12 of my  
3 first statement and paragraph 6 above, NRD's 2010  
4 application was for new five-year licences. NRD did not  
5 apply for long-term licences until January 2013.  
6 "10.2. NRD's 2010 application came nowhere near the  
7 standard required for the granting of a five-year  
8 licence they were in fact applying for, let alone  
9 a long-term licence. As I also explain at paragraph 12  
10 of my first statement, not only had NRD failed to comply  
11 with the Contract but they had also failed to provide  
12 an acceptable feasibility study.  
13 "10.3. Although we had discussions regarding new  
14 licences with Mr Marshall during 2011, we never came  
15 close to discussing the terms of a new agreement as NRD  
16 was never able to satisfy us that they had the technical  
17 or financial capacity to develop the concessions.  
18 A draft contract would not have been prepared unless and  
19 until we were satisfied that NRD's application met the  
20 requirements necessary to be granted a licence, and we  
21 never were satisfied.  
22 "10.4. Mr Bidega never provided me with any draft  
23 contract regarding NRD, including the document exhibited  
24 at C-114 which he claims to have drafted and the draft  
25 contracts exhibited at C-042 and C-207. I have never

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17:28 1 seen these documents before, and I never had any  
2 discussions with Mr Bidega regarding a draft contract  
3 with NRD. It was not within Mr Bidega's remit to  
4 conduct negotiations or to prepare draft contracts. If  
5 he ever claimed to NRD that he was negotiating on behalf  
6 of OGMR then that was certainly something that was not  
7 within his authority, and not something that I was aware  
8 of."  
9 Then he deals with Mr Kibelinka, and I'll come back  
10 to that point.  
11 Then he says:  
12 "I did not submit a draft contract ..."  
13 This is 10.5:  
14 "I did not submit a draft contract with NRD to the  
15 Minister for approval and/or submission to the Cabinet.  
16 If I had submitted a draft contract to the Minister,  
17 I would have had a review meeting with him before it was  
18 submitted to the Cabinet office. No such meeting ever  
19 took place."  
20 Then:  
21 "10.6. As regards Mr Bidega's suggestion at  
22 paragraph 5 of his statement that Cabinet would or  
23 should have communicated its position on a contract with  
24 NRD to him or me, I note that Mr Bidega was at that time  
25 a mid-ranking official at OGMR. I was the Director

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17:29 1 General of OGMR and I was myself never contacted by the  
2 Cabinet. If Cabinet had had any questions regarding  
3 a contract with NRD those questions would have been  
4 discussed with the Minister himself. However in this  
5 case no such questions arose or could have arisen as no  
6 contract with NRD was ever submitted to Cabinet."  
7 That all reflects the reality of what really  
8 happened, didn't it?  
9 A. This is all new information to me. I doubt it. And  
10 I think that this was prepared in preparation for this  
11 hearing.  
12 Q. Can we go to C-207. This is a set of documents produced  
13 on disclosure, following a request from the Respondent:  
14 it's a number of communications between you and  
15 Mr Bidega.  
16 NRD came to employ Mr Bidega; correct?  
17 A. Yes.  
18 Q. And he joined NRD at the beginning of 2012, didn't he?  
19 A. Early 2012, yes.  
20 Q. So shortly after the emails and draft agreements we're  
21 about to look at; yes?  
22 Now, it's right to say, isn't it, that in the  
23 assistance he was giving when he communicated with you  
24 in respect of this draft contract, Mr Bidega was helping  
25 you out in advance of his joining the company?

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17:31 1 A. No.  
 2 Q. You never understood him to be articulating an official  
 3 position on behalf of OGMR, the Geology and Mining  
 4 Authority, did you?  
 5 A. Of course I did.  
 6 Q. If we go to the first email on the chain at page 1.  
 7 This chain is sequential in time. We can see there's  
 8 an email from -- no, sorry, back where we were. Thank  
 9 you. Just stay there.  
 10 This is an email from Mr Kibelinka to Mr Bidega,  
 11 copying you. Now, Mr Kibelinka was an employee of you  
 12 and NRD, wasn't he?  
 13 A. He was a consultant to us, yes.  
 14 Q. Yes. So he's on the NRD side of the fence; yes?  
 15 A. Yes.  
 16 Q. Now, this is the first email on the chain, and it's  
 17 an email of 28 September. What we can see is that,  
 18 contrary to your allegation in the Reply, it's not  
 19 Mr Bidega who sends you a draft contract at all; in  
 20 fact, on 28th September, Mr Kibelinka emails you and  
 21 Mr Bidega a draft agreement, and we can see the  
 22 agreement starting on page 2 of the document. Yes?  
 23 A. I'm not understanding.  
 24 Q. So your allegation in the Reply is that Mr Bidega  
 25 provided you with a draft agreement.

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17:34 1 Reply contained the allegation that Mr Bidega had sent  
 2 you a draft contract. We asked for disclosure of that  
 3 material. This tab, C-207, is all that your side has  
 4 produced by way of disclosure in response. And we can  
 5 see the sequence of events, and the first email, first  
 6 draft contract comes from your side, from Mr Kibelinka;  
 7 correct?  
 8 A. No, no.  
 9 Q. Mr Bidega was --  
 10 A. You have all the documents from our office, and whatever  
 11 Gifurwe document was there -- I think you need to ask  
 12 Dominique or Kibelinka or anybody. But that's the  
 13 process, I'm telling you.  
 14 Q. Mr Bidega was not providing you with any draft at all,  
 15 was he?  
 16 A. No, the ministry provided us with the draft.  
 17 Q. And you were the one who had the idea of putting in  
 18 these details of investments and estimations of  
 19 investments?  
 20 A. No.  
 21 Q. If we go to page 5 of this exhibit, this is an email  
 22 from you. It's a little further on: now at 14 October.  
 23 You say to Mr Bidega, to his Yahoo address:  
 24 "Hi Dominique,  
 25 "I have attached a draft agreement for your review.

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17:32 1 A. He did, from --  
 2 Q. Your side has exhibited, has produced on disclosure, the  
 3 documents that go to this allegation, and what they show  
 4 is that it starts off, in fact, with Mr Kibelinka of NRD  
 5 producing a draft and sending it to you or Mr Bidega.  
 6 Yes?  
 7 A. This would have been well into the negotiation, because  
 8 this page is talking about what the ministry's position  
 9 was on capital investment.  
 10 The document was simply a document by Gifurwe, which  
 11 was another large concession, that the ministry -- we  
 12 were told that the ministry had been negotiating or had  
 13 negotiated, and they gave us that. We, you know, went  
 14 through the exercise of whiting-out all the names and  
 15 all of the specific provisions relating to Gifurwe, and  
 16 used that as the template.  
 17 This email would have been communicating to us --  
 18 well, and I don't know, but the information about the  
 19 technical parameters came from the ministry. They were  
 20 the ones who told us how much had to be invested and  
 21 what the production numbers were likely to be for each  
 22 of them. They are much more modest than Dr Michael  
 23 would have liked, but that's because he was part of the  
 24 smuggling operation.  
 25 Q. Now, again, none of this is true, Mr Marshall. Your

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17:35 1 Please have a look and tell me what you think."  
 2 So, again, it's not Mr Bidega providing you with  
 3 a draft, contrary to what you said in the Reply, is it?  
 4 A. No, in colloquial terms, every time an agreement gets  
 5 passed and it's not a final agreement, it's referred to  
 6 as a draft. So this is just yet another draft.  
 7 And by the way, all ministry employees used their  
 8 private emails. There was no -- at this time there was  
 9 no ministry email system for them to work through.  
 10 Q. Let's look at page 7 of this exhibit. So this is your  
 11 draft agreement.  
 12 A. This would have been our amendment to their draft  
 13 agreement that they gave to us.  
 14 Q. And what you sent, what you provided in Article 2, the  
 15 "Rights", if you look at item 2:  
 16 "The right given by the semi industrial mining  
 17 concession licenses are valid for all the duration of  
 18 the licence (2017) will be granted after signing of this  
 19 contract".  
 20 So you were providing for five-year licences under  
 21 the draft agreement that you sent to Mr Bidega; correct?  
 22 A. Yes, I don't know why that number is there, because the  
 23 later drafts are talking about 30 years, not 5 years.  
 24 Q. The reason it's there is because you understood that all  
 25 that NRD had so far applied for was a five-year licence.

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17:37 1 A. No.  
 2 Q. That's why you put in the five-year licence in your  
 3 version of the draft, wasn't it?  
 4 A. This is an early draft. The later draft has 30 years.  
 5 Q. If we go to page 4 of this document, we can see that  
 6 again there is forecasted cash flow provided for, not  
 7 yet filled in, as well as estimated capacity of  
 8 production.  
 9 That again is something that had all come from you,  
 10 isn't it, rather than from Mr Bidega, as something to  
 11 put into the contract; correct?  
 12 A. No, that would come from the ministry.  
 13 Q. Now, if we go to page 33 of this exhibit and go to the  
 14 top of the page. This is an email from you to say:  
 15 "Hi Dominique,  
 16 "I have attached a draft agreement - please excuse  
 17 the date on the file but I could not change it after  
 18 I began drafting the agreement. (I need better computer  
 19 skills!)"  
 20 So again, quite clear that you are the draftsman of  
 21 this agreement; yes?  
 22 A. They provided us with a template, and we were amending  
 23 it and working on the document as we sat down for  
 24 discussions each time. I have legal training, so it  
 25 made more sense to me putting the language into the

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18:00 1 signing of this Agreement) as a result of making the  
 2 estimated total amount in investments set forth in the  
 3 Article 4 Capital Investment program ... NRD shall then  
 4 be granted [a] long term thirty-five year concession  
 5 right[] ..."  
 6 So what you're doing in this draft agreement is,  
 7 although it's a 5-year agreement still, you're providing  
 8 on certain conditions that there can be a grant of  
 9 a 35-year concession right; yes?  
 10 A. I see the language you're talking about.  
 11 Q. And that was what you were proposing?  
 12 A. No, that's what they were proposing.  
 13 Q. No, do you remember the -- I hope I didn't go too  
 14 quickly. You asked him to --  
 15 A. I asked him to look at the language. This is the  
 16 language that we were talking back and forth. This is  
 17 how he wanted it framed.  
 18 Q. Not so, Mr Marshall. You were suggesting a term that  
 19 would, on certain conditions, lead to the grant of  
 20 a 35-year concession; correct?  
 21 A. This is reflective of our conversation is what  
 22 I'm pointing out to you.  
 23 Q. It's your drafting and your proposal; yes?  
 24 A. It's reflective of our conversation. It is not my  
 25 proposal versus his proposal. This is the language

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17:39 1 agreement and then for him to check it to make sure that  
 2 it was what he was expecting.  
 3 MR HILL: Mr President, I wonder if now might be  
 4 a convenient moment for a break. It's perhaps a little  
 5 earlier than I thought, but it's been quite turgid stuff  
 6 we've been going through, and I wonder if now works for  
 7 the Tribunal. (Pause)  
 8 THE PRESIDENT: We will take a 15-minute break now.  
 9 MR HILL: I'm grateful.  
 10 (5.39 pm)  
 11 (A short break)  
 12 (5.59 pm)  
 13 MR HILL: Mr Marshall, we were in C-207. If FTI could pull  
 14 up page 25. This is another email from you in this  
 15 sequence, and it's another one from you to Mr Bidega,  
 16 saying:  
 17 "I have attached a copy of [our] proposed agreement.  
 18 Please note especially Article 3(B)."  
 19 Can we go to page 28, and we can look at this  
 20 article. You, in this agreement -- this is still  
 21 a five-year agreement, but there is a new obligation  
 22 that you have inserted in this draft, in Article 3(B),  
 23 which says at the bottom half of this para, do you see:  
 24 "As soon as NRD makes a calculation of reserves and  
 25 begins semi-industrial production (at any time after the

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18:01 1 which he was looking for to make it acceptable for him.  
 2 Q. No. If we go to --  
 3 A. That's why I highlighted it for him: was this  
 4 sufficient?  
 5 Q. If we go to page 89 in this email chain, we can see that  
 6 you're still in conversation with Mr Bidega in  
 7 December 2011.  
 8 A. Yes.  
 9 Q. In the middle of December 2011.  
 10 You knew, didn't you, that Mr Bidega himself didn't  
 11 have authority to agree the terms of a licence, and it  
 12 would need to be approved by Dr Biryabarema, and  
 13 thereafter a minister; correct?  
 14 A. Dominique is the head of a committee, and when the  
 15 committee approves it, it is referred up to Dr Mike; and  
 16 if he approves it, it's referred up to Minister Kamanzi,  
 17 and then the whole package submitted to the cabinet.  
 18 Q. Well, the second half of what you've just said is  
 19 correct: it had to be approved by Dr Mike and submitted  
 20 to the minister. But you are wrong to suggest that  
 21 Mr Bidega was the head of any committee for the purposes  
 22 of agreeing a contract of this kind, aren't you?  
 23 A. Well, that's the first I've heard of it.  
 24 Q. And you didn't understand at any point --  
 25 A. He was the acting -- he was the acting director of OGMR.

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18:03 1 So I assumed.  
 2 Q. You didn't understand at any point that this draft  
 3 agreement had actually been agreed by Dr Biryabarema or  
 4 submitted to the minister or provided to cabinet,  
 5 did you?  
 6 A. I absolutely believed it. He told it to me.  
 7 Q. If you had understood that, we would have seen that all  
 8 over the correspondence, which we don't. And it's  
 9 inconsistent with the meeting you did have with  
 10 Dr Biryabarema in December 2011, isn't it?  
 11 A. Dr Biryabarema is -- was a wild card. I never knew what  
 12 he was going to do when, because he was so angry with  
 13 me.  
 14 That being said, there was nothing about this  
 15 process that I doubted. If you claim that there are  
 16 other -- should be other documents, then they would have  
 17 been in our offices, and I would again ask you to give  
 18 them back to us and then we can show it.  
 19 Q. Just in relation to that last answer, you did know then,  
 20 didn't you, that Dr Biryabarema, who needed to approve  
 21 an agreement of this sort, had never approved it?  
 22 A. No, I -- no, obviously not. I had been told that he had  
 23 approved it and Minister Kamanzi had forwarded it with  
 24 his approval to the cabinet.  
 25 Q. We can see what Dr Biryabarema's position in fact was as

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18:04 1 regards your application, because in December 2011 you  
 2 did meet with him, didn't you? Do you remember that?  
 3 A. Yes.  
 4 Q. You were told at that meeting that NRD's performance  
 5 fell short of the level expected, and that the  
 6 government were only prepared to negotiate on new  
 7 licences for two out of the five concessions; correct?  
 8 A. No, that's not correct.  
 9 Q. Mr Bidega was not at that meeting, was he?  
 10 A. I don't think he was.  
 11 Q. No. We'll come back to that meeting. I'm just going to  
 12 move first to a different topic, which is closures of  
 13 concessions on environmental grounds.  
 14 We've been looking at the period in 2011, after you  
 15 arrived at NRD. And you were also aware -- you were  
 16 aware at the time, weren't you, that the Government of  
 17 Rwanda was quite concerned at environmental damage on  
 18 NRD's sites; yes?  
 19 A. No. Well, there is environmental -- there's ongoing  
 20 environmental damage everywhere in the context of it  
 21 being erosion. These are very steep slopes. Miners and  
 22 farmers, neither of them pay much attention. Some of  
 23 them are in our concession areas, and so the easy person  
 24 to go and say, "Can you please fix this?", is us.  
 25 But this is not because of our mining or our poor

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18:05 1 supervision; this is just what happens in Rwanda. It's  
 2 not like there's cyanide or any heavy metals; this is  
 3 simple erosion issues. And we were asked to fix some in  
 4 the Sebeya River catchment.  
 5 Q. Can you go to R-110. This is an inspection report for  
 6 mines in the Western Province from November 2010, so  
 7 this is the time of the application.  
 8 Can we just go to page 6 of that document.  
 9 A. What's the date of this?  
 10 Q. This is November 2010, so the same month as the  
 11 application for the five-year licences was made.  
 12 MR COWLEY: Can I ask Mr Hill for clarification: are we  
 13 supposed to be looking at R-110 or R-100?  
 14 MR HILL: R-110. Is that not what's come up? Sorry.  
 15 MR COWLEY: I thought on the prior page it said "R-100", but  
 16 it went by fast. I apologise if I missed it. But  
 17 I would just ask to double-check that.  
 18 MR BRODSKY: It does say "100" on the Bates stamp.  
 19 MR HILL: This is in my files and what's marked as R-110.  
 20 MR BRODSKY: It looks similar to --  
 21 MR HILL: Anyway, it's the document I want.  
 22 MR BRODSKY: Just for clarification, there's a translated  
 23 version of it. I think it might be a typo on the Bates  
 24 number.  
 25 MR HILL: Thank you. Can we go back to it, and I'm after

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18:07 1 page 6 of it.  
 2 So these are observations from the government  
 3 inspectors, and what they say is that, if you look at  
 4 the fourth bullet:  
 5 "In general, all mines of NRD experience  
 6 environmental damage ..."  
 7 So their finding in 2010, end of 2010, was that all  
 8 of NRD's mines were suffering from environmental issues;  
 9 correct?  
 10 A. I see the words. I think this is a fabricated document.  
 11 I was never aware of it, never heard of it, nobody ever  
 12 complained about it.  
 13 Q. We'll look at complaints now. Let's go to C-040.  
 14 A. Not communicated to us.  
 15 Q. This is a letter to Minister Kamanzi in October 2011  
 16 notifying you of his concerns of environmental damage on  
 17 land that was subject to a NRD concession.  
 18 I imagine you recall that letter; yes?  
 19 A. I did, and I responded.  
 20 Q. Yes. Let's look at your response: it's at C-041.  
 21 Now, this was a response from you that goes on for  
 22 six pages, with a series of arguments against  
 23 Minister Kamanzi's observations. And it would be fair  
 24 to say that in this letter you don't accept any  
 25 criticism of NRD's environmental compliance; correct?

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18:09 1 A. No, I think you're mischaracterising it. What the issue  
 2 was that he was complaining about was in the --  
 3 Nyatubindi, which was a coltan -- the only recognised  
 4 coltan area in the country, the Belgians had been using  
 5 what they called "ground sluice mining techniques"  
 6 approaches, which are illegal in most countries, because  
 7 it's really turning on a fire hose and washing down  
 8 a hillside and then picking up what minerals are at the  
 9 bottom.  
 10 So there are some areas in Nyatubindi -- I think you  
 11 can see it in some of the photos; I don't know if  
 12 they've been shown to the panel -- where -- and it's  
 13 about 3 kilometres wide that the Belgians did this.  
 14 It's a scar on the hillside. But it's not, you know,  
 15 a particularly attractive mining area -- I mean,  
 16 agricultural area anyway, so it hadn't been a priority.  
 17 The Belgians did that, you know, in the 1920s and  
 18 1930s, and there had been some efforts to dam up parts  
 19 of it to make sure that the erosion didn't get worse.  
 20 That's what we were addressing. And he said that that  
 21 was -- NRD had caused those problems, and therefore  
 22 needed to be subject to immediate sanction. He did it  
 23 to a group of 300 people, and it was a political  
 24 statement rather than a statement of fact.  
 25 Q. Well, he was talking about the continuing siltation of

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18:10 1 the river that resulted, wasn't he? Yes? He was saying  
 2 there was a continuing problem; correct?  
 3 A. Yes, it is a continuing problem, and we have been  
 4 building dams there to hold back the silt.  
 5 Q. Let's look at the penultimate paragraph of the letter.  
 6 A. But it was not something that NRD did. This was ground  
 7 sluice mining by the Belgians, as I say, in the '20s and  
 8 '30s, and it continues.  
 9 Q. He was asking for remedial action. And you say:  
 10 "As it is impossible to perform what you ask. Given  
 11 the misrepresentations and half-truths and faulty logic  
 12 of the letter, we at NRD and our investor group must  
 13 conclude that the intent is to nationalize the Giciye  
 14 mining concession. If the intent is to nationalize this  
 15 concession, I would encourage an open and frank  
 16 discussion about how the nationalization process will  
 17 work, and how to present this information to the  
 18 international investment community."  
 19 It's fair to say, isn't it, that this allegation of  
 20 expropriation and the threat to present information to  
 21 the international investment community is one that you  
 22 resorted to frequently in answer to critical  
 23 correspondence from a member of the government?  
 24 A. No, this was a highly inflammatory hearing where I was  
 25 not allowed to speak. I was made, you know, sort of

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18:12 1 a caricature bad guy. And his information was wrong,  
 2 who was responsible for it was wrong, and we weren't  
 3 sure we were going to get out of there alive. I think  
 4 this is actually a measured -- as loud as it sounds, you  
 5 know, 20 -- or 12 years after the fact, what he did was  
 6 really put us and the team that I was with at personal  
 7 safety risk. So --  
 8 Q. This was a response to his letter, and in your letter  
 9 you talk about the minister having made  
 10 "misrepresentations and half-truths and faulty logic",  
 11 don't you?  
 12 A. If you read the whole letter, you'll understand what  
 13 that means, yes.  
 14 Q. Well, when you read the whole letter, what we can see is  
 15 that at this stage you are denying any responsibility  
 16 for any environmental damage, and you are also saying  
 17 it's impossible to take actions to perform what he wants  
 18 you to do; yes?  
 19 A. No. We're not responsible for what happened in the  
 20 1920s and the 1930s; no mining company can be --  
 21 Q. Well, we can all agree -- we've got limited time. I'm  
 22 not going to take you -- just listen to my question.  
 23 I'm not going to take you to every paragraph --  
 24 MR COWLEY: I request that you let him finish his answer,  
 25 because you did cut him off again, and you asked him

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18:13 1 a multi-part question and he was answering it. Please.  
 2 THE PRESIDENT: Yes, please let him finish his answer.  
 3 A. We were put in a very unpleasant position because this  
 4 is a problem area, and I think you can see photos of it.  
 5 They did do ground sluice mining. We cannot be  
 6 responsible for -- no company can -- for degradation  
 7 without specific agreement. This would cost millions of  
 8 dollars to remediate this. You can do lots and lots of  
 9 short-term fixes.  
 10 The problem that they were having was that there was  
 11 silt in the Sebeya River. The amount that actually  
 12 comes -- this is a comparatively stable place. The  
 13 amount of silt that comes from it is minimal. This is  
 14 where the river begins. This is not partway down the  
 15 river, where there is substantial silt coming into it.  
 16 So what we did was we brought an environmental team  
 17 from Czech and Slovakia, Dr Novak, who is a famous  
 18 environmental specialist, with a team from his  
 19 university, and we spent -- they spent the better part  
 20 of two years identifying practical procedures to  
 21 eliminate the silt from this part of the Sebeya River  
 22 catchment.  
 23 The majority of the problem is downstream, when it's  
 24 agricultural run-off. Here we like to think we've made  
 25 a significant impact. In fact --

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18:15 1 MR HILL: Mr Marshall, I've listened to that answer. It  
 2 wasn't an answer to my question. Now will you focus on  
 3 my question.  
 4 The question was that you were at this stage denying  
 5 responsibility for any environmental damage and at this  
 6 stage saying it's impossible to take further action;  
 7 correct?  
 8 A. No. It's a multi-part question, and I'm trying to  
 9 answer each part.  
 10 Q. Well --  
 11 A. We had no liability and no responsibility even under  
 12 Rwanda law for it. I was trying to make him understand  
 13 that even though he had been provoking a riot in front  
 14 of 300 people, it was not our -- it was not damage that  
 15 we had done and it was not damage that we had  
 16 a responsibility to fix, but we would fix it and, step  
 17 by step, make efforts to do that.  
 18 Q. Do you want to show us where in the letter you say to  
 19 Minister Kamanzi that you would fix it? It starts at  
 20 page 1.  
 21 A. I didn't say we would fix it; I said we would take  
 22 remedial steps. We brought in a team to --  
 23 Q. That's the point I'm trying to get to, if you'll listen  
 24 to my question. You don't in fact, in this letter,  
 25 indicate you will take any remedial steps. I completely

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18:16 1 accept you do later, and I'm going to come to that.  
 2 But my point, which I'm trying to get you to focus  
 3 on, is that in response to Minister Kamanzi's  
 4 observation about environmental damage, your immediate  
 5 reaction is not to offer any acceptance that there had  
 6 been environmental damage by NRD and not to offer any  
 7 remedial action. That's correct, isn't it? And we can  
 8 look at the whole letter: it's six pages long.  
 9 A. I don't think so. Let me read both letters and then  
 10 I'll respond. But we were -- certainly we felt like we  
 11 were at risk of our lives, so we may have been upset.  
 12 Q. We've got pages 1 and 2 on the screen. You can take it  
 13 from me there's no acceptance --  
 14 A. Can I read it?  
 15 Q. Well, I'm trying to move along as quickly as possible.  
 16 A. I understand. You asked me a serious question.  
 17 Q. We're looking for either an acceptance by you that NRD  
 18 has done anything, contributed at all to the  
 19 environmental damage, or an offer of remedial action.  
 20 A. Okay. Let me read the letter. (Pause)  
 21 You will note that it is Giciye, not Sebeya.  
 22 (Pause)  
 23 Okay, can I move on?  
 24 Q. Yes, we can put the next two pages up, please, FTI.  
 25 (Pause)

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18:22 1 A. Okay. (Pause)  
 2 Yes, it speaks about termination.  
 3 Q. So you've now read it --  
 4 A. No, I haven't. Just one moment.  
 5 Q. Sorry. (Pause)  
 6 A. Yes, I'm sorry. Go ahead.  
 7 Q. So you've now read it. And I'm right, aren't I, there  
 8 is no acknowledgment by NRD of any contribution by NRD  
 9 to environmental damage and there's no offer at all to  
 10 remediate at this stage, is there?  
 11 A. The point of the letter, and I think if you read it  
 12 correctly, is that we do not acknowledge any liability  
 13 or responsibility for any of this silting at the upper  
 14 ends of the Sebeya River catchment.  
 15 This is where the river begins, okay? Just so you  
 16 understand --  
 17 Q. No, that really is a digression.  
 18 A. You want to know what --  
 19 Q. I want you to focus on my question. That is  
 20 a digression.  
 21 A. You want to understand --  
 22 THE PRESIDENT: Sorry, could I just intervene a moment.  
 23 The question was a very simple one, susceptible to  
 24 an extremely short answer. Please try to listen to the  
 25 question and answer it.

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18:25 1 MR MARSHALL: Okay. Thank you for that.  
 2 No, I am offering implicit help. We had been  
 3 offering help before, and it did continue.  
 4 MR HILL: Well, I'm going to suggest you clearly weren't.  
 5 I'm also going to suggest -- and I'm going to give you  
 6 one opportunity to comment on it -- that accusing  
 7 a minister, in response to a fair letter about  
 8 environmental damage, of "misrepresentations,  
 9 half-truths and faulty logic" is hardly the action of  
 10 a responsible professional mining company, is it?  
 11 A. I disagree. Under those circumstances, I disagree.  
 12 Q. Can we go to C-043. This is a report that you did  
 13 commission in relation to the damage on the mine after  
 14 this letter. This is Dr Twagiramungu's report of  
 15 November 2011.  
 16 Can you go to the second page. He has his findings,  
 17 bottom half of the page, where he says:  
 18 "The most significant environmental problems found  
 19 are the following:  
 20 "There is a continuous pollution of Sebeya river by  
 21 sediments from Nyatubindi mining sites,  
 22 "There are numerous areas in Nyatubindi where gully  
 23 erosion and landslips are taking place as a result of  
 24 mining activities and non-implementation of the best  
 25 management practices of erosion and sedimentation

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18:27 1 control,  
 2 "There are many vertical trenches from mining sites  
 3 towards Sebeya river (Nyatubindi I, II and III)  
 4 "The horizontal trenches (ditches) ... are in bad  
 5 conditions (not maintained) and need to be widened in  
 6 order to have the required size comparatively to the  
 7 volume of the sediments,  
 8 "The existing sedimentation ponds are not enough and  
 9 are not well maintained ..."  
 10 And then the last point:  
 11 "Some unknown individuals are still mining in  
 12 informal and in disorganized manner resulting in more  
 13 environmental and socio-economical concerns."  
 14 Then he has his action plans, and they include:  
 15 "1) Construction of check dams ...  
 16 "2) Upgrading the existing sedimentation ponds,  
 17 "3) Construction of two new sedimentation ponds ...  
 18 "4) Revegetation  
 19 "5) Filling the created gullies,  
 20 "6) Planting trees ...  
 21 "7) ... ensur[ing] ... security, [and]  
 22 "8) Training NRD's workers of Nyatubindi on the best  
 23 environmental practices."  
 24 So what Dr Twagiramungu found was that there was, in  
 25 fact, continuous and continuing environmental damage

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18:28 1 being done which needed action; yes?  
 2 A. No, Nyatubindi was closed. There was a security problem  
 3 because illegal miners were working there and making  
 4 some damage, and that was the reason we did go in there.  
 5 And we, I think, largely followed this plan, although  
 6 I would have to get the environmental people to say what  
 7 was able to be done. Maybe all of it was, I don't know.  
 8 But it was only about illegal miners. There was no --  
 9 it was closed just for the reasons you're talking about.  
 10 Q. Yes, it had just been closed, and what this geologist is  
 11 finding is that it's the activities of NRD that have  
 12 indeed been contributing to the environmental damage;  
 13 correct?  
 14 A. No, it was closed during Starck's time, and maybe before  
 15 Starck. I don't know that any mining was ever done.  
 16 When I say "just closed", I mean it's closed completely,  
 17 not like partly open or ...  
 18 Q. This is referring to NRD's workers on Nyatubindi being  
 19 trained.  
 20 A. Yes. Yes, but that's creating dams and limiting the  
 21 silt coming down; that's not mining they're being  
 22 trained for.  
 23 Q. What was found was that NRD's mining activities were  
 24 still a contributing factor, whatever the historic  
 25 problems with the colonial era; correct?

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18:29 1 A. No. NRD wasn't mining there. As far as I know, NRD  
 2 never mined it.  
 3 Q. Can you go to bundle C-044. We have in this letter  
 4 a change of tone from you, because you're writing now to  
 5 the mayor of Ngororero District. In the first three  
 6 paragraphs of this letter, you say:  
 7 "This letter is to update you on the site work and  
 8 remedial activities ongoing at Nyatubindi site ...  
 9 "Since our meeting on October 25 ... NRD has  
 10 retained an environmental expert ... to guide the NRD  
 11 remediation works. Dr Fabian researched and wrote  
 12 a report in 2010 entitled 'Rapid Environmental  
 13 Assessment of Nyatubindi mining site' and has repeatedly  
 14 visited the ... site. He prepared a remediation plan  
 15 for the ... site and has been supervising the hundreds  
 16 of workers that have been upgrading the horizontal  
 17 trenches, reinforcing the weirs and constructing new  
 18 sediment pools."  
 19 And then:  
 20 "In addition to the hundreds of casual laborers that  
 21 have been hired by NRD to improve the ... site and  
 22 reduce the sedimentation into the Sebeya River, NRD has  
 23 put into place a variety of additional improvements."  
 24 It's fair to say, isn't it, that this is a change of  
 25 tone, because you were acknowledging there was a problem

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18:31 1 caused by NRD; yes?  
 2 A. If you perceive a change in tone, I'm not going to argue  
 3 with you. We believe that Minister Kamanzi had put our  
 4 lives at risk. I was very unhappy. I did deny, and  
 5 I continued to deny as long as I was in Rwanda, that we  
 6 were responsible for any of the Belgian mining.  
 7 As far as I know, these sites were closed from 2007,  
 8 and maybe even in REDEMI time. There are people who go  
 9 in there and illegally mine, and they don't pay  
 10 attention to the runoff. So this exercise was to repair  
 11 what those illegal miners had done.  
 12 Q. I don't accept that, but I'm going to move on to  
 13 a different topic and ask you now to go to R-018. We're  
 14 back on the question of the licences.  
 15 This is a letter from January 2012 from  
 16 Minister Kamanzi to you. And he deals with the  
 17 December 2011 meeting that I was discussing with you  
 18 a little earlier, and he says:  
 19 "I received the information of what was discussed in  
 20 the meeting held on 12/12/2011 between NRD and our  
 21 representatives from RNRA/Geology and Mining Department,  
 22 with the objective to agree on the nature of the new  
 23 contract with NRD.  
 24 "Given that the resources evaluation accomplished  
 25 under your previous contract fell far short of the level

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18:32 1 expected, it was put to you that we would only be  
 2 prepared to negotiate with you possible new licences on  
 3 only two of the five concessions you held."  
 4 So just pausing there, the point made is that the  
 5 resources evaluation under the previous contract "fell  
 6 far short of the level expected", and you were being  
 7 told again that your November 2010 application was  
 8 considered as inadequate and you hadn't complied with  
 9 the contract; correct?  
 10 A. That's right. But this letter is not true.  
 11 Q. Well, it's Minister Kamanzi's letter, isn't it?  
 12 A. It is Minister Kamanzi's letter, but Dr Michael had  
 13 misreported what the meeting -- what had been said in  
 14 the meeting. I was never made an offer of two out of  
 15 five concessions. In fact, the discussion never went in  
 16 that direction. There was no discussion like that.  
 17 Q. And you say he had also -- sorry, please finish.  
 18 A. I followed up in a subsequent letter, answering that  
 19 letter in that vein.  
 20 Q. The government did make clear to you, didn't they, that  
 21 they were prepared to negotiate for two out of the five  
 22 concessions; yes?  
 23 A. No. No.  
 24 Q. Mr Kamanzi is also making clear that he's regarding your  
 25 previous contract as indeed a previous contract, and not

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18:35 1 contract for you and sent it to cabinet, and it must  
 2 have been totally obvious to you when you received this  
 3 letter?  
 4 A. All the concession holders were in exactly the same  
 5 position. Nobody had a long-term licence. Nobody had  
 6 any more than performance and waiting for Rwanda to  
 7 perform. So we didn't think of ourselves as any  
 8 different.  
 9 Q. Back to my question. It was clear to you that you did  
 10 not have a long-term agreement that had been approved by  
 11 Minister Kamanzi and submitted to cabinet?  
 12 A. I believe that we had.  
 13 Q. Well, how could you have believed that when you got this  
 14 letter?  
 15 A. Because I don't know what their internal politics are.  
 16 I knew that it was in front of the cabinet. I knew that  
 17 at the time that he had approved it, it was okay. Did  
 18 he have the ability to withdraw it? No, I didn't know,  
 19 and I didn't mind. I was waiting just for the decision  
 20 of the cabinet, nothing else.  
 21 Q. You've mentioned your response to this. Let's have  
 22 a look at it. It's at C-039.  
 23 You start off by telling Minister Kamanzi he has  
 24 been misinformed.  
 25 A. Yes.

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18:34 1 a continuing one; you see that in the second paragraph?  
 2 A. Yes.  
 3 Q. And you knew very well that -- this is now in  
 4 January 2011 -- there had been no long-term contract  
 5 approved by the minister, who had been Mr Kamanzi, and  
 6 then sent to cabinet, didn't you?  
 7 A. I'm sorry, you said January 2011?  
 8 Q. Sorry, January 2012.  
 9 A. Yes. No, we were being told repeatedly that it was  
 10 still in cabinet and that it was always -- the cabinet  
 11 has a list and they determine which issues can be  
 12 determined by the cabinet, and that ours had not been  
 13 included on the list.  
 14 Dr Michael I knew to be -- have a very bad  
 15 relationship. I could not pay him bribes. I was in  
 16 a difficult position with him. He expected to be the  
 17 owner of NRD, as he repeatedly told me, and that it was  
 18 unfair that ...  
 19 Q. Just to be clear, none of those points you've just made  
 20 about Dr Michael have ever been said before in any  
 21 witness statement by you, have they?  
 22 A. I think they have.  
 23 Q. Well, we can look at your witness statements.  
 24 Coming back to the point, it's quite clear, isn't  
 25 it, that Minister Kamanzi had not approved a long-term

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18:36 1 Q. You then go on in the second paragraph, I would suggest,  
 2 to quibble at the language. You say:  
 3 "First, Dr Michael never stated that the ministry  
 4 'would only be prepared to negotiate ... possible new  
 5 licences on only two of the five NRD concessions'.  
 6 A. Yes.  
 7 Q. "In fact ... he made one mention (I believe that he used  
 8 the word 'prefer') that NRD only retain two licenses."  
 9 So that's your quibble, is it?  
 10 A. I don't think it was a quibble. I don't think that he  
 11 even made it a question. He may have made a statement  
 12 to the room at large, but it was being done in  
 13 translation and I don't know. I don't think so. I was  
 14 told by the others who speak Kinyarwanda that if he had  
 15 said that, he said, "I would prefer you to keep two  
 16 licences"; not as an offer, not as a requirement.  
 17 Q. We then look at what you say at the bottom paragraph on  
 18 this page. You say:  
 19 "... it is not true, as alleged, that I stated that  
 20 if NRD does 'not get the five ... concessions, [NRD]  
 21 would not accept [the Ministry's] offer to negotiate an  
 22 agreement over two of them as suggested to [NRD].'  
 23 I certainly never made such statement and I was never  
 24 even aware that Dr Michael was informing me that the  
 25 Ministry expected to take three of the concessions

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18:37 1 back."  
 2 Now, at that point you only had a licence extension  
 3 until February 2012, didn't you? Yes?  
 4 A. I don't recall what the issue is.  
 5 Q. You were given a six-month extension in  
 6 Minister Kamanzi's August 2011 letter; yes?  
 7 A. Yes. It was commonly understood in the mining community  
 8 that those extensions had a political purpose and were  
 9 not connected to the negotiations. But that may well be  
 10 true, that that six-month period finished; I don't know.  
 11 Q. Minister Kamanzi told you that the six-month period was  
 12 connected to negotiations, didn't he? Because that was  
 13 the six-month period that you had to try and sort things  
 14 out; yes?  
 15 A. Yes. He gave -- if you look at the long-term -- or  
 16 rather the extensions, they were for odd periods. One  
 17 was only for two weeks, for example. It seemed to have  
 18 a political dynamic and nothing to do with what was  
 19 happening. He would not --  
 20 Q. Just --  
 21 A. You want to know if I was negotiating. The only  
 22 negotiation I had was through Dominique and the document  
 23 that was in front of the cabinet.  
 24 Q. Just to understand the point you make at the bottom of  
 25 this paragraph, you say:

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18:39 1 "... [you're not] even aware that Dr Michael was  
 2 informing me that the Ministry expected to take three of  
 3 the concessions back."  
 4 Well, given that the licences were due to expire in  
 5 February, and given Dr Michael was saying he only wanted  
 6 to negotiate in respect of two of them, it's quite  
 7 obvious that what he was expecting, wasn't it, was that  
 8 three of the concessions would lapse and would remain --  
 9 go back to Rwanda; yes?  
 10 A. The meeting wasn't even about these licences. The  
 11 meeting was what was happening in different mining  
 12 areas. If he made these cursory messages, they were not  
 13 made clear to me.  
 14 Q. This was a confected, made-up surprise on your part in  
 15 answer to Mr Kamanzi's letter, wasn't it?  
 16 A. No, it was not.  
 17 Q. Can we go to the next page and look at the second  
 18 paragraph. You say:  
 19 "It must be also noted that your letter of  
 20 26 January 2011 is the first indication of any kind that  
 21 [NRD] was in any respect deficient in its 'resources  
 22 evaluation. NRD vigorously disputes that such research,  
 23 as you put it, 'fell far short of the level expected'.  
 24 Do you see that?  
 25 A. Yes.

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18:40 1 Q. You knew very well that the failure in respect of the  
 2 feasibility report was identified in Minister Kamanzi's  
 3 letter in August 2011; yes?  
 4 A. If you could bring it back up. But I -- to me, we were  
 5 still in the process of identifying the long-term  
 6 concession, so it could not have been deficient.  
 7 Q. He told you the respects in which the 2010 application  
 8 was deficient, didn't he? He told you you hadn't met  
 9 your obligations in Article 2 of the contract in respect  
 10 of the feasibility report?  
 11 A. Okay, I -- for reasons I don't recall right now, I did  
 12 not -- if that was what it said, it was not something  
 13 that I took seriously, because we had our long-term  
 14 concession in front of the cabinet.  
 15 Q. This is another piece of confected surprise, isn't it?  
 16 A. No, it's not. This is the process. Not everything is  
 17 pretty there.  
 18 Q. Then you say in the next paragraph:  
 19 "... your letter is a great shock ... We evidently  
 20 misunderstood your message relayed through  
 21 Mr David Bensusan that NRD was performing well and that  
 22 the concessions will be extended, presumably under the  
 23 terms of the draft contract which was approved by RNRA  
 24 Committee and the RDB."  
 25 Again, what you're doing there is suggesting things

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18:41 1 to the minister that simply are not the case,  
 2 aren't you?  
 3 A. No, this is -- I don't do that. I -- what I understand  
 4 to be the case, that's what I articulated.  
 5 Q. You knew very well that NRD's performance was not  
 6 considered satisfactory and the contract had been  
 7 regarded as no longer being on foot, with the  
 8 obligations unfulfilled; yes?  
 9 A. No. I knew that the Supervision and Licensing Board  
 10 committee had approved it, had found it acceptable; in  
 11 fact, they'd found it the best of all the applicants.  
 12 If Dr Michael or Minister Kamanzi had an opinion without  
 13 looking at the documents or without reading the  
 14 application, then I followed what was the detailed  
 15 analysis by the board.  
 16 Q. No, you suggest here that there has been a "draft  
 17 contract ... approved by RNRA Committee and the RDB".  
 18 That's a different version of events from what you now  
 19 say in this arbitration, which is that there's  
 20 a contract approved by Dr Biryabarema and  
 21 Minister Kamanzi and provided to cabinet.  
 22 A. "RNRA", that's the ministry. So that would have been  
 23 the Supervision and Licensing Board.  
 24 The RDB, I don't know -- I don't recall now what  
 25 their position has been or why I thought that was the

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18:43 1 case.  
 2 Q. What you're not saying is, "Look, Minister Kamanzi,  
 3 you've approved this contract and submitted it to  
 4 cabinet". And if that was what you thought had  
 5 happened, you would have said so?  
 6 A. As far as I knew, it had -- I've given you what  
 7 I understood. The fact that Dr Kamanzi was jockeying  
 8 for a negotiating position to get tougher terms, on the  
 9 long-term contract, or what his motivations might be,  
 10 I know that he didn't read the application or the  
 11 long-term licence.  
 12 Q. No, but your case, your version of events you're trying  
 13 to ask the Tribunal to accept, is that by this point  
 14 Minister Kamanzi and Dr Biryabarema have in fact  
 15 approved a long-term licence and submitted it to  
 16 cabinet.  
 17 A. That's what I was told.  
 18 Q. But if you had really been told that, you would have  
 19 said so loud and clear, because you don't hold back in  
 20 your correspondence. Correct?  
 21 A. Well, you think that. I think that I am tactful, unless  
 22 my life has been threatened.  
 23 Q. Even on your evidence and allegations in these  
 24 proceedings, no one is threatening your life, are they,  
 25 at this point? On your case.

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18:44 1 A. Sorry?  
 2 Q. Even on your allegations, there's no threat to your life  
 3 at this stage?  
 4 A. At this point, no.  
 5 Q. What you also do, we can see in this letter, is copy it  
 6 to the Prime Minister, the Minister of Justice, CEO RDB,  
 7 the ambassador and various lawyers. Why were you doing  
 8 that?  
 9 A. I don't recall the circumstance, but I wanted to make  
 10 sure that it was generally known what the process was.  
 11 If he was going to flip-flop and decide that it was not  
 12 an acceptable document, then that's fine.  
 13 Q. You were trying to bully Minister Kamanzi, weren't you?  
 14 A. No. I wanted to make sure that the process was fair and  
 15 transparent.  
 16 Q. You were also putting a false version of events in this  
 17 letter --  
 18 A. No, I'm not putting a false version --  
 19 Q. -- and then copying it to a number of other people at  
 20 the same time; yes?  
 21 A. No, I'm not putting a false list of events in this  
 22 letter. We had -- and I understand this to be  
 23 calculated in the damages section -- but we had put  
 24 millions of dollars in already, and we were at risk of  
 25 losing everything. I was very worried.

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18:45 1 Q. [REDACTED] ?  
 2 A. No.  
 3 Q. Just look at the penultimate paragraph:  
 4 "NRD requests that you give consideration to the  
 5 provisions of the Bilateral Investment Treaty. If the  
 6 Ministry anticipates termination of any or all the NRD  
 7 concessions, such termination is a 'taking' or  
 8 expropriation of the assets of American investors. The  
 9 [Bilateral Investment Treaty] provides that the American  
 10 investors will be compensated before the asset is  
 11 expropriated. (Please see the attached summary ...)"  
 12 So you are already lining up your correspondence,  
 13 aren't you, for a claim of the sort you've now brought  
 14 in this arbitration?  
 15 A. I was very worried, and the people that I was working  
 16 for in the military were very worried.  
 17 Q. Can we go to Mr Sindayigaya's second witness statement  
 18 at paragraph 6.4.  
 19 A. All I can do is -- I don't -- I can't -- the political  
 20 system there is what it is. To bring a claim in  
 21 a Rwandan court for enforcement, the Rwandan courts  
 22 would not recognise me. I can't sue them in a US court.  
 23 The only way I can bring a claim is under the treaty:  
 24 that's my only mechanism to get a review.  
 25 So, you know, as far as I was concerned, I had

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18:47 1 a very good relationship with everybody in the  
 2 government except these two people, and then  
 3 Minister Evode as well.  
 4 Q. Let's look at what Mr Sindayigaya says:  
 5 "On several occasions, I recall Mr Marshall telling  
 6 me that if NRD was not granted licences, he would sue  
 7 the government for \$ 15 million USD. I remember being  
 8 surprised by this: it seemed a huge sum to be claiming  
 9 given the company was an artisanal operation based on  
 10 miners using traditional tools of their own (namely  
 11 picks and shovels). The only substantive investment at  
 12 the concessions were the Rutsiro plant (which was  
 13 a commercial failure as I explained above) and a fleet  
 14 of four trucks."  
 15 It's right, isn't it, that you told Mr Sindayigaya  
 16 that if NRD was not granted licences, you would sue the  
 17 government for US\$15 million; yes?  
 18 A. No. No, I think this is a fraudulent document. That  
 19 conversation never happened and it's not something  
 20 I would even have conveyed to him. What would --  
 21 I would have no purpose in conveying information like  
 22 what our expectation was.  
 23 Q. Now, we were looking -- we are looking -- sorry, I'll  
 24 start that again.  
 25 We have been looking at late 2011. It is right to

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18:48 1 say, isn't it, that from 2011 onwards, you started  
2 borrowing money on behalf of NRD from Mineral Supply  
3 Africa; yes?  
4 A. The only lines of credit available in the country are --  
5 if you're in the minerals industry, are from the mining  
6 traders. So I did have a line of credit of about  
7 \$100,000 from MSA.  
8 Q. If we go to Mr Kayihura's witness statement at  
9 paragraph 17. He had been working at Mineral Supply  
10 Africa. He explains that:  
11 "In 2011 NRD were working at some mines that were  
12 potentially very good, particularly the mines at Nemba  
13 and Rutsiro. Mr Bensusan and I were interested in  
14 working with Mr Marshall and NRD to develop these mines.  
15 Mr Marshall knew of and exploited our interest. He  
16 regularly asked MSA to lend NRD money allegedly for  
17 investments in the mines and the infrastructure in the  
18 mines. Between 2011 and, in and around, 2015, MSA  
19 provided around USD\$500,000 to NRD through a series of  
20 loans none of which had been repaid when I left MSA at  
21 the end of 2016."  
22 That's accurate, isn't it?  
23 A. No, that's not accurate.  
24 Q. Which aspect do you say is not accurate?  
25 A. David Bensusan was working with General Kabarebe, who

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18:51 1 Solange: we could not figure out what she was doing.  
2 And David claimed that he was advancing her money, which  
3 he never got approval from us on.  
4 So as far as I'm concerned, it was a nonsense  
5 discussion, unless he could show us something of where  
6 this \$500,000 went.  
7 Q. Let's see what Mr Sindayigaya says. He's the  
8 accountant; you suggest he's a bookkeeper, but he  
9 describes himself as a senior accountant. Let's look at  
10 paragraph 23 of his first witness statement.  
11 A. David Bensusan asked us to give verification to his  
12 auditors that that was the debt, and obviously we  
13 laughed and refused. And we took the issue to David's  
14 parent, Cronimet(?), and explained what had been going  
15 on, and that is what led to David being fired.  
16 Q. Well, Mr Kayihura has confirmed this \$500,000 figure.  
17 Mr Sindayigaya, who is at the company, is able to say,  
18 in paragraph 23 in the middle:  
19 "In total, between November 2011 and September 2012  
20 when I left NRD, he ..."  
21 That's you:  
22 "... borrowed around \$300,000."  
23 This is from Mineral Supply Africa. So that's  
24 right, isn't it, that you were borrowing hundreds of  
25 thousands of dollars from Mineral Supply Africa?

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18:49 1 was the then Minister of Defence, in bringing minerals  
2 from Congo. They very badly wanted us to participate in  
3 smuggling minerals from Congo and representing them as  
4 having been mined in Rwanda so that they could be DRC  
5 conflict-free as defined under the statute, the US  
6 statute. That was the SEC requirement.  
7 We had a letter of credit for \$100,000 -- a line of  
8 credit for \$100,000. All companies had the line of  
9 credit with the traders. It was never \$500,000.  
10 We had a major falling-out with David because he was  
11 involved in a number of corrupt schemes. We contacted,  
12 among other people -- we and other people contacted his  
13 parent entity and explained what he was doing with  
14 Mr Kayihura and the fraud that they were perpetrating on  
15 people.  
16 I attended business meetings with General Kabarebe  
17 and David Bensusan. They wanted our concessions; they  
18 wanted us to merge with their company. For us it made  
19 no sense because -- and I know this may be getting away  
20 from it -- but I found them dangerous and that it would  
21 end badly for us.  
22 For David to claim that we owed him -- or in this  
23 case Fabrice to claim that we owed him \$500,000 was  
24 nonsense. We had one of his staff people out in the  
25 western concessions on secondment, a woman named

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18:53 1 A. Well, we had a line of credit for \$100,000, and we had  
2 left several pieces of machinery as security for that  
3 line of credit. There was nobody else who had to  
4 provide a line of credit -- I mean, security for it. We  
5 were happy to do so. I don't -- if it got to \$120,000,  
6 I don't know. But it certainly never got to \$300,000,  
7 much less \$500,000.  
8 Q. Well, I suggest you went to both \$300,000 by  
9 September 2012 and \$500,000 rather later. That's  
10 correct, isn't it?  
11 A. No, that's a lie.  
12 Q. Now, it's also right, isn't it, that you were borrowing  
13 this money from MSA ostensibly for investment into the  
14 mines, but it wasn't going into investment at all; it  
15 was going into general cash flow and your own personal  
16 expenses? Yes?  
17 A. Certainly none of it went to my own personal expenses.  
18 I would have to go back and look at what the specific  
19 use of the money was; I can't say off the top of my  
20 head. But certainly --  
21 Q. NRD -- sorry, please finish.  
22 A. Certainly not personal expenses.  
23 Q. NRD continued to be in a worsening financial state under  
24 your control, didn't it?  
25 A. No.

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18:54 1 Q. You weren't --  
 2 A. We had been able to pay off all of the outstanding NRD  
 3 debts that were there when we got there. We had been  
 4 able to turn the company around. But for the taking of  
 5 the tags, we were doing well.  
 6 Q. You weren't paying --  
 7 A. (Overspeaking).  
 8 Q. You weren't paying your employees either, were you?  
 9 A. Yes, we were.  
 10 Q. And we see that result in a series of court judgments?  
 11 A. No, we -- to this day, we don't know who these people  
 12 were. If they were --  
 13 Q. It's right -- sorry.  
 14 A. If they were NRD employees, they were certainly NRD  
 15 employees before we got there, during Zarnack or the  
 16 Starck periods. We could never find out who they were.  
 17 Q. It's also right, isn't it, that from the time you took  
 18 over, production went materially down from production  
 19 levels at the time of the Starck period; yes?  
 20 A. That depends on what period. You know, certainly with  
 21 regard to Nemba, it went up significantly, when they  
 22 suspended our operations in our western concessions just  
 23 because of the Sebeya catchment, even though our areas  
 24 didn't all go into the Sebeya catchment, yes. It went  
 25 down because we were suspended.

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18:55 1 Q. It had already gone down well before the suspension that  
 2 you're talking about, hadn't it?  
 3 A. Not that I know of.  
 4 Q. Correct?  
 5 A. Not that I know.  
 6 Q. We'll come back to that.  
 7 A. Okay.  
 8 Q. In early 2012 Professor Rupiya left, didn't he?  
 9 A. He retired.  
 10 Q. He explains in his witness statement that he asked for  
 11 early retirement because the business was in chaos, you  
 12 were not paying the miners, and as a result they started  
 13 to sell minerals and steal company property. And that  
 14 fairly sums up the position in early 2012, doesn't it?  
 15 A. No. And I need to take a moment just to explain to you  
 16 how the artisan mining process works.  
 17 We organise the mine into gangs. They associate  
 18 usually by family, but sometimes family and friends.  
 19 There's a gang leader, and the gang leader has  
 20 supervisory expertise and authority.  
 21 The miners mine the minerals -- and this is true for  
 22 all mines, without exception. The miners mine the  
 23 minerals. We take it as a group, when there's enough to  
 24 do it: usually it's about once a week. The wives in  
 25 particular didn't want it less than once a week because

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18:57 1 they wanted a lump sum that they could use for schools  
 2 and so on. We would take it up to a trader like MSA,  
 3 sell it to them, and bring the cash back -- there were  
 4 no bank accounts, there was no other mechanism, there  
 5 were no cheques -- and bring the cash back to the mine  
 6 and give it to the miners.  
 7 In principle, the minerals are actually their  
 8 minerals. They were allowed to get a small margin off  
 9 them. But these -- we're selling for them, in practice.  
 10 All the mines operate in the same way.  
 11 Q. Just coming back to my question --  
 12 A. Sorry, one last thing, just so you understand.  
 13 There's security. There's speciality functions,  
 14 like people who have expertise in blasting and  
 15 supervision. So there are some permanent employees:  
 16 they always get paid. We've never -- there was never  
 17 an instance where somebody didn't get paid.  
 18 Q. Just to come back to my question, Professor Rupiya  
 19 explains that he left in early 2012, at a point where  
 20 you were not paying the miners; yes?  
 21 A. No, for the reason I just explained.  
 22 Q. Mr Sindayigaya also makes this point, if you look at  
 23 paragraph 22 of his witness statement.  
 24 A. There are no miner employees. They get paid when the  
 25 minerals are sold, and they get paid from those

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18:58 1 proceeds.  
 2 Q. But you weren't doing so, and we can see that from  
 3 paragraph 22 also of Mr Sindayigaya's witness statement.  
 4 A. I'm sorry, you don't understand the process. There  
 5 would be riots if we didn't bring the money back.  
 6 Q. There were, and that's the point. Mr Sindayigaya  
 7 explains it:  
 8 "Around May 2012, we stopped paying for the miners  
 9 for their minerals and from then on it was very  
 10 difficult for me to visit the mines as I would be  
 11 confronted by hundreds of angry miners asking why they  
 12 were not being paid. I stopped going to the mines in  
 13 early July 2012, at which point NRD owed around  
 14 RwF 50-60 million to the miners. By the time I left the  
 15 company in September 2012, the miners were owed about  
 16 Rwf 100 million for minerals that they had sold to NRD  
 17 but for which they had not been paid."  
 18 That's correct, isn't it?  
 19 A. Entirely apocryphal.  
 20 Q. It reflects also Mr Rupiya's evidence, and it also shows  
 21 that you were running this company into financial  
 22 difficulties; yes?  
 23 A. No. And in fact, the very next day they would have gone  
 24 to the labour inspector -- there was never a labour  
 25 claim against us -- if that had been the case. And --

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18:59 1 Q. There were claims -- I'm sorry, I'm interrupting; you  
2 finish.  
3 A. The -- not that I'm aware of, there were no claims.  
4 Certainly they never went, as far as I know, to the  
5 labour inspectors and said, "We haven't been paid for  
6 our minerals". This is made up from whole cloth, as far  
7 as I know, and it sounds to me very much like they  
8 coordinated to write it.  
9 Q. I'm going to go back to the licence story. Can we go to  
10 C-034. This is a letter from Minister Kamanzi again and  
11 it's dated 20 February 2012. He says:  
12 "This is in reference to my letter ... extending the  
13 special license you had in the above concessions for  
14 six ... months in order to negotiate the terms of the  
15 new contract.  
16 "It has not been possible to conclude the contract  
17 in the above time of extension. I understand the  
18 absolute necessity to conclude this agreement as soon as  
19 possible for strong investor confidence. However,  
20 because of the need for more time to finalize the  
21 process of contract negotiations, I extend your existing  
22 license for three months ... I am certain that this is  
23 enough time for us to conclude a good contract for this  
24 partnership.  
25 "Allow me to thank you for your continued commitment

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19:00 1 to invest in the Mineral Sector in Rwanda."  
2 So he's expressing optimism that a contract can be  
3 agreed; yes?  
4 A. Yes, but he never followed up with the meeting.  
5 Q. But he's also, at the same time, not giving you any  
6 guarantee or assurance that you'll get long-term  
7 licences, is he? Correct?  
8 A. This is not the only communications we had.  
9 Q. And by this stage you hadn't even applied for any  
10 long-term licences, had you?  
11 A. Yes, we had.  
12 Q. And nothing had changed positively for NRD since you  
13 acquired NRD and were told by Mr Ehlers that the most  
14 you could hope for would be a renewal of five-year  
15 licences?  
16 A. We were the only concession holder who did not get  
17 a long-term licence, and our -- all of our application  
18 materials, investments and studies were equal or better  
19 than that of all the other concession holders.  
20 Q. Can we now go to R-040.  
21 A. What is the date of this again, I'm sorry?  
22 Q. This is February 2012.  
23 A. February what?  
24 Q. 2012. So, in other words, do you remember, August 2011  
25 he had given you a six-month extension; February 2012 he

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19:02 1 gives you another three-month extension?  
2 So I'm now going to a new document, which is R-040.  
3 This is an evaluation of your licence application in  
4 May 2012 by Mr Imena, who would later become the  
5 Minister of State in Charge of Mining. At this stage he  
6 was a mining geologist in the government Geology and  
7 Mines Department, and you can see on page 1 he's  
8 evaluating the material in your application of  
9 November 2010. Do you see that?  
10 A. Yes.  
11 Q. You can see also that one of the things that he includes  
12 in his list of sources of information is Dr Biryabarema  
13 Michael's report; do you see that?  
14 A. I see it. But I don't know if --  
15 Q. So you were suggesting earlier that that report was some  
16 form of fabrication for the purposes of this  
17 arbitration. You can see, can't you, it's one of the  
18 things relied on in May 2012 for this further evaluation  
19 by Mr Imena; yes?  
20 A. I don't know that this document is -- I was never aware  
21 of Evode ever evaluating us or ever visiting our mine or  
22 ever talking to anybody on our company. I doubt that  
23 this is a real document. And for him to refer to yet  
24 another fraudulent document is not surprising for me.  
25 Q. So you're suggesting, are you, that this is another

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19:03 1 fraudulent document; is that right?  
2 A. I would believe it to be. But I haven't read it all  
3 yet, so I don't know what he's saying.  
4 Q. Let's start on page 1. You see he's evaluating the  
5 material in your application of November 2010; do you  
6 see that? That's item 2 under "Main source of  
7 information". And the reason he's evaluating that is  
8 that's the only licence application you had made by that  
9 point; correct?  
10 A. You'll have to scroll down. I don't see that here.  
11 Q. It's item 2 under "Main source of information".  
12 A. "Application for the Renewal of Exploration". But he  
13 doesn't include the second line, does he?  
14 Q. Sorry, I don't understand what you just said. Just  
15 repeat that, please.  
16 A. Well, the application is for two things: renewal of  
17 exploration licences and allocation of licence.  
18 Otherwise you wouldn't have -- we wouldn't have put it  
19 on the front of the 2010 application.  
20 Q. I'm going to suggest to you that clearly the document  
21 he's referring to is the document we spent time looking  
22 at, which is the November 2010 application; yes?  
23 A. Yes, but you went on to say that it's only for  
24 five years, and that's not what the 2010 application  
25 was, is my point.

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19:04 1 Q. I'm not going to go back to that with you.  
 2 Let's go to page 2, item 3.1.  
 3 A. Well, you asked me to agree to it, and I don't agree, is  
 4 what I'm saying.  
 5 Q. He deals there with the "Initially proposed work plan  
 6 and budget", making the point that:  
 7 "The original proposed budget submitted in 2007 was:  
 8 "- Equipment and working capital ...  
 9 \$ 39 [million]".  
 10 And then:  
 11 "- Reported expenditures (2008 to June 2011) [are]  
 12 \$ 12,000,000".  
 13 Yes? Do you see that?  
 14 A. I see that.  
 15 Q. And at the top of the next page --  
 16 A. He never came to us for this information, so I don't  
 17 know where he got it.  
 18 Q. At the top of the next page:  
 19 "They have only invested 30% of the initial budget.  
 20 They explain this by the lack of knowledge of the nature  
 21 of the mining industry in Rwanda by the former NRD's  
 22 management which submitted a plan seriously flawed and  
 23 inappropriate."  
 24 That's just a summary, isn't it, of NRD's own  
 25 application and their own explanation for the

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19:05 1 discrepancy between the size of the investment?  
 2 A. He never came to talk to us. After he applied for  
 3 a job, I don't think we ever saw him again.  
 4 Q. Well, just answer my question: all he's doing there is  
 5 summarising NRD's position in its own application?  
 6 A. I would say that he's editorialising on it, don't you?  
 7 "They explain this by the lack of knowledge of the  
 8 nature of the mining industry ..."  
 9 That's an editorial comment.  
 10 Q. No, it's not. That's exactly what the application said:  
 11 it said that NRD/the Zarnacks didn't have sufficient  
 12 experience and knowledge of the mining industry. That  
 13 was the point in the application, wasn't it?  
 14 A. Rather than going back to look at that language, I don't  
 15 think that's -- I think that's an editorial comment.  
 16 Q. Mr Imena then goes on to "Exploration", and he observes  
 17 in the opening lines that it's obvious that NRD had done  
 18 less than half the required exploration and development  
 19 works, for a company that spent 30% of its initial  
 20 budget?  
 21 A. He can't even possibly know that without visiting the  
 22 company. He never interviewed anybody, he never talked  
 23 to anybody, he never came.  
 24 Q. Well, Mr Marshall, that's not how these applications  
 25 work, is it? These applications work by the company

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19:07 1 submitting material that's said to justify the licence.  
 2 The conclusion that he drew -- correctly -- from the  
 3 material submitted by the company was that it was  
 4 obvious they had done less than 50% of the required  
 5 exploration of mine development works; and that of  
 6 course fits with Professor Rupiya's own analysis.  
 7 Correct?  
 8 A. No, that is not how these application processes work.  
 9 In every case they go and visit the company. Rutongo  
 10 has had dozens and dozens of visits looking at any  
 11 number of things to see whether there's been what they  
 12 expected or what investments had been made or any number  
 13 of items. They never once visited our concessions or  
 14 our offices.  
 15 Q. Professor Rupiya explained that only superficial  
 16 exploratory work had been done, and that's obvious on  
 17 the face of the 2010 application. You can't dispute  
 18 that, can you?  
 19 A. I certainly do.  
 20 Q. All Mr Imena is doing is drawing the same conclusions as  
 21 NRD itself drew and as the application demonstrates;  
 22 correct?  
 23 A. This is not the way this review process works in Rwanda.  
 24 You don't just read the document; you sit down with the  
 25 people and you find out what's going on, what's real and

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19:08 1 what's not. And if there are views to be shared, it  
 2 gives you an opportunity to share the views.  
 3 Q. Underneath that, Mr Imena goes on to explain that:  
 4 "The major objective of these hybrid permits was to  
 5 delineate the resources and evaluate the reserves ..."  
 6 And he then explains the "Work done in exploration".  
 7 Then he says:  
 8 "NRD did only some significant preliminary  
 9 exploration work, but failed to realise the objective of  
 10 delineating the resources and evaluating the reserves."  
 11 That's a fair conclusion, isn't it?  
 12 A. No, it certainly is not. That's an editorial comment  
 13 which I reject.  
 14 Q. Then Mr Imena refers to the review conducted by  
 15 Dr Biryabarema, which he refers to as "the DDG  
 16 RNRA/GMD"; yes?  
 17 A. Yes, I'm sorry, can you tell me the date of this  
 18 document again?  
 19 Q. This was May 2012.  
 20 A. Okay.  
 21 Q. The point that follows from that is that, just as  
 22 Minister Kamanzi said in his August 2011 letter to you,  
 23 the obligations under Article 2 of the contract had not  
 24 been satisfied?  
 25 A. No. Sorry, I believe this to be a fraudulent document.

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19:09 1 Q. Mr Imena then goes on to deal with NRD's production  
 2 figures, which he lists, and you can see the decline in  
 3 production from those figures. Do you see that?  
 4 A. I don't believe those production figures to be correct.  
 5 Q. And over the page, he makes an observation about NRD's  
 6 production. If we could just look over the page,  
 7 please. He says:  
 8 "It should be noted that Nemba is responsible for  
 9 more [than] 3/5 of the total Cassiterite production.  
 10 These figures show a very low ... production compared to  
 11 any other company of this caliber operating in Rwanda.  
 12 The NRD's ... total production/number of mine sites is  
 13 probably the lowest in the country; most of the  
 14 cooperatives have recorded greater production compared  
 15 to NRD."  
 16 That's accurate too, isn't it?  
 17 A. No, it's not. I don't recognise these numbers and  
 18 I find it impossible to believe.  
 19 Q. NRD's production levels were not considered impressive  
 20 by the government representatives, were they?  
 21 A. For example, in 2011 -- 62 tonnes is really only two  
 22 containers. We were producing -- in 2011 we were  
 23 producing -- 1,000 kilos a day -- we were producing --  
 24 that's a number for two months of production in 2011.  
 25 Q. Well, just to be clear, if FTI could scroll up a little

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19:11 1 bit, Minister Imena is making it clear, fairly, that  
 2 production for 2011 is only January to June. So that  
 3 might be what's confusing you.  
 4 That doesn't affect his conclusion he makes on the  
 5 next page, which is what I'm interested in --  
 6 A. Okay.  
 7 Q. -- which is that the level of production is not  
 8 considered impressive by the government geologists.  
 9 A. I'd dispute those production numbers. But let's go  
 10 ahead.  
 11 Q. Mr Imena then deals with the "Work plan and budget" in  
 12 the 2010 application, which includes -- pause there,  
 13 please, FTI -- a €382,000 budget for research and  
 14 exploration. And his conclusion, you can see below  
 15 that, is that:  
 16 "The plan provided by NRD is neither clear nor  
 17 detailed (no time frame, no budget). The planned  
 18 exploration budget is unrealistic (small) compared to  
 19 the planned activities."  
 20 That again chimes with Dr Biryabarema's conclusions  
 21 that he had reached earlier in his report; correct?  
 22 A. I fully agree that they colluded to write these reports.  
 23 This \$9,960,000 is the ministry's number. We never were  
 24 asked at any of these events for information about any  
 25 of these items. My opinion is that if they had wanted

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19:12 1 information which was substantive they should have come  
 2 and asked us.  
 3 This figure, \$9,960,000, is from the draft long-term  
 4 agreement. And so it's a sort of a mishmash. He's  
 5 criticising the information that was given to us by the  
 6 ministry and plugged into that document.  
 7 Q. He's making it clear, isn't he, that the application  
 8 you've made "is neither clear nor detailed", and the  
 9 exploration budget in particular "is unrealistic" at  
 10 €382,000, and that's exactly the point made by  
 11 Dr Biryabarema; yes?  
 12 A. Well, this is a hodgepodge. So I'm not understanding  
 13 what you're evaluating now.  
 14 Q. Well, I will move on then.  
 15 Let's look at his conclusions, if you go on to go  
 16 further down. He says:  
 17 "In order to avoid granting mining permits to  
 18 companies without financial and technical capabilities;  
 19 In order to ..."  
 20 A. Hold on a second. This "Management" section is  
 21 interesting:  
 22 "During the last 5 years NRD showed ... poor (weak)  
 23 management. This apart from being noticed by MINIRENA  
 24 and GMD is also admitted clearly by NRD on its  
 25 Chairman's letter of October 14, 2012 ..."

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19:14 1 Well, that would suggest that this was written after  
 2 October 14th, not March 2012, right?  
 3 Q. Do you think there is a chairman's letter of  
 4 October 14th 2012?  
 5 A. I would guess. We can find out.  
 6 Q. Well, let's do that.  
 7 A. I think this is the kind of thing that I find very  
 8 disappointing, is he has caught himself. He's referring  
 9 to -- he writes this, perhaps as recently as six months  
 10 ago, and he's forgotten that the date of the document  
 11 is March, and then he quotes a letter from October.  
 12 This is the kind of thing that I think is really  
 13 unpleasant.  
 14 Q. Now, looking at the substance of what he's actually  
 15 saying here:  
 16 "During the last 5 years NRD showed signs of poor  
 17 (weak) management."  
 18 You don't disagree with that, do you?  
 19 A. Of course I do.  
 20 Q. Well, wasn't that inherent in the November 2010  
 21 application itself, because the application itself  
 22 explained the change in financial expenditure on the  
 23 basis that the previous management didn't understand  
 24 mining?  
 25 A. No. Look, you really need to compare it to what the

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19:15 1 other mining companies are doing and all the challenges  
 2 of operating in that environment. I believe that other  
 3 than Rutongo, we were the best, efficient, most  
 4 professionally run operation in the country.  
 5 Q. Let's look at his conclusion --  
 6 A. The fact that he never came to even talk to us about any  
 7 of these items suggests to me that this is fraudulent.  
 8 Q. Let's look at his conclusion:  
 9 "In order to avoid granting mining permits to  
 10 companies without financial and technical capabilities;  
 11 in order to avoid companies that lets dormant rich  
 12 mining areas. We should not renew the five mining  
 13 exploration/mining permits applied for by NRD.  
 14 "This company has failed to its contractual  
 15 obligations and hasn't demonstrated enough managerial,  
 16 financial and technical competence.  
 17 "We should allow them to select one or two areas  
 18 within the five and request them to prepare relevant  
 19 Financial and Technical plans that would be evaluated  
 20 for eventual conditional licences."  
 21 And it's a fair conclusion that NRD hadn't met up to  
 22 its contractual obligations; yes?  
 23 A. No.  
 24 Q. And these are also Dr Michael's conclusions?  
 25 A. We had been repeatedly told -- other than

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19:17 1 I want to just make sure we're both following in time,  
 2 so we don't get lost.  
 3 A. What's the date? What's the date?  
 4 Q. I'm trying to do it sequentially. So we've just looked  
 5 at May 2012. July 2012, NRD notified that mining  
 6 activities in Rutsiro were being suspended, just placing  
 7 you in time.  
 8 A. Okay.  
 9 Q. Before we go to that topic, I want to first go to  
 10 an incident in early August 2012, involving Mr Benzinge,  
 11 which forms part of your complaint; yes? So you know  
 12 we're going to deal with the issue of Mr Benzinge in  
 13 early August 2012.  
 14 A. Yes.  
 15 Q. Can I just see if we can start by agreeing on some of  
 16 the steps in the story.  
 17 First, Mr Benzinge was one of the original  
 18 shareholders of NRD; yes? You accept that?  
 19 A. No, he was given an opportunity to purchase some  
 20 per cent share, and under Rwanda law, if you don't pay  
 21 within I think it's two years, you are not  
 22 a shareholder.  
 23 Q. The allotment that he was entitled to was 15%; yes?  
 24 A. He had an option to purchase 15%, yes.  
 25 Q. We agree, don't we, that around 2nd August 2012,

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19:16 1 Dr Kamanzi's -- Mr Kamanzi's letter, we had been  
 2 repeatedly told that we were by far the best  
 3 application, by far the most professional managed  
 4 company, other than Rutongo, in the country.  
 5 Q. But we've already seen a number of letters to you not  
 6 making that point, and it wasn't just Mr Kamanzi's  
 7 letter: we've seen a number of letters already.  
 8 A. No. I think we were better than any other mining  
 9 company in that country.  
 10 Q. But your suggestion that that was what you were  
 11 repeatedly told is at odds with all the correspondence  
 12 that we can see about what you were told?  
 13 A. You know, my first comeback to that is: please give us  
 14 our document back and we can show it to you. There's  
 15 nobody in the country who's going to say that we were  
 16 not behaving professionally, did not have more equipment  
 17 than anybody else. Of the supposed 395 mining companies  
 18 in the country, one has a car. We had 18 cars and  
 19 trucks. 18.  
 20 Q. Now, this was in May 2012, and in July 2012 NRD was  
 21 notified that mining activities in Rutsiro were being  
 22 suspended because of environmental concerns. Do you  
 23 recall that?  
 24 A. Yes. I don't recall what was the allegation though.  
 25 Q. Don't worry, we'll come back to that. First -- because

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19:18 1 Mr Benzinge was able to persuade people at the RDB that  
 2 their corporate registration information for NRD should  
 3 be updated on the basis that there were no legal  
 4 documents justifying your point and Ms Mruskovicova's  
 5 appointment as directors; yes?  
 6 A. No. We were told by the RDB when he was able --  
 7 he appeared at our office and said -- waved a corporate  
 8 registration at us and said, "I am the 100% owner of  
 9 NRD". This was the first we'd heard of it. There was  
 10 no notice.  
 11 The first thing we did was we went to the US Embassy  
 12 and said, "What do we do?" And they said, "Well, please  
 13 get down to the registry and find what this is about".  
 14 We went to the registry. The registry said, "We don't  
 15 have any documents for you".  
 16 So under the guise of them claiming whatever he was  
 17 claiming, he claimed to be a 100% owner, for reasons we  
 18 couldn't understand and that were not articulated,  
 19 except that he had made a criminal threat according to  
 20 the commercial registrar.  
 21 Q. I think you may be agreeing with me. Do you agree  
 22 he was able to persuade people at the RDB to update  
 23 corporation registration information?  
 24 A. I wouldn't call it "update"; I would call it defraud our  
 25 investors.

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19:20 1 Q. He was able -- you're not suggesting that the RDB  
 2 personnel that he persuaded were themselves fraudulent,  
 3 are you?  
 4 A. No. I would say, according to their explanation,  
 5 he threatened them with bodily harm, and so they did it.  
 6 Q. Well, that's also not what they said, is it?  
 7 A. It is what they said. That's what I'm telling you.  
 8 Q. That's something else that you just made up, isn't it?  
 9 A. No. No, you can ask Zuzana: she was there, she heard  
 10 the same explanation. I don't --  
 11 Q. The truth is much more prosaic.  
 12 A. That's what they told us.  
 13 Q. He was able to persuade them that the information for  
 14 NRD should record him and not you; correct?  
 15 A. All I know is that she said she had been threatened with  
 16 bodily harm and that she made him the sole shareholder  
 17 of the company. And he was claiming to be a cousin of  
 18 President Kagame and so they'd better pay attention.  
 19 Q. Now that led to a response from you to the RDB,  
 20 including a letter to the RDB CEO the next day,  
 21 3rd August, saying that Mr Benzinge had misinformed the  
 22 RDB and that the company information should be changed  
 23 back; yes?  
 24 A. Probably. I don't recall the letter, but that sounds  
 25 like something I would have said.

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19:21 1 Q. Just -- I mean, I'm going to try -- I don't think we  
 2 need to go to the detail of the letter, but for  
 3 everyone's note, it's at R-231. And amongst other  
 4 things, you suggested there was a dispute about whether  
 5 Mr Benzinge was a shareholder at all.  
 6 A. Yes.  
 7 Q. Your position being that he wasn't; yes?  
 8 A. For the reason I explained.  
 9 Q. Do you suggest today that Mr Benzinge is not  
 10 a shareholder at all of the company to any extent?  
 11 A. Mr Benzinge's lawyer has admitted several times in  
 12 official proceedings that Benzinge did not pay for his  
 13 15% shares. So we had understood under Rwanda law --  
 14 and maybe your expert can say something different,  
 15 I don't know -- but we had understood under Rwanda law  
 16 that means that you cannot later pay for the shares.  
 17 Q. Your position at the time was that the RDB must have  
 18 been misinformed or misled by Benzinge; yes?  
 19 A. If I was being polite, that's the way I would put it.  
 20 But the commercial registrar told us that she had been  
 21 criminally threatened and that's why she went along with  
 22 it. And all of the documentation for the firm was at  
 23 that point missing. There were no documents of any  
 24 kind.  
 25 Q. Well, as we see, and we will continue to see, you don't

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19:22 1 hold back in your letters, and if you really thought  
 2 that this had happened as a result of some physical  
 3 threat from Mr Benzinge, you certainly would have been  
 4 trumpeting that loud and clear in your letters, and you  
 5 didn't.  
 6 A. I think every circumstance is different. The criminal  
 7 threat was not against me. This was the commercial  
 8 registrar's excuse. She's a nice woman; did I accept it  
 9 at face value? Yes, I did. I don't know that she was  
 10 corrupt. I think Ben Benzinge was scamming. He had no  
 11 right to claim 100% ownership of our company.  
 12 I certainly was upset and that's why the first thing  
 13 I did was went to the embassy.  
 14 Q. Give me one moment. (Pause)  
 15 But your position at the time, what you were saying  
 16 to the RDB, was that they must have been misinformed or  
 17 misled. Never suggested that there was some physical  
 18 threat, did you? Never have suggested that before  
 19 two minutes ago, Mr Marshall.  
 20 A. The key thing I've learned -- I learned from the very  
 21 beginning about Rwanda was: unless the circumstances  
 22 require it, don't do anything precipitous; give people  
 23 a face-saving way of getting out of something.  
 24 Q. Mr Marshall, your letters -- we are going to see lots of  
 25 them -- are absolutely full of you doing things

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19:24 1 precipitous and making the most serious allegations all  
 2 the time.  
 3 A. Yes, but in what context? You know, if what you're  
 4 saying, for example, is: Ben Benzinge is now, today,  
 5 taking your company, you own nothing, you've lost all  
 6 the property you have and you have no recourse, that's  
 7 upsetting. So what I do is I give the commercial  
 8 registrar a way out in saying: okay, yes, there was  
 9 a misunderstanding, and now the investment group from  
 10 the United States has been returned to their ownership  
 11 position. But it took twelve days. It was not quick.  
 12 And we didn't get the bank accounts back for almost  
 13 a month after that.  
 14 MR HILL: Let's look at R-231.  
 15 THE PRESIDENT: Could I intervene?  
 16 MR HILL: Yes.  
 17 THE PRESIDENT: We're five minutes from closing time.  
 18 MR HILL: Yes.  
 19 THE PRESIDENT: I would like to raise one matter of  
 20 housekeeping.  
 21 The Tribunal have been provided with USBs with the  
 22 documents on, but we don't find them very user-friendly  
 23 in that the form in which the documents are presented  
 24 are folders too small to identify individually, and to  
 25 go to a particular document, you first have to go to the

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19:25 1 folder of the pleading in which the document was first  
 2 introduced.  
 3 Would it be possible at some stage, perhaps  
 4 before -- we start at midday, so perhaps before that,  
 5 for somebody to come to help put on our laptops the  
 6 documents in a more user-friendly way? I think that can  
 7 be done, but we would need some help with that.  
 8 MR HILL: Yes.  
 9 THE PRESIDENT: So that's the first point.  
 10 The second point is that we've agreed that it would  
 11 be extremely helpful at some stage if we could have  
 12 an index with hyperlinks of the documents in  
 13 chronological order with their C and R references, and  
 14 with indications of those documents which are alleged to  
 15 have been fabricated.  
 16 MR HILL: Yes. Just on the last --  
 17 THE PRESIDENT: That may be very difficult to produce, but  
 18 if it's fairly easy to put the documents into  
 19 chronological order, that would be a great help.  
 20 MR HILL: Yes, just on the last point, I know indexes or  
 21 indices of that kind already exist because I have access  
 22 to one in Excel which is extremely useful.  
 23 Adding -- I don't know how easy it is to asterisk or  
 24 something those that are said to be fabricated, but  
 25 I imagine what you mean by that is those identified in

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19:27 1 the parties' position papers as being fabricated.  
 2 Mr Marshall, as we know, in cross-examination seems  
 3 to be adding to the list. I don't know if you mean us  
 4 to include anything that he suggests in  
 5 cross-examination is fabricated?  
 6 THE PRESIDENT: Well, I think the answer to that is yes.  
 7 A separate list would probably do for that, yes.  
 8 MR HILL: Because we're learning about these allegations of  
 9 fabrication for the first time.  
 10 THE PRESIDENT: Anyway, if you can let us know when it would  
 11 be convenient for us to arrive early so that we can have  
 12 this data put onto our laptops, that would be enormously  
 13 useful.  
 14 MR HILL: Yes.  
 15 THE PRESIDENT: Mr Marshall, we weren't able to say goodbye  
 16 yesterday, but we are today, and it's customary to  
 17 remind witnesses that they shouldn't discuss the case  
 18 over the adjournment with anybody. That's usually  
 19 a relief.  
 20 MR MARSHALL: Yes.  
 21 THE PRESIDENT: Very well. We shall adjourn until midday  
 22 tomorrow.  
 23 (7.28 pm)  
 24 (The hearing adjourned until 12.00 noon the following day)  
 25

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<p style="text-align: center;"><b>A</b></p> <p><b>Aaronson</b> 2:7,7,8,8  <b>abide</b> 26:12,14,17,18  <b>ability</b> 52:3 161:18  162:3 219:18  <b>able</b> 4:12 9:4 21:5  29:7,14,15 34:17  35:6 36:12 40:21  42:6 54:17 56:4  64:12 76:12 78:3  80:18,19,20 83:9  86:16 91:4 97:23  100:2 104:23 105:1  107:2 122:7 128:3  128:22 132:14  135:12 143:15  151:24 153:7 179:4  190:16 214:7  231:17 233:2,4  252:1,6,22 253:1,13  258:15  <b>above</b> 18:3 94:21  190:3 228:13  237:13,17  <b>absolute</b> 237:18  <b>absolutely</b> 52:6 57:23  138:7 162:9 164:16  178:22,22 184:4  201:6 255:25  <b>abstract</b> 88:3 172:11  174:4  <b>abusing</b> 147:25  <b>accept</b> 12:18 25:4  54:23 156:22  157:19 160:6,11  168:4,5 169:10  174:5,12 177:7  178:2,3 186:5  187:10 204:24  210:1 216:12  220:21 225:13  251:18 255:8  <b>acceptable</b> 82:24  169:19 190:12  200:1 224:10  226:12  <b>acceptance</b> 210:5,13  210:17  <b>accepted</b> 10:6,9 25:3  29:3 44:18 76:10  98:11 130:22 145:5  146:14,17,19 160:9  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