

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

Case No. ARB/14/22

World Bank
66 avenue d'Iéna
Paris, 75116
France

Day 9
Hearing on the Merits

Thursday, 1st June 2017

Before:

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

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

Claimants

-v-

THE REPUBLIC OF GUINEA

Respondent

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

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

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

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

ALSO APPEARING

FOR CLAIMANTS

JACK BURSTYN, Mishcon de Reya
MICHAL WAIZER, lawyer (via video conference)
GUSTAF BODIN, BSGR
FRANÇOIS FERREIRA, CFA

FOR RESPONDENT

ANDREA LAPUNZINA-VERONELLI, DLA Piper
CLÉMENTINE EMERY, DLA Piper
EUGÉNIE WROBEL, DLA Piper
HAYDEN CANTOR, DLA Piper (via video conference)
QUIREC DE KERSAUSON, Orrick Herrington & Sutcliffe
VALÉRIE KUBWIMANA, Orrick Herrington & Sutcliffe
MARIUS ATTINDOGBE, Orrick Herrington & Sutcliffe

COURT REPORTERS

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

INTERPRETERS

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

Discussion re procedural matters	1
Submissions by Mr Libson	4
Submissions by Mr Jaeger	11
Submissions by Mr Ostrove	15
Questions from the Tribunal	19
MR ASHER AVIDAN (called)	23
Direct examination by MR DAELE	27
Cross-examination by MR OSTROVE	28
Tribunal questions	80
Tribunal questions	143
Re-direct examination by MR DAELE	150
Tribunal questions	154
Questions from THE TRIBUNAL	159
Further cross-examination by MR OSTROVE	198
Further re-direct examination by MR DAELE ...	201
Discussion re procedural matters	203

09:30

1

Thursday, 1st June 2017

2

(9.34 am)

3

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

4

I hope you still have enough energy for Day 9, which is

5

also the last day probably of this hearing. It's always

6

nice to know that one gets to the end of the hearing.

7

We will now hear the mini-openings, and I will first

8

turn to the Claimants.

9

MR LIBSON: Thank you, Madam President. Actually I think on

10

this occasion perhaps it's more appropriate for the

11

Respondent to be addressing you first in relation to

12

these issues, given their nature. Our --

13

THE PRESIDENT: I had asked myself which was the appropriate

14

order, and then in doubt I had given the floor first to

15

the Claimants. Would we wish to hear the Respondent

16

first?

17

MR JAEGER: (Interpreted) I don't think it is our

18

responsibility to open up this debate concerning

19

documents, since BSGR is the party to allege that they

20

are fakes or forgeries. It's up to them to prove that

21

this is the case, and I consider that on this particular

22

request they are the Claimants. It's not up to us to

23

open the debate. We would like to have the Claimants'

24

position.

25

THE PRESIDENT: This is on the documents, but

09:35

1 what about the hearing of Mamadie Touré?

2 MR JAEGER: Well, it's the Claimants that have asked to hear
3 Mamadie Touré. We haven't asked that she appear. We
4 produced a witness statement that was achieved under the
5 control of the FBI and we feel that this is sufficient.

6 But it's up to BSGR, if they wish to challenge
7 documents, I think it's up to them to say why and on
8 what basis, because we still don't know on what basis
9 BSGR is contesting these documents.

10 THE PRESIDENT: What the President would like to hear now is
11 in fact neither a request on one side or the other; it's
12 just to help the thinking of the Tribunal. One might
13 wonder in what sequence that should be done.

14 (The members of the Tribunal confer)

15 THE PRESIDENT: (In English) Insofar as we do not have
16 a request from any party on which we want to hear you
17 now -- we have a request from the Claimants, but what we
18 want to address now is the Tribunal's proposals or
19 thoughts about the way forward. And in that respect, in
20 doubt, I think I reaffirm my initial assessment that it
21 would rather be for the Claimants to go first.

22 Mr Libson, you have the floor.

23 MR LIBSON: Thank you, Madam President. Just before I do
24 that, I think we have agreed three documents to come on
25 to the record and I just want to make sure that we have

09:38

1 the right references for those. I think this is agreed
2 with my friends.

3 THE PRESIDENT: Yes, can you just state which documents
4 these are and what numbers you have given them?

5 MR LIBSON: Yes, so the first is the motion to compel
6 production of original documents in the matter of the
7 United States of America v Frédéric Cilins, and that's
8 C-361. The second is the document I referred to
9 yesterday, which was the government's memorandum of law
10 in opposition to the claimant's motion to compel. It's
11 dated 30th June, and that's C-362. And the third is
12 a letter dated July 12th 2013 from the Department of
13 Justice to William Pauley, the United States district
14 judge, and that's C-363.

15 THE PRESIDENT: (Interpreted) Are there any comments
16 concerning these documents, as to the submittal of these
17 documents? It seems to me that we mentioned the first
18 two, probably the third one too, but I can't recall.

19 MR JAEGER: The comment that we'd like to make is that they
20 date from June 2013; we are now in June 2017. It would
21 have been desirable that these be produced earlier.
22 These are public documents that BSGR had access to. And
23 these documents actually show that BSGR, who pretends
24 that they are surprised that the contracts signed by
25 Mrs Touré should be in the possession of Guinea, these

09:40

1 documents show that BSGR were fully aware of this,
2 because it shows that these documents were not in --

3 THE PRESIDENT: I'm sorry to interrupt you. I wasn't going
4 to ask you to comment on the substance; I just wanted to
5 make sure that there was no opposition to their
6 admittal.

7 MR JAEGER: I confirm that there is no objection.

8 THE PRESIDENT: You will have ample opportunity to plead
9 this.

10 (In English) Mr Libson, you can carry on. I just
11 wanted to make sure that the admission into the record
12 of these documents was agreed.

13 MR LIBSON: Thank you, Madam President.

14 So the Tribunal has asked us to address it on two
15 matters: first, whether it should seek a forensic
16 expert's report on the authenticity of the original
17 documents; and second, whether the Tribunal should hear
18 from Madame Touré if it can. Our position on the first
19 issue is a qualified yes; and our position in the second
20 issue -- and we may be in agreement with the Respondent
21 on this one, for once -- is no.

22 So let me deal with the documents first. As to the
23 documents, as we have said all along, we would welcome
24 a forensic expert examination of them. But we don't
25 believe at the moment that that examination can be

09:42

1 properly or safely carried out without first receiving
2 a full explanation of the issues that I have raised on
3 a few occasions and we raised in our 28th May letter
4 this weekend.

5 So I'm not going to repeat yesterday's submissions,
6 but we think that any approach to the documents should
7 be in two stages.

8 The first stage is that we must have a full
9 explanation of the chain of custody of the documents,
10 who is said to have had which documents and when. The
11 explanation should include the possession of them by
12 Madame Touré, by Samuel Mebiame, by Walter Hennig, by
13 Mr Ostrove, anyone else at DLA, and anyone from the
14 Government of Guinea. In relation to each document, the
15 dates on which they came into the possession of each
16 person should be identified, as well as any evidence
17 along the way of the state of the documents should also
18 be set out; for instance, when they were scanned into IT
19 systems or sent by email.

20 Without that information, anything else is useless.
21 You can't have a forensic investigation without first
22 knowing exactly what it is that you're investigating.
23 However, once this is done, it should be possible to
24 understand exactly what the FBI has. Then, as a second
25 stage, forensic experts on both sides can be instructed

1 on a common basis, with an agreed set of joint
2 instructions.

3 If the Tribunal is minded to adopt a course such as
4 this, we would be in full support.

5 The alternative, we submit, is to doom the process
6 from the beginning, because the state of documents held
7 by the FBI will remain a matter of controversy, despite
8 what my friends say, and any forensic findings will be
9 open to challenge.

10 I'd say one more thing on the documents. This is not
11 a particularly satisfactory way of going about things.
12 We have just spent two weeks listening to evidence, and
13 this is an issue that ought to have been explored in
14 this period, not some time after the evidentiary hearing
15 is concluded, with the light cast by these two weeks
16 influencing the approach to the documents.

17 There is no reason why it shouldn't have been done
18 in the normal way. As I said before, we made a clear
19 request for these documents in our Redfern schedule.
20 Had they been provided -- and we maintain that they
21 should have been -- many of the issues that we are
22 encountering now, including those about provenance and
23 authenticity, are likely to have been explored and
24 sorted between the parties some time ago. In the same
25 way, any issues of authenticity would have been raised

09:44

1 for consideration by the Tribunal over the last couple
2 of weeks.

3 So that's all I have to say on the documents. But
4 in theory we are supportive, subject to that condition.

5 THE PRESIDENT: Yes, I understand your two-stage process.

6 In the second stage, your proposal is for both parties
7 to give the same instructions to two experts; it is not
8 for a Tribunal-appointed expert? Or is that
9 a possibility too?

10 MR LIBSON: I think the contentious nature of these
11 documents is such that it would be better, more likely
12 to arrive at a situation where you can make
13 a determination, if you hear from experts instructed by
14 both parties.

15 THE PRESIDENT: Thank you.

16 MR LIBSON: Shall I now move on to Madame Touré?

17 THE PRESIDENT: Yes, maybe you move on. Then we have a full
18 picture.

19 MR LIBSON: So as to Madame Touré, as you observed
20 yesterday, Madam President, there's nothing on the
21 record to show that she cannot give evidence in these
22 proceedings. I didn't understand until now that the
23 declaration that she made in America was evidence in
24 these proceedings. I believed it was just a declaration
25 in exhibit in these proceedings, as opposed to evidence,

09:46

1 but Mr Jaeger appeared to say something different. But
2 that was my understanding up to now.

3 Our position from when these proceedings commenced
4 is that her evidence was at the very centre of the
5 issues in this case, and given the Respondent's reliance
6 on Madame Touré and her evidence in other proceedings,
7 they should have called her to be cross-examined. They
8 had the opportunity to do that, and they have chosen not
9 to do so. That's their bed and they need to lie in it.

10 We appreciate the Tribunal's effort to establish the
11 truth in this matter, and we also greatly appreciate
12 your efforts to establish that truth by considering
13 calling Madame Touré as a witness. However, in the
14 circumstances in which the evidence would now be given,
15 we are of the firm view that any evidence Madame Touré
16 would give would not bring the Tribunal closer to the
17 truth, but quite the opposite.

18 To call her now would mean that the entire record of
19 the last two weeks would be available to her. It is
20 highly likely that she has been watching the proceedings
21 or has been given a summary of it, or has been provided with
22 the transcripts. This case, as you know, is of great
23 importance and of great interest to very many parties,
24 including, of course, the parties in the proceedings,
25 individuals affected by the allegations, Rio Tinto,

09:47

1 Vale, Mr Soros, et cetera, all of whom will have been
2 watching the proceedings very carefully. And there is
3 no doubt, as far as I am concerned, that Mamadie Touré
4 would also have taken an active interest, and other people
5 may have provided her with access -- which would be
6 perfectly fine -- access to the live feed and to the
7 transcripts. And people could have recorded the live
8 feed and make it available to her in the next period.

9 The Respondent would therefore be able to prepare
10 her, in the light of the evidence given, and would have
11 a significant amount of time to do so. She would be
12 able to prepare herself as well, in the light of what
13 has happened.

14 We agreed a process for the arbitration which
15 included this hearing of the evidence, together with all
16 the relevant protections put in place, including
17 sequestration. It is not right or fair that the
18 Respondent should have the opportunity to repair the
19 damage its conscious decision not to call Madame Touré
20 has caused it.

21 It's also, I think, a bad precedent for this case
22 and others. It opens the door for any litigant to wait
23 and see how the evidence goes at a hearing and then
24 decide to apply to call someone who was available to be
25 called first time round, and who that party deliberately

09:49

1 decided not to call, to appear to deal with issues on
2 a sequential basis.

3 What, for example, would Madame Touré's witness
4 statement look like? Is it possible to imagine the
5 evidence without reference to what has gone on already?
6 What would my client's right of reply be? Could my
7 client, for example, bring more witnesses to rebut what
8 Madame Touré is going to say?

9 To put it simply, my client considered how best to
10 present its case, including which witnesses to call,
11 based on the evidence which the Respondent was adducing.
12 The Respondent decided not to call Madame Touré, and we
13 have conducted our case accordingly. To allow this
14 sudden turn of events, which has the greatest impact on
15 the rest of the case and the way it has been conducted,
16 would be manifestly unfair. The inferences we have
17 invited you to draw in our opening from Madame Touré's
18 non-attendance, and which invitation we will repeat
19 again in our post-hearing submissions, are the ones that
20 should be drawn.

21 My initial reaction yesterday when Madam President
22 suggested calling Madame Touré was a small, and I hope
23 undetectable, air punch. At last we would be hearing
24 from the elusive Madame Touré, and my client would have
25 an opportunity to address her on the damage her lies

09:50

1 have caused them. But for the reasons I have given,
2 I cannot see how that process could possibly be handled
3 fairly; and in accordance with my client's right to
4 a level playing field, I suggest that she is not called.

5 Thank you.

6 THE PRESIDENT: (Interpreted) Can I give the floor to the
7 Respondent.

8 MR JAEGER: Thank you, Madam President.

9 I would like to underline that as far as the
10 documents are concerned -- and then I shall give the
11 floor to Michael Ostrove concerning Mrs Touré's
12 testimony -- as far as the documents the authenticity of
13 which is being contested, I'd like to underline the
14 exceptional situation we find ourselves in today.

15 It is rare that a party in international arbitration
16 should contest the authenticity of signature and
17 documents, and that's a good thing. It's even rarer
18 that a party should have changed position as to the
19 authenticity of documents -- and here I'm talking about
20 that the Pentler documents -- during the course of the
21 procedure, and more particularly at the end of the
22 arbitration proceedings. And I would like to underline
23 that it is even rarer that a party should sustain during
24 the arbitration that some documents are forgeries, and
25 not sustain this in another parallel arbitration that

09:52

1 deals with the same facts; and here I'm referring to the
2 case between BSGR and Vale under the LCIA.

3 You need to know that in the LCIA proceedings,
4 amongst the witnesses there was Mr Noy, who is one of
5 the Pentler managers. Mr Noy produced a witness
6 statement in that arbitration [PROTECTED]

[REDACTED]

21 In light of all of these elements that we have
22 to hand, there is a great likelihood that Mr Noy, in
23 front of the LCIA, did indeed authenticate the documents
24 that had been submitted by his company, Pentler. BSGR
25 is opposing production of this witness statement in our

09:53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

case [PROTECTED]

It seems to me that before any question of forensic expertise or [anything] else, it is indispensable that BSGR should produce this witness statement, so that we have a clear picture of the situation concerning Pentler contracts, because if the manager of Pentler, Mr Noy, recognised their authenticity, there's no need to call upon a forensic expert to authenticate them further. But at least this would be one way of dealing with at least part of the question.

For the remainder, BSGR contracts R-27, R-28 and R-29, we don't know today exactly why BSGR is challenging their authenticity; it's not clear. BSGR indicates that it asked that such documents be presented within the Redfern schedule, but it is clear that the these documents were not in the possession of the Republic of Guinea and you can't ask a party to produce documents that are in the hands of the American judicial authorities. So the originals can simply not be produced.

It is conceivable that one should launch an expertise of such documents. I consider that it would have been desirable that the Claimant should ask for this at the beginning of the proceedings, which they never did. But should the Tribunal feel that indeed

09:55

1 this is desirable, the Republic of Guinea has no
2 objection, no objection on the principle.

3 We have a few reservations though that we'd like to
4 submit to you, upon which we'd like to draw your
5 attention.

6 First, the timing for such expertise that might
7 bring about some delays for the proceedings. We would
8 have to access the documents, ask for the American
9 authorities' authorisation; this might bring about some
10 delays, and we know that such proceedings may drag on
11 over a long time. So we wish them to be as efficient as
12 possible.

13 This is why my learned colleague's proposal, which
14 consists in having each party appoint their own expert
15 and opening up a sort of adversarial procedure with
16 experts appointed by parties -- which would, by the way,
17 require that a new hearing be organised in order to hear
18 those experts -- seems to be very burdensome, costly and
19 prone to slowing down this first phase of our
20 proceedings. Therefore we would be more inclined to
21 appoint a single [expert], who would be appointed by the
22 Arbitral Tribunal, and who would be entrusted with
23 presenting a report on his or her observations to the
24 Tribunal.

25 I would add that it seems to us that the cost of

09:57

1 such expertise should be advanced by the Claimants,
2 since they are the ones who are contesting the
3 authenticity of the documents. So it is only normal
4 that they should at least advance the costs in such
5 a situation. This is our position on the documents.

6 Let me now give the floor to Michael Ostrove, who is
7 going to deal with the testimony of Mrs Touré.

8 MR OSTROVE: Thank you, Madam President.

9 We can only be astonished by the attitude of the
10 Claimants relating to Madame Touré and their declaration
11 this morning. It would seem that there is a confusion
12 as to the nature of her declaration in this particular
13 case. They now claim that we should present
14 Madame Touré as a witness in this case, that her
15 declaration would have been a witness statement
16 full-fledged, and the fact that she shouldn't appear
17 means that it should be worthless.

18 This conclusion doesn't hold if you look at our
19 Rejoinder, paragraph 366 in particular, in the section
20 entitled "Declaration of Mamadie Touré is credible". We
21 gave our thoughts on this and we explained that this
22 isn't a witness statement per se, but a declaration
23 which was prepared in 2013 during the administrative
24 review of the titles in Guinea and within the framework
25 of this cooperation with the FBI and the Department of

09:59

1 Justice in the United States, et cetera.

2 Mamadie Touré is not under the control of the
3 Republic of Guinea; she is a lady who lives in the
4 United States. Her declaration constitutes evidence,
5 yes. I think there was a little confusion by Mr Libson
6 between declarations and evidence. It is evidence: it
7 is something that has been admitted for your
8 consideration.

9 As far as the principle of your question is
10 concerned, we are not at all opposed to a request being
11 presented that Mrs Touré to appear, either in person, if
12 possible at all, or by video conference, and on the
13 principle, we have no problem.

14 Unfortunately we believe that from a practical
15 vantage point, it may turn out to be impossible; in any
16 case, very difficult. It's not a matter of knowing
17 whether there can be access to all the statements or
18 whether she spent her time watching these hearings by
19 video. These are things that can be easily settled if
20 she is heard. In any case, she wouldn't be a witness.
21 So that could certainly be taken care of.

22 But all of this is hypothetical. Why? Because so
23 far we've been talking about the fact that she had
24 a certain specific status in the United States. The
25 Martinez declaration -- the FBI agent -- that you have

10:00

1 before you does indicate that her immigration procedure
2 in the United States and the fact that she would be
3 deported from the United States has been suspended, so
4 that she stays in the United States, available for
5 a possible hearing in the United States. So that's all
6 we have to say about her role in the United States.

7 But perhaps it is not necessary here to involve the
8 Department of Justice. We will have to see what
9 Mrs Touré's position on this is. We approached her
10 lawyer in the United States, Ms Mary Mulligan in the
11 United States, and she is categorical: she says that
12 Madame Touré will not voluntarily provide any testimony
13 in any proceeding, in any arbitral proceeding, not
14 before this Tribunal. We would be happy, however, to
15 give our friends and you the address and contact details
16 of Ms Mulligan.

17 Before you start asking me what communications
18 I have received -- because apparently I do get love
19 letters from my friends, who want to know exactly what
20 I have been doing every single day -- we do hold all of
21 that information available.

22 However, there's one thing that was mentioned
23 yesterday, under title 28 of the United States Code,
24 Article [1782]. I haven't had time to check last night
25 what the jurisprudence of the Eleventh Circuit that

10:02

1 covers Florida is, but a comment on the availability of
2 that law.

3 Since the very beginning, when BSGR told themselves,
4 "No, it's not possible. We'd like to hear her. Why is
5 she not coming forward as a witness?", BSGR always had
6 the possibility of going to the United States, going
7 before a judge in the US, on the basis of
8 Article [1782]. That's one of the big advantages in the
9 United States. In an arbitral proceeding framework,
10 they could have done so.

11 Like for the documents, isn't it a little bit odd
12 that BSGR should wait, and then create a big procedural
13 incident? But today apparently they would no longer
14 want that to be. Obviously the Tribunal perhaps would
15 like to unleash that mechanism.

16 The only thing -- as far as the expertise is
17 concerned as well -- our only problem here would be the
18 question of cost, because if you go before a federal
19 judge in Florida on this point, and if Madame Touré is
20 still in the United States for reasons connected with
21 a criminal investigation, the practice of the Department
22 of Justice in the United States would be to first of all
23 defend the interest of the United States. They may
24 oppose this; I don't know what would happen. But it
25 does seem to me that such a procedure could lead to

10:04

1 a related proceeding in Florida, with costs, and that
2 would be very time-consuming. But then again, if the
3 Tribunal wants this, we would be happy to support any
4 request from this Tribunal to the American authorities.

5 THE PRESIDENT: Thank you. Could I ask you -- and that
6 would be to Mr Jaeger -- to speak to a two-stage
7 procedure that your adversaries mentioned? By that
8 I mean a first stage in the course of which you would
9 produce the chain of custody of the documents. You
10 could do it now or, if you prefer, later, because
11 I think that this is a proposal that you were not aware
12 of and you have not discussed it yet. But if you do
13 have a reaction now, that would enable us to close that
14 subject for the time being.

15 MR JAEGER: Well, why turn it into a stage? We've been
16 asked for some information and the itinerary followed by
17 these documents; it's no problem, we can give that
18 information. I believe that this is a relatively
19 ancillary subject, the chain of custody.

20 What is important is the authenticity of the
21 documents. I'm under the impression that our colleagues
22 on the other side of the table are confusing the
23 procedural rules before an arbitral tribunal and the
24 English procedural rules which apply to criminal
25 proceedings. Chain of custody here is not pertinent,

10:06

1 it's not useful to the solution of this litigation.

2 What is important is to know whether the documents are
3 genuine or forgeries.

4 To the extent that we do have information, this
5 information is available. We shall communicate it in
6 due time to the Tribunal, and as rapidly as possible, by
7 the way. But I don't think that this should give rise
8 to any particular debate.

9 THE PRESIDENT: Thank you very much.

10 My co-arbitrators would still have questions to the
11 parties at this particular juncture? (Pause)

12 (In English) Professor Mayer draws my attention to
13 one point that was raised by the Respondent, and on
14 which we should also have the Claimants' views. You
15 have objected to the production into this record of
16 Mr Noy's witness statement in the LCIA arbitration. Now
17 there appears to be a new request -- or at least
18 a suggestion -- that this witness statement should be
19 considered by this Tribunal.

20 Can you tell us the reasons for the objection and
21 whether this is maintained, or whether you would agree
22 to provide the Tribunal with the witness statement of
23 Mr Noy? Shortly.

24 MR LIBSON: Thank you. The reason why Mr Noy's witness
25 statement has not been produced into this arbitration is

10:08

1 that we had permission from him to participate as
2 a witness in the LCIA proceedings, but he was not
3 cooperating in these proceedings and we had no
4 permission from him to introduce his witness statement
5 into these proceedings. [PROTECTED]

[REDACTED]

[REDACTED] So that's the reason why we've maintained

11 confidentiality in relation to that document.

12 What I've taken from what Mr Jaeger has just said is
13 that he makes a complaint about our change of position
14 in relation to the documents. Our position in relation
15 to the Pentler documents, as I made clear and as
16 Mr Wolfson made clear, was that we didn't take a view on
17 their authenticity because we were not party to those
18 documents, we were neutral in relation to those; and in
19 the light of the evidence that has come out in the
20 course of these last couple of weeks, our neutrality in
21 relation to those documents has changed. That's the
22 position.

23 Our position in relation to the BSGR documents has
24 been clear from the beginning: we have always maintained
25 they were forgeries, and there has been no change in our

10:10

1 position in relation to that.

2 THE PRESIDENT: No, we understand that. We understand the

3 change of position to relate to the Pentler documents.

4 And obviously your first change, I understand, was the

5 result of Mr Noy's evidence in the LCIA arbitration --

6 MR LIBSON: Yes.

7 THE PRESIDENT: -- and then yesterday you changed again, on

8 the basis of Mr Tinkiano.

9 We understand the reason for the confidentiality of

10 the LCIA witness statement of Mr Noy. Has Mr Noy been

11 heard as a witness so far or has he just produced

12 a witness statement?

13 MR LIBSON: He's just produced a witness statement.

14 THE PRESIDENT: Any further points? No. Then for the time

15 being we should leave this topic.

16 MR JAEGER: (Interpreted) There is something that I would like to
say in

17 connection with that statement, on a constructive basis.

18 I can understand that there is this confidentiality

19 issue. But we also have the way of restricting access

20 to that document, having strict confidentiality rules,

21 i.e. the document should only be made available to the

22 Tribunal. Therefore I believe that the question of

23 confidentiality of that particular statement is never

24 really an obstacle to the production of the document.

25 That is something that has to be settled, simply to

10:11

1 avoid that the information contained in that document,
2 the document itself, be revealed, be disclosed.

3 THE PRESIDENT: Thank you very much.

4 (In English) Does that, for the time being, deal
5 with this issue? The Tribunal of course will have to
6 revert to you on the two points later in the day. But
7 if we could now proceed with the examination of
8 Mr Avidan, who must be waiting, that would be fine.

9 Is the video link established.

10 MR GAREL: Not yet. It would need ten minutes.

11 THE PRESIDENT: We need ten minutes. So that's a nice
12 opportunity to take a ten-minute break, and we will
13 resume in ten minutes.

14 MR LIBSON: Madam President, I hope you will excuse me, but
15 I have to leave now this afternoon. So I hope you will
16 excuse me.

17 THE PRESIDENT: We'll regret your absence. You are excused,
18 of course.

19 MR LIBSON: Thank you.

20 (10.12 am)

21 (A short break)

22 (11.14 am)

23 MR ASHER AVIDAN (called)

24 (Evidence given via video conference)

25 THE PRESIDENT: We are very pleased that the connection

11:14

1 eventually worked and we are eager to hear you. Thank
2 you for making yourself available.

3 For the record, can you please confirm to us that
4 you are Asher Avidan?

5 MR AVIDAN: Yes, I am Asher Avidan, and thank you for having
6 me here today. Sorry for the inconvenience.

7 THE PRESIDENT: Thank you. What is your current position
8 within the BSG group?

9 A. I am now an outside consultant, let's say, for the
10 group. I left the group on May last year, on the
11 payroll. And since I started my own business here in
12 Israel, I decided to work for the group, to continue as
13 a consultant.

14 THE PRESIDENT: Fine. You're working under the name of
15 a company, or is it your personal --

16 A. No, just Asher Avidan.

17 THE PRESIDENT: Good.

18 You have provided us with two written witness
19 statements in this arbitration: one was dated
20 28th February 2016 and the other one 10th January 2017.

21 Is this correct?

22 A. That's correct.

23 THE PRESIDENT: Nodding will not show on the transcript, so
24 you need to speak out.

25 A. Okay.

11:15

1 THE PRESIDENT: You meant to say "Yes"?

2 A. Yes, I have it in front of me.

3 THE PRESIDENT: Good. And you have them there, as I see.

4 Just to make sure, who is with you in the room? Can
5 the two people please identify themselves?

6 MS WAIZER: Yes, my name is Michal Waizer, I'm from the
7 Claimants. I'm a lawyer.

8 THE PRESIDENT: Thank you.

9 MR CANTOR: I'm Hayden Cantor and I'm a representative from
10 DLA Piper.

11 THE PRESIDENT: Fine, excellent. Do you have a technician
12 who is also with you in the room?

13 MS WAIZER: No, he is not here at the moment.

14 THE PRESIDENT: He is not here, but he is available in case
15 we have problems?

16 MS WAIZER: Yes.

17 THE PRESIDENT: Good. (Pause)

18 So we can proceed. Mr Avidan, you are heard as
19 a witness in this arbitration. As you know, as
20 a witness, you are under a duty to tell us the truth.

21 Can you please confirm that this is your intent by
22 reading the witness declaration into the record.

23 There should be a declaration with you. Do you have
24 it?

25 MR AVIDAN: Which declaration?

11:18

1 MS WAIZER: Which declaration?

2 MR GAREL: Sorry, it is being -- I don't think they have
3 printed it out.

4 THE PRESIDENT: Fine. So let me do this otherwise.

5 Mr Avidan, you have to solemnly declare that you
6 will speak the truth, and nothing but the truth. Can
7 you please restate this?

8 MR AVIDAN: I solemnly declare that I will tell the truth
9 and nothing but the truth, only the truth.

10 THE PRESIDENT: Thank you.

11 So we can now proceed. You will first be asked some
12 questions by --

13 MR AVIDAN: Will you allow me just to say something that
14 I have to say for the record on behalf of my lawyers
15 here in Israel?

16 THE PRESIDENT: Yes, please.

17 MR AVIDAN: Unfortunately last time I couldn't attend to
18 this honourable court because of their advice. And I am
19 here today under my own decision and unfortunately
20 against the lawyers' advice, and I take full
21 responsibility for it and I am happy to do it.

22 THE PRESIDENT: We appreciate that you have made yourself
available and we understand the circumstances, Mr Avidan.

23 So thank you for being with us today.

24 Fine. So I will first turn to Claimants' counsel
25 for introductory questions, and then we will turn to

11:20

1 Guinea's counsel for their own questions.

2 Mr Daele, can I give the floor to you?

3 MR DAELE: Thank you.

4 (11.20 am)

5 Direct examination by MR DAELE

6 Q. Good morning, Mr Avidan.

7 A. Good morning, Karel.

8 Q. I just have two small points. The first one is,
9 Mr Avidan, I understand that English is not your
10 mother-tongue?

11 A. Exactly.

12 Q. Yes. So that means that --

13 A. It's not my mother-tongue. I do speak English and
14 I speak French. And if you will allow me, from time to
15 time, only for some terms that I used to use in Guinea,
16 because I used it in French, so not always I know how to
17 translate it exactly in English. So I will try to do my
18 best.

19 Q. Thank you.

20 Then the second point is that I understand that
21 there is an ongoing investigation in Israel and that you
22 are not allowed to talk about that investigation. Can
23 you please confirm that?

24 A. Yes, I confirm it.

25 Q. Because otherwise you risk committing an offence under

11:21

1 Israeli law?

2 A. Exactly.

3 Q. Okay.

4 A. Exactly. So I trust we won't discuss of the process
5 here in Israel, that I was promised by my lawyers and
6 everybody that were involved on the BSGR side.

7 THE PRESIDENT: Mr Avidan, if a question is asked that would
8 go into that investigation, just say so, that you cannot
9 answer, and we will understand.

10 MR AVIDAN: Okay, I will. Thank you.

11 MR DAELE: I have no further comments or questions for
12 Mr Avidan.

13 THE PRESIDENT: Thank you.

14 So let me then turn to the Respondent's counsel.

15 Mr Ostrove?

16 MR OSTROVE: (In English) Thank you, Madam President.

17 (11.22 am)

18 Cross-examination by MR OSTROVE

19 Q. Good afternoon, Mr Avidan.

20 A. Good afternoon.

21 Q. My name is Michael Ostrove, with the firm of DLA Piper,
22 representing the Government of Guinea. Nice to see you
23 again.

24 A. Nice to see you too.

25 Q. A quick question regarding your discussion with

11:22

1 Mr Daele. Are you more comfortable speaking in French
2 about these issues than speaking in English?

3 A. No, no, I am more comfortable to speak in English.

4 Q. Okay. But if I use, as you, some terms in French that were
5 commonly used, that's okay?

6 A. That's okay, that's fine.

7 Q. Good. And certainly if there is anything over the video
8 conference, if you have trouble understanding any of my
9 questions, please let me know and I will rephrase them.

10 A. I will. Okay.

11 Q. Regarding the question that the President asked you
12 about your current position, do you have a consultancy
13 contract with BSGR?

14 A. I'm sorry?

15 Q. You mentioned that you're acting currently as
16 a consultant, an outside consultant for BSGR; correct?

17 A. Yes.

18 Q. Do you have a consultancy contract with BSGR?

19 A. No, I have an email exchange that we agreed that I will
20 continue as a consultant.

21 Q. With whom did you have that email exchange?

22 A. With our office in Guernsey, I think.

23 Q. Okay. How much are you paying paid for those
24 consultancy services?

25 A. It's due to my work. I started again like, I would say,

11:24

1 full-time in end of September/October, and I would say
2 that I earned around -- between -- it was between
3 US\$10,000 and US\$14,000.

4 Q. And when you say end of [September] or --

5 A. It depends how much I work. It depends how much I work
6 during the week.

7 Q. Okay. So when you say end of [September] or October, of
8 what year?

9 A. Last year, 2016.

10 Q. You submit, therefore, what, monthly invoices to BSGR
11 for your work performed?

12 A. I did. I did. I did, yes.

13 Q. And you continue to do so?

14 A. No, now I don't work. Since December I stopped working.
15 So they owe me for my work during September -- October,
16 November, December. That's the months I worked.

17 Q. I see. So when the Chair of the Tribunal asked you
18 whether you were currently working for BSGR, I thought
19 you said that you were working as an outside consultant
20 for them?

21 A. Exactly. So I invoiced the company for those three
22 months, and I was paid a long time ago. Now, since what
23 happened in Israel, I get no salary, unfortunately, or
24 no consulting fee.

25 Q. I see. So since December of last year you have not been

11:25

1 acting as a consultant for BSGR?

2 A. Last December, you can say January, yes. What has
3 happened here was in the end of December.

4 Q. Okay. So October, November, December, you were paid
5 between US\$10,000 and US\$14,000 per month by BSGR?

6 A. Exactly. I invoiced three invoices that were around,
7 I think, \$36,000, and unfortunately I got until now only
8 for two months.

9 Q. Okay. And what work were you performing for --

10 A. And expenses, sorry, for my hotels in London and Paris.

11 Q. Okay. So what work were you performing for BSGR in
12 October, November and December of last year?

13 A. I came to meetings and the normal things that
14 unfortunately we are doing lately, mainly working on the
15 legal side of the issue in Guinea.

16 Q. So you have been assisting them with the arbitrations
17 going on with Guinea and with Vale?

18 A. Yes, each time our lawyers needed me in London. And
19 still I had some things to do in the beginning; I
20 a little bit helped on finding some issues in Sierra
21 Leone only in October. But mostly I worked with our
22 lawyers and I came to meetings with our American
23 lawyers, and we started to think -- well, actually
24 I started when we discovered this email from Rio Tinto
25 about \$10.5 million that they paid to the so-called

11:27

1 consultant Mr François de Combret.

2 Q. François Polge de Combret, yes.

3 A. François de Combret. So that's when I came back to the
4 table. And I was almost every day in London and in
5 Paris, and also here in Israel when I was needed,
6 because most of the interaction at the time was between
7 me and Mr François de Combret. So that's how it
8 started.

9 Q. Okay. When you say "most of the interaction at the time
10 was between [you] and Mr François de Combret", what
11 period of time are you saying you were interacting with
12 Mr Polge de Combret?

13 A. It was in the year, I think, 2012, just the year before
14 we have met together in Paris, and then afterwards in
15 London.

16 Q. Because did you approach Mr Polge de Combret at that
17 time to help?

18 A. No, he approached me. He approached me.

19 Q. Okay. And then you mentioned that Rio Tinto apparently
20 offered him \$10.5 million to try to assist Rio Tinto in
21 their negotiations. Did BSGR offer François Polge
22 de Combret any money to assist them in the negotiations?

23 A. Never. Never. I didn't say that Rio Tinto paid
24 François de Combret. I said that they paid
25 \$10.5 million to François de Combret, yes. But we never

11:29

1 offered anything to Mr François de Combret. You are
2 also aware that we were in touch with this gentleman.

3 Q. Indeed, yes.

4 Now let's go back to the time that really concerns
5 this Tribunal, which is your arrival at BSG in 2006.

6 A. Yes.

7 Q. You joined as the project manager for Guinea; is that
8 correct?

9 A. Direction des opérations, yes.

10 Q. Okay.

11 A. Directeur des opérations, sorry. Directeur des
12 opérations, yes.

13 Q. Thank you. And that was your first job in the private
14 sector?

15 A. Indeed.

16 Q. If we look at the experience that you've described to
17 the Tribunal as relevant in your witness statement --
18 you go through your experience in paragraphs 6 and 7 --
19 just to summarise, you had some experience in
20 West Africa already?

21 A. Yes.

22 Q. But your whole career had been spent working in the
23 Israeli Ministry of Foreign Affairs and Security
24 Services of Israel; is that correct?

25 A. Exactly. In the beginning, the first two years, in the

11:30

1 Ministry of Defence, then I moved to -- after
2 I graduated in university, I moved to the Ministry of
3 Foreign Affairs.

4 Q. And your primary responsibility was security services
5 for Israeli embassies; is that correct?

6 A. Mainly, mainly. But also I represented the state in
7 very difficult and sensitive, I would say, countries,
8 mainly in the Arab countries and some in North Africa;
9 that kind of things, yes. It depends which period
10 you're talking about.

11 Q. Understood. But one of your roles was developing
12 security for embassies at some point in your career;
13 correct?

14 A. Exactly.

15 Q. Okay.

16 A. I was responsible for all Middle East security, Europe
17 and Africa.

18 Q. That's a pretty sensitive position --

19 A. In some period. In some period. Between 1998 and 2002,
20 that was my work, yes.

21 Q. Okay. Did that involve selecting people to be part of
22 the security teams locally?

23 A. Of course. I was recruiting people in Israel and abroad
24 for our work. I was in charge of the courses and the
25 way we trained them to be what they are. And I was

11:32

1 leading them and responsible for everything that moved
2 and has happened in those -- in our domains in those
3 areas.

4 Q. So not only setting up the teams, but actually also you
5 were involved in security issues yourself?

6 A. I was responsible of everything. For example, if I was
7 responsible for Jordan at the time, we had some
8 terrorist attacks against our diplomats, so I would go
9 to Jordan and talk to the local authorities, et cetera.
10 I can give you other examples. Some are, of course,
11 privileged to my government.

12 Q. Of course.

13 A. But I was very proud to represent them. I opened the
14 negotiations and the relationship between, for example,
15 Israel and Morocco at the time, in 1994.

16 Q. Yes, you mentioned your role when Yitzhak Rabin went to
17 Morocco in 1994. I will ask --

18 A. Yitzhak Rabin and -- sorry -- and Shimon Peres and --

19 Q. And Shimon Peres.

20 A. Yes. And a big -- and a huge delegation of an economy
21 summit in Morocco, yes.

22 Q. Mr Avidan, in the interests of time, especially as we
23 got a late start, I'm trying to of course verify certain
24 things, and if you feel that things are misleading,
25 certainly say so, but let's try to keep the answers

11:33

1 a little bit short, so that we don't run too late into
2 the evening in Israel today, please.

3 A. Okay, sorry.

4 Q. So particularly with respect, for example, to what you
5 just mentioned about Morocco, aside from your skills in
6 security, you also had quite some serious skills in
7 international diplomacy that you developed through your
8 career; correct?

9 A. Exactly.

10 Q. In your job to develop security, to be able to know what
11 was going on, is it fair to say that you were somebody
12 who was operating in part on gathering intelligence,
13 with respect to your role with the embassies?

14 A. No, my job in the ministry was not to deal with
15 intelligence. This is not the role of the Foreign
16 Ministry in Israel. I was -- everything that I did was,
17 I would say, really diplomacy. Like maybe on the
18 security side point of view, but it was real diplomacy,
19 officially having a diplomatic passport, et cetera. No
20 intelligence.

21 Q. So, Mr Avidan, would you agree with me that often people
22 who work with the intelligence services get postings in
23 security and diplomacy work as kind of a cover?

24 A. No.

25 Q. You never heard of that happening?

11:35

1 A. No. No. Not as far as my knowledge.

2 Q. But sometimes in the course of your career, you found it
3 useful secretly to record people who you were having
4 conversations with?

5 A. Not in my work in the ministry, no.

6 Q. In your work with BSGR though, you did sometimes have
7 recourse to recording conversations?

8 A. Unfortunately I did, yes. When it was legal to do so,
9 of course.

10 Q. I'm sorry, did you just say, "When it was legal to do
11 so"?

12 A. Legal to do so. I did it when I was in front of
13 somebody and talking to him, when it was concerning our
14 issue in Guinea.

15 Q. So, for example, if you turn to paragraph 98 of your
16 first witness statement, which is CWS-3. It's a part of
17 your witness statement where you're discussing your
18 meetings with Mr Hennig in early 2012.

19 A. Yes, mm-hm.

20 Q. You say:

21 "I met Mr Hennig again ... and this time recorded
22 our meeting."

23 Did Mr Hennig know that you were recording the
24 meeting?

25 A. No.

11:36

1 Q. Then you say in paragraph 99:

2 "We met again on 29 March 2012. There is
3 a transcript for this meeting too."

4 There's a transcript because you also recorded that
5 meeting; correct?

6 A. Exactly.

7 Q. And again, Mr Hennig did not know that you were
8 recording that meeting, did he?

9 A. He did not, no.

10 Q. And where did those meetings take place?

11 A. In his office.

12 Q. In his office in what city?

13 A. In London.

14 Q. Thank you.

15 So did you develop a habit, when you were working
16 with BSGR, of recording meetings that you thought were
17 important?

18 A. No. Only this meeting that was extremely important.
19 That was the first time I've heard that they were acting
20 on behalf of the President, so-called, of Guinea during
21 his election, that they were supporting him and
22 financing his election, together with the people I had
23 never heard of at the time, like OchZiff, Tokyo Sexwale
24 in South Africa. So I thought it would be extremely
25 important for me to record it.

11:38

1 Q. Very well. We'll come back to those meetings a little
2 bit later and what was discussed there.

3 But you did mention the meetings that we had where
4 you and I met in the past. Did you record those
5 meetings?

6 A. No. God forbid, no. (Laughs) Sorry!

7 Q. So those meetings were held on 18th December 2012 and
8 20th March 2013; is that correct?

9 A. Which meetings?

10 Q. So Mr Steinmetz testifies in his witness statement,
11 which is at -- if you want to go there, but I'll just
12 mention it for the moment -- tab 63 of the bundle,
13 paragraph 27 of his witness statement, Mr Steinmetz
14 testifies about tripartite meetings between Vale and the
15 government and BSGR. Do you recall those meetings?

16 A. Of course I know. That's why I mentioned that we met
17 there once. It was the only time we met.

18 Q. Exactly. There were two meetings; correct? In
19 December 2012 --

20 A. Exactly: December, and March 2013.

21 Q. Exactly. Without revealing the content of what was
22 discussed during those meetings, they involved
23 an attempt to settle the dispute, didn't they, between
24 Vale, BSGR and the Government of Guinea?

25 A. Exactly. It was us that initiated those meetings, in

11:39

1 fact.

2 Q. Do you recall who participated in those meetings for
3 BSGR?

4 A. For BSGR it was myself, Dag Cramer, our lawyer from
5 Vale, it was Skadden Arps, who else was from our side.
6 That's it. Did I forget somebody? No, I think our
7 lawyers, Vale, Dag and myself.

8 Q. Very good. And do you recall --

9 A. And Skadden.

10 Q. Skadden, yes.

11 A. Skadden.

12 Q. And do you recall who participated for the Government of
13 Guinea?

14 A. Monsieur Nava Touré.

15 Q. And as you mentioned, obviously you and I met there. Do
16 you remember anybody else who was there from the
17 Government of Guinea?

18 A. Only Mr Nava Touré. There was somebody else that
19 I don't remember?

20 Q. And then he was accompanied by lawyers; correct?

21 A. Yes, but at the time I was sure that you are acting on
22 behalf of another entity to be honest, but this is
23 a different matter; we will reach to it. But from
24 Guinea Government, it was only Mr Nava [Touré].

25 Q. So you thought I was acting on behalf of which entity at

11:40

1 the time, Mr Avidan?

2 A. For the Open Society Foundation and George Soros.

3 Q. Okay. Interesting.

4 A. That's what I thought.

5 Q. You didn't mention it at the time, did you?

6 A. No, I did. I did. But it was -- you said that -- you
7 mentioned at the time that it was without prejudice. So
8 I don't want to too much -- unless you want me to
9 elaborate, I will. But that's what happened in this
10 meeting. We all knew that Scott Horton just joined
11 DLA Piper lately, and we knew that you were acting or
12 getting -- whoever hired you for this thing. And I told
13 you that even Mr François de Combret confirmed that
14 Mr Alpha Condé confirm to him that George Soros is
15 paying his lawyer.

16 Q. Okay. So --

17 A. So that's why --

18 Q. -- did you consider that those meetings were not being
19 held in good faith?

20 A. No, I was sure it was in good faith. I was sure.

21 I think the first meeting was excellent attempt for us,
22 all of us, to find a solution. The second one was, as
23 you remember --

24 Q. Less successful?

25 A. -- a short one.

11:42

- 1 Q. Yes.
- 2 A. Less successful, unfortunately.
- 3 Q. Okay. Let's go back to your role at BSGR. At one point
- 4 you became the president of BSGR Guinea; is that
- 5 correct? Or the directeur général?
- 6 A. After the deal with Vale, after the joint venture.
- 7 Q. Okay.
- 8 A. Until then I was directeur des opérations.
- 9 Q. Okay. So after the deal with Vale, which was in
- 10 April 2010; correct?
- 11 A. Exactly.
- 12 Q. And did you become --
- 13 A. A month after. A month after.
- 14 Q. And did you become the directeur général of the local
- 15 operating company?
- 16 A. Well, more or less it's the same thing. Maybe we
- 17 changed the title towards -- but it's the same thing,
- 18 directeur des opérations or directeur général. When we
- 19 changed the name of the company, yes, there was a point
- 20 that we changed the company from -- to another entity,
- 21 I became directeur général de BSGR Guinea.
- 22 Q. Okay. So you stayed at the local operating company
- 23 level that you were directeur général?
- 24 A. Exactly.
- 25 Q. Okay.

11:43

1 If you could turn to paragraph 63 of your witness
2 statement. I think we might have had some
3 misunderstanding just now.

4 A. Yes.

5 Q. You say:

6 "Following the joint venture being concluded, in
7 May 2010 ..."

8 So, as you mentioned, a month later:

9 "... I became the President of BSGR and ceased to be
10 country manager for Guinea."

11 So in fact when Vale became the controlling
12 shareholder, my understanding was that you stopped
13 working for the local operating company. Is that
14 correct?

15 A. That's exactly correct.

16 Q. Okay. And when you say you became "President of BSGR",
17 what BSGR company are you talking about?

18 A. I talked about BSGR Guernsey.

19 Q. Okay. There are two Guernsey companies in the chain of
20 ownership here: there's the top one, which is
21 BSG Resources (Guernsey), and then there's one below it,
22 which is BSG Resources (Guinea) Limited, Guernsey.

23 A. Exactly. That's the one.

24 Q. You became the --

25 A. Second.

11:44

1 Q. -- president of the BSG Resources (Guinea) Limited,
2 Guernsey company; correct?

3 A. That's the one.

4 Q. Okay. But didn't Vale own 51% of that company?

5 A. On which side you are talking? On the shareholder
6 agreement?

7 Q. Yes, I'm just wondering --

8 A. But I was only on our, like, side of the shareholders'
9 agreement. Like the 49%, our side was, and I was
10 president of this side.

11 Q. Okay. So you were president of the 49% shareholder and
12 had, after that, stopped having an operational role;
13 correct?

14 A. Indeed.

15 Q. Up until that time, if I understand correctly, your
16 monthly salary in early 2010 was about US\$17,000
17 per month. Does that sound correct?

18 A. Yes, I think so.

19 Q. And I understand that you got a raise in July 2010 to
20 \$22,500 per month; is that correct?

21 A. That's correct.

22 Q. Did you consider \$17,000 per month and \$22,500 per month
23 to be a pretty good salary?

24 A. I think so, yes. After -- but that's before tax.

25 Q. Yes, there's always those taxes!

11:46

- 1 A. Yes!
- 2 Q. But you also received a bonus when the Vale deal
3 concluded; correct?
- 4 A. Yes, correct.
- 5 Q. And that bonus was an amount of \$2.5 million; is that
6 correct?
- 7 A. Yes, correct.
- 8 Q. That's a significant recognition of your contribution?
- 9 A. I don't think so. If I would work for a bank, I would
10 get, I would say, \$25 million, for an amount of 500.
- 11 Q. Because you think your contribution was worth more than
12 the 0.5% that they gave you?
- 13 A. I'm sorry, again the question? I have to calculate what
14 you are saying.
- 15 Q. Yes. Well, you said you think if you were working for
16 a bank, you would have gotten \$25 million of the
17 \$500 million; that would have been 5%. In fact, you
18 only got one-tenth of that; correct?
- 19 A. Ah, well, that's -- yes, exactly. I didn't calculate it
20 that way, but it's my way of telling you that it was not
21 so high. And I complained about it, and I was not the
22 only one to get it. More of the employees complained
23 about it.
- 24 Q. Okay. So you think that you contributed a great deal to
25 the success of the operation in Guinea, yes?

11:47

1 A. We all did.

2 Q. Let's talk about someone else where there's some
3 disputes about his contribution, his level of
4 contribution. Let's talk about Mr Frédéric Cilins and
5 his role in Guinea.

6 I understand you met him in June 2006, when you
7 arrived in Guinea?

8 A. End of June 2006.

9 Q. And the way you describe his role, which you describe in
10 paragraphs 11 and 12 of your witness statement, was that
11 he was dealing with formalities and practicalities on
12 the ground?

13 A. Yes. I would say so, yes. Before I came. Before
14 I came.

15 Q. Okay. But even after you came, did he sometimes assist
16 or represent BSGR at meetings with the Minister of Mines
17 or with the CPDM?

18 A. With the CPDM, in my first or second visit he was once
19 with me. And I can say that as for our presentation for
20 the Ministry of Mines in Novotel, I can confirm that the
21 day after, he disappeared completely, under my request.
22 And then once he came, I think, beginning of 2007;
23 I didn't see him, but I heard that he was around. But
24 not in our operations; it was due to his own business in
25 Guinea.

11:49

1 Q. Okay. I think we could summarise a lot by saying you
2 did not particularly like Mr Cilins; is that correct?

3 A. No, there's nothing personal about that. It's because
4 I was, like, coming as a very high rank from the
5 Ministry of Foreign Affairs and Defence; I considered
6 myself as a good manager. I didn't need his language
7 anymore, like he was -- like the company told me that he
8 speaks the language very well, so therefore I thought
9 that I can be by myself.

10 Q. Okay. But you describe in paragraphs 12 and 13 of your
11 witness statement about how he kept talking about this
12 as being "his project" and how "he brought [you] over".
13 And you found him alone in your offices uninvited, and
14 you say:

15 "I was upset to find him there unaccompanied by
16 anyone from BSGR, and felt he had crossed a line."

17 So you were getting upset with Mr Cilins?

18 A. But it wasn't personal. It wasn't personal and it
19 didn't feel, like, angry. We didn't have really
20 dispute. It was in a very, I would say, civilised way.
21 He also accepted that. He never had the intention to
22 stay, I must admit. So he had no intention. For him,
23 it was too difficult, the place, and he preferred to go
24 back home. He was very happy that I came. But we had
25 to put the lines of responsibilities and --

11:51

1 Q. So other than that one time you mentioned, you think he
2 came at the beginning of 2007, after that you had
3 nothing to do with Mr Cilins?

4 A. Nothing to do. Not until towards the end of 2009, if
5 I'm not mistaken.

6 Q. Because what was he doing --

7 A. Mid-2009.

8 Q. What was his role in mid-to-late 2009?

9 A. Nothing, no role. But that's when -- you asked me if
10 I've met him. So this is where I've met him the first
11 time after he disappeared, after he left the country.

12 Q. So in 2009, where did you see him again?

13 A. In the south of France.

14 Q. You didn't see him in Guinea again at that time?

15 A. No, no, no. Absolutely not.

16 Q. Okay. Could we turn to tab 65, please, which is in our
17 second bundle. This is a share purchase agreement by
18 which BSGR bought back Pentler shares. Are you familiar
19 with this document?

20 MS WAIZER: Which exhibit is this?

21 MR OSTROVE: It's Exhibit C-84, tab 65, and it's entitled
22 "Share Purchase Agreement of Shares in BSG Resources
23 (Guinea) Ltd dated March [24] 2008".

24 Do you recall that share purchase agreement,

25 Mr Avidan?

11:53

1 A. I can ensure you that today I see it for the first time,
2 like really seeing it.

3 Q. Okay.

4 A. But I was familiar that it happened, yes.

5 Q. Because you knew that Pentler, Mr Cilins's company, had
6 a shareholding interest in BSGR; correct?

7 A. I knew it much later, not in the beginning.

8 Q. Okay. But as of March 2008, when BSGR bought back
9 Pentler shares, at that point you were informed?

10 A. I was informed, of course.

11 Q. Okay.

12 A. I supported it 100%.

13 Q. Sure. Why should Messrs Cilins and Noy and Lev Ran have
14 a shareholding interest in this company when they
15 weren't doing anything, right?

16 A. You might say so. This was one of the reasons.

17 Q. Were you consulted on the terms of negotiating the
18 purchase of these shares?

19 A. No. No, I was not part of it. I had nothing to do with
20 it.

21 Q. Do you know who negotiated it?

22 A. Our board. A few people from our board and our advisor
23 and our London office.

24 Q. Are you aware that Mr Steinmetz --

25 A. Switzerland office.

11:54

1 Q. Are you --

2 A. Switzerland -- yes, sorry. Switzerland office.

3 Q. Switzerland office. Are you aware that Mr Steinmetz has
4 said that he was involved in negotiating this document?

5 A. Probably he was.

6 Q. Okay. But he did not ask many questions about Pentler
7 or its role when he did that?

8 A. Pentler's role on what? They had no role when I came to
9 Guinea. For me, they had nothing to do with Guinea
10 whatsoever.

11 Q. So I appreciate that you haven't seen this document
12 before, but if you look at paragraph 1 under what the
13 parties have agreed, and the second paragraph of item 1.

14 A. Yes.

15 Q. "The parties hereby agree on the following terms and
16 conditions for the Purchaser to purchase from the Seller
17 the 17.65% in the Company (the 'Shares')."

18 A. Yes.

19 Q. It says:

20 "When the transaction is executed, the Purchaser
21 takes the full responsibility of local consultants,
22 advisers etc."

23 Did nobody consult you, as the project manager, the
24 directeur des opérations in Guinea, as to what local
25 consultants and advisors Pentler might have been

11:55

1 responsible for up to that time?

2 A. Nobody has consulted me when I was in Guinea during all
3 my time from the Pentler side.

4 Q. I'm sorry, let me ask me question more specifically.

5 Did anybody at the time, around January, February,
6 March 2008, enquire of you as to what Pentler's "local
7 consultants, advisers, etc" could be?

8 A. No. I might have a question from one of our lawyers at
9 the time, I recall I had maybe one or two, but he was
10 not really aware of what is entre guillemets the politics in
Guinea. So

11 I told him, "I'm sorry, I have nothing to do with it".

12 Q. Okay. But at the time this is being consulted, a lawyer
13 might call you and say, "Hey, we're negotiating an
14 agreement, you know, we're buying Pentler out, could you
15 tell us whether Pentler has any consultants or local
16 advisors", that kind of background information?

17 A. No, I don't recall the -- I recall that I had a few
18 questions, whether it was from Skadden or from the
19 in-house lawyer or something similar. But I -- but
20 I replied that I have no interaction whatsoever with
21 Pentler.

22 Q. So there was some diligence being done, and you answered
23 the questions?

24 A. Not diligence as far as I'm concerned. I was not part
25 of it. Nobody interrupted me for this matter. I was

11:57

1 not in the negotiation.

2 Q. Right. But somebody asked you some background questions
3 and you answered?

4 A. What do you mean by "background questions"? Whenever
5 I was asked -- whenever I was asked about Pentler,
6 I always answered that I've met them -- I've met only
7 Fred, Mr Cilins, towards the end of 2006. Then once
8 I was, in 2007, in South Africa, I have met Mr Lev Ran
9 for the first time. And sometime during 2007 I came to
10 Israel for one of my leaves, and I've met Mr Noy.

11 And I knew their background because I was in
12 charge -- one of my specialties were the security on the
13 airports and airplanes of El Al. So they were, like,
14 station managers in this company when I used to work for
15 the Ministry -- of Defence, not Foreign Affairs.

16 Q. Let's focus for a moment though on the project in
17 Guinea, but thank you for the background.

18 A. Okay. Okay.

19 Q. In fact, Mr Avidan, didn't you occasionally go back to
20 Mr Cilins for help in Guinea, in 2007, 2008, 2009, at
21 times when you really needed some assistance?

22 A. I say that till toward the third quarter of 2009, no,
23 nothing whatsoever, not even a word. Now -- nothing, no
24 assistance.

25 Q. What about in 2010?

11:59

- 1 A. Of course I did.
- 2 Q. What did you --
- 3 A. I did.
- 4 Q. That was in the context of when you were arrested; is
- 5 that correct?
- 6 A. Arrested in Guinea. Arrested in Guinea. Not only.
- 7 Each time that -- when we started to be -- I started to
- 8 be in touch with Mr Cilins, when I first got a letter
- 9 from a lawyer that was -- well, actually it was when
- 10 I was arrested with the general. That was the first
- 11 time that I came back to our house and I picked up the
- 12 phone and -- I think I phoned Mr Noy rather than
- 13 Mr Cilins, because Mr Noy is a native in Hebrew, so
- 14 I prefer to speak with him.
- 15 Q. Okay. And Mr Noy said he would get Fred Cilins to deal
- 16 with it?
- 17 A. Yes. Well, he said we should meet, if this is the case.
- 18 He didn't know what I was talking about. I was very --
- 19 very nervous that I was captured by a general over
- 20 there.
- 21 Q. And that general was claiming that he was acting on
- 22 instructions from Mamadie Touré?
- 23 A. From, yes, Mamadie Touré.
- 24 Q. So the person who Mr Noy got to intervene with
- 25 Mamadie Touré was Mr Cilins?

12:01

1 A. Sorry, again the question?

2 Q. So you called Mr Noy, he said he would get Fred Cilins
3 to deal with it --

4 A. Yes.

5 Q. -- and in fact --

6 A. No, he said that we should meet, and this is mainly
7 Fred Cilins that is in touch with this woman, and then
8 we will discuss that.

9 Q. Do you remember the exact date on which you were
10 arrested by this general in Guinea?

11 A. Exact date? No. But it was like maybe September 2009.

12 Q. Okay. In that same period in late 2009, when you
13 mentioned that your only contact with Mr Cilins
14 otherwise was seeing him in the south of France, are you
15 sure he was not coming into Guinea and helping assist
16 with negotiations about the Convention de Base for the
17 Zogota Project?

18 A. 100%, no. 100%, most definitely.

19 Q. So anybody who said that he was there would be lying?

20 A. I would say "didn't say the truth".

21 Q. A more genteel way of saying the same thing?

22 A. I came from diplomacy, let's not forget!

23 Q. I'm going to ask you to look at a document which is not
24 in the bundle. I understand that if I put it up on the
25 screen here, you'll be able to see it. And I think we

12:03

1 need to go to a confidential section.

2 Do you know Mr Momo Sakho?

3 A. Yes, I do.

4 Q. He is someone that BSGR has even hired as a lawyer after
5 he left government service, right?

6 A. Exactly.

7 Q. I'm putting up on the screen now -- sorry, I hadn't put
8 it up on the screen -- Exhibit C-18 in the case. If we
9 could put this on the screen so Mr Avidan can see it.
10 Can you see the document, or not yet? (Pause) There we
11 go. Do you see it now or not?

12 A. Yes, I see it.

13 Q. Right.

14 A. I see.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:08

[PROTECTED]

[REDACTED]

12:10

[PROTECTED]

[REDACTED]

12:13

[PROTECTED]

[REDACTED]

13 Q. Okay. Mr Cilins had some other roles afterwards, right?

14 He worked with you and Skadden Arps in trying to put
15 together responses to the Technical Committee, is that
16 correct, in 2013?

17 A. When it was concerning his role, or what he did at the
18 time, he participated with our lawyers, yes.

19 Q. So in late 2012 and in early 2013?

20 A. I would say so, yes.

21 Q. And in fact he went and tried to get Mamadie Touré to
22 sign an attestation in early 2013; correct?

23 A. Which attestation you are talking about? About the
24 forged documents? I remember, yes, he did the ones like
25 that, yes.

12:15

1 Q. Yes, a statement saying that she never signed any
2 contracts with BSGR, right?

3 A. Exactly.

4 Q. Okay. And he even asked her to sign a statement saying
5 she was not the wife of the President, right?

6 A. I don't know if he made her; I think she wrote it down,
7 for sure. For us it was -- I don't want to take you to
8 this part of the story -- but for us it's quite obvious:
9 she is not the wife of the President, that's -- period.

10 Q. We'll come back to that in a few minutes.

11 A. Okay.

12 Q. Let's talk about someone else who worked with you
13 locally: Mr Ibrahima Sory Touré. You also met him when
14 you first went to Guinea in late June 2006; correct?

15 A. Correct.

16 Q. And he introduced himself as a journalist, that was his
17 background and role?

18 A. No, he said he is journalist and juriste.

19 Q. Oh, and juriste. So he also had legal training, you
20 say?

21 A. Yes. I would believe so, yes.

22 Q. Do you know at what point he became employed by BSGR?

23 A. In the minute we settled our official presence and
24 company in Guinea, from then he became an employee of
25 BSGR.

12:17

1 Q. When you established your presence in Guinea?

2 A. Yes.

3 Q. But the operating company was established in

4 January 2006, right? Oh, no, that was the BVI company.

5 When did you establish the local operating company; do

6 you recall?

7 A. When I came, shortly after I came.

8 Q. Did you find Mr Touré to be a trustworthy person when

9 you worked with him?

10 A. I think he is an outstanding guy, a very patriot to his

11 country, loves his country -- Guinea, his country --

12 loves his people, and very devoted to the work, yes.

13 An excellent guy.

14 Q. Let me ask my question again. Did you find Mr Touré to

15 be a trustworthy person?

16 A. Of course.

[PROTECTED]

[REDACTED]

12:20

[PROTECTED]

[REDACTED]

12:22

[PROTECTED]

[REDACTED]

- 6 Q. Okay. But going back to Mr Touré's role, you found
7 that he had very good contacts locally, didn't he?
- 8 A. Well, I knew that he knew the country much better than
9 me, for sure.
- 10 Q. That wasn't my question. You knew that he had very good
11 contacts, right?
- 12 A. No. No, not necessarily. It depends with whom. The
13 minister at the time that I came, I remember, Dr Sylla,
14 I think he never met him before I came with him to his
15 chamber.
- 16 Q. But, Mr Avidan, he had good contacts in politics and in
17 business, didn't he?
- 18 A. No, I don't think so.
- 19 Q. So --
- 20 A. He was a very timid guy, like -- he knew the place much
21 better than me.
- 22 Q. Could we look at paragraph 11 of your first witness
23 statement, where you describe meeting Mr Touré. In the
24 middle of that paragraph, paragraph 11, you say:
25 "Mr Touré was a journalist. He had very good

12:28

1 contacts on the ground throughout Guinea and knew lots
2 of people in business, politics and mining."

3 So why would you --

4 A. Yes, but not the people that we were in touch with in
5 the ministry. Like, you can ask Dr Sylla if he has ever
6 met Mr Touré before we came to him, and he wasn't; so
7 was Ahmed Kanté and so was Louncény Nabé. He knew
8 people, of course, because he lives in Guinea, and he
9 was a journalist and he knew much better than me. Each
10 company has an internal -- external relations guy.

11 Q. Mr Avidan, I just want to clarify your testimony.

12 A moment ago I asked you:

13 "But ... he had good contacts in politics and
14 business, didn't he?"

15 And your answer was:

16 "No, I don't think so."

17 I turn you to your paragraph in your witness
18 statement where you said, "He had ... good contacts on
19 the ground throughout Guinea and knew lots of people in
20 business, politics and mining", and now suddenly you say
21 he did. Which is it?

22 A. Yes, it's true. But your question at the beginning
23 referred that if he knew, like, ministers that we were
24 in touch with, and people on the ground. The only
25 people that I think he knew really is very low-key, at

12:29

1 the time, bureaucrats in the Ministry of Mines, when
2 I came.

3 Q. Okay. So he wasn't really essential for those things?

4 A. No. But he knew about the politics, the tradition.
5 I relied on him a lot on this matter.

6 Q. So really the essence and the most important part of his
7 role was just setting up meetings with low-level people,
8 things like that?

9 A. Yes, and talking to the press. He was a journalist, and
10 the local press, during our external relations with --
11 mainly with the villages we were travelling to, talking
12 to the imam, talking to the préfet, talking -- he was my
13 frontman. He knew Susu, he knew the local languages.
14 So, like, other companies had the same type of person.
15 He was doing his job, yes.

16 Q. But he did particularly help you in trying to promote
17 BSGR's efforts to get rights over Blocks 1 and 2 of
18 Simandou, didn't he?

19 A. He was promoting me, in his way, and BSGR, with Blocks 1
20 and 2 and in Zogota, like all what we did.

21 Q. Did he play a particular role in trying to promote your
22 interests in Blocks 1 and 2?

23 A. No. There was -- all the meetings I was talking about
24 Blocks 1 and 2 was together with me, and if he had his
25 role to talk to the technical people in the ministry

12:32

1 without me, I didn't have to come. And we had to
2 convince also the local people in Kérouané that the
3 best, like, for them is to divide the mountain and
4 create competition for their wealth.

5 Q. So his --

6 A. So he was doing it in his way, much better than me.

7 Q. So he was much more important just for local population
8 support than for actual high-level Mining Ministry?

9 A. No, high-level ministry, each time I came to the
10 minister, like, I would say 80% of the time he was with
11 me. Or when I saw the President, he was with me, of
12 course.

13 Q. And he was effective --

14 A. Also -- also it doesn't look well when -- sorry -- when
15 a white businessman is coming by himself to the
16 ministry.

17 Q. So --

18 A. All of the companies came with a local external guy.

19 Q. So he was no more helpful in these meetings than any
20 local Guinean would have been to have by your side?

21 A. No, he was very intelligent, very knowledgeable, very
22 devoted, very well organised. You see, I'm not so well
23 organised in my nature. So he always knew the Mining
24 Codes, he knew the law, the local law, since he was also
25 a juriste in the place. And I relied on his opinion,

12:33

1 but all what concerned the local environment.

2 Q. In fact, amongst his contacts, he told you that he knew
3 the President of Guinea personally, didn't he?

4 A. No, never. He knew -- he told me the story -- and I'm
5 not so sure that Ibrahima was born at the time -- he
6 told me the story about the President that he took
7 shelter from Sekou Touré in their village or something,
8 when he was a baby or he was not even born. So that
9 President Conté got shelter in their house, something
10 like that.

11 Q. Okay. But he didn't tell you that he knew personally
12 President Conté for a very long time?

13 A. He didn't know him personally.

14 Q. Okay.

15 A. He knew his background and maybe -- I don't -- I'm not
16 sure he even met him before he knew us.

17 Q. So could we turn to paragraph --

18 A. I'm not sure.

19 Q. Can we turn to paragraph 109 of your witness statement,
20 please.

21 A. Mm-hm.

22 Q. We'll come back to Mamadie Touré later, when this
23 describes Mr Touré informing you about her. But in the
24 last sentence there, you wrote:

25 "He explained ..."

12:34

1 He, Ibrahima Sory Touré:

2 "... explained that Ms Touré had, like him, got to
3 know President Conté when he was hiding from the then
4 President, Ahmed Sekou Touré."

5 So --

6 A. I'm happy you're reading: that's exactly what I told
7 you. He knew of him -- and that's exactly what I told
8 you. He told me that when he was hiding from the
9 President at the time, Sekou Touré, he hid -- he found
10 shelter in some period in their house, yes.

11 Q. Mr Avidan, with respect, it's not what you told me a few
12 moments ago. A few moments ago, you said that he never
13 told you that he knew President Conté.

14 A. Not in person. I said not in person.

15 Q. So when you say, "He explained that Ms Touré had, like
16 him, got to know President Conté when he was hiding from
17 ... President ... Sekou Touré", when you say, "He ...
18 had ... got to know President Conté", you didn't really
19 mean that he had personally got to know President Conté?

20 A. No, of course not. Of course not. Of course not.
21 I say that he told me the story that he was in their
22 house having shelter at the time, and that's what really
23 happened. I'm not so sure that he really met him before
24 we came. I'm almost positive.

25 MR OSTROVE: Madam President, would it be a convenient time

12:36

1 to take a short break?

2 THE PRESIDENT: Yes. Where do you stand approximately in
3 your examination?

4 MR OSTROVE: I have quite a few subjects to cover with
5 Mr Avidan.

6 THE PRESIDENT: I appreciate that, yes.

7 MR OSTROVE: So probably at least -- unless I can reduce it
8 a little bit -- an hour and a half/two hours to go.

9 THE PRESIDENT: Yes. We can take a break now. Can we take
10 it a little shorter than usual? Because we have lost
11 quite some time this morning. If we start at 1.30,
12 maybe that's reasonable. Is it fine?

13 MR OSTROVE: Even 1.15, if that's enough time for people
14 to --

15 THE PRESIDENT: 1.15, that's enough time? Good.

16 Mr Avidan, we are going to take a break now and
17 resume at 1.15 for us, which will be 2.15 for you.
18 During the break, I have to ask you not to speak to
19 anyone about this case, about your testimony, and the
20 best way of doing this is just not to speak to people
21 around you, so we are sure that you are complying with
22 this indication.

23 MR AVIDAN: Okay. Okay.

24 THE PRESIDENT: Maybe I could also ask during the lunch
25 break whether the setup of the room could be changed

12:37

1 a little. I must say that I thought that we saw
2 Mr Steinmetz better, and the setting of the camera and
3 the placement of the seating was also different. Those
4 who were there then will know how it was. It would be
5 better. Sometimes Mr Avidan's face is half in a shadow,
6 and we see him not that well. So if we can change this
7 during the break. It's not that important; that is why
8 I did not interrupt earlier. But we could take
9 advantage of the break to do this.

10 MS WAIZER: Yes, we will try.

11 THE PRESIDENT: Excellent, thank you.

12 MR AVIDAN: Thank you.

13 THE PRESIDENT: So we take the break now.

14 Can I just add, for the people in Tel Aviv, that we
15 should keep the connection open, because it was so
16 difficult to establish. We will mute, of course, and
17 you should mute on your side as well. Thank you.

18 (12.39 pm)

19 (Adjourned until 1.15 pm)

20 (1.19 pm)

21 (Pause to resolve a technical problem)

22 (1.25 pm)

23 THE PRESIDENT: Fine, so the connection is re-established.

24 Mr Avidan, do you hear me?

25 MR AVIDAN: Yes, I hear you loud and clear.

13:25

1 THE PRESIDENT: Good. I hear you too.

2 So we can continue, Mr Ostrove. You have the floor.

3 MR OSTROVE: Thank you, Madam President.

4 Hello again, Mr Avidan.

5 A. Hello.

6 Q. Before the break we were just talking about the role of
7 some people locally. We talked about the role of
8 Mr Cilins and we were talking about the role of
9 Mr Touré.

10 When the Vale joint venture went through, Mr Touré
11 received a bonus as well; correct?

12 A. True.

13 Q. That bonus was an amount of US\$450,000; is that correct?

14 A. True.

15 Q. You were the one who decided that he should get paid
16 that amount; correct?

17 A. I did. I certainly pushed that all of our employees
18 will get a bonus, from the driver until Mr Touré.

19 Q. The amount though, that was your decision?

20 A. No, the board decision.

21 Q. Did you recommend that amount to the board?

22 A. I wanted much more than this, like I wanted for the rest
23 of us, but that's what they approved.

24 Q. Okay. So you thought that Ibrahima Sory Touré should
25 get more than \$450,000 for his role in getting to the

13:26

- 1 point where you did the Vale --
- 2 A. Certainly I didn't -- yes, certainly I didn't see the
3 difference that he's a local guy, did an extraordinary
4 amount of work, together with me, and he should be
5 different than most of us, or the rest of our team.
- 6 Q. In fact though, his bonus was much higher than any other
7 local employee's bonus, wasn't it?
- 8 A. Because he was a much senior guy than all the rest.
- 9 Q. "Much senior": when you say that, you mean not that he
10 was older than them, but that he had the most important
11 position?
- 12 A. Senior: senior job, senior work, senior position in the
13 company.
- 14 Q. He didn't participate in the Vale negotiations, did he?
- 15 A. No, he did not. He was in the due diligence though.
- 16 Q. Okay. That bonus, that wasn't part of his normal
17 salary, was it; that was something special?
- 18 A. No, it's like the rest of us: all of us got our salary
19 and bonuses. When we normally work, before the deal
20 with Vale, we had a second -- like a second month, or
21 the 13th or 14th month on a year, we got the same thing.
22 That's at least what I tried to achieve.
- 23 Q. Sorry, this was not just like the 13th or 14th month of
24 the year; this was a very special --
- 25 A. No, then there was no deal with Vale. Then we work

13:28

1 normally.

2 Q. But you agree with me that --

3 A. So we all had from time to time bonuses, and I made sure
4 that everybody has.

5 Q. But you would agree with me that \$450,000 that he
6 received was not part of his normal salary?

7 A. It was a bonus, nothing to do with the salary.

8 Q. Okay.

9 A. Like mine, like Dag's, like Marc and everybody.

10 Q. Could we turn to tab 3 in the bundle, please, which is
11 document C-54.

12 In this tab there's an English translation in front
13 and the French original is the second half of the
14 document. If you turn to the last page of the document
15 in the bundle.

16 A. Yes.

17 Q. The very last page is -- are you on document C-54, which
18 should be a letter from BSG Resources to the Comité
19 Technique de Revue des Titres et Conventions Miniers
20 from 26th December 2012? Is that your signature at the
21 end of the document?

22 A. It is, yes.

23 Q. Do you recall working on the preparation of this
24 document?

25 A. Yes.

13:29

1 Q. Could you please turn to page 7 of the letter. This is
2 BSGR's responses to the various allegations from the
3 Technical Committee; correct?

4 A. Yes, it is.

5 Q. In response to allegation number 5, which starts on the
6 bottom of page 6, the allegation is:

7 (Interpreted) "To reward his efforts in favour of
8 BSGR, I.S. Touré got several gifts and advantages,
9 including an appointment in 2006 as director for foreign
10 affairs of BSGR in the Republic of Guinea."

11 (In English) And in the response to that allegation
12 that you give, you write in the second paragraph:

13 (Interpreted) "BSGR recruited Mr Touré because of
14 his professional competence and his knowledge of the
15 country, and he was promoted to the position of
16 vice president of VBG-Vale BSGR Guinea after the joint
17 venture agreement ... As Mr Touré confirmed, he received
18 in all only his normal remuneration, and no gift was
19 ever given to him."

20 (In English) So you didn't mention to the Technical
21 Committee that he received, on top of his normal salary,
22 a US\$450,000 bonus?

23 A. Maybe tell me: what does it mean, "rémunération"? What
24 does it mean in English, "rémunération"?

25 THE PRESIDENT: It means "compensation".

13:31

1 MR OSTROVE: "Compensation", okay. So is it your testimony
2 then that \$450,000 was just part of his normal
3 compensation?

4 A. Exactly, like all of us.

5 Q. Okay. If you look at the English version of this
6 letter. This was a translation that's also submitted by
7 BSGR, the first part of this document. Could you turn
8 to the first page of this document.

9 THE PRESIDENT: Can I just ask Mr Avidan for
10 a clarification. The reply to allegation 5 says:

11 "... all he received in exchange for his work was
12 his normal salary ..."

13 And a moment ago you said the \$450,000 was a bonus
14 and was not a salary. Or did I misunderstand you? So
15 now I'm confused, frankly.

16 A. When I say the "rémunération", or his salary, like all
17 of us, we all considered the bonus part like it is one
18 of the rémunération, as a salary. A bonus is a bonus,
19 as it sounds and as it is.

20 But, Madam President, we have to understand the
21 context of our answers to what Guinea calls the
22 Technical Committee. We didn't recognise this committee
23 right from the start, but in any case we answered. But
24 I don't think I have to disclose the committee that each
25 one of us had different bonuses, like a salary, so it

13:33

1 was not exceptional to Mr Touré. That was the answer.

2 THE PRESIDENT: Thank you.

3 MR OSTROVE: Mr Avidan, Madam President was looking at the
4 English translation that BSGR also did at the time,
5 which said that this was "his normal salary".

6 Even if you were sticking to the French, did you
7 understand that the Technical Committee was interested
8 in how much Ibrahima Sory Touré had received? You
9 thought it would be better not to tell them the full
10 amount?

11 A. No. No, I didn't think. I think a bonus is a private
12 matter, like you consider your bonuses where you work,
13 and the rest of your colleagues, and I don't have to
14 disclose his bonus, like I didn't have to disclose the
15 bonuses of the other guys that worked with us as the
16 local consultants that worked.

17 Q. But you did understand that Technical Committee was
18 concerned that Ibrahima Sory Touré, from their point of
19 view, was a member of the President's family? You did
20 understand that?

21 A. No. No, no. No, it wasn't mentioned like that. For
22 me, they can think whatever they want. They thought
23 many things at the time.

24 Q. Could you look at allegation 4, which appears just
25 above. I'm reading the French version:

13:34 1
presidential

(Interpreted) "In order to facilitate access to the
2 family, BSGR struck up a relationship with Mr Ibrahima
3 Sory Touré ... the brother of Madame Touré ..."

(In English) So a moment ago you told me that, no,
4 they didn't tell you; they could think what they want.
5 In fact it was perfectly obvious that the Technical
6 Committee was concerned about payments --
7

8 A. No, what does this got to do with the rémunération?
9 I don't follow. What does this got to do with
10 rémunération? This is a different issue. Rémunération
11 is the salary of Mr Touré.

12 You know, when we are treating the local employees
13 like the rest of us -- and unfortunately I still today
14 think that we made a kind of a difference, maybe because
15 of they were Guineans -- when we consider them like all
16 of us, so this is also not good. If we would tell them,
17 "You are only so-called Guineans and you don't get
18 rémunération because of this", he would tell us: why we
19 got the bonuses and not them? I think we were fair and
20 clear.

21 Now, the reason --

22 Q. Mr Avidan, I'm sorry to interrupt, but you're not
23 answering my question, you are discussing something
24 else.

25 A. I did answer.

13:35

1 Q. My question is simple. You understood that the
2 Technical Committee was looking into allegations of
3 corruption?

4 A. No, they didn't ask me if Mr Touré got a special
5 rémunération or special bonuses like others. And if
6 they would, I don't believe today that at the time
7 I would have answered that he got a bonus. This is
8 a private thing. We didn't recognise the committee as
9 a legal procedure. You know it much better than me.
10 Nobody wrote us the question. It was you that wrote
11 question, not Mr Nava Touré.

12 Q. Mr Avidan, did you consider --

13 A. Did you write the question or not, Mr Ostrove? You're
14 asking me, and I'm replying like a normal Jewish person
15 by asking you the question.

16 Q. And as you are very --

17 A. It's been Mr Nava who wrote the question? If he would
18 I would tell you, I am sure.

19 Q. Mr Avidan, on a personal level, I am indeed very used to
20 people answering questions with questions, but the way
21 it works here, I'm afraid, is that I'm going to be
22 asking you the questions. So if I can continue.

23 A. I think I answered. I think I answered.

24 Q. I understand that you did not feel that the Comité
25 Technique was legitimate. Did that mean that you felt

13:37

1 you could lie to the Comité Technique?

2 A. No, I didn't lie. I just didn't write the same amount
3 of words that I was using in my testimony.

4 Q. Then let's move on to some other people. I'd like to
5 ask you about Mr Issiaga Bangoura. Do you know
6 Mr Issiaga Bangoura?

7 A. Dit Benjamin, yes.

8 Q. Dit Benjamin, yes. He was the chief of security for
9 BSGR in Guinea; correct?

10 A. Correct.

11 Q. Was that his only role, chief of security?

12 A. Yes.

13 Q. He didn't do any --

14 A. He was in charge of my security mainly, and our
15 activities in the fields, in the camps, in the ...

16 Q. Did he have any direct role in helping BSGR obtain
17 mining rights?

18 A. Obtain what, sorry?

19 Q. Did he have any direct role in helping BSGR obtain
20 mining rights?

21 A. No, not at all, whatsoever.

22 Q. He didn't help make the JV deal happen either?

23 A. The what?

24 Q. Sorry. He didn't help make the joint venture with Vale
25 happen, did he?

13:38

1 A. No. (Laughs) No. I'm sorry I'm laughing. But of
2 course not.

3 Q. Okay. But he received a bonus of US\$100,000 after the
4 Vale deal happened; correct?

5 A. True, true.

6 Q. That bonus was ten times higher than any other Guinean
7 employee, other than Mr Touré; is that correct?

8 A. Correct, because he was the second senior guy after
9 Mr Touré, as far as I'm concerned.

10 Q. In fact, Mr Avidan, wasn't one of his roles also to
11 handle cash that was being distributed in Guinea?

12 A. No, no. Mr Ostrove let tell me you something. Allow me,
13 please, because this is extremely important.

14 \$100,000 to Mr Issiaga Bangoura was not even close
15 to what he deserves. I want to tell you here and now
16 something that I haven't told no one during the
17 discussions. Mr Issiaga Bangoura, apart from keeping my
18 life safe in Guinea during all the crisis that they had,
19 Mr Bangoura lost his son in our activities in Guinea, in
20 the swimming pool, his older son, his first-born son.
21 And when we made the deal, I thought that the guy
22 deserves ten times, and not even -- you know, I cannot
23 even express what the guy deserves.

24 The name of the son was Djibril. I want you to
25 understand that he has a son that lost his life in our

13:39

1 activities. And Mr Bangoura, I felt very, very, sorry,
2 until today, until today, that he got only \$100,000, and
3 you cannot bring back his son, Djibril, with \$100,000.

4 So I tell you here under oath -- and you can bring
5 him over. I don't want to discuss what happened to him
6 during his time in prison because this is a side thing.
7 He lost his son, Djibril, during these activities.

8 I can show you pictures of Djibril and his family with
9 me. And when we got the bonuses, it was nickel --

10 Q. Mr Avidan --

11 A. I'm sorry to be -- I'm trying to stay calm, but I want
12 the court to understand the context as well of my
13 people.

14 Q. Let's move on to somebody else then, Mamadie Touré, and
15 let's discuss your relationship with her.

16 When you first got to Guinea, one of the things that
17 Mr Ibrahima Sory Touré told you quite early on was about
18 his half-sister, Madame Touré; correct?

19 A. Correct.

20 Q. He was not telling you about her because she had some
21 special voodoo powers or something like that, right?

22 A. No, she considered herself as a marabout. She
23 considered herself as a karamoko marabout, or -- they
24 have many names for these things.

25 Q. But when he introduced you, it was not because of such

13:41

1 powers specifically but because she was an influential
2 lady, right?

3 A. An influential lady on what, what aspect?

4 Q. Well, if we could turn to your first witness statement,
5 paragraph 109, please.

6 A. Yes.

7 Q. You say in the second sentence that:

8 "He [Mr Touré] said that she was an influential lady
9 and BSGR should keep on the right side of her."

10 So I'm asking you what you understood he meant when
11 he said to you that she was an "influential lady".

12 A. He told me -- okay, he told me that this woman
13 considered herself -- considered herself -- as the
14 fourth wife of the President, which she was not, because
15 he is the half-brother of hers, and he told me that she
16 can cause more issues to us by causing some problems.
17 Some people believed in her karamoko, or voodoo like you
18 call, on her, some people, and she was known to cause
19 problems not only to us, there were other companies like
20 Hyperdynamics and Global Alumina, that she caused
21 problems. So he told me, "Keep her just on the right
22 side of us".

23 Q. So if I understand correctly, at that time he said not
24 what you said here, that she was influential, but rather
25 that he said, "Hey, you need to know about my sister,

13:43 1 she thinks that she's influential, she thinks that she's
 2 the fourth wife of the President, but it's not really
 3 true"?

 4 A. Yes, 100%.

 5 Q. And apparently he felt that she could have influence, at
least 6 negative influence on you, and you had to keep
 7 her happy?

 8 A. That I have to be on her side, yes. Happy? I don't
 9 know how I can keep her happy.

 10 Q. Sorry, in paragraph --

 11 A. Said at the time 2006.

 12 Q. In paragraph 114 of your witness statement, you said:
 13 "I did speak to Mr Touré about what Ms Touré had
 14 said to me, and he told me not to pay too much
 15 attention. He said that I should just go and see
 16 Ms Touré regularly to make sure ... she was happy and
 17 ... did not feel ignored."

 18 So it was important to make sure she felt happy,
 19 yes?

 20 A. Yes, that's what I said, that she won't be upset.

 21 Q. So your view was that she wasn't really important in
 22 business circles or political circles in Conakry?

 23 A. Definitely. I certainly hope so, that she never
 24 influenced any one of those gentlemen of the ministers
 25 and --

13:44

1 Q. That's not my question, Mr Avidan. I'm asking whether,
2 at the time, your understanding was that she was not
3 someone who would be influential amongst politicians and
4 ministers and businesspeople?

5 A. Yes, you might say so, yes. That's what exactly I mean.

6 Q. But you did go to see her occasionally because Mr Touré
7 insisted that you do so; correct?

8 A. Not only because he insisted, because I truly felt and
9 I understood that I don't have to have any open
10 accounts -- "accounts" meaning like bad stuff, bad
11 spirit -- with her, yes. I understood that, yes. He
12 was each time reminding me that, "We have to go and see
13 her, she is upset", this kind of thing.

14 Q. Okay. So you went to see her four or five times between
15 September 2006 and February 2008; is that about
16 accurate, more or less?

17 A. During 2007 I didn't see her, let's say, more than five
18 times, yes. I saw her once in 2006, I think before the
19 presentation of our -- at least maybe I saw her in the
20 end of 2006, maybe I remember something before
21 Christmas. But then maximum five times during 2007.

22 Q. So 2006, I think you mentioned in your witness statement
23 that you first went to see her at her house in Dubréka?

24 A. Yes, true.

25 Q. And then you said she was at that reception that you had

13:45

1 in September?

2 A. She was in the reception, yes.

3 Q. And then you saw her again around Christmas time?

4 A. Something before Christmas.

5 Q. Okay. And then about five times in 2007?

6 A. Yes. You might say so, yes. This is an estimation, but
7 yes.

8 Q. Okay. If I may, I'm going to play a short excerpt of
9 the video. Do you recall at that reception there was
10 a television camera crew that was there?

11 A. Yes.

12 Q. So you had met her at her house in Dubréka shortly
13 before this reception?

14 A. When was the reception, sorry?

15 Q. September 2006.

16 A. So I would say shortly before, yes: end of
17 August/beginning of September.

18 Q. Okay. I'm trying to put it up on the screen so you can
19 see the video. Let's see if it comes up for you. Do
20 you see the video on your screen?

21 A. Yes.

22 Q. Okay, sorry. What you see is blocked by ours. Okay,
23 thank you.

24 (Video played)

25 That was Mr Cilins bringing her in; is that correct?

13:47

1 A. No, this is Mr Touré, I think. It's quite dark.

2 Q. I'm sorry, just before. Is it Mr Cilins who walks in
3 with her?

4 (Video played)

5 Was that Mr Cilins?

6 A. Yes. I saw him only for a bit of a second.

7 Q. Right. And now that's her half-brother, Mr Touré,
8 right?

9 A. Exactly.

10 (Video played)

11 Q. I don't know if you could hear there, but I believe what
12 Mr Touré said was, "Asher Avidan", he introduced you to
13 her. I think that was your nose we saw at the edge of
14 the screen for a second. Do you recall --

15 A. Oh, really? I have a very Jewish nose, yes!

16 Q. Do you recall being the first person that she was
17 presented to at the --

18 A. I don't know. I don't know. I don't see it clearly,
19 I don't remember.

20 (Video played)

21 Q. So this woman, who you've just said you didn't consider
22 her very influential, she comes in surrounded by berets
23 rouges at the height of your party, and you're the first
24 person to greet her. Clearly she was deemed to be
25 a guest of a certain importance when she showed up,

13:49

1 wasn't she?

2 A. No, no, the berets rouges was our berets rouges, it
3 wasn't her berets rouges. She came with one. I think
4 she came with her bodyguard. Everyone in Guinea can
5 have -- at the time, I don't know today. You're more
6 familiar with what's happening today in Guinea. But
7 I would presume that there was no big difference.

8 So she had constantly, like I had, and like most of
9 the businessmen coming from Europe or other places had,
10 the berets rouges. All those berets rouges, we had
11 a pool of at least ten berets rouges that were working
12 with the company. In this reception, you have to
13 understand that we had ministers, previous minister, we
14 had Mr Souaré, we had other previous ministers, we had
15 like 100 people, and the berets rouges was guarding the
16 house. It was part of my pool, not her pool.

17 Q. Okay.

18 A. She came, I think -- like she was always walking with
19 her bodyguard, you know, Mr Cissé, the father of her
20 child.

21 Q. Mr Avidan, thank you for your explanation. I think the
22 Tribunal has heard an awful lot about berets rouges, and
23 we will move on to another topic.

24 But of all the people on the ground with BSGR in
25 2006, is it fair to say that Mr Cilins had the most

13:50

1 contact with Mamadie Touré?

2 A. In 2006? During 2006 he was probably the only one to
3 have contacts with Mamadie Touré.

4 Q. In fact, Mr Avidan, you were smart enough or savvy
5 enough to figure out in 2006 that Frédéric Cilins must
6 have had some kind of arrangement with her, right?

7 A. No. No. At the time -- at the time I'm not sure that
8 I knew something. He told me that he is doing business
9 with her with chicken or pharmaceutical, and that was
10 the case. And I think at the time Mr Touré invited all
11 his family. So if you see on her left side or right
12 side and behind her, and then after they were sitting in
13 a room, it was all -- he invited all his family.

14 Q. I'm sorry, Mr Avidan, I'm confused by your response.
15 I asked you whether you were smart enough or savvy
16 enough at the time to figure out that Mr Cilins must
17 have had some kind of deal with her, and --

18 MR DAELE: And he already replied.

19 MR OSTROVE: -- and on the first hand you said, "No,
20 I didn't think so", and then you said, "I think he was
21 doing poultry with her".

22 A. No, no, I --

23 Q. At the time, did you suspect he had some kind of deal
24 with her?

25 A. No, I'm sorry, the only thing that catches my attention

13:52

1 when you asked the question, that I was happy that you
2 think that I was smart enough. But no, the answer:
3 Mr Touré invited his family, it was a natural thing; so
4 did Benjamin, Issiaga Bangoura. And Ms Touré came
5 because she was in touch with Mr Cilins indeed, and it
6 was okay for her to come. Today you all see it in
7 a different context. I didn't see anything strange with
8 it.

9 Q. Mr Avidan, maybe it's been a year since you did your
10 witness statement, but if you turn to paragraph 112 of
11 your witness statement -- you're talking about the time
12 even before this reception -- you say:

13 "From memory I believe it was in September 2006 that
14 I went to her house in Dubréka to meet her. She was
15 a ... young woman [et cetera]. In our meeting, she was
16 very aggressive. She said lots of odd things like that
17 BSGR had to report to her and that BSGR's work in Guinea
18 was her project. I felt uncomfortable both about her
19 conduct, which was unusual (she was very young but very
20 aggressive) and about what she was saying to me. I had
21 gone there in good faith but she kept saying that
22 I should not be there because Mr Cilins should be
23 running things for BSGR."

24 A. Yes.

25 Q. "It was clear to me that she had had some kind of

13:53

1 agreement with Mr Cilins, or at least thought she had."

2 So that's why I asked you whether at the time,
3 seeing how she behaved, you were smart enough or savvy
4 enough to realise that Mr Cilins must have had some kind
5 of agreement with her. Do you change your testimony or
6 do you stand by your testimony?

7 A. No, I don't -- I didn't change my testimony. I said
8 it's some kind of agreement he had; what I meant here,
9 that he had a relationship with her at the time due to
10 his business in Guinea, not an agreement on our issue.

11 Q. Mr Avidan --

12 A. This I didn't know at the time.

13 Q. Mr Avidan, you thought that he had a deal with her about
14 chickens?

15 A. Yes.

16 Q. You just describe a meeting where she says, "BSGR has to
17 report to me, the project here is Mr Cilins's project",
18 and you come away saying, "He must have some kind of
19 agreement with her about chickens"?

20 A. Because she always wanted Mr Cilins to stay on the
21 ground, and not me, and that's her way of showing me
22 that she is kind of influential, or here and there.

23 Q. In fact --

24 A. I even laughed at the time. I didn't take it seriously.

25 Q. But in fact you must have understood at the time, when

13:54

1 you say she must have some kind of agreement with him,
2 that that agreement related to BSGR's activities,
3 Mr Avidan?

4 A. No. Some kind of agreement, that's what you are saying.
5 Some kind of agreement is a relationship that she had
6 with him, agreements on their business, I think, in
7 2006.

8 Q. Which led her to say that Mr Cilins should be running
9 the show at BSGR?

10 A. True.

11 Q. You also say in your witness statement at paragraph 125
12 that you may have seen her at a meeting between
13 Mr Steinmetz and President Conté in April 2008. Do you
14 recall that?

15 A. Yes, I do.

16 Q. And at that meeting, you weren't discussing chickens
17 with President Conté, right; you were discussing BSGR's
18 activities in Guinea?

19 A. Never discussed with Conté on chickens.

20 Q. And you were discussing BSGR's activities; correct?

21 A. True.

22 Q. The Minister of Mines was not there at that meeting?

23 A. No, I don't think so. I don't think so. It's a good
24 question, but I don't think so. I'm not so sure.

25 Q. So it didn't seem strange to you at the time that the

13:56

1 President of the country would talk to you about your
2 activities in the country with Mamadie Conté --
3 Mamadie Touré there?

4 A. No, he was Lansana Conté, she was Mamadie Touré.

5 Q. Yes, I'm sorry, I misspoke.

6 It didn't strike you as strange that the President
7 of the country would receive you to discuss your
8 activities in the country --

9 A. No, no. Mr Ahmed --

10 Q. -- with Mamadie Touré?

11 A. No, no. Mr Ahmed Kanté, maybe he was not available at
12 this time, but we didn't hide the fact that Mr Steinmetz
13 is coming over. But we did try to see him, or maybe we
14 saw the Prime Minister, and he also didn't come to the
15 Prime Minister.

16 Q. Mr Avidan, you're not answering my question. My
17 question was: did it not surprise you that the President
18 of the country would discuss your business with
19 Mamadie Touré there?

20 A. She wasn't there on her -- like you are presenting it.
21 She was among -- it was very odd meeting. There were
22 like at least six or seven women sitting in a circle
23 and, I don't know, opening nuts, you know, kola or
24 something like that, or peppers, and some soldiers
25 sitting around, and among those women I can tell you

13:57

1 I am positive that she was there.

2 Q. Okay. But you also saw her again at the Presidential
3 Palace; correct? You mention that at paragraph 135 of
4 your witness statement. That's in 2008, a couple of
5 years later.

6 A. Together with Marc Struik.

7 Q. Exactly.

8 A. Yes.

9 Q. Okay. And if I turn back to paragraphs 121 to 122 of
10 your statement, you said she came to your office at BSGR
11 in 2008; correct? Twice?

12 A. Yes, she came with an albino girl and her mother. She
13 was often walking with an albino person.

14 Q. Mr Avidan, would you have any reason to hide your
15 relationship or your dealings with Mamadie Touré?

16 A. No, why should I hide? I told you everything that
17 happened. I could tell you that I never met the woman.
18 But I did meet the woman in 2008, she came -- actually
19 when I was with Marc in --

20 Q. Excuse me, Mr Avidan, I'm just trying to wonder if
21 you've ever felt it important to lie to somebody in the
22 past about the extent of your contacts --

23 A. Never lied, and I'm not lying today.

24 Q. Okay.

25 Then could we turn to tab 7 in the bundle, which is

13:59

1 Exhibit R-406. (Pause) This is another letter that you
2 wrote to the Technical Committee reviewing BSGR's mining
3 rights, or VBG's mining rights, on 15th March 2013.

4 A. Mm-hm.

5 Q. Do you recall preparing this letter?

6 A. Yes, I do.

7 Q. And that's your signature on the last page; correct?

8 A. Well ...

9 Q. And this letter involves some demandes des précisions,
10 some requests for clarification from the committee? If
11 you could turn to the second-to-last page, where it says
12 "3ème demande de précision".

13 A. Yes.

14 Q. (Interpreted) "VBG is asked to clarify 'whether it
15 denies having had any kind of contact with Mrs Touré and
16 whether it denies that Mr Touré claimed to be forwarding
17 instructions coming from the President'."

18 A. Mm-hm.

19 Q. (In English) And the response is:

20 (Interpreted) "BSGR was contacted once by Mrs Touré
21 regarding the exploitation of a site in the Forécariah
22 prefecture that may contain diamonds ... BSGR refused to
23 respond."

24 (In English) So when the Technical Committee asks
25 you whether you deny having any contact with Mamadie

14:00

1 Touré, the response that was given is, "We were
2 contacted by her one time".

3 A. No. No. That one time we contacted -- she contacted us
4 for Aredor, for the diamonds. She wanted us to take
5 Aredor. That's the only time I can recall that she
6 contacted us and wanted us to take, like, diamonds. We
7 didn't say we never met her or something.

8 But again, I have to emphasise: this committee, we
9 answered very shortly, only because our lawyers
10 insisted. Me, if it was me, I wouldn't even reply to
11 them. I always ask them to come and do the committee in
12 Paris or something like that.

13 Q. So is it your view that in front of this Tribunal you
14 need to tell the truth and the whole truth, but in front
15 of the Comité Technique you could just tell a little bit
16 of the truth?

17 A. No, but listen. We had the professors that told us that
18 the Comité Technique is a puppet. So --

19 Q. That's not my question, Mr Avidan. Before you told
20 me --

21 A. So why not? Why not? Here I do respect the Tribunal,
22 and that's why I'm telling you, as far as I can to my
23 knowledge and as far as I can to my memory, tell you
24 exactly how many times and how I saw her.

25 Q. So, Mr Avidan, before you told me that you did not feel

14:01

1 that you could lie to the Technical Committee. Is it

2 your testimony that you felt that you could just not --

3 A. Well, you asked if I would not lie to the Tribunal, I'm

4 sorry.

5 Q. Well, we'll check what you said before.

6 A. And I didn't lie to the committee. I also didn't lie to

7 the committee.

8 Q. You just didn't --

9 A. That was your question and this is my answer.

10 Q. So you just didn't tell them all of the truth?

11 A. We were very short. They asked us if she ever contacted

12 us for our activities, and we answered: only one, which

13 we didn't touch, we refused to touch, which was

14 diamonds.

15 Q. You and Mr Struik had a nickname for Mamadie Touré,

16 right? You referred to her as "the Lady"?

17 A. We started to call her "the Lady" sometime in 2007, yes.

18 Q. Why did you call her "the Lady"?

19 A. Because we called also other women "lady", but in her

20 case it was like, I would say -- I would say, like, not

21 so serious or a half-joke, I would say, that was between

22 us. Real ladies were other people in Guinea.

23 Q. You say that you started calling her that with Mr Struik

24 in 2007?

25 A. Something around that, yes.

14:03

1 Q. Could it have been earlier, in 2006, that you and
2 Mr Struik started using that term?

3 A. Maybe.

[PROTECTED]

[REDACTED]

19 Q. I understand. Does that help you with your recollection
20 that even when you got there, in June 2006, you already
21 referred to Mamadie Touré jokingly as -- if I could
22 finish my question -- already in 2006 Mamadie Touré was
23 jokingly referred to between you and Mr Struik as
24 "the Lady"?

25 A. No, we started to -- Mr Struik and I when we started to

14:04

1 talk of "the Lady", as far that it was concerned me, we
2 started to call her "the Lady" -- I don't recall that we
3 called her beforehand, like me and Mr Struik. He might
4 have [been] calling her this way. But, you know, we
5 have different views on the people. He almost didn't
6 meet her, he had no interaction with this -- the lady.

7 Q. We'll let Mr Struik's testimony stand for Mr Struik.
8 Thank you, Mr Avidan.

9 In your first witness statement you give some
10 comments regarding the contracts from 2008 allegedly
11 signed by BSGR and a company, Matinda. If I understand
12 your position correctly, you claim that those contracts
13 of 27th and 28th February 2008 are forgeries. Is that
14 correct?

15 A. Absolutely.

16 Q. But those contracts do appear to have your signature on
17 them; correct?

18 A. I'm not a professional on this. It looks like my
19 signature, yes.

20 Q. You know, don't you, that Mr Cilins, when he was in the
21 United States after he was arrested, hired a forensic
22 expert to test the validity of those contracts? Were
23 you aware of that?

24 A. Not. Not so much, no. I'm not really aware whether he
25 hired a forensic expert, not really.

14:06

1 Q. When you say "not really", had you vaguely heard of
2 something --

3 A. Maybe I heard of it, I don't know, maybe during his time
4 in jail or after, when we were discussing this. But I'm
5 not -- I wasn't aware of it.

6 Q. Ok. Did Mr Cilins ever share with you the results of
7 forensic analysis into those contracts?

8 A. No. No.

9 Q. No, he didn't?

10 A. What I know is that -- no. What I know is that I have
11 not signed those contracts. I had no mandate. And as
12 you know very well, Mr Ostrove, it's a common practice
13 in Guinea, unfortunately, to forge documents like that.

14 Q. Mr Avidan, if you want me to testify now as an expert
15 witness about what common practice in Guinea is, I'm
16 afraid it's not my role here today. We'll save that for
17 submissions.

18 Can I ask you to turn to --

19 A. No, but Guinea forged another -- sorry, because you are
20 aware that Guinea forged the document that was given to
21 the CEDEAO, to ECOWAS, not so long ago with a signature
22 of Momo Sakho. But this is only one of these. But
23 unfortunately that's how it is and I don't have to
24 convince anyone. I did not sign those documents.

25 Q. Let's look for a moment at the documents. I think you

14:08

1 only have black and white photocopies in front of you.

2 If you'd like, I can put the colour copies on the

3 screen, if that would be helpful for you.

4 A. No, that's okay. That's okay, I've seen it.

5 Q. Okay. You've seen the colour copies?

6 A. I saw it, yes.

7 Q. Okay.

8 A. I saw one with authorisation, with -- what do you

9 call? -- greffier, one without greffier. I saw some of

10 the documents.

11 Q. Just to refresh your recollection, let's look at tab 11

12 of the bundle, which is Exhibit R-28, a document called

13 "Contrat de commission".

14 A. Yes.

15 Q. I'm just going to put the better copy up on the screen.

16 This at least purports to be a document in which

17 BSGR engaged itself to pay a sum of \$4 million as

18 a commission for obtaining Blocks 1 and 2 of Simandou;

19 correct?

20 A. That's what it's written, yes.

21 Q. Okay. And if we look down at the signature blocks, my

22 question to you before was whether the signature that

23 appears there appears to be your signature.

24 A. It looks like mine.

25 Q. And is that the stamp that was typically used by BSG in

14:10

1 Guinea? Does it look like the stamp that you typically
2 used?

3 A. It looks -- it looks like ours, yes.

4 Q. You had a stamp like that, that said "Le Directeur des
5 Opérations"?

6 A. Yes, we did have.

7 Q. Okay. Let's look at the document that's purportedly
8 signed the next day, Exhibit R-29, which is the next tab
9 in the bundle, which is entitled "Protocole d'Accord."
10 By this one, according to the contract -- which we
11 understand you contest:

12 "... BSG Resources s'engage à donner 5% des actions
13 des blocs 1 et 2 de simandou [à la société Matinda]."

14 Correct?

15 A. Yes. Can you go lower, please?

16 Q. Of course.

17 A. Yes.

18 Q. Does that also look like your signature?

19 A. It looks like my signature, yes.

20 Q. But you confirm that these are forgeries?

21 A. 100%.

22 Q. Who would you suspect would have forged this document,
23 Mr Avidan?

24 A. I have no idea. I don't want to get into it. I never
25 thought of it and I didn't want to know, and this is not

14:11

1 my concern.

2 Q. But the first time you saw these documents was when
3 Walter Hennig came to your office; is that correct?

4 A. No, it was when a lawyer named Moussi sent us a letter
5 with the documents, those particular contracts.

6 Q. Okay --

7 A. When I was with the general, I didn't see those
8 documents, when I was arrested.

9 Q. Okay. But when that lawyer named Moussi came to you, he
10 had copies of these contracts?

11 A. He came with those contracts, yes.

12 Q. And then later, in 2012, Mr Hennig also had copies of
13 these contracts?

14 A. Yes.

15 Q. Mr Avidan, you were in Guinea around 28th February 2008,
16 weren't you?

17 A. I don't think so. I'm not so sure.

18 Q. Okay. In this arbitration, in your witness statement,
19 you did not deny having been in Guinea at that time.

20 But --

21 A. No, I don't deny because I cannot be sure of it, because
22 due to our tickets from the ticketing company that we
23 were buying in Israel, Diesenhaus, we saw a document
24 that during this period I was in Israel. But I cannot
25 be sure of it, so that's why I'm not certain.

14:13

1 Q. So if I can turn --

2 A. I tried to --

3 Q. If I could ask you to turn to document tab 2, which is
4 Exhibit C-262. That's your witness statement in the
5 LCIA arbitration with Vale. Do you recall that you
6 denied being in Guinea at that time in the LCIA
7 arbitration? I can turn you to paragraph 18, where you
8 wrote:

9 "I was not even in Guinea on 27 or 28 February 2008.
10 I was in Israel, as is seen from BSGR's expense records
11 at the time ..."

12 And you cite to an exhibit, which is an entry for
13 "rent a car, travel charges in Israel, Asher".

14 A. Yes.

15 Q. And you say also the records of Diesenhaus travel agents
16 show that you flew from Conakry to Tel Aviv on
17 18th February 2008 and returned only in April.

18 A. Yes.

19 Q. So I'm confused that you relied on these documents in
20 the Vale arbitration to deny that you were in Conakry at
21 the time, but you don't make that denial in this case.

22 A. No, but that's what I'm saying, I'm not -- I don't want
23 to be behind it 100% from the Diesenhaus. Sorry?

24 Q. So you are saying now --

25 A. Because I hear myself twice.

14:15

1 Q. Okay. So is it your testimony --

2 A. Now it's okay.

3 Q. Is it your --

4 A. So -- but I -- yes, go ahead.

5 Q. Is it your testimony that you no longer stand 100% by
6 your LCIA testimony?

7 A. That's what I told you before: I cannot be sure. When
8 I am 100%, I am 100%. But due to Diesenhaus and our
9 ticketing, I was not there. But I went to the --
10 I tried to find in the records in Guinea once, just in
11 case maybe they have some records or not, and also in
12 the Ministry of Interior here, and I didn't manage
13 because of the time passing. They keep a record until,
14 I think, six years. So I couldn't find it. But I'm
15 trying to be as honest and clear as I can.

16 Q. Then let me --

17 A. So due to Diesenhaus, I had no ticket there.

18 Q. Sorry, due to Diesenhaus what?

19 A. I had no ticket to go to Guinea, I was not in Guinea,
20 due to Diesenhaus ticket.

21 Q. When you say "due to Diesenhaus", you mean based on
22 Diesenhaus?

23 A. Our -- the ticket company that issued me all my travels
24 mentioned that there was no ticket at the time showing
25 that I was in Guinea during this period.

14:16

1 Q. Sorry, I think what you say in your LCIA statement is
2 that it shows that you travelled from Conakry to
3 Tel Aviv on 18th February, and that you went back --

4 A. Yes, that's what the Diesenhaus is showing.

5 Q. Okay. Let me see if there are other documents that help
6 you refresh your recollection about whether you were in
7 Guinea at the time.

8 Could you turn to tab 71 in the bundle, please,
9 which is Exhibit R-217. This is BSG Resources Guinea's
10 first trimester 2008 report. Do you recognise this
11 document? (Pause)

12 While we're looking for the document, Mr Avidan, do
13 you remember preparing a first trimester report in 2008
14 to present to Guinea about BSGR's activities?

15 A. Yes, but I don't know, I didn't see the document.

16 Q. I understand. We're getting you the document. (Pause)

17 Let me put it up on screen in the meantime, while
18 you're looking for it. Do you see the document on the
19 screen, Mr Avidan?

20 A. Now I see it.

21 Q. Okay. That's the first trimester report 2008.

22 The introduction, that's an introduction that -- did
23 you prepare that introduction?

24 A. Yes, I believe so.

25 Q. Okay. You'll see that the last sentence of that report

14:18

1 refers to the presence of Mr Beny Steinmetz,
2 "propriétaire du groupe les 24 and 25 février
3 à conakry".

4 A. Mm-hm.

5 Q. Does that help you remember being with Mr Steinmetz in
6 Guinea at the time?

7 A. No, I don't remember. But I see I wrote it, yes.

8 I don't remember he was there during this time.

9 Q. Okay. If you could ...

10 A. I read that.

11 Q. Could you turn to page 41 of this document, please,
12 which I will also put up on the screen, in case it's
13 helpful. I've put the relevant page up on the screen.
14 It's the page that's entitled "Visite de Monsieur
15 STEINMETZ à conakry, Propriétaire dela société BSGR".
16 It says:

17 (Interpreted) "In the framework of the dynamisation
18 of activities of BSGR, the owner Beny STEINMETZ rendered
19 a visit to Guinea on 24 and 25 February 2008."

20 (In English) It's the fourth page from the back of
21 the document, if that helps find it. And it notes:

22 (Interpreted) "Mr STEINMETZ, during his visit (which
23 was the second one in the Republic of Guinea) ..."

24 (In English) Do you remember when his first visit
25 was?

14:20

- 1 A. I think this was his first visit.
- 2 Q. But in the report you submitted, you say it was the
3 second visit in February 2008, back at that time.
- 4 A. Which report? This report?
- 5 Q. This report here.
- 6 A. This report, I don't remember.
- 7 Q. Okay.
- 8 A. But if I wrote it, probably he was there during this
9 time. So it's 24th and 25th February.
- 10 Q. Okay. And it says --
- 11 A. So it's even better that if he came and I was with him,
12 probably I got back with him in the plane. So I don't
13 see why the 27th and 28th I'm still in Guinea.
- 14 Q. Well, I want you to be careful about speculating,
15 Mr Avidan. You think that --
- 16 A. I'm not speculating.
- 17 Q. -- if he came, you would usually fly back with
18 Mr Steinmetz?
- 19 A. I probably came with him and flew out with him.
20 Probably. I remember we did one like that.
- 21 Q. Okay. Where did you fly to and from with him?
- 22 A. From Israel. I was in Israel. Or maybe from another
23 place. I don't remember really. I do not remember.
- 24 Q. Mr Avidan, it was not so frequently that Mr Steinmetz
25 came to Guinea, right?

14:21 1 A. No, but it was like when, ten years ago, nine years ago?
 2 I want to be accurate in what I'm saying. So
 3 remembering? I don't remember. But --
 4 Q. But a moment ago you said you probably flew in with him
 5 and flew out with him, but --
 6 A. Yes, that was -- that was the normal things. And if
 7 I put it with the Diesenhaus, it makes totally sense,
 8 because I didn't have a ticket going to Guinea at this
 9 period of time. So if I came with Mr Steinmetz, I went
 10 back with Mr Steinmetz. Because the next ticket I had
 11 was from Tel Aviv via Paris to Guinea.
 12 Q. And it would have been normal at the time for you to
 13 otherwise stay away from Guinea for several months?
 14 A. No, many times -- not several months. When did I come
 15 back? It's the end of February. Probably I stayed --
 16 my leave was sometimes -- ah, you know what?
 17 25th February -- you know what? 25th February, it's
 18 my -- how you say? -- anniversary, my anniversary with
 19 my wife. So probably that was the reason that I went
 20 back with Mr Steinmetz.
 21 But I -- listen, I have to admit that I don't have
 22 it as a memory. But when I saw the tickets from
 23 Diesenhaus, I thought that it was related to the
 24 anniversary, which is 25th February, that I got married
 25 with my wife. So I don't believe that ever I stayed in

1 Paris on the 25th -- sorry, in Guinea on the 25th.

[PROTECTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:27

1 MR OSTROVE: I just want to put in context some things that
2 were going on in February and March 2008, Mr Avidan.
3 Earlier today we saw that it was about a month later
4 that BSGR bought back Pentler shares; correct?

5 A. I don't know exactly if it is a month later, but yes.

6 Q. It was in March 2008, right?

7 A. Okay.

8 Q. And we looked together at clause 1 of that agreement
9 that said that when the transaction is executed, the
10 purchaser, BSGR Steel, takes the full responsibility of
11 the local consultants, right? And you testified that
12 you hadn't seen that at the time; correct?

13 A. No, I didn't.

14 Q. But we know from what you said in your witness statement
15 at paragraph 112 that you suspected from early on that
16 Frédéric Cilins had some kind of an agreement with
17 Mamadie Touré, right?

18 A. Well, his business.

19 Q. But that made her think that she could have some
20 influence with BSGR, right?

21 A. Sorry?

22 Q. But we saw that from her perspective, in September 2006,
23 she thought that her agreement with Cilins, her
24 arrangement with Cilins, related to BSGR's work, right?
25 From her perspective?

14:28

1 A. That's what she thought probably. I don't know. That's
2 what she thought.

3 Q. So, Mr Avidan, is it your testimony that it's just
4 a coincidence that Mr Steinmetz came to visit Guinea on
5 26th February 2008, the day before these contracts with
6 Mamadie Touré appear to have been signed, and while he's
7 in the midst of negotiating the buyback of Pentler's
8 shares?

9 A. No. She wanted probably -- I'll tell you -- she wanted
10 probably to see him in any case, and she was very angry
11 we didn't see her, and she came with these contracts to
12 force us to go and to accept her in this kind or
13 another. I cannot speculate on her behalf.

14 Q. I'm sorry --

15 A. Those contracts were not part of our --

16 Q. I'm sorry, are you saying that at the time she came with
17 you and said, "Sign these contracts"?

18 A. No, no, no, I didn't say that. She came with those
19 contracts after, in order to show that we were --
20 because she was very angry in this visit and we didn't
21 see her. In 2008 I refused to see her, and so was
22 Mr Steinmetz.

23 Q. Let's jump to 2008 then, Mr Avidan, because earlier we
24 discussed the fact that Mr Hennig brought these
25 contracts to you in February 2008; correct? You

14:30

1 testified to that at paragraph --

2 A. 2012.

3 Q. I'm sorry, I stand corrected. The February 2008
4 contracts, Mr Hennig brought them to you in 2012;
5 correct?

6 A. True.

7 Q. And now you explain in your witness statement that you
8 felt that Mr Hennig was trying to blackmail you with
9 these contracts; is that correct?

10 A. Indeed. Indeed.

11 Q. So he showed you photocopies of the contracts and
12 said -- what did he say to try and blackmail you?

13 A. "You have to work with me now, so we will together be
14 partners in the blocks, because I gave the \$50 million
15 to Alpha Condé and he is refusing to believe".

16 Q. Was it your impression that Mr Hennig himself thought
17 that these were real contracts?

18 A. I don't know. I told him that those are forged
19 immediately, and he was like half-joking, he told me,
20 "Wait a minute, you should meet a guy named Samuel
21 Mebiame". And I refused, I told him I don't need to
22 stay or to meet this kind of a guy, and I left.

23 Q. And his threat was, "If the Government of Guinea, if
24 President Condé gets his hands on these contracts, boy,
25 you're in trouble", right?

14:32

1 A. That's what he said. And I told him that they already
2 have them.

3 Q. Let's look at your first transcript of your conversation
4 with him, which is at tab 40, Exhibit C-107. If you
5 turn to the second page, there's a long paragraph where
6 "Speaker 1" -- that's Mr Hennig, and "Speaker 2" is you,
7 right?

8 A. Yes.

9 Q. Just for the record, C-107, this is marked as "Date:
10 28 March 2012", "Time: 11h03", "Length: 15min", and then
11 the speakers.

12 He talks to you about, "It's a FCPA nightmare in
13 Africa, very strict rules". Then do you see where he
14 says:

15 "And that agreement for sure will get you guys in
16 big shit, I'm 100% sure about it."

17 A. Where is this?

18 Q. The second page of the document, in the middle of the
19 long paragraph.

20 A. Yes.

21 Q. Do you see that? It's right where he says:

22 "And that agreement for sure will get you guys ...",
23 et cetera.

24 So I don't repeat curse words.

25 A. Yes, mm-hm.

14:33

1 Q. "If they give that to the law firm, the chain of events
2 I think will be similar like the DRC process."

3 A. Mm-hm.

4 Q. Where do you say in here, "The government already has
5 those contracts"?

6 A. I told him so.

7 Q. Yes, but this is --

8 A. I said they were -- this is the first meeting or the
9 second meeting? Because in the second meeting he gave
10 me the contracts, in the end.

11 Q. Sorry, we'll get there. There were three meetings,
12 I think. You said you recorded the second meeting and
13 the third meeting.

14 A. And the third meeting, yes.

15 Q. A little while ago, I said to you, "So you he told you
16 how the government could get these?", and you said,
17 "I don't care, the government already has these
18 contracts". So here --

19 A. Yes, that's what I said.

20 Q. So I've just pointed you to the section where he says if
21 the government gets this:

22 "That for sure will happen, if they give it to a law
23 firm. The good news is they have not given it to a law
24 firm. I think that's the positive side, the way I see
25 it now. The President does not have these things in his

14:34

1 hand. Right. This is two people basically that has
2 got it and it would be a matter of time ...", et cetera.

3 You don't say at any point there, "But the
4 government already has it"?

5 A. No, I do say it. I don't want to read everything, but
6 for sure I said it. And when I saw it, I didn't even
7 take it in my hand.

8 Q. Well, we can look for that, and I'll be glad to let you
9 look for that.

10 A. Yes.

11 Q. But at the end of that paragraph he says:

12 "And you got a lady on the other side in a panic,
13 who wants immunity from the president."

14 And you respond to this:

15 "Which lady?"

16 You're being careful; you know that you're being
17 recorded. He says:

18 "The [edge] one. In a panic. She wants immunity
19 from the president."

20 Then you say to [him]:

21 "This is, according to your knowledge, the first or
22 the fourth one?"

23 When you says "the first or the fourth one", what do
24 you mean, Mr Avidan?

25 A. Exactly what I'm asking: which lady is he referring to?

14:35

1 Q. And when you say "the first [one]" are you referring to
2 Henriette Condé, the first wife of the President?

3 A. Yes, that is -- yes, yes. I was a bit, like, sarcastic
4 about that.

5 Q. And "the fourth one", you were referring to
6 Mamadie Touré?

7 A. The -- which one?

8 Q. When you said "the first [one]", you said that was --

9 A. No, according to him, yes. That's what everybody
10 thought. But it doesn't mean that I confirmed that she
11 was the wife.

12 Q. I'm not asking you now, Mr Avidan, if you confirm --

13 A. Yes, you are. Yes, you are.

14 Q. Then let me ask my question again. I'm asking: when you
15 were referring to "the first or the fourth one", were
16 you saying to him, "Henriette Conté or Mamadie Touré"?
17 That's what you meant by --

18 A. True, that's what I was referring to.

19 Q. Okay. And he says:

20 "I don't know, the one who lives in America."

21 And you say:

22 "Okay."

23 So you knew at the time, in March 2012, that
24 Mamadie Touré was living in the United States?

25 A. I knew. Of course I did.

14:36

1 Q. Mr Steinmetz, in characterising your discussion about
2 this, said that you told Mr Hennig he's free to publish
3 everything in the newspapers if he wants to.

4 A. Mm-hm.

5 Q. I don't see that anywhere in here. Do you recall
6 telling him that?

7 A. Yes, but, you know, I don't -- I -- now I don't read it
8 in front of you. We can discuss it and listen to the
9 recordings and the words. I did tell him he can do
10 whatever he feels like with them, and it doesn't bother
11 me.

12 Q. Sorry, when you say, "We can ...listen to the
13 recordings", do you still have the audio recordings of
14 this?

15 A. I don't know. I assume we do somewhere. I don't have
16 it anymore. But we do have recordings of these
17 meetings.

18 Q. At that time you felt that the government already had
19 copies of those contracts in its possession?

20 A. Because Moussi sent me those contracts at the time,
21 I assumed that everybody has it.

22 Q. At that time Pentler, or at least Mr Cilins or Mr Noy,
23 they offered to assist you with the Technical Committee,
24 right?

25 A. Yes.

14:38

1 Q. Mr Cilins said that he would go to Jacksonville to meet
2 with Mamadie Touré; correct?

3 A. When was it? He said so, yes. He said so when we were
4 sitting at the lawyer's office.

5 Q. Do you recall approximately when that was?

6 A. Maybe a week or two before we left. We had a meeting
7 with our lawyers in Paris.

8 Q. So sometime almost a year after this, in February or
9 early March 2013?

10 A. Yes. It was after DLA report, what you call it, your
11 report that you came out with those stories as well. So
12 we were -- we took the report together with the
13 allegations and he proposed to go to Jacksonville.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14:44

[PROTECTED]

[REDACTED]

[PROTECTED]

[REDACTED]

10 Q. So you deny that BSGR actually instructed Frédéric
11 Cilins to try to get the documents destroyed; is that
12 correct?

13 A. I'll tell you what: much the contrary. We were sitting
14 at the Vale office, which the lawyers themselves thought
15 after we saw this report and after we saw the
16 allegations that they will go with an attestation or
17 affidavit or declaration to go and see her. He insisted
18 that there is no need for them to go.

19 So I told Cilins specifically that I had information
20 that she already gave an affidavit to Alpha Condé and
21 his son in the palace; I knew it, and therefore we
22 should not go, it's useless. And I thought that he should
23 absolutely not even see her. Nobody thought or imagined
24 that there is a kind of investigation on whatever it is
25 in America, otherwise we wouldn't sit with the lawyers,

14:47

1 et cetera. This is quite obvious.

2 Q. So when --

3 A. He insisted. I told him not to go because she already
4 gave an affidavit and she was in Guinea talking to
5 Alpha Condé and his son.

6 Q. How did you know --

7 A. With her mother.

8 Q. Sorry. How did you know that she
9 was in Guinea talking to Alpha Condé and his son?

10 A. People told me in Guinea.

11 Q. Who in Guinea would know what was going on between
12 Alpha Condé and his son and Mamadie Touré in the palace?

13 A. Many people. People talk in Guinea.

14 Q. So you said people in Guinea told you.

15 A. Yes.

16 Q. Who in Guinea told you, Mr Avidan?

17 A. It's mainly -- if I remember well, I heard it from at
18 least -- different people. Like I heard it from Ibrahim
19 himself, I heard it -- he was in Guinea at the time. It
20 was very difficult to hide it. And probably I heard it
21 from one of the security guards in the palace or in the
22 house, something like that. I knew it for 100% that she
23 was with Alpha Condé at the time, together with her mum,
24 with her mother.

25 Q. Do you know what -- you're having this conversation with

14:49

1 Cilins in February or early March 2013, where you say to
2 him, "Don't worry, she's already gone to see Alpha Condé
3 and his son and given an affidavit"?

4 A. Yes, and -- yes, I told him that, "She already signed
5 an affidavit beforehand that everything was fake. So we
6 don't need another one; it's no use".

7 Q. But I'm interested in this information you got that she
8 was in the Presidential Palace and you got this from
9 maybe a guard at the Presidential Palace. When was that
10 meeting supposed to have happened? Just shortly before,
11 or a long time ago?

12 A. Oh, I think -- March, where are we, 2013 -- I think even
13 towards the end of 2012/beginning of 2013.

14 Q. So when Frédéric Cilins goes -- and I won't bore
15 everyone with the tape again -- and tells her that he
16 needs to get the originals and he needs her to burn the
17 originals, and that it's urgent that she burn the
18 originals, you think there was no point in that?

19 A. 100%. Of course not. Why should he? We knew that, you
20 know, today everything gets to a different perspective.
21 But at the time we knew that the contracts are forged,
22 we knew that she already signed an affidavit that the
23 contracts are forged, and we knew that she already --
24 what you call? -- cooperating with you, or with Alpha or
25 his son, so there was no use for us to go and see her.

14:51

1 Q. And you explained all that to Mr Cilins?

2 A. Yes, definitely.

3 Q. So if these were forged documents and people are trying
4 to blackmail you with forged documents, like Mr Hennig,
5 why didn't you just go to the police and make a report
6 that somebody is trying to blackmail you with forged
7 documents?

8 A. The police where?

9 Q. In London.

10 A. Where is the jurisdiction of this?

11 Q. Mr Avidan, you said that you were in Mr Hennig's office
12 in London and he tried to blackmail you with these
13 documents.

14 A. Yes.

15 Q. You know that these are fake documents, you're not
16 worried; why don't you go to the police?

17 A. What we did, we went to see a lord -- I don't remember
18 his name -- that he had some liaison with the police in
19 London. I refused -- our lawyers at Skadden at the time
20 told us that we must go to the police, and I really,
21 really refused to do so because I was resident
22 non-domicile in London at the time and I didn't want
23 any -- you know, that's an issue, that doesn't concern
24 the local police. I didn't see any use of complicating
25 the things by going to the police over there.

14:52

1 But we didn't hide it. We go to our lawyers. We
2 went with Skadden to this lord. Maybe my colleagues
3 there in the room will remember the name of the lord,
4 but -- and then we complained, and that's it. For me it
5 was much better than going to the police.

6 Q. So you get legal advice to go talk to this lord about
7 going to the police, and you should file a complaint for
8 this blackmail, but then you decide maybe it's better
9 not to; you make that decision --

10 A. I said -- no, I said I don't want to go. Skadden really
11 insisted.

12 Q. Sure. And wouldn't one reason not to go be that maybe
13 these documents were real, and if you made that claim,
14 that could come out?

15 A. No, no, no. That's your interpretation.

16 Q. Let's talk about another topic related to those
17 documents, which is some of the mining rights that BSGR
18 obtained in Guinea, including the research permits for
19 Blocks 1 and 2.

20 A. Yes.

21 Q. You were aware that BSGR wanted to get Blocks 1 and 2
22 of Simandou from the moment you arrived in Guinea;
23 correct?

24 A. True.

25 Q. Over time you started to understand that those were

14:54

1 potentially really valuable rights; correct?

2 A. True.

3 Q. You finally sent a request to the Ministry of Mines
4 asking for the right to research Blocks 1 and 2 in
5 July 2007; is that correct?

6 A. That's correct.

7 Q. Now, just to take you back over time, in your first
8 witness statement at paragraph 34 you actually denied
9 having sent a letter requesting rights in July 2007, but
10 then you --

11 A. No, I didn't deny. I didn't deny. I thought that we
12 are talking about a letter that was written in 2008, and
13 therefore I thought that there is an error on the
14 typing. And then I corrected it, because I remember
15 that we had a request from the same -- like a year
16 beforehand, on the same topic.

17 Q. Right. So in fact you had made a request for rights to
18 Blocks 1 and 2 over a year before they became available;
19 correct?

20 A. True.

21 Q. Then at some point around late August or September 2007,
22 a few months after sending that letter, you had
23 a meeting with Minister Kanté to discuss your interest
24 in Blocks 1 and 2; correct?

25 A. That's correct.

14:55

1 Q. But Mr Kanté at that time was telling you, "You need to
2 show me what you've done on the permits you already have
3 before I can consider anything else"; correct?

4 A. True. He said that he is more supportive of giving it
5 to the Chinese company rather than ours.

6 Q. So you knew that you had to make more efforts to show
7 why you should get Blocks 1 and 2, because you had to
8 overcome Minister Kanté's reluctance; correct?

9 A. There was, like, a thought at the time, it was
10 published, there was a convention, I think, in the
11 Palais du Peuple at which all the companies were there,
12 and it was said there that since Rio Tinto has not
13 retroceded the 50% as they should, Minister Kanté
14 himself told me in the meeting that he thinks that they
15 should retrocede, but it should be given not to us, and
16 he would support the Chinese. That's what I recall from
17 this meeting.

18 Q. But you wanted to make sure that when the government was
19 thinking about Blocks 1 and 2, and the fact that they
20 might take them away from Rio Tinto, you wanted to make
21 sure that all the decision-makers had BSGR first and
22 foremost in their minds; correct?

23 A. Because we had the first refusal that we
24 signed a memorandum of understanding in 2006. So I came
25 with this MOU to Mr Kanté and I told him that, "I think

14:57

1 that we have proved enough that we are capable of taking
2 those blocks". I tried to convince him.

3 Q. In fact you also tried to convince other key
4 decision-makers, like President Conté, right?

5 A. True.

6 Q. So if we look at paragraph 32 of your first witness
7 statement, you said:

8 "Whilst we did not advertise the fact that we were
9 doing this, I did not keep it quiet either and would
10 mention our interest in meetings I had with people
11 influential in the industry and officials. In my
12 regular meetings with the Minister of Mines, the
13 President and the Prime Minister ..."

14 The Minister of Mines, the President and the Prime
15 Minister are the three key decision-makers for you?

16 A. Yes, I think so.

17 Q. Okay:

18 "... I repeatedly explained the work that we were
19 doing in Simandou North and South ..."

20 You knew you needed to explain the work you were
21 doing because that was one of the Minister of Mines'
22 concerns, right, that you hadn't shown enough?

23 A. Yes.

24 Q. "... and said that if Rio Tinto's blocks came up we
25 would like to apply for them."

14:59

1 In fact you had already applied for them, in July,
2 right?

3 A. Yes.

4 Q. And you say:

5 "Indeed, from late 2007, until he died and in
6 December 2008, I saw President Conté about seven or
7 eight times ... so that BSGR was always on his radar."

8 A. Mm-hm, true.

9 Q. Then towards the bottom, the second-to-last line of that
10 page, you say:

11 "I also discussed this with others, such as
12 Tania..."

13 Tania is your business manager in Conakry?

14 A. She's the accountant.

15 Q. The accountant.

16 "... and Mr Touré."

17 So Ibrahima Sory Touré also knew what you were
18 trying to do?

19 A. Exactly.

20 Q. "I believe I also told Ms Touré (Mr Touré's half-sister)
21 that this was what we planned to do in one of my
22 meetings with her ..."

23 A. Yes.

24 Q. So you thought it would be useful to let Mamadie Touré
25 know about your interest in Blocks 1 and 2?

15:00

1 A. No, I told her -- of course I told her that we had this
2 intention to do, and that's about it; didn't deny.

3 Q. We talked about that meeting in September 2007 where
4 Minister Kanté told you, "Well, I want to see, show me
5 what you've done on the North and South blocks". Do you
6 remember that?

7 A. Yes.

8 Q. Okay. So you understood that Minister Kanté wanted to
9 actually see a presentation of all the investments that
10 you had made; is that correct?

11 A. Yes, that's correct.

12 Q. You asked Mr Struik to prepare that presentation;
13 correct?

14 A. That's correct.

15 Q. So Mr Struik, he was not the person who dealt with the
16 technical things like permits, getting permits; he dealt
17 with the actual analysis of the mining work. Is that
18 correct?

19 A. No, he dealt with everything, together with me. Like,
20 he was more on the technical side, yes.

21 Q. But he --

22 A. So I don't know what exactly you mean by the question.

23 Q. Let me be more specific. Mr Struik dealt with things
24 like the technique of mining, right? He was a mining
25 expert?

15:01

1 A. Mining itself. Yes, true.

2 Q. But he wasn't the person dealing with kind of the
3 administrative side of "What permits do we need?" or
4 "How do we see that the government takes away Blocks 1
5 and 2 from Rio Tinto so they can give them to us"?

6 A. No, he participated in those conversations.

7 Q. Okay. So he did not only the mining part but also the
8 administrative part?

9 A. He was my CEO at the time.

10 Q. Okay. So he did not only the pure mining part, but he
11 was actually --

12 A. Other work, yes. He did other work, yes.

13 Q. He was involved in the administrative part as well?

14 A. Yes. Well, he didn't know the local law very well, like
15 we did, but he was part of it.

16 Q. Okay.

[PROTECTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15:03

[PROTECTED]

[REDACTED]

15:04

[PROTECTED]

[REDACTED]

15:05

[PROTECTED]

[REDACTED]

15:06

[PROTECTED]

[REDACTED]

15:07

[PROTECTED]

[REDACTED]

18 MR OSTROVE: (Interpreted) Madam President, if I may be
19 given a few minutes, I'd like to see whether I can get
20 through my questions rapidly or I need perhaps a short
21 half-hour.

22 THE PRESIDENT: (Interpreted) Yes, indeed. Let me ask the
23 secretary how much you have got, because you had
24 an extra allowance, but it would be a good idea to know
25 exactly how much more we have.

15:09

1 MR GAREL: (Interpreted) 40 minutes.

2 THE PRESIDENT: That gives you an indication, sir.

3 (In English) [PROTECTED]

[REDACTED]

15:13

[PROTECTED] [REDACTED]

[REDACTED]

12 THE PRESIDENT: Fine. So let's take a break now. Let's
13 take 15 minutes and resume.
14 Mr Avidan, we are still under the same rule like
15 before of not speaking to anyone.
16 MR AVIDAN: Okay.
17 THE PRESIDENT: Thank you.
18 MR AVIDAN: We have like 5 minutes?
19 THE PRESIDENT: 15.
20 MR AVIDAN: Thank you.
21 (3.14 pm)
22 (A short break)
23 (3.38 pm)
24 THE PRESIDENT: Good. Mr Avidan, are you ready to continue?
25 MR AVIDAN: I am, your Honour.

15:38

1 THE PRESIDENT: Fine.

2 So, Mr Ostrove, you have the floor again.

3 MR OSTROVE: (In English) Thank you, Madam President. We've
4 attempted to use the break to reduce the rest, so
5 I think we'll try to end relatively quickly.

6 Mr Avidan, I'd like I'd just like to address,
7 I believe, one more topic with you, which is the
8 negotiation of the Base Convention, the Convention de
9 Base, for Zogota in December 2009. If I could turn you
10 to paragraph 58 of your witness statement.

11 You indicate that BSGR submitted the feasibility
12 study for Zogota on November 16th 2009; correct?

13 A. Yes.

14 Q. Did you personally assist in bringing the feasibility
15 study over?

16 A. Yes, to the ministry.

17 Q. Yes. Then you indicate that:

18 "[When] the Ministry of Mines decided that the
19 [feasibility study] was complete, the Minister of Mines
20 established a committee for the technical examination of
21 the [feasibility study] and the negotiation of a Base
22 Convention, which I think, from memory, was formed
23 almost immediately."

24 What I want to check with you is: you are not
25 a mining expert; correct?

15:40

1 A. Correct.

2 Q. So did you participate in the discussion of the
3 feasibility study with that committee that was
4 established for the technical examination of the
5 feasibility study and the negotiation of the
6 Base Convention?

7 A. Yes.

8 Q. You did participate --

9 A. I participated, of course.

10 Q. Sorry?

11 A. Of course.

12 Q. In the discussion --

13 A. I participated.

14 Q. In the discussion of the feasibility study?

15 A. In the negotiations.

16 Q. Well, that's what I want to understand, because you say
17 the committee had two purposes:

18 "... the technical examination of the DFS and the
19 negotiation of a Base Convention ..."

20 And then in the next sentence you say:

21 "I distinctly remember that in the middle of the
22 negotiations ..."

23 When you talk about "the negotiations" there, are
24 those the negotiations of the Base Convention?

25 A. Yes.

15:41

1 Q. So your distinct memory is that you were already
2 negotiating the Base Convention on the day that
3 Captain Dadis Camara was shot?

4 A. Exactly.

5 Q. You say:

6 "... this happened on 3 December 2009 and we had
7 definitely been in negotiations for some time at this
8 point."

9 Is it your testimony that you had been negotiating
10 the Base Convention with that committee for more than
11 two or three days at that point?

12 A. Something like that, yes. We started -- I don't know
13 with the dates. But Dadis Camara was shot in the middle
14 of the negotiations, I don't know if it was two days
15 before or four days before.

16 Q. Okay.

17 A. I don't remember.

18 Q. Then in fact you do refer to the date of the formal
19 decree. So you say:

20 "The committee had therefore been working for some
21 time before Mr Thiam signed the formal decree which
22 created it on 1 December 2009."

23 So your recollection is that you had actually
24 started negotiating the Base Convention prior to
25 December 1st 2009?

15:42

1 A. Yes, of course. We were sitting with the committee
2 altogether about two weeks.

3 Q. And when you describe a few sentences later:

4 "Mr Struik and I sat in these meetings with the
5 committee for the last two weeks of it in order to
6 negotiate its terms. We literally had the convention on
7 a screen and were typing it up as we went."

8 A. Yes.

9 Q. So before you said you were already in the middle of
10 negotiations of the Base Convention when President
11 Camara was shot, and now you say:

12 "[We] sat in [the] meetings with the committee for
13 the last two weeks ... to negotiate its terms."

14 The last two weeks before the signature on
15 16th December would have been from December 2nd to
16 December 16th. But it's your recollection that it was
17 a little bit longer than that?

18 A. It was -- from my recollection, it was two weeks'
19 negotiations, about 14 days.

20 Q. Okay. But focused on the Base Convention --

21 A. Including Saturday. Including Saturday, Sunday and
22 Friday.

23 Q. And including the day after Captain Dadis Camara was
24 shot?

25 A. Yes. They really appreciated that we didn't leave, and

15:43

1 we stayed and did continue.

2 MR OSTROVE: Mr Avidan, thank you very much.

3 (Interpreted) Madam President, I have no further
4 questions.

5 THE PRESIDENT: (Interpreted) Thank you.

6 (In English) Mr Daele, any questions in re-direct?

7 MR AVIDAN: Can I say only something for the -- because
8 I read some of the witness statements of the ministers.
9 I just want to add that the Convention de Base that we
10 were discussing, we discussed on the base of
11 a convention de base that was formed from the
12 World Bank. It's very important. The World Bank had
13 a blank or a prototype convention de base that they sent
14 to Guinea, and Guinea ratified it as a draft for all the
15 companies during the end of 2008. I think it was
16 Minister Nabé and Prime Minister Souaré, they ratified
17 the World Bank prototype for all the companies. So we,
18 a year after, negotiated on the base of this convention
19 de base that came from the World Bank.

20 THE PRESIDENT: Thank you.

21 Mr Daele, you had questions?

22 MR DAELE: Yes, I have.

23 (3.45 pm)

24 Re-direct examination by MR DAELE

25 Q. My first question relates to the payment or the bonus

15:46

1 that was paid to Mr Ibrahima Sory Touré and to
2 Mr Bangoura.

3 Do you remember, Mr Avidan, what the total bonus
4 pool was that BSGR used?

5 A. Altogether?

6 Q. Yes.

7 A. I don't remember precisely.

8 Q. Can we take a look at document R-331. (Pause)

9 MR OSTROVE: Tab 62. (Pause)

10 MR DAELE: Mr Avidan, can I ask you to look at that

11 document, please: R-331, under tab 62. (Pause)

12 A. Yes.

13 Q. So this is an overview of all the bonuses that were paid
14 arising out of the agreement between BSGR for the sale
15 of the shares to Vale. If you look at, I think, halfway
16 in the page, there is a column that says "USD" --

17 MS WAIZER: We don't have the exhibit.

18 A. I can't, I don't have the exhibit, I'm sorry. (Pause)

19 MR DAELE: So the document there, it's an email. Then you
20 turn to the third page.

21 A. Yes.

22 Q. That's the page that says "Tab 1: Bonus". You see that?

23 A. Mm-hm, yes.

24 Q. And you turn the page, and then you have an actual kind
25 of a print-out of an Excel spreadsheet?

15:49

- 1 A. Yes.
- 2 Q. So in that table, like halfway, like the ninth column or
3 something, it says on top "USD Equivalent". Do you see
4 that?
- 5 A. Yes.
- 6 Q. So then you have, for all the different individuals --
- 7 A. Yes.
- 8 Q. -- you have the bonuses that everyone was paid?
- 9 A. Yes.
- 10 Q. What is the number at the bottom of that column?
- 11 A. 12,881,659.09.
- 12 Q. So the total bonus pool -- at least that's what this
13 document suggests -- was US\$12,881,000. Do you have
14 that recollection?
- 15 A. Yes.
- 16 Q. I guess you're not a mathematician, but do you have
17 an idea that Mr Ibrahima Sory Touré's bonus of \$450,000,
18 what percentage that was of the total bonus pool?
- 19 A. I would say like maybe 4% or 3%.
- 20 Q. It's 3.5%.
- 21 A. Okay.
- 22 Q. And the upfront payment that BSGR received from Vale, do
23 you remember how much that was?
- 24 A. \$500 million.
- 25 Q. Excuse me, that wasn't clear.

15:51

- 1 A. \$500 million.
- 2 Q. \$500 million.
- 3 A. But we reduced whatever we had invested.
- 4 Q. Yes. It may be a more difficult question now. Do you
- 5 know what percentage Mr Ibrahima Sory Touré was of the
- 6 upfront payment, the \$500 million?
- 7 A. It would be like 0.-something. I don't know. Maybe --
- 8 Q. It is 0.09%.
- 9 A. Yes.
- 10 Q. Then Mr Bangoura's bonus, if we look here, so he
- 11 received \$100,000.
- 12 A. Mm-hm.
- 13 Q. Do you know the percentage that Mr Bangoura's bonus
- 14 represents in the total bonus pool?
- 15 A. From the total amount? No, I cannot. It should
- 16 0.000-something.
- 17 Q. It's 0.7% of the total bonus pool. So it's 0.7% of the
- 18 \$12.8 million.
- 19 A. Yes.
- 20 Q. Do you know what the percentage it is of the
- 21 \$500 million that BSGR received from Vale?
- 22 A. That's what I said: 0.000-something.
- 23 Q. No, it's 0.02%.
- 24 A. Okay.
- 25 Q. These are percentages based on the upfront payment.

15:53

- 1 A. Sure.
- 2 Q. Was that the total price that BSGR could receive from
3 Vale?
- 4 A. It was only 500 that we received from Vale; this we all
5 know.
- 6 Q. Yes, but that was an upfront payment. Was there also
7 going to be -- can you explain the payment system maybe
8 in the agreement between Vale and BSGR?
- 9 A. There was a -- there was a system of milestones that
10 covered \$2.5 billion in total, but in the upfront
11 payment on signing we got only 500. And the rest was to
12 come when we had a Liberian solution, when we started --
- 13 Q. So if the milestones -- I apologise. If the milestones
14 would be met, then this deal would have made BSGR
15 \$2.5 billion; is that what you're saying?
- 16 A. Yes.
- 17 Q. Okay.
- 18 A. Yes, the total of the deal was that.
- 19 Q. Okay, I have no more questions on this document.
- 20 THE PRESIDENT: Before you leave it, just to simplify
21 matters and not having to come back to it, can you turn
22 to the next pages. There's a tab 2 that says "Salaries"
23 in the same document, and then there's a tab 3 that says
24 "Consulting".
- 25 A. Yes.

15:55

1 THE PRESIDENT: Can you tell us where we find
2 Mr Ibrahima Sory Touré's salary? (Pause) Does that mean
3 you don't find it?
4 A. No, I don't find it here.
5 THE PRESIDENT: No, I don't find it either. What could the
6 explanation be?
7 A. I don't know, I'm not an accountant. So I don't know
8 which tab in this one, which Excel -- we had our local
9 men we paid in Guinea. If you are looking for Ibrahima
10 Sory Touré's salary, we have it, I'm sure, somewhere.
11 THE PRESIDENT: So you have somewhere a different Excel
12 sheet with local employees, and these are --
13 A. Yes. Yes, those are the expats.
14 THE PRESIDENT: Or the ones that are --
15 A. Those are the expats.
16 THE PRESIDENT: Yes, good. That's the explanation. No,
17 because in terms of percentages, it would have been
18 interesting to see the percentage between the salary and
19 the bonus. But it's not available here. Fine.
20 Apologies for the interruption.
21 MR DAELE: No problem, Madam President.
22 You discussed your meeting with Mr Hennig in London.
23 You said that you took legal advice?
24 A. Yes.
25 Q. And you did not remember exactly the name of the lawyer

15:57

1 you went to see. Is that something --

2 A. No, the lord. No, it was a lord. We went with Skadden,
3 with Skadden to the --

4 Q. Was it a lord? Can you explain --

5 A. Is it Lord Renwick? No, Lord -- I don't remember his
6 name. He was like in the -- his position was something
7 in the -- related to the -- in England to police or
8 something. I don't remember the name. But we went with
9 Skadden to his chambers.

10 Q. Could it be that it was a barrister, that you are
11 confusing a lord and a barrister?

12 A. Ah, yes. He was a lord barrister -- I'm sorry, yes. He
13 was a lord barrister, yes.

14 Q. Okay. Does the name Ken Macdonald sound familiar?

15 A. Yes, Macdonald, exactly. This is the name. This is the
16 gentleman. We went there with Skadden and they told
17 us -- it was understood that he's a barrister that takes
18 care of this kind of blackmail and things. So that's
19 where we went.

20 Q. Okay. Then my last question. The last point that you
21 were taken to was the duration of the negotiation of the
22 Base Convention.

23 A. Yes.

24 Q. I think at least on my end, there's some confusion. You
25 said that it took like two weeks?

15:59

1 A. It was two weeks, yes.

2 Q. Is that the total period that you negotiated --

3 A. The total, yes.

4 Q. And is that just negotiating the Base Convention or does
5 that also include examining the feasibility study?

6 A. It was -- examining the feasibility studies was in the
7 first days of the negotiations. Mainly Marc and one of
8 our South African geologists presented the feasibility
9 studies. And that's -- when we finished this part, we
10 started to negotiate the terms.

11 The negotiations, from what the president of the
12 committee -- I don't remember if it was Nimaga, he was
13 a juriste or a lawyer at this time -- told us that it
14 shouldn't take more than three days because we were
15 negotiating on the blank of the World Bank.

16 Q. So can --

17 A. Or rather a brief to do. But it took longer.

18 Q. Can you take a look at the document R-268. (Pause) Do
19 you recognise this document? (Pause) Tab 89.

20 My question was: do you recognise this document?

21 A. Yes, I remember I saw it, yes.

22 Q. Can you explain [to] me what it is?

23 A. We have to read it. I cannot -- from my memory, that it
24 was talking about the way that we're going to negotiate,
25 isn't it, like what will be the timetable?

16:02

- 1 Q. If you go to the first page.
- 2 A. Yes.
- 3 Q. It's called "Rapport de la Commission".
- 4 A. "... Chargée d'Examiner l'Étude de Faisabilité et
5 d'élaborer le Projet de Convention d'Exploitation des
6 Gisements", et cetera. Yes.
- 7 Q. Do you see in the first paragraph --
- 8 A. Yes.
- 9 Q. -- it says that:
- 10 "..." le ministre a mis en place une Commission
11 Interministérielle qui du 02 au 12 Décembre ...
12 a examiné ladite étude et élaboré un project du
13 Convention de Base ..."
- 14 Is this the period that you had in mind?
- 15 A. Yes, I think so, yes. So it represents more or less two
16 weeks.
- 17 Q. Can you look at the last page.
- 18 A. Yes.
- 19 Q. So it's signed on 14th December 2009 by two people: one
20 is the vice president, Momo Sakho, and then on the
21 right, Cécé Noramou?
- 22 A. Noramou.
- 23 Q. Yes. I think in the session with Mr Ostrove --
- 24 A. Yes, I said that I think that Momo Sakho was not there.
- 25 Q. Yes.

16:04

1 A. I don't think he was there. So I see he was there. He
2 was part of the ministry though, not our lawyer.

3 Q. Are you confusing with the time when he was a lawyer?

4 A. He was a -- at the time he worked, I think, for the
5 ministry.

6 Q. Okay. So now you say he was there?

7 A. Now I see that he was there, yes. I don't remember the
8 names that were in the -- the 20 people that were there.
9 So we can see if he was there or not.

10 MR DAELE: Okay. I don't think I have any further
11 questions. Thank you very much.

12 MR AVIDAN: Thank you.

13 THE PRESIDENT: Do my colleagues have questions for
14 Mr Avidan?

15 (4.05 pm)

16 Questions from THE TRIBUNAL

17 PROFESSOR VAN DEN BERG: Mr Avidan, could you please go to
18 paragraph 88 of your witness statement.

19 A. Yes.

20 PROFESSOR VAN DEN BERG: There you state:

21 "In February 2011, I was one of a delegation of BSGR
22 and Vale personnel that attended two meetings with
23 President Condé."

24 A. Yes.

25 PROFESSOR VAN DEN BERG: Do you recall when it was in

16:05

1 February, Mr Avidan? Do you recall when it was in
2 February?

3 A. February, yes. You know, for me it's difficult to say
4 if it was February or January. But it was February,
5 yes, like the meetings.

6 PROFESSOR VAN DEN BERG: Then you continue in paragraph 88
7 of your witness statement:

8 "With me was Ricardo Saad (of Vale) and Mr Touré who
9 still worked for BSGR Guinea)."

10 A. Yes.

11 PROFESSOR VAN DEN BERG: "During those meetings,
12 President Condé proposed that BSGR make a payment to him
13 of \$1.25 billion and threatened to halt the building of
14 the Trans-Guinean railway and withdraw the consent to
15 exporting iron ore through Liberia if we did not pay."

16 How should I understand "to him"? Is that to him
17 personally or to the State of Guinea?

18 A. I think that he meant -- we have to understand how it
19 was like in French. He told me, "Vous avez eu
20 \$2 milliards 5 millions, vous me devrez \$1 milliard 25
millions".

21 PROFESSOR VAN DEN BERG: "Me devrez"?

22 A. "Et vous devraient parler immédiatement avec mon fils".
23 It was more or less the conversation. But I honestly at
24 the time told the accountant, "For sure it's meant for
25 Guinea". I don't imagine that he thought that it's

16:07

1 going to him, \$1.25 billion. "Vous me devrez", maybe
2 it meant to Guinea, but not to himself.

3 PROFESSOR VAN DEN BERG: Did his son have an official
4 capacity in the government at that time in Guinea?

5 A. No, I -- at that time -- I think at this time I didn't
6 know that he has a son. I had no idea.

7 PROFESSOR VAN DEN BERG: At that time he told you and
8 Mr Saad that you, or at least the joint venture, BSGR
9 and Vale, owed him \$1.25 million?

10 A. 1-point -- yes.

11 PROFESSOR VAN DEN BERG: And you now testify that this meant
12 the State of Guinea, rather than him personally?

13 A. That's what I thought. I talked about it afterwards,
14 and I was thinking that he really meant "vous
15 devrez", c'est-à-dire -- that's a way of saying
16 that's what I thought. I didn't really thought that he
17 was thinking to him himself. It was ridiculous that we
18 would be pay \$1.25 billion to him. But ...

19 PROFESSOR VAN DEN BERG: Did he add that, "You have to talk
20 with my son"?

21 A. Yes, yes, yes.

22 PROFESSOR VAN DEN BERG: And how did you understand that?

23 A. Sorry?

24 PROFESSOR VAN DEN BERG: How did you understand that
25 statement?

16:09

1 A. "Vous devrez parler avec mon fils". It was very
2 clear.

3 PROFESSOR VAN DEN BERG: So what does it mean?

4 A. Well, "avec mon fils". I don't know, on the terms or
5 something. I didn't -- what I told him -- I didn't pay
6 attention to what he was even telling me. There was no
7 use for me to talk to his son, because I was surprised
8 that he has a son. He was sitting probably in the hall
9 or living room, I have no idea. But then I told him
10 that -- sorry.

11 PROFESSOR VAN DEN BERG: No, go on, please.

12 A. And then I told him -- I showed him a letter that we got
13 from Minister of Finance General Secretary back in 2009,
14 after we signed the contract with Vale, that was
15 claiming for 10% of the deal. So I told him, "If I owe
16 you something, it's only 10%", from the 500. He told me
17 and he started -- you know, he has his way of talking
18 and shouting. He told me, "C'est pas votre décision,
19 c'est ma décision. Vous avez volé les gisements de fer
20 de notre pays. Il faut payer \$1.25 milliards, c'est la
21 moitié". So I told him -- I told him there is no use.

22 PROFESSOR VAN DEN BERG: But the way you understood it it
23 was to be paid, that amount of \$1.25 billion, to the
24 Guinean State and not to him personally?

25 A. I wanted to believe that, yes. But the words in French

16:10

1 were as I stated: "vous me devrez".

2 PROFESSOR VAN DEN BERG: To your knowledge, what was the
3 position of his son?

4 A. No position at all, whatsoever. Only his son.

5 PROFESSOR VAN DEN BERG: Are you familiar with the similar
6 demand made to Rio Tinto at the time?

7 A. No, at the time Rio Tinto didn't pay anything, I think,
8 in this period of time. Rio Tinto paid only after the
9 \$720 million to Guinea. But they presented also about
10 half of what they had from Chinalco. I think that was
11 the logical thing behind the number.

12 PROFESSOR VAN DEN BERG: To your knowledge, what was the
13 reason for the payment of the \$720 million by Rio Tinto?

14 A. I have no -- no explanation for this until today. And
15 what I know: that we were asked after, by -- when the
16 lawyers came and Mr Soros came, that we have to pay --
17 in the beginning they asked us to pay \$500 million.
18 They even -- the people of Vale came to us in London and
19 they had some kind of a meeting with Mr Soros in his
20 house, and they came then to us and they said that they
21 want us to agree to pay \$500 million together -- not us,
22 like the joint venture -- to Mr Soros, and then it was
23 reduced to 250 or something similar. And we refused
24 totally, although the money came from Vale. Vale said,
25 "We will pay, and you will reimburse us during the

16:12

1 exploitation in the future".

2 PROFESSOR VAN DEN BERG: This meeting with Mr Soros, when
3 did that take place?

4 A. Mid-2011, in London.

5 PROFESSOR VAN DEN BERG: And it's your testimony that
6 Mr Soros demanded a payment of \$200 million, or
7 \$500 million first?

8 A. \$500 million, for sure. We also exchanged, I think,
9 some correspondence on that.

10 PROFESSOR VAN DEN BERG: And to whom should that be paid: to
11 him personally, or to one of his companies?

12 A. To -- I don't know. He asked the 500 in order to settle
13 down the argument we had with President Condé.

14 PROFESSOR VAN DEN BERG: So it was the \$500 million that --

15 A. It was to him. In any case it was to him.

16 PROFESSOR VAN DEN BERG: And not to the Guinean State?

17 A. No, it was through him. I don't know if it was meant to
18 go to Guinean State. I don't know what's happened with
19 the \$720 million that Rio Tinto paid at the time. Where
20 did it go? I mean, Minister Nabé, I understood that he
21 testified. So I don't know if it went to the Central
22 Bank or whatever. But in any case, it was meant to be
23 under control of Mr Soros.

24 PROFESSOR VAN DEN BERG: Okay. You were at that meeting
25 with Mr Soros?

16:13

1 A. No. He didn't want to see us at all.

2 PROFESSOR VAN DEN BERG: I see.

3 A. We asked to be in this meeting.

4 PROFESSOR VAN DEN BERG: So on what basis do you make your
5 statement that he demanded \$500 million, Mr Soros? Who
6 told you so?

7 A. Because the president -- the CEO of Vale came to our
8 office, together with legal counsel and somebody -- and
9 maybe Eduardo Ledsham. If I'm not mistaken, still at
10 the time it was Roger Agnelli, that unfortunately had
11 a plane crash afterwards. But he came to our office
12 specifically and told us that Mr Soros is demanding
13 \$500 million. And also Pedro Rodrigues told me
14 afterwards, from Vale, that they had a similar meeting
15 at Soros's house in New York demanding money from all
16 the companies that participated in this meeting. We
17 insisted to be in this meeting, but unfortunately
18 Mr Soros refused to see us.

19 PROFESSOR VAN DEN BERG: This is the somewhat difficult part
20 because it is something lawyers call "hearsay".
21 Nonetheless, the way you understood the Vale person who
22 came to your office, and with whom you spoke directly,
23 did you understand this to be that Mr Soros was asking
24 this money for him personally or his companies, or was
25 Mr Soros asking that on behalf or for the benefit of the

16:15

1 State of Guinea?

2 A. For -- you say the -- I understood that this is for the
3 Guinean project. And he said that we have to pay him,
4 this is most definitely. But I understood, I wanted to
5 understand -- at the time I didn't know Mr Soros very
6 well, I didn't know the involvement. I was a bit naive
7 on this point of view. So I thought that it's going to
8 Guinea, this way or another. I don't know what happened
9 with the 720, but -- how it went to Guinea, but it's
10 more or less the same system, I would presume.

11 PROFESSOR VAN DEN BERG: Okay, thank you.

12 MR DAELE: Madam President, may I just point Professor
13 van den Berg to one of our exhibits in relation to the
14 question he just asked, just a reference number?

15 THE PRESIDENT: You can just give a reference number but not
16 more, because of course lots could be said about our
17 questions.

18 MR DAELE: Yes, C-234 and C-238.

19 THE PRESIDENT: Thank you.

20 MR DAELE: Thank you.

21 PROFESSOR MAYER: Mr Avidan, we've heard from one of the
22 witnesses that feasibility studies in Guinea are
23 extremely voluminous documents, several volumes,
24 generally. In your witness statement at paragraph 73
25 you said that:

16:17

1 "All this work allowed BSGR Guinea to present the
2 Simandou Blocks 1 and 2 the feasibility study which was
3 submitted to the Government ... in September 2011. It
4 consisted of eight volumes and more than 2,100 pages."

5 So it seems to match with what we heard.

6 A. Yes.

7 PROFESSOR MAYER: This contrasts with the feasibility study
8 for Zogota, which you know yourself was only one volume,
9 I think 450 pages. Do you have any explanation for this
10 contrast?

11 A. Yes. Zogota presented approximately 900 million tonnes
12 of iron ore in general, of which 150 or 80 tonnes that
13 was relatively high-graded of direct shipping ore, and
14 all the rest was a relatively low grade that was meant
15 to be mixed with the iron ore that we are going to bring
16 from Blocks 1 and 2. And the Blocks 1 and 2 represented
17 at least 5 billion tonnes of a very high-grade iron ore
18 and represented, from what we knew at the time, at least
19 5 billion tonnes. So it was -- Zogota was much, much
20 smaller than the blocks.

21 And in the feasibility studies of the blocks we
22 talked about the transport solution, the railway that we
23 gave to the Government of Guinea, the \$1 billion
24 invested in it, and exactly how we're going to do it,
25 the mechanism. It was much more wider and bigger than

16:19

1 Zogota. Zogota was only, I would say, a "bonus" to
2 Blocks 1 and 2, and it was on the way to Liberia.

3 PROFESSOR MAYER: Wasn't there also a railway project for
4 Zogota?

5 A. From Zogota, yes. Yes, of course. From Zogota to
6 Sanniquellie, and from Sanniquellie to connect to Mittal
7 railway in the beginning, bring it to Buchanan, and then
8 afterwards creating a deepwater port in Didia, which is
9 like, I think, 30 kilometres south of Buchanan. And
10 that's it. I think that's the only -- we said it all
11 along, that it's only the viable solution to take out
12 the ore from this place. We truly thought that it will
13 change the Mano River countries in the area, because it
14 related to, of course, Guinea.

15 PROFESSOR MAYER: Thank you. No other questions.

16 THE PRESIDENT: I think Professor van den Berg has
17 a follow-up question.

18 PROFESSOR VAN DEN BERG: Yes.

19 Mr Avidan, could you please be shown Exhibit C-234.

20 MR OSTROVE: I've just put it on the screen, if that's
21 helpful. (Pause)

22 PROFESSOR VAN DEN BERG: Mr Avidan, you see an email dated
23 12th March 2011. Do you remember that? Approximately
24 the same period as you talked about in paragraph 88.
25 You talk about February.

16:21

1 A. Yes.

2 PROFESSOR VAN DEN BERG: Do you know who Mr Eduardo Ledsham
3 is, of Vale?

4 A. Yes, that's the one that I told you that was in the
5 meeting with Soros, together with Roger Agnelli and the
6 legal people.

7 PROFESSOR VAN DEN BERG: Do you recall this email?

8 A. Yes, I do. Now that I see it, yes.

9 PROFESSOR VAN DEN BERG: What do you recall of the email?

10 A. I recall -- I don't see all the email. But I recall
11 that Daniela Chimisso -- she was the legal advisor,
12 inside-house lawyer to Vale -- wrote to Chris Canavan,
13 that is, as you see, from the Soros organisation,
14 talking about the demand of the money that they were
15 asking. So I don't know what exactly was written.

16 PROFESSOR VAN DEN BERG: Okay. If you scroll down, because
17 what they attach is a draft MOU for the Open Society
18 Foundation. You see it here: there's a memorandum of
19 understanding --

20 A. Okay, now I remember that it was issued, yes.

21 PROFESSOR VAN DEN BERG: What do you remember?

22 A. I remember that it corresponded exactly to what I told
23 you: that there was a demand for them to pay the money
24 in order to continue to work.

25 PROFESSOR VAN DEN BERG: Yes. Could you scroll, please,

16:23

1 further down.

2 Incidentally, what is the Open Society Foundation
3 doing in this case, according to you?

4 A. This is a question that has to be asked the other part.
5 The Open Society Foundation is nothing to do with
6 business; it's an NGO. So I have no idea. That's why
7 I'm saying all along that the Soros people handled it
8 directly. Like they did with Rio Tinto, they tried to
9 do with us in the beginning. Like we were the first
10 one, I think, that they approached. So Open Society,
11 I have no answer what they have to do with this.

12 PROFESSOR VAN DEN BERG: What was your understanding of
13 their position? Were they a representative of the
14 Guinean Government?

15 A. No, no. They are a representative of George Soros, they
16 are one of his organisations. We all know it today.

17 PROFESSOR VAN DEN BERG: Alright. So if we go --

18 A. Chris Canavan -- Chris Canavan, above, is one of the
19 main -- at the time -- main representatives in Guinea.

20 PROFESSOR VAN DEN BERG: In the interests of time, let's
21 skip for the time being the preamble and then go to the
22 contract, at least the contract terms. So:

23 "The parties agree as follows: ..."

24 And then you see:

25 "The Company may consider the possibility ..."

16:25

1 "The Company", that is the joint venture of BSGR and
2 Vale, VBG?

3 A. Yes, VBG, VBG.

4 PROFESSOR VAN DEN BERG: "... may consider the possibility
5 of making an advance payment of up to [US \$500 million]
6 out of the royalty payment obligations, as set out in
7 the Basic Agreement, for the Zogota Project and Simandou
8 Blocks 1 & 2 Project ('Advance Payments')."

9 A. That is -- yes.

10 PROFESSOR VAN DEN BERG: Then it says:

11 "The Advance Payments made by the Company should
12 consider the following conditions: ..."

13 A. Yes.

14 PROFESSOR VAN DEN BERG: Then it goes:

15 "(a) for the disbursement of a Zogota Project
16 Advance Payment [e.g. 20% of total value], the economic
17 flow of the Zogota Project within larger framework of
18 an integrated project; and

19 "(b) in the event a mining concession is granted for
20 Simandou Blocks 1 & 2, whereby it would be anticipated
21 that the Company will also be liable for royalties for
22 mining substances extracted from Blocks 1 & 2 on
23 substantially the same terms as set out in the Basic
24 Agreement, then and only then a Simandou Blocks 1 & 2
25 Advance Payment could be considered."

16:26

1 A. Yes.

2 PROFESSOR VAN DEN BERG: If you go a little bit down, then
3 they say:

4 "The Parties ..."

5 Again, that is the Open Society Foundation and VBG:

6 "... agree to jointly study how to structure the
7 Advance Payments ..."

8 Skipping:

9 "The Parties agree to explore how to ensure the
10 feasibility of high priority projects as defined by
11 the Republic, including but not limited to: ..."

12 And we go a little bit further down:

13 "Due to the importance of the Liberian corridor to
14 the Project and the ability to export out of Liberia,
15 the Foundation agrees to undertake endeavours to assist
16 the Company in executing the Infrastructure Development
17 Agreement with the Government of Liberia."

18 I could go on with this.

19 So the Open Society Foundation here is proposing its
20 assistance, let's put it that way. What was your answer
21 by Vale and BSG?

22 A. No, Vale really pushed us to accept the offer and to
23 agree, because we were together, we had a common -- we
24 had a shareholders' agreement and we were partners.
25 They wanted us to be approve that, in order to continue

16:27

1 to work.

2 PROFESSOR VAN DEN BERG: Who is "they"?

3 A. It's Vale.

4 PROFESSOR VAN DEN BERG: Vale accepted?

5 A. Yes. They came to our office and we had a meeting with
6 them; and I think Dag is in the room, he can be more
7 specific. But they were asking us to accept the Open
8 Society Foundation. But they mentioned George Soros, to
9 accept payment and to pay, and the words that they used,
10 that Mr Soros used in his house, is to pay in order to
11 play. That's -- I remember that very clearly.

12 PROFESSOR VAN DEN BERG: Could you please repeat? To pay in
13 order to ...?

14 A. You should pay in order to play. Pay to play.

15 PROFESSOR VAN DEN BERG: Okay, pay to play.

16 A. Pay to play, like ... And that was -- they say that it
17 was the words that he was using.

18 And we of course at the time, if you're asking me
19 today if we should have accepted it, even today I would
20 tell you, "Not on earth". Because we had -- we saw no
21 point of paying money like that. For us, it looked like
22 purely and surely as a -- I don't know, I don't have
23 another word to call it than an open bribe. For me it's
24 totally ridiculous. Why should we pay \$500 million to
25 Open Society and to George Soros? Then I heard that

16:29

1 they wanted, to start with, 250, something like that.

2 PROFESSOR VAN DEN BERG: I'll come to that.

3 A. Okay.

4 PROFESSOR VAN DEN BERG: Could you please show now

5 Exhibit C-0238.

6 MR OSTROVE: While we're on this, may I just bring the

7 Tribunal and Mr Avidan's attentions to a few other

8 provisions that have been skipped?

9 THE PRESIDENT: I think we're actually familiar with this

10 document and we've read it. But if you think we should

11 ask a question to Mr Avidan while we're on it, then ...

12 MR OSTROVE: If we could just look in the whereases.

13 Whereas G:

14 "The Company has been approached by the Foundation,

15 acting on behalf of the Republic, in order to discuss

16 possibilities of aiding the Republic in meeting

17 a portion of its current and anticipated revenue

18 shortfalls."

19 PROFESSOR VAN DEN BERG: That's what I understood.

20 MR OSTROVE: So I was wondering if Mr Avidan had

21 a recollection as to whether the purpose of what the

22 Open Society Foundation was doing was trying to act as

23 a go-between for the Republic.

24 PROFESSOR VAN DEN BERG: Mr Avidan, are you familiar with

25 what is here called preamble G:

16:30

1 "The Company has been approached by the Foundation
2 acting, on behalf of the Republic, in order to discuss
3 possibilities of aiding the Republic in meeting
4 a portion of its current and anticipated revenue
5 shortfalls."

6 So was it also your recollection that the Open
7 Society Foundation acted in this case -- or at least
8 told you so -- on behalf of the Republic of Guinea?

9 A. I might say that I believed so, but it wasn't relevant.
10 I don't mind whom I am paying for. And we say that if
11 the Republic of Guinea thinking that they are entitled
12 to have this kind of money, they should have approached
13 us. Why the Open Society Foundation should do the
14 go-between on this matter? And it's a lot of money,
15 \$500 million, to pay them.

16 And there was no really discussion for us. We
17 immediately said, "No way in the world". We told
18 Daniela, we told Eduardo Ledsham, and they -- even after
19 the meeting in Soros's house in New York --

20 PROFESSOR VAN DEN BERG: Okay, let's move on then to --

21 A. And again --

22 PROFESSOR VAN DEN BERG: Mr Avidan, that's the next email
23 I'd like to ask you a few questions about. So may it
24 now be shown -- or you wish me to point out other
25 things, Mr Ostrove?

16:31

1 MR OSTROVE: If I may, but I don't want to take the
2 Tribunal's time.

3 PROFESSOR VAN DEN BERG: I am now being couched by
4 Mr Ostrove!

5 MR OSTROVE: I was also just going to bring Mr Avidan's
6 attention, in terms of what his understanding of the
7 document was, to Article 2 at the bottom of page [5] of
8 the PDF, which, Professor van den Berg, you started to
9 read before:

10 "The Parties agree to jointly study how to structure
11 the Advance Payments, including but not limited to, the
12 possibility of entering into an agreement with the
13 World Bank as a fiduciary agent within the framework of
14 a trust fund."

15 I wanted to understand whether Mr Avidan seriously
16 thought that this was some kind of bribe payment to
17 George Soros that was intended, or whether this was in
18 the framework of the Open Society Foundation's
19 transparency initiatives to try and make sure that the
20 payment got to the Government of Guinea properly.

21 PROFESSOR VAN DEN BERG: Do you understand, Mr Avidan, what
22 Mr Ostrove just said?

23 A. Yes, yes. I can say that for me -- yes, sorry. For me
24 it was an Open Society or open widely blanchir of
25 \$500 million to pay with no reason in the world. At the

16:32

1 time we didn't know what the source of the Open Society
2 has to do with it. And I think today I don't have
3 a title to the \$720 million that was paid by Rio Tinto
4 until today. Of course we know that some of the money
5 didn't go to the Government of Guinea, but I don't have
6 a title.

7 PROFESSOR VAN DEN BERG: Mr Avidan, this line of questions
8 does not concern Rio Tinto, it concerns the company you
9 work for.

10 Let's move on to Exhibit C-238.

11 Mr Avidan, do you speak Portuguese?

12 A. No.

13 PROFESSOR VAN DEN BERG: Obrigado! Alright.

14 This is an email of 6th June 2011 from Ricardo Saad.
15 That is the same person that you refer to at
16 paragraph 88 of your witness statement?

17 A. Yes. Yes, it's the same guy.

18 PROFESSOR VAN DEN BERG: And he sends it to Rafael Benke.

19 Who is Rafael Benke; do you know?

20 A. Who is -- which one? Rafael Benke, I think it was --
21 yes, he was in the negotiations with us, I know, a young
22 guy that is also a lawyer working in Vale.

23 PROFESSOR VAN DEN BERG: If you go a little bit down, you
24 see "Mensagem original", and I tell you that that means
25 "Original message"; it doesn't require too much

16:34

1 imagination. And you see below that it is from Eduardo
2 Ledsham?

3 A. I understand only the numbers.

4 PROFESSOR VAN DEN BERG: Don't worry. If you scroll down,
5 there is a translation.

6 Alright. So from Eduardo Ledsham, you go down to
7 Murilo Ferreira. Who is Murilo Ferreira?

8 A. Was the President of Vale at the time, maybe just
9 looking --

10 PROFESSOR VAN DEN BERG: Alright. Then see what he writes:

11 "I don't know if I commented to you that in the
12 first week of March Roger and I ..."

13 Who is Roger?

14 A. Roger Agnelli, the first CEO of Vale, the one that's
15 already dead.

16 PROFESSOR VAN DEN BERG: "... and I were in London with
17 Soros, where he suggested that Vale should anticipate
18 US\$ 250 [million] to the government and as counterpart
19 would get the agreement signed with BSGR guaranteed."

20 A. Yes.

21 PROFESSOR VAN DEN BERG: "One week later, after the draft
22 agreement was ready, he changed position saying that we
23 should pay US\$ 250 [million] to have the right to sit
24 with the government and discuss the agreement again???
25 He clearly has a proximity to President Alpha ..."

16:36

1 And "Alpha" is Alpha Condé?

2 A. Yes.

3 PROFESSOR VAN DEN BERG: "... but has no right to speak on
4 their behalf."

5 Then I go on:

6 "This week President Alpha will be talking with BSGR
7 on the subject of payment of the capital gain tax."

8 I stop here. Were you familiar with that, that
9 there would be a discussion in June --

10 A. Yes that's what I --

11 PROFESSOR VAN DEN BERG: -- about capital gain tax? What
12 were these discussions?

13 A. I'm sorry?

14 PROFESSOR VAN DEN BERG: You see here that there would be
15 discussions with BSGR "on the subject of payment of the
16 capital gain tax".

17 A. Yes.

18 PROFESSOR VAN DEN BERG: You were aware of that?

19 A. No, we already signed all the terms about that. He is
20 referring that now, after the \$500 million that were
21 asked in the beginning, which we refused, with Roger
22 Agnelli, the first CEO of Vale, now he is coming to the
23 second CEO, the one that replaced him, and telling him
24 that now, not like the first time in the meeting in
25 London, they are asking \$250 million only in order to

16:37

1 start to renegotiate with Mr Alpha Condé on the capital
2 gain tax. And then some other info.

3 PROFESSOR VAN DEN BERG: Then it continues, Mr Avidan:

4 "Still to be confirmed, the Liberian President would
5 like to have a meeting with Vale at the beginning of
6 next week ..."

7 So why is the Liberian President now coming on the
8 scene? Is that because of the railway that had to be
9 constructed?

10 A. Yes, well, we started right after the signing of the
11 contract between us and Vale. The day after, I would
12 say, the week after, we went to Liberia to start
13 negotiating the passage to Liberia with the President
14 and the committee in Liberia.

15 PROFESSOR VAN DEN BERG: Let's continue then the email:

16 "She is interested to accelerate the agreement
17 execution, and wants to know what is preventing it."

18 And "She" is the President of Liberia?

19 A. Yes, exactly.

20 PROFESSOR VAN DEN BERG: "Saad should participate in the
21 meeting, during which we shall arrange a conditioning
22 for the contract on the export through Liberia for
23 Zogota and blocks 1 and 2."

24 A. Exactly.

25 PROFESSOR VAN DEN BERG: What was the follow-up of this

16:38

1 email, to your knowledge?

2 A. Well, we went to Liberia a few times. I don't know if
3 the decision maybe came after. But we were in Liberia;
4 we signed with Liberia a memorandum of understanding for
5 the infrastructure in Liberia about a month after we
6 signed with Vale on the contract.

7 And President Sirleaf Johnson really didn't
8 understand why we are not accelerating towards the
9 definitive contract with them on the infrastructure
10 agreement. She didn't really understand. We explained
11 her in a meeting, in a few meetings, that unfortunately
12 we have some issues with Alpha Condé and some people
13 from the Open Society Foundation that are preventing us
14 from continuing the negotiation or the work in Guinea,
15 so we couldn't continue.

16 Vale -- I wanted to continue like nothing happens.
17 Like we had to sign it with Liberia and then use it,
18 I would say, as a leverage on Alpha to continue the
19 project. But unfortunately Vale didn't want to continue
20 because they were afraid that what will happen, that we
21 are standing here today. So they objected to it.

22 PROFESSOR VAN DEN BERG: Right. This is an email exchange,
23 so there's one further email I would like to ask you
24 a question about. There is the same date, on June 6th
25 2011, and this is to Eduardo Ledsham and it is, I think,

16:40

1 from Murilo Ferreira.

2 A. Yes, from the CEO himself.

3 PROFESSOR VAN DEN BERG: Yes, exactly. Subject: "Soros'
4 phone call". Then he says.

5 "George Soros called me at 6:00 PM. He said that he
6 is working with the President of Guinea, Alpha Condé, to
7 improve transparency. In this context, the President of
8 Guinea asked Soros to conduct the new Vale CEO to
9 reinforce Guinea's interest to develop the relationship
10 with Vale. I said that we are ready to continue the
11 project and share the Brazilian experience in mining.
12 He said that it is the ..."

13 And then now it is in bold face:

14 "... President Alpha Condé that does not recognize
15 the agreement with the negotiator ('dealer') Steinmetz.
16 An ongoing investigation is being held. However, the
17 relationship with Vale should not be affected by the
18 result of this investigation. In this context it is
19 necessary to open a parallel channel of negotiation."

20 Do you recall this?

21 A. Yes.

22 PROFESSOR VAN DEN BERG: What happened at that time?

23 A. Well, we were, like, really struggling to keep our
24 position vis-à-vis Vale, and unfortunately we felt like
25 Alpha, together with Soros, had a mechanism that they

16:42

1 wanted to keep Vale alone in the project. It was -- as
2 we see here, clearly it was prejudged before Alpha Condé
3 came to power, during his campaign of election, and it
4 was prejudged by Soros. Doesn't matter that Soros
5 didn't -- he refused a few times that we asked to see
6 him.

7 And fortunately, in the beginning, Vale didn't want
8 to play this game, although they were thinking about it
9 very firmly. Alpha Condé went in one occasion in this
10 time -- and we saw another email that he was talking to
11 Dilma Rousseff at the time that she was President, it
12 was sometime around this area, and he really pushed her
13 to agree to keep only Vale in the project.

14 Vale told Alpha, in the meeting that they had
15 afterwards, also that he cannot cancel the agreement
16 that they had with us. I think Mr Ostrove remembers
17 that in our negotiations in the end of 2012, Vale said
18 that they, I think, prefer to stay with us, rather than
19 giving our shares of course to the Chinese. Vale had no
20 intention to give half of the project because the
21 Chinese are the buyers of the ore. So they were quite
22 happy to stay with us. But then we saw that there is
23 a game behind our back between Soros and the Brazilians
24 to push us out of the game.

25 PROFESSOR VAN DEN BERG: Mr Avidan, my last question is: the

16:44

1 sentence you see in the middle of the screen, "In this
2 context it is necessary to open a parallel channel of
3 negotiation", what did you understand by that?

4 A. That they wanted to see what they can do of what the
5 spirit of this email is saying: to push the deal with
6 Steinmetz out. That's exactly this.

7 I want to also add to it something. They were,
8 like, in touch with other Brazilian companies that were
9 doing the infrastructure in place, and still doing, like
10 OAS, like Oderbrecht and things like that, that they
11 were also pushing Vale to push us out of the deal.

12 PROFESSOR VAN DEN BERG: Thank you.

13 THE PRESIDENT: Thank you. (Pause)

14 Let me see what points have not been raised yet,
15 although you have answered many questions so far and
16 most matters that I had have been dealt with.

17 You were taken to tab 65, which is Exhibit C-84,
18 which is the share purchase agreement by which the
19 Pentler shares in BSGR were repurchased. You were asked
20 what the reasons were for this repurchase, and it was
21 put to you, "Why should they have a participation if
22 they are doing nothing?", and you answered, "Yes, that
23 was one of the reasons".

24 Would you want to elaborate on what the other
25 reasons were for this deal, for repurchasing the shares?

16:46

1 Maybe you should look at the document. You have told us
2 that you saw it for the first time, so that is fine. We
3 understand that you do not know that document. But you
4 knew the fact of the repurchase.

5 A. Yes. Well, they had shares in our BSGR Guinea, the
6 17.65%: it was like a free carry, free-carry shares.
7 They were not meant to invest anything. And since we
8 took the risk and invested our own money -- and we have
9 to remember that in 2008 the recession, the crisis, the
10 economic crisis came to the world, as we all know,
11 unfortunately. And I remember that myself, I asked the
12 board to cease a little bit of the work in the country,
13 and of course they didn't accept it, in spite [of] the
14 crisis. And here we purchased the shares because they
15 had no point of being there.

16 THE PRESIDENT: Why were they there? Why would they have
17 this free-carry interest in the first place?

18 A. Because they had the idea --

19 THE PRESIDENT: Sorry.

20 A. Well, they had the idea that we should come to the
21 country, because they saw the opportunity. And it's
22 like -- I don't know if I can give you an example.
23 Mobileye in Israel just sold the company for
24 \$15 billion, and the one that only had the idea, and did
25 not much during the process of developing this company,

16:48

1 had about \$1 billion, so only because he had the idea.

2 So it's quite common that people in the world are

3 telling companies to come over because they see

4 opportunity and they --

5 THE PRESIDENT: No, I understand all that. Thank you,

6 I understand all that. But you said the fact that they

7 did nothing was "one of the reasons" for repurchasing

8 their participation.

9 A. Yes.

10 THE PRESIDENT: When you say "one of the reasons", that to

11 me implies that there were others. What were these, in

12 your mind?

13 A. I think because they were not assisting in any case,

14 because --

15 THE PRESIDENT: That's the same reason!

16 A. Well, more or less.

17 THE PRESIDENT: Maybe that's the reason.

18 A. Maybe I saw that the opportunity will be that the

19 project would be much bigger in the future, and it's

20 better to pay them out, so they will be happy and leave.

21 But from my memory, they were really opposed, they

22 really refused to sell their shares at the time. We had

23 a real fight about it. But that was the thing. So we paid

24 them, and that's it. I think that's the main reason.

25 THE PRESIDENT: Thank you.

16:50

1 The questions that were asked about your being in
2 Guinea in the spring of 2008 or not. Just one
3 clarification. I understood that you were essentially
4 stationed in Guinea and that's where you were, except
5 for some trips. So is it likely that you would have
6 been away more than two months?

7 A. Yes -- no, I don't think it was more than two months.
8 I think when Ahmed Kanté was minister, and then the four
9 blocks were taken away while he was minister, and during
10 this time, exactly on the bridge of this time, when he
11 left, it was because of riots that started in the
12 country. So I don't know if it was the reason. But
13 I don't think that I left two months. I don't know the
14 dates --

15 THE PRESIDENT: No, I'm just saying this because this is
16 what arises from the records, to which you referred, by
17 your travel agent, Diesenhaus. Yes, Kanté was Minister
18 of Mines from March 2007 to August 2008; and if I'm
19 wrong, of course counsel will correct me. So it is true
20 that this was in this period.

21 Anyway, do I take it from your answer that in --

22 A. I had also at this time --

23 THE PRESIDENT: Yes?

24 A. I'm sorry. I had also at this time typhoid.

25 THE PRESIDENT: Sorry, you --

16:54

1 A. Mr Kanté? No, he was very difficult to convince.
2 Mr Kanté is very, I would say, firm on his position.
3 I would consider him a very straightforward guy, so ...
4 and he didn't have so much -- like, he wasn't so much in
5 the ministry to know exactly what we were doing.

6 He was very familiar with the Chinese market. He
7 even talked about it once in the -- when Dadis came to
8 power, he was in the Palais du Peuple and he justified
9 the retrocession of Blocks 1 and 2. And as far as
10 I remember, he said it was really done in a way that
11 because there was an attempt of BHP Billiton to take
12 over Rio Tinto, a hostile takeover in 2008, during
13 the -- just before the recession, and that was the
14 period that Guinea understood the gisement, the --

15 THE PRESIDENT: The value.

16 A. -- the quantity and the value that they had in Simandou.
17 Until then, Rio Tinto unfortunately didn't disclose what
18 exactly is under the surface. And only after this
19 attempt, Rio Tinto disclosed it to the NASDAQ,
20 et cetera.

21 So that's what annoyed him very much at this time.
22 So after this, he told me that because of what happened,
23 he was very, very hurt by -- he was in his watch. So he
24 was very hurt that Rio Tinto didn't disclose that, and
25 he mentioned it in this speech he gave in the Palais

16:56

1 du Peuple sometime in the beginning of 2009. This

2 I remember very well.

[PROTECTED]

[REDACTED]

7 THE PRESIDENT: People did not contradict the President?

8 A. No. It was very, very rare, very uncommon.

9 THE PRESIDENT: And you thought you have the ear of the
10 President?

11 A. I thought so, yes. I thought that he was trusting me.
12 I thought he was like -- he always told me, "You know,
13 I don't understand business. I am running the country
14 like I am running a village". And, "I'm a very simple
15 man". And I think ...

16 That was the kind of small talks that we had, even
17 though that we didn't talk too much. He was putting
18 football, we were talking a little bit on football, with
19 very noisy television there. And I think I was very
20 trusted by him, very. He really liked me.

21 I think also the other ministers, until today, if it
22 was Nabé, if it was Souaré, if it was Kanté, if it was
23 Sylla, they all liked me very much. They were very fond
24 of my -- I have to say that the only one that I had some
25 difficulties with at the time was Prime Minister

16:59

1 Kouyaté, because I don't know for what reason, but he
2 didn't want really to discuss with me about those
3 blocks. He told me it's none of my business. He talked
4 to the Minister Kanté and that's it. I felt really
5 a bit less connected to this gentleman.

6 THE PRESIDENT: Can you tell us a little bit more -- I mean,
7 you say that you got along well with the ministers, except
8 for Mr Kouyaté; you went along well, with the President.
9 There's one person with whom apparently you did not
10 apparently get on well: that is Mamadie Touré.

11 This is a strange picture that emerges from your
12 witness statement. On the one hand you have a feeling
13 that you need to take care of her, because otherwise she
14 gets angry. I don't know why she would get angry if you
15 don't pay attention to her, but that's apparently what
16 it is. And then she is very annoying and she is somehow
17 difficult to deal with; she is also difficult to ignore.

18 So can you explain this a little more?

19 A. I really did -- I really done my best during 2007 to
20 stay in good relations with her, so there will be no
21 issues whatsoever, and I did my best. The time that was
22 really --

23 THE PRESIDENT: Can I just interrupt you before you go on.
24 You did your best to be on good terms with her, but why
25 would she be someone you have to be on good terms with?

17:01

1 I mean, the minister I understand, the President

2 I understand. Why she?

3 A. Because when I came, I got the fact of her existence as
4 like a fait accompli, unfortunately. And she was
5 like -- we had never been in touch with any other
6 personnel or real wives of the President or things like
7 that. I got her as really a fait accompli. And since
8 Ibrahim was very sensitive that I should keep good
9 relations with her, I agreed with him, and until today
10 I think he had a point. There was a crisis in 2007.

11 THE PRESIDENT: She was a fait accompli. What was
12 a fait accompli: her presence?

13 A. Like a fact, yes.

14 THE PRESIDENT: I know what a fait accompli is, but usually
15 you don't say this of a person. But what was the
16 fait accompli: she was there? Why was she there?

17 A. When I came, she was already related to the people that
18 were there, like if it was Pentler, or I would say
19 mostly with Cilins. And when I got Ibrahim, in order --
20 I wanted very much to keep him in the loop and to stay
21 working with him, I really, really liked the guy, so it
22 was like something that I had to live with.

23 I didn't feel her so much like during -- I was very
24 busy in the field, working. So each time I came to
25 Conakry, before I left for my leave, in Israel or in

17:03

1 Paris, wherever I went, I made sure that Ibrahim took me
2 to Dubréka and I was seeing her and told her what we
3 were doing in the field, and that we are working and
4 everything is okay, and that's it.

5 Now, when she -- I think when she started to realise
6 that we are negotiating -- maybe Fred told her that we
7 are negotiating with them on purchasing the shares --
8 then she started to get really aggressive. Really
9 aggressive. And when I'm saying "aggressive", I mean,
10 it's very difficult, extremely difficult -- if you have
11 a Guinean in the room, he can explain what the marabout
12 thing is really meaning. It's very hard to explain to
13 the court what exactly is happening. But she was always
14 walking with an albino girl: I remember her name, her
15 name was Emma or something. I think that she is still
16 alive; beforehand, she had somebody else that
17 disappeared.

18 But until 2007, each time I told the President, "You
19 know, Mamadie is a little bit pushing", and he was
20 telling me, "You don't pay attention to her. You don't
21 pay attention to her. She is doing me the massage in
22 the foot" -- he didn't feel the bottom legs because of
23 diabetes that he had -- "and that's all. You don't pay
24 attention to her, you don't pay attention to her".
25 That's exactly it.

17:08

[PROTECTED]

[REDACTED]

17:10

[PROTECTED]

[REDACTED]

7 THE PRESIDENT: If it helps you, why don't you look at your
8 second witness statement, paragraph 14 and following.

9 A. Yes.

10 THE PRESIDENT: So it was two tractors and a generator?

11 A. I don't know if it is the exact -- exactly the same
12 transaction we deal with here. This one ... This one
13 was in 2009. I don't know when he supplied this. But
14 I'm not so sure that -- the one that you saw here, the
15 500,000 and the 350, maybe it was part of this payment.
16 I have no idea on this.

[PROTECTED]

[REDACTED]

17:14

[PROTECTED]

[REDACTED]

6 MR OSTROVE: Thank you. Merci, Madame.

7 THE PRESIDENT: Thank you.

8 Would you like to ask a question on this document?

9 You will of course get your chance for follow-up
10 questions. But if you have one now, I should allow you
11 to ask it.

12 MR DAELE: No. No, I don't.

13 THE PRESIDENT: Good. (Pause)

14 I have no further questions. Do the parties have
15 any follow-up questions on the basis of the Tribunal's
16 questions? Mr Daele?

17 MR DAELE: I just have one.

18 THE PRESIDENT: Yes, please.

19 MR DAELE: In relation to a question Professor Mayer asked.

20 I think the question was asked about the difference in
21 pages between the two base conventions, the one for
22 Blocks 1 and 2 and the other for Zogota, and Mr Avidan
23 gave an explanation.

24 (5.19 pm)

25 Further re-direct examination by MR DAELE

17:19

1 Q. Is it possible that the difference is that one of the
2 two also includes the pages of the annexes and the other
3 one is just like the main body of the feasibility study?

4 A. You're asking me?

5 Q. Yes. Is it possible -- so there were four -- we looked
6 yesterday at the document --

7 MR OSTROVE: Excuse me. Might I suggest that that's
8 an exceptionally leading question?

9 MR DAELE: Do you know whether the feasibility study of
10 Zogota, the Zogota feasibility study -- we looked at it
11 yesterday: it was 454 pages. I think that is the number
12 that Professor Mayer mentioned. Do you remember whether
13 that included the annexes or not?

14 A. I don't think so. I think it was the real studies. I'm
15 almost positive that it was the real studies with no ...
16 Geophysics surveys can contain, I don't know, 50 or
17 100 pages. So I'm not so sure. I think the explanation
18 I gave corresponds. But, you know, Marc is a better
19 person to answer this question.

20 THE PRESIDENT: No, but we have seen the document and we
21 know that 454 pages is the actual study without annexes.
22 We are just asking ourselves where the annexes were.

23 MR DAELE: I have no further questions.

24 THE PRESIDENT: Thank you. Are there any questions on the
25 Respondent's side?

17:21

1 MR OSTROVE: (Interpreted) No, thank you, Madam President.

2 THE PRESIDENT: Fine.

3 So, Mr Avidan, that leads us to the end of your
4 examination. We thank you very much again for having
5 answered very patiently all our questions and having
6 been available in spite of the circumstances. That
7 closes now this session, and we can switch off and say
8 goodbye. Thank you.

9 MR AVIDAN: Thank you very much. Thank you.

10 THE PRESIDENT: The Tribunal has a number of procedural
11 points that it wishes to address with the parties.

12 I would suggest that we take now just five minutes, not
13 a real break -- we already had a real break this
14 afternoon -- but just to be ready for the procedural
15 discussions.

16 (5.22 pm)

17 (A short break)

18 (5.36 pm)

19 THE PRESIDENT: So the procedural points that the Tribunal
20 would like to address now are the following.

21 First of all, after this hearing, we have already
22 set in Procedural Order No. 1 a procedure for the
23 correction of the transcripts, which is 30 days. You
24 would agree among parties within 30 days from the
25 receipt of the sound or the transcript, whichever is

17:37

1 later, and I assume that the sound will be a little
2 later than the written transcript.

3 It would probably make sense that while you correct
4 the transcript, you also agree on the portions that are
5 protected, and if there is a disagreement, both on
6 correction or transparency issues, then of course the
7 Tribunal would rule on it.

8 The video will also be published, and that will be
9 dealt with by ICSID. Since we have cut off the
10 streaming when there were protected documents addressed,
11 there is no additional transparency exercise to be done
12 with respect to the video. This is different than the
13 transcript.

14 Then taking up the mini-opening topics of this
15 morning, the Tribunal has conferred on your submissions.

16 First, with respect to hearing Mamadie Touré, we
17 came to the conclusion that we will not hear her, on the
18 one hand because of the due process issues that were
19 raised by the Claimants and because of the practical
20 difficulties that were raised by the Respondent.

21 In respect of the document inspection and forensic
22 expert report, we do think that it would be helpful to
23 the Tribunal to know whether these documents are
24 authentic or not, and it will also be helpful to you for
25 your post-hearing briefs, in the sense that the

17:39

1 arguments might be different if they are authentic or
2 they are forged.

3 So what we would suggest in this respect is the
4 following procedure, and I'm not giving every detail.
5 It goes without saying that what I am saying now -- and
6 you may have questions afterwards -- that this will all
7 go into a post-hearing procedural order where we can go
8 into more details. But in general, in more general
9 terms.

10 The first thing would be that the Respondent does
11 provide the information on the chain of custody. At the
12 same time, the Respondent should also enquire and advise
13 its opponent and the Tribunal of how to access the
14 original documents: should the Tribunal make a request
15 to the FBI, or what is the best way of arranging this?

16 In parallel to this -- and we may want to set a time
17 limit for these two matters -- in parallel to this, the
18 Tribunal will seek to identify an expert and will then
19 submit to you a proposal for a tribunal-appointed
20 expert. At the same time or thereafter, whatever is
21 more efficient, we will also submit to you draft terms
22 of reference for this expert that will set out the
23 proceedings for the authenticity inspection and report.

24 The parties will obviously have a chance to comment
25 both on the identity of the expert and on the draft

17:42

1 terms of reference. Essentially what the terms of
2 reference would say is that the Tribunal-appointed
3 expert will inspect the documents, the original
4 documents; that this will be organised in such a fashion
5 that the parties can send representatives. They could
6 also send their own forensic expert, if they wish to
7 have one, and this would be organised under the
8 supervision either of the secretary or the assistant.

9 Thereafter, the Tribunal expert will submit probably
10 a draft report first, where the parties can make
11 comments, and then submit a final report, making changes
12 or not, but having considered the parties' comments.
13 Then most likely it will be helpful to have a hearing
14 where the expert is heard and the parties can examine
15 the expert; and if the parties have their own expert,
16 we'll see how to deal with that. Should they be heard
17 as well? Maybe.

18 That is for the expert proceedings.

19 That means that we don't think it is helpful to have
20 post-hearing briefs at this stage, because the
21 post-hearing briefs may be different depending upon the
22 findings of the expert. So we would defer the
23 post-hearing briefs, so that you can address everything
24 that occurred during this week, plus the expert report,
25 in one set of briefs.

17:44

1 That is essentially what the Tribunal had. But I'm
2 looking at my co-arbitrators: is there something that
3 needs to be added?

4 So you can of course react right away. If you need
5 a little time to confer, obviously you may. If you have
6 clarification questions, we are happy to answer them, or
7 any suggestions, comments.

8 Mr Daele?

9 MR DAELE: I only have one comment: I think it's a very
10 sensible proposal of the Tribunal.

11 THE PRESIDENT: Thank you.

12 (Interpreted) May I give the floor to the
13 Respondent? Do you need to confer?

14 MR OSTROVE: Thank you, Madam President. There's a few
15 points of clarification to make sure I fully understand.

16 First, on the transcript. When we correct the
17 transcript -- I'd like to thank the interpreters for
18 their enormous job. So we are going to leave the
19 interpretations as taken down, and I hope that the
20 Tribunal can read the original of the two transcripts
21 and have them next to each other, so that the only thing
22 that's binding in fact is the original language. We are
23 not going to validate the interpreting.

24 THE PRESIDENT: No, I agree with you. I think the original
25 should be correct.

17:46

1 MR OSTROVE: So we might be in a situation where the
2 transcript is published on the ICSID website. There are
3 things that are said in the interpreting that are only
4 in English or only in French; for instance, there was
5 one word -- usually I don't look at the interpreting, of
6 course -- but there was one word which was a complicated
7 [one]: we said that, for instance, it was
8 a "pseudo-simulacrum" and it was translated as
9 "forgery". Anyway, such things will be indicated in the
10 transcripts and it will be indicated clearly whether the
11 original was in French or in English.

12 THE PRESIDENT: In terms of the drafting of the award,
13 I think we may agree that the Tribunal quotes in the
14 original language. That will simplify discussions on
15 the translations, right? Can we agree on this?

16 MR DAELE: (In English) Another very sensible proposal.

17 THE PRESIDENT: Thank you!

18 MR OSTROVE: (Interpreted) Concerning the forensic exam of the
19 [documents], there are a few questions to start with.

20 Can we agree that this has to do with all of the
21 original documents, or it's only the BSGR documents that
22 are concerned? This morning my colleague Laurent Jaeger
23 said that there was potentially no reason to carry out
24 a forensic expertise on all of the Pentler documents.
25 We are open to any possibility, but it would take much

17:47

1 longer if we include all of the Pentler documents.

2 I don't know how many there are. Let me check.

3 There are five original documents, if I'm not
4 mistaken, Pentler documents, and three BSGR documents.
5 So if we do Pentler's too, I have no problem, but it
6 will more than double the work of the expert and it
7 would double the time, obviously.

8 THE PRESIDENT: (Interpreted) Yes, I can see this. I felt
9 that insofar as the exercise would be launched and there
10 was a challenge on those documents too, it would be more
11 logical in fact to submit all of the documents.

12 MR OSTROVE: Okay, it was just to be absolutely clear.

13 In this regard we had asked that the Claimants be
14 asked to produce, even under conditions of very [strict]
15 confidentiality, the declaration by Mr Noy in the LCIA
16 case. I don't know if the Tribunal has [considered]
17 this possibility.

18 THE PRESIDENT: Yes, thank you. Forgive me, it was not in
19 my presentation a moment ago.

20 What can be done is that you could confer amongst
21 lawyers to see whether an increased confidentiality
22 agreement could be acceptable. What the Tribunal wishes
23 to avoid is that it be the only ones to have the
24 availability of the documents; it would raise problems
25 of due process.

17:50

1 MR OSTROVE: Okay, we shall confer with our adversary on
2 this point.

3 THE PRESIDENT: Yes, and we will put this in the PO too.

4 MR OSTROVE: Another point of clarification. You mentioned
5 the possibility for the parties to appoint their own
6 experts to assist the Tribunal-appointed expert. So if
7 I understand rightly, in the mind of the Tribunal, there
8 will be a single expert report; there won't be the
9 Tribunal-appointed report plus the other two, which
10 would mean three in total?

11 THE PRESIDENT: Yes, we wondered about this, and it seemed
12 to us that naturally each party had the possibility of
13 being assisted by an expert to assess the conclusions of
14 the Tribunal-appointed expert, but we didn't think that
15 it would be necessary that they both submit their own
16 reports. It wasn't clear in what I said, and that is
17 because the thinking of the Arbitral Tribunal has not
18 been completed so far.

19 Would we hear not only the Tribunal-appointed expert
20 at the hearing, but also the experts of the parties, who
21 may make comments or criticise the conclusions of the
22 Tribunal-appointed expert? I'm going to note this,
23 because in the terms of reference we can include this
24 and then you can make comments.

25 MR OSTROVE: Thank you.

17:51

1 Last two items on the expertise. You've asked us to
2 check the possibility of accessing; we'll come back to
3 you as requested. I seem to understand -- but again, we
4 need to check -- that for the Department of Justice in
5 the United States, it would be much simpler if the
6 Tribunal-appointed expert was resident in the United
7 States. But I'll come back to you on this particular
8 item.

9 THE PRESIDENT: We had contemplated this and thought --
10 without, of course, having anybody in mind at this
11 stage -- that we should appoint an American expert.

12 MR OSTROVE: This leads me to my last point, which was also
13 mentioned by Laurent Jaeger this morning: the question
14 of the cost, the additional cost of this process.

15 As Laurent Jaeger indicated this morning, it's the
16 Claimants that contest the validity of the contracts.
17 We fully understand that this is a request that stems
18 from the Tribunal, incumbent on both parties to the
19 proceedings. But as you understand too, since the
20 beginning the cost of these proceedings for the Guinean
21 Republic is very high, and we'd ask that the additional
22 cost, at least the cost of the experts, be borne by the
23 Claimant.

24 THE PRESIDENT: Yes, we've taken note of this, and I think
25 that in the terms of reference of the expert we can have

17:53

1 a provision on this particular matter and you can make
2 your comments at that time.

3 (In English) Mr Daele, would you like to react on
4 any of these matters? You don't have to, but it's just
5 an opportunity.

6 MR DAELE: No, no, no. I was going to make a comment, but
7 then you said we could comment after we received --
8 I had a comment in relation to the cost: that obviously
9 it is the burden of proof of Guinea to show that these
10 documents are authentic. So from our point of view,
11 also taking into account that it's a request of the
12 Tribunal, we think the cost should be shared. But
13 that's the only comment I have for the moment.

14 THE PRESIDENT: Fine.

15 (Interpreted) You have no more questions or
16 comments?

17 MR OSTROVE: Well, obviously, you know, for form's sake,
18 this is totally challenged by our party.

19 THE PRESIDENT: We need to fix timing for the information on
20 chain of custody as well as the indications on access to
21 the documents. Since this is under the control of the
22 Claimant -- of the Respondent, sorry. You see, I'm glad
23 that the hearing is nearly over because we're getting
24 tired!

25 MR OSTROVE: It shouldn't be too complicated. The team will

17:55

1 not be around between Wednesday and the end of next
2 week; we are travelling. But I don't have my --

3 THE PRESIDENT: I was thinking in terms of two weeks, that
4 sort of thing.

5 MR OSTROVE: Yes, we could do this by 15th June.

6 THE PRESIDENT: 16th June? 16th June is a Friday.

7 MR OSTROVE: Yes. If we can answer before that, naturally
8 we will endeavour to do so.

9 THE PRESIDENT: Perfect.

10 Can we have the same timing for the parties to come
11 back -- and that goes for both -- on the question of
12 Mr Noy's statement in the LCIA proceedings?

13 MR DAELE: (In English) Yes, Madam President.

14 THE PRESIDENT: Maybe we should then set
15 some -- you may wish to comment on what you get from
16 Guinea about chain of custody and access to documents
17 before the Tribunal goes on issuing its draft terms of
18 reference. Would you need, what, a week, ten days?

19 MR DAELE: If possible, ten days, please. We also don't
20 know how many documents we will receive. So we would
21 rather err --

22 THE PRESIDENT: What we would really need in terms of
23 comments is what we need to proceed with the draft terms
24 of reference. It goes without saying that later on you
25 will have other opportunities of commenting.

17:57
have the

1 MR OSTROVE: (Interpreted) I'd like to make sure that the parties
2 same conception of what we're talking about in terms of
3 chain of custody. If we can answer by Friday, we will
4 do that.

5 So we had understood from our part -- because
6 Mr Daele just said it depends on the number of documents
7 that are produced -- we had seemed to understand that at
8 what date the documents went from Mamadie Touré to the
9 Guinean Government; at what date I had scanned the
10 documents in question; and at what date the documents
11 had been forwarded from Guinea to the American
12 authorities. And we've been asked this morning --
13 yesterday Mr Libson asked about Hennig, and there we
14 have no idea how these people accessed the documents.

15 But is this truly the question that you wish us to
16 answer: when the documents were forwarded from Mamadie
17 Touré to Guinea, when we scanned them, and when they
18 went from my client to the United States authorities?

19 THE PRESIDENT: This is what I understand when I say "chain
20 of custody": who was the custodian of the document and
21 at what time?

set out

22 MR DAELE: (In English) Well, as far as we are concerned, we have
23 our questions in our letter of 28th May.

24 THE PRESIDENT: (In English) The Tribunal requests not
25 a full explanation on all the matters in the letter.

17:59

1 What we want is to understand how these documents have
2 travelled and at what point in time, from which hands
3 they passed to which other hands. That may be of
4 relevance for the expert or not, but it may be helpful
5 information to have.

6 MR DAELE: But to clarify, if that means that the documents
7 went from Mamadie Touré to Mr Mebiame and then from
8 Mebiame to DLA, and then from DLA, let's say, to the
9 government; I assume that's what is meant by the chain
10 of [custody]?

11 THE PRESIDENT: Yes, absolutely.

12 MR OSTROVE: (Interpreted) I can assure you that all of the
information we

13 have on the chain of custody will be included. If the
14 document went from Mamadie Touré to George Soros to his
15 magicians and somebody else, it will be included. But
16 I just wanted to make it absolutely clear that this was
17 what you expected from us.

18 THE PRESIDENT: Absolutely.

19 (In English) Mr Daele, is there anything else in
20 terms of procedure that we have not addressed now that
21 we should, or any other points that you wish to raise?
22 Any remarks on the conduct of this hearing or of the
23 proceedings, any complaints that you wish to raise?

24 MR DAELE: No, I don't think so, except also maybe thanking
25 the people for the translation, thanking the Tribunal,

18:01

1 thanking Mr Garel and the ICSID Secretariat, and
2 obviously thanking -- I think from our point of view
3 it's been a pleasure to work both with the DLA and the
4 Orrick side, so I would like to thank everyone involved.
5 Thank you.

6 THE PRESIDENT: Thank you.

7 (Interpreted) Does the Respondent still have
8 questions of organisation, procedure or comments to
9 make, or any complaints, for that matter?

10 MR OSTROVE: No, we have no comment on the proceedings and
11 we have no reservations as to the way the hearings were
12 held so far. Like our learned colleagues, we'd like to
13 thank the Tribunal for its questions and its attention,
14 and also thank the Secretariat, as well as the Tribunal
15 Secretary, also the court reporters, the interpreters,
16 the technical team, and of course our adversaries.
17 Thank you very much.

18 THE PRESIDENT: (In English) Fine. So this leads us to the
19 end of the hearing.

20 We should not close without thanking all those who
21 deserve to be thanked: the interpreters, of course; the
22 technician, who handled a difficult job.

23 We certainly marked history with transparency in
24 these hearings, we made progress. We invented the green
25 and the red -- we; the Secretary invented the green and

18:03

1 the red light. It's a lightbulb, but it was very
2 helpful. I must say I was a little concerned before we
3 started about how to handle all these protected
4 documents and going off and on the streaming, and it
5 worked out extremely well, thanks to the discipline of
6 everyone and the help of the technician.

7 Thanks to the court reporters as well, who have
8 sometimes worked quite long stretches. Thanks to the
9 party representatives, who sat in very long hours. And
10 of course, thanks to the secretary, the assistant, and
11 to counsel for very professional conduct of this
12 arbitration, of this hearing, also in the preliminary
13 written phase. It was very much appreciated how you
14 worked together these two weeks because it allowed us to
15 focus on the issues, and the issues are quite complex,
16 and we were not disturbed by skirmishes of procedural
17 issues and that is very much appreciated.

18 Now I wish everyone a little rest, and I close this
19 hearing. Thank you.

20 MR OSTROVE: Merci.

21 MR DAELE: Thank you.

22 (6.04 pm)

23 (The hearing concluded)

24

25

